

THE DISTRICT COURTS ACT, 1891⁽¹⁾⁽²⁾ (QUEENSLAND, ADOPTED) IN ITS APPLICATION TO THE TERRITORY OF PAPUA.

An Act to Consolidate and amend the Law relating to District Courts.

55 Vic. No. 33.
THE DISTRICT
COURTS ACT,
1891.

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

PART I.—PRELIMINARY.

1. This Act may be cited as "*The District Courts Act, 1891.*"⁽¹⁾
It is divided into Parts, as follows:—

PART I.—
PRELIMINARY.
Short title.
Division of Act.

- Part I.—Preliminary;
- Part II.—Courts, Judges, Jurors, and Officers;
- Part III.—Criminal Jurisdiction and Procedure;
- Part IV.—Civil Jurisdiction;
- Part V.—Civil Procedure;
- Part VI.—Recovery of Possession of Land;
- Part VII.—Appeals, &c.;
- Part VIII.—Enforcement of Judgments;
- Part IX.—General Provisions.

(1) *The District Courts Act, 1891*, of Queensland in its application to the Territory of Papua, comprises *The District Courts Act, 1891*, of Queensland, as amended by the other Queensland Act referred to in the following Table:—

ACTS OF THE STATE OF QUEENSLAND.

Citation of Act.	Rules of Court by which applied.	Date on which application took effect.
<i>The District Courts Act, 1891</i> (55 Vic. No. 33)	<i>Rules of the Central Court For Regulating Civil Procedure and the Admission of Barristers and Solicitors</i>	2.2.1910 (Papua Govt. Gaz. of 2.2.1910)
<i>The District Courts Act, 1897</i> (61 Vic. No. 23)	<i>Rules of the Central Court For Regulating Civil Procedure and the Admission of Barristers and Solicitors</i>	2.2.1910 (Papua Govt. Gaz. of 2.2.1910)

(2) Rule 3 of the *Rules of the Central Court for Regulating Civil Procedure and the Admission of Barristers and Solicitors* provided that, "Where any matter is not provided for in the *Rules of Civil Procedure*, or by any Ordinance of the Territory, the practice and procedure of the District Courts of the State of Queensland, as regulated by the District Court Acts of the said State, 55 Vic. No. 33, and the Rules made thereunder known as the District Court Rules, 1891, shall, as far as circumstances will admit of, govern the matter."

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Commencement of Act.	2. This Act shall commence and take effect on and from the first day of January, one thousand eight hundred and ninety-two.
Interpretation.	3. In this Act, unless the context otherwise indicates—
Court or District Court.	The term “Court” or “District Court” means a Court appointed under the authority of this Act;
Judge or District Court Judge.	The term “Judge” or “District Court Judge” means a Judge of a District Court or District Courts, and includes a Deputy Judge;
Crown Law Officer.	The term “Crown Law Officer” means and includes the Attorney-General, the Solicitor-General, and the Minister of Justice;
District.	“District” means a district assigned to a District Court under the provisions of this Act;
Petty Sessions District.	The term “Petty Sessions District” means a district appointed under “ <i>The Justices Act of 1886</i> ” ⁽³⁾ for the purposes of Courts of Petty Sessions;
Justice.	“Justice” means a Justice of the Peace appointed under “ <i>The Justices Act of 1886</i> ” ⁽³⁾ ;
Registrar.	“Registrar” means Registrar of a District Court, or, where there are joint Registrars, either of the Registrars;
Landlord.	“Landlord” means the person entitled to the immediate reversion of land, or, if it is held in joint tenancy, coparcenary, or tenancy in common, any one of the persons entitled to the reversion;
Action.	“Action” includes suit, and means a civil proceeding commenced as prescribed by plaint;
Matter.	“Matter” means a proceeding in the Court which is commenced as prescribed otherwise than by plaint;
Judgment.	“Judgment” includes a judgment, order, or other decision or determination of a Judge;
Party.	“Party” includes a person served with notice of or attending a proceeding, although not named on the record;
Return Day.	The term “Return Day” means the day appointed in a summons or proceeding for the trial or hearing of an action or matter;

(3) *The Justices Act of 1886* (Queensland) was adopted as a law of British New Guinea by *The Courts and Laws Adopting Ordinance (Amended)* of 1889 and was continued in force in the Territory of Papua by Section 6(1) of the *Papua Act 1905*. *The Justices Act of 1886* (Queensland, adopted) was repealed and replaced in the Territory of Papua by the *Justices Ordinance, 1912-1940*.

The District Courts Act, 1891 (Queensland, adopted).

“Prescribed” means prescribed by this Act, or the Rules of Court; Prescribed.

The term “Rules of Court” means Rules of Court made as by this Act prescribed; Rules of Court.

The term “Goods” includes money or bank-notes of any banking society or company established in Queensland or elsewhere, and cheques, bills of exchange, promissory-notes, specialties, or other securities for money; Goods.

The term “Small Debts Court” means a Court held under the “*Small Debts Act of 1867.*”⁽⁴⁾ Small Debts Court.

4. The Acts specified in the First Schedule to this Act are repealed to the extent in that Schedule indicated. Repeal. First Schedule.

But the repeal shall not affect or invalidate any acts or things done or proceedings taken under the authority of the repealed Acts or any of them.

All proceedings initiated before the commencement of this Act shall be carried on, as far as practicable, according to the provisions of this Act, and, subject to this Act, according to the provisions of the repealed Acts, which shall for that purpose be deemed to continue in force notwithstanding the repeal.

District Courts created, and Judges, registrars, bailiffs, and other officers, appointed, under the provisions of the repealed Acts shall, so far as may be necessary, be deemed to have been created and appointed respectively under the provisions of this Act, and shall continue subject to the provisions of this Act.

5. This Act shall not be construed to diminish or take away from any jurisdiction power or authority conferred on a District Court or Judge by any other Act. General saving of powers of judges.

PART II.—COURTS, JUDGES, JURORS, AND OFFICERS.

PART II.—
COURTS,
JUDGES,
JURORS, AND
OFFICERS.

Courts.

6. The Governor in Council may, by Proclamation, order that Courts, to be called District Courts, shall be held at such places as he thinks fit, and may, by like Proclamation, alter the place for holding a Court, or order that the holding of any Court be discontinued. Appointment of District Courts. Cf. Imp. 51 & 52 Vic. c. 43, s. 4.

(4) The *Small Debts Act of 1867* (Queensland) was adopted as a law of British New Guinea by *The Courts and Laws Adopting Ordinance (Amended)* of 1889 and was continued in force in the Territory of Papua by Section 8(1) of the *Papua Act 1905*. The *Small Debts Act of 1867* (Queensland, adopted) was repealed and replaced in the Territory of Papua by the *Small Debts Ordinance, 1912*.

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Assignment of districts.

The Governor in Council may also, by Proclamation,⁽⁵⁾ assign to any District Court a District, which shall consist of a Petty Sessions District, or two or more contiguous Petty Sessions Districts.

When the holding of a Court is discontinued, all proceedings pending in the Court shall be transferred to and continued in such other Court as the Governor in Council may direct by the Proclamation, and all records of the Court, the holding of which is discontinued, shall be transferred to such other Court.

Courts to be courts of record.
Cf. Imp. 51 & 52
Vic. c. 43, s. 5.

7. Every District Court shall be a Court of Record, and shall have criminal and civil jurisdiction as provided by this Act.

Seal of the court.
Cf. Imp. *Ib.* s. 180.

8. For every Court there shall be a seal; and notices, summonses, certificates, warrants, and other process, issued by the registrar shall be sealed or stamped with the seal.

Judges.⁽⁶⁾

Appointment and qualification of judges.
Cf. Imp. *Ib.* s. 8.
Amended by
Q. 61 Vic. No. 23, s. 2.

9. The Governor in Council may, by commissions in Her Majesty's name, appoint Judges of District Courts, each of whom shall be a barrister or a solicitor of at least five years' standing.

The number of Judges shall not exceed four.⁽⁷⁾

A barrister or solicitor shall not be appointed unless he has been in practice or has held a judicial or legal office under the Crown within two years immediately preceding his appointment.

Governor in Council may assign courts to each judge.

10. The Governor in Council may, by Order in Council, assign to a Judge, either permanently or in rotation with other Judges, such Courts as he thinks fit; but the jurisdiction of a Judge shall not be deemed thereby to be limited exclusively to the Courts so assigned to him.

Judges empowered to act throughout the colony.
Cf. Imp. *Ib.* s. 9.

11. Every Judge holding office at the passing of this Act is hereby empowered, without a fresh commission, to act as Judge of any District Court in the Colony as though such Court had been named in his commission and assigned to him by Order in Council.

Every Judge hereafter appointed shall be appointed for the whole Colony, and shall under his commission be empowered to act in any District Court in the Colony.

(5) No proclamation has been published in *Papua Govt. Gaz.*

(6) As to the appointment of Judges of the Supreme Court of Papua, see the *Central Court Ordinance, 1925.*

(7) The words, "The number of Judges shall not exceed four", were substituted in Queensland for the words, "Until otherwise provided by Act of Parliament, the number of Judges shall not exceed three", by *The District Courts Act of 1897.* As to the applicability of this provision, as amended, see Rule 3 of the *Rules of the Central Court for Regulating Civil Procedure and the Admission of Barristers and Solicitors*, printed on p. 669. See also footnote (6) printed on p. 670.

The District Courts Act, 1891 (Queensland, adopted).

12. The Judge to whom a Court is assigned shall attend and hold the Court at the place appointed by the Governor in Council at such times as are appointed by the Judge with the approval of a Crown Law Officer, but so that a Court is held in the place once at least in such interval as the Governor in Council directs by Proclamation.

Judge to hold court where directed and to give notice.
Cf. Imp. 51 & 52
Vic. c. 43, s. 10.

Notice of the days on which the Court is appointed to be held shall be put up in a conspicuous place in the court-house and in the office of the registrar, and shall be otherwise published as the Judge directs.

When, by reason of the absence of the Judge, the Court cannot be held at the time appointed, the registrar, or, in the event of his absence, the bailiff, shall adjourn the Court to such day as he deems convenient, and shall enter in the minute-book the cause of the adjournment.

13. A Judge may sit in chambers⁽⁸⁾ at any time and at any place, whether that place is within or not within the district of the Court in which the action or proceeding is pending.

Judge may sit in chambers.

14. Subject to the Rules of Court, a Judge may exercise in chambers⁽⁸⁾ any jurisdiction of a District Court, except the trial of actions and the hearing of applications for new trials.

Jurisdiction in chambers.

15. A Judge shall not practise as a barrister, solicitor, conveyancer, or notary, or be directly or indirectly concerned or interested in such practice; and a Judge shall not be capable of being summoned or being chosen as a member of the Legislative Council or Legislative Assembly.

Judges not to practise or sit in Parliament.
Cf. Imp. *Ib.* ss. 8, 14.

16. A Judge shall hold his office during ability and good behaviour, and shall receive (exclusive of any allowance for travelling expenses) an annual salary of one thousand pounds, which sum shall not be diminished during his continuance in office.

Judge's salary.
Cf. Imp. *Ib.* s. 23.

17. The Governor in Council may remove a Judge for inability or misbehaviour:

Removal from office.
Cf. Imp. *Ib.* s. 15.

Provided that twenty-one days at the least before removal, the Judge shall receive notice of the intention to remove him, and he shall thereafter and before removal have the opportunity of being heard before the Governor in Council in his defence.

18. A Judge shall not be entitled to receive any allowance by way of travelling expenses or otherwise in respect of a journey, except such as is necessary for the purpose of attending the Courts assigned to him under the provisions of this Act.

No travelling expenses except to attend courts.
Cf. Imp. *Ib.* s. 23.

(8) See, also, Rules 96 to 98 inclusive of the *Rules of Civil Procedure*, printed on p. 613.

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Deputy judge.
Cf. Imp. 51 & 52
Vic. c. 43, s. 18.

19. In case of the illness or absence of a Judge, the Governor in Council may appoint⁽⁹⁾ another Judge, or a barrister or solicitor of at least five years' standing, to act as the deputy of the Judge during his illness or absence.

A deputy appointed under this section shall, during the time for which he is appointed, have all the powers and privileges and perform the duties of the Judge for whom he is appointed.

Judge may perform the duties of another judge.
Cf. Imp. Ib. s. 19.

20. In case of the illness, or absence on leave or otherwise, of a Judge, or on an emergency, another Judge may, at the request in writing of the first-mentioned Judge or of a Crown Law Officer, sit either in Court or in chambers for the first-mentioned Judge, and may exercise all the powers and perform all the duties which that Judge might have exercised or performed.

Two judges may sit at same place concurrently.
Cf. Imp. Ib. s. 12.

21. When it appears to a Crown Law Officer to be desirable for the more speedy disposal of business that two Judges should hold Courts or sit in chambers concurrently for the disposal of business at the same place, any two Judges, upon the request in writing of a Crown Law Officer, may hold Courts or may sit in chambers at the same place, and may exercise any jurisdiction of a District Court or of a Judge of a District Court at that place either concurrently or at such times as may be convenient.

Judge may be called on to retire when disabled.

22. A Judge who is disabled by reason of permanent infirmity from performing the duties of his office may, and if required by the Governor in Council shall, retire from office.

Retiring allowance.
Cf. Imp. Ib. s. 24.

If the Judge at the time of such retirement has held the office of Judge for not less than fifteen years, he shall be entitled to a pension by way of annuity during his life equal to the amount of one-half of his salary at the time of his retirement.

Who shall be jurors.
Cf. Imp. Ib. s. 102.

23. The persons qualified and liable to act as jurors for the trial of criminal and civil issues and for the assessment of damages

Jurors.⁽¹⁰⁾

(9) See Section 7 of the *Central Court Ordinance, 1925.*

(10) Despite the express provisions in this Act and in the Rules made thereunder as to jury trials in civil cases, *quaere* whether it is legally possible for issues of fact in civil cases in the Supreme Court of the Territory of Papua to be tried by a Judge with a jury. No provision as to the qualification of jurors, the summoning of jurors, or the empanelling of juries in civil cases has been made by any Ordinance of the Territory of Papua or by any enactment of Queensland which has been expressly adopted by any Ordinance of the Territory of Papua as a law of that Territory, except to the extent, if at all, that the adoption of the provisions of *The District Courts Act, 1891* (Queensland, adopted) or *The District Court Rules, 1891* (Queensland, adopted) may be held to have introduced the jury system into the law of the Territory. See, however, on this question, Section 7 of *The Courts and Laws Adopting Ordinance of 1888*, and Rules 66 to 78 of the *Rules of Civil Procedure*. As to trial by jury in criminal proceedings, see *The Jury Ordinance of 1907* and footnote (4) to *The Criminal Procedure Ordinance of 1889*.

respectively, under the provisions of "*The Jury Act of 1867*,"⁽¹¹⁾ shall be the persons qualified and liable to act as jurors in District Courts.

When the Court is held in an assize town or circuit town the jury books made out under that Act by the sheriff, or copies of them, shall be the jury books for the Court; and for the purposes of the establishment of jury districts and the preparation of jury lists every city or town in which a Court is held shall be deemed to be a Court town within the meaning of that Act.

When the city or town in which the Court is held is not an assize town or circuit town, jury lists shall be prepared, published, and corrected, according to the provisions of that Act; but the lists, when corrected, shall be transmitted by the clerk of petty sessions to the Judge, who shall thereupon cause to be prepared a jury book according to that Act as nearly as may be, and his duties in that behalf shall be the same as those of the sheriff, except that it shall not be necessary for the Judge to provide the boxes for jury cards mentioned in the tenth section of that Act.

24. When the Governor in Council, by Proclamation, orders a Court to be held at a town where provision has not been made for the preparing and settling of the jury lists for the town, the Governor in Council may direct the proper justices to cause jury lists for the town to be prepared.

Jury lists for newly proclaimed districts.

The justices shall thereupon, in pursuance of the direction, prepare or cause to be prepared, within three months after the receipt of the direction, lists of the jurors within the jury district for the town; and thereupon the clerks of petty sessions, police officers, and justices, shall do and perform within the three months all the acts, matters, and things in and towards preparing, correcting, and allowing, the jury lists which are by the said Act required to be ordinarily done in certain months in each year.

The jury lists when so prepared, corrected, and allowed shall be transmitted by the clerks of petty sessions to the Judge.

A jury list prepared under the direction of the Governor in Council in pursuance of this section shall have effect and the same shall continue in force until a new list is prepared under the said Act and this Act.

25. The Judge shall, within ten days after the receipt of the jury lists, cause to be made out from them a jury book for the Court according to the provisions of the said Act so far as it can be applied.

Jury book to be made therefrom.

The jury lists when settled shall come into force, and the per-

(11) *The Jury Act of 1867* (Queensland) has not been expressly adopted as a law of the Territory by any Ordinance of the Territory of Papua.

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sons whose names are therein set down shall be liable to serve as jurors immediately after the jury book for the town is made out, and the lists shall continue in force until new lists are allowed and a new jury book is made out under the provisions of this Act.

Provisions of
"The Jury Act of
1867" to apply.

26. Except as herein otherwise provided, all the provisions of "The Jury Act of 1867"⁽¹¹⁾ relating to the constituting and procuring of juries, and the summoning and challenging of jurors, and the discharge of juries, shall extend and apply to the constituting and procuring of juries, and the summoning and challenging of jurors, and the discharge of juries, in District Courts.

Judge may
issue precepts.

27. The Judge of a District Court shall have the same power to issue precepts for summoning common jurors and special jurors for the trial of criminal and civil issues, that a Judge of the Supreme Court has to issue such precepts for the trial of such issues in the Supreme Court.

Attendance of
jurors.

28. The Judge of a District Court shall have the same powers to inflict fines for the non-attendance of jurors that a Judge of the Supreme Court has under the thirty-sixth section of "The Jury Act of 1867";⁽¹¹⁾ and that section shall hereafter be read and understood as if the words "or District Court" were inserted after the words "Circuit Court" in that section.

Special jurors
for the trial
of actions.

29. When a jury is required for the trial of an action, the jury shall be chosen from the class of special jurors, unless the Judge orders that the jury shall be chosen from the class of common jurors.

Payment to
jurors.

30. A person summoned or nominated to act as a juror under this Act shall, for his attendance, be entitled to the same compensation and allowance for his travelling expenses as a juror attending the Supreme Court or a Circuit Court under a general jury precept.

Registrars.

Appointment
and salary of
registrar.

Cf. Imp. 51 & 52
Vic. c. 43, ss. 25,
29, 45.

31. For every Court the Governor in Council may appoint a registrar, who shall be paid by salary.

In populous places the Governor in Council may appoint two persons to hold the office of registrar, and a Crown Law Officer may make orders as to the division of their duties and the emoluments of the office in case of difference between them.

(11) *The Jury Act of 1867* (Queensland) has not been expressly adopted as a law of the Territory by any Ordinance of the Territory of Papua.

The District Courts Act, 1891 (Queensland, adopted).

32. The registrar shall sign and issue summonses and warrants and register the records and judgments, and keep minutes of the proceedings of the Court, and shall take charge of and keep an account of the Court fees and fines payable or paid into Court, and of the moneys paid into and out of Court, and shall enter an account of the fees, fines, and moneys, in a ledger to be kept by him for that purpose, and shall, when required, submit his accounts to be audited by the Auditor-General or his officers.

Duties of registrar.
Cf. Imp. 51 & 52
Vic. c. 43, s. 26.

33. The registrar shall during the sitting of the Court act as deputy sheriff, and exercise the powers and perform the duties of a deputy sheriff as prescribed by "*The Jury Act of 1867*,"⁽¹¹⁾ so far as the provisions of that Act are applicable.

Registrar to act as deputy sheriff.

34. The registrar shall cause a note of the complaints and summonses, and of the judgments and executions, and returns thereto, and of the fines and of all other proceedings of the Court, to be fairly entered from time to time in books belonging to the Court, which shall be kept at the office of the Court.

Minutes of proceedings to be kept.
Cf. Imp. *Ib.*
s. 28.

In any action or other proceeding the books, and any entries therein, or copies of the books or entries under the seal of the Court and purporting to be signed and certified by the registrar, shall upon production be *primâ facie* evidence of the contents of the books, or of the entries, and of the proceedings referred to in them, and of the regularity of the proceedings.

Evidence.

35. When a clerk of petty sessions is appointed registrar of a District Court held at the place where he is clerk, the successor in office of the clerk, or a deputy, or a person for the time being performing the duties, of the clerk, shall have and may exercise the rights, and powers, and shall perform the duties, of registrar of the District Court while he is performing the duties of the clerk of petty sessions:

When a clerk of petty sessions is registrar, his successor or deputy shall be registrar.

Provided that the provisions of this section shall not affect the power of appointment hereinbefore vested in the Governor in Council.

Bailiffs.⁽¹²⁾

36. For every Court there shall be one or more bailiffs, who shall be appointed by the Governor in Council.

Appointment of bailiffs and bailiffs' assistants.

A bailiff may be suspended by the Judge.

Cf. Imp. *Ib.*
s. 33.

(11) *The Jury Act of 1867* (Queensland) has not been expressly adopted as a law of the Territory by any Ordinance of the Territory of Papua.

(12) See, also, *The Sheriff's Act of 1875* (Queensland, adopted), printed on p. 853.

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The bailiff may, by writing under his hand, appoint a sufficient number of fit persons to assist him, and may dismiss all or any of them and appoint others in their stead.

An officer so appointed may also be suspended by the Judge or suspended or dismissed by a Crown Law Officer.

The bailiff shall be responsible for the acts and defaults of the officers appointed to assist him.

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

Cf. Imp. 51 & 52 Vic. c. 43, s. 34.

37. The death or removal of a bailiff shall not invalidate the acts of the officers so appointed, but they shall continue to act until they are dismissed by the successor to the bailiff or by a Crown Law Officer.

They shall receive for their services while they so act after the death or removal of the bailiff the same remuneration as they were receiving at the date of the death or removal, and such remuneration shall be paid out of the salary and allowances attached to the office of bailiff.

Duties of bailiffs.

Cf. Imp. *Ib.* s. 35.

38. The bailiffs or one of them shall, if required by the Judge, attend every sitting of the Court, and shall, by themselves or their officers, serve all summonses, and execute all warrants issued out of the Court; and the bailiffs and officers shall in the execution of their duties conform to the Rules of Court, and subject thereto to the order and direction of the Judge of the Court for which they are appointed:

Provided that a summons may be served by the plaintiff or a person employed by him.

Bailiff not required to take out auctioneer's licence.

39. A bailiff or other officer duly authorised to execute a warrant of execution issued under the authority of this Act may sell land or goods without taking out an auctioneer's licence.

Remuneration of bailiffs.

Cf. Imp. *Ib.* ss. 44, 46.

Fourth Schedule.

40. A bailiff shall be paid a salary on account of his general duties, and shall also be entitled to receive and retain for his own use the fees⁽¹³⁾ mentioned in the Fourth Schedule to this Act as bailiffs' fees, unless the Judge in any case otherwise orders. The bailiff shall, out of such fees, provide for the performance of the duties for which the fees are allowed, and for the payment of the officers appointed to assist him.

The fees received for executing warrants of execution shall be paid by the registrar to the bailiff upon the issue of the warrant of execution, and the fees for the service of a summons or subpoena shall be paid by the registrar to the bailiff after service:

(13) For the fees to be charged by the Sheriffs and Bailiffs of the Supreme Court, see Rule 112 of the *Rules of Civil Procedure*, printed on p. 615, and the *Rules of Court of the Supreme Court (Solicitors' Costs and Fees and Court Fees)* (Queensland, adopted), printed on p. 632.

The District Courts Act, 1891 (Queensland, adopted).

Provided that if in any Court the fees allowed to be taken by a bailiff appear to be more than sufficient to afford him a reasonable remuneration, the Governor in Council may order that a certain specified part only of his fees shall be retained by him, and in that case, and so long as the order is in force, the amount of the residue of the fees shall be accounted for, paid, and applied, in the same manner as all other fees payable to the registrar are accounted for, paid, or applied.

41.⁽¹⁴⁾ If a bailiff who is directed to levy execution loses by neglect, connivance, or omission, the opportunity of levying the execution, the Judge may, upon complaint of the party aggrieved, inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of the necessary parties in the same manner in which the attendance of witnesses in an action may be enforced, and may order the bailiff to pay such damages as it appears that the plaintiff has sustained, not exceeding in any case the sum of money for which the execution was issued; and the bailiff shall be liable to pay the same.

Bailiff answerable for escape and neglect to levy execution.
Cf. Imp. 51 & 52 Vic. c. 43, s. 49.

Upon demand made, and on his refusal to pay and satisfy the damages, payment may be enforced in the manner provided by this Act for enforcing a judgment.

General Provisions relating to Officers.

42. A registrar, or his partner, or a person in the service of a registrar or his partner, shall not act as bailiff, and a bailiff, his partner or clerk, or a person in the service or employment of a bailiff or his partner, shall not act as registrar, and an officer of the Court shall not, either by himself or by his partner, be directly or indirectly concerned as solicitor or agent for a party in a proceeding in the Court.

Disabilities of registrar and bailiff.
Cf. Imp. Ib. s. 41.

Any person committing an offence against this section shall be liable to pay the sum of one hundred pounds and full costs of action to any person who sues for the same.

Penalty.

43. Every registrar and bailiff shall give security for such sum, and in such manner, as the Governor in Council orders, for the due performance of their several offices, and for the due accounting for and payment of the moneys received by them under this Act, or which they are liable to pay for misbehaviour in their office.

Registrar and bailiff to give security.
Cf. Imp. Ib. s. 40.

44. If a registrar, bailiff, or other officer, acting under, or under colour or pretence, of the process of the Court is charged with extortion or misconduct, or with not duly paying or accounting for money levied by him under the authority of this Act, the Judge

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

(14) See, also, Sections 7 and 9 of *The Sheriff's Act of 1875 (Queensland, adopted)* printed on p. 853.

Cf. Imp. Ib. s. 50.

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may inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of the necessary parties in the manner provided by this Act for enforcing the attendance of witnesses, and may make such order for the repayment of the money extorted, or for the due payment of the money so levied, and for the payment of such damages and costs as he thinks just.

Fine.

The Judge may also impose a fine upon the registrar, bailiff, or other officer not exceeding ten pounds for each offence, and, in default of payment of the money so ordered to be paid, payment may be enforced in the manner provided by this Act for enforcing a judgment.

Indemnity to persons acting under this Act.

Imp. 51 & 52
Vic. c. 43, s. 55.

45. If an action is brought against a person for anything done under a warrant issued in pursuance of this Act, the production of the warrant under the seal of the Court in the action shall be deemed sufficient proof of the authority of the Court previous to the issuing of the warrant, and if the plaintiff in the action has a verdict given against him, is nonsuited, or discontinues the action, the defendant shall be allowed full costs as between solicitor and client.

Limitation of actions.

Imp. *Ib.* s. 53.

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

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

Barristers, Solicitors, and Agents.

Privilege.

Cf. Imp. *Ib.*
s. 175.

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

Appearance to be in person or by barrister, or solicitor, or other person allowed by the judge.

Cf. Imp. *Ib.* s. 72.

48. A party to an action or other proceeding under this Act, or a barrister or solicitor retained by or on behalf of the party on either side, or any person allowed by special leave of the Judge in any case, may appear⁽¹⁵⁾ instead of the party, to address the Court, and examine and cross-examine the witnesses, but subject to the Rules of Court and the orders of the Judge for the orderly transaction of the business of the Court:

(15) See, also, Rule 84 of the *Rules of Civil Procedure*, printed on p. 611.

But a person, not being a barrister or solicitor of the Supreme Court, shall not be entitled to receive or recover, or receive directly or indirectly, a sum of money or other remuneration⁽¹⁶⁾ for appearing or acting on behalf of another person in the District Court.

PART III.—CRIMINAL JURISDICTION AND PROCEDURE.⁽¹⁷⁾

Jurisdiction.

49. A District Court shall have jurisdiction to inquire of, hear, and determine all felonies, misdemeanours, and offences, wheresoever committed, save as hereinafter excepted. District Courts shall have criminal jurisdiction.

50. A District Court shall not have jurisdiction to try a person charged with any of the following offences:— Exceptions from criminal jurisdiction.

- (1) Treason;
- (2) Misprision of treason;
- (3) A felony punishable with death;
- (4) A felony which, when committed by a person not previously convicted of felony, is punishable by penal servitude for life under the "*Offences against the Person Act of 1865*;"
- (5) Offences against the Queen's title, prerogative, person, or government, or against either House of Parliament;
- (6) Offences subject to the penalties of *præmunire*;
- (7) Stealing or fraudulently taking, injuring, or destroying records or documents belonging to the Supreme Court or relating to any proceeding in the Supreme Court;
- (8) Stealing, or fraudulently destroying or concealing, wills or testamentary papers, or any document or written instrument being or containing evidence of the title to land or of an interest in land.

51. The Governor in Council may, by Proclamation, withdraw from a Court, either absolutely or for a time to be limited by the Proclamation, the criminal jurisdiction possessed by the Court, and after three months from the publication of the Proclamation in the *Gazette* the criminal jurisdiction of the Court named in the Proclamation shall cease. Governor may withdraw criminal jurisdiction.

(16) See, however, *The Legal Agents Remuneration Ordinance of 1909.*

(17) For the provisions as to the criminal jurisdiction of the Supreme Court, see Section 8 of *The Courts and Laws Adopting Ordinance of 1888* and for the provisions as to the procedure of the Supreme Court in criminal matters, see *The Criminal Procedure Ordinance of 1889.*

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Procedure.

Change of venue.

52. When an accused person is committed for trial to a District Court, not being the Court of the district within which the offence is alleged to have been committed, a Judge of the Supreme Court or of a District Court, or a Crown Law Officer, may order the trial to be held in the Court of that district, and may make all such orders for the remand and custody of the accused person, and for the extension of his bail or the recognisances of witnesses, as may be necessary:

In any other case the venue may be changed by order of a Judge of the Supreme Court, or of a District Court, who may make the like orders for the purposes aforesaid.

The Judge of a District Court may, at any stage of a criminal trial depending in his Court, order that the trial take place at another Court, subject to such conditions as he thinks fit, and may remand the accused in custody or on bail to that Court.

Proceeding by information.

53. Felonies, misdemeanours, and offences, cognizable in a District Court may be tried by information in the name of a Crown Law Officer, or such other person as the Governor in Council appoints, who shall respectively perform the duties of a grand jury.

Issues of law joined on the information shall be determined by the Judge (and in error by the Supreme Court), and issues of fact shall be tried before the Judge and a jury of twelve men, as next hereinafter provided.

The person in whose name an information is presented may enter a *nolle prosequi* upon the information.

Jury in criminal cases.

54. Felonies, misdemeanours, and offences prosecuted in the Court shall be tried by a jury of twelve men, to be chosen, returned, summoned, and sworn, as by law for the time being is provided for the choosing, returning, summoning, and swearing, of common jurors for the trial of criminal issues in the Supreme Court.

Registrar may issue subpoenas.

55. The registrar may issue subpoenas in criminal cases for the attendance of witnesses at the trial of a person committed for trial at the Court of which he is registrar, or at another Court, whether an information has been presented against such person or not.

A person disobeying a subpoena shall be liable to the same consequences as for disobedience to a subpoena issued in a civil proceeding under the authority of this Act.

The District Courts Act, 1891 (Queensland, adopted).

PART IV.—CIVIL JURISDICTION.⁽¹⁸⁾

Jurisdiction as to Subject-Matter.

56. All personal actions in which the amount claimed is not more than two hundred pounds, whether on a balance of account or after an admitted set-off or otherwise, may be commenced in a District Court; and in an action for recovery of a balance of account, the Court shall have jurisdiction, if the original claim is reduced to two hundred pounds or less, by payment or otherwise, or by deducting any sum for which the plaintiff gives the defendant credit upon the plaint being entered.

In personal actions.
Cf. Imp. 51 & 52
Vic. c. 43, ss.
56, 57.

But, except as hereinafter provided, a District Court shall not have jurisdiction to try any case in which the title to land, or the validity of a devise, bequest, or limitation under a will or settlement, is in question:

Cf. Imp. *Ib.* s. 61.

If the title to land incidentally comes in question in an action, the Court shall have power to decide the claim which it is the immediate object of the action to enforce, but the judgment of the Court shall not be evidence of title between the parties or their privies in another action in that Court, or in any proceedings in another Court.

57. A District Court shall have jurisdiction to try any action brought to recover a sum not exceeding two hundred pounds, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of the distributive share under an intestacy or of a legacy under a will.

In cases of partnership, intestacy, and legacy.
Cf. Imp. *Ib.* s. 58.

58. In any case in which a person has an equitable claim or demand against another person in respect of which the only relief sought is the recovery of a sum of money or of damages, whether liquidated or unliquidated, and the amount claimed is not more than two hundred pounds, the person seeking to enforce the claim or demand may sue for and recover it in a District Court.

Equitable claims for debt or damages.

59. The jurisdiction given to District Courts by the "*Distress Replevin and Ejectment Act of 1867*"⁽¹⁹⁾ in actions of replevin shall extend to all cases relating to distresses for rent between landlord and tenant, in which the rent, for or in respect of which the distress is or might have been made, does not exceed the sum of one hundred pounds.

Extension of jurisdiction in replevin.
Cf. Imp. *Ib.* s. 59.

(18) For the provisions as to the civil jurisdiction of the Supreme Court, see Section 10 of *The Courts and Laws Adopting Ordinance of 1888*.

(19) See the *Distress Replevin and Ejectment Act of 1867* (Queensland, adopted), printed below, title LAND.

Jurisdiction as to Locality.

Limits of the jurisdiction.
Cf. Imp. 51 & 52
Vic. c. 43, s. 74.

60. Every District Court shall have jurisdiction throughout the whole of Queensland:

Provided that a defendant shall not be compellable to appear except at some one of the following Courts, that is to say—

- (1) The Court of the district within which the defendant, or one of two or more defendants, as the case may be, resides or carries on business; or
- (2) The Court of the district within which the cause of action or claim, either wholly or in some material point, arose; or
- (3) The Court of the district within which by an engagement or promise in writing given by the defendant a debt or sum of money is made payable:

This proviso does not apply to summonses for final judgment returnable at Brisbane or Townsville or any other place appointed by the Governor in Council as a place at which judgment summonses may be made returnable under Part V. of this Act.

Corporations and joint stock companies which have an office or place of business at which they carry on business in Queensland shall be amenable to the jurisdiction of District Courts, whether they are constituted under the laws of Queensland or not.

Consent Jurisdiction.

Consent jurisdiction.
Cf. Imp. 1b. s. 64.

61. If both parties agree, by a memorandum signed by them or by their solicitors, that any specified District Court shall have jurisdiction to try any action which might be brought in the Supreme Court, that District Court shall have jurisdiction to try the action.

The memorandum shall state that the parties signing it know that the action was not within the jurisdiction of the District Court without such consent, and shall be filed with the registrar at the time when the plaint is entered.

PART V.—
CIVIL
PROCEDURE.

PART V.—CIVIL PROCEDURE.

Plaint and Summons.

Action commenced by plaint.
Imp. 1b. s. 73.

62. On the application of a person desirous of bringing an action in a District Court, the registrar shall enter in a book to be kept for the purpose in his office a plaint in writing, stating the names and the last known places of residence of the parties and

the substance of the action intended to be brought. The plaints shall be numbered in every year according to the order in which they are entered.

Upon the plaint being entered, a summons⁽²⁰⁾ stating the substance of the action and the time for filing a notice of defence, and bearing the number of the plaint on the margin, shall be issued under the seal of the Court in the prescribed form, and shall be served on the defendant at the prescribed time and in the prescribed manner.

Summons.

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

63. In an action in which a plaintiff seeks to enforce an equitable claim under the provisions of this Act, the plaint or so much of it as relates to the equitable claim shall express that the plaintiff is suing upon equitable grounds.

Plaint when equitable claim.

64. In an action in which the plaintiff seeks only to recover a debt or liquidated amount of money payable by the defendant with or without interest, arising—

Special indorsement of summons when claim liquidated.

- (1) On a contract express or implied (as for instance on a bill of exchange, promissory note, cheque, or other simple contract debt);
- (2) On a bond or contract under seal for payment of a liquidated amount of money;
- (3) On a statute when the sum sought to be recovered is a fixed sum of money or in the nature of a debt; or
- (4) On a guaranty, whether under seal or not, when the claim against the principal is in respect of a debt or liquidated demand only—

the summons⁽²⁰⁾ issued upon the plaint being entered may be indorsed with a special indorsement in the form or to the effect in the Second Schedule to this Act, and with the particulars of the amount sought to be recovered after giving credit for any payment or set-off.

Second Schedule.

The particulars may be indorsed to the effect of such of the particulars of claim in the Second Schedule to this Act as are applicable.

The summons⁽²¹⁾ may also be indorsed with a claim for the prescribed sum for costs, exclusive of Court fees and mileage, and

(20) For the form of a summons and the endorsements to be made thereon, see Rules 7 to 15 inclusive of the *Rules of Civil Procedure*, printed on p. 601.

(21) See, however, Rule 16 of the *Rules of Civil Procedure*, printed on p. 602.

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shall state that upon payment of the amount claimed in respect of the cause of action and for costs respectively within the time prescribed for filing a notice of defence further proceedings will be stayed.

Service of
summons.

65. A summons or other process of the Court shall, except when otherwise prescribed, be served⁽²²⁾ upon the person to whom it is directed by delivering a copy to him personally, or, if he cannot be found, by leaving it with some person for him at his place of residence. If no person can be found at his place of residence, the summons or other process may be served in such manner as the Judge directs.

Specially
indorsed
summons.

A specially indorsed summons shall be served personally, unless the Judge otherwise orders.

Service on
company.

A summons (whether specially indorsed or not) or other process shall be served on a corporation or joint stock company at the registered office, if any, of the corporation or company, and if there is not a registered office, then upon a member, officer, or servant, of the corporation or company, at the principal place of business of the corporation or company in Queensland (if any can be found), or, if a member, officer, or servant cannot be so found, then by serving some member or members or officer or servant or agent of the corporation or company as the Judge directs.

The person who serves a summons or other process of the Court must, within three days after service, endorse on the summons or other process a statement of the day and place and manner of service and his signature.

Proof of service
by bailiff.

Cf. Imp. 51 & 52
Vic. c. 43, s. 78.

66. When a summons or other process of the Court is served by a bailiff, the bailiff may attend before a justice and depose on oath to the time, place, and manner of the service. Such deposition shall be endorsed on or attached to the summons or other process, and shall, on production to the Court, be sufficient proof of the service.

Defences.

Notice of
defence to be
filed.

Cf. Imp. 1b. s. 86.

67. In every action in which it is the intention of the defendant to contest the plaintiff's claim or a part of it, a notice of defence⁽²³⁾ shall be filed within eight days after the service of the summons or within such other time as may be prescribed.

(22) For the provisions as to service of a summons, see also:—

Rules 19 to 21 inclusive of the *Rules of Civil Procedure*, printed on p. 602;

The *District Court Rules (Service of Summonses) of 1st January 1866*, printed on p. 626;

Rule 2 of the *Rules of the Central Court for Regulating Civil Procedure and the Admission of Barristers and Solicitors*, printed on p. 669.

(23) See, also, Rule 26 of the *Rules of Civil Procedure*, printed on p. 603.

68. All matters which are only the subject of a cross-action, or may be made the subject of a cross-action between the parties, may be pleaded by way of set-off.⁽²⁴⁾

Cross-action.

69. An equitable claim or demand which might be the subject-matter of an action in the Court may be pleaded by way of set-off.

Equitable claim may be set-off.

70. The defendant in an action in which, if judgment were obtained against him, he would be entitled to relief against the judgment on equitable grounds, may plead the facts entitling him to such relief by way of defence.

Defence upon equitable grounds.

71. Subject to the power of amendment conferred by this Act, a defendant shall not, without the consent of the plaintiff, be allowed to set off a debt or demand claimed or recoverable by him from the plaintiff, or to set up a defence upon equitable grounds, or on the ground of infancy, coverture, or any Statute of Frauds or Limitations, or of his discharge under any Act relating to insolvents, or to plead a justification in an action of tort, unless the prescribed notice is given to the registrar.

Notice of special defence.
Imp. 51 & 52
Vic. c. 43, s. 82.

When the prescribed notice is given, the registrar shall, as soon as conveniently may be after the notice, communicate it to the plaintiff by post, or by causing it to be delivered at his usual place of residence or business, but it shall not be necessary for the defendant to prove on the trial that the notice was so communicated to the plaintiff.

Payment into Court.⁽²⁵⁾

72. A defendant may, within the prescribed time, pay into Court a sum of money as full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of payment.

Payment into court.
Imp. 7b. s. 107.

Notice of the payment into Court shall be communicated by the defendant to the plaintiff by post, or by causing it to be delivered at his usual or last known place of residence or business, and such sum of money shall be paid to the plaintiff; but if the plaintiff elects to proceed, and does not recover a further sum in the action than is paid into Court, the plaintiff shall pay to the defendant the costs incurred by him in the action after the payment, and an order shall thereupon be made by the Court for the payment of the costs by the plaintiff.

(24) See, also, Rule 33 of the *Rules of Civil Procedure*, printed on p. 605.

(25) See, also, Rules 38 to 42 inclusive of the *Rules of Civil Procedure*, printed on p. 605.

Judgment upon Admission of Defendant.⁽²⁶⁾

Confession of debt or part of debt and judgment thereon.

Cf. Imp. 51 & 52 Vic. c. 43, s. 98.

73. A defendant may, in the presence of the registrar of the court in which the plaint is entered, or in the presence of a solicitor, or a justice, sign a statement confessing and admitting the amount of the debt or demand, or part of the amount of the debt or demand, for which the plaint is entered, and the amount due for costs, and the registrar shall, as soon as conveniently may be after receiving the statement, send notice of it to the plaintiff in manner aforesaid.

The plaintiff may, upon filing an affidavit verifying the signature of the defendant, sign judgment for the amount admitted in the statement and costs. When the signature of the defendant is made in the presence of the registrar, the plaintiff may sign judgment without filing such affidavit.

Agreement as to the amount of debt and conditions of payment.

Imp. *Ib.* s. 99.

74. If a defendant agrees with the plaintiff as to the amount of the debt or demand, and the terms and conditions upon which it is to be paid or satisfied, the parties may, in the presence of the registrar of the Court in which the plaint is entered, or in the presence of a solicitor, or a justice, sign a statement of the amount so agreed upon, and of the terms and conditions upon which it is to be paid or satisfied.

The plaintiff may, upon filing an affidavit verifying the signature of the defendant, sign judgment for the plaintiff for the amount, and upon the terms and conditions, agreed upon. When the signature of the defendant is made in the presence of the registrar, the plaintiff may sign judgment without filing such affidavit.

Judgment by Default.⁽²⁷⁾

Judgment when no defence and summons specially indorsed.

75. If the defendant does not file a notice of defence within the prescribed time and the summons is specially indorsed, the plaintiff may, upon proof of the service of the summons as prescribed, and upon filing a statement verified on oath of the particulars of his claim in respect of the causes of action stated in the special indorsement, sign judgment for any sum not exceeding the sum indorsed on the summons, together with the interest at the rate specified, if any, to the date of the judgment and the prescribed sum for costs; but a Judge may set aside or vary the judgment upon such terms as he thinks just.

(26) See, also, Rules 43 to 45 inclusive of the *Rules of Civil Procedure*, printed on p. 606.

(27) For provisions as to the trial of undefended actions, see Rules 66 to 70 of the *Rules of Civil Procedure*, printed on p. 609.

76. When there are several defendants to a specially indorsed summons, and one or more of them files a notice of defence, and the other or others of them does or do not, the plaintiff may sign judgment against such of them as have not filed notices of defence, and may issue execution upon the judgment without prejudice to his right to proceed with his action against such as have filed notices of defence.

When some defendants file notices of defence and others do not.

Judgment Summonses.

77. When the defendant files a notice of defence in an action in which the summons is specially indorsed, the plaintiff may, on filing an affidavit made by himself or by another person who can depose of his own knowledge to the debt or cause of action, and stating that in his belief there is no defence to the action, take out a summons in the form in the Third Schedule to this Act, or in such other form as may be prescribed, and which is in this Act called a "judgment summons," calling on the defendant to show cause before a Judge why the plaintiff should not be at liberty to sign judgment forthwith, for the amount so indorsed, together with interest, if any, and costs.

When judgment summons may be issued.

Third Schedule.

A copy of the affidavit shall accompany the judgment summons.

Upon the return of the summons, the Judge may, unless the defendant by affidavit or otherwise satisfies him that he has a good defence to the action on the merits, or discloses such facts as are sufficient to entitle him to defend, make an order authorising the plaintiff to sign judgment accordingly.

78. A judgment summons shall be returnable eight days after service, or at such other time after service as may be prescribed.

When judgment summons returnable.

79. A judgment summons may be made returnable before a Judge at the Court from which it was issued, or, if the place is not within the Northern District within the meaning of "*The Supreme Court Act of 1889*,"⁽²⁸⁾ at the District Court at Brisbane, or, if the place is within the Northern District, at the District Court at Townsville, or in either case at a District Court held at such other place as the Governor in Council may, by Proclamation, appoint as a place at which judgment summonses issued from the Court from which the summons was issued may be made returnable.

Where judgment summons returnable.

80. A judgment summons made returnable at the Court from which it was issued shall be heard and determined by the Judge at that Court, and not elsewhere.

When judgment summons heard at court from which it was issued.

(28) *The Supreme Court Act of 1889*. (Queensland) has not been expressly adopted as a law of the Territory by any Ordinance of the Territory of Papua.

Duty of registrar when judgment summons made returnable at Brisbane or Townsville or other appointed place.

81. When the Court from which a judgment summons is issued is not the District Court at Brisbane or at Townsville, or a District Court held at a place appointed by the Governor in Council under the provisions of the last preceding section but one, and the judgment summons is made returnable at any of such Courts, the registrar of the Court from which the judgment summons was issued shall forthwith transmit a certified copy of the plaint and of the judgment summons, together with the affidavits and other documents relating to the summons, to the registrar of the District Court at Brisbane, or at Townsville, or at such other place at which the summons is made returnable, as the case may be.

When summons heard at Brisbane, or Townsville, by District Court judge.

82. A judgment summons made returnable at Brisbane or Townsville, or at a place appointed by the Governor in Council as lastly hereinbefore provided, shall be heard and determined by a District Court Judge, if any such judge is present at the place at which the judgment summons is made returnable on the return day.

When summons heard by Supreme Court judge.

83. If on the return day no District Court Judge is present at the place at which the judgment summons is made returnable, the registrar of the Court shall forthwith transmit the judgment summons and other documents in his possession relating to the summons, to the registrar of the Supreme Court at Brisbane, if the place is not within the Northern District within the meaning of "*The Supreme Court Act of 1889*,"⁽²⁸⁾ or otherwise to the registrar of the Supreme Court at Townsville.

On the first day after the receipt of the summons and other documents on which a Judge of the Supreme Court is appointed to sit in chambers, the registrar of the Supreme Court shall submit the same to such Judge. The Judge shall thereupon hear and determine the summons in the same manner in which other applications are heard and determined in chambers.

Minute of order.

84. A Judge who hears a judgment summons under this Act shall make a minute of his order.

Documents to be returned to court from which summons was issued.

85. The minute of the order of the Judge, together with the summons and other documents relating to it, shall be returned by the registrar of the Supreme Court or of the District Court as the case may be, to the registrar of the Court from which the judgment summons was issued.

Defendant may show cause by payment into court or by affidavit.

86. The defendant may show cause against a judgment summons by offering to bring into Court the sum indorsed on the summons, or by affidavit. In the affidavit he shall state whether

(28) *The Supreme Court Act of 1889* (Queensland) has not been expressly adopted as a law of the Territory by any Ordinance of the Territory of Papua.

the defence he alleges goes to the whole or part only, and if so to what part, of the plaintiff's claim. And the Judge may further order the defendant to attend and be examined upon oath, or to produce any books or documents, or copies of or extracts therefrom.

87. If it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that a part of his claim is admitted to be due, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to, or as is admitted to be due, subject to such terms, if any, as to suspending execution or the payment of the amount levied, or a part of it, into Court by the bailiff, the taxation of costs, or otherwise as the Judge thinks just. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

If defence only as to part, judgment shall be had forthwith for balance.

88. If it appears to the Judge that a defendant has a good defence to or ought to be permitted to defend the action, and that another defendant has not a good defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to sign judgment against the latter, and may issue execution upon the judgment without prejudice to his right to proceed with his action against the former.

If one of two defendants has defence leave may be granted to him.

89. A defendant who has set up a defence by way of set-off may in like manner and subject to the same conditions call on the plaintiff to show cause why the defendant should not be at liberty to sign judgment for the amount claimed by him, and thereupon the same proceedings may be taken on the part of the defendant as are hereinbefore provided for on the part of a plaintiff.

Defendant claiming set-off may call upon plaintiff to show cause why he should not have judgment.

90. Leave to defend may be given unconditionally, with or without costs, and subject to such terms as to giving security or otherwise as the Judge thinks fit.

Leave to defend may be unconditional.

91. When liberty to sign judgment is given by order of the Judge, the registrar of the Court from which the summons was issued shall, upon receipt of the minute of the order, cause judgment for the amount mentioned in the order and the prescribed costs to be entered.

When judgment to be entered by registrar.

92. When a defendant obtains leave to defend, the trial of the action shall, subject to the provisions of this Act relating to change of venue, take place at the Court in which the plaint was entered.

Place of trial when leave to defend.

Parties.

93. In proceedings under this Act by a man and his wife for an injury done to the wife in respect of which she is necessarily

Proceedings by husband and wife.

joined as a co-plaintiff, the husband may add claims in his own right.

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

Insolvency not to cause action to abate if trustee elects to continue it.
Cf. Imp. 51 & 52 Vic. c. 43, s. 94.

94. The insolvency⁽²⁹⁾ of the plaintiff in an action which the trustee might maintain for the benefit of the creditors shall not cause the action to abate, if the trustee elects to continue the action and to give security for the costs thereof within such reasonable time as the Judge orders, but the hearing of the action may be adjourned until the election is made.

If the trustee does not elect to continue the action and to give the security within the time limited by the order, the defendant may avail himself of the insolvency as a defence to the action.

One of several persons jointly liable may be sued.
Cf. Imp. *Ib.* s. 97.

95. When a plaintiff has a demand recoverable under this Act against two or more persons jointly answerable, it shall be sufficient if any one or more of the persons is or are served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable are not served or sued, or are not within the jurisdiction of the Court.

Every such person against whom judgment is so obtained, and who has satisfied the whole or a part of the judgment, shall be entitled to demand and recover contribution from another person jointly liable with him.

Executors.
Imp. *Ib.* s. 95.

96. An executor or administrator may sue and be sued in a District Court in the same manner in which a person may sue or be sued in his own right, and in any such case judgment may be given and execution issued against the same persons against whom, and in the same manner in which, judgment would be given or execution issued in the Supreme Court.

Infants.
Cf. Imp. *Ib.* s. 96.

97. A person under the age of twenty-one years may sue in a District Court in his own name for the recovery of a sum not exceeding two hundred pounds, which is due to him for wages or piecework, or for work or services as a clerk, servant, mechanic, or labourer, in the same manner as if he were of full age.

Joinder and Severance of Causes of Action.

Joinder of causes of action.

98. Subject to the limit hereby prescribed as to the amount for which a plaint may be entered, two or more causes of action, if by and against the same parties and in the same rights, may be

(29) As to insolvency see, also, the *Insolvency Ordinance*, 1912.

joined in the same action in a District Court; but if the Judge is of opinion that the trial of different causes of action together would be inexpedient or inconvenient he may order separate trials to be had.

99. A plaintiff shall not divide a cause of action for the purpose of bringing two or more actions in a District Court; but a plaintiff having a cause of action for more than the amount for which a plaint might be entered under this Act may abandon the excess (which abandonment shall be stated when the plaint is entered), and thereupon the plaintiff may, on proving his case, recover to an amount not exceeding two hundred pounds, and the judgment of the Court shall be in full discharge of all demands in respect of the cause of action, and entry of the judgment of the Court shall be made accordingly.

Splitting demands.
Cf. Imp. 51 & 52
Vic. c. 43, s. 81.

100. If a defendant has given two or more bills of exchange, promissory notes, bonds, or other securities, for a debt or sum originally exceeding two hundred pounds, the plaintiff may sue separately upon each of the securities not exceeding two hundred pounds as forming a distinct cause of action.

Splitting debt by giving bills, &c.

Changing Venue.⁽³⁰⁾

101. If the Judge is satisfied that an action pending in a District Court can be more conveniently or fairly tried in another District Court, he may order that the action be sent for trial to such other Court.

Judge may change venue.
Cf. Imp. 1b.
ss. 22, 85.

If a Judge is interested in the matter of an action pending in a Court assigned to him, he shall either order the action to be sent for trial to the nearest District Court which is not assigned to him, or shall adjourn the trial to be heard before another Judge.

In the former case the registrar of the Court in which the plaint was entered shall forthwith transmit by post to the registrar of the Court to which the action is sent for trial a certified copy of the plaint as entered in the plaint-book, the duplicate copy of the summons served on the defendant, and a certified copy of the order of the Judge, and the Judge of the last-mentioned Court shall appoint a day for the trial, and notice of it shall be sent by post or otherwise by the registrar to both parties.

Means of obtaining Evidence.

102. A party to an action may obtain, at the office of the registrar, subpoenas⁽³¹⁾ to witnesses, requiring them to attend at

Subpoenas to witnesses.
Cf. Imp. 1b.
s. 110.

(30) As to setting down actions for trial and change of venue in Papua, see the *Rules of the Central Court for Regulating Civil Procedure*, printed on p. 625.

(31) As to subpoenas see, however, Rule 58 of the *Rules of Civil Procedure*, printed on p. 608.

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the trial, with or without a clause requiring the production of books, deeds, papers, and writings, in their possession or control. A subpoena may be served, at the option of the party, by himself or his agent, or by the bailiff.

Any number of names may be inserted in a subpoena.⁽³¹⁾

Penalty on witnesses neglecting subpoenas.

Cf. Imp. 51 & 52
Vic. c. 43, s. 111.

103. A person on whom a subpoena is served either personally or in the prescribed manner, and to whom at the same time payment or a tender of payment of his expenses⁽³²⁾ is made on the prescribed scale, and who refuses or neglects without sufficient cause to appear or to produce any books, deeds, papers, or writings, required by the subpoena to be produced, and also every person present in Court who is required to give evidence and who refuses to be sworn and give evidence, shall be liable to pay a fine not exceeding fifty pounds.

The whole or a part of the fine, as the Judge thinks fit, after deducting the costs of levying it, shall be applicable toward indemnifying the party injured by the refusal or neglect, and the remainder shall be disposed of in the same manner in which other moneys recovered by the registrar of the Court by which the fine was imposed are disposed of, but the fine shall not exempt the person from an action for disobeying the subpoena.

Power of judge to cause arrest of witness not attending on subpoena.

104. Instead of fining the person so refusing or neglecting to appear, the Judge before whom the person should have appeared may, if good cause is not shown for his non-appearance, issue his warrant to bring and have the person at a time and place to be therein mentioned before the Judge to testify what he knows concerning the matters in dispute in the action in which he is subpoenaed as a witness, and may adjourn the trial to that time and place.

Examination de bene esse.

105. At any time after a plaint is entered, on the application of either party, supported by affidavit that the evidence of a specified witness, including in that term either of the parties, is material in the action, and that the witness is absent from the Colony, or is more than one hundred miles from the place of trial, or is expected to die or to be unable from sickness or infirmity to attend at the trial, or is about to leave the Colony or to go to some place beyond the said distance before the action can be heard, the Judge of the Court in which the plaint was entered may himself take in Court or chambers, or may authorise the registrar of any District Court or a commissioner of the Supreme Court, or justice, or

(31) As to subpoenas *see*, however, Rule 58 of the *Rules of Civil Procedure*, printed on p. 608.

(32) For the scale of witnesses' expenses, *see* the Schedule to the *Rules of Civil Procedure*, printed on p. 623.

practising barrister or solicitor, to take at some convenient time and place, the examination of the witness *de bene esse*.⁽³³⁾

A subpoena may be obtained in any such case requiring the attendance of the witness at the time and place appointed for the examination, with or without the production of books, deeds, papers, or writings.

Any such subpoena may be served in the same manner, and disobedience to it shall entail the same consequences, as in the case of a subpoena to attend at a trial of an action.

All evidence so taken shall be admissible at the hearing subject to all just exceptions, unless it is proved that the witness is at the time of the hearing within a convenient distance of the Court and able to attend.

In every such case the opposite party shall have sufficient notice of the time and place appointed for taking the examination, and may cross-examine the witness in the usual manner.

The Judge may either direct the costs of taking the evidence to be paid by the party applying, or may make them costs in the action.

Trial.⁽³⁴⁾

106. The Judge shall be the sole Judge in all actions or proceedings in the Court, and shall determine all questions of law, and also, unless a jury is summoned, all questions of fact.

Trial.
Cf. Imp. 51 & 52
Vic. c. 43, s. 100

107.⁽³⁵⁾ On the first day of the sitting of a Court for the trial of actions the registrar shall call over the list of the actions in which the plaintiff's claim is for a debt or liquidated demand and in which a notice of defence has not been filed, and in which judgment⁽³⁵⁾ has not been entered as hereinbefore provided; and upon proof of the service of the summons as prescribed, judgment shall be given for the plaintiff in every such action in which the registrar has not received notice from the plaintiff that it has been settled out of court, and in which the plaint discloses a sufficient cause of action; and it shall not be necessary for the plaintiff to appear at the sitting of the Court, but judgment may be given for him in his absence:

Judgment to
be given if notice
of defence not
filed.

But nothing herein contained shall prevent the Judge from letting the defendant in to defend, on proof of merits, upon such terms as to costs or otherwise as he thinks just.

(33) See, also, the *Evidence and Discovery Ordinance, 1913.*

(34) See, also, Rules 66 to 78 inclusive of the *Rules of Civil Procedure*, printed on p. 609.

(35) See, however, Rules 66 to 70 inclusive of the *Rules of Civil Procedure*, printed on p. 609.

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Execution shall not be issued upon a judgment obtained under this section until the plaintiff has filed with the registrar an affidavit of the amount justly and *bonâ fide* due to him upon the judgment, together with particulars of it annexed to the affidavit.

Proceedings at the trial when both parties appear.

Imp. 51 & 52 Vic. c. 43, s. 79.

108. The defendant, if a notice of defence has been filed, shall appear at the time and place named in the summons, and the defendant shall be required to answer the plaint; and on answer being made in Court the Judge shall proceed to try the action and give judgment without further pleading or formal joinder of issue.

Proceedings when plaintiff does not appear.

Cf. Imp. *Ib.* s. 88.

109.⁽³⁶⁾ If a notice of defence has been filed, and the plaintiff does not appear⁽³⁶⁾ at the time and place named in the summons, or upon an adjournment of the Court or of the action, and the defendant appears, the plaintiff shall be nonsuited:

But if the plaintiff does not appear when called upon, and the defendant appears and admits⁽³⁷⁾ the cause of action to the full amount claimed, and pays the fees payable in the first instance by the plaintiff, the Judge may proceed to give judgment as if the plaintiff had appeared.

When neither party appears.

If in any such case neither party appears the action shall be struck out of the list of actions for trial.

Proceedings when defendant does not appear.

Cf. Imp. *Ib.* ss. 90, 91.

110. If at the time and place so named, or upon an adjournment of the Court or of the action, the defendant does not appear,⁽³⁸⁾ the Judge, upon proof of service of the summons, shall give judgment for the plaintiff, if the plaint discloses a sufficient cause of action:

But the Judge may, at the same or a subsequent Court, set aside a judgment so given in the absence of the defendant, and the execution upon it, and may grant a new trial of the action upon such terms, if any, as to payment of costs, giving security for the debt or costs, or otherwise as he thinks fit.

Proceedings when defendant's set-off exceeds the plaintiff's claim.

111. In every action in which the defendant is allowed to set off⁽³⁹⁾ a debt or demand claimed or recoverable by him from the plaintiff, the defendant shall, whether the plaintiff is nonsuited or has judgment given against him, be entitled to recover in the action the amount, if any, by which the debt or demand so set off exceeds the debt or demand claimed and proved by the plaintiff, and shall have judgment and execution for the same accordingly:

(36) See, also, Rule 73 of the *Rules of Civil Procedure*, printed on p. 610.

(37) See, also, Rule 74 of the *Rules of Civil Procedure*, printed on p. 610.

(38) See, also, Rule 76 of the *Rules of Civil Procedure*, printed on p. 610.

(39) See, also, Rule 77 of the *Rules of Civil Procedure*, printed on p. 610.

But the defendant shall not be allowed to set off a debt or demand exceeding two hundred pounds.

112. The Judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the action, and may also from time to time adjourn the Court or the trial, or further trial, of an action in such manner and upon such terms as to the Judge seems fit.

Judges may grant time or adjourn.

Imp. 51 & 52 Vic. c. 43, s. 106.

Trial by Jury.⁽¹⁰⁾

113. Any party, or the Judge, may require a jury to be summoned in any of the following cases:—

When a jury may be summoned.

Imp. *Ib.* s. 101.

- (1) In an action or matter in which the sum sued for exceeds twenty pounds;
- (2) In an action for the recovery of possession of land of which the value or rent exceeds twenty pounds by the year;
- (3) In an action of replevin in which the amount of rent in respect of which the distress was or might have been made exceeds twenty pounds;
- (4) In proceedings in interpleader in which the amount claimed, or the value of the goods in question, exceeds twenty pounds.

In every such case the jury shall be summoned according to the provisions hereinafter contained.

The party requiring a jury to be summoned shall give to the registrar the prescribed notice, and the registrar shall cause notice of the demand of a jury made by either party to be communicated to the other, either by post or by causing it to be delivered at his usual place of residence or business, but it shall not be necessary for either party to prove on the trial that the notice was communicated to the other party by the registrar.

114. A party requiring a jury to be summoned shall, at the time of giving the notice, and before he is entitled to have the jury summoned, pay to the registrar the sum of two pounds, and such sum shall be considered costs in the action or proceeding unless otherwise ordered by the Judge.

Party requiring jury to make deposit.

Imp. *Ib.* s. 101.

When the Judge requires an action or matter to be tried by jury, such sum of two pounds is to be paid by the unsuccessful party.

(10) See footnote (10) printed on p. 676.

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Jurors.
Imp. 51 & 52
Vic. c. 43, s. 102.

115. When a jury is required, the registrar shall summon not less than eight nor more than twelve of the persons named in the jury book to attend the Court at a time and place to be mentioned in the summons, and the Judge shall administer or cause to be administered to such of them as shall be empanelled an oath to give a true verdict according to the evidence.

Jury to be
chosen by ballot.

116. Upon the trial of any case a jury of four men shall be chosen by ballot from the list of jurors so summoned, and in case of a deficiency of jurors the necessary number of persons to compose a jury shall be nominated by the Judge from the bystanders.

Penalty.

If any person so nominated refuses to act as a juror, without an excuse allowed by the Judge, he shall be liable to the same penalty to which a juror is liable for not attending when summoned.

Evidence.

Rules of
evidence.

117. The rules of evidence observed in the Supreme Court shall be applicable to and observed upon the trial of questions of fact in a District Court.

Proof to be
limited to matter
in the summons.
Imp. *Ib.* s. 80.

118. Subject to the power of amendment conferred by this Act, evidence shall not be given by the plaintiff of any demand or cause of action except such as is stated in the summons issued in the action.

Affidavits, before
whom sworn.
Cf. Imp. *Ib.* s. 83.

119. Affidavits to be used in a District Court may be sworn before a Judge of the Supreme Court or a commissioner for taking affidavits in that Court, or before a Judge or registrar of a District Court, or before a justice; and all registrars of District Courts and justices are hereby authorised and empowered to take affidavits to be used in a District Court without any commission being issued for that purpose.

Costs.
Imp. *Ib.* s. 113.

Costs.⁽⁴⁰⁾

120. Except where herein otherwise provided, the costs of any action or proceeding shall be paid by or apportioned between the parties in such manner as the Judge directs, and in default of a special direction shall abide the event; and the costs may be recovered in like manner as a debt adjudged by the Court to be paid can be recovered.

Costs to be taxed.
Cf. Imp. *Ib.*
s. 118.

121. Except as hereinafter provided all costs and charges as between the parties shall be taxed⁽⁴¹⁾ by the registrar of the Court

(40) See, however, Rule 107 of the *Rules of Civil Procedure*, printed on p. 614.

(41) See, also, Rule 78 of the *Rules of Civil Procedure*, printed on p. 611.

in which they are incurred, but the taxation of the registrar may be reviewed by the Judge on the application of either party: And no costs or charges shall be allowed on taxation which are not sanctioned by the scale of costs then in force.

122. The fees to be allowed to barristers and solicitors practising in a District Court for appearing or acting on behalf of a party to an action or other proceeding, and the expenses to be paid to witnesses, shall be according to the scale⁽⁴²⁾ prescribed by the Rules of Court:

Fees to barristers and solicitors, and expenses to witnesses.

Provided that in an action for the recovery of money in which the sum sued for does not exceed ten pounds no fees shall be allowed as between the parties to barristers or solicitors to any greater amount than might have been allowed if the action had been brought in the Small Debts Court.

123. In any action, the Judge may give judgment for costs⁽⁴³⁾ in a fixed sum not exceeding thirty pounds, exclusive of mileage and witnesses' expenses, instead of giving a judgment for costs to be taxed by the registrar.

Fixed costs may be allowed in certain cases.

124. When an action or appeal is brought in a District Court which the Court has not jurisdiction to try or hear, the Judge shall order the action or appeal to be struck out, and shall, unless the parties consent in writing that the Court shall have jurisdiction to try the action or appeal, have power to award costs, to the same extent, and recoverable in the same manner, as if the Court had had jurisdiction in the matter of the action or appeal, and the plaintiff had been nonsuited or the appeal had been dismissed.

Costs where court has no jurisdiction.
Cf. Imp. 51 & 52
Vic. c. 43, s. 114.

125. Costs and charges of proceedings in a District Court as between solicitor and client may be taxed by the Judge of the Court in which they were incurred, or by the taxing officer of the Supreme Court.

Costs between solicitor and client.
Cf. Imp. 1b.
s. 118.

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

126. If in an action in the Supreme Court the plaintiff recovers judgment by default, verdict, or otherwise, for a sum not exceeding thirty pounds, the plaintiff shall have judgment to recover such sum only and no costs, except in the cases hereinafter mentioned.

No costs in action under thirty pounds.
Cf. Imp. 1b.
s. 116.

(42) See, however, Rule 10 of the *Rules of the Central Court for Regulating the Admission of Barristers and Solicitors and their Fees*, printed on p. 631, and also *The Legal Agents Remuneration Ordinance of 1909*.

(43) See, also, Rule 78 of the *Rules of Civil Procedure*, printed on p. 611.

Exceptions.

Cf. Imp. 51 & 52
Vic. c. 43, s. 116.

127. If the plaintiff in such an action recovers a sum not exceeding thirty pounds, and a Judge of the Supreme Court certifies—

- (1) That the action was one which could not have been brought in a District Court without the defendant's consent; or
- (2) That an officer of the District Court was a party (except in respect of claims to goods taken in execution of the process of the Court, or the proceeds in virtue thereof); or
- (3) That it appears to him that there was a sufficient reason for bringing the action in the Supreme Court, either by reason of—
 - (a) The probable cost of trial in a District Court; or
 - (b) The questions of law involved in the case;

the plaintiff shall have the same right to a judgment to recover his costs that he would have had if the last preceding section had not been passed.

Costs and judgment on judge's order.

128. When in an action in the Supreme Court the defendant appears to the writ, and the plaintiff recovers judgment for a sum not exceeding thirty pounds in a summary manner by order of a Judge upon proof that there is no defence to the action, the plaintiff shall be entitled to recover costs against the defendant, but the amount of the costs shall not, unless the Judge certifies as in the last preceding section mentioned, exceed the amount of costs which would have been recoverable if judgment had been recovered in a District Court by judgment summons under the provisions of this Act.

Removal of action to District Court.

Cf. Imp. 1b.
s. 69.

129. When an action is brought in the Supreme Court which might have been brought in a District Court without the defendant's consent, the defendant may at any time apply to the Court or a Judge for an order remitting the action to a District Court, and unless it is shown by the plaintiff—

- (1) That unnecessary delay would be caused by a trial in a District Court; or
- (2) That, either by reason of the probable cost of trial in a District Court, or by reason of the questions of law involved in the action, or because there is reason to believe that a fair trial cannot be had in a District Court, the case ought to be tried in the Supreme Court;

the Court or Judge shall make an order accordingly.

Thereupon the registrar of the Supreme Court shall transmit to the registrar of the District Court to which the action is remitted a copy of the order, together with a copy of the writ and of the pleadings (if any).

And the Judge of the District Court shall appoint a day for the trial of the action, and notice of it shall be sent by the registrar by post or otherwise to both parties or their solicitors, and after the trial the registrar of the District Court shall certify the result to the registrar of the Supreme Court, and judgment in accordance with the certificate may be signed in the Supreme Court.

The costs of the parties in respect of the proceedings subsequent to the order and up to judgment shall be allowed according to the scale prescribed in District Courts. The costs of any other proceedings shall be in the discretion of the Supreme Court or a Judge thereof.

130. A person against whom an action for a wrong is brought in the Supreme Court, whatever the amount claimed may be, may, upon an affidavit that the plaintiff has no visible means of paying the costs of the defendant if a verdict is not found for the plaintiff, call upon the plaintiff to show cause before a Judge of the Supreme Court in chambers why he should not give security for the defendant's costs of the action, and why in default of such security the action should not be remitted to a District Court, or the proceedings in the action be stayed.

Frivolous action
may be referred
to District Court.
Of. Imp. 51 & 52
Vic. c. 43, s. 66.

Upon the hearing of the application, the Judge, unless he is satisfied that the plaintiff has a cause of action which ought to be prosecuted in the Supreme Court, may order that the plaintiff shall within a time mentioned in the order, give security for the defendant's costs to the satisfaction of the Judge, and that, in the event of the plaintiff failing to give the security, the action shall be remitted to a District Court to be named in the order, or that in the event of such failure all proceedings in the action be stayed.

When such an order is made, if the plaintiff fails to give the security within the time limited by the order, the plaintiff shall, unless the proceedings are directed to be stayed, lodge the original writ and the order with the registrar of the last-mentioned Court, and the Judge of that Court shall appoint a day for the trial of the action, and notice of it shall be sent by post or otherwise by the registrar to both parties or their solicitors.

The action and all subsequent proceedings therein shall be tried and taken in such Court as if the action had originally been commenced therein, and that Court shall have jurisdiction to entertain and decide the same; and the costs of the parties in respect of the proceedings subsequent to the order of the Judge

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of the Supreme Court shall be allowed according to the scale of costs prescribed in District Courts, and the costs of the order and all proceedings previous to the order shall be allowed according to the costs for the time being allowed in Supreme Court actions.

Amendment.

As to amendment of defects and errors of proceedings, &c.
Cf. Imp. 51 & 52
Vic. c. 43, s. 87.

131. A Judge of a District Court may at any time amend any defect or error in a civil proceeding, whether there is anything in writing to amend by or not, and whether the defect or error is that of the party applying to amend or not; and an amendment may be made upon or without payment of costs and upon such terms as the Judge thinks fit, and all such amendments as are necessary for the purpose of determining in the existing action the real question in controversy between the parties shall be so made.

Judgment and New Trial.

Judgment to be final unless new trial granted.
Cf. Imp. *Ib.* s. 93.

132. Every judgment, except as herein provided, shall be final and conclusive between the parties; but the Judge may nonsuit the plaintiff in any case in which proof is not given entitling him to judgment, and may also in any case order a new trial, to be had upon such terms as he thinks reasonable, and in the meantime may stay the proceedings.

When judgment does not exceed twenty pounds judge may order payment by instalments.
Cf. Imp. *Ib.*
s. 105.

133. When judgment is obtained in a District Court for a sum not exceeding twenty pounds, exclusive of costs, the Judge may order the sum and costs⁽⁴³⁾ to be paid at specified times, by instalments, and all such moneys shall be paid into Court; but in all other cases he shall order the full amount for which judgment is obtained to be paid either forthwith or within fourteen clear days from the date of the judgment, unless the plaintiff or his barrister, solicitor, or agent, consents to its being paid by instalments, in which case the Judge shall order it to be paid at the times and by the instalments consented to; and all such moneys, whether payable in one sum or by instalments, shall be paid into Court.

Arbitration.⁽⁴⁴⁾

Power to refer to arbitration.
Cf. Imp. *Ib.*
s. 104.

134. The Judge may in any action order the action, with or without other matters within the jurisdiction of the Court in dispute between the parties, to be referred to arbitration, to such person or persons and in such manner and on such terms as he thinks reasonable.

(43) See, also, Rule 88 of the *Rules of Civil Procedure*, printed on p. 612.

(44) See the *Arbitration Ordinance*, 1912.

The reference shall not be revocable by either party except by consent of the Judge, and the arbitrator or arbitrators or umpire shall hear and determine the case, and the award given by him or them shall be entered as the judgment in the action, and shall be as binding and effectual to all intents as if it were the judgment of the Court:

But the Judge may, on application to him at the first sittings of the Court held after the expiration of one week after the entry of the award, set aside the award, or refer the award back to the arbitrator, arbitrators, or umpire, or, with the consent of the parties, revoke the reference or order another reference to be made in the manner before prescribed.

135. When a reference to arbitration is made by a Judge, he may, by an order to be made for that purpose, direct the issue of subpoenas requiring the attendance and examination of any person to be named, or the production of any documents to be mentioned, in the order.

Power to compel attendance of witnesses before arbitrators.

Any such subpoena may be served in the same manner as a subpoena to attend at a trial; and if an appointment of the time and place of attendance in obedience to it, signed by one at least of the arbitrators or by the umpire before whom the attendance is required, is served either together with or after the service of the subpoena, disobedience to the subpoena shall entail the same consequences as in the case of a subpoena to attend at a trial of an action:

But a person shall not be compelled to produce under the subpoena any writing or other document which he would not be compelled to produce at a trial.

Every application made to the Judge for such an order must set forth the place where the witness whose attendance is required is residing at the time.

Every person whose attendance is so required shall be entitled to the like conduct money and payment of expenses as for and upon attendance at a trial.

Attachment of Goods.⁽⁴⁵⁾

136. If a plaintiff in an action shows to the satisfaction of the Judge or Registrar, by affidavit made by himself or another person, that he has a cause of action against the defendant to the amount of ten pounds or upwards, or has sustained damage to that amount, and that—

Attachment of goods of defendant.

- (1) The defendant is about to, or is making preparations to, leave the Colony, or to go into remote parts of the Colony, or is about to, or is making preparations to, sell

(45) See, however, Section 1 of *The Creditors Remedies Ordinance of 1905.*

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or remove out of the Colony, or into remote parts of the Colony, goods belonging to the defendant; and that—

- (2) The action will be defeated by such departure, sale, or removal;

the Judge or Registrar may, upon such terms as to giving security or otherwise as he thinks fit, give leave to the plaintiff to issue a warrant which shall be called a warrant of attachment and seizure, authorising the bailiff of the Court to seize and attach the goods of the defendant until he gives bail in a sum equal to the plaintiff's claim and five pounds for costs.

The bailiff shall thereupon seize and attach a sufficient part of the goods of the defendant, and shall return the warrant immediately on its execution.

If the defendant whose goods are so seized or attached, or anyone on his behalf, gives bail with two sufficient sureties in the amount of debt or damages sought to be recovered and five pounds for costs, or deposits the amount sued for and five pounds for costs to abide the event, the action shall proceed, and the bailiff shall release the goods from his possession; but if the bail is not given or deposit made within fourteen days after the return of the warrant the action shall be set down for trial before the police magistrate resident in the town nearest to the place where the goods are seized, and the plaintiff shall at the time appointed prove his debt or damages *vivâ voce* to the satisfaction of the police magistrate.

The proofs shall be reduced into writing in the form of a deposition, and shall be signed by the deponents and also by the police magistrate, together with the finding of the police magistrate on the facts, and shall be transmitted to the registrar of the District Court from which the warrant was issued.

Judgment may thereupon be entered by the registrar for the plaintiff in accordance with the finding, and a warrant of execution may be issued thereon for the sale of the goods of the defendant.

Any such judgment may be set aside by the Judge upon such terms as he thinks just.

PART VI.—RECOVERY OF POSSESSION OF LAND.⁽⁴⁶⁾

Possession of land may be recovered by landlords when terms have expired or been determined.
Cf. Imp. 51 & 52 Vic. c. 43, s. 138.

137. When the term or interest of the tenant of any land has expired, or is determined by notice to quit or by demand of possession, and the tenant or a person claiming under him actually occupies the land or a part of it, and neglects or refuses to give up possession, the landlord may bring an action to recover possession, either against the tenant, or against the person so neglecting or refusing, in the Court of the District in which the land is situate.

(46) As to recovery of possession of land, see the *Distress Replevin and Ejectment Act of 1867* (Queensland, adopted), printed below, title LAND; and the *Summary Ejectment Act of 1867* (Queensland, adopted), printed below, title LAND.

The District Courts Act, 1891 (Queensland, adopted).

A summons shall thereupon be issued in the prescribed form, addressed to the tenant or the person so neglecting or refusing, and if on the return day the defendant does not show good cause to the contrary, then, on proof of the tenancy, and of the defendant's still neglecting or refusing to deliver up possession, and of the yearly value of the land or of the rent, and of the expiration or other determination of the tenancy with the time and manner of the determination, and of the title of the plaintiff, if the title has accrued since the letting of the land, and of the service of the summons if the defendant does not appear, the Judge may order that possession of the land be given to the plaintiff either forthwith, or on or before such day as the Judge appoints.

Summons.

If the order is not obeyed the registrar, whether the order is proved to have been served or not, shall, on the application of the plaintiff, issue a warrant authorising and requiring the bailiff of the Court to give possession of the land to the plaintiff.

138. In any such action against a tenant or other person as in the last preceding section mentioned the plaintiff may add a claim for rent or mesne profits, or both, down to the day appointed for the hearing, or to any preceding day named in the plaint, provided that the claim does not exceed two hundred pounds.

In plaint for recovery of possession plaintiff may claim for rent and mesne profits. Cf. Imp. 51 & 52 Vic. c. 43, s. 138.

139. When one half-year's rent of any land of which neither the value nor the rent payable in respect of it exceeds two hundred pounds by the year, is in arrear, and the landlord has right by law to re-enter for the non-payment of it, he may, without formal demand or re-entry, bring an action to recover possession in the Court of the District in which the land is situate.

Possession of land may be recovered by landlords for non-payment of rent. Cf. Imp. 1b. s. 139.

A summons in the prescribed form shall thereupon be issued to the tenant, and the service of it shall stand instead of a demand and re-entry; and if the tenant, five clear days before the return day, pays into Court all the rent in arrear and the costs, the action shall be stayed.

Summons.

But if he does not make such payment and does not, on the return day, show good cause why the land should not be recovered, then on proof of the yearly value and rent of the land, and of the fact that one half-year's rent was in arrear before the plaint was entered, and of the landlord's power to re-enter, and of the rent being still in arrear, and of the title of the plaintiff, if the title has accrued since the letting of the land, and of the service of the summons if the defendant does not appear, the Judge may order that possession of the land be given to the plaintiff on or before such day, not being less than fourteen days from the day of hearing, as the Judge appoints, unless within that time all the rent in arrear and the costs are paid into Court.

If the order is not obeyed, and the rent and costs are not so paid, the registrar, whether the order is proved to have been served or not, shall, at the instance of the plaintiff, issue a warrant, authorising and requiring the bailiff of the Court to give possession of the land to the plaintiff, and the plaintiff shall, from the time of the execution of the warrant, hold the land discharged of the tenancy, and the defendant and all persons claiming under him shall, so long as the order of the Court remains unreversed, be barred from all relief.

Sub-tenant served with summons for recovery of possession must give notice to his immediate landlord.

Cf. Imp. 51 & 52
Vic. c. 43, s. 140.

140. When a summons for the recovery of possession of land is served on or comes to the knowledge of a sub-tenant of the plaintiff's immediate tenant, the sub-tenant being an occupier of the whole or of part of the land sought to be recovered, he shall forthwith give notice of it to his immediate landlord, under penalty of forfeiting to the landlord three years' rack-rent of the land held by the sub-tenant, to be recovered by the landlord by action in the Court from which the summons was issued, and the landlord, on the receipt of the notice, if not originally a defendant, may be added or substituted as a defendant.

Service of summons in action to recover possession of land.

Cf. Imp. *Ib.*
s. 141.

141. A summons for the recovery of possession of land may be served like other summonses to appear to plaintiffs, but if the defendant cannot be found, and his place of residence is not known, or admission to it cannot be obtained for serving the summons, a copy of the summons shall be posted on some conspicuous part of the premises sought to be recovered, and the posting shall be deemed good service on the defendant.

Warrant to bailiff sufficient to justify entry on land.

Cf. Imp. *Ib.*
s. 142.

142. A warrant to a bailiff to give possession of land shall justify the bailiff named in the warrant in entering upon the land with such assistance as he thinks necessary, and in giving possession accordingly, but an entry under the authority of such a warrant shall not be made except between the hours of nine in the morning and four in the afternoon.

Warrant to be in force for three months.

Cf. Imp. *Ib.*
s. 143.

143. The warrant shall, on whatever day it is issued, bear date on the day next after the last day named by the Judge in his order for the delivery of possession of the land in question, and shall continue in force for three months after such date and no longer, but an order for delivery of possession need not be drawn up or served.

PART VII.—
APPEALS, &C.

PART VII.—APPEALS,⁽⁴⁷⁾ &C.

Appeal from the District Court to the Supreme Court.

Appeal to the Supreme Court in certain cases.

Cf. Imp. *Ib.*
s. 120.

144. Any party who is dissatisfied with the judgment of the Court—

(47) As to appeals from the Supreme Court of Papua, see *The Appeal Ordinance* of 1909.

The District Courts Act, 1891 (Queensland, adopted).

- (1) In an action or matter in which the sum sued for exceeds thirty pounds;
- (2) In an action for the recovery of possession of land of which the value or rent exceeds thirty pounds by the year;
- (3) In an action of replevin in which the amount of rent in respect of which the distress was or might have been made exceeds thirty pounds; or
- (4) In proceedings in interpleader in which the amount claimed or the value of the goods in question exceeds thirty pounds;

may appeal to the Supreme Court.

The appellant shall, within the time and in the manner prescribed, give notice of the appeal to the other party or his solicitor, and shall also give security (to be approved by the registrar) for the costs of the appeal, or shall, instead of giving security, deposit in the hands of the registrar thirty pounds, to answer the costs of the appeal, in the event of the appeal being dismissed.

Notice of appeal shall not operate as a stay of execution upon the judgment, but the execution may proceed, unless the Judge, or a Judge of the Supreme Court, otherwise orders.

145. At the trial or hearing of an action or matter in which there is a right of appeal, the Judge, at the request of either party, shall make a note of any question of law raised at the trial or hearing, and of the facts in evidence in relation to that question, and of his decision on it, and of his decision of the action or matter.

When judge to take a note of questions of law.
Cf. Imp. 51 & 52
Vic. c. 43, s. 121.

146. In any action or matter in which the Judge has at the request of either party made a note as in the last preceding section mentioned he shall, at the expense of any party or parties to the action or matter, furnish a copy of the note so taken at the trial or hearing, or allow a copy of it to be taken by such party or parties, and he shall sign the copy, whether a notice of appeal has been given or not, and the copy so signed shall be used and received at the hearing of the appeal.

When copy of judge's note to be given.
Cf. Imp. *Ib.*
s. 121.

147. On the hearing of an appeal, the Supreme Court shall have power to draw inferences of fact from facts found by the Judge or jury, or from admitted facts or facts not disputed, and may order a new trial on such terms as the Court thinks just, or may order judgment to be entered for any party, or may make any other order, on such terms as the Supreme Court thinks proper, to ensure the determination on the merits of the real questions in controversy

Jurisdiction of Supreme Court.
Cf. Imp. *Ib.*
s. 122.

between the parties, and may make such order with respect to the costs of the appeal as it thinks proper, and such order shall be final.

Parties may agree not to appeal.

Cf. Imp. 51 & 52
Vic. c. 43, s. 123.

148. An appeal shall not lie from the decision of a Judge if, before the decision is pronounced, both parties agree, in writing signed by themselves or their solicitors or agents, that the decision of the Judge shall be final.

Removal of action only in manner provided by this Act.

Cf. Imp. *Ib.*
s. 124.

149. A judgment given by a Judge, or an action or matter brought before him or depending in his Court, shall not be removed by appeal, motion, writ of error, or certiorari, or otherwise into another Court, save and except in the manner and according to the provisions of this Act.

Certiorari.

When action may be removed.

Cf. Imp. *Ib.*
s. 126.

150. If the Supreme Court or a Judge thereof thinks it desirable that any action, matter, or proceeding pending in a District Court in its civil or criminal jurisdiction should be tried in the Supreme Court, the Court or Judge may direct a writ of certiorari to be issued for removing such action, matter, or proceeding into the Supreme Court, upon such terms as to payment of costs, giving security for costs, or otherwise as such Court or Judge thinks fit.

An action or matter shall not be so removed when the amount claimed does not exceed thirty pounds, unless the defendant gives security to the satisfaction of such Court or Judge for the amount claimed, and also for a sum not exceeding one hundred pounds for the costs in the Supreme Court.

Order in lieu of Mandamus.

Rule or order substituted for writ of mandamus to a judge or officer.

Cf. Imp. *Ib.*
s. 131.

151. A writ of mandamus shall not be issued to a Judge or an officer of a District Court requiring him to do any act relating to the duties of his office, but a party requiring the act to be done may apply to the Supreme Court or a Judge thereof, upon an affidavit of the facts, for a rule or summons calling upon the Judge or officer of the District Court, and also the party to be affected by the act, to show cause why the act should not be done, and if after the service of the rule or summons good cause is not shown, the Supreme Court or a Judge thereof may, by rule or order, direct the act to be done, and the Judge or officer of the District Court shall, upon being served with the rule or order, obey it under pain of attachment, and in any event the Court or Judge may make such order with respect to costs as to the Court or Judge seems fit.

Prohibition.

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

Cf. Imp. *Ib.*
s. 128.

152. When an application is made to the Supreme Court or a Judge thereof for a writ of prohibition addressed to a District Court, the Judge of the District Court shall not be served with notice, and shall not, except by the order of a Judge of the Supreme

Court, be required to appear or be heard on the application, and shall not be liable to any order for the payment of the costs thereof; but the application shall be proceeded with and heard in the same manner in all respects as a case of an appeal duly brought from a judgment of a Judge.

Notice of the application shall be given to or served upon the same parties as in the case of an order made or refused by a Judge in a matter within his jurisdiction.

Practice in such Cases.

153. The granting by the Supreme Court, or by a Judge thereof, of a rule or summons to show cause why a writ of certiorari or of prohibition should not be issued to a District Court, shall, if the Supreme Court or a Judge thereof so directs, operate as a stay of proceedings in the action to which the same relates until the determination of the rule or summons, or until such Court or Judge otherwise orders; and the Judge of the District Court shall, from time to time, adjourn the hearing of the action to such day as he thinks fit, until the determination or until such order is made.

Rule or summons to show cause why a writ of certiorari or prohibition should not be issued to be a stay of proceedings.
Cf. Imp. 51 & 52
Vic. c. 43, s. 129.

If a copy of the rule or summons is not served by the party who obtained it on the opposite party, and on the registrar of the District Court, at least two clear days before the day fixed for the hearing of the action, the Judge of the District Court may order the party who obtained the rule or summons to pay the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made a different order respecting such costs.

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

154. When a writ of certiorari or of prohibition addressed to a District Court is granted by the Supreme Court or a Judge thereof on an *ex parte* application, and the party who obtained it does not lodge it with the registrar, and give notice to the opposite party that it has been issued, at least two clear days before the day fixed for hearing the action to which it relates, the Judge of the District Court may order the party who obtained the writ, to pay all the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made a different order respecting such costs.

Notice of writ of certiorari or prohibition obtained *ex parte* to be given to registrar and parties.
Cf. Imp. *Ib.*
s. 130.

155. When an order is granted for the removal of an action or matter from a District Court, or for the issuing of a writ of certiorari for such removal, and provision is not made with respect to the costs of the proceedings in the District Court, the costs of the proceedings shall be costs in the action or matter.

Costs.

COURTS—

Appeals to a District Court.

Evidence on
appeals from
Small Debts
Court.

156. In any case in a Small Debts Court⁽⁴⁸⁾ in which the sum sued for amounts to ten pounds or upwards, the clerk of such Court shall take notes of the evidence, and shall append the same to the proceedings, and in case of appeal, the notes and proceedings shall be transmitted by him to the registrar of the Court to which the appeal is directed, two clear days before the sitting of the Court, and shall be the only evidence received upon the appeal unless both parties consent to the reception of fresh evidence, or the Judge directs such reception; and after the determination of the appeal, the registrar of the District Court shall append to the notes and proceedings the judgment given on the appeal, and shall return the same to the clerk, and effect shall be given to the judgment according to its tenor.

Judge may allow
costs and
expenses of
witnesses.

157. In any case of appeal from a Small Debts Court to a District Court the Judge may award costs and allow expenses of witnesses.

Power of
amendment on
appeals.

158. In any case of appeal to a District Court from a conviction or order of justices⁽⁴⁹⁾ the Judge shall have the same power to amend mistakes or errors in the conviction or order appealed from that the Supreme Court has in cases of applications to quash, and after the amendment the conviction or order may be enforced or dealt with in all respects as if the same had so stood originally.

Appeal.

159. When in any Act provision is made for an appeal to a court of general or quarter sessions, or to a Judge of the Supreme Court on circuit, or an appeal is given from a decision of a justice and no other Court of appeal is given from such decision, the appeal shall lie to the District Court of the district in which the decision appealed from was given, and shall be heard and determined by the Judge of that Court.

In any such case, the Judge may state in the form of a special case for the opinion of the Supreme Court any question of law arising upon the facts of the case, and his judgment shall be affirmed, amended, or reversed, as the Supreme Court, upon the hearing of the special case, directs.

PART VIII.—
ENFORCEMENT
OF JUDGMENTS.

PART VIII.—ENFORCEMENT OF JUDGMENTS.⁽⁵⁰⁾

Action on judgment.

Action on
judgment.

160. An action may be brought in the Supreme Court upon a judgment in a District Court, but the plaintiff shall not recover any

(48) As to appeals from the Small Debts Courts of Papua to the Supreme Court of Papua, see Section 64 of the *Small Debts Ordinance*, 1912.

(49) As to appeals to the Supreme Court of Papua from an order of justices, see Part IX of the *Justices Ordinance*, 1912-1940.

(50) See, also, Rules 89 to 92 inclusive of the *Rules of Civil Procedure*, printed on p. 612, and the *Creditors Remedies Ordinance*, 1905-1921.

costs in such an action up to judgment unless the defendant appears and unsuccessfully defends the action.

Warrants of Execution.

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

Registrar to issue warrants of execution.
Cf. Imp. 51 & 52
Vic. c. 43, s. 146.

Execution against Land.⁽⁵¹⁾

162. A bailiff may, under a warrant of execution by which he is directed to levy a sum of money, seize and take, and cause to be sold, any land which the person named in the warrant is or may be possessed of or entitled to, or which he has power to assign or dispose of.

Bailiff may take land.

163. Instead of making an actual seizure of land under a warrant of execution in order to authorize a sale thereof, the bailiff may cause notice of the warrant and of the intended day and place of sale, and the particulars of the property to be published in such manner as may be prescribed, or as the Judge may direct.

Notice of sale.

The publication of the notice shall be equivalent to an actual levy by the bailiff on the land indicated in the notice.

164. When the right, title, and interest of a person of, to, or in, any land is sold under a warrant of execution, the registrar shall execute a proper deed of bargain and sale or transfer to the purchaser, which deed of bargain and sale or transfer shall operate and be effectual as a conveyance of the estate, right, title, and interest, of such person.

Registrar to execute deed of bargain and sale or transfer.

165. In the case of land which is not subject to the "*Real Property Act of 1861*"⁽⁵²⁾ a warrant of execution shall not bind the land until it is registered in the office of the Registrar of Titles, who shall duly register the same in a book to be kept for that purpose.

Executions not to bind land unless registered.

Execution against Goods.

166. A bailiff, under a warrant of execution by which he is directed to levy a sum of money, may seize and take, and cause

Bailiff may seize goods.
Cf. Imp. *Ib.*
s. 147.

(51) See, however, Rule 91 of the *Rules of Civil Procedure*, printed on p. 612.

(52) The *Real Property Act of 1861* (Queensland) was adopted as a law of the Possession of British New Guinea by *The Courts and Laws Adopting Ordinance (Amended)* of 1889 and continued in force in the Territory of Papua by Section 6(1) of the *Papua Act 1905*. The *Real Property Act of 1861* (Queensland, adopted) was repealed and replaced in the Territory of Papua by the *Real Property Ordinance, 1913-1939*.

to be sold any goods which the person named in the warrant is or may be possessed of or entitled to, or which he has power to assign or dispose of :

Exception.

Provided that the wearing apparel, bedding, tools and implements of trade of such person and his family, to the value of ten pounds in the whole, shall be protected from seizure.

Securities seized to be held by bailiff.

Cf. Imp. 51 & 52 Vic. c. 43, s. 148.

167. The bailiff shall hold any cheques, bills of exchange, promissory notes, specialties or other securities for money, which are seized or taken under a warrant of execution, as a security for the amount directed to be levied under the warrant, or so much thereof as has not been otherwise levied or raised for the benefit of the execution creditor, and may receive any moneys payable by virtue of any such instrument from the person liable under it.

The execution creditor may sue in the name of the execution debtor, or in the name of any person in whose name the execution debtor might sue, for the recovery of the sums secured or made payable by any such instrument, when the time of payment thereof arrives.

Any money paid to the bailiff or recovered in an action brought by the execution creditor in respect of any such instrument shall be paid into Court by the officer or person who receives the same. The payment of any such moneys to the bailiff or in the course of or under a judgment in any such action shall effectually discharge the person by whom they are paid to the extent of the payment.

When goods taken in execution may be sold.

Cf. Imp. 1b. s. 154.

168. A sale of goods which are taken in execution shall not be made until after the expiration of the five days at least next following the day on which the goods were taken, unless the goods are of a perishable nature, except upon the request in writing of the person whose goods are taken.

Until the sale the goods must be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the bailiff to be put in possession by the bailiff.

When goods seized landlord may claim certain rent in arrear.

Cf. Imp. 1b. s. 160.

169. The landlord of any premises in which goods are taken may, at any time within five clear days from the date of the taking, or at any time before the removal of the goods, claim any rent in arrear by delivering to the officer making the levy a writing signed by himself or his agent, stating the amount of rent in arrear claimed and the period in respect of which the rent is due.

If such a claim is made, the officer making the levy shall, in addition to levying for the amount for which the warrant was issued, keep possession of the goods by way of distress for the rent

so claimed and the cost of the possession, and shall not within five clear days next after the notice sell any part of the goods taken, unless they are of a perishable nature, except upon the request in writing of the person whose goods are taken.

The bailiff shall afterwards sell so much of the goods taken under the execution as is sufficient to satisfy—

- (1) The costs of and incident to the levy and sale;
- (2) The claim of the landlord not exceeding the rent for four weeks when the premises are let by the week, the rent for two months when the premises are let by the month, or the rent for three months in any other case; and
- (3) The amount for which the warrant was issued.

If a replevin is made of any goods so taken, the bailiff shall, notwithstanding the replevin, sell such portion of the goods as will satisfy the costs of and incident to the levy and sale under the execution, and the amount for which the warrant was issued, and the surplus, if any, arising from the sale, and the residue of the goods shall be returned to the defendant.

The poundage of the bailiff and broker for appraisalment and sale under the possession by way of distress, shall be the same as would have been payable if no claim had been made for rent; and no other fees shall be demanded or taken in respect thereof.

Execution against the Person.⁽⁵³⁾

170. When a sum of money is recovered by the judgment of a District Court, and the judgment creditor shows to the satisfaction of a Judge of the Supreme Court, or of a District Court—

Execution against
the person.
Cf. Imp. 51 & 52.
Vic. c. 43, s. 161.

- (1) That the debt was fraudulently contracted; or
- (2) That the judgment debtor conceals goods; or
- (3) That he has any income, salary, or means, by which, in the opinion of the Judge, he can satisfy the judgment or a part of it; or
- (4) That he is about to leave the Colony, or to go into remote parts of the Colony, or to remove any of his property with intent to evade payment of the judgment debt;

(53) See, also, Section 4 of *The Creditors Remedies Ordinance of 1905.*

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the Judge may authorize the registrar of the District Court to issue a warrant in the prescribed form for his commitment to prison.

The bailiff and the keeper of the prison to whom the warrant, or any warrant issued in pursuance of it, is directed, shall respectively execute and obey the same, and the police officers within their several jurisdictions shall aid and assist in its execution.

A warrant of commitment may be executed on a Sunday as on any other day.

Discharge on
payment of
debt and costs.

171. A person arrested or imprisoned under warrant of commitment shall be entitled to his discharge on payment of the amount named in the warrant as due on the judgment, and the costs of obtaining and executing the warrant, or, except in the case of a debt fraudulently contracted, upon his being adjudged insolvent or otherwise upon the order of the Judge.

The bailiff making the arrest, and the keeper of the prison to whom the warrant is directed, are hereby empowered and required to receive the amount so paid, and to transmit it to the registrar of the Court in which the judgment was recovered.

Detention of
person arrested.
Cf. Imp. 51 & 52
Vic. c. 43, s. 163.

172. When a warrant of commitment is issued, and the judgment debtor is arrested, he shall, unless entitled to his discharge under the provisions of this or some other Act, be forthwith conveyed in the custody of the bailiff or other officer apprehending him to the prison nearest to the place where he was arrested, and shall be detained in custody until he is discharged therefrom by due process of law.

Execution beyond the District.

How execution
may be had out
of the district of
the court from
which the
warrant was
issued.
Imp. 16. s. 158.

173. When a warrant of execution, or a warrant of commitment, has been issued under this Act, and the person against whom it is issued, or any of his property, is out of the district of the Court from which the warrant was issued, the registrar of the Court may send the warrant to the registrar of another District Court within the district of which the person, or any of his property, then is or is believed to be, with a warrant annexed to it, under the hand of the registrar and under the seal of the Court from which the original warrant was issued, requiring execution thereof.

The registrar of the Court to which the warrant is sent shall seal or stamp it with the seal of the Court, and shall issue it to the bailiff of his Court.

The last-mentioned bailiff shall thereupon be authorised and required to act in all respects as if the original warrant of execution

or commitment had been directed to him by the Court of which he is the bailiff, and he shall within the prescribed time make a return to the bailiff of the Court from which the warrant was originally issued with respect to what he has done in the execution of the process; and, if a levy is made, he shall, within the prescribed time, pay over the moneys received in pursuance of the warrant to the registrar of the Court from which it was originally issued, retaining the fees for execution of the process.

General provisions relating to Execution.

174. The precise time when an application is made to a registrar to issue a warrant of execution shall be entered by him in the execution book, and on the warrant, and when more warrants than one are delivered to a bailiff to be executed against the same person he shall execute them in the order of the times so entered.

Time of applications for warrants to be entered.
Cf. Imp. 51 & 52
Vic. c. 43, s. 146.

175. When a writ of execution against the lands or goods of a party to an action or other proceeding has been issued out of the Supreme Court, and a warrant of execution on the application of the same party has been issued out of a District Court, the right to the property seized shall be determined by the priority of the time of the delivery of the writ so issued out of the Supreme Court to the sheriff to be executed, or the time of the application to the registrar for the issue from the District Court of the warrant of execution, whichever is the earlier.

Priority of execution issuing out of Supreme Court and District Court.
Cf. Imp. *ib.*
s. 152.

The sheriff shall, on demand, inform the registrar of the precise time of the delivery of the writ so issued out of the Supreme Court, and the registrar shall, on demand, inform the sheriff, or a sheriff's officer, of the precise time of the application to the registrar for the issue from the District Court of the warrant of execution.

176. If the Judge makes an order for payment of a sum of money by instalments, execution upon the order shall not be issued against the party until after default in some instalment.

Execution after default in instalment may be issued for whole sum.
Cf. Imp. *ib.*
s. 149.

Upon such default being made, execution or successive executions may be issued for the whole of the sum of money and costs then remaining unpaid, or for such portions thereof as the Judge may have ordered, either at the time of making the original order, or at a subsequent time.

177. If at any time it appears to a Judge that the defendant in an action or matter is unable from sickness or other sufficient cause to pay and discharge the debt or damages recovered against him or any instalment thereof, the Judge may suspend or stay any

Judge may suspend execution or order discharge in certain cases.
Cf. Imp. *ib.*
s. 153.

judgment given or execution issued in the action or matter for such time and upon such terms as he thinks fit, and so from time to time until it appears that the cause of inability has ceased.

A Judge may also discharge a debtor confined in prison by order of a Judge, whether of the Supreme Court or a District Court, who by reason of sickness, insanity, or other sufficient cause ought, in the opinion of the Judge, to be discharged.

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

178. In or upon every warrant of execution the registrar of the Court shall cause to be inserted or indorsed the sum of money and costs adjudged and the amount of the fees for the execution of the warrant.

If the party against whom the warrant is issued, before actual sale, pays or tenders to the registrar of the Court from which it was issued, or to the bailiff holding the warrant, the sum of money and costs, or such part thereof as the person entitled thereto agrees to accept as full payment of the debt or damages and costs, the execution shall be superseded, and the property of the party against whom the execution was issued shall be discharged.

Cross-judgments to be set off.
Cf. Imp. 1b.
s. 150.

179. If there are cross-judgments between the same parties in a District Court, execution shall be issued at the instance of that party only who has obtained judgment for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction shall be entered on the judgment for the smaller sum, and if both sums are equal, satisfaction shall be entered on both judgments.

Interpleader.⁽⁵⁴⁾

Interpleader.
Cf. Imp. 1b.
s. 157.

180. If a claim is made to or in respect of goods taken in execution under the process of a District Court, or in respect of the proceeds or value of the goods, by a person not being the party against whom the process has been issued, the registrar of the Court under the process of which the levy is made, or the registrar of the Court of the district in which the levy is made, upon application of the officer charged with the execution of the process, whether an action has been brought against the officer or not, may enter an interpleader complaint, and may issue a summons thereon calling before the Court both the party issuing the process and the party making the claim, and thereupon any action which has been brought in the Supreme Court or in a District Court in respect of the claim shall be stayed.

(54) As to interpleader, see the *Interdict Act of 1867* (Queensland, adopted), printed on p. 585.

Upon the return of the summons the Judge shall have and may exercise such and the same powers as a Judge of the Supreme Court has and may exercise upon the application of the sheriff, under the provisions of the "*Interdict Act of 1867*,"⁽⁵⁵⁾ in the case of goods taken in execution under process issued from the Supreme Court.

The Court in which the action has been brought, or any Judge of such Court, on proof of the issue of the summons and that the goods were so taken in execution, may order the party bringing the action to pay the costs of all proceedings had upon the action after the issue of the summons out of the District Court. Costs.

Attachment of Debts.⁽⁵⁶⁾

181. When a judgment is for the recovery by or payment to a person of a sum of money, the party entitled to enforce it may apply to the Judge for an order that the judgment debtor be orally examined before the Judge, or such other person as the Judge appoints, as to whether any and what debts are owing to him; and the Judge may make an order for the examination of the judgment debtor, and for the production of any books, deeds, papers, or writings. Examination of judgment debtor as to debts due to him.

182. Upon the *ex parte* application of the judgment creditor, either before or after the oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment debtor and is within the Colony, the Judge may order that all debts owing or accruing from the third person (hereinafter called the garnishee) to the judgment debtor, shall be attached to answer the judgment, and by the same or a subsequent order may order that a summons be issued requiring the garnishee to appear before the Judge, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much of it as is sufficient to satisfy the judgment. Power to make garnishee order.

183. Service of an order that debts due or accruing to a judgment debtor shall be attached, or notice of it to the garnishee in such manner as the Judge directs, shall bind the debts in his hands. Service of garnishee order.

184. If the garnishee does not dispute the debt due or claimed to be due from him to the judgment debtor, or does not appear in obedience to the summons, and if in either case he does not forthwith pay into Court the amount due from him to the judg- Execution against garnishee.

(55) See the *Interdict Act of 1867* (Queensland, adopted), printed on p. 585.

(56) See, also, the *Creditors Remedies Ordinance*, 1921.

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ment debtor, or an amount equal to the judgment debt, the Judge may order a warrant of execution to be issued, and it may be issued accordingly without a previous writ or process, to levy the amount due from the garnishee, or so much of it as is sufficient to satisfy the judgment.

Trial of liability of garnishee.

185. If the garnishee disputes his liability, the Judge, instead of making an order that a warrant of execution shall be issued, may order that any issue or question necessary for determining his liability be tried or determined, in any manner in which an issue or question in an action is tried or determined, and thereupon the same proceedings may be had in all respects as if an action were pending between the parties, and any order or judgment made in such proceedings may be enforced in the same manner as a judgment in an action in the Court.

Lien of third person on debt.

186. When in proceedings to obtain an attachment of debts it is suggested by the garnishee, or it otherwise appears, that the debt sought to be attached belongs to a third person, or that a third person has a lien or charge upon it, the Judge may order a summons to be issued requiring the third person to appear and state the nature and particulars of his claim upon the debt.

Trial of claim of third person.

187. After hearing the allegations of the third person, and of any other person whom by the same or a subsequent order the Judge directs to be summoned, or if the third person does not appear in obedience to the summons, the Judge may order that a warrant of execution be issued to levy the amount due from the garnishee, or that an issue or question be tried or determined as hereinbefore provided, and the Judge may bar the claim of the third person, or may make such other order as he thinks fit, upon such terms with respect to the lien or charge (if any) of the third person, and to costs, as he thinks just.

Discharge of garnishee.

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

Attachment book.

189. The registrar shall keep a debt attachment book, in which entries shall be made of all attachments made and of the proceedings taken in respect of them, with names, dates, and statements of the amount recovered and such other particulars as may be prescribed; and copies of entries made in the book may be taken by any person upon application to the registrar.

Costs.

190. The costs of an application for an attachment of debts,

and of the proceedings arising from or incidental to the application, shall be in the discretion of the Judge.

PART IX.—GENERAL PROVISIONS.

Rules of Court.⁽⁵⁷⁾

191. The District Court Judges for the time being, or a majority of them, may, from time to time, make Rules of Court prescribing the mode of keeping the books, entries, and accounts to be kept by the registrars, the times for appearing to summonses, for filing and serving notices of defence, and the mode of such service, the cases in which special defences shall be required, the particulars to be given in any notice of defence or special defence, the fees to be allowed to barristers and solicitors, and the expenses to be paid to witnesses, and may make Rules of Court prescribing forms for any matter or proceeding in District Courts, and otherwise regulating the practice and proceedings of the Courts.

Power to make rules.
Cf. Imp. 51 & 52
Vic. c. 43, s. 164.

All Rules of Court shall be approved by the Judges of the Supreme Court, or two of them, of whom the Chief Justice shall be one, and shall be published in the *Gazette*, and shall not take effect until one month after the publication.

The Rules and forms in force at the commencement of this Act, except so far as they are inconsistent with this Act, shall continue in force until altered or revoked by Rules made under this Act.

In any case not expressly provided for by this Act, or by Rules of Court, the Rules of practice in the Supreme Court shall be adopted and applied by the Judges of the District Courts to actions and proceedings in their several Courts.

Fees⁽⁵⁸⁾ and *Fines*.

192. There shall be payable in respect of every civil proceeding in a District Court the fees mentioned in the Fourth Schedule to this Act.

Amount of court fees.
Fourth Schedule.
Cf. Imp. *Ib.*
s. 165.

The fees shall be paid in the first instance by the party on whose behalf the proceeding is to be taken, and shall be paid before the proceeding is taken, and the fees payable for executing warrants of execution shall be paid into Court before or at the time of the issue of the process of execution.

(57) As to the power to make Rules of Court, see Section 9 of *The Courts and Laws Adopting Ordinance of 1888*.

(58) As to fees to be charged by the Supreme Court of Papua and by Sheriffs and Bailiffs thereof, see Rule 112 of the *Rules of Civil Procedure*, printed on p. 615, and the *Rules of Court of the Supreme Court (Solicitors' Costs and Fees and Court Fees)* (Queensland, adopted), printed on p. 632.

A table of the fees shall be put up in some conspicuous place in the Court-house and in the registrar's office.

Governor in Council may alter fees.

193. The Governor in Council may alter the scale of fees in any particular:

But the scale of fees so altered shall not come into force until the expiration of one month after it has been notified to both Houses of Parliament, and shall not take effect if within that period, either House of Parliament, by an address to the Governor, signifies its dissent.

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

194. All fees payable in respect of any proceedings to the registrar, except such part of them as the bailiff is entitled to receive and retain for his own use under the provisions of this Act, and all fines imposed under this Act and received by the registrar, shall be paid into the Consolidated Revenue Fund.

Unclaimed Money in Court.

Suitors' money unclaimed for six years to be paid to the Consolidated Revenue Fund.
Cf. Imp. 51 & 52
Vic. c. 43, s. 173.

195. The registrar of every District Court shall, in the month of March in each year, make out a list of all sums of money belonging to suitors in the Court which have been paid into Court and which have remained unclaimed for five years before the first day of January then last past, specifying the names of the persons for whom or on whose account the same were so paid into Court.

A copy of the list shall be put up and remain during Court hours in some conspicuous part of the Court-house, and at all times in the registrar's office, and all sums of money which have been paid into Court to the use of any suitors, and which shall have remained unclaimed for the period of six years on the first day of January next after the list has been put up as aforesaid shall be paid into the Consolidated Revenue Fund; and no person shall be entitled to claim any sum which shall have remained so unclaimed.

The time during which the person entitled is an infant, or of unsound mind, or beyond the seas, shall not be taken into account in estimating the period of six years.

Offences.

Misappropriation by registrars or bailiffs.

196. Any registrar, bailiff, or other officer who appropriates to his own use any money or other thing which comes into his possession by virtue of his office, and which ought to be paid or delivered to any other person, shall be guilty of felony, and shall be liable to be kept in penal servitude for any term not exceeding five years, or to be imprisoned with or without hard labour for any term not exceeding two years.

The District Courts Act, 1891 (Queensland, adopted).

197. Any person who—

- (1) Forges the seal of any process of a District Court; or
- (2) Serves or enforces a forged process knowing it to be forged; or
- (3) Delivers or causes to be delivered to any person a paper falsely purporting to be a copy of a summons or other process of the Court knowing the same to be false;

Punishment for forging seal or serving forged process.
Cf. Imp. 51 & 52
Vic. c. 43, s. 180.

shall be guilty of felony, and shall be liable to be kept in penal servitude for any term not exceeding seven years, or to be imprisoned with or without hard labour for any term not exceeding three years.

198. If any person wilfully insults a Judge, or a juror, or a registrar, bailiff, or other officer of a District Court during his sitting or attendance in Court, or in going to or returning from the Court, or wilfully interrupts the proceedings of the Court, or otherwise misbehaves himself in Court, a bailiff or other officer may, with or without the assistance of another person, by order of the Judge, take the offender into custody and detain him till the rising of the Court, and the Judge may, by a warrant under his hand, and sealed with the seal of the Court, commit the offender to the prison nearest to the Court, for any time not exceeding fourteen days, or may impose on the offender a fine not exceeding ten pounds, and in default of payment may commit the offender to prison for any time not exceeding fourteen days, unless the fine is sooner paid.

Power of committal for contempt.
Cf. Imp. *Ib.*
s. 162.

FIRST SCHEDULE.

Section 4.

Date of Act.	Title.	Extent of Repeal.
31 Vic. No. 30	An Act to Consolidate and amend the Laws relating to District Courts	The whole.
31 Vic. No. 41	An Act to amend " <i>The Jury Act of 1867</i> "	The whole.
36 Vic. No. 11	An Act to amend " <i>The District Courts Act of 1867</i> "	The whole.
37 Vic. No. 3	An Act to amend the practice and course of procedure of the Supreme Court of Queensland in equity, and for other purposes	Sections 1, 2, 3, and 4.
42 Vic. No. 9	An Act to further amend " <i>The District Courts Act of 1867</i> "	The whole.

SECOND SCHEDULE.

Section 64.

Special Indorsement on Summons.

If you give notice of your intention to defend, a summons may be issued requiring you to show cause before a judge why the plaintiff should not be at liberty to sign judgment forthwith, for the amount claimed, together with interest (if any) and £ for costs and mileage.

COURTS—

Particulars of Claim to be endorsed on Summons.

Goods sold and delivered.

1. The plaintiff's claim is for the price of goods sold and delivered. The following are the particulars:—

1889—31st December.—			
Balance of account for butcher's meat to	£	s.	d.
this date	35	10	0
1890—1st January to 31st March.—			
Butcher's meat supplied	74	5	0
<hr/>			
1890—1st February.—Paid			
	45	0	0
<hr/>			
Balance due	£64	15	0

Against principal and surety for goods sold and delivered.

2. The plaintiff's claim is against the defendant A.B. as principal, and against the defendant C.D. as surety for the price of goods sold and delivered to A.B. The following are the particulars:—

1890—2nd February. Guarantee by C.D. of the price of woollen goods to be supplied to A.B.

				£	s.	d.
2nd February—To goods	47	15	0			
3rd March—To goods	105	14	0			
17th March—To goods	14	12	0			
5th April—To goods	31	0	0			
<hr/>				£199	1	0

Against the maker of a promissory note.

3. The plaintiff's claim is against the defendant as maker of a promissory note. The following are the particulars:—

Promissory note for £100 dated 1st January, 1890, made by defendant in favour of plaintiff payable four months after date.

				£
Principal	100			
Interest				

Against the acceptor and drawer of a bill of exchange.

4. The plaintiff's claim is against the defendant A.B. as acceptor, and against the defendant C.D. as drawer, of a bill of exchange. The following are the particulars:—

Bill of exchange for £100 dated 1st January, 1890, drawn by defendant C.D. upon and accepted by defendant A.B. payable three months after date.

				£
Principal	100			
Interest				

For principal and interest on a bond.

5. The plaintiff's claim is for principal and interest due upon a bond. The following are the particulars:—

Bond dated 1st January, 1889. Condition for payment of £100 on the 26th December, 1889.

				£
Principal due	50			
Interest				

For principal and interest under a covenant.

6. The plaintiff's claim is for principal and interest due under a covenant. The following are the particulars:—

Deed dated 1st January, 1889, covenant to pay £100 and interest.

				£
Principal due	80			
Interest				

The District Courts Act, 1891 (Queensland, adopted).

THIRD SCHEDULE.

Section 77.

Judgment Summons.

In the District Court of Queensland, Held at } No. (of plaint)

Between , plaintiff, and , defendant.

Let all parties concerned attend at the chambers of His Honour the Judge street,

[or at the , House,], on at , the day of , o'clock in the noon, on the hearing of an application on the part of the plaintiff that he may be at liberty to sign judgment in this action forthwith, for the amount indorsed on the summons herein, with interest, and costs, including the costs of this application, or for such further or other order as to the judge may seem meet.

Dated this day of , A.D. Registrar.

To the abovenamed defendant (and to his solicitors).

FOURTH SCHEDULE.

Sections 40, 192.

Court Fees. (58)

	In cases not exceeding £10.	In cases not exceeding £20.	In cases not exceeding £50.	In all other cases.
	s. d.	s. d.	s. d.	s. d.
For entering plaint and issuing summons ..	2 6	5 0	10 0	20 0
For issuing subpoena or subpoenas in an action or matter	0 6	0 6	1 0	2 0
For filing notice of defence or special defence	0 6	0 6	1 0	2 0
For issuing summons in interlocutory matter	0 6	0 6	1 0	2 0
For filing interlocutory order	0 6	0 6	1 0	2 0
For filing affidavit other than affidavits as to service	0 6	0 6	1 0	2 0
For entering judgment	1 0	2 0	4 0	10 0
For issuing any warrant	2 0	2 6	5 0	5 0
For taxing bill of costs	1 0	2 6	5 0	5 0
For inspection of records in any action or matter	0 6	0 6	0 6	0 6
For copying same, per folio of 72 words or figures	0 6	0 6	0 6	0 6

Bailiffs' Fees (in all cases).

Mileage for service of summons or subpoena, or for executing a warrant, each mile from the court-house (one way)	1 0
For service fee	2 0
For executing a warrant, when the sum levied for does not exceed twenty pounds	5 0
For executing warrant when the sum levied for exceeds twenty pounds, the like sum for the first twenty pounds, and for every pound over that sum	0 3
For keeping possession under a warrant of execution against goods each day	6 0
For drawing advertisement of sale, when sale under warrant of execution	5 0
For conveying a person to prison under warrant, per mile	1 0

(58) As to fees to be charged by the Supreme Court of Papua and by Sheriffs and Bailiffs thereof, see Rule 112 of the Rules of Civil Procedure, printed on p. 615, and the Rules of Court of the Supreme Court (Solicitors' Costs and Fees and Court Fees) (Queensland, adopted), printed on p. 632.

COURTS—