

# THE SMALL DEBTS ACT, 1887.

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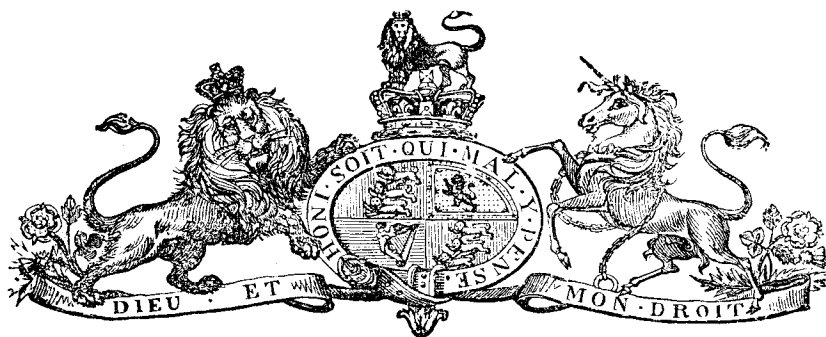
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*Short Title.*

- 153. Short Title.

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T A S M A N I A.



1887.

ANNO QUINQUAGESIMO-PRIMO

VICTORIÆ REGINÆ,

No. 23.

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AN ACT to consolidate and amend the Law A.D. 1887.  
relating to the Recovery of Small Debts  
and Demands. [20 December, 1887.]

**W**HEREAS it is expedient to consolidate and amend the Law PREAMBLE.  
relating to the recovery of Small Debts and Demands :

Be it therefore enacted by His Excellency the Governor of *Tasmania*,  
by and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows :—

*Interpretation.*

**1** In construing this Act the following terms shall have the respective Interpretation.  
meanings hereunder assigned to them, unless in any case inconsistent  
with or repugnant to the context :—

“Person” shall mean a body politic or corporate as well as an “Person.”  
individual :

“Court” shall mean any Court having jurisdiction under this “Court.”  
Act and the Supreme Court sitting to hear cases in  
accordance with the provisions of this Act :

“Commissioner” shall mean a Commissioner appointed to hold “Commissioner.”  
any Court under this Act :

“Chairman” shall mean the Chairman of any Court of General “Chairman.”  
Sessions of the Peace appointed a Court for the recovery of  
debts and demands under this Act :

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“Bailiff.”

“Judge.”

“Bailiff” shall mean the Bailiff or any Bailiff of a Court :

“Judge” shall mean and include any Judge of the Supreme Court, any Commissioner, and the Chairman of any Court of General Sessions of the Peace appointed a Court for the recovery of debts and demands under this Act.

*Constitution of Courts and appointment of Commissioners.*

Governor in Council empowered to appoint Courts to be held before a Commissioner.

**2** The Governor in Council is hereby empowered, from time to time, to appoint Courts to be held before a Commissioner for the recovery of debts and demands under this Act, to such an amount not exceeding Fifty Pounds, and at such places and times, as the Governor in Council thinks fit.

Courts of Requests.

**3** Every Court held under this Act before a Commissioner shall be called a Court of Requests.

Governor in Council may appoint Commissioners.

**4** The Governor in Council is hereby empowered, from time to time, to appoint as many fit persons as are needed to be Commissioners of such Courts ; and from time to time to remove any such Commissioner ; and the same person may be appointed Commissioner of Two or more such Courts.

Governor may appoint Substitute for Commissioner, when necessary.

**5** It shall be lawful for the Governor, from time to time as occasion may in his opinion require, to nominate and appoint a fit person as a Substitute to do and execute the duty of any Commissioner under this Act, for such time as the Governor may deem necessary ; and such Substitute shall, during the continuance of his appointment, and notwithstanding the death of the Commissioner for whom he was appointed Substitute, have all the powers and jurisdiction of the Commissioner for whom he is appointed Substitute.

Governor in Council may appoint Courts of General Sessions to be Courts under this Act.

**6** The Governor in Council is also hereby empowered to appoint any Court of General Sessions of the Peace now or hereafter established to be a Court for the recovery of debts and demands under this Act to such an amount, not exceeding Fifty Pounds, as the Governor in Council thinks fit ; and upon the publication of any such appointment in the *Gazette* the Court of General Sessions so appointed shall be held as a Court for the recovery of such debts and demands, and for that purpose shall have the jurisdiction of, and be deemed to be, a Court held under this Act.

Amount to which jurisdiction of Courts is limited may be increased.

**7** The Governor in Council may from time to time, by notice published in the *Gazette*, increase the amount to which the jurisdiction of any Court of Requests or any Court of General Sessions of the Peace appointed as a Court for the recovery of debts and demands under this Act may have been limited, to an amount not exceeding Fifty Pounds, and may reduce the amount to which the jurisdiction of any such Court may extend to any sum not less than Ten Pounds.

Courts to be of Record.

**8** Every Court held under this Act shall be a Court of Record.

Governor in Council may alter

**9** The Governor in Council is hereby empowered, from time to time, to alter the time and place of holding any Court of Requests or any

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Court of General Sessions of the Peace appointed as a Court for the recovery of debts and demands under this Act, and to discontinue the holding of any such Court. A.D. 1887.

**10** Upon the discontinuance by the Governor in Council of any Court of Requests or any Court of General Sessions of the Peace appointed as a Court for the recovery of debts and demands under this Act, any proceeding depending or judgment recovered in such Court may be continued or enforced in and by the Court held under this Act having competent jurisdiction which is at or nearest to the place where the Court so discontinued was held. time or place of holding, or discontinue Court. Proceedings pending in discontinued Courts.

**11** Sittings of the Supreme Court shall be held at such times and places as the Governor in Council may from time to time appoint, before a Judge of such Court, for hearing and determining cases in accordance with the provisions of this Act, for the recovery of debts and demands to an amount exceeding Ten Pounds and not exceeding One hundred Pounds, and for hearing and determining actions of ejectment in accordance with the provisions of this Act. Supreme Court to entertain cases under this Act.

**12** A Judge of the Supreme Court sitting in Chambers shall have and may exercise in respect of any action brought under this Act in the Supreme Court all the powers which such Judge has or may exercise in respect of actions brought in the said Court in its ordinary Common Law Jurisdiction. Supreme Court Judge may sit in Chambers.

**13** The Governor may appoint Courts under this Act to be held at *Hobart* and *Launceston* respectively before the Police Magistrate or any Two Justices, for the recovery of debts and demands to an amount not exceeding Ten Pounds, and such Court shall be deemed to be a Court of Requests held before a Commissioner; and such Magistrate or Justices shall have and exercise all the powers by this Act, or by any other Act passed or to be passed, conferred on a Commissioner; and the Clerks of Petty Sessions at *Hobart* and *Launceston* respectively shall act as Registrars of such Courts unless some person be appointed by the Governor, and any Constable duly appointed may act as Bailiff of such Court. Courts at *Hobart* and *Launceston* for recovery of debts, &c. not exceeding £10.

**14** The Court or a Judge may from time to time adjourn any Court or the hearing or further hearing of any cause in such manner as the Court or a Judge may think fit. Adjournment of Court or hearing of any cause.

*Officers.*

**15** For every Court held under this Act there shall be a Registrar who shall be appointed and removable by the Governor at pleasure; and in case of the illness or absence of any such Registrar or any other Officer of the Court a Deputy may be appointed by the Court, who shall have and exercise all the powers of such Registrar or Officer, and such Deputy may continue to act notwithstanding the death of his principal till a new Registrar or other Officer, as the case may be, is appointed: Provided that any Officer or Officers of the Supreme Court who may be directed by the said Court, or a Judge thereof, to act at *Hobart* or *Launceston* as the Registrar shall be deemed to be Registrar for the purposes of this Act, and any Officer of the Sheriff of *Tasmania* shall be deemed to be a Bailiff of the Supreme Court under this Act. Registrar to be appointed.

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Appointment of  
Bailiffs.

**16** For every Court held under this Act there shall be, in addition to the Registrar, such and so many Bailiffs as the Governor from time to time deems necessary, who shall serve all summonses and orders, and execute all warrants, precepts, and writs issued out of the Court, and who shall generally perform all duties and exercise all functions to be performed and exercised by any Bailiff appointed under this Act; and every such Officer shall be appointed and removable by the Governor at pleasure.

Officers of other  
Courts to act as  
Officers of  
Supreme Court.

**17** Every person acting as Registrar or Bailiff of any Court held for the recovery of debts and demands under this Act at any place appointed under Section Eleven of this Act as a place at which sittings of the Supreme Court shall be held under this Act shall be deemed to be and to have been duly appointed the Registrar or Bailiff of the Supreme Court at such place in respect of the jurisdiction conferred upon the Supreme Court for the recovery of debts and demands under this Act.

In Municipalities  
corporate officers  
to be officers of  
the Court.

**18** In every case where a Court of General Sessions of the Peace held within any Rural Municipality is appointed a Court for the recovery of debts and demands under this Act, the Council Clerk of such Rural Municipality shall be the Registrar, and the Superintendent of Police shall be the Bailiff of such Court as respects its jurisdiction as a Court for the recovery of debts and demands, if they are respectively appointed by the Governor such Registrar and Bailiff, but not otherwise, and shall respectively perform the duties of such respective offices.

Registrars may  
act as Bailiffs.

**19** The Registrar of any Court held under this Act may, with the consent of the Governor, be appointed to perform the duties of a Bailiff of such Court, and shall have all the powers and authorities vested in the Bailiff of a Court held under this Act, and shall be responsible for the acts and defaults of himself and his officers, in like manner as the Bailiff of a Court held under this Act is now by Law responsible for the acts and defaults of himself and his officers; and where before the passing of this Act any person holding the office of Registrar has been appointed the Bailiff of the Court of which he is Registrar, he shall be deemed to have been lawfully appointed the Bailiff of such Court, anything in this Act to the contrary notwithstanding; and where before the passing of this Act any person has performed the duties of the Bailiff of any such Court, although not appointed the Bailiff of such Court, all acts, matters, and things *bonâ fide* done, performed, and executed by such person as the Bailiff of such Court shall be deemed and taken to have been lawfully done, performed, and executed by such person.

Bailiffs may ap-  
point Assistants.

**20** Every Bailiff, notwithstanding anything to the contrary hereinbefore contained, may, subject to the restrictions hereinafter contained, by writing under his hand, appoint a sufficient number of fit persons, not exceeding such number as may be from time to time allowed by the Judge, to be Assistants to the said Bailiff, and at his pleasure to dismiss all or any of them, and to appoint others in their stead; and every Assistant so appointed may also be suspended or dismissed by the Judge.

Duties of Regis-  
trar.

**21** The Registrar shall sign and issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of



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the Court; and keep an account of all proceedings of the Court; and shall receive and keep an account of all Court fees and fines payable or paid into Court, and of all moneys paid into or out of Court, and shall enter an account of all such fees, fines, and moneys in a book belonging to the Court to be kept for that purpose; and such entries in the said book, or a copy thereof purporting to be signed and certified as a true copy by the Registrar of the Court, shall at all times be admitted in all Courts and places whatsoever as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding without any further proof; and the Registrar shall, subject to the provisions of this Act, submit his accounts to be audited at such times and in such manner as the Court may direct.

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Minutes of proceedings to be kept.

**22** It shall be lawful for the Registrar of every Court, except of the Courts held at *Hobart* and *Launceston* respectively, to prepare complaints, summonses, defences, and other process and documents under this Act; and in respect of every such complaint, summons, defence, process, or document so prepared by the Registrar there shall be paid a fee of One Shilling for his own use.

Registrars may fill in complaints, &c.

**23** The Bailiff shall attend every sitting of the Court, for such time as may be required by the Court, unless when his absence is allowed for reasonable cause by the Court, and every Bailiff shall, by himself or by his Assistants appointed as aforesaid, serve all the summonses and orders, and execute all the warrants, precepts, and writs issued out of the Court; and every such Bailiff and his Assistants shall in the execution of their duties conform to all such general Rules as are from time to time made for regulating the proceedings of the Court, as hereinafter provided, and, subject thereunto, to the order and direction of the Court; and every such Bailiff shall be responsible for all the acts and defaults of himself and of his Assistants, in like manner as the Sheriff is responsible for the acts and defaults of himself and his Officers.

Duties of Bailiffs, &c.

Where there shall be more than one Bailiff of any Court, such one of such Bailiffs as the Court shall appoint shall attend every sitting of the Court.

**24** In case any Bailiff who is employed to levy any execution against Goods and Chattels or Lands by neglect, or connivance or omission, loses the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance, or omission, and the fact alleged being proved to the satisfaction of the Court on the oath of any credible witness, the Court shall order such Bailiff to pay such damages as it appears that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the Bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such means as are herein provided for enforcing a judgment recovered in the said Court.

Bailiffs made answerable for escapes, and neglect to levy execution.

**25** If any Registrar, Bailiff, or Officer of the Court, acting under colour or pretence of the process of the Court, is charged with extortion or misconduct, or with not duly paying or accounting for any money received or levied by him under the authority of this Act, it shall be lawful for the Court to enquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in

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like manner as the attendance of witnesses in any case may be enforced. and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so received or levied as aforesaid, and for the payment of such damages and costs as the Court thinks just; and also, if the Court thinks fit, to impose such fine upon the Registrar, Bailiff, or Officer, not exceeding Ten Pounds for each offence, as the Court deems adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such means as are herein provided for enforcing a judgment recovered in the said Court.

Penalty on  
Officers taking  
fees besides those  
allowed.

**26** Every Registrar, Bailiff, or other Officer employed in putting this Act or any of the powers thereof in execution, who wilfully and corruptly exacts, takes, or accepts any fee or reward whatsoever, other than and except such fees as are for the time being appointed and allowed respectively as aforesaid, for or on account of any thing done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before the said Court, be liable to a fine not exceeding Twenty Pounds, to be recovered by order of the Court.

*Jurisdiction.*

Actions cogniz-  
able under this  
Act.

Exceptions.

**27**--(1.) The following shall be the Actions cognizable by Courts held under this Act:—All personal Actions where the debt or damage claimed is not more than the amount to which the jurisdiction of the Court in which the action is brought is limited, excepting Actions in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise is in question, or in which the validity of any devise or bequest, or limitation under any will or settlement may be disputed, or for the infringement of Letters Patent, or Copyright, or for the recovery of any money or thing won or alleged to have been won at or by means of a race, match, wager, or any kind of play, or for any arrest or false imprisonment, or malicious prosecution, or for any libel or slander, or for seduction, or breach of promise of marriage, or upon any charter-party of affreightment, or policy of assurance.

Ejectment and  
replevin only  
cognizable by  
the Supreme  
Court.

(2.) No action of ejectment, other than actions brought in accordance with the provisions hereinafter contained for recovering possession of corporeal hereditaments, and no action of replevin, shall be cognizable by any Court held under this Act other than a Court held before a Judge of the Supreme Court.

Cases of partner-  
ship and intestacy.

(3.) The jurisdiction of the Courts held under this Act shall extend to the recovery of any demand, not exceeding the sum to which the jurisdiction of the Court is limited, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will.

Exceptions not to  
apply to Supreme  
Court.

(4.) None of the exceptions hereinbefore made to the jurisdiction of Courts held under this Act shall apply to the jurisdiction of the Supreme Court under this Act. But no Action of Ejectment other than actions brought in accordance with the provisions hereinafter contained for recovering possession of corporeal hereditaments shall be brought under this Act in the Supreme Court to obtain possession of any land and hereditaments exceeding in value the sum of One hundred Pounds.

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**28** In order to avoid technical difficulties arising from local jurisdiction, every Court held under this Act shall have jurisdiction throughout the Colony, but the plaintiff in any action brought under this Act shall file his plaint in the Court having jurisdiction to the amount claimed nearest to the place where the defendant or one of the defendants dwelt or carried on business at any time within Six calendar months next before the day on which such plaint shall be filed as aforesaid, or in the Court having jurisdiction to the amount claimed nearest to the place where the cause of action, either wholly or in part, arose: Provided always, that in every action in which the plaintiff sues for the value of any work or labour performed or services rendered, the plaintiff shall be at liberty to file his plaint either in the Court having jurisdiction to the amount claimed nearest to the place where the work or labour was performed or the services rendered, or in the Court having jurisdiction to the amount claimed nearest to the place where the agreement for the performance of such work or labour or services as aforesaid was made.

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Courts to have jurisdiction throughout Colony, but actions to be brought in nearest Court.

**29** If on the trial of any action brought under this Act it shall appear to the Court that at the time of the commencement of the action another Court of competent jurisdiction appointed under this Act was nearer by not less than Five miles to the place where the defendant, or if there are several defendants then to all the places where the several defendants respectively at any time within Six calendar months next before the day on which the plaint in such action was filed, dwelt or carried on business, and also to the place where the cause of action wholly arose, the plaintiff shall be nonsuited unless the defendant or defendants forego his or their right to such nonsuit: Provided that nothing contained in this Section shall interfere with the right hereinbefore conferred on the plaintiff in any action for work or labour performed or for services rendered to file his plaint in the Court having jurisdiction to the amount claimed nearest to the place where the work or labour was performed or the services rendered, or in the Court having jurisdiction to the amount claimed nearest to the place where the agreement for such work or labour or services was made, or prevent the holder of any dishonored bill of exchange or promissory note or cheque for a sum of not less than Ten Pounds from bringing an action for the recovery thereof in the Supreme Court.

Plaintiff to be nonsuited in certain cases.

**30** Where in any action brought in any Court held under this Act the debt or demand consists of a balance not exceeding the amount to which the jurisdiction of the Court is limited after deduction as a set-off of an admitted debt or demand claimed or recoverable by the defendant from the plaintiff, the Court shall have jurisdiction to try such action.

Where claim reduced by set-off to amount to which jurisdiction is limited, Court to have jurisdiction.

**31** It shall not be lawful for the plaintiff to divide any cause of action for the purpose of bringing Two or more suits under this Act, but any plaintiff having cause of action for more than the sum to which the jurisdiction of the Court is limited, for which a plaint might be filed under this Act if not for more than such sum, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding such sum; and the judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

Demands not to be divided for the purpose of bringing Two or more suits.

*Small Debts.*

A.D. 1887.

No second suit in  
second Court for  
the same cause.

**32** If any party sues another in any Court for any debt or other cause of action for which he has already sued him, and obtained judgment, in any other Court, the proof of such former suit having been brought and judgment obtained may be given, and the party so suing shall not be entitled to recover in such second suit, and shall be adjudged to pay Three times the costs of such second suit to the opposite party.

Minors may sue  
for wages.

**33** It shall be lawful for any person under the age of Twenty-one years to prosecute a suit in any Court held under this Act for any sum of money, not greater than the sum to which the jurisdiction of the Court is limited, which may be due to him for wages or piecework, or for work as a servant, in the same manner as if he were of full age.

Executors may  
sue and be sued.

**34** It shall be lawful for any executor or administrator to sue and be sued in any Court held under this Act in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like case would be given or issued in the Supreme Court in its ordinary jurisdiction.

One of several  
persons liable may  
be sued.

**35** Where any plaintiff has any demand recoverable under this Act against Two or more persons jointly answerable, it shall be sufficient if any of such persons is served with process, and judgment may be obtained and execution issued against the person so served, notwithstanding that others jointly liable may not have been served or sued; and every such person against whom judgment has been obtained under this Act, and who has satisfied such judgment, shall be entitled to demand and recover in a Court held under this Act contribution from any other person jointly liable with him: Provided always, that any person not served with process, and alleged by the plaintiff or summons to be jointly answerable with any other person who has been served with process, may at any time before the return day of the summons enter a defence to the summons, and appear at the hearing and dispute his liability in the same manner as if he had been served with process.

*Plaint and Summons, &c.*

Suits to be by  
Plaint.

**36** Any person desirous to bring a suit under this Act shall file with the Registrar a plaint in writing, stating the names and the usual or last known places of abode of the parties, and the substance of the action intended to be brought, and full and explicit particulars of the claim for which the action is brought, and the Registrar shall make an entry in a book to be kept for this purpose in his office of the filing of such plaint, and every plaint shall be numbered in every year according to the order in which it is entered; and thereupon a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall, on being presented to the Registrar for signature, be issued under his hand according to such form, and be served on the defendant so many days before the day on which the Court is held at which the cause is to be tried, as may be directed by the Rules of Practice made as hereinafter provided; and delivery of such summons to the defendant, or in such other manner as may be specified in the Rules of Practice, shall be deemed good service; and no misnomer or

*Small Debts.*

inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known. A.D. 1887.

**37** Any summons or other process which under this Act is required to be served or executed at a place nearer to another Court than to the Court from which the same has issued may be served by the Bailiff of such other Court, and such service or execution shall be as valid as if the same had been made by the Bailiff of the Court out of which such process issued; and the Bailiff of every Court is hereby required in any such case to serve or execute all lawful process issuing out of any other Court upon the same being transmitted to him by the Registrar or Bailiff of the Court out of which it issued.

Process out of Court may be served by Bailiff of any other Court.

**38** Service of any process of the Court which is required to be served by the Bailiff of another Court may be proved by affidavit, purporting to be sworn before any person authorised by Law to take affidavits, or before any Commissioner, or before any Justice; and the fee for taking such affidavit shall be costs in the cause; and in every case of the unavoidable absence of the Bailiff of the Court out of which such process issued, by whom any process of the Court has been served, the service of such process may be proved, if the Court thinks fit, in the same manner, by affidavit, but without additional charge to either of the parties to the suit.

Proof of service of process by Bailiff of another Court or in the absence of the Bailiff.

*Defence.*

**39** Notice of defence to any action brought in any Court held under this Act shall be filed with the Registrar within such time as may be directed by the Rules of Practice made under the provisions of this Act; and the Registrar shall, as soon as conveniently may be, after receiving such notice, communicate the same to the plaintiff or his attorney by the post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the Registrar.

Notice of defence to be given in all cases to the Registrar, who shall communicate the same to the plaintiff.

**40** In any action in a Court held under this Act for a debt or liquidated money demand when the summons has been served upon the defendant in manner prescribed by the Rules of Practice in force for the time being, if no notice of defence shall have been given to the Registrar within the time required by such Rules for giving such notice, the plaintiff shall have judgment entered up by the Registrar, whether the Court be then sitting or not, against the defendant, for the amount of his claim and costs to be taxed by the Registrar, and such judgment shall be for payment forthwith: Provided that a Judge may at any time, upon the application of the defendant, make an Order for a stay of execution upon payment of the amount of the judgment debt and costs within such time, either in one sum or by instalments, as he may think fit; and also may set aside any judgment so entered up, and may give leave to defend upon such terms as he deems just.

When no defence filed judgment to be entered forthwith.

*Actions not to abate.*

**41** When a sole plaintiff or defendant or one or more of several plaintiffs or defendants shall die before judgment, the action shall not abate if the cause of action survive to or against the representatives of

Action not to abate on death of plaintiff or defendant.

*Small Debts.*

A.D. 1887.

the deceased person or persons, or to or against the surviving parties respectively; and when one or more of several plaintiffs or defendants shall die after judgment, proceedings thereon may be taken by the survivor or survivors or against the survivor or survivors without leave of the Court.

*Payment into Court.*

Defendant may  
pay money into  
Court.

Notice of such  
payment to be  
given to plaintiff.

**42** It shall be lawful for the defendant in any action brought under this Act, within such time as may be directed by the Rules of Practice, to pay into Court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment; and notice of such payment shall be communicated by the Registrar to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business; and the said sum of money shall be paid to the plaintiff; but if he elects to proceed, and recovers no further sum in the action than has been so paid into Court, he shall pay to the defendant the costs incurred by him in the said action after such payment; and such costs shall be settled by the Court, and an order shall thereupon be made by the Court for the payment of such costs by the plaintiff.

*Confession of Debt.*

Confession of  
debts or parts of  
debts, &c., and  
judgment there-  
upon.

**43** Any person against whom a plaint is filed may, if he thinks fit, whether summoned upon such plaint or not, in the presence of the Registrar of the Court in which such plaint has been filed, or in the presence of an Attorney of the Supreme Court, or of 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 such plaint has been entered; and such Registrar shall receive such statement, and, upon proof by affidavit of the signature of the party if such statement were not signed in the presence of the Registrar, enter up judgment for the plaintiff for the amount admitted in such statement; and such judgment shall have the same effect and shall be enforceable in the same manner as if the Court had heard the cause and given judgment thereupon.

Agreement as to  
the amount of  
debt, &c., and  
conditions of pay-  
ment.

**44** If the person against whom a plaint is filed can agree with the person on whose behalf such plaint has been filed upon the amount of the debt or demand in respect of which such plaint has been filed, and upon the terms and conditions upon which the same shall be paid or satisfied, it shall be lawful for such persons respectively, in the presence of the Registrar of the Court in which such plaint has been entered, or in the presence of an Attorney of the Supreme Court or of a Justice, to sign a statement of the amount of the debt or demand so agreed upon between such persons respectively, and of the terms and conditions upon which the same shall be paid or satisfied, such Registrar shall receive such statement, and shall thereupon, upon proof by affidavit of the signature of the party, if such statement were not made in the presence of the Registrar, enter up judgment for the plaintiff for the amount of the debt or demand so agreed on, and upon the terms and conditions mentioned in such statement; and such judgment shall to all intents and purposes be the same, and have the same effect, and shall be enforced and enforceable in the same manner, as if it had been a judgment of the Court.

*Small Debts.**Discovery of Documents.*

A.D. 1887.

**45** Upon the application of either party to any action brought under this Act in the Supreme Court, upon an affidavit by such party of his belief that any document to the production of which he is entitled for the purpose of discovery or otherwise is in the possession or power of the opposite party, it shall be lawful for the Court or Judge to order that the party against whom such application is made, or if such party is a body corporate then some officer to be named of such body corporate, shall answer on affidavit stating what documents he or they has or have or had in his or their possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he or they objects or object (and if so on what grounds) to the production of such as are in his or their possession or power; and upon such affidavit being made the Court or Judge shall make such order thereon as shall be just.

Discovery of documents.

*Interrogatories.*

**46** Either party to an action brought under this Act in the Supreme Court may by order of the Court or a Judge deliver, after notice of defence has been filed, interrogatories in writing upon any matter as to which discovery may be sought, and require the opposite party, or in the case of a body corporate any of the officers of such body corporate, to answer the questions in writing by affidavit, and to return such answers to the Registrar for filing, together with a copy thereof for service on the party interrogating, within a time to be appointed in the order authorising the delivery of such interrogatories; and the Registrar shall, within Twenty-four hours from the time of receiving the same, transmit by messenger or by post such copy of such answers as aforesaid to the party interrogating.

Power to deliver written interrogatories to opposite party.

**47** Every application for an order to deliver such interrogatories as aforesaid shall be made upon the affidavit of the party proposing to interrogate, or his attorney or agent, stating that the deponent believes that the party proposing to interrogate will derive material benefit in the action from the discovery which he seeks, and that there is a good cause of action or defence upon the merits.

Affidavit by party proposing to interrogate or his attorney.

**48** Where the party served with the order shall object to answer the interrogatories or any of them, he shall file an affidavit stating his grounds for objecting, and that he will be prepared to show cause to the Court at the return day against his being required to answer them.

Party interrogated may file affidavit stating grounds of objection.

**49** Where a party required to answer interrogatories shall successfully show cause against an order requiring him to answer them, the Judge may direct the cause to proceed, or adjourn it, as he thinks fit; but if the party objecting shall not show sufficient cause for his objection, the Judge may adjourn the cause and make an order for the answering of the interrogatories by such time and for the payment of such costs as he may think fit.

Judge may postpone or order cause to proceed.

**50** In case of omission without just cause to answer sufficiently such interrogatories, it shall be lawful for the Court or a Judge at

Oral examination of parties allowed in certain cases.

*Small Debts.*

A.D. 1887.

its or his discretion to direct an oral examination upon oath of the interrogated party as to such points as it or he may direct before a Judge or Commissioner of the Supreme Court, and the Court or Judge may order the attendance of such party before the person appointed to take such examination for the purpose of being orally examined as aforesaid, or the production of any writing or other documents to be mentioned in the order commanding the attendance of such party as aforesaid, and may impose therein such terms as to such examination, and the costs of the application, and of the proceedings thereon and otherwise, as to such Court or Judge shall seem just.

*Witnesses.*

Summonses to  
witnesses.

**51** Either of the parties to the suit or any other proceeding under this Act may obtain, at the office of the Registrar of the Court, summonses to witnesses, to be served by one of the Bailiffs of the Court, under the hand of such Registrar, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in any such summons any number of names may be inserted.

Supreme Court  
may order exami-  
nation of witnesses  
by interrogatories  
or otherwise.  
5 William 4,  
No. 2.

**52** The provisions of the Act of Council of the 5th *William* 4th, No. 2, shall apply to any action brought under this Act in the Supreme Court, and the costs of every Order to be made for the examination of witnesses under any interrogatories, commission, or otherwise by virtue of this Act and of the proceedings thereupon shall, for all business transacted within *Tasmania*, be allowed as between party and party, according to the scale of costs in Schedule (3.) hereto; and as to business transacted out of *Tasmania*, fair and reasonable costs shall be allowed according to the amount actually and *bonâ fide* paid and expended in and about transacting such business; and all such costs shall be costs in the cause, unless otherwise directed by the Court or Judge making the Order for the examination, or by the Court on the trial of the cause.

Practice to be  
same as in  
Supreme Court.

**53** In all cases not otherwise herein provided for, the practice as to applying for an Order for the examination of witnesses or for a Commission, and the proceedings to be thereupon had, shall as far as possible be the same as the practice in the Supreme Court in like cases.

Penalty on wit-  
nesses neglecting  
summons.

**54** Every person on whom any summons issued under Section Fifty-one of this Act has been served, either personally or in such other manner as may be directed by the general Rules of Practice of the Court, and to whom at the same time payment or a tender of payment of his expenses has been made in accordance with the scale of allowance contained in Schedule (4), and who refuses or neglects, without sufficient cause, to appear or to produce any books, papers, or writings required by such summons to be produced, and also every person present in Court who is required to give evidence, and who refuses to be sworn and give evidence, shall forfeit and pay such fine, not exceeding Ten Pounds, as the Court may impose on him; and the whole or any part of such fine, in the discretion of the Court, after deducting the costs, shall be applicable towards indemnifying the party



*Small Debts.*

injured by such refusal or neglect, and the payment of such fine may be enforced in the same manner as money ordered to be paid by such Court. A.D. 1887.

**55** Every Court held under this Act may commit to prison, as for contempt of Court, for a term not exceeding One month, any person who shall be fined under the preceding Section of this Act and shall make default in payment of the fine imposed on him thereunder. Power of Court to commit defaulting witnesses.

**56** Every person who in any examination upon oath or solemn affirmation before any Court held under this Act wilfully and corruptly gives false evidence shall be deemed guilty of Perjury. Persons giving false evidence guilty of Perjury.

*Hearing.*

**57** The Commissioner before whom any Court is held under this Act shall be the sole judge of questions of law, and such Commissioner shall also decide all questions of fact in actions where the debt or damage claimed does not exceed Ten Pounds, and in cases where the amount claimed exceeds Ten Pounds the Commissioner may, with the consent of both parties, try questions of fact. Commissioner alone to determine all questions when amount claimed does not exceed Ten Pounds.

**58** In any proceeding under this Act in a Court of General Sessions of the Peace, all questions shall be decided by the majority of the Justices present; and the decision of the majority shall be the judgment of the Court; and in case the Justices present should be equally divided in opinion, the Chairman shall have a deliberative and a casting vote. Decision of majority of Justices to be the judgment of the Court.

**59** In all actions brought in a Court held under this Act before a Commissioner where the amount claimed exceeds Ten Pounds, a Jury shall be summoned to try the action, except where the Commissioner with the consent of the parties tries such action. Actions over £10 to be tried by Jury, except, &c.

**60** In all actions brought in a Court held under this Act before a Judge of the Supreme Court such Judge shall alone determine all questions as well of fact as of law, and his decision shall be the judgment of the Court, unless a Jury be required as hereinafter provided. Judge of Supreme Court to try actions brought before him.

**61** In any such action it shall be lawful for the plaintiff or defendant to require a Jury to try the action, and when the plaintiff requires a Jury to try the action he shall insert in the plaint and summons the words "For trial by Jury," and no further notice shall be necessary; and when the defendant requires a Jury to try the action he shall insert in the notice of defence the words "For trial by Jury," and no further notice shall be necessary. Such actions may be tried by Jury when parties require it.

**62** A Judge may, at any time before the return day of the summons, by Order in writing, direct that a cause shall be tried by Jury, although no demand of a Jury has been made by either of the parties thereto, and such cause shall be tried by a Jury accordingly. Judge may order action to be tried by a Jury.

**63** If notice of defence is filed to any action brought in any Court under this Act, the plaintiff and defendant shall both appear either in person or by their respective attorneys on the day mentioned in the Parties to appear at the hearing.

*Small Debts.*

A.D. 1887.

Proceedings if  
plaintiff does not  
appear or prove  
his case.

summons issued in such action, and the Court shall thereupon proceed to try the cause and to give judgment.

**64** In any case in which the plaintiff is not entitled to judgment as hereinbefore provided, if upon the day of the return of the summons, or at any continuation or adjournment of the Court, or of the cause for which the said summons has been issued, the plaintiff does not appear, either by himself or his attorney, the cause shall be struck out; and if he does appear, either by himself or his attorney, but does not make proof of his demand to the satisfaction of the Court, it shall be lawful for the Court to nonsuit the plaintiff, or to give judgment for the defendant; and in either case, where the defendant appears, either by himself or his attorney, and does not admit the demand, to award to the defendant, or to his attorney, by way of costs and satisfaction for his trouble and attendance, such sum when the defendant appears in person as the Court in its discretion thinks fit, and when he appears by attorney such sum as may be taxed by the Registrar, and every such sum shall be recoverable from the plaintiff by such means as any debt or damage ordered to be paid by the same Court can be recovered: Provided always, that if the plaintiff does not appear when called upon, either by himself or his attorney, and the defendant, or some one duly authorised on his behalf, appears and admits the cause of action to the full amount claimed, and pays the fees payable in the first instance by the plaintiff, the Court, if it thinks fit, may proceed to give judgment as if the plaintiff had appeared.

Proceedings if the  
defendant does  
not appear.

**65** If on the day so named in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant does not appear, or sufficiently excuse his absence, or neglects to answer when called in Court, the Court, upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: Provided always, that the Court in any such case, at the same or any subsequent Court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause, upon such terms, if any, as to payment of costs, giving security for debt or costs, or such other terms as the Court may think fit, on sufficient cause shown for that purpose.

Where set-off  
exceeds plaintiff's  
claim, judgment  
for excess.

**66** In any action under this Act where the defendant's set-off exceeds the plaintiff's claim, the defendant shall, whether the plaintiff is nonsuited or has judgment given against him, be entitled to recover the amount by which such set-off exceeds the plaintiff's claim, and shall have judgment and execution accordingly.

Court may grant  
time to either  
party.

**67** The Court, or a Judge, may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit.

Court may  
administer both  
legal and equitable  
remedies.

**68** If in any action brought under this Act in the Supreme Court both legal and equitable rights are involved, the Court may adjudicate upon and determine both classes of rights, and in every such case the equitable rights shall prevail; and if in any such action the Rules of Common Law applicable thereto shall be in conflict with or vary from the Rules of Equity, the Rules of Equity shall prevail.

*Small Debts.*

**69** The proof of title in any one or more of the plaintiffs in ejectment shall be sufficient to entitle such plaintiff or plaintiffs to a verdict. A.D. 1887.  
Proof of title.

*Amendments.*

**70** The Judge may at all times amend all defects and errors in any proceeding in such Court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs, and upon such terms as to the Judge may seem fit; and all such amendments as may be necessary for the purpose of determining in the existing cause the real question in controversy between the parties shall be so made, if duly applied for. As to amendment of defects and errors in proceedings, &c.

*Affidavits.*

**71** Any Affidavit to be used in a Court held under this Act may be sworn before the Registrar of any such Court without the payment of any fee, or before a Commissioner of the Supreme Court, or before a Justice. Before whom affidavits may be sworn.

*Arbitrator.*

**72** The Court may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the Court in dispute between such parties, to be referred to arbitration, to such person or persons, and in such manner, and on such terms as the Court thinks reasonable and just; and such reference shall not be revocable by either party, except by consent of the Court: and the Award of the Arbitrator or Arbitrators or Umpire shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the Court: Provided that the Court may, on application made at the first Court held after the expiration of One week after the entry of such Award, set aside any such Award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid. Suits may be settled by arbitration.

*Trials by Juries.*

**73** The Jurors included in the Special Jury Lists and resident within Three miles of a Court held before a Judge of the Supreme Court shall be the Jurors who may be summoned to attend such Court; and where sittings of the Supreme Court are held under this Act at any place distant more than Fifteen miles from *Hobart* or *Launceston*, the Judges of the Supreme Court shall in every year select and make a list of a sufficient number of persons whose names appear upon any Valuation or Assessment Roll, and who are resident within Fifteen miles of the place at which sittings of the Supreme Court for which such list shall be available shall be held, and whom the Judges shall deem qualified in that behalf to serve as Jurors under this Act, and shall deliver a copy of such list to the Registrar; and the persons whose names are in such list shall be the Jurors who may be summoned to attend any sittings of the Supreme Court held at any such place as aforesaid. Jurors at Courts held before a Judge of the Supreme Court.

*Small Debts.*

A.D. 1887.

Special Jurymen  
may be im-  
pannelled.Jurors in actions  
tried by Com-  
missioners.

**74** Jurors may, notwithstanding anything hereinbefore contained, be selected, impannelled, and sworn from any special Jurymen who may be in attendance on the Supreme Court in any other jurisdiction.

**75** The Commissioner of every Court of Requests having jurisdiction to an amount exceeding Ten Pounds shall in every year select a sufficient number of persons resident within Fifteen miles of such Court, and whose names appear upon any Valuation or Assessment Roll as being qualified in that behalf, to serve as Jurors under this Act, and shall make out a List of the Jurors so selected, and deliver a copy thereof to the Registrar; and the persons whose names are on such List shall be the Jurors who may be summoned to attend such Court.

Registrar to  
summon Jurors.

**76** Whenever a Jury is required, the Registrar shall cause to be summoned to attend the Court, at a time and place to be named in the summons, so many as in the opinion of the Judge are needed, being not less than Seven of the Jurors liable to be summoned to attend the Court for which such Jury is required, and shall administer or cause to be administered to such of them as are impannelled to try any cause or causes an oath to give true Verdicts according to the evidence; and the persons so summoned shall attend at the Court at the time mentioned in the summons, and in default of attendance shall forfeit such sum of money as the Court directs, not being more than Five Pounds for each default; and the delivery of such summons to the person whose attendance is required on such Jury or delivery thereof to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, shall be deemed good service; Provided that no objection shall be raised to any person being summoned or acting as a Juror if he is qualified as a Juror.

Number of the  
Jury.

**77** Whenever there are any Jury trials Three Jurymen shall be impannelled and sworn, as occasion may require, to give their Verdicts in the causes which are brought before them in the said Court, and being once sworn shall not need to be re-sworn in each trial; and either of the parties to any such cause shall be entitled to his lawful challenge for cause against all or any of the said Jurors in like manner as he would be entitled in the Supreme Court in any other jurisdiction, and to a peremptory challenge against one Juror; and the Verdict of such Three Jurymen, if they agree, shall be the judgment of the Court; and if after being One hour in deliberation they cannot agree, then the Verdict of Two of them shall be the judgment of the Court; and if after deliberation for Three hours Two cannot agree, the Jury shall be discharged, and the action may be tried again when the Court may think fit to order.

*Judgment and New Trial.*Judgments, how  
far final.

**78** Every order and judgment of any Court held under this Act, except as herein provided, shall be final and conclusive between the parties, but the Court shall have power to nonsuit the plaintiff in every case in which the plaintiff shall, in the opinion of the Court, fail to establish his claim; and shall also in every case whatever have the power, if the Court thinks fit, to order a new trial to be had upon such terms as the Court thinks reasonable, and in the meantime to stay the proceedings; and in actions brought in the Supreme Court

New trial.

*Small Debts.*

under this Act a Judge shall, for the purposes of this Section, have co-ordinate jurisdiction with the Supreme Court. A.D. 1887.

*Attachment of Debts.*

**79** It shall be lawful for any creditor who has obtained a judgment in any Court held under this Act to apply to the Court or a Judge for an order asking that the judgment debtor should be orally examined before the Court or a Judge, or such other person as the Court or Judge shall appoint, as to any and what debts are owing to him ; and the Court or Judge may make such order for the examination of such judgment debtor, and for the production of any books or documents ; and the examination shall be conducted in the same manner as in the case of an oral examination of an opposite party under the said Act. Examination of judgment debtor as to debts due to him.

**80** It shall be lawful for a Judge, upon the *ex parte* application of such judgment creditor as aforesaid, either before or after such oral examination as aforesaid, and upon affidavit by himself or his attorney, stating that judgment has been recovered and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt, and by the same or any subsequent order it may be ordered that the garnishee shall 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 thereof as may be sufficient to satisfy the judgment debt : Provided always, that the Judge may in his discretion refuse to interfere where from the smallness of the amount to be recovered, or of the debt sought to be attached or otherwise, the remedy sought will be worthless or vexatious. Judge may order an attachment of debts.

**81** Service of an order that debts due or accruing to the judgment debtor shall be attached or notice thereof to the garnishee in such manner as the Judge shall direct, shall bind such debts in the garnishee's hands. Order for attachment to bind debts.

**82** If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Judge may order execution to issue, and it may be sued forth accordingly without any further process to levy the amount due from such garnishee towards satisfaction of the judgment debt. Proceedings to levy amount due from garnishee to judgment debtor.

**83** If the garnishee disputes his liability, the Court or Judge, instead of making an order that execution shall issue, may order that the judgment creditor shall be at liberty to proceed against the garnishee by plaint in the nature of a *scire facias* calling upon him to show cause why there should not be execution issued against him for the alleged debt, or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit. Judge may allow creditor to proceed against garnishee.

**84** Whenever it is suggested by the garnishee that the debt sought to be attached belongs to some third person who has a lien or charge upon it, the Court or Judge may order such third person to appear and Proceedings where third person has a lien on debt.

*Small Debts.*

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state the nature of his claim upon such debt; and after hearing the allegation of such third person under such order, and of any other person whom by the same or any subsequent order the Court or Judge may think fit to order to appear, or in case of such third person not appearing upon summons, the Court or Judge may order execution to levy the amount due from the garnishee, or may order the judgment creditor to proceed against the garnishee by plaint in the nature of a *scire facias* as hereinbefore provided for in cases in which the garnishee disputes his liability; and the Court or Judge may bar the claim of such third person, or make such other order as it or he may think fit, upon such terms in all cases with respect to the lien or charge of such third person, and to costs, as it or he shall think just and reasonable.

Plaint against  
garnishee to be  
accompanied by  
affidavit.

**85** Every plaint in the nature of a *scire facias* directed to be filed against a garnishee by the Court or a Judge as aforesaid shall be accompanied by an affidavit by the plaintiff stating that he has recovered judgment against the defendant, and to what amount, and that the same is still wholly unsatisfied or unsatisfied to an amount to be mentioned therein; and that the garnishee is indebted to the judgment debtor, and to what amount; and such affidavit may be sworn before a Commissioner of the Supreme Court or any Justice of the Peace; and every such plaint as aforesaid may be filed in any Court in which the judgment debtor could have filed a plaint to recover the debt sought to be attached.

Summons on  
plaint against  
garnishee to be  
served personally.

**86** The summons on such plaint as aforesaid shall be personally served on the garnishee, and when served shall attach in the hands of the garnishee all debts due, owing, or accruing from him to the judgment debtor.

Courts to deter-  
mine as to the  
liability of  
garnishee, &c.

**87** Upon the return day the Court shall determine as to the liability of the garnishee, and as to the party by whom the costs of proceeding by plaint shall be paid, and make an order or orders in accordance with such determination; and the costs of any application for an attachment of debt under this Act, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or Judge.

Garnishee dis-  
charged by  
payment.

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

Plaintiff may  
lodge with  
Registrar state-  
ment of debts  
owing to the  
defendant.

**89** Where a plaintiff is desirous that the defendant, if the defendant shall have judgment given against him, shall be orally examined forthwith after the judgment shall have been given as to what debts are due and owing to him, the plaintiff shall, before the cause is called on, lodge with the Registrar a statement in writing of the name, address, and description of the person or persons within the ordinary jurisdiction of the Court whom he considers are debtors to the defendant.

Garnishee may  
be examined  
immediately after  
judgment if  
present.

**90** Where such a statement has been lodged by a plaintiff, the defendant, if he shall have had judgment given against him, may be examined before the Court at the request of the plaintiff as to any debts due and owing or accruing from any person mentioned in the statement to the defendant, and if such person be then present he may be

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required forthwith to show cause why he should not be ordered to pay into Court for the benefit of the judgment creditor such debts or so much thereof as will satisfy the judgment debt, and the Court may make an order for the payment of such debts or so much thereof as will satisfy the judgment debt; and such order may be enforced in like manner as any order made in any suit in the Court, and where the garnishee pays the money as ordered he shall not be liable for any costs; and an entry of the payment shall be made in the debt attachment book mentioned in the immediately succeeding Section.

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**91** A debt attachment book shall be kept by the Registrar of every Court held under the said Act, and in such book entry shall be made of the attachment and proceedings thereon with the names, dates, and statements of the amount recovered and otherwise, and copies of any entries made therein may be taken by any person upon application to the Registrar.

Debt attachment book to be kept by Registrar.

*Order to pay by Instalments.*

**92** Where judgment has been obtained in a Court held under this Act for a sum not exceeding Twenty Pounds, exclusive of costs, the Court may order such sum and the costs to be paid at such time or times, and by such instalments if any, as he thinks fit, and all such moneys shall be paid into Court; but in all other cases he shall order the full amount for which judgment has been obtained to be paid either forthwith or within Fourteen clear days from the date of the judgment, unless the plaintiff, or his counsel, attorney, or agent, will consent that the same shall be paid by instalments, in which case the Judge shall order the same to be paid at such time or times and by such instalments, if any, as shall be consented to, and all such moneys, whether payable in one sum or by instalments, shall be paid into Court.

Where judgment does not exceed £20 Judge may order payment by instalments; in other cases consent of plaintiff necessary.

**93** In any action brought under this Act in the Supreme Court wherein judgment has been obtained, a Judge of the said Court may make Orders under the Fourth Section of "The Debtors Act, 1870," notwithstanding such judgment may exceed Fifty Pounds exclusive of costs.

Committal under Debtors Act upon Supreme Court judgments.

*Execution.*

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

Cross judgments.

**95** Whenever the Court has made an Order for the payment of money, the amount shall be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution against the Goods and Chattels, and in case there are not sufficient Goods and Chattels, but not otherwise, against the Lands, of the party against whom such Order has been made; and the Registrar of the Court, at the request of the party prosecuting such Order, shall issue under his hand a writ of *feri*

Court may award execution against goods and lands.

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*facias* as a warrant of execution to the Bailiff of the Court, who by such warrant shall then be empowered to levy, or cause to be levied, by seizure and sale of the Goods and Chattels, and in case there are not Goods and Chattels sufficient then of the Lands, of such party such sum of money as is ordered, wheresoever such Goods or Chattels or Lands may be found in the Colony, and also the costs and expenses of and incident to the execution; and all Constables and other Peace Officers shall aid in the execution of every such warrant.

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

**96** If the Court has made any Order for payment of any sum of money by instalments, execution upon such Order shall not issue against the party until after default in payment of some instalment according to such Order, and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the Court may order, at the time of making the original Order, or as the Court or the Judge may order at any subsequent time.

What may be taken in execution.

**97**—(1.) Every Bailiff or Officer executing any process of execution issuing out of the Court against the Goods and Chattels and Lands of any person may by virtue thereof seize and take any of the Goods and Chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of Five Pounds, which shall to that extent be protected from such seizure), and may also seize and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to any such person in whose hands soever any of such things may be; and in case such Goods and Chattels are not sufficient to satisfy the execution, may also seize and take in execution any real property of such person, or any interest therein, whether legal or equitable.

(2.) Land held by certificate of title under “The Real Property Act” may be taken in execution, and sold under this Act, in the same manner that it may now be taken in execution and sold by the Sheriff under any writ issuing out of the Supreme Court.

Securities seized to be held by Bailiff.

**98** The Bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which have been so seized or taken as aforesaid, as security for the amount directed to be levied by such execution, or so much thereof as may not have been otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sums secured or made payable thereby, when the time of payment thereof has arrived, and may, by leave of the Court or a Judge, endorse any such cheques, bills of exchange, or promissory notes payable to the order of the payee, and such endorsement shall be a good discharge to any banker or other person paying the same.

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

**99** In all cases where a warrant of execution has issued against the goods and chattels or lands of any party, and such goods and chattels or lands are or are believed to be nearer to another Court than to the Court out of which the process has issued, it shall be lawful for the Bailiff of the latter Court to send such warrant of execution to the Registrar of such other Court, and the Registrar of the Court to which



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the same is sent shall deliver the same to the Bailiff of his Court, and thereupon such last-mentioned Bailiff is hereby authorised and required to act in all respects as if the warrant of execution had been directed to him by the Court of which he is the Bailiff, and shall, within such time as may be specified in the Rules of Practice, return to the Registrar of the Court from which the same issued what he has done in the execution of such process; and in case a levy has been made shall, within such time as may be specified in the Rules of Practice, pay over all moneys received in pursuance of the warrant to the Registrar of the Court from which the same issued.

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*Power to suspend Execution.*

**100** If at any time it appears to the satisfaction of the Court, or, when the Court is not sitting, of the Judge of the Court, by the oath of any person or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for such Court or Judge, in its or his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action, for such time and on such terms as the Court or Judge thinks fit, and so from time to time until it appears by the like proof as aforesaid that such temporary cause of disability has ceased.

Power to Court  
to suspend execu-  
tion in certain  
cases.

*Sales of Property taken in Execution.*

**101** Every sale of any personal property taken in execution shall be made not less than Five days, and of real property not less than Twenty-one days, after the levy by the Bailiff, by public auction, without being licensed as an auctioneer, after having been duly advertised in such manner and for such time as may be directed by the Rules of Practice: Provided that Goods of a perishable nature may be sold immediately on seizure; and any personal property taken in execution may, with the consent in writing of the execution debtor, be sold by the Bailiff by private contract at any time after seizure.

Regulating sales  
of property taken  
in execution.

**102** Section One of the Act of the Eighth year of the Reign of Queen Anne, Chapter Fourteen, shall not apply to Goods taken in execution under the Warrant of a Court held under this Act, but the Landlord of any Tenement in which any such Goods shall be so taken may claim the rent thereof at any time within Five clear days from the date of such taking, or before the removal of the Goods, by delivering to the Bailiff or Officer making the levy any writing signed by himself or his Agent, which shall state the amount of rent claimed to be in arrear, and the time for and in respect of which such rent is due; and if such claim be made, the Bailiff or Officer making the levy shall, in addition thereto, distrain for the rent so claimed and the costs of such Distress, and shall not within Five days next after such Distress sell any part of the Goods taken unless they be of a perishable nature, or upon the request in writing of the party whose Goods shall have been taken, and the Bailiff shall afterwards sell such of the Goods under the Execution and Distress as shall satisfy first the costs of and incident to the Sale, next the claim of such Landlord not exceeding the rent of Four weeks where the Tenement is let by the

When goods  
seized under  
process of Court  
landlord may  
claim certain  
rent in arrear.

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week, the rent of Two terms of payment where the Tenement is let for any other term less than a year, and the rent of One year in any other case, and lastly the amount for which the Warrant issued; and if any Replevin be made of the Goods so taken, the Bailiff shall notwithstanding sell such portion thereof as will satisfy the costs of and incident to the Sale under the Execution and the amount for which the Warrant issued; and in either event the overplus of the Sale, if any, and the residue of the Goods shall be returned to the Defendant, and the Poundage of the Bailiff and Broker for keeping possession, appraisement, and sale under such Distress shall be the same as would have been payable if the Distress had been an execution of a Court held under under this Act, and no other Fees shall be demanded or taken in respect thereof.

Execution of  
process.

**103**—(1.) All process and writs issued out of any Court shall be served and executed by a Bailiff of such Court, or of any other Court, in the same manner in all respects as process or writs of a similar nature issuing out of the Supreme Court may be or might have been served or executed by the Sheriff; and every such Bailiff shall, as to the execution of process and writs issuing from another Court, be and he is accordingly hereby constituted the Bailiff of such other Court, and shall be subject to the order and direction of such Court and the Judge thereof; and every Bailiff shall, for the purpose of enabling him to perform the duties of his office, have the same powers and authorities, and shall in the exercise of the duties of his office be subject to the same liabilities, as the Sheriff.

(2.) When any Writ of *fiery facias* or other Writ of Execution for a sum not exceeding Fifty Pounds for debt and costs is issued out of the Supreme Court in any action or other proceeding brought or taken in the said Court otherwise than under the provisions of this Act, and the lands or chattels of the person against whom such Writ is issued are nearer to the place at which a Court is held under this Act than to either *Hobart* or *Launceston*, the Sheriff may forward his Warrant to the Bailiff of such last-mentioned Court, and such Warrant shall thereupon be executed in the same manner as a Warrant of Execution is now executed by the Sheriff's Bailiff, and all moneys received in pursuance of such Warrant shall be paid to the Sheriff, and the Sheriff shall not be answerable for the neglect or wrongful act of any such Bailiff.

*Execution superseded by Payment.*

Execution to be  
superseded on  
payment of debt  
and costs.

**104** In or upon every Warrant of Execution issued against the Goods, Chattels, or Lands of any person whomsoever the Registrar of the Court shall cause to be inserted or endorsed the sum of money and costs adjudged, with the costs for the execution of such warrant; and if the party against whom such execution is issued before an actual Sale of the Goods and Chattels or Land pays or causes to be paid or tendered to the Registrar of the Court out of which such Warrant of Execution has issued, or to the Bailiff holding the Warrant of Execution, such sum of money and costs as aforesaid, or such part thereof as the person entitled thereto agrees to accept in full of his debt or damages and costs, together with the costs for the execution, such execution shall be superseded, and possession of the Goods and Chattels or Lands of the said party shall immediately be given up.

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**105** Where a Bailiff has necessarily incurred expenses in the execution of a Writ of *feri facias* or Warrant of Commitment, and is unable from insufficiency of Goods or Lands of the party against whom the execution issued, or other cause, without his own default to obtain reimbursement of such expenses, by means of such execution, within One month after the issue of the writ or warrant, such expenses or the amount thereof unpaid shall be paid to the Bailiff by the party at whose suit the execution issued; and on non-payment of the same by such last-mentioned party on demand, the Court shall, in a summary way, ascertain the amount of such expenses, and enforce payment thereof by such last-mentioned party to the Bailiff by the same means as are herein provided for enforcing a judgment of the Court; and such amount shall be recoverable by such last-mentioned party against the opposite party as costs in the cause.

Where Bailiff put to expenses in executing writ and cannot obtain same under the execution, he shall be repaid by party issuing execution.

*Interpleader.*

**106** If any claim is made to or in respect of any goods or chattels taken in execution under the process of any Court held under this Act, or in respect of the proceeds or value thereof by any person not being the party against whom such process has issued, it shall be lawful for the Court or a Judge upon the application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to order the person making such claim to appear before such Court or Judge and to state the nature and particulars of his claim, and to maintain or relinquish the same, and upon such order to hear the allegations, as well of the person making such claim as of the plaintiff, and in the meantime to stay the proceedings in the action in respect of which such goods have been taken in execution as aforesaid, and finally to adjudicate in a summary manner upon such claims, and make such order between the parties in respect thereof, and of the costs of the proceedings as may seem fit, and such Order shall be enforced in like manner as any order or judgment made in any suit brought in such Court, and thereupon any action which may have been brought in the Supreme Court or in any Court held under this Act in respect of such claim shall be stayed; and the Court in which such action has been brought or a Judge thereof, on proof of the fact that such claim has been adjudicated upon in manner aforesaid, may order the party bringing such action to pay the costs of all proceedings taken therein after the service on him of the order calling upon him to appear before the Court or Judge and state the nature and particulars of his claim as aforesaid.

Proceedings on Interpleader.

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

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

**108** Provided always, that any Judge before whom any person making such claim as aforesaid shall appear in answer to any order calling upon him to appear and state the nature and particulars of his claim may, in his discretion, order such person to make himself

Judge may order trial of conflicting claim by actions.

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defendant in the same or other action, or to proceed to trial on one or more feigned issue or issues either in the Supreme Court in its superior jurisdiction, or in any Court held under this Act, and also to direct which of the parties shall be plaintiff or defendant on such trial.

Sale of goods  
held under Bill  
of Sale.

**109** Where goods or chattels have been seized in execution by a Bailiff or other Officer under process of any Court held under this Act, and some third person claims to be entitled under a Bill of Sale or otherwise to such goods or chattels by way of security for a debt, a Judge may order a sale of the whole or part thereof, upon such terms as to payment of the whole or part of the secured debt or otherwise as such Judge thinks fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to such Judge seems just.

*Order of Chairman subject to Review.*

Order of Chair-  
man subject to  
review by full  
Court.

**110** Any order or act made or done under the authority of this Act by the Chairman of any Court of General Sessions having jurisdiction under this Act, when the Court is not sitting, shall be subject to be reversed or altered by the Court at a subsequent sitting of the Court, within such time, on such terms, and with such consequences, as may be prescribed by the Rules of Practice.

*Removal of Actions.*

Removal of  
actions into  
Supreme Court  
by *Certiorari*.

**111** Any action commenced in any Court of Requests or in any Court of General Sessions under this Act, may be removed by *Certiorari* into the Supreme Court by order of the Supreme Court or a Judge thereof, if it appears to such Court or Judge that the case is one which for any reason it is fit or desirable should be tried in the Supreme Court; and such order may be made upon such terms as to payment of costs, giving security for the amount claimed or costs, or such other terms as such Court or Judge thinks fit.

*Recovery of Possession of Corporeal Hereditaments.*

Construction of  
the word  
"Tenant."

**112** In so much of this Act as relates to the *Recovery of Possession of Corporeal Hereditaments*, except where the same is inconsistent with the context, the word "Tenant" shall mean and include not only any tenant but also any person who claims through or under any tenant, and also any person who came into possession of any corporeal hereditament by the licence or with the consent of the tenant thereof, and also any person who being upon any such hereditament with the consent of the tenant thereof continues thereon after the tenant vacates possession thereof or dies.

Possession of  
small tenements  
may be recovered  
where term has  
expired or been  
determined by  
notice.

**113** When the term and interest of the Tenant of any corporeal hereditament, where neither the annual value of the premises nor the rent payable for a year in respect thereof shall exceed the amount to which the jurisdiction of the Court is limited, and upon which no fine or premium shall have been paid, shall have expired, or shall have been determined either by the Landlord or the Tenant by a legal notice to quit, and such Tenant neglects or refuses to deliver up possession accordingly, the Landlord may enter a Complaint, at his option, against such Tenant in the Court held under the provisions of this Act nearest

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to which the premises lie for the recovery of the same ; and thereupon a Summons shall issue to such Tenant ; and if the Defendant shall not, at the time named in the Summons, show good cause to the contrary, then, on proof of his still neglecting or refusing to deliver up possession of the premises, and of the yearly value and rent of the premises, and of the holding, and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the Title of the Plaintiff if such Title has accrued since the letting of the premises, and of the service of the Summons if the Defendant shall not appear thereto, the Judge may order that possession of the premises mentioned in the Plaint be given by the Defendant to the Plaintiff, either forthwith or on or before such day as the Judge thinks fit to name ; and if such Order be not obeyed, the Registrar shall, where the Defendant has appeared, whether such Order can be proved to have been served or not, and where the Defendant has not appeared, then on proof by affidavit or otherwise of the service of the Order, at the instance of the Plaintiff, issue a Warrant authorising and requiring the Bailiff of the Court to give possession of such premises to the Plaintiff.

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**114** In any such Plaint against a Tenant as in the last preceding Section is specified the Plaintiff may add a claim for rent or mesne profits or both, down to the day appointed for the hearing or to any preceding day named in the Plaint, so as the same shall not exceed such amount as aforesaid, and any misdescription in the nature of such claim may be amended at the trial.

In Plaint for recovery of possession plaintiff may claim for rent and mesne profits.

**115** When the rent of any corporeal hereditament, where neither the annual value of the premises nor the rent payable for a year in respect thereof exceeds the amount to which the jurisdiction of the Court is limited, shall for one half year be in arrear, and the Landlord shall have right by Law to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a Plaint in the Court nearest to which the premises lie for the recovery of the premises ; and thereupon a Summons shall issue to the Tenant, the service whereof shall stand in lieu of a demand and re-entry ; and if the Tenant shall, Five clear days before the return day of such Summons, pay into Court all the rent in arrear, and the costs, the said Action shall cease, but if he shall not make such payment, and shall not at the time named in the Summons show good cause why the premises should not be recovered, then, on proof of the yearly value and rent of the premises, and the fact that one-half year's rent was in arrear before the Plaint was entered, and that no sufficient distress was then to be found on the premises to countervail such arrear, and of the Landlord's power to re-enter, and of the rent being still in arrear, and of the Title of the Plaintiff if such Title has accrued since the letting of the premises, and of the service of the Summons if the Defendant shall not appear thereto, the Judge may order that possession of the premises mentioned in the Plaint be given by the Defendant to the Plaintiff on or before such day, not being less than Four weeks from the day of hearing, as the Judge shall think fit to name, unless within that period all the rent in arrear and the costs be paid into Court ; and if such Order be not obeyed, and such rent and costs be not so paid, the Registrar shall, whether such Order can be proved to have been served or not, at the instance of the Plaintiff, issue a Warrant authorising and requiring the Bailiff of the Court to give possession of such premises to the Plaintiff ;

Possession may be recovered for non-payment of rent.

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and the Plaintiff shall from the time of the execution of such Warrant hold the premises discharged of the tenancy, and the Defendant and all persons claiming by, through, or under him shall, so long as the Order of the Court remains unreversed, be barred from all relief in Equity or otherwise.

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

**116** Where any Summons for the recovery of a tenement as is hereinbefore specified shall be served on or come to the knowledge of any Sub-tenant of the plaintiff's immediate Tenant, such Sub-tenant being an occupier of the whole or a part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate Landlord under penalty of forfeiting Three years' rack-rent of the premises held by such Sub-tenant to such Landlord, to be recovered by such Landlord by Action in the Court from which the Summons has issued; and such Landlord, on the receipt of such notice, if not originally a Defendant, may be added or substituted as a Defendant to defend possession of the premises in question.

In Plaints to recover possession of premises, how summonses &c. may be served.

**117** A Summons or other document relating to the recovery of a tenement may be served like Summonses to appear to Plaints in Courts held under the provisions of this Act; and if the defendant cannot be found, and his place of dwelling shall either not be known or admission thereto cannot be obtained for serving any such Summons or document, a copy thereof shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the Defendant.

Warrants to Bailiffs sufficient to justify them for entering on premises.

**118** Any Warrant to a Bailiff to give possession of a tenement shall justify the Bailiff named therein in entering upon the premises named therein, with such Assistants as he shall deem necessary, and in giving possession accordingly; but no entry upon any such Warrant shall be made except between the hours of Eight in the morning and Five in the afternoon.

Such Warrants to be in force for Three months from the day named for delivery of possession.

**119** Every such Warrant shall, on whatever day it may be 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 premises in question, and shall continue in force for Three months from such date and no longer, but no Order for delivery of possession need be drawn up or served in any case in which the Defendant has appeared.

*Appeal.*

Appeal to the Supreme Court from judgment of other Courts.

**120**—(1.) If either party to any action brought under this Act in the Supreme Court is dissatisfied with the determination or direction of the Judge in point of law, or upon the admission or rejection of any evidence, such party may, by leave of the Court or a Judge thereof, appeal to the Supreme Court in manner hereinafter provided; and if either party to any action brought in any other Court held under this Act is dissatisfied with the determination or direction of the Court in point of law, or upon the admission or rejection of any evidence, such party may by leave of a Judge of the Supreme Court appeal from the same to the Supreme Court: Provided that such party shall within Ten days after such determination or direction give notice of his intention to apply for leave to appeal to the other party or his attorney, and shall

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also, within Ten days from the delivery of such notice as aforesaid, take out a Judge's Summons or obtain a Rule *Nisi* calling upon the other party or his attorney or agent to show cause why leave should not be given to appeal: Provided that the Court or the Judge granting such leave may, in its or his discretion, require the party obtaining such leave to give such security as the Court or Judge may approve for the costs of the appeal and for the amount of the judgment if the appellant be defendant and the appeal be dismissed; but no such security for the amount of such judgment shall be required in any case where the Court in which the action was tried has ordered the party appearing to pay the amount of such judgment into the hands of the Clerk of the Court, and the same has been paid accordingly; and the Court of Appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, and make such Order in the premises and with respect to the costs of the appeal as such Court thinks proper, and such Order shall be final.

(2.) If any claimant to any goods taken in execution under the process of any Court held under this Act, or to the proceeds or value thereof, or the party at whose instance the warrant of execution has issued under which such goods have been taken is dissatisfied with the decision or direction of any Court other than the Supreme Court, or the decision or direction of any Judge given in respect of any such goods, or in respect of the value or proceeds thereof, upon the hearing of any interpleader proceedings such claimant or party as aforesaid may appeal from the decision or direction of such Court or Judge to the Supreme Court in the same manner as any party to any action brought under this Act may appeal from the determination or direction of any Court or Judge in such action: Provided always, that notice of appeal in all such cases shall be given within Five days after such decision or direction, and the party giving notice of appeal shall prosecute his appeal in the manner hereinbefore provided within Five days after giving such notice.

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Appeal from  
decision upon  
Interpleader.

**121** Such appeal shall be in the form of a case agreed to by both parties or their attorneys, and if they cannot agree the Judge or Commissioner or Chairman of the Court in which the action was tried upon being applied to by them or their attorneys or either of them shall settle the case and sign it, and such case shall be transmitted by the appellant to the Registrar of the Supreme Court.

Appeals to be in  
the form of a  
special case.

**122** If the appellant shall not proceed with due diligence in the prosecution of the appeal, the successful party in the action may apply to a Judge of Supreme Court upon summons, or to the Supreme Court, for an Order dismissing the appeal for want of prosecution, with costs, which Order the said Judge or Court is hereby empowered to make.

Appeal may be  
dismissed for want  
of prosecution.

*Prohibition.*

**123** It shall be lawful for any Judge of the Supreme Court, as well in Term time as in Vacation, to hear and determine applications for Writs of Prohibition directed to the Courts held under this Act, except where held before a Judge of the Supreme Court, and to make such Rules or Orders for the issuing of such writs as might be made by the Court, and all such Rules or Orders so made by any such Judge shall have the same force and effect as Rules of Court for such purposes now

Judges may hear  
applications for  
Writs of Prohi-  
bition either in  
Term or in  
Vacation.

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have, and such writs shall be issued by virtue of such Rules or Orders as well in Term time as in Vacation: Provided always that any Rule or Order made by any such Judge, or any writ issued by virtue thereof, may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such Rule or Order.

Rule or Order substituted for Writ of Mandamus to a Judge or officer of the Court.

**124** No Writ of Mandamus shall henceforth issue to a Judge or an Officer of any Court held under this Act for refusing to do any act relating to the duties of his office, but any party requiring such 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 such Judge or Officer of the Court held under this Act, and also the party to be affected by such act, to show cause why such act should not be done; and if after the service of such 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 said Court upon being served with such Rule or Order shall obey the same on pain of attachment; and in any event the Supreme Court or a Judge thereof may make such Order with respect to costs as to such Court or Judge seems fit.

*Court Fees.*

Fees to be taken according to Schedule, and Tables to be exhibited in conspicuous places.

**125** There shall be payable on every proceeding in the Courts held under this Act such Fees as are set down in the Schedule (1), and a Table of such Fees shall be put up in some conspicuous place in the Registrar's office; and the Fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding, and in default payment thereof shall be enforced by order of the Court by such means as any debt or damage ordered to be paid by the Court can be recovered; and the Fees upon executions shall be paid into Court at the time of the issue of the warrant of execution.

Fees to be paid in stamps.

**126** At such Courts as the Governor in Council may appoint, all fees payable to the Court by virtue of this Act shall be paid by stamps affixed to or impressed on the document in respect of which any such fee is payable; and no document liable to be stamped shall be filed or delivered until the stamp thereon shall have been defaced, except documents on which the stamp has been impressed, and it shall be the duty of the Registrar or Officer receiving such document to see that such defacement has been duly made.

No fees other than those mentioned to be taken by officers.

**127** No Officer of any Court held under this Act shall demand or receive from any suitor for the performance of any duty under this Act any fee or reward whatsoever other than such fees as are directed or authorised to be paid by this Act; and every Officer who demands or receives from any suitor any fee or reward for the performance of any duty under this Act other than the fees directed or authorised to be paid by this Act shall for every such offence be liable to a penalty not exceeding Twenty Pounds.

Registrar's Accounts to be audited and settled by Auditor.

**128** The Colonial Auditor shall from time to time, annually or oftener, as he may think fit, audit and settle the accounts of the Registrar and other Officers of the Court.



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**129** The Registrar of every Court under this Act held elsewhere than in any Rural Municipality shall from time to time, as often and in such form as he is required so to do by the Treasurer of the Colony, deliver to the said Treasurer a full account in writing of the Fees received in that Court under the authority of this Act, and a like account of all Fines levied by the Court, and of the expenses of levying the same, and shall pay over to the said Treasurer, monthly or oftener in every year, as may from time to time be ordered by the said Treasurer, the moneys remaining in his hands over and above such balance as he may be allowed by the said Treasurer to retain for the current expenditure of the Court.

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Fees and fines to be accounted for to Treasurer.

*Costs.*

**130** All the costs of any action or proceeding in the Court shall be in the discretion of the Court, and shall be paid by or apportioned between the parties in such manner as the Court thinks fit, and in default of any special direction shall abide the event of the action; and execution may issue for the recovery of any such costs in like manner as for any debt adjudged in the said Court.

Costs to abide the event of the action.

**131** The fees and charges contained in Schedule (2) hereto shall be the fees and charges as between party and party to be paid to practitioners of the Supreme Court for appearing and acting in any Court under this Act, and for business transacted by them in connection with any action brought under this Act.

Practitioners' charges.

**132** All costs between party and party, and between Attorney and client, shall be taxed by the Registrar of the Court, but his taxation may be reviewed by the Court upon the application of either party; and in no case upon the taxation of the costs between Attorney and client shall any charges not mentioned in any of the Schedules to this Act be allowed unless the Registrar is satisfied, by writing under the hand of the client, that he has agreed to pay such further charges, and no Attorney shall have a right to recover from his client any costs or charges not so allowed on taxation.

Costs to be taxed by Registrar subject to review. No charges beyond Scale to be allowed unless client has agreed in writing to pay them.

**133** If in any action commenced in the Supreme Court otherwise than under this Act the plaintiff recovers a sum not exceeding Fifteen Pounds if the action is founded on Contract, or Seven Pounds if founded on Tort, whether by verdict, judgment by default, or on demurrer, or otherwise, he shall not be entitled to any costs of suit unless the Judge certifies on the record that there was sufficient reason for bringing such action in the Supreme Court otherwise than in its Small Debts jurisdiction, or unless the Court or a Judge at Chambers shall by Rule or Order allow such costs.

Costs not recoverable in Supreme Court.

*General Rules of Practice.*

**134** The Judges of the Supreme Court shall have power, and they are hereby required, to make and issue all the general Rules for regulating the Practice and Proceedings of the Courts held under this Act; and also to frame Forms for every proceeding in the said Courts for which they may think it necessary that a Form be provided; and also for keeping all Books, Entries, and Accounts to be kept by Registrars of the said Courts, and from time to time to alter any such Rule or

Forms of procedure in Courts to be framed by the Judges of the Supreme Court.

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Form; and the Rules so made, and the Forms so framed, shall be observed and used in all the Courts held under this Act; and in any case not expressly provided for herein, or by the said Rules, the general principles of practice in the Supreme Court may be adopted and applied, at the discretion of the Court, to actions and proceedings under this Act; and all such general Rules shall be published in the *Gazette* in the same manner as the general Rules of the Supreme Court are published therein.

Supreme Court  
may make Rules  
regulating  
appeals.

**135** The Judges of the Supreme Court may from time to time make general Rules for regulating the proceedings on Appeals, which Rules shall be as valid as if included in this Act.

*Advocates.*

Who may appear  
for any party in  
Court held under  
this Act.

**136** It shall be lawful for the party to the cause or other proceeding or for a Barrister or Attorney of the Supreme Court, or, by leave of the Court any other person allowed by the Court to appear instead of the party, to address the Court; but no person, not being a Barrister or Attorney of the Supreme Court, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said Court.

*Contempts.*

Power of  
committal for  
contempt.

**137** In a Court held under this Act before a Commissioner or Justices, if any person wilfully insults such Commissioner or any such Justice, or any Juror, or any Registrar, Bailiff, or Officer of the said Court for the time being 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 in Court, it shall be lawful for any Bailiff or Officer of the Court, with or without the assistance of any other person, by the order of the Court, to take such offender into custody, and detain him until the rising of the Court; and the Court is hereby empowered, if it thinks fit, by a warrant under the hand of the Registrar, reciting generally the grounds of Committal without showing the particulars thereof or the jurisdiction, to commit any such offender to any Gaol or House of Correction for any time not exceeding Seven days, or to impose upon any such offender a Fine not exceeding Five Pounds for every such offence, and in default of payment thereof to commit the offender to any Gaol or House of Correction for any time not exceeding Seven days unless the said Fine be sooner paid.

*Assaults on Bailiffs.*

Penalty for  
assaulting Bailiffs,  
or rescuing goods  
taken in execution.

**138** If any Officer or Bailiff of a Court held under this Act is assaulted while in the execution of his duty, or if any rescue is made or attempted to be made of any Goods, or if any such Officer or Bailiff is turned out of possession of any Lands levied under process of the Court, the person so offending shall be liable to a Fine not exceeding Ten Pounds, to be recovered by order of the Court, or in a summary way before a Justice; and it shall be lawful for the Bailiff of the Court or any Peace Officer in any such case to take the offender into custody (with or without Warrant), and bring him before such Court or Justice accordingly.

*Small Debts.**Recovery and Appropriation of Fines and Fees.*

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**139** Payment of any Fine imposed by any Court under the authority of this Act may be enforced upon the Order of the Court in like manner as payment of any debt adjudged in the said Court, and shall be accounted for as herein provided.

Fines how to be enforced and accounted for.

**140** All Fees received under this Act by any Officer of the Court, and all Fines and penalties imposed by this Act, shall, unless hereinbefore otherwise specifically appropriated, be paid into the Public Treasury of the Colony, and shall form part of the Consolidated Revenue Fund, except where such Fees, Fines, and Penalties are received or imposed in a Rural Municipality, and then the same shall form part of the Municipal Fund.

Appropriation of fees, fines, and penalties.

**141** All fines and penalties imposed or made payable by this Act shall, where no other mode of recovery is provided, be recovered in a summary way by and before any two Justices, in the mode prescribed by *The Magistrates' Summary Procedure Act*.

Recovery of penalties.

19 Vict. No. 8.

*Appointments published in Gazette.*

**142** All Orders and Appointments made by the Governor in Council, and all Appointments made by the Governor alone, as the case may be, for the purposes of this Act, shall be published in the *Gazette*, and the production of a copy thereof purporting to contain any such Order or Appointment shall be conclusive evidence of such Order or Appointment.

Orders in Council and appointments under this Act to be published in the *Gazette*.

*Actions against Officers.*

**143** Where the Judge or any Officer of any Court held under this Act is a party to any action, except in respect of any claim to goods and chattels taken in execution of the process of the Court, or the proceeds or value thereof, such action may, at the election of the party suing, be brought in the Court of competent jurisdiction held under this Act which is nearest to the place of holding the Court of which such party is the Judge or Officer.

Where Judge, &c. interested in cause of action, it may be brought in nearest Court.

**144** No action shall be brought against any Bailiff, or against any person acting by the order and in aid of any Bailiff, for anything done in obedience to any warrant under the hand of the Registrar, until demand has been made or left at the office of such Bailiff by the party intending to bring such action, or by his Attorney or Agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same has been refused or neglected by the space of Six days after such demand; and in case after such demand and compliance therewith, by showing the said warrant to and permitting a copy to be taken thereof by the party demanding the same, any action is brought against such Bailiff or other person acting in his aid for any such Cause as aforesaid without making the Registrar who signed the said warrant defendant, on producing or proving such warrant at the trial of such action the Jury shall give their Verdict for the defendant, notwithstanding any defect of jurisdiction or other irregularity in the said warrant; and if such action is brought jointly against such Registrar, and also against such Bailiff, or person acting in his aid as aforesaid, then on proof of such warrant the Jury shall find for such Bailiff and

No action to be brought against any Bailiff, &c. acting under order of the Court without notice; and Registrar of the Court to be made defendant in the suit.

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for such person so acting as aforesaid, notwithstanding such defect or irregularity as aforesaid; and if the Verdict is given against the said Registrar, in such case the plaintiff shall recover his costs against him, to be taxed in such manner by the proper Officer as to include such costs as such plaintiff is liable to pay to the defendant for whom such Verdict is found as aforesaid.

No officer or party shall be deemed a trespasser by reason of irregularity.

**145** No Officer of a Court in executing any warrant of a Court, and no person at whose instance any such warrant shall be executed, shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it, except against the party executing it, but the party aggrieved may bring an action for any special damage which he may have sustained by reason of such irregularity or informality against the party guilty thereof, and in such action he shall recover no costs unless the damages awarded shall exceed Forty Shillings.

Limitation of actions for proceedings in execution of this Act.

**146** All actions brought against any person for anything done under or in pursuance of this Act shall be commenced within Three months after the act complained of shall have been committed; and notice in writing of such action, and of the cause thereof, shall be given to the defendant or left at his last known place of abode One month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends has been made before such action brought, or if after action brought a sufficient sum of money is paid into Court, with costs, by or on behalf of the defendant.

Protection to officers and others acting under the Act.

**147** In any action brought against any person for anything done under or in pursuance of this Act, the defendant may plead the general issue, and give the special matter in evidence; and the warrant under the hand of the Registrar of the Court out of which it issued produced in any such action shall be sufficient proof of the authority of such Court previous to the issuing of such warrant; and in case the Verdict in such action is found against the plaintiff, or he is nonsuit, or discontinues the action, the defendant shall in any of such cases be allowed full costs as between Attorney and client; and in any such action brought in the Supreme Court against any officer of a Court held under this Act, if the plaintiff does not recover greater damages than the sum of Twenty Pounds no costs shall be awarded him, unless the Judge certifies in Court upon the back of the Record that the action was fit to be brought in the Supreme Court.

*Repeal.*

Repeal of existing Acts.

**148** On and after the day on which this Act commences and takes effect the Acts set forth in the Schedule (5.), to the extent to which such Acts are therein expressed to be repealed, shall be hereby repealed: Provided that such repeal shall not affect—

- (1.) Anything duly done before, or any case pending when, this Act commences and takes effect:
- (2.) Any liability accruing before this Act commences and takes effect:

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- (3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this Act commences and takes effect : A.D. 1887. —
- (4.) The institution of any legal proceeding or any other remedy for enforcing or recovering any such liability, penalty, forfeiture, or punishment as aforesaid.

**149** Where in any Act the several Acts hereby repealed may be referred to, the same shall, for the purposes of any such Acts as first aforesaid, be deemed to mean this Act. Reference to former Acts.

*Existing Courts, &c. continued.*

**150** All Courts existing at the time of the commencement of this Act by virtue of any Act hereby repealed shall continue to be and shall be holden as if this Act had not been passed, and shall be deemed to be Courts within the meaning and for the purposes of this Act, and shall be subject to its provisions; and all proceedings commenced in any such Court may be continued, executed, and enforced against all persons liable thereunto in the same manner as if they had been commenced under the authority of this Act. Existing Courts continued.

**151** All existing Rules of Practice and Procedure made by the Judges of the Supreme Court under the provisions of any Act hereby repealed shall continue, so far as the same are not inconsistent with this Act, to be the Rules of Practice and Procedure for all such existing Courts as aforesaid, and also for any Courts hereafter established under the provisions of this Act, until new Rules of Practice and Procedure shall be made and issued by the Judges of the Supreme Court under the authority of this Act. Existing Rules of Practice to continue.

**152** All Commissioners, Registrars, and Officers of Courts at the time of the commencement of this Act by virtue of any Act hereby repealed shall continue in office notwithstanding such repeal, and shall be deemed to have been appointed Commissioners, Registrars, and Bailiffs under this Act and shall be subject to its provisions. Existing Officers continued.

*Short Title.*

**153** This Act may be cited as "The Small Debts Act, 1887." Short title.

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SCHEDULE.

(1.)

	Where the Amount claimed in Action is				
	Not more than £10.	Above £10 and not above £25.	Above £25 and not above £50.	Above £50 and not above £75.	Above £75 and not above £100.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Entering every plaint, including the issuing and service of summons .....	0 1 0	0 5 0	0 7 6	0 10 0	0 15 0
Hearing fee .....	0 1 0	0 5 0	0 7 6	0 10 0	0 15 0
Judgment by consent or default.....	0 1 0	0 5 0	0 7 6	0 10 0	0 15 0
Entering defence .....	0 1 0	0 1 6	0 1 6	0 2 6	0 2 6
Summons (any number of witnesses) .....	0 0 6	0 1 0	0 1 6	0 2 6	0 2 6
Copy of particulars supplied by Registrar.....	0 0 6	0 1 0	0 1 6	0 2 0	0 2 6
Issuing warrant of execution .....	0 0 6	0 1 0	0 1 6	0 2 0	0 2 6
Taking recognizance bond or security for costs ...	0 0 6	0 1 0	0 1 6	0 2 0	0 2 6
Enquiry into sufficiency of sureties .....	0 0 6	0 1 0	0 1 6	0 2 0	0 2 6
For every levy .....	0 1 0	0 1 6	0 2 0	0 2 6	0 2 6
Taxing costs .....	0 1 0	0 1 6	0 2 0	0 2 6	0 2 6
Every interlocutory summons and every order made thereon.....	0 0 6	0 1 0	0 1 6	0 2 6	0 2 6

Where the plaintiff recovers less than the amount of his claim, he shall be entitled to recover fees according to the amount of the verdict only unless the reduction is caused by a set-off.

In cases of warrants of execution the actual expenses necessarily incurred by the Bailiff in respect of such warrant shall be allowed by the Court as costs in the cause.

In cases of interpleader the summons to the Bailiff shall be issued gratis in the first instance ; and necessary expenses incurred by the Bailiff in keeping possession of the goods to be included in the general costs of the case.

No increase of fees shall be made by reason of there being more than one plaintiff or defendant.

(2.)

	Where the Amount claimed in Action is				
	Above £2 and not more than £10.	Above £10 and not above £25.	Above £25 and not above £50.	Above £50 and not above £75.	Above £75 and not above £100
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Instructions for and letter before action, instructions to sue, drawing and filing plaint, summons, and copy, including particulars of demand and copies, and attending Registrar for signature ... (Amount to be entered on summons.)	0 10 0	0 15 0	1 0 0	1 10 0	2 10 0
Instructions for and entering defence, including particulars and copies in case of set-off .....	0 10 0	0 15 0	1 0 0	1 10 0	2 10 0
For every additional copy of summons, or notice of defence, and particulars where necessary.....	0 1 0	0 2 0	0 2 0	0 2 6	0 2 6
Preparing summons for witness, and attending Registrar therewith for signature.....	0 1 6	0 2 6	0 2 6	0 2 6	0 2 6
For every copy of summons for service .....	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0
Getting case ready for trial, including taking minutes of evidence of witnesses, notices to produce and admit, and all interlocutory proceedings in Chambers, and preparation of brief .....	0 10 0	1 10 0	2 0 0	2 10 0	3 10 0
Attending Court with Counsel, per diem .....	...	0 10 0	0 15 0	1 0 0	1 0 0
Counsel's fee .....	...	2 2 0	3 3 0	4 4 0	5 5 0
Attending Registrar to get judgment entered up when no defence filed .....	0 5 0	0 7 6	0 10 0	0 10 0	0 10 0
Drawing costs and copy for Registrar .....	0 1 0	0 2 0	0 2 6	0 2 6	0 2 6
Copy for taxation .....	0 0 6	0 1 0	0 1 0	0 1 0	0 1 0
Preparing notice of appointment to tax and service.....	0 1 0	0 2 6	0 2 6	0 2 6	0 2 6
Attending taxation .....	0 1 0	0 2 0	0 3 0	0 4 0	0 5 0
Preparing and issuing warrant of execution .....	0 2 6	0 5 0	0 5 0	0 7 6	0 7 6
Attending Court cause in paper not called on, per diem .....	0 5 0	0 7 6	0 7 6	0 10 0	0 10 0

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	Where the Amount claimed in Action is									
	Above £2 and not more than £10.		Above £10 and not above £25.		Above £25 and not above £50.		Above £50 and not above £75.		Above £75 and not above £100.	
	£	s. d.	£	s. d.	£	s. d.	£	s. d.	£	s. d.
Preparing confession or statement of agreement under section 43 or section 44 .....	0	2 6	0	5 0	0	7 6	0	10 0	0	10 0
All affidavits, including instructions, drawing, and engrossing, not exceeding ten folios (if over 10 folios in discretion of Registrar) .....	0	5 0	0	7 6	0	10 0	0	10 0	0	10 0
Copies of affidavits, per folio .....	0	0 6	0	0 6	0	0 6	0	0 6	0	0 6
Attending hearing of an interpleader summons ...	0	10 6	1	1 0	1	1 0	2	2 0	2	2 0
Attending Court or in Chambers to support or oppose application for new trial, or motion to set aside proceedings including instructions and preparation of brief, &c. ....	0	10 6	1	1 0	2	2 0	2	2 0	3	3 0
Instructions to apply to have Judgment Debtor examined as to debts owing to him, or to have debts attached, and preparing notice of intention to apply to Judge, and attending Registrar therewith, and obtaining appointment.....	0	2 6	0	5 0	0	7 6	0	7 6	0	7 6
Every necessary attendance before a Judge in connection with any proceedings for attachment of debts.....	0	5 0	0	7 6	0	7 6	0	7 6	0	7 6
Preparing any summons on any proceeding for attachment of debts or any order made thereon or any other summons or order other than in connection with an interlocutory proceeding or those before named .....	0	2 0	0	3 0	0	4 0	0	5 0	0	5 0
Preparing a copy for service of any such summons or order .....	0	1 0	0	1 6	0	2 0	0	2 6	0	2 6
Service of any such summons or order.....	0	1 0	0	2 0	0	2 6	0	3 0	0	3 0
Any attendance at the office of the Registrar which he shall upon taxation think was necessary .....	0	1 0	0	2 0	0	2 6	0	3 0	0	3 0
NEW TRIAL.										
Costs to be allowed on the same scale as on the original trial.										
COSTS ON ADJOURNMENT.										
Attending Court .....	0	5 0	0	10 6	0	10 6	1	1 0	1	1 0
Witnesses' expenses same as on trial.										
ARBITRATION.										
Attending reference, for each sitting.....	0	10 6	1	1 0	2	2 0	3	3 0	3	3 0
Witnesses' expenses same as on trial.										

Costs of making a survey and preparing plan may be allowed on taxation to an amount not exceeding £3 3s., and also costs of making a valuation or estimating damages up to an amount not exceeding £2 2s., in all cases in which the Registrar shall deem such survey and plan or such valuation to have been necessary.

In cases where the amount claimed does not exceed £1, the sum of three shillings may be endorsed on the summons or notice of defence for Attorney's costs, and upon judgment being entered up the further sum of two shillings shall be added by the Registrar for costs of applying to have judgment entered up when no defence has been filed, and the sum of five shillings when the claim has been defended, and the sum of two shillings and sixpence shall be allowed by the Registrar for Attorney's costs in preparing and issuing warrant of execution.

In cases where the amount claimed exceeds £1 and does not exceed £2, the sum of five shillings may be endorsed on the summons or notice of defence for Attorney's costs, and upon judgment being entered up the further sum of two shillings and sixpence shall be added by the Registrar for costs of applying to have judgment entered up when no defence has been filed, and the sum of seven shillings and sixpence when the claim has been defended, and the sum of two shillings and sixpence shall be allowed by the Registrar for Attorney's costs, for preparing and issuing warrant of execution.

Where the same Practitioner acts as Attorney and Counsel he shall be entitled to charge and receive the Counsel's fee for conducting the case; and in all cases in which the action or defence has been abandoned within forty-eight hours before the opening of the Court, one-half of such fee, together with the costs of getting the case ready for trial, shall be allowed upon taxation.

Where the trial of any cause extends over six hours, a Refresher fee of one-half of the original fee for every additional six hours, or any shorter additional time the trial may occupy, shall be allowed on taxation.

Costs shall be allowed upon the filing and hearing of complaints in the nature of a *scire facias* against a Garnishee, and upon all subsequent proceedings connected therewith, upon the same scale as in ordinary cases.

The costs of all proceedings connected with an interpleader summons shall be regulated by the amount for which execution has been issued, and the costs of all proceedings in connection with an order for the attachment of debts shall be regulated by the amount of the debt sought to be attached.

In actions for the recovery of the possession of corporeal hereditaments, the costs shall be regulated by the rent or yearly value of the property, and the amount claimed as rent or mesne profits.

In actions of ejectment the Court may award such additional costs beyond those included in the Schedule, as the Court thinks fit.

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(3.)

	Up to £50.	£50 and upwards.
	£ s. d.	£ s. d.
Instructions for order or commission.....	0 5 0	0 10 0
Drawing and engrossing affidavit.....	0 5 0	0 10 0
Application for order or commission.....	0 10 0	1 0 0
Obtaining appointment from Commissioner for examination .....	0 5 0	0 10 0
Copies of order or commission.....	6d. per	folio.
Drawing notices to serve on witnesses .....	1s. per	folio.
Copying.....	6d. per	folio.
Service of copy, order, or commission, with notice.....	0 2 6	0 5 0
Attending examination, per day.....	1 1 0	2 2 0
Fee to Commissioner, per day .....	1 1 0	2 2 0
Journeys to place of examination, each way .....	6d. per	mile.
Attending for office copy of depositions.....	0 2 6	0 5 0

(4.)

ALLOWANCE TO WITNESSES.

	£ s. d.	£ s. d.
Gentlemen, merchants, bankers, auctioneers, and professional men, per diem .....	from 0 10 6	to 1 1 0
Tradesmen, farmers, clerks, and the like, per diem .....	from 0 7 0	to 0 15 0
Skilled mechanics, per diem .....	from 0 5 0	to 0 10 0
Labourers, and the like, per diem .....	from 0 3 0	to 0 6 0

Travelling expenses, sum reasonably paid, but not more than one shilling per mile, one way.  
No allowance where attendance of witness unnecessary.

If the witnesses attend in more than one cause, they will be entitled to a proportionate part in each cause only.

(5.)

ACTS TO BE REPEALED.

Date and Number of Act.	Title of Act.	Extent of Repeal.
31 Vict. No. 15.	"The Small Debts Act."	The whole.
33 Vict. No. 9.	"The Small Debts Act Amendment Act, 1869."	The whole.
38 Vict. No. 15.	"The Small Debts Act Amendment, 1874."	The whole.
44 Vict. No. 7.	"The Small Debts Act Amendment Act, 1880."	The whole.
48 Vict. No. 22.	"The Small Debts Act Amendment Act, 1884."	The whole.
49 Vict. No. 24.	"The Small Debts Act Amendment Act, 1885."	The whole.