

LOCAL COURTS ACT, 1926-1936.

BEING

LOCAL COURTS ACT, 1926, No. 1782 OF 1926 [ASSENTED TO
22ND DECEMBER, 1926.]

AS AMENDED BY

LOCAL COURTS ACT AMENDMENT ACT, 1935, No. 2244 OF 1935
[ASSENTED TO 19TH DECEMBER, 1935.]

STATUTE LAW REVISION ACT, 1935, No. 2246 OF 1935
[ASSENTED TO 19TH DECEMBER, 1935.]

AND

STATUTE LAW REVISION ACT, 1936, No. 2293 OF 1936
[ASSENTED TO 8TH OCTOBER, 1936.]

An Act to consolidate and amend the law relating to
local courts and officers thereof, and matters con-
nected therewith.

BE IT ENACTED by the Governor of the State of South
Australia, with the advice and consent of the Parliament
thereof, as follows:

1. This Act may be cited as the "Local Courts Act, 1926-1936." Short title.

2. This Act shall come into operation on a day to be fixed
by proclamation. Commence-
ment of Act.

3. The Acts mentioned in the First Schedule are hereby
repealed. Repeal.

4. In this Act, unless inconsistent with the context or some
other meaning is clearly intended— Interpreta-
tion.

"court" and "local court" means—

(a) a Judge of the Supreme Court, when sitting in the
exercise of the jurisdiction conferred by this Act;

or

(b) the Local Court Judge; or

Cf. 386, 1886,
s. 4.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 191.

s. 2. This Act was proclaimed to commence on 7th March, 1927: *Gazette* 10th February,
1927, p. 297.

- (c) the Local Court Judge and two justices when sitting as a local court of full jurisdiction; or
- (d) a special magistrate and two justices, when sitting as a local court of full jurisdiction; or
- (e) a special magistrate, when sitting alone as a local court of full jurisdiction; or
- (f) a special magistrate or two justices when sitting as a local court of limited jurisdiction; or
- (g) the Local Court Judge, or a Judge of the Supreme Court when exercising the equitable jurisdiction conferred by Part XII. of this Act; or
- (h) the tribunal, however constituted, which has jurisdiction by consent to hear and determine any action in a local court:

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

“bailiff” includes assistant bailiff:

“clerk” includes assistant clerk:

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

“law” includes equity:

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

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

Arrangement
of Act.

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

PART I.—The establishment and constitution of local courts, the appointment of officers, their functions and duties.

PART II.—The ordinary jurisdiction of local courts and the concurrent jurisdiction of the Supreme Court.

PART III.—Replevin.

PART IV.—*Certiorari*, prohibition, and *mandamus*.

PART V.—Appeals from local courts to the Supreme Court.

PART VI.—The joinder of parties and of causes of action.

PART VII.—The commencement of actions and proceedings to judgment.

PART VIII.—The enforcement of judgments and orders.

PART IX.—Interpleader summonses.

PART X.—The recovery of premises.

PART XI.—The action of ejectment.

PART XII.—Special equitable jurisdiction of Local Court of Adelaide.

PART XIII.—Remedies against debtors about to abscond.

PART XIV.—Commissions and orders for the examination of witnesses.

PART XV.—Court fees and costs.

PART XVI.—Penalties.

PART XVII.—Protection of offices of local courts, and general matters.

PART I.

PART I.

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

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

Continuance
of local courts
already
established.
386, 1886,
s. 6.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 2.

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

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

PART I.

Establishment of additional courts.
Cf. 386, 1886, s. 9.

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

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

Continuance of local court districts.
Cf. *ibid.*, s. 9.

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

Powers of the Governor with respect to local court districts.
Cf. U.K. 24 & 25 Geo. 5 c. 17, s. 1.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 1.

(2) The Governor may, by proclamation—

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

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

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

Transfer of records and business of abolished court.
386, 1886, s. 10.

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

(2) In the event of the defendant, or defendants if more than one, in any action having appeared before such transfer, notice of trial shall be given by the clerk of the court to which

such proceedings have been transferred as if the appearance had been entered in a like action in such local court on the day of such transfer, and in the event of any defendant not having appeared and judgment not having been signed, the defendant shall be allowed the same time for appearance as if the summons had been issued out of the local court to which such transfer has been made and had been served personally on the day of such transfer.

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

Limitation of local courts not to affect right of suitors prior to such limitation.
386, 1886, s. 11.

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

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

Local courts to be courts of record.
Ibid., s. 12.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 1 (1).

12. The special magistrates, clerks of local courts, and bailiffs of local courts, now acting by virtue of an appointment under any law heretofore in force, shall continue to occupy their respective offices during His Majesty's pleasure, but subject to the provisions of this Act and the Public Service Act, 1936.

Present special magistrates, clerks, and bailiffs continued in office.
386, 1886, s. 13.

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

Appointment of local court judge.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 5.

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

s. 11. VAN HEMERT v. ELLIS AND ANOTHER (1868) 2 S.A.L.R. 16; 5 Austr. Digest 43. A local court, being a court of record, has an inherent power of adjournment.

s. 12. The expression "Public Service Act, 1936," has been substituted for "Public Service Acts, 1916 to 1925," pursuant to the Acts Republication Act, 1934.

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

Appointment
of Special
Magistrate.
386, 1886,
s. 14.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 4.

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

Governor may
appoint gaols
for imprison-
ment under
warrant of
local court;
existing
appointments
to continue.
Cf. 386, 1886
s. 15.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 141.

15. The Governor may, from time to time, by proclamation, appoint what common gaols shall be places of imprisonment for persons arrested under warrants issued out of local courts or committed to gaol under the authority of this Act, and from time to time in like manner cancel such appointments, and, in default of such appointment, such persons shall, except in cases for which provision is made by or under the Prisons Act, 1936, be imprisoned in the Adelaide Gaol: Provided that all gaols heretofore so appointed shall, until their appointment is cancelled, or some other appointment in lieu of them is made hereunder, continue to be places of imprisonment in accordance with such appointment for persons so arrested or committed to gaol.

Appointment
of officers.
386, 1886,
s. 16.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 28.

16. Local courts shall have such and so many clerks, bailiffs, and other officers and servants as are necessary for the due administration of justice, who shall be appointed and may be suspended or removed as prescribed by the Public Service Act, 1936.

Clerks and
bailiffs to
give security.
386, 1886,
s. 17.

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

s. 15. The expression "Prisons Act, 1936," has been substituted for "Prison Acts, 1869 to 1925," pursuant to the Acts Republication Act, 1934.

s. 16. The expression "Public Service Act, 1936," has been substituted for "Public Service Acts, 1916 to 1925," pursuant to the Acts Republication Act, 1934.

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

Remuneration of officers.
386, 1886,
s. 18.

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

Offices of the courts, when to be open.
Cf., *ibid.*,
s. 19.

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

Holding of courts.

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

Postponement of court by Attorney-General.
Cf., 386,
1886, s. 20.

21. (1) All actions and matters cognizable under this Act by a local court of full jurisdiction other than actions or matters under Part XII. shall be heard and determined in open court in a summary way, by and before a Judge, or by and before a special magistrate, or by and before a special magistrate and two justices when one of the parties has, in manner prescribed by this Act, demanded that the court should be so constituted.

Constitution of court.
Cf. *ibid.*,
s. 21.
Cf. U.K.
51 & 52 Vict.
c. 43, s. 101.
Cf. U.K.
24 & 25
Geo. 5 c. 17,
s. 17.

(2) All actions and matters cognizable by a local court of full jurisdiction under Part XII. shall be heard and determined in open court by a Judge.

(3) All actions and matters cognizable under this Act by a local court of limited jurisdiction shall be heard and determined in open court in a summary way, by and before the Local Court Judge or a special magistrate or two justices: Provided that a local court of limited jurisdiction shall not

adjudicate upon any matter when the claim or counter-claim exceeds thirty pounds, exclusive of costs.

(4) Several Judges, special magistrates, and justices, or some of them, may sit contemporaneously in different places as the same local court, for the trial of actions pending in such court.

Majority
verdict to be
valid.

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

Where special
magistrate
available
local court
of limited
jurisdiction
not to be
constituted
of justices.
Cf. Justices
Act, 1921,
s. 43.

23. Notwithstanding anything in section 21, if at any place where it is desired to hold a local court of limited jurisdiction there is a special magistrate present who is competent and willing to act, then such local court shall be constituted of such special magistrate and not of two justices.

Jurisdiction
by consent
where court
defective
owing to
absence of a
member.
Cf. 386,
1886, s. 24.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
ss. 38, 43, 53.

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

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

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

Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 36 (2).

(4) If such consent is not obtained, or if there is no Judge, special magistrate, or justice or justices present, the justice or justices present in the one case, or the clerk of the court in the other, shall adjourn the court to such a day as may be deemed convenient, and shall enter in the minute book a memorandum of such adjournment and the cause thereof.

s. 22. OFFLER v. BAGOT (1883) 18 S.A.L.R. 1; 11 Austn. Digest 517. In the absence of statutory provisions to the contrary, justices constituting a local court must give unanimous judgments.

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

- I. He shall preside at every local court of full jurisdiction in which he sits with two justices, and shall determine all questions of law arising in any action or matter before such court;

Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 72.

Powers and
duties of
Judge and
special
magistrate.
Cf. 386, 1886,
s. 25.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 87.

- II. On the application of any party to an action or matter, he may—

To preside at
courts.

- (a) make an order for the inspection of such documents as it then appears to him the party applying is legally or equitably entitled to inspect;

To order dis-
covery or
inspection.

- (b) order that any other party, or if such other party is a body corporate, that some specified officer of such body corporate, do make discovery on oath or otherwise of the documents which are, or have been, in the possession or power of such other party relating to any question in the action or matter. Such order may be either general or limited to such classes of documents or such particular documents as he may think fit, but in no case shall he make any such order unless the same is in his opinion necessary for disposing fairly of the action or matter or for saving costs: The party making discovery shall produce to the other party for inspection all such documents as aforesaid; and

- (c) order that any other party, or if such other party is a body corporate, that some specified officer, of such body corporate, do answer by affidavit such interrogatories in writing relating to any question in the cause or matter as he thinks proper to administer. In no case shall he make any such order unless the order is in his opinion necessary for disposing fairly of the action or matter or for saving costs;

s. 25. (1) I. BLOOD v. BARLOW (1907) S.A.L.R. 136; 11 Austn. Digest 518. In an action for libel the special magistrate must rule whether the occasion was privileged, and if he rules that it was, he and the justices should decide whether the privilege was exceeded. The magistrate must decide whether there was any evidence of malice, and if he rules that there is, he and the justices must decide whether there was malice in fact. Justification is a question for the magistrate and the justices.

PART I.

To postpone
hearing.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 36 (1).

III. He may, before or at the hearing of any action or matter, order the adjournment of the hearing upon any terms he may think fit;

To order
re-service of
summons.

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

To set aside
judgment by
default.

V. He may—

(a) extend the time for taking any step in any action, on such terms as he may think fit;

(b) set aside any judgment by default of entering an appearance or attending at the hearing; and

Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 119.

(c) suspend any execution;

To amend
pleadings.

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

To re-instate
action
struck out.

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

To order
interlocutory
summons to
be heard at
another
court.

VIII. He may, in the case of an interlocutory summons issued out of a local court within a particular local court district, make the summons returnable to be heard by him or any Judge or special magistrate at such place in that or any other local court district, and at such time, and upon such terms as to costs or otherwise, as he thinks proper;

To review
decision of
clerk.

IX. He may review any act or decision of the clerk of his court;

s. 25. (1) III. VAN HEMERT V. ELLIS AND ANOTHER (1868) 2 S.A.L.R. 16; 5 Austn. Digest 43. A local court, being a court of record, has an inherent power of adjournment.

s. 25. (1) V. LUTZ V. GOERS (1931) S.A.S.R. 366; 11 Austn. Digest 514. A judgment obtained by default of appearance should not be set aside unless the court or special magistrate believes that the defendant has a *bona fide* defence which he desires to put before the court. Other principles governing the setting aside of default judgments, considered.

s. 25. (1) VIII. BEARE V. BECKMANN (1868) 2 S.A.L.R. 30; 11 Austn. Digest 513. Held under the Local Court Act, 1861, that an interlocutory summons need not necessarily be returnable at the place where the court in which the action is pending is situated. It is, however, desirable to make summonses returnable at that place.

PART I.

- x. He may authorise a bailiff of the court to act as appraiser or auctioneer for the purpose of valuing or selling any goods, chattels, or effects taken in execution under process of a local court, and the person so authorised may, without other licence in that behalf, do and perform all the duties of appraiser or auctioneer, as the case may be;
- xi. He may in any case, on the application of the party interested, appoint a special bailiff for the purpose of serving any process of the court, or for the purpose of executing any warrant against the goods or lands, or for the apprehension or committal, of the person named in any warrant;
- xii. He may temporarily appoint any fit person to act as clerk or bailiff of the court in case of the death, suspension, removal, illness, or absence of any clerk or bailiff;
- xiii. He shall, on such terms as he may think fit, amend all defects and errors in any proceeding; and
- xiv. He may do all other matters necessary to carry out this Act.

To authorise bailiff to sell by auction.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 128.

To appoint special bailiff.

To appoint a temporary clerk.

Other powers.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 88.

(2) Where a party has in manner prescribed by this Act demanded that the local court of full jurisdiction hearing any action or matter shall be constituted of a special magistrate and two justices, the Local Court Judge may sit with two justices to constitute a local court of full jurisdiction.

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

26. (1) The clerk of each local court, in addition to the other duties imposed by this Act, shall have the custody of all books, records, processes, and other proceedings of the court, and of the seal of the court, and shall have an office at or near to the place where the court is held, at which the business of the clerk of the court shall be transacted, and at which shall be kept the record book and minute book hereinafter mentioned, and where all proceedings shall be entered of record, and all summonses and

Duties of clerk.
Of. 386, 1886,
s. 26.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 23.
Office of clerk.

- s. 25. (1) *XIII. WIGNELL v. DISTRICT COUNCIL OF BEACHPORT* (1911) S.A.L.R. 110; 11 Austn. Digest 513. The power to amend defects and errors is not an arbitrary but a judicial discretion which must be exercised on judicial grounds.
- s. 26. *NALTY v. HOWELL AND ANOTHER* (1929) S.A.S.R. 23; 11 Austn. Digest 502. The clerk of a local court, who issues a warrant in pursuance of his duty, is not responsible for the wrongful execution thereof.

other processes shall be issued, and all moneys shall be received into and paid out of court.

(2) The clerk of each local court shall also have the following specific duties:—

To keep
record book.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 23.

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

To keep
Minute Book.

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

To deliver
process to
bailiff.

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

To enter
services and
returns in
record book.

IV. He shall forthwith after receiving the duplicate of any summons issued by him from the bailiff or the clerk of any other court, enter in the record book the date of the service, or the report of non-service, and the cause thereof:

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

V. He shall forthwith after receiving from the bailiff the duplicate of any summons or any warrant forwarded

from any other court for service or execution, return the same to the clerk of the court from which it was received:

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

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

- viii. When a warrant of execution has been issued against the goods and chattels, or against the lands, of any person at a distance from the court, or a warrant for the commitment of any such person has been issued, the clerk shall send such warrant to the clerk of the local court nearest to the place where such person, or his lands, goods, and chattels shall then be, or be believed to be, requiring execution of the same: To forward warrant to clerk of nearest court for execution.

- ix. When a warrant of execution, or a warrant of commitment, is sent by the clerk of any other local court, the clerk receiving the same shall notify thereon the date of its receipt, and shall seal or stamp it with the seal of his court, and shall deliver it to the bailiff of his court: To notify receipt of warrants.

- x. He shall make a minute of the precise time when he was requested to issue any warrant against the goods and chattels, or against the lands of any person, and he shall notify the same on the warrant: To note time when warrants applied for.
Of. U.K. 24 & 25
Geo. 5 c. 53, s. 116 (3).

- xi. Where more than one warrant of execution against the goods and chattels, or against the lands, of any party is taken out, he shall deliver such warrants to the bailiff in the order in which they were taken out: To deliver warrants in rotation.
Of. U.K. 24 & 25
Geo. 5 c. 53, s. 116 (3).

- xii. He shall cause all summonses, notices, warrants, and other documents proceeding from the court of which he is clerk, to be sealed or stamped with the seal of his court: To affix seal to all documents.
Of. U.K. 24 & 25
Geo. 5 c. 53, s. 176.

- xiii. He shall deliver all summonses, subpoenas, and notices proceeding from the court of which he is clerk, to To deliver summonses, etc., to bailiff in order of issue.

PART I.

the bailiff of such court (if required to be served by him), in the order in which they were issued:

To keep books of account, and make returns.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 170.

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

Duties of bailiff.
386, 1886,
s. 27.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 144.

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

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

To examine summonses.

- i. He shall cause all summonses delivered to him for service to be examined, to enable the correctness thereof to be proved; and he shall cause all summonses to be served on the respective defendants as soon as practicable after their delivery to him by the clerk of the court and, in case of their non-service within a week, he shall as soon as possible thereafter report such non-service and the cause thereof to the clerk of the court:

To indorse service.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 175 (1).

- ii. He shall, forthwith after service of any summons, indorse on the duplicate summons the day of the month and year of such service, and shall, as soon as practicable after service, swear an affidavit of such service:

To serve summonses in order in which he received them.

- iii. When more than one summons, subpoena, or notice directed to any person has been delivered to him to serve, he shall serve them in the order in which they were delivered to him:

To execute warrants, and make returns of same.

- iv. He shall cause to be executed every warrant of execution against goods and chattels, or against lands, or any warrant of commitment, within five days, or

s. 27. (2) iv. In *re* ELIZABETH BRISTOWE, an insolvent (1913) S.A.L.R. 44. Paragraph iv. is mandatory. A warrant of execution should not be sent from the court direct to an assistant bailiff, but should go first to the bailiff. A return signed by an assistant bailiff is not properly signed. Where the judgment is not satisfied in full, the return to the warrant of execution must show whether the judgment debtor had no goods at all, or insufficient goods to meet the debt.

sooner if required by the clerk of the court, after receiving such warrant from him, and shall indorse on every warrant the time and mode of executing the same, and the several amounts received and disbursed or retained on account thereof; and in case of non-execution, he shall report to the clerk of the court such fact and the cause thereof:

- v. Where more than one warrant against the goods and chattels, or against the lands, of any person has been delivered to him, he shall execute such warrants in the order in which they were delivered to him:

To execute warrants in rotation.

- vi. He shall, immediately after the receipt of any money levied or received by virtue of his office, pay over the same to the clerk of the court:

To pay over money.

- vii. He shall be responsible for all the acts and defaults of himself and his assistant bailiffs, in like manner as the sheriff of the State is responsible for the acts and defaults of himself and his officers.

To be responsible for wrongful acts.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 144.

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

Power to make rules of court.
Cf. 386, 1886, s. 28.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 99.

- i. Regulating the pleading, practice, and procedure in local courts;
- ii. Prescribing the mode of keeping entries and accounts kept by clerks of local courts;
- iii. Prescribing forms for use in local courts; and
- iv. Generally with respect to the duties of the officers of local courts or to the costs of proceedings or allowances to witnesses therein, or to the fees and costs to be allowed to practitioners in local courts, or to the execution of the process of local courts.

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

S. 28. *THE MUNICIPAL TRAMWAYS TRUST V. LAPIDGE* (1929) S.A.S.R. 71; 11 Austn. Digest 522. A rule of court empowering the court to award costs at a rate higher than the scale in the Act, held to be valid.

PART I.

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

References
to local court
in Acts not
repealed.

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

Saving of
rules under
unrepealed
Acts.

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

Forms may be
altered.
Cf., 386,
1886, s. 29.

30. It shall not be necessary that the forms in force under the provisions of this Act, or any rules of court made thereunder, shall be strictly adhered to; and any such forms may be altered or amended by a Judge, special magistrate, or clerk of the court, to meet the exigency of a particular case.

PART II.

PART II.

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

Jurisdiction
of courts of
full jurisdic-
tion.

Cf. 386, 1886,
s. 30.
Cf. U.K.
24 & 25
Geo. 5 c. 17,
s. 5.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 40.

Amended by
2244, 1935,
s. 3.

31. Every local court of full jurisdiction shall have jurisdiction to hear and determine:—

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

s. 31. *ANDERSON v. LOUTIT* (1868) 2 S.A.L.R. 19. Held that a local court had jurisdiction to hear an action arising out of an assault committed on the high seas, where the defendant was resident in South Australia at the time when the action was brought.

NIMMO v. PETERS (1870) 4 S.A.L.R. 11; 11 Austr. Digest 507. Held (under section 23 of the Local Court Act, 1861, which limited the jurisdiction of local courts to

- ii. All actions for the recovery of any sum, not exceeding seven hundred and fifty pounds, which is the whole or part of the unliquidated balance of a partnership account:
- iii. All actions for the recovery of any sum not exceeding seven hundred and fifty pounds, which is the amount or part of the amount of a distributive share under an intestacy, or which is the amount or part of the amount, of any legacy under a will:
- iv. All unsatisfied judgment summonses issued in any local court, whatever the amount of the judgment may be.

32. Every local court of limited jurisdiction shall have jurisdiction to hear and determine:—

Jurisdiction of courts of limited jurisdiction.

Cf. 386, 1886, s. 31.

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

s. 31. £100) that a local court had jurisdiction where the amount specified in the claim was under £100 as a result of payment of part of a larger sum than £100.

(contd.)

LAWRIE v. CHICK (1929) S.A.S.R. 47; 11 Austn. Digest 511. Local courts have jurisdiction in causes of action arising in the State, although at the commencement of the action plaintiff and defendant are both resident outside the State.

MOORE v. DIMOND (1929) S.A.S.R. 274; 11 Austn. Digest 508; reversed on other grounds by **MOORE v. DIMOND** 43 C.L.R. 105; 3 A.L.J. 354; 36 A.L.R. 341. The local court has no jurisdiction (apart from Part XII.) to entertain a claim for rent payable as an equitable debt under an agreement for a lease.

JOHN AND ANOTHER v. COLES AND ANOTHER (1931) S.A.S.R. 416; 8 Austn. Digest 54. Notwithstanding a local court judgment, proceedings for equitable relief on the same grounds may be taken in the Supreme Court.

ALTMANN v. BECKER (1932) S.A.S.R. 26; 11 Austn. Digest 507. Held, that the Act does not prevent a plaintiff, who has joined several causes of action against the same defendant, from claiming up to the limit of the court's jurisdiction in respect of each separate cause of action, and then concluding with a statement that he abandons any excess over such limit.

iv. All unsatisfied judgment summonses issued in any local court, whatever the amount of the judgment may be.

Court to have jurisdiction to any amount, by consent.
386, 1886, s. 32.
Cf. U.K. 24 & 25 Geo. 5 c. 53, ss. 38, 43, 53.

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

Jurisdiction on consent to special procedure.

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

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

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

Cf. U.K. 24 & 25 Geo. 5 c. 17, s. 8.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 46.

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

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

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

s. 35. SCHMERL V. BERRIMAN (1936) S.A.S.R. 304. As a rule of practice an application to remit an action from the Supreme Court to a local court for trial should be made not later than a week after filing the defence.

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

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

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

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

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

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

Cf. 386, 1886, s. 33.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 71.

37. It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more actions in any of the said courts; but any plaintiff having cause of action for more than the sum for which a claim might be filed under this Act may abandon the excess by entering such abandonment in or at the end of his claim, and thereupon the plaintiff shall, on proving his case,

Plaintiff not to divide cause of action.

Cf. 386, 1886, s. 34.
Cf. U.K. 24 & 25 Geo. 5 c. 53, ss. 42, 67.

s. 36. *SHAW V. BAKER AND OTHERS* (1885) 19 S.A.L.R. 69; 11 Austn. Digest 508. Held a local court has no jurisdiction to give relief in spite of a written contract where there is no fraud. Jurisdiction of local courts discussed.

DOUGLAS V. HILL (1909) S.A.L.R. 28; 11 Austn. Digest 510. S. 36 applies to equitable doctrines and not mere rules of practice. A local court has the like power to entertain a claim for damages for breach of an agreement which could have been specifically enforced, as the Supreme Court had under s. 20 of the Equity Act 20, 1866-7 (now s. 26 of the Supreme Court Act, 1935).

MOORE V. DIMOND (1929) S.A.S.R. 274; 11 Austn. Digest 508; reversed on other grounds by *MOORE V. DIMOND* 43 C.L.R. 105; 3 A.L.J. 354; 36 A.L.R. 341. A local court has no jurisdiction (apart from Part XII.) to entertain a claim for rent payable as an equitable debt under an agreement for a lease.

GOWER V. WAPLES (1930) S.A.S.R. 120; 11 Austn. Digest 515. S. 36 requires a local court to apply the equitable rules relating to estoppel, in a proper case.

s. 37. *ALTMANN V. BECKER* (1932) S.A.S.R. 26; 11 Austn. Digest 507. Held, that the Act does not prevent a plaintiff, who has joined several causes of action against the same defendant, from claiming up to the limit of the court's jurisdiction in respect of each separate cause of action and then concluding with a statement that he abandons any excess over such limit.

recover an amount not exceeding the sum competent to be awarded by such court; and the judgment of the court upon such claim shall be in full discharge of all claims in respect of such cause of action, and entry of judgment shall be made accordingly.

Defendant not
to divide
set-off.
Cf. 386, 1886,
s. 35.

38. Where the defendant relies upon a set-off or counter-claim he shall not divide any cause of action which he may have against any plaintiff for the purpose of such set-off or counter-claim, but any defendant having a set-off or counter-claim for more than the sum for which a claim may be made under this Act may abandon the excess by entering such abandonment in or at the end of his defence or counter-claim, and thereupon may, on proving his set-off or counter-claim, recover or be allowed an amount not exceeding the sum competent to be awarded by the court, and the judgment of the court upon such set-off or counter-claim shall be in full discharge of all demands in respect of the same.

Exceptions
from jurisdic-
tion.
386, 1886,
s. 36.
Cf. U.K.
51 & 52
Vict. c. 43,
s. 60;
24 & 25
Geo. 5 c. 53,
s. 51.

39. (1) A local court of full jurisdiction shall, but a local court of limited jurisdiction shall not, have cognizance of any action in which the title to any corporeal or incorporeal hereditament or easement incidentally comes in issue, or in which the validity or effect of any devise, bequest, or limitation, under any will or settlement, or document in the nature of a settlement, may be disputed.

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

Supreme
Court may
order certain
actions to be
tried in
local courts.
Cf. 386, 1886,
s. 37.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 45.
Amended by
2244, 1935,
s. 4.

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

s. 40. *ETTRIDGE V. VERMIN BOARD OF THE DISTRICT OF MURAT BAY* (1928) S.A.S.R. 124; 11 Austn. Digest 542. Proceedings in a local court in an action remitted by the Supreme Court are in the nature of an inquest *at nisi prius*. Explanation of procedure for reviewing certificate of local court.

by and before any local court of full jurisdiction which he names.

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

U.K. 24 & 25
Geo. 5 c. 53,
s. 74.

41. (1) When in any action of contract brought in the Supreme Court the amount claimed by the plaintiff is reduced by payment into court, under such circumstances that the plaintiff is entitled to have the money so paid into court paid out to him on his request, to a sum not exceeding seven hundred and fifty pounds, it shall be lawful for the plaintiff to accept such sum in bar of the further maintenance of the action, and thereupon to file in the office of the Master of the Supreme Court a notice intituled in the action that he claims a further sum, that the amount so claimed is within the jurisdiction of a local court, and that he abandons all further proceedings in the said action.

Amount
claimed in
Supreme
Court reduced
by payment
into court.
Of. 386, 1886,
s. 38.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 45.

Amended by
2244, 1935,
s. 5.

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

(3) After the filing and service of such notice the plaintiff may sue for the residue of the amount claimed by him in such action in a local court of competent jurisdiction.

Plaintiff
may sue for
balance of
claim in local
court.
386, 1886,
s. 39.

(4) If the money paid into court, in any such action in the Supreme Court, is paid into court with a defence setting up a tender of the sum paid into court, then the plaintiff shall not tax his costs of action until the question raised by such defence is decided, and such plaintiff may join issue on such defence, and thereupon he shall lodge with the clerk of the local court wherein he has sued for the residue of such amount, a copy, certified by the Master of the Supreme Court,

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

of all the pleadings, filed in such action, and such court shall try the issue thus raised, and shall notify the result of such trial to the Master of the Supreme Court, and judgment in accordance with such certificate may be signed in the Supreme Court.

Plaintiff
suing in
Supreme
Court not
to recover
costs in
certain
cases.
Cf. 386, 1886,
s. 40.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 47.

Amended by
2244, 1935,
s. 6.

Substituted
by 2244,
1935, s. 6.

42. (1) In every action in the Supreme Court for any cause within the jurisdiction of any local court, except actions removed into the Supreme Court by a defendant, being in covenant, debt, or assumpsit where the plaintiff recovers a sum not exceeding seven hundred and fifty pounds, or being in trespass, detinue, trover, or case where the plaintiff recovers a sum not exceeding one hundred and fifty pounds, such plaintiff shall have judgment to recover such sum only and no costs unless the Judge trying the action, or, if there was no trial, a Judge of the Supreme Court in Chambers otherwise orders.

(2) If such Judge is of opinion that having regard to all the circumstances of the case it is just that the plaintiff should recover the whole or any part of the costs of the action, he may order the defendant to pay such costs to the plaintiff as he deems just.

- s. 42. LUNN v. KILSBY (1919) S.A.S.R. 358; 4 Austn. Digest 1066. Action for slander. Judgment for £75. Costs allowed on the ground of the serious nature of the case.
- SCOTT v. MUNICIPAL TRAMWAYS TRUST AND OTHERS (1920) S.A.L.R. 442; 4 Austn. Digest 1063. Action for wrongful arrest and false imprisonment. Verdict for £75. Costs allowed owing to difficulty of the case in point of law and the conflict and complexity of the evidence.
- DUNCAN v. HYLAND (1922) S.A.S.R. 475; 4 Austn. Digest 1062. Action for negligence in driving motor vehicle. Verdict £100. Costs not allowed where there were no special difficulties.
- MILES v. PATTERSON (1923) S.A.S.R. 470; 4 Austn. Digest 1064. Action for breach of contract of marriage. Verdict for £300. Costs not allowed where:—(a) There were no special difficulties of law or fact; (b) the power of discovery of documents in the local court would have been sufficient for the plaintiff's purposes; (c) there were no reasonable expectations that the plaintiff could recover greater damages than the local court could award; (d) there was no reasonable apprehension that the plaintiff would not get a fair trial in the local court.
- DUBOIS v. SINCLAIR (1929) S.A.S.R. 497; 4 Austn. Digest 1063. Action for breach of contract. Judgment for £189. Costs not allowed where the only apparent reason for bringing the action in the Supreme Court was that £1,400 was claimed.
- BULL v. LAING (1929) S.A.S.R. 65. Action for wrongful arrest and false imprisonment. Damages £50. Costs allowed as there was a substantial point of law involved.
- GRAY v. CHILMAN (1935) S.A.S.R. 359. Action for slander. Judgment for £75. Costs not allowed. Held that the following circumstances did not justify the allowance of costs:—(a) The position or occupations of the parties; (b) the possibility that the trial in the local court would be before a special magistrate with justices of the peace; (c) the length of the case; (d) the issues of fact and law were not complex; and (e) differences in the practice between the Supreme Court and the local court in allowing interrogatories.

PART III.

REPLEVIN.

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

Replevin may be brought by plaint in local court nearest to place of seizure.
Cf. 386, 1886, s. 43.
Cf. U.K. 51 & 52 Vict. c. 42, s. 133.

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

Clerks of local courts to grant replevin.
386, 1886, s. 44.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 101 (1).

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

Party distrained upon to give security.
386, 1886, s. 45.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 101 (2).

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

Action of replevin may be commenced in Supreme Court.
386, 1886, s. 46.

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

Conditions of security to be given in such cases.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 102.

PART III.

Conditions of security when action of replevin is brought in local court.

Cf. 386, 1886, s. 47.

47. If the replevisor wishes to commence proceedings in a local court he shall, at the time of replevying, give security to be approved of by the clerk of such court for such amount as such clerk deems sufficient to cover the alleged rent or damage in respect of which the distress has been made, or if the goods replevied have been seized otherwise than under colour of distress, the value of the goods and the probable costs of the action in the local court, conditioned to commence an action of replevin against the seizer in the local court nearest to the place where the seizure has been made within one month from the date of the security, and to prosecute such action with effect and without delay, and to make return of the goods, if a return thereof should be adjudged.

PART IV.

PART IV.

CERTIORARI, PROHIBITION, AND MANDAMUS.

Certain writs not to issue.

386, 1886, s. 64.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 104.

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

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

Cf. 386, 1886, ss. 64, 66.
Cf. U.K. 24 & 25 Geo. 5 c. 53, ss. 111-114.

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

s. 49. *WHITING v. WHITE* (1868) 2 S.A.L.R. 13. Held, under the Local Court Act, 1861, that prohibition did not lie in respect of a matter collateral to the action, such as the taxation of costs.

WATTS v. GIESECKE AND OTHERS (1870) 4 S.A.L.R. 123; 11 Austn. Digest 533. Held under the Local Court Act, 1861, that where a local court made an order without jurisdiction, no appeal lay but prohibition (which could be issued under the Act of 1861) was the proper remedy.

TASSIE & Co. v. GUNTER AND ROBERTSON (1873) 7 S.A.L.R. 26. Held under the Local Court Act, 1861, that *certiorari* should not be granted where the points relied on for removal could all be taken on appeal to the court to which the cause was proposed to be removed.

ELLIS v. BUTLER (1887) 21 S.A.L.R. 136; 11 Austn. Digest 504; *FOWLER v. HOPKINS* (1888) 22 S.A.L.R. 117; 10 A.L.T. 206. Before the enactment of s. 49 (3), the provision for objections to jurisdiction in s. 115, did not affect the power of the Supreme Court to grant prohibition. (*Semble*, prohibition can still be granted where the want of jurisdiction in the local court depends on some ground other than the fact that the action has not been commenced in the court prescribed by s. 114.)

FLETCHER v. THE S.A. STEVEDORING Co., LTD. (1890-91) 24 S.A.L.R. 54; 11 Austn. Digest, 525, 526. Ordered that an action under the Employers Liability Acts, in

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

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

50. The order to show cause shall be directed to and served upon the particular local court or officer thereof concerned and the party to be affected or his solicitor, but service on the clerk of a local court or the special magistrate constituting or presiding over a local court shall be deemed service on that local court. Service of order.

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

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

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

s. 49. which £490 was claimed and a difficult question of law arose, should be removed from the local court to the Supreme Court. (contd.)

HANSON v. BOTTEN (1905) S.A.L.R. 113; 11 Austn. Digest 522. Order in the nature of prohibition made to prevent a local court from allowing costs in excess of the amount fixed by the schedule to the Act. [But see s. 295 (2).]

MANUEL v. WHYBROW (1911) S.A.L.R. 13. Where an order for interrogatories was made under the Local Courts Act, 1886, and there was no right of appeal, the court intimated that prohibition was the proper remedy.

In *re* an action in the Local Court of Naracoorte; BENNETT v. BENNETT (1925) S.A.S.R. 137; 11 Austn. Digest 526. Where an important question of fact in the local court action was the same as that in an action in the Supreme Court between the same parties, the court ordered that the local court action be removed to the Supreme Court.

Ex parte JEFFREY; In *re* the LOCAL COURT OF ADELAIDE; JEFFREY v. ADELAIDE DEVELOPMENT COMPANY LIMITED (1932) S.A.S.R. 453; 11 Austn. Digest 528. Where the amount of costs payable on a judgment was settled by the special magistrate after a judicial hearing, held that prohibition would not lie to prevent proceedings for enforcing the payment of such costs.

PART IV.

Action commenced in local court may be removed into Supreme Court.

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

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

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

Refusal of order by Supreme Court or Judge to be final.

Of. 386, 1886, s. 68.
Of. U.K. 24 & 25 Geo. 5 c. 53, s. 115.

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

No other jurisdiction in Supreme Court over local court matters.
386, 1886, s. 78.

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

PART V.

PART V.

APPEALS FROM LOCAL COURTS TO THE SUPREME COURT.

Local court may reserve question of law for Supreme Court.
Of. 386, 1886, s. 69.

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

s. 57. *BODLEY V. MURRAY AND OTHERS* (1884) 18 S.A.L.R. 38; 11 Austn. Digest 516. The case reserving a question of law must be sent up from the local court itself, and not from chambers.

HOOPER V. HOLDEN (1885) 19 S.A.L.R. 100; 11 Austn. Digest 516. In a case stated by a local court, any proposed reasons for judgment or other argumentative matter, should, if included, be clearly separated from the statement of the point of law reserved.

DISTRICT COUNCIL OF PENOLA V. HOGGARTH (1889) 23 S.A.L.R. 65; 11 Austn. Digest 516. A local court has no power to reserve for the opinion of the Supreme Court a question of law arising in any proceeding in a local court not being an action; but a special Act may confer such a power.

SEIDEL V. STEICKE (1923) S.A.S.R. 214; 11 Austn. Digest 503. A local court may state a special case on a point of law arising out of an objection to the jurisdiction.

MOORE V. DIMOND (1929) 43 C.L.R. 105; 36 A.L.R. 341; 11 Austn. Digest 516. The Act does not enable the Supreme Court to draw inferences of fact upon a case stated under s. 57. The court, therefore, must deduce from the case and documents attached to it, what the local court meant to state as the ultimate as distinct from the evidentiary facts, and must decide what is their legal effect.

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

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

Appeal from local court to Supreme Court.

Cf. 386, 1886, s. 70.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 105.

- (a) in any action in which the amount of the claim or counter-claim exceeds thirty pounds; or
- (b) in any action of replevin where the amount of the rent or damage, or, if the goods have been seized otherwise than under colour of distress, the value of the goods, exceeds thirty pounds; or
- (c) in any action for the recovery of premises where the yearly rent of the premises exceeds thirty pounds; or
- (d) in proceedings in interpleader where the amount claimed, or the value of the goods in question, or of the proceeds thereof, exceeds thirty pounds; or
- (e) in any action of ejectment under Part XI.; or
- (f) in any action under Part XII.,

may appeal to the Supreme Court.

s. 58. *HOOKE v. MCCOY* (1870) 4 S.A.L.R. 62; 11 Austn. Digest 533. The right of a defendant to appeal depends on the amount claimed and not the amount of the judgment.

RANDALL v. ACRAMAN (1871) 5 S.A.L.R. 69; 11 Austn. Digest 536. Where an entry was made in the record-book of a local court of a judgment "subject to a point reserved, case to be stated within a week" held that the entry was not a final judgment even though the case was not stated.

THE BANK OF SOUTH AUSTRALIA v. HULBERT (1877) 11 S.A.L.R. 60; 11 Austn. Digest 533. A plaintiff cannot by claiming a larger sum than £30 obtain a right of appeal where the maximum sum which he could have recovered is less than that amount.

WHITE v. MULES (1879) 12 S.A.L.R. 170; 11 Austn. Digest 533. There is a right of appeal where the claim exceeds £30 although the plaintiff may have admitted that the value of his claim was less than £30.

TAYLOR v. HARROP S.A. *Register* (newspr.) 9th May, 1894. Where a local court refused to hear a case on the ground that it had no jurisdiction, held that the court had made a final determination on a point of law from which an appeal lay.

COMMISSIONER OF TAXES v. ROONEY (1936) S.A.S.R. 289. S. 58 does not confer a right of appeal to the Supreme Court from a local court sitting as a court of appeal under Division V. of Part IX. of the Taxation Act, 1927 (now superseded by Part V. of the Income Tax Assessment Act, 1936).

ALTMANN v. BECKER (1932) S.A.S.R. 26; 11 Austn. Digest 535. Where a magistrate refused leave to appeal against an order for further and better answers to interrogatories, held, that a judge of the Supreme Court could grant leave. An appeal lies against an order for further and better answers.

See also *WATTS v. GIESECHE AND OTHERS; TASSIE & Co. v. GUNTER AND ROBERTSON*, supra p. 646.

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

Notice of
appeal.
Cf. 386, 1886,
ss. 70, 71,
72.

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

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

Appellant to
obtain order
to show
cause.
Cf. 386, 1886,
s. 70.

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

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

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

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

s. 58. (2) *BLUSTON v. DALLY* (1930) S.A.S.R. 89; 11 Austn. Digest 535. The discretion of the local court in allowing or disallowing interrogatories will only be interfered with when on strong grounds a case for interference is clearly made out.

METROPOLITAN ABATTOIRS BOARD v. SCHOLZ (1927) S.A.S.R. 444; 11 Austn. Digest 535. The Supreme Court may grant leave to appeal against an interlocutory order notwithstanding that an application for the same purpose has been made unsuccessfully to the magistrate.

s. 59. *TAYLOR v. RAMSAY* (1884) 18 S.A.L.R. 47; 6 A.L.T. 4; 11 Austn. Digest 530. Held (under Local Courts Act, 1886, s. 58) that a notice of appeal could be given by telegraph.

JOHNS v. POWELL (1930) S.A.S.R. 230; 11 Austn. Digest 536. Held, that a notice of appeal which, though irregular in form, informed the respondent of appellant's intention, was sufficient.

shall have and be subject to the same rights, duties, and liabilities as the appellant in respect of his appeal.

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

Order may be granted on terms.

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

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

Time for obtaining order may be enlarged.

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

Powers of the Supreme Court on hearing of appeal.

Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 109.

Amended by 2244, 1935, s. 7.

(a) draw all inferences of fact which might have been drawn by the local court appealed from:

(b) order a new trial on such terms as it or he thinks fit, and may make such order on the ground of surprise:

(c) order judgment to be entered for any party:

(d) make any other order, on such terms as it thinks fit or proper to ensure the determination on the merits of the real questions in controversy between the parties :

(e) make such order with respect to the costs of the appeal as it thinks proper:

(f) amend the order to show cause or notice of intention to cross-appeal.

Where the appeal has been heard by a single Judge, any party aggrieved by any order made by the Judge on the appeal may, by leave of that Judge or of the Full Court, but not otherwise, appeal against that order to the Full Court; and on such further appeal the Full Court shall have all the powers which it has when an appeal from a local court is heard by the Full Court in the first instance.

s. 61. O'CALLAGHAN v. DUHST AND ANOTHER (1931) S.A.S.R. 369; 11 Austn. Digest 541. The Supreme Court has inherent jurisdiction to order an appellant to give security for costs, even after the order *nisi* has been granted. Where the appellant is wholly without means it is proper to order him to give security for costs.

s. 63. FULLARTON v. O'LEARY (1871) 5 S.A.L.R. 3; 11 Austn. Digest 527. Held (under section 61 of the Local Court Act, 1861) that the power of the Supreme Court not to interfere on appeal if substantial justice had been done, applied only if some technical question of law involving no important principle had been wrongly

PART V.

Of. 886, 1886,
s. 75.

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

s. 63. decided, but did not allow a departure from a rule of law such as that a deed
(contd.) could not be contradicted by parol evidence.

SHAW V. BAKER AND OTHERS (1885) 19 S.A.L.R. 69; 11 Austn. Digest 528. The decision in FULLARTON V. O'LEARY (1885) 19 S.A.L.R. 69 as to the meaning of "substantial justice between the parties" approved.

LENNARD V. DISTRICT COUNCIL OF NARACOOORTE (1924) S.A.S.R. 407. Where a magistrate has wrongly held that there is evidence to give to the jury and the defendant leads further evidence and on the whole evidence there is a case for a jury and no misdirection, the appellant cannot on appeal, contend that although the judgment is not wrong he is entitled to a judgment or non-suit on the evidence as it stood at the close of the plaintiff's case.

FARMERS AND SETTLERS CO-OPERATIVE INSURANCE COMPANY OF AUSTRALIA LIMITED V. LUTZ (1924) S.A.S.R. 84; 11 Austn. Digest 537. Where, if the case were remitted to the local court for re-trial the local court could only arrive at a conclusion in favour of the appellant, the court on appeal will order judgment to be entered for the appellant.

HAIG V. CHESNEY (1925) S.A.S.R. 82; 11 Austn. Digest 532. The fact that the judgment of a local court only concerns a small sum is no ground for dismissing an appeal on the ground that substantial justice has been done.

TRIMPER V. FRAHN (1925) S.A.S.R. 347. The fact that an insufficiently stamped document was received in evidence, is not a ground for holding that substantial justice was not done.

GRAVES V. WALKOM (1926) S.A.S.R. 34. Where the local court excluded evidence of a regulation which on the facts proved might have applied to the case, held that substantial justice had not been done.

HEWETT V. SMITH (1927) S.A.S.R. 338; 11 Austn. Digest 529. Failure to appoint a guardian *ad litem* of an infant is a ground for setting aside a judgment obtained against the infant.

MCGREGOR V. ROWLEY (1928) S.A.S.R. 67; 11 Austn. Digest 531. An appeal from a local court is governed by the same principles as an appeal to the Full Court from a judge of first instance. The appeal is on facts and law and the rule in DEARMAN V. DEARMAN (1908) 7 C.L.R. applies. Decision of the local court as to amount of damages upheld.

GREATER ADELAIDE LAND DEVELOPMENT CO. LTD. V. HAMILTON (1930) S.A.S.R. 114; 11 Austn. Digest 531. The appeal under the Local Courts Act is not a re-hearing except so far as the right to order fresh evidence to be taken amounts to a re-hearing. The law to be applied by the court on appeal is that in force at the time of the original hearing.

FALKENBERG V. THE SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1930) S.A.S.R. 246; 11 Austn. Digest 532. Where an appeal was heard by a single judge, held there was no further right of appeal to the Full Court. (An appeal to Full Court now given by Local Courts Act Amendment Act, 1935, s. 7, which amended s. 63 (1) for that purpose.)

O'CALLAGHAN V. DUHST (1931) S.A.S.R. 369; 11 Austn. Digest 536. The Supreme Court has power under the Supreme Court Act, 1878, s. 4 (see Supreme Court Act, 1935, ss. 3, 64), to regulate the practice on appeals as it thinks proper.

POHLNER V. THE ADELAIDE DEVELOPMENT COMPANY LIMITED (1932) S.A.S.R. 346. On appeal, the defendant was allowed to amend his defence and plead illegality based on fresh evidence discovered after the trial in the local court; leave to amend the counter-claim refused.

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

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

Signed copy of evidence and special magistrate's notes to be used on appeal.
Cf. 386, 1886, s. 128.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 108 (2).

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

Duty of clerk of local court after receiving notice of appeal.

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

Costs of appeal.
Cf. 386, 1886, s. 77.

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

66a. (1) Any party to any action commenced in any local court may by notice in writing filed in the court waive the rights of appeal given pursuant to this Act in respect of the action.

Power of parties to waive rights of appeal.

Inserted by 2244, 1935, s. 8.

(2) The notice may waive all rights of appeal under this Act or may waive any of the rights of appeal under this Act, including the reservation of any point of law for the decision of the Supreme Court.

s. 64. *JOHNS v. POWELL* (1930) S.A.S.R. 230; 11 Austn. Digest 538. Where no note of the magistrate's reasons for judgment has been taken by the magistrate or his clerk, the Supreme Court on appeal may use a note made by counsel for one of the parties at the time of the delivery of the magistrate's judgment.

s. 65. *ROBERTS v. HEGGIE* (1867) 1 S.A.L.R. 72; 11 Austn. Digest 538. On an appeal from a local court, where the evidence was not forwarded to the Supreme Court, the Supreme Court refused to order a new trial on an affidavit of the attorney as to what took place at the trial.

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(3) If all the parties to the action by notice filed as aforesaid waive all rights of appeal in the action, no appeal as provided by this Act shall be made against any final judgment, determination, or order, or any interlocutory order given or made after the said notice has been filed; and after the said notice has been filed no question of law arising out of the action shall be reserved for the decision of the Supreme Court.

(4) If all the parties to the action by notice filed as aforesaid waive any of the rights of appeal given by this Act no appeal shall be made or question of law reserved contrary to the notice.

PART VI.

PART VI.

THE JOINDER OF PARTIES AND OF CAUSES OF ACTION.

Joinder of
plaintiffs.
Cf. Supreme
Court Rules,
O. xv., r. 1.

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

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

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

Misjoinder
and non-
joinder of
plaintiffs.
Ibid., O. xv.,
r. 2.
Cf. 386, 1886,
s. 85.

68. Where an action has been commenced in the name of a wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the court or a Judge or special magistrate may, if satisfied that it has been so commenced through a *bona fide* mistake or that it is necessary for the determination of the real matter

in dispute so to do, order any other person or persons to be substituted or added as plaintiff, upon such terms as he thinks proper.

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

Joinder of
defendants.
Of. S.C.
Rules, O. xv.,
r. 4.

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

Defendant
need not
be interested
as to all
relief claimed.
S.C. Rules,
O. xv.,
r. 5.

71. Where the plaintiff is in doubt as to the person from whom he is entitled to redress he may, in such manner as hereinafter mentioned, or as may be prescribed by rules of court, join two or more defendants to the intent that in such action the question as to which (if any) of the defendants is liable, and to what extent, may be determined as between all parties.

Where doubt
as to party
liable.
S.C. Rules,
O. xv.,
r. 7.

72. (1) Trustees, executors, and administrators may sue and be sued on behalf of, or as representing the property or estate of which they are trustees, or representatives, without joining any of the parties beneficially interested in the trust, or estate, and shall be considered as representing such persons; but the court, or a Judge, or special magistrate, may, at any stage of the proceedings, order any of such persons to be made parties, either in addition to, or in lieu of, the previously existing parties.

Trustees
representing
estate.
Ibid., r. 8.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 76.

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

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

Representa-
tive actions.
S.C. Rules,
Order XV.,
r. 9.

PART VI.

Misjoinder
and non-
joinder not to
defeat action.

S.C. Rules,
Order XV.,
r. 12.
Cf. 386,
1886, s. 87.

74. (1) No action shall be defeated by reason of the misjoinder, or nonjoinder, of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

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

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

Mode of
applying to
rectify mis-
joinder and
nonjoinder.
S. C. Rules,
O. xv.,
r. 13.

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

Service of
process on
added or sub-
stituted
defendant.
Ibid., r. 14.

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

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

One of several
persons
jointly liable
may be sued.
386, 1886,
s. 86, altered.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 78.

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

s. 77. *F. H. FAULDING AND CO. v. FOTHERINGHAM* (1904) S.A.L.R. 1; 8 Austn. Digest 46. An action on a debt for which two co-executrices were jointly liable held maintainable against the administrator of one joint executrix after a previous action on the same debt against the other executrix.

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

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

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

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

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

Defendant may plead set-off or counter-claim.
386, 1886, s. 89.

(2) The court, or before trial a Judge or special magistrate, on the application of the plaintiff or any person joined with the plaintiff in the set-off or counter-claim, may, if of opinion that such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof, and make such other order as it or he may think fit.

S. 78. *ALTMANN v. BECKER* (1932) S.A.S.R. 26; 11 Austn. Digest 507. Held, that the Act does not prevent a plaintiff, who has joined several causes of action against the same defendant, from claiming up to the limit of the court's jurisdiction in respect of each separate cause of action, and then abandoning his claim for any excess over such limit.

PART VII.

PART VII.

THE COMMENCEMENT OF ACTIONS AND PROCEEDINGS TO JUDGMENT.

Plaintiff to
furnish names
of parties
and particu-
lars.
386, 1886,
s. 98.

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

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

Allegation as
to jurisdic-
tion.

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

- (a) that such local court has jurisdiction and the ground or grounds on which it has jurisdiction; or
- (b) that the defendant has consented to such local court having jurisdiction.

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

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

Entry of
plaint.
386, 1886,
s. 100.

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

s. 80. *KAINS v. WHITTLE* (1886) 20 S.A.L.R. 23; 11 Austn. Digest 509. The pleadings in a local court need not be drawn with technical exactness as in the Supreme Court. There are no forms of pleading in a local court but simply particulars giving notice of the claim of the party.

CALDWELL v. COBBLEDICK (1912) S.A.L.R. 40; 11 Austn. Digest 509. The claim in an action in the Local Court should contain such particulars as will disclose to the defendant the nature of the action and the grounds on which it is brought.

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

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

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

Summons to
issue to
defendant.
Cf. 386, 1886,
s. 101.

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

84. (1) Any party to an action in a local court of full jurisdiction (other than under Part XII.) may demand that the action be tried by a special magistrate and two justices, and thereupon such action shall be tried accordingly.

Party may
require local
court of full
jurisdiction to
be constituted
of special
magistrate
and two
justices.

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

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

Infants—
How they sue
and defend.
Cf. *ibid.*,
s. 82.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 77.

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

Married
women.
S. C. Rules,
O. xv., r. 16.
Cf. U.K.
25 & 26
Geo. 5 c. 30,
Part I.

s. 85. *HEWETT v. SMITH* (1927) S.A.S.R. 338; 11 Austn. Digest 529. Where a judgment is obtained against an infant for whom no guardian *ad litem* was appointed, the local court has a discretion to set aside the judgment.

s. 86. The Married Women's Property Act, 1883-4, has been repealed by the Law of Property Act, 1936, and is superseded by Part X. of that Act.

PART VII.

Lunatics.
Amended by
S.L.R. Act,
1936.

87. Lunatics, persons of unsound mind not so found, and persons mentally defective within the meaning of the Mental Defectives Act, 1935, may sue and defend in manner prescribed by rules of court.

Consent of
persons under
disability.
Of. S.C.
Rules, O.,
XVI., r. 21.
Amended by
S.L.R. Act,
1936.

88. In any action to which any infant or person of unsound mind or mentally defective within the meaning of the Mental Defectives Act, 1935, whether so found by inquisition or not, or a person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure shall if given with the sanction of the court or a Judge or special magistrate, by the Public Trustee, the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent.

Poor persons.

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

Partners.
Of. S.C.
Rules, O.,
XLVII., r. 1.
Of. 386, 1886,
s. 99.

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

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

When special
summons may
issue.
Of. 386, 1886,
s. 102, and
S.C. Rules,
O. III.,
r. 6.
Of. U.K.
9 & 10
Geo. 5 c. 73,
s. 8.

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

(a) upon a contract express or implied (as, for instance on a bill of exchange, promissory note, or cheque, or other simple contract debt); or

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

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

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

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

Cf. 386, 1886, s. 103.

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

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

93. (1) Where an intended plaintiff is resident in the State of South Australia and an intended defendant is outside the State of South Australia, the intended plaintiff may, in any case in which a local court would have had jurisdiction had the defendant been within the State of South Australia, issue a summons out of the local court nearest to which the intended plaintiff resides or, at his option, out of the local court of Adelaide.

Summons may be served out of the State.

Cf. *ibid.*, s. 104.

(2) Such summons may, if the defendant is within any other State or part of the Commonwealth of Australia, be

s. 93. *MARTIN V. McINNES* (1891-2) 24 S.A.L.R. 131; 11 Austn. Digest 511. If leave to issue a summons should have been obtained but was not, the omission is an irregularity which the defendant waives by entering an appearance without protest.

LAWRIE V. CHICK (1929) S.A.S.R. 47; 11 Austn. Digest 511. S. 93 is not exhaustive and does not prevent a plaintiff resident outside the State from taking proceedings in a local court for a cause of action arising in the State.

issued without the leave of a Judge or special magistrate, provided—

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

- (a) that the subject matter of the action, so far as it concerns such defendant, is—
 - i. land or other property situated or being within the State of South Australia; or
 - ii. shares, or stock, of a corporation or company having its principal place of business within the State of South Australia; or
 - iii. any deed, will, document, or thing affecting any such land, shares, stock, or property; or
- (b) that any contract in respect of which relief is sought in the action against such defendant by way of enforcing, rescinding, dissolving, annulling, or otherwise affecting such contract, or by way of recovering damages or other remedy against such defendant for a breach thereof, was made or entered into within the State of South Australia; or
- (c) that the relief sought against the defendant is in respect of a breach, within the State of South Australia, of a contract wherever made; or
- (d) that the act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was done, or is to be done, or is situated, within the State of South Australia; or
- (e) that, at the time when the liability sought to be enforced against the defendant arose, he was within the State of South Australia.

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

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

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

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

94. (1) A summons (other than an interlocutory summons) shall be served personally, or, in the case of an ordinary summons when served within the State, by delivering the same at the dwelling-house or place of business of the defendant, to some person thereat who is apparently above the age of fourteen years or, in special cases, in such other manner as is prescribed by rules of court: Provided that no place of business shall be deemed the place of business of the defendant unless he is the master or one of the masters thereof.

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

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

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

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

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

Affidavit
of service.
386, 1886,
s. 106.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 175 (1).

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

Defendant to
appear within
certain
periods.
386, 1886,
s. 107.

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

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

s. 94. HEWITT v. SMITH (1927) S.A.S.R. 338; 11 Austn. Digest 510. *Seem*, that under Rule 30 of the Local Court Rules, 1927, a special magistrate may at any stage of the proceedings order that service of a summons on an infant defendant (in lieu of service on his father or guardian) shall be deemed good service.

PART VII.

Mode and
effect of
appearance.
Cf. 386, 1886,
s. 108.

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

(2) Such appearance—

(a) in the case of a debt, whether by simple contract or specialty, shall operate as a denial as well of the particular contract, dealing, or transaction between the defendant and the plaintiff out of which the alleged debt or liability arises, as of the breach thereof; and

(b) in the case of a claim for damages for a breach of duty or wrongful act, shall operate as a denial as well of such breach of duty or wrongful act as of the right, property, or possession of the plaintiff, or of the circumstances out of which the alleged cause of complaint arises,

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

Cf. U.K.
51 & 52 Vict.
c. 43, s. 82.

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

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

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

s. 98. CALDWELL BROTHERS v. COBBLEDICK (1912) 14 C.L.R. 719; 11 Austn. Digest 512. Refusing special leave to appeal from **CALDWELL v. COBBLEDICK** (1912) S.A.L.R. 40; 1 Austn. Digest 1213. Where the non-payment by the defendant of a particular sum is a condition precedent to the liability set up by the plaintiff in the action such non-payment must be proved by the plaintiff, and s. 98 does not apply.

WHITTLE v. JENNINGS (1914) S.A.L.R. 167; 11 Austn. Digest 512. The defence of fair comment in an action for defamation need not be specially pleaded.

ANCELL v. HANNAM (1926) S.A.S.R. 40; 11 Austn. Digest 513. The effect of an appearance as a general traverse is not negated by inconsistent allegations of particulars in the pleadings.

JOHN v. COLES (1931) S.A.S.R. 254; 11 Austn. Digest 512. In an action in a local court on an agreement to pay money, the onus of proving payment rests on defendant, and he must plead payment as a special defence in his appearance.

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

Defendants to counter-claim to be served.
Cf. 386, 1886, s. 91.

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

Mode of service.
Cf. *ibid.*, s. 91.

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

Appearance by defendants to counter-claim.
Cf. *ibid.*, s. 90.

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

Reply to counter-claim.
Cf. *ibid.*, s. 90.

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

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

Defendant's right of set-off or counter-claim preserved in case of misjoinder.
386, 1886, s. 92.

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

Matters arising pending action.
Cf. 386, 1886, s. 94.

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

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

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

Equitable
defence may
be availed of.
386, 1886,
s. 109.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 71.

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

Defendant
not to appear
without
affidavit of
good defence,
when special
summons
issued.
386, 1886,
s. 110.

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

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

Judgment
by default.
Of. *ibid.*,
s. 111.

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

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

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

When not final, damages to be assessed.
386, 1886,
s. 112.

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

When action to be tried.
Cf. *ibid.*,
s. 114.

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

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

Defendant may confess debt or part thereof and judgment thereupon.
Cf. *ibid.*,
s. 115.

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

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

Defendant may pay money into court.
Cf. *ibid.*,
s. 116.
Cf. U.K.
51 & 52 Vict.
c. 43, s. 107.

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

s. 111. *PERRYMAN V. KLOPPER* (1868) 2 S.A.L.R. 171; 11 Austn. Digest 517. Held, in an action for trespass to land that, although the defendant had paid money into court, it was still necessary for the plaintiff to give evidence of his possession of the land.

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

Plaintiff to pay costs in certain cases. 386, 1886, s. 117. Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 47 (4).

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

Judgment when parties agree as to amount and terms of payment. 386, 1886, s. 118.

113. If—

- (a) the defendant agrees with the plaintiff upon the amount of the claim and upon the terms and conditions upon which the same shall be paid or satisfied; and
- (b) a statement of the claim so agreed upon, and of the terms and conditions upon which the same shall be paid or satisfied, signed by the plaintiff and the defendant, and attested by a clerk of a local court or a practitioner of the Supreme Court, is filed with the clerk of the court,

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

In what courts actions to be commenced. Cf. 386, 1886, s. 119, and 431, 1888, s. 7. Cf. U.K. 51 & 52 Vict. c. 43, s. 74.

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

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

s. 112. *RICHARDSON v. DODD* (1901-3) S.A.L.R. 99; 11 Austn. Digest 521. S. 112 over-rides s. 293. The court has no discretion to deprive a defendant of costs when the plaintiff has recovered no further sum than that paid into court.

s. 114. *ELLIS v. BUTLER* (1887) 21 S.A.L.R. 136; 9 A.L.J. 139; 11 Austn. Digest 504. Held that prohibition lay on the motion of the defendant to prohibit a local court

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

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

- (a) a memorandum in writing of such objection, setting out the grounds thereof and specifying the local court in which he alleges the action should have been commenced; and
- (b) an affidavit by himself or some person cognizant of the facts of the case, stating that he has a good defence to the action on the merits irrespective of such objection and setting out some ground of such defence.

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

No objection to be allowed unless ground given and merits proved.
Cf. 386,
1886, s. 119;
481, 1888,
s. 2.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 44.

Procedure if plaintiff admits action brought in wrong court.
481, 1888,
s. 3.

s. 114. from proceeding in an action commenced in the wrong court, although the defendant had not objected to the jurisdiction as required by the Act. (Law now altered; *vide* s. 49 (3).)

BROWN v. BROWN (1887) 21 S.A.L.R. 140; 11 Austn. Digest 504. The term "cause of action" means the whole cause of action, *i.e.*, everything material which the plaintiff must prove.

TAYLOR v. HARROP S.A. *Register* (newspr.) 9th May, 1894. Where the parties at the time when a contract was made between them lived within the jurisdiction of a local court and at the time of action brought defendant was a resident of Victoria, held that the cause of action arose within the jurisdiction of that local court.

SEIDEL v. STEICKE (1923) S.A.S.R. 214; 11 Austn. Digest 505. A person resides where his permanent place of abode is; if he has no permanent place of abode he "resides" in the place of his temporary abode. In order to "carry on business," a person must manage or conduct his own business, or must own a business which is managed or conducted for him.

s. 115. SEIDEL v. STEICKE (1923) S.A.S.R. 214; 11 Austn. Digest 505. The onus of proving want of jurisdiction lies on the defendant and the court cannot, of its own motion, call a witness to give evidence to establish jurisdiction or want of jurisdiction.

PART VII.

If objection
not sus-
tained.
431, 1888,
s. 4.

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

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

If sustained,
proceedings to
be trans-
ferred.
Ibid., s. 5.

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

To what
court pro-
ceedings to be
transferred.
Ibid., s. 6.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 74 (2).

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

Costs may be
awarded not-
withstanding
want of
jurisdiction.
386, 1886,
s. 119.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 73.

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

Security for
costs.
Cf. 386, 1886,
s. 120.

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

Plaintiff may
discontinue.
Cf. *ibid.*,
s. 123.

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

(2) Such costs, and any further costs ordered by a Judge or special magistrate, may be recovered as a judgment of the court.

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

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

Counter-claim may proceed though action delayed.

S. C. Rules,
O. xxii.,
r. 16.

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

Witnesses may be summoned.

386, 1886,
s. 124.
Cf. U.K.
51 & 52 Vict.
c. 43, s. 110.

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

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

386, 1886,
s. 125.
Cf. U.K.
51 & 52 Vict.
c. 43, ss. 88,
89.

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

126. (1) If, on the day appointed for hearing an action, the defendant does not attend when the action is called on, personally or by his solicitor, the court may, in all cases where the claim is for a debt or liquidated demand, without requiring the plaintiff to call any evidence, cause judgment to be entered for the amount claimed, together with interest, if the plaintiff so desires, from the date of the filing of the claim to the date of entry of judgment, on so much of the claim as does

If defendant does not appear, plaintiff may recover.

Cf. 386, 1886,
s. 126.
Cf. U.K.
51 & 52 Vict.
c. 43, ss. 90,
91.

s. 123. *WRIGHT v. WALLACE* (1899) S.A.L.R. 63; 11 Austr. Digest 516. Held that in an action in a local court, the defendant has a right to proceed with his counterclaim notwithstanding that the plaintiff discontinues the action.

s. 124. *SEIDEL v. STEICKE* (1923) S.A.S.R. 214; 11 Austr. Digest 503. A local court has no power to call and examine witnesses without the consent of the parties.

not consist of interest. Such interest shall be calculated at the rate, if any, alleged by the plaintiff in his claim to have been agreed upon, or, if no such rate is alleged, then at the rate of eight pounds per centum per annum.

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

Court may
nonsuit when
plaintiff does
not appear.
386, 1886,
s. 127.
Cf. U.K.
51 & 52 Vict.
c. 43, ss. 88,
89.

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

Evidence in
appealable
actions to be
taken down
in writing
and certain
notes to be
taken.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 108.

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

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

In case of
cross judg-
ments, execu-
tion to issue
for the
balance of the
larger.
386, 1886,
s. 130.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 97.

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

s. 128. *KELMAR V. ADELAIDE UNITED FRIENDLY SOCIETIES' DISPENSARY* (1912) S.A.L.R. 117; 11 Austn. Digest 538. Held under s. 128 of the Local Courts Act, 1886, that it was not a condition precedent to the right of appeal that either party should have requested the judge or special magistrate to make a written note of every question of law raised at the trial, but it is sufficient if the point was raised at the trial. *Semble* it is raised, if the court of first instance necessarily decided it in arriving at its conclusion.

HEMPEL V. ROBINSON (1924) S.A.S.R. 288; 11 Austn. Digest 518. Observations on duty of court (under s. 128 of Local Courts Act, 1886) to record findings of fact and issues of law.

s. 128. *LENNARD V. DISTRICT COUNCIL OF NARACOORTE* (1924) S.A.S.R. 407; 11 Austn. Digest 540. Where the judge or magistrate has not taken a note of his findings or rulings, it is doubtful if the Supreme Court can inquire from him what they were: such a power if it exists should only be used where there is good ground to believe that a miscarriage of justice has taken place, or in exceptional circumstances.

PART VII.

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

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

386, 1886,
s. 93.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 97.

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

Court may order return of chattels detained.

Of. 386, 1886,
s. 131.

(a) order that execution shall issue for the return of the chattel detained, without giving the defendant the option of retaining such chattel upon paying the value assessed; and

(b) order that the defendant pay such damages as the court may assess in respect of the detention of the chattel, such damages to be reduced to such sum as the court fixes if the plaintiff obtains possession of the chattel.

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

Specific delivery of goods sold may be ordered.

Cf. 386, 1886,
s. 132.

(a) what are the goods in respect of the non-delivery of which the party is entitled to recover, and which remain undelivered;

(b) what (if any) is the sum the party would have been liable to pay for the delivery thereof;

(c) what damages (if any) the party would have sustained if the goods should be delivered under execution as hereinafter mentioned; and

(d) what damages if not delivered.

(2) Thereupon the court, on the application of the party in whose favour judgment is given, may, if satisfied that the goods are still in the possession or control of the opposite party, order execution to issue for delivery of them, on payment of such sum (if any) as has been found to be payable by the party making the application for the said goods, without giving the opposite party the option of retaining the same upon paying the damages assessed.

S. 131. *BERNSTEIN V. CORPORATION OF THE CITY OF ADELAIDE* (1932) S.A.S.R. 320; 11 Austn. Digest 519. In an action for damages for conversion of goods the local court has jurisdiction to make an order for restoration of the goods in satisfaction of the damages awarded, but should not make such an order against the will of the plaintiff except for the purpose of stopping litigation, or preventing a clear abuse of the process of the court.

PART VII.

Second action for same cause not allowed. 386, 1886, s. 133. Cf. U.K. 51 & 52 Vict. c. 43, s. 115.

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

Party obtaining judgment may cause execution to issue.

134. Any party to any action in any local court in whose favour any judgment has been given, unless the court otherwise orders, may cause execution to be issued thereon forthwith after the judgment has been pronounced and entered in the record book.

Who may appear at hearing. 386, 1886, s. 137. Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 86.

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

Court may nonsuit. 386, 1886, s. 138. Cf. U.K. 51 & 52 Vict. c. 43, s. 93 (part).

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

Plaintiff may elect to be nonsuited.

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

- s. 133. *JOHN AND ANOTHER V. COLES AND ANOTHER* (1931) S.A.S.R. 416; 8 Austn. Digest 54. Notwithstanding a local court judgment, proceedings for equitable relief on the same grounds may be taken in the Supreme Court.
- s. 135. *DRUMMOND V. HOWELL* (1923) S.A.S.R. 124; 11 Austn. Digest 515. A magistrate cannot refuse to hear a practitioner, duly instructed by a party, on the ground of misconduct in another case before the magistrate.
- s. 136. *PERRYMAN V. KLOPPER* (1868) 2 S.A.L.R. 171; 11 Austn. Digest 517. Held that a local court may non-suit the plaintiff although the defendant has paid money into court.
- McFARLANE V. HUTCHISON* (1880) 14 S.A.L.R. 184; 11 Austn. Digest 517. A local court is not justified in entering a non-suit on the ground that the particulars of claim are insufficient.
- LAMBERT V. PUTT* (1890) 24 S.A.L.R. 58. Held that a local court had no power under s. 138 of the Local Courts Act, 1886, to non-suit a plaintiff whose evidence disclosed a legal right and was uncontradicted.
- BARRY V. TUCKER* S.A. *Advertiser* (newspr.) 21st July, 1897; 11 Austn. Digest 517. Held, that a local court may non-suit on the opening of counsel without hearing evidence. [But for the contrary view see *FLETCHER V. L. & N.W. RAILWAY CO.* (1892) 1 Q.B. 122 and *CROSS V. RIX* 29 T.L.R. 85.]
- BERRY CO-OPERATIVE PACKING UNION LIMITED V. TRAEGER*, Supreme Court, November, 1932 (not reported); 11 Austn. Digest 517. Where the court feels a difficulty about the law at the close of the plaintiff's case but thinks that the plaintiff may have shown a good case, the best course is to disregard an application for non-suit.

PART VII.

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

Nonsuit same effect as judgment on the merits.
386, 1886,
s. 139.

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

On death of sole or one of several plaintiffs or defendants, action not to abate.
386, 1886,
s. 95.

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

On death of one of several plaintiffs or defendants, after judgment, proceedings may be taken against survivors.
Ibid.. s. 96.

140. (1) The bankruptcy of, or the execution of a deed of assignment under the Bankruptcy Act, 1924-1933, of the Commonwealth by, the plaintiff in any action in a local court which the trustees might maintain for the benefit of the creditors, shall not cause the action to abate if the trustees elect to continue such action and to give security for the costs thereof within such reasonable time as a Judge or special magistrate orders, and all further proceedings in the action shall be suspended, and the hearing may be adjourned, till such election is made.

In case of insolvency of plaintiff, action not to abate if trustees elect to proceed.
386, 1886,
s. 97,
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 79.

Amended by
S.L.R. Act,
1936.

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

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

Costs where executor or administrator is unsuccessful plaintiff.
English County Court Rules, O. 30, r. 1.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 76.

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

When executor or administrator does not appear.
English County Court Rules, O. 30, r. 2.

PART VII.

Plaintiff
may charge
devastavit.
English
County Court
Rules, O. 30,
r. 3.

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

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

If waste
found pro-
visions as to
costs.
Ibid., r. 4.

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

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

If assets not
denied.
Ibid., r. 4a.

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

Where
demand only
denied.
Ibid., r. 5.

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

Judgment of
assets *quando*
acciderint.
Ibid., r. 6.

147. Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be to levy the costs of proving the demand *de bonis testatoris, si, &c., et si non, de bonis propriis*, and as to the demand, judgment of assets *quando acciderint*, and the plaintiff shall pay the defendant's costs of proving the administration of assets unless the court otherwise orders.

Where total
or partial
administra-
tion alleged
and is not
proved, but
demand is
denied and
proved.
English
County Court
Rules, O. 30,
r. 7.

148. Where such defendant admits his representative character but denies the claim, and alleges a total or partial administration of assets, and the plaintiff proves his claim, but the defendant does not prove the administration alleged,

the judgment shall be to levy the amount of the claim, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, &c., et si non*, as to the costs *de bonis propriis*, and as to the residue of the claim, if any, judgment of assets *quando acciderint*.

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

Where total or partial administration alleged and proved and demand is admitted, English County Court Rules, O. 30, r. 8.

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

Where defendant admits demand and fails to prove administration alleged. Ibid., r. 9.

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

Procedure on judgment *quando acciderint*. Ibid., r. 10.

s. 149. WEBB AND OTHERS V. CAMPBELL (1868) 2 S.A.L.R. 53; 11 Austn. Digest 507. Held that (without any express statutory power) a local court could give judgment of assets *quando acciderint*.

PART VII.

Defendant admitting assets and demand to pay into court.
English County Court Rules, O. 30, r. 11.

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

PART VIII.

PART VIII.

THE ENFORCEMENT OF JUDGMENTS AND ORDERS.

Execution to issue against goods.
386, 1886, s. 141.

153. Judgments and orders of any local court, Judge, or special magistrate for the payment of money—

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

Judgments and orders for sums over £20 to be enforceable by a *fiery facias* or by *capias ad satisfaciendum* after return of *nulla bona*.
Ibid., s. 142.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 116 (1).

154. (1) Judgments and orders of any local court, or of any Judge or special magistrate for the payment of a sum exceeding twenty pounds, exclusive of costs, may be enforced in like manner as judgments and orders for the payment of any sum of money are enforceable in the Supreme Court.

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

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

Clerk to issue warrant of execution.
Cf. 386, 1886, s. 143.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 116 (2).

155. (1) The clerk of the court, at the request of the party prosecuting a judgment or order for the payment of any sum of money, shall issue a warrant of execution to the bailiff of the court, who, by such warrant, shall be empowered to levy, or cause to be levied, by distress and sale of the goods and

s. 155. DEACON v. KINGDON (1931) S.A.S.R. 271; 11 Austn. Digest 1123. Goods not in possession of the judgment debtor cannot be seized under a writ of execution.

chattels of the party against whom the judgment or order is sought to be enforced, such sum of money as is adjudged or ordered, and also, if sought to be recovered, the interest thereon as provided by section 153, and also the costs of execution.

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

Of. U.K.
24 & 25
Geo. 5 c. 53;
s. 116 (4).

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

Successive
levies may
be made.

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

Warrant to
sell.
386, 1886,
s. 144.

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

the clerk of the court, at the request of the party prosecuting the judgment or order, shall issue a warrant in the form prescribed by rules of court, and thereupon the bailiff shall make sale, and the clerk of the court shall execute a conveyance, or if the land is subject to the provisions of The Real Property Act, 1886, a transfer, to the purchaser, of so much of all lands, tenements, and hereditaments within the said State as the person against whom execution is issued out, or any person in trust for him, was seized or possessed at the time of or after the issuing of such last-mentioned warrant, or over which such person then or at any time thereafter has

any disposing power which he might, without the consent of any person, exercise for his own benefit as may be required to produce the amount by such warrant directed to be levied.

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

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

Warrant of
possession of
land.
386, 1886,
s. 145.

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

Judgment
against
partners, how
recovered.
Of, *ibid.*,
s. 146.

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

(a) against any property of the partnership:

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

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

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

Execution by
a person not
a party.
386, 1886,
s. 147.

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

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

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

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

Execution against a person not a party.
386, 1886,
s. 148.

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

Execution against goods of deserting husband.
Cf. *ibid.*,
s. 149.

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

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

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

Clerk to issue process on application of party entitled to it.
386, 1886,
s. 150.

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

Bailiff to perform duties of sheriff.
386, 1886,
s. 151.

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

Gaolers, peace officers, etc., to obey process of local courts.
Ibid., s. 152.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 143 (4).

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

Cf. 386, 1886, 153.

Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 119.

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

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

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

386, 1886, s. 154.

Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 117.

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

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

Cf. 386, 1886, s. 155.

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

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

PART VIII.

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

What goods may be taken in execution.
Of. 386, 1886,
s. 156, and
385, 1886,
s. 108.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 121.

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

Judgment creditor may sue upon securities seized in execution.
386, 1886,
s. 157.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 123.

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

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

Warrants may be executed by bailiff of another court.
386, 1886,
s. 158.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 135.

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

No sale to be made of goods taken in execution until the expiration of five days, except in certain cases.
Of. U.K.
24 & 25
Geo. 5 c. 53,
s. 125.

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

PART VIII.

Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 129.

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

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

386, 1886,
s. 160.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 118 (2).

172. The party against whom any execution has been issued may, before an actual sale thereunder, pay or tender to the bailiff or other officer holding the warrant of execution the sum of money and costs indorsed on the warrant, or such part thereof as the person entitled thereto agrees to accept, in full satisfaction of his judgment and costs, together with the fees by this Act directed to be paid, and any other charges necessarily incurred in connection with an intended sale, whereupon the execution shall be superseded, and the lands, goods, and chattels of the said party shall be released.

Party arrested
to be dis-
charged on
payment.

386, 1886,
s. 161.
Cf. U.K.
32 & 33 Vict.
c. 62, s. 5.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 142.

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

Certificate of
judgment for
registration
in other
Local Courts.

Com. 11,
1901, s. 20.

Substituted
by 2244,
1935, s. 9.

174. (1) Any person who has obtained any judgment or order in any local court for the payment of any sum of money may, if that sum or any part thereof has not been paid, obtain from the clerk of that local court a certificate of that judgment or order containing the following particulars:—

- (a) The number and year of the action in which the judgment or order was obtained:
- (b) The name, place of residence, and the occupation or description of the person in whose favour the judgment or order was made or given, or of the person to whom payment is to be made under the judgment or order:
- (c) The name and place of residence of the person ordered to pay money:
- (d) The date of the judgment or order:
- (e) The amount ordered to be paid:
- (f) The amount due and owing under the judgment or order at the time when the certificate is issued, together with particulars of that amount.

(2) The clerk of a local court shall, on application duly made in writing, and payment of the fee prescribed by rules of court, grant such a certificate under his hand and the seal of the court.

174a. (1) Upon production of the certificate to the clerk of any other local court, that clerk shall forthwith register the certificate by entering the particulars contained in it in a book to be kept by him, and to be called The Register of Transferred Judgments and Orders.

Registration of certificate of judgment.
Com. 11,
1901, s. 21.
Inserted by
2244, 1935,
s. 9.

(2) From the date of registration the certificate shall be a record of the court in which it is registered, and shall have the same force and effect in all respects as a judgment or order of that court, and the like proceedings may be taken upon the certificate as if the judgment or order mentioned therein were a judgment or order of that court; and interest shall be payable under the certificate from the time and at the rate from and at which it is payable under the judgment or order.

(3) No certificate of a judgment or order shall be so registered after the lapse of twelve months from the date of the judgment or order unless leave in that behalf has first been obtained from the local court in which the judgment or order was obtained.

174b. The costs of and incidental to obtaining and registering a certificate and of any proceedings under a certificate shall be added to the amount payable under the certificate, and payment thereof shall be enforceable accordingly.

Cost of proceedings in relation to certificates.
Com. 11,
1901, s. 22a.
Inserted by
2244, 1935,
s. 9.

174c. (1) No execution shall be issued, or other proceedings taken, upon any such certificate unless an affidavit is first filed in the local court out of which it is intended to issue the execution or take those proceedings. The affidavit shall be made by the person in whose favour the judgment or order was given or made, or by some other person cognisant of the facts of the case, and shall state that the amount, for which execution is proposed to be issued, or in respect of which other proceedings are proposed to be taken, is actually due and unpaid.

Execution not to issue unless affidavit of liability filed.
Inserted by
2244, 1935,
s. 9.

(2) No execution shall be issued for, or other proceedings taken in respect of, a larger amount than that sworn to.

PART VIII.

Control of
Local Court
over proceed-
ings of
certificate.

Com. 11,
1901, s. 24.

Inserted by
2244, 1935,
s. 9.

Stay of pro-
ceedings.

Com. 11,
1901, s. 25.

Inserted by
2244, 1935,
s. 9.

Notification
of proceed-
ings upon
certificate
and of satis-
faction of
judgment.

Com. 11,
1901, s. 26.

Inserted by
2244, 1935,
s. 9.

Exercise of
jurisdiction
relating to
certificates.

Inserted by
2244, 1935,
s. 9.

Fees and
costs.

Inserted by
2244, 1935,
s. 9.

174d. The local court in which any such certificate has been registered shall, in respect of execution upon the certificate and the enforcement of the judgment or order, have the same control and jurisdiction over the judgment or order as if it were a judgment or order of that local court.

174e. (1) The local court in which any such certificate has been registered may, on the application of any person against whom the judgment or order has been given or made, order a stay of proceedings upon that certificate.

(2) Such order may be given on such terms as to giving security or otherwise as the court thinks fit.

174f. (1) When—

(a) any certificate of a judgment or order is registered in any local court; or

(b) any execution is issued or other proceedings are taken in any local court upon any such certificate; or

(c) the local court in which any certificate is registered, or the clerk of that court is made aware of the satisfaction in whole or part of the judgment or order mentioned in the certificate,

the clerk of that court shall forthwith notify that fact in writing under seal of the court to the clerk of the court in which the judgment or order was given or made.

(2) When any judgment or order of which a certificate has been registered in any local court has been satisfied in whole or in part, the clerk of the court in which the judgment or order was given or made shall forthwith, upon such satisfaction being made or notified, as the case may be, enter such satisfaction in writing under the seal of the court to the clerk of every other court in which a certificate of the judgment has been registered, and such satisfaction shall thereupon be entered upon every such certificate.

174g. The jurisdiction conferred on a local court by the last preceding seven sections shall be exercised in Chambers by a Judge or special magistrate.

174h. The fees payable to any local court and the costs to be allowed and paid in relation to obtaining, registering, and taking proceedings under any certificate of a judgment or order shall be as prescribed by rules of court.

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

Summons on unsatisfied judgment.
Cf. 386, 1886, s. 162, and 466, 1889, s. 6.

(2) Such summons shall be issued—

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

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

(3) Such summons shall—

(a) be in the form prescribed by rules of court:

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

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

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

176. (1) Where a judgment, decree, or order is against a firm, or is against a person carrying on business in any name other than his own in such other name, and the person entitled to enforce the judgment, decree, or order, desires to do so by unsatisfied judgment summons against any person whom he alleges to be liable under the judgment, decree, or order as a partner in, or sole member of, the firm, or as the

Unsatisfied judgment summons against partners.
Cf. Eng. County Court Rules, O. 25, r. 27.

person carrying on business in such other name as aforesaid, he shall file an affidavit, together with a copy thereof, according to the form prescribed by rules of court, and thereupon may cause an unsatisfied judgment summons to issue according to the form prescribed by rules of court, directed to the person alleged to be liable, as aforesaid, and there shall be annexed to such unsatisfied judgment summons, and served therewith, a copy of such affidavit, sealed with the seal of the court.

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

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

If party
appears, he
may be
examined
touching
his estate,
etc.
Cf. 386,
1886, s. 163.

177. At the hearing of the summons—

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

- (b) the court may hear such evidence in relation to the said matters as it thinks fit; and
- (c) the court may order the party summoned to pay the judgment debt at such time or in such instalments as it thinks fit.

Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 96.

178. If the person so summoned attends and—

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

Party appearing and refusing to be sworn, or not answering satisfactorily, may be committed to gaol.
Cf. 386, 1886,
s. 172.

Cf. U.K.
32 & 33 Vict.
c. 62, s. 5.

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

Procedure
when party
summoned
does not
attend.

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

(a) may order that for such failure to attend he be committed to a gaol or other place of imprisonment to be named in such order for any period not exceeding forty days, if the court is that having jurisdiction nearest to which the party summoned resides or carries on business at the time of the issue of the summons; and

(b) may proceed *ex parte* upon hearing the evidence adduced, and make an order for payment of the judgment debt at such time and in such instalments as it thinks fit.

Imprisonment
of judgment
debtor.
Cf. 386, 1886,
s. 172.

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

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

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

Date of
warrant of
commitment.
386, 1886,
s. 176.

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

Imprison-
ment not to
satisfy or
extinguish
judgment.
Cf. *ibid.*,
s. 177.
Cf. U.K.
32 & 33 Vict.
c. 62, s. 5.

(5) No imprisonment under this Act and no order made on the hearing of an unsatisfied judgment summons shall operate as a satisfaction or extinguishment of the judgment, decree, or order in respect of which the judgment debtor was liable, or protect the judgment debtor from being again

summoned and imprisoned for any new fraud or default rendering him liable to be imprisoned under this Act, or deprive the judgment creditor of any right to take out execution against the goods and chattels of the judgment debtor in the same manner as if such imprisonment or order had not taken place or been made.

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

The court may alter and rescind orders, and make any other orders.
386, 1886, s. 178.
Of. U.K. 24 & 25 Geo. 5 c. 53, s. 96 (2).

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

Compensation in vexatious cases.
Of. Justices Act, 1921, s. 48.

182. When any party to an action personally attends at the trial of the action and judgment is subsequently given against him, the court, at the hearing of the action, or at any adjournment thereof, shall have the same power and authority to examine such party, and the opposite party, and other persons touching the matters referred to in section 177, and of commitment and of making an order, as the court would have under the provisions hereinbefore contained in case the judgment creditor had obtained a summons on an unsatisfied judgment.

Power to examine and commit at hearing of action.
386, 1886, s. 174.

183. (1) Whenever any order of commitment has been made against a judgment debtor, the clerk of the court shall, if the party prosecuting the order so requires, issue a warrant of commitment, in the form prescribed by rules of court, under his hand and the seal of the court, directed to

Warrants of commitment to be issued to the bailiff.
Ibid., s. 175.
Of. U.K. 24 & 25 Geo. 5 c. 53, s. 140.

the bailiff of his court, and to the bailiffs of all other local courts, who by such warrant shall be empowered to take the body of the person against whom such order is made.

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

Attachment of
debts.
Cf. 386, 1886,
s. 164.

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

(a) order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment or order, together with the costs of the garnishee proceedings; and

(b) order, either at the same time or later, that the garnishee shall appear before the court or a Judge or special magistrate to show cause why he should not pay to the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs aforesaid.

Garnishee
order may be
made on a
trial or on
hearing of
judgment
summons.
Cf. 386, 1886,
s. 164.

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

(2) It shall not in any such case be necessary for the judgment creditor or his solicitor to make any such affidavit as mentioned in the said section if the facts which the said

s. 184. *MAYWALD AND ANOTHER V. RIEDEL* (1927) S.A.S.R 345; 9 Austn. Digest 580. Held, on the facts that a person with whom money was deposited by the judgment debtor in connection with a contemplated contract, was not "indebted" to the judgment debtor within the meaning of s. 184.

section requires to be stated upon affidavit are sufficiently proved by evidence at such trial or hearing.

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

Service of order binds debts.

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

187. If the garnishee—

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

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

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

(b) does not appear pursuant to an order made under section 184.

then the court, Judge, or special magistrate may order execution to issue, and it may issue accordingly, without any previous summons or process, to levy the amount due from such garnishee or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

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

If garnishee disputes liability, question may be tried.

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

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

Third party, having alleged lien, may be summoned.

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

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

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

Cf. S.C. Rules O. 42, r. 6.

(a) order execution to issue to levy the amount due from such garnishee, together with the costs of

the garnishee proceedings, and of any issue or question of the garnishee's liability tried or determined under this Act, and bar the claim of such third person; or

- (b) make such other order as the court, judge, or special magistrate thinks fit;

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

- (2) The court, Judge, or special magistrate may also make any such order if such third party fails to appear as required by the order.

Payment by
garnishee
discharged
his debt *pro*
tanto.

Cf. Supreme
Court Rules,
O. 42, r. 7.

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

Debt
attachment
book to be
kept.
Ibid., O. 42,
r. 8.

192. (1) The clerk of the court shall keep a debts attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates and statements of the amount recovered, and otherwise.

- (2) Copies of any entries made in the debts attachment book may be taken by any person upon application to the clerk of the court.

Jurisdiction
and costs
determined by
amount of
garnishee's
debt.
386, 1886,
s. 171.

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

- (2) The court, judge, or special magistrate hearing any such application or proceeding may make any order as to such costs as it or he may think fit.

Provision for
landlord in
case of rent in
arrear.

Ibid., s. 178.

Cf. U.K.

24 & 25

Geo. 5 c. 58,

s. 134.

194. (1) Section one of the Act of the eighth year of the reign of Queen Anne, chapter fourteen, shall not apply to goods taken in execution under the warrant of a local court; but the landlord of any premises in which any such goods have been so taken may claim the rent thereof at any time within five clear days from the date of such taking, or before the removal of the goods, by delivering to the bailiff

or officer making the levy a memorandum in writing, signed by himself or his agent, stating the amount of rent claimed to be in arrear, and the period in respect of which such rent is due.

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

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

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

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

(c) the amount for which the warrant issued.

(4) If any replevin is made of the goods so taken the bailiff shall, notwithstanding, sell such portion thereof as will satisfy the costs of and incident to the sale under the execution and the amount for which the warrant issued.

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

(6) The poundage of the bailiff for keeping possession and sale under such distress shall be the same as would have been payable if the distress had been an execution of a local court, and no other fees shall be demanded or taken in respect thereof.

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

195. (1) Where a party against whom a warrant of execution has been issued has no goods and chattels available for the purpose of the execution, that fact shall be sufficiently

Effect of
return of
"no effects."
1112, 1913,
s. 4.

indicated in the return to the warrant by the words "no effects."

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

Judgment of local courts may be removed into Supreme Court in certain cases. Cf. 386, 1886, s. 283. Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 136.

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

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

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

When removed shall have the same effect as judgment of the Supreme Court. 386, 1886, s. 284. Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 136 (2).

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

s. 196. (4) ENGLISH, SCOTTISH AND AUSTRALIAN CHARTERED BANK v. DUBOIS (1870) 4 S.A.L.R. 95; 11 Austn. Digest 526. Held (under the Local Court Act, 1861) that a judgment of a local court removed by *certiorari* into the Supreme Court did not become a judgment of the Supreme Court, but only had the effect of such a judgment for the purposes of execution. [*Seem* the law is different under s. 196 (4).]

PART IX.

PART IX.

INTERPLEADER SUMMONSES.

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

Bailiffs may interplead where claims as to goods taken in execution are made. 386, 1886, s. 179. Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 132.

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

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

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

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

Claims to goods taken in execution may be made by telegram. 386, 1886, s. 180.

PART IX.

Claimant must deposit the value of the goods, or pay cost of keeping possession, otherwise goods to be sold.
386, 1886, s. 181.
Ct. U.K. 24 & 25 Geo. 5 c. 53, s. 132 (1).

199. (1) Where any claim is made under section 197, the claimant may deposit with the bailiff either the amount of the value of the goods claimed, to be fixed by appraisal in case of dispute, to be by such bailiff paid into court, to abide the decision of the court upon such claim, or the sum which the bailiff is allowed to charge as costs for keeping possession of such goods, until such decision can be obtained.

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

Deposits to bailiffs of country local courts may be made to the clerk of the Adelaide Local Court.
386, 1886, s. 182.

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

Proceedings in case of claim to goods seized in execution.
Ibid., s. 183.

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

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

s. 199. *HOLMES V. DUNSTALL AND OTHERS* (1868) 2 S.A.L.R. 28; 11 Austn. Digest 1156. If the claimant does not deposit with the bailiff the estimated value of the goods or the bailiff's expenses of keeping possession to the day of trial, the claimant cannot recover the value of the goods, but only the proceeds of the sale.

TOTHILL V. BURNETT AND ANOTHER (1874) 8 S.A.L.R. 75; 11 Austn. Digest 1156. Where a claimant to goods seized by a bailiff failed to make the deposit required by law, and the bailiff sold the goods, held that the property in the goods passed to the purchaser.

s. 201. *TREGINZIE V. MCINTYRE* (1877) 11 S.A.L.R. 46; 11 Austn. Digest 1155. It is sufficient for the purposes of s. 201 (2) if particulars of the goods claimed are filed five days before any adjourned hearing of the interpleader summons.

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

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

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

Withdrawal by claimant and admission of title by execution creditor.

Cf. Eng. County Court Rules, O. 27 r. 1.

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

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

Cf. *ibid.*, r. 2.

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

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

Claimant to give particulars of his claim for damages.

386, 1886, s. 184.

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

Execution creditor to give notice of claim for damages.

Ibid., s. 185.

PART IX.

Execution creditor or bailiff may pay money into court.
386, 1886, s. 186.

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

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

From what court interpleader summonses to issue.
Ibid., s. 187.

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

Interpleader in action by assignee or in action for debt, &c., where conflicting claims exist.
Cf. Eng. County Court Rules, O. 27, r. 15 (1).

208. Where the defendant in an action brought by the assignee of a debt or chose in action has had notice that the assignment is disputed as to the whole or part of such chose in action by the assignor, or anyone claiming under him, or where the defendant in any such action for any debt, chose in action, money, goods, or chattels, has had notice of any other opposing or conflicting claim to the whole or any part of such debt, chose in action, money, goods, or chattels, such defendant may, within five days of the service of the summons upon him, apply to a Judge or special magistrate for a summons against the assignor or the person making such opposing or conflicting claim (hereinafter called the claimant).

Judge or S.M. to be satisfied that defendant claims no interest and does not collude.
Cf. ibid., r. 15 (2).

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

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

Absence of common origin of title not to disentitle defendant to relief.
Eng. County Court Rules, r. 15 (3).

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

211. (1) The Judge or special magistrate on being satisfied as aforesaid shall—

Interpleader summons to issue.

Of. English County Court Rules, r. 15 (4).

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

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

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

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

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

Claimant to furnish particulars.
Of. *ibid.*, r. 15 (5).

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

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

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

Payment into court by defendant.
Ibid., r. 15 (6).

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

Interpleader, how disposed of.

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

(a) if the plaintiff does not appear the interpleader summons shall be struck out and the action dealt with in the ordinary way, and the court may make such order as to costs as may be just:

s. 214. *HOOPER V. HOLDEN* (1885) 19 S.A.L.R. 100; 11 Austn. Digest 1115. Where the claimant in interpleader proceedings made no claim for damages but merely claimed the goods, held that he was not estopped from subsequently claiming damages in another action.

PART IX.

(b) if the claimant does not appear, the court shall hear and determine the action as between the plaintiff and the defendant, and may make an order declaring the claimant and all persons claiming under him for ever barred against the defendant and all persons claiming under him, and may make such order as to costs against the claimant as may be just, but the order shall not affect the rights of the plaintiff and the claimant between themselves; or if the claimant has filed a notice that he relinquishes his claim, the court may make an order declaring him and all persons claiming under him for ever barred against both the plaintiff and the defendant, and all persons claiming under them, and may make such order against the claimant as to costs incurred by the other parties before the receipt of notice of relinquishment as may be just:

(c) if both the plaintiff and the claimant appear, the court shall, whether the defendant does or does not appear, hear the cases of the plaintiff and the claimant (and the case of the defendant, if he appears), and shall give such judgment thereon as will finally determine the rights and claims of all parties; but the court shall not make any order in favour of the claimant against the defendant unless the claimant requests him so to do.

Costs and
other
incidental
matters.
English
County
Court Rules,
r. 15 (8).

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

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

PART X.

PART X.

THE RECOVERY OF PREMISES.

216. (1) The landlord of any premises the rent of which is not at a greater rate than two hundred and eight pounds a year may file a claim for the recovery of the premises and for rent and mesne profits in respect of the same in the local court of full jurisdiction nearest to which the premises are situated, against the tenant or any person holding or claiming by, through, or under him, if the term or interest of such tenant has expired or been determined by legal notice to quit and the tenant or such person refuses or neglects to deliver up possession.

Proceedings for recovery of premises and rent when term has expired or been determined by notice.

Cf. 386, 1886, s. 194.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 48.

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

(a) the name of the landlord and, if his title has accrued since the letting of the premises, particulars of such title:

(b) the situation and rent of the premises:

(c) the name of the tenant and the nature of the tenancy:

(d) whether the person sued is the tenant, or the person holding or claiming by, through, or under the tenant:

(e) the date on and the manner in which the tenancy expired or was determined, or on which the notice to quit was given, and whether such notice was oral or in writing:

(f) that the person sued refuses or neglects to deliver up possession:

(g) the amount of rent and mesne profits claimed, and the date up to which they are claimed:

(h) whether the landlord claims possession forthwith, or on some future day.

217. The clerk of the court shall—

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

Clerk of court to enter in plaint book particulars and to issue summons.

Cf. 386, 1886, ss. 205 and 206.

s. 216. *FERGUSON v. DAYMAN* (1935) S.A.S.R. 4. When the defendant tenant hands over to another the premises sought to be recovered, the owner should apply under s. 74 for an order that the person taking the premises be joined as a defendant.

- (b) issue a summons requiring the defendant to enter an appearance within twelve days after the service of the summons.

How summons to be served.
386, 1886, s. 198.
Cf. U.K. 51 & 52 Vict. c. 53, s. 141.

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

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

Sub-tenant served with summons to give notice to his immediate landlord, who may come in and defend.
386, 1886, s. 197.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 179.

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

(2) Such landlord, on receipt of such notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question.

Procedure applicable to actions under this Part.
Amended by S.L.R. Act, 1935.

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

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

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

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

(a) order that the defendant shall give possession of the premises, either forthwith or on or before such day as the court fixes; and

(b) enter judgment for the amount of mesne profits and rent claimed; and

(c) make such other order, either as to costs or otherwise, as it thinks fit.

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

Amended by
S.L.R. Act,
1935.

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

Judgment for
plaintiff by
default.

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

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

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

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

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

Warrant a
justification
to bailiff for
entering
premises.
386, 1886,
s. 199.
Of. U.K.
51 & 52 Vict.
c. 43, s. 142.

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

Warrants
to be in
force for
three months.
Ibid., s. 200.
386, 1886,
s. 200.
Of. U.K.
51 & 52 Vict.
c. 43, s. 143.

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

Judges, magis-
trates, clerks,
bailiffs, and
other officers
not liable to
action on
account of
proceedings
taken.
386, 1886,
s. 201.
Of. U.K.
51 & 52 Vict.
c. 43, s. 144.

PART X.

When landlord has lawful title, he shall not be deemed a trespasser by reason of irregularity.
386, 1886, s. 202.
Cf. U.K. 51 & 52 Vict. c. 43, s. 145.

227. (1) Where the landlord, at the time of applying for such warrant as aforesaid, had lawful right to the possession of the premises, neither the said landlord nor any other person acting in his behalf shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding under this Act for the recovery of the premises.

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

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

Proceedings in action for recovery of possession when rent is one half-year in arrear.
Cf. 386, 1886, s. 196.
Cf. U.K. 51 & 52 Vict. c. 43, s. 139.

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

(a) may, without any formal demand or re-entry, file a claim against the tenant for the recovery of the premises in the local court of full jurisdiction nearest to which they are situated; and

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

(2) The clerk of the court shall—

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

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

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

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

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

(6) On the hearing the plaintiff shall prove—

- (a) the rent of the premises;
- (b) that at the time when the claim was filed he had the right to re-enter the premises for the non-payment of one half-year's rent, and that such rent is in arrear at the date of the hearing;
- (c) that no sufficient distress was found on the premises to countervail the rent in arrear;
- (d) the landlord's power to re-enter;
- (e) the title of the plaintiff, if such title has accrued since the letting of the premises; and
- (f) the service of the summons, if the defendant does not attend.

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

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

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

This Part to
apply to
tenants-at-
will.
386, 1886,
s. 203.

PART XI.

PART XI.

THE ACTION OF EJECTMENT.

Proceedings
on ejectment
where land is
under Real
Property Act.
Cf. 386, 1886,
s. 204.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 48.

230. (1) Any person claiming possession of land under The Real Property Act, 1886, of the value of not more than two thousand pounds, may file a claim to recover possession of the same in the local court of full jurisdiction nearest to which the land concerned is situated.

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

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

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

Cf. 386, 1886,
s. 207.

Clerk of court
to enter in
plaint book
particulars.
Ibid., s. 205.

231. The clerk of the court shall enter in the plaint book a plaint stating the same particulars as in a personal action, and also a short description of the land sought to be recovered, and shall furnish a note thereof to the plaintiff.

Summons to
issue.
Cf. *ibid.*,
s. 206.

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

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

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

Mode of
serving
summons.
386, 1886,
s. 209.

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

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

Form of
defence.
Of. 386, 1886,
s. 210.

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

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

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

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

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

PART XI.

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

Plaintiff
entitled
to judgment
if no defence.
Cf. 886, 1886,
s. 213.

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

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

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

(4) Such judgment order shall state whether it is for all, and, if for part only, for what part, and may be in the form prescribed by rules of court, without any award of costs, but without prejudice to the plaintiff's right to have his costs taxed, and to proceed with any claim which has been properly joined and for the recovery of costs.

What to be
question in
action of
ejectment.
Cf. 886, 1886,
s. 214.

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

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

Proof of
title.
Ibid., s. 215.

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

Proceedings
if plaintiff or
defendant
does not
appear.
Cf. *ibid.*,
s. 216.

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

(2) If the plaintiff appears and the defendant does not appear at the hearing, the action shall be proceeded with and adjudicated upon, and the court may, without requiring

the plaintiff to prove any fact other than the service of the summons—

- (a) order judgment to be entered for the plaintiff for the recovery of possession of the land;
- (b) so far as any claim properly joined is for a debt or liquidated demand, order judgment to be entered for the amount claimed; and
- (c) so far as any such claim is for damages, assess such damages and give judgment for the amount so assessed.

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

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

On finding for plaintiff judgment may be entered and execution issue.
386, 1886,
s. 218.

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

Proceedings on finding for defendant.
Ibid., s. 219.

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

Several warrants of execution may issue on judgment in execution.
Ibid., s. 220.

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

Any joint tenant, etc., may defend as such, and admit right of plaintiff to an undivided share of property, and deny ouster
Ibid., s. 221.

PART XI.

On trial, if it be found that defendant is joint tenant, etc., with plaintiff, question of ouster shall be tried.
386, 1886, s. 222.

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

If plaintiff or defendant die, action not to abate.

Ibid., s. 223.

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

If right of deceased plaintiff survives to another plaintiff.

Ibid., s. 224.

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

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

If right of deceased plaintiff does not survive to another plaintiff.
386, 1886, s. 225.

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

On death of sole plaintiff, or before trial of one of several plaintiffs whose right does not survive.
Ibid., s. 226.

248. (1) In case of the death before the trial of a sole plaintiff, or of one of several plaintiffs whose right does not survive to another or others of them, the clerk of the court, at the request of the legal personal representative of the deceased plaintiff and by order of a Judge or special magistrate—

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

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

(2) Where such entry is made before the trial, the truth of the entry shall be tried thereat, together with the title of the

deceased plaintiff, and such judgment shall follow in favour of or against the person causing such entry to be made as is hereinbefore provided in the case of a judgment for or against the plaintiff.

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

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

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

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

In case of death of one or several defendants in ejectment who defend jointly.
386, 1886,
s. 227.

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

In case of death of sole defendant or of all defendants in ejectment.
Ibid., s. 228.

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

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

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

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

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

In case of death before trial of one of several defendants in ejectment who defends for a portion for which the others do not defend.
886, 1886,
s. 229.

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

In case of death before trial of one of several defendants in ejectment who defends separately for a portion for which the others also defend.
Ibid., s. 230.

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

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

In case of death after verdict of sole defendant or all the defendants in ejectment.
886, 1886,
s. 231.

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

Plaintiff in ejectment may discontinue action as to one or more defendants, and one of several plaintiffs may discontinue.
Ibid., s. 232.

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

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

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

Defendants
in ejectment
may confess.
386, 1886,
s. 233.

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

If one of
several
defendants
confess.

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

If one of
several
defendants
who defend
separately
desires to
confess.
Ibid., s. 234.

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

Effect of
judgment in
ejectment
under this
Act same as
judgment in
the Supreme
Court.
386, 1886,
s. 235.

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

All provisions
in this Act
to extend to
ejectment.
Of, *ibid.*,
s. 236.

258. Warrants of possession shall be in the form prescribed by rules of court.

Form of
warrant of
possession.
Ibid., s. 237.

PART XII.

PART XII.

SPECIAL EQUITABLE JURISDICTION OF LOCAL COURT OF ADELAIDE.

Extent of
special
jurisdiction.
Of U.K.
24 & 25
Geo. 5 c. 53,
s. 52.

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

- i. By creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), or next of kin, in which the personal estate or real estate or personal estate and real estate against which, or for an account or administration of which the demand is made, does not exceed in amount or value the sum of five hundred pounds:
- ii. For the execution of trusts in which the trust estate, or fund, does not exceed in amount or value the sum of five hundred pounds:
- iii. For foreclosure or redemption, or for enforcing any charge or lien, where the mortgage, charge, or lien does not exceed in amount the sum of five hundred pounds:
- iv. For the dissolution or winding up of any partnership in which the whole property, stock, and credits of such partnership does not exceed in amount or value the sum of five hundred pounds:
- v. For specific performance of, or for delivering up, or cancelling of, any agreement for the sale, purchase, or lease of any property where, in the case of a sale or purchase, the purchase money, or in the case of a lease, the value of the property, does not exceed the sum of two thousand pounds:
- vi. For relief against fraud or mistake in which neither the damage sustained, nor the estate or fund in respect of which relief is sought, exceeds in amount or value the sum of five hundred pounds:
- vii. For the partition of land where the value thereof does not exceed five hundred pounds:
- viii. For orders in the nature of injunctions, where the same are requisite for granting relief in any matter in which jurisdiction is given by this Act to the Local

Court of Adelaide of Full Jurisdiction; or for stay of proceedings at law to recover any debt provable under a judgment for the administration of an estate made by the said local court.

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

Bowers of Judge and special magistrate.

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

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

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

261. In any action under this Part there may be joined with any cause of action under this Part any causes of action under any other Part, and the Judge having jurisdiction under this Part shall have jurisdiction to hear and determine all such causes of action; but if it appears to a Judge, before or at the hearing, that any of such causes cannot be conveniently tried or disposed of together, the Judge may order separate trials of any such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

Joined with causes under other Parts of the Act.

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

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

Ibid., s. 123.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 63.

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

Actions may be transferred from Supreme Court to Local Court.

Cf. Victorian County Courts Act, 1890, s. 124.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 54.

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

Power to enforce judgments in equity jurisdiction.
Cf. Victorian County Courts Act, 1890, s. 129.

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

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

Ibid., s. 180.
Cf. U.K.
51 & 52 Vict.
c. 43, s. 68.

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

(2) Notwithstanding subsection (1) hereof, any party may apply to a Judge of the Supreme Court at chambers for an order authorising and directing the action to be carried on and prosecuted in the Local Court of Adelaide of Full Jurisdiction, notwithstanding such excess in the amount of the limit to which jurisdiction in the matter is hereby given to the said local court; and the Judge, if he deems it proper to summon the other parties or any of them to appear before him for that purpose, after hearing such parties or on default of the appearance of all or any of them, shall have full power to make such order.

Application of Supreme Court Act, 1878.

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

s. 266. The Supreme Court Act, 1878, is repealed and superseded by the Supreme Court Act, 1935, but the rules of law enacted by paragraphs III., IV., V., VI., and VII. of section 6 of the Supreme Court Act, 1878, are reproduced in sections 12, to 16 inclusive of the Law of Property Act, 1936.

Discovery.

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

Procedure.

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

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

Judge or special magistrate may give special directions as to procedure.

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

Power to hear actions in any part of the State.

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

PART XIII.

PART XIII.

REMEDIES AGAINST DEBTORS ABOUT TO ABSCOND.

271. If—

- (a) there is owed to any person (hereinafter called "the creditor"), either alone or jointly with another, a debt of ten pounds or more, whether on an unsatisfied judgment of a local court or otherwise, or any person (hereinafter called "the claimant") has

Creditor to whom debt of thirty pounds is due may obtain warrant for arrest.
386, 1886, s. 238.
Cf. U.K. 32 & 33 Vict. c. 62, s. 6.

s. 271. *LEAKE v. SUTHERLAND* (1868) 2 S.A.L.R. 158. Held that the arrest of an absconding debtor under the warrant of a justice is a judicial act, and that the remedy of the person arrested against the creditor or claimant is not an action for trespass but an action for malicious prosecution.

through breach of contract sustained damage to the extent of twenty pounds or more; and

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

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

Plaintiff to file a claim at the time of issuing warrant.
386, 1886,
s. 239.

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

Form and currency of warrants.
Ibid., s. 240.

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

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

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

Bailiff arresting to indorse certificate of time and place of arrest.
Ibid., s. 241.

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

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

- (a) pays the sum indorsed on the warrant for debt, damages, and costs; or
- (b) deposits such sum with the bailiff to abide the result of the action; or
- (c) requests to be brought before the Local Court Judge or a special magistrate.

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

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

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

- (a) on the application of such person, of which adequate notice shall be given to the creditor or the claimant, and on proof to the satisfaction of the Judge or special magistrate that the creditor or the claimant had not good cause for making or causing to be made the affidavit or affidavits on which the warrant was issued, release the said person so arrested, and order the creditor or the claimant to pay to the person arrested a sum not exceeding twenty pounds by way of compensation, which order may be enforced as an order of the court; or

Bailiff to take debtor to gaol unless he pays or secures the debt, or claims to go before a judge or special magistrate.

386, 1886, s. 242.

Debtor lodged in gaol on unsatisfied judgment.

Cf. 386, 1886, s. 243.

Duties and powers of Judge or special magistrate where debtor claims to be brought before him.

Ibid., s. 244.

- (b) where a judgment has been recovered, take the security in the preceding section mentioned, and release the alleged debtor; or
- (c) where no judgment has been recovered, take security by deposit or otherwise, or partly by deposit and partly otherwise, for defending the action and paying any sum adjudged to be due therein, and the costs thereof, and of the warrant and arrest, or in default for rendering the person arrested to the bailiff of the court to be dealt with as ordered by the court, and, when the security is given, release such person; or
- (d) take payment of part, and take security, as last above-mentioned, as to the rest, and release the person arrested; or
- (e) discharge such person from custody on being satisfied that three weeks at least before the issue of the warrant he had given public notice by advertisement in two newspapers published in Adelaide of his intended departure and the time and manner thereof; or
- (f) hear the action in accordance with the following provisions:—

and, if the Judge or special magistrate does not release or discharge the person arrested, the person executing the warrant shall lodge him in a gaol or other proper place of imprisonment.

Judge or special magistrate may adjudicate upon claim by consent of defendant.
386, 1886,
s. 245.

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

(2) In case the plaintiff does not attend, the Judge or special magistrate may order the defendant to be detained in custody, or to enter into sureties or give security for his appearance, until such notice of the hearing of the action as

s. 278. **STEPHENS v. FRANKLIN** (1867) 1 S.A.L.R. 60; 11 Austr. Digest 514. Held that where a person was arrested on Saturday after the office hours of the court and on finding sureties for the amount of the plaintiff's claim, was released forthwith, although an appearance had not been entered, the magistrate had jurisdiction to hear the action notwithstanding that the defendant was discharged from custody before entry of appearance.

the Local Court Judge or a special magistrate may direct has been given to the plaintiff, and, if the plaintiff does not then attend, the defendant shall be discharged.

279. If, on the hearing of the action by consent of the defendant before the Local Court Judge or a special magistrate—

Defendant may be committed to gaol on non-payment of judgment. 386, 1886, s. 246.

(a) judgment is given for the plaintiff; and

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

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

280. If, on the hearing of the action by consent of the defendant before the Local Court Judge or a special magistrate—

Compensation may be ordered to defendant improperly arrested. Cf. *ibid.*, s. 247.

(a) judgment is given for the defendant; or

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

the Judge or special magistrate may order the plaintiff to pay to such defendant a sum not exceeding twenty pounds by way of compensation, which order may be enforced in like manner as a judgment given for a defendant upon the hearing of an ordinary action in a local court.

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

When person arrested to be discharged.

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

Other remedies preserved. *Ibid.*, s. 248.

PART XIV.

PART XIV.

COMMISSIONS AND ORDERS FOR THE
EXAMINATION OF WITNESSES.

Judge or
special magis-
trate may
order prisoner
to be brought
up for the
purpose of
giving
evidence.

386, 1886,
s. 249.
Cf. U.K.
24 & 25
Geo. 5 c. 53,
s. 83.

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

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

Expenses to
be paid to
gaoler.

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

Judge or
special magis-
trate may
issue order
for examina-
tion of
witnesses
about to leave
the State or
unable to
attend from
illness.

386, 1886,
s. 250.

284. In every action in any local court, where the debt or damages claimed exceed thirty pounds, a Judge or special magistrate, upon the application of any of the parties to such action, and upon being satisfied that any material witness is about to quit the said State, or is unable to attend on the trial of such action from illness or other sufficient cause—

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

s. 283. DITTMER v. RADESTOCK (1892) 25 S.A.L.R. 39; 11 Austn. Digest 513. A Supreme Court Judge should make an order under s. 283 only in cases of great emergency. The seal with which the order must be sealed is that of the local court in which the order is returnable. *Semble*, an application for an order under s. 283 should preferably be made to the Local Court Judge or a special magistrate.

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

285. If, in any action in any local court, where the debt or damages claimed exceed thirty pounds, it is made to appear to the satisfaction of a Judge or special magistrate, upon the application of any of the parties to such action, that any material witness is resident out of the State, or more than one hundred miles from the place where the court for the trial of such action is situated, such Judge or special magistrate—

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

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

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

386, 1886, s. 251.
Of. U.K. 24 & 25 Geo. 5 c. 53, s. 82.

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

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

386, 1886, s. 252.

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

Compelling attendance of witnesses, or production of documents.

Ibid., s. 253.

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

(3) If the person named in such order, after being so served as aforesaid, neglects or fails to attend at the time and place mentioned, or to produce the writings or other documents therein mentioned, and does not give a good and

sufficient excuse for his non-attendance, or the non-production of such writings or other documents, to the satisfaction of the person or persons so appointed to take the examination as aforesaid, he shall forfeit a sum not exceeding one hundred pounds, to be recovered by the party aggrieved by action in any court of competent jurisdiction.

(4) Every person whose attendance is so required shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at the trial of an action in a local court.

(5) No person shall be compelled to produce, under any such order, any writing or other document that he could not be compelled to produce at a trial of the action.

Examina-
tion of
witnesses to
be taken upon
oath.
386, 1886,
s. 254.

288. (1) Every person authorised to take the examination of witnesses by any order or commission made or issued in pursuance of this Part shall take all such examinations upon the oath, affirmation, or declaration of the witnesses, to be administered by the person so authorised.

(2) If, upon such oath, affirmation, or declaration, any person making the same wilfully and corruptly gives any false evidence, he shall be guilty of perjury.

Persons
appointed for
taking
examinations
may report to
the court
upon the
conduct or
absence of
witnesses.
Ibid., s. 255.

289. (1) The Judge or special magistrate, if he takes the examination himself, or the clerk of the court, or any other person to be named in any such order or commission as aforesaid for taking any examination in pursuance thereof, may, and, if required so to do by any party to the action, shall, make a special report to the court touching such examination, and the conduct or absence of any witnesses or other person thereon or relating thereto.

(2) The court may thereupon institute such proceedings and make such order upon such report as justice may require, and as may be instituted in any case of contempt of court.

Examinations
to be received
in evidence
without
proof of
signature of
Commis-
sioner, etc.
Ibid., s. 256.

290. In all cases in which any such order or commission as aforesaid is made or issued, the examinations or depositions certified under the hand of the Judge, special magistrate, clerk of the court, or other person taking the same shall, without proof of the signature of such certificate, be received and read in evidence, saving all just exceptions.

Costs.
Ibid., s. 257.

291. (1) The costs of every order for the examination of witnesses under any commission or otherwise under this Part and of the proceedings thereon shall, for all business transacted within the State, be allowed as between party and party, according to the scale of costs in the second schedule;

and as to business transacted out of the State fair and reasonable costs shall be allowed, according to the amounts actually and *bona fide* paid and expended in and about transacting such business.

(2) All such costs shall be costs in the action, unless otherwise directed on the trial of the action by the Judge or special magistrate making the order for the examination, or by the court.

292. Where by this Act a Judge or special magistrate has power to make an order for the examination of witnesses or for a commission, the practice as to applying for an order for the examination of witnesses, or for a commission, and the proceedings to be thereupon had, shall, in cases not otherwise provided for by this Act, be the same as the practice of the Supreme Court in similar cases.

Practice to be same as in Supreme Court.
386, 1886,
s. 258.

PART XV.

PART XV.

COURT FEES AND COSTS.

293. The costs in every action or proceeding in a local court not herein otherwise provided for shall be paid by or apportioned between the parties in such manner as the court thinks just and in default of any special direction shall abide the event.

Costs to abide event.
Cf. *ibid.*,
s. 259.
Cf. U.K.
51 & 52 Vict.
c. 43, s. 113.

s. 293. *TURNER v. TYER* (1871) 5 S.A.L.R. 141; 11 Austn. Digest 520. Held (under the Local Court Act, 1861) that a local court may order the plaintiff to pay to the defendant his costs of establishing an objection to the jurisdiction of the local court to which he was summoned. If any grounds are shown which justify the plaintiff in proceeding in that court, the court may refuse costs against him.

HODGKINS v. DISTRICT COUNCIL OF BURNSIDE (1892) 25 S.A.L.R. 37; 11 Austn. Digest 520. S. 293 does not empower a local court to order a successful defendant to pay the plaintiff's costs.

RICHARDSON v. DODD (1901-3) S.A.L.R. 99; 11 Austn. Digest 521. S. 112 overrides s. 293. The court has no discretion to deprive the defendant of costs when the plaintiff has recovered no further sum than that paid into court.

STUART v. TOMS (1911) S.A.L.R. 29; 11 Austn. Digest 521. Held that where a defendant obtained a judgment on the claim and the counterclaim, he was entitled to costs as if the claim and counterclaim were separate actions: but see now rules 151-154 of the Local Court Rules, 1927.

Ex parte JAFFREY; *IN re THE LOCAL COURT OF ADELAIDE*; *JAFFREY v. ADELAIDE DEVELOPMENT COMPANY LIMITED* (1932) S.A.S.R. 453; 11 Austn. Digest 528. S. 293 means that a successful party gets his costs of action, unless the court in giving judgment for him orders otherwise. Where the amount of the costs on a judgment was settled by the special magistrate after a judicial hearing, held that prohibition would not lie to prevent proceedings for enforcing the payment of such costs.

The term "costs" in s. 293 includes court fees, bailiff's fees, and other fees paid to the court by the successful party.

PART XV.

What court
fees to be
paid.

Of. 386, 1886,
s. 260.
Of. U.K.
51 & 52 Vict.
c. 43, s. 166.

Amended by
2244, 1935,
s. 10.

294. (1) The fees specified in the third and fourth schedules shall be paid in respect of the matters therein specified: Provided that bailiff's service fees and mileage fees may be repaid to the party who has paid them if service of the process in respect of which they were paid has not been effected and the bailiff has made only one attempt to effect service.

(2) The Governor may, from time to time, by proclamation, vary the said fees and may direct what other fees in respect of steps taken, process issued, or duties performed, shall be taken in local courts.

(3) Every fee shall be paid in the first instance and in advance by the party for whose benefit the act or service in respect of which the fee is to be paid is to be done.

(4) In default of the payment of any fee, payment thereof may be ordered by a Judge or special magistrate, which order shall be enforced in like manner as an order of a local court.

(5) A table of all fees shall be posted in some conspicuous place in every courthouse and in the office of the clerk of every local court.

Practitioners
entitled to
costs accord-
ing to certain
scale.

386, 1886,
s. 261.
Of. U.K.
51 & 52 Vict.
c. 43, ss. 118,
119.

295. (1) Practitioners of the Supreme Court shall, as between party and party, be entitled to receive from the party liable to pay them their costs and charges according to the scale in the fifth schedule, and such costs and charges shall be taxed by the clerk of the court, but his taxation may be reviewed by a Judge or special magistrate.

(2) Notwithstanding anything in subsection (1) hereof any Judge or special magistrate hearing any action or proceeding may certify for costs on a higher scale to be paid in respect of such action or proceeding or part if he considers that by reason of unusual difficulty or intricacy involved in the action justice to the successful party makes it necessary.

s. 294. *O'HALLORAN v. COLGAN* (1875) 9 S.A.L.R. 95; 11 Austn. Digest 524. Held that a bailiff who had seized goods under execution at the instance of a judgment creditor could sue the creditor for his expenses without awaiting the determination of an appeal pending in the action. The party and not his solicitor is liable for the fees due to a bailiff acting in the execution of the duties of his office.

s. 295. *FERRY v. GREIG* (1883) 17 S.A.L.R. 109; 11 Austn. Digest 523. Where a rule prescribed an allowance of 6d. per mile one way for travelling expenses of witnesses, held that the actual travelling fare only could not be allowed, but mileage as prescribed by the rule must be allowed.

MUNICIPAL TRAMWAYS TRUST v. LAPIDGE (1929) S.A.S.R. 71; 11 Austn. Digest 522. The rule of court empowering the court to award costs at a rate higher than the scale in the Act is valid.

PART XV.

296. (1) All costs and charges as between solicitor and client may be taxed by the clerk of the court in which such costs and charges were incurred but the taxation of such clerk may be reviewed by a Judge or special magistrate.

Costs of practitioner as between attorney and client.
386, 1886, s. 263.
Of. U.K. 24 & 25 Geo. 5 c. 53, s. 184.

(2) No costs and charges shall be allowed on such taxation which are not authorised by the scale in the fifth schedule.

(3) Subsection (2) hereof shall not apply where there is an agreement in writing signed by or on behalf of the client to pay costs and charges in excess of those authorised by the fifth schedule and setting out that such costs and charges are in excess of those authorised by the fifth schedule.

PART XVI.

PART XVI.

PENALTIES.

297. Every person shall be guilty of felony who—

- (a) forges the signature of any Judge or special magistrate acting under this Act, or of the clerk, bailiff, or other officer of a local court; or
- (b) forges or counterfeits the seal of any local court, or any process of a local court; or
- (c) knowingly concurs in using any such forged or counterfeit signature or seal for the purpose of authenticating any such process; or
- (d) serves or enforces any such forged process knowing the same to be forged; or
- (e) delivers or causes to be delivered to any person any paper falsely purporting to be a copy of a summons or other process of a local court, knowing the same to be false; or
- (f) tenders in evidence any such process having subscribed or attached thereto a false or counterfeit signature of any such Judge or special magistrate, or of the clerk, bailiff, or other officer of a local court, or a false or counterfeit seal of a local court knowing such signature or seal to be false or counterfeit; or

Punishment for forging signature of magistrate, etc., or counterfeiting seal, or serving forged process, or tendering same in evidence.
Of. 386, 1886, s. 264.

Of. U.K. 24 & 25 Geo. 5 c. 53, s. 177.

s. 296. In *re HOARES TRUSTEES* (1887) 21 S.A.L.R. 88; 11 Austn. Digest 523. Held that in cases under £5 a solicitor could not in the absence of an agreement recover costs for taking instructions, letter before action, issuing summons, and entering appearance. *Semle*, this rule applies whether or not an action is commenced, if an action is contemplated.

- (g) acts or professes to act under any false colour or pretence of the process of a local court; or
- (h) falsely pretends that a judgment or order of a local court has been made in favour of himself or of any person for whom he acts as solicitor or agent, with intent thereby to procure some advantage for himself or for such person.

Justice not attending court when summoned may be fined.

Cf. 386, 1886 s. 265.

298. If any justice liable and summoned to attend any local court fails without reasonable excuse to attend such court on the day and at the time for which he was so summoned, or, attending, to continue to act during the sitting of the court, he shall be liable to a penalty not exceeding ten pounds.

Person giving false evidence to be guilty of perjury.
386, 1886, s. 266.

299. Every person shall be guilty of perjury who—

- (a) in any examination upon oath before any local court, wilfully and corruptly gives false evidence; or
- (b) before any Judge or special magistrate or justice or before the clerk of any local court, acting in pursuance of this Act, wilfully makes any false affidavit or statement on oath.

Local court may fine or imprison for contempt of court.
Cf. *ibid.*, s. 267.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 139.

300. If any person—

- (a) wilfully insults any local court, or any Judge, special magistrate or justice presiding over or sitting in a local court, or any clerk or officer of a local court in the exercise of his duties in court, or whilst such Judge, special magistrate, justice, clerk, or officer are going to or returning from the court; or
- (b) wilfully interrupts the proceedings of the court, or otherwise misbehaves in court; or
- (c) in court refuses to obey any lawful order of the court; or
- (d) in court is guilty of any other contempt of court,

the court may detain him and may, by a warrant, commit him to prison for any term not exceeding fourteen days, or may impose upon him a fine not exceeding ten pounds, and, in default of payment thereof, commit him to prison for any time not exceeding fourteen days unless the fine is sooner paid.

301. (1) (a) If any officer or bailiff of a local court is assaulted while in the execution of his duty; or

(b) if any rescue is made of any goods levied under process of any local court,

the person so offending shall be liable to a penalty not exceeding fifty pounds, or to be imprisoned for a period not exceeding three months.

(2) Such officer or bailiff, or any constable, may in such case take the offender into custody (with or without a warrant), and bring him before a court of summary jurisdiction.

302. If any clerk, or bailiff, or officer of any local court, acting under colour or pretence of the process of any local court, is charged with extortion or, having received or levied any money under the authority of this Act, is charged with not duly paying or accounting for the same, or is charged with any misconduct in his office, a Judge or special magistrate—

(a) may inquire into such matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses may be enforced in any action in a local court; and

(b) may make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied or received as aforesaid, and for the payment of such damages and costs, as he thinks just; and

(c) may also impose a fine upon the clerk, bailiff, or officer, not exceeding twenty pounds for each offence.

303. Every clerk, bailiff, or other officer employed in putting this Act, or any of the powers thereof, in execution, who wilfully and corruptly exacts, takes, or accepts any fee or reward whatsoever, except such fees as are authorised by or under this Act, for or on account of anything done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before a Judge or special magistrate and on allowance of the finding of such Judge or special magistrate by the Governor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages, as hereinafter provided.

Penalty for assaulting officers, or for rescuing goods taken in execution.
Cf. 386, 1886, s. 268.
Cf. U.K. 24 & 25 Geo. 5 c. 53, ss. 31, 124.

Remedy against officers guilty of extortion or other misconduct.
386, 1886, s. 269.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 32.

Penalty on taking fees besides those allowed.
386, 1886, s. 270.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 32 (4).

PART XVI.

Bailiff of local court not to act as private agent for suitors.

386, 1886, s. 271.
Of U.K. 24 & 25
Geo. 5 c. 53, s. 30.

304. (1) It shall not be lawful for the bailiff of any local court to act as agent, otherwise than in the performance of his duties under this Act, for parties in the recovery of their debts, nor to issue, on behalf of such parties, any summons or other process, nor to enter any appearance for a defendant.

(2) Every bailiff who directly or indirectly acts in contravention to this section shall, on proof thereof before a Judge or special magistrate and on allowance by the Governor of the finding of the Judge or special magistrate, be deprived of his office, and be for ever incapable of serving in any office of profit or emolument under this Act.

Penalty on witness duly summoned not appearing.

386, 1886, s. 272.
Of U.K. 24 & 25
Geo. 5 c. 53, s. 81.

305. (1) (a) Every witness duly summoned and to whom payment, or a tender of payment, of his expenses has been made, who refuses or neglects without sufficient cause, to appear, and to produce any books, papers, writings, or other things required by such summons to be produced; and

(b) every person present in court who is required to give evidence and refuses after payment, or tender of payment, of his expenses, to be sworn and give evidence,

shall pay such fine, not exceeding ten pounds, as the court imposes.

(2) The whole or any part of any such fine shall, at the discretion of the court, be applicable towards indemnifying the party injured by such refusal or neglect.

Subpoena to produce public document not to issue without leave.

306. (1) No person shall apply for any summons to issue, nor shall any summons issue, out of any local court to compel the production of any public document, except by leave of a Judge or special magistrate.

(2) Application for such leave may be made *ex parte*, and the order giving such leave may be made upon the unsworn statement of the person making such application; but a Judge or special magistrate may require any statement to be verified by affidavit. Any affidavit used upon such application, when filed, shall be sealed up by the clerk of the court and shall not be opened for or produced to any person other than the party filing the same, or his solicitor, until after the action or proceeding has been disposed of, unless a Judge or special magistrate otherwise orders.

PART XVI.

307. (1) Every proceeding under this Act against persons for omissions, defaults, or offences to which fines or penalties attach shall, except where otherwise provided, be heard and determined in a summary way by any special magistrate or two justices under the provisions of the Justices Act, 1921.

Proceedings for penalties in certain cases to be heard under Justices Act, 1921.
Of. 386, 1886, s. 273.

(2) In every case where a fine is imposed by any local court, Judge, special magistrate, or justices under the authority of this Act, such local court, Judge, special magistrate, or justices may order the offender to pay such costs as appear just, and the payment of such fine and costs, except where otherwise provided for, may be enforced by the committal of the offender to gaol for any period not exceeding three months, unless the amount thereof is sooner paid.

Of. U.K. 24 & 25 Geo. 5 c. 53, s. 169.

308. Every warrant of commitment which issues from a local court for any offence against this Act where the punishment is by imprisonment, and every warrant of commitment issued to enforce the payment of any penalty imposed by a local court under this Act or of the amount of any judgment or order of a local court, shall be under the hand of the clerk of the court and the seal of the court.

Warrant of commitment to be under hand of clerk and seal of court.
386, 1886, s. 274.

PART XVII.

PART XVII.

PROTECTION OF OFFICERS OF LOCAL COURTS, AND GENERAL MATTERS.

309. The contents of any document in the custody of the clerk of any local court may be proved in any court by a certified copy of the same purporting to be under the hand of the clerk and the seal of the local court.

Certain certified copies evidence.
386, 1886, s. 129.

310. (1) Where any distress is made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful nor the party making the same a trespasser on account of any defect or want of form in any proceeding relating thereto.

Distress not unlawful for want of form.
Ibid., s. 276.

(2) The party distraining shall not be deemed a trespasser from the beginning on account of any irregularity which is afterwards committed by the party distraining.

(3) The person aggrieved by any such irregularity may recover full satisfaction for the special damage in an action upon the case.

PART XVII.

No action to be brought against bailiff, etc., acting under order of the court, without notice, and making clerk of court a defendant.

386, 1886, s. 277.
Cf. U.K. 24 & 25 Geo. 5 c. 53, ss. 147, 148.

311. (1) No action shall be brought against any bailiff, or against any person acting by the order and in aid of any bailiff, for anything done in obedience to any warrant under the hand of any clerk of a local court and the seal of such court, until demand has been made, or left at the office of such bailiff in writing signed by the intended party, for the perusal and copy of such warrant, and the same has been refused or neglected for the space of six days after such demand.

(2) If, after such demand and compliance therewith by showing the said warrant to and permitting a copy to be taken by the party demanding the same, any action is brought against such bailiff, or any other person acting in his aid, for any such cause as aforesaid, without making the clerk of the said court who signed or sealed the said warrant the defendant in the action, then, on the production or proof of such warrant at the trial of such action, the court shall give its judgment for the defendant, notwithstanding any defect of jurisdiction or other irregularity in the said warrant.

(3) If such action is brought jointly against such clerk and such bailiff or person acting in his aid, then, on proof of such warrant, the court shall find for such bailiff, and for such person so acting, notwithstanding any such defect or irregularity.

(4) If the judgment is given against the said clerk, then the plaintiff shall recover his costs against him, to be taxed in such manner as to include such costs as the plaintiff is liable to pay to such defendant for whom the court has found as aforesaid.

(5) If any action is brought, the defendant may plead the general issue, and give the special matter in evidence at any trial had thereupon.

Protection to officers.
386, 1886, s. 278.
Cf. U.K. 56 & 57 Vict. c. 61.

312. (1) All proceedings, whether civil or criminal, commenced against any person for anything done in pursuance of this Act shall be commenced within three months after the Act was done, and not otherwise.

(2) Notice in writing of any such proceedings, and the cause thereof, shall be given to the defendant one month at least before the commencement of the proceedings.

s. 312. NALTY V. HOWELL AND ANOTHER (1929) S.A.S.R. 23; 11 Austn. Digest 502. Where a bailiff in good faith arrested the plaintiff in the mistaken belief that he was the person named in a warrant, held the bailiff was acting in pursuance of the Local Courts Act, 1926.

(3) The defendant in any such action may plead the general issue, and give this Act and the special matter in evidence at any trial.

(4) The plaintiff shall not recover in such action if tender of sufficient amends is made before action brought, or if, after action brought, the defendant pays into court sufficient amends.

(5) If the defendant pays into court sufficient amends, the plaintiff shall recover his costs of action up to the time of payment into court, and if judgment is given for the defendant, or the plaintiff is nonsuited, or discontinues, the defendant shall recover full costs, as between solicitor and client, and have his remedy for the same in the usual way.

313. Every oath, affirmation, or declaration required by this Act, or intended to be used in any action or proceeding in a local court, may be taken or made before a Judge, special magistrate, or justice, or before the clerk of any local court or a commissioner for taking affidavits in the Supreme Court.

Oaths and affirmations, before whom to be taken and made.
386, 1886, s. 279.
Cf. U.K. 24 & 25 Geo. 5 c. 53, s. 84.

314. (1) All sums of money which have already been or are hereafter paid into a local court to the use of any party to an action therein, shall, after remaining unclaimed for six years, be paid to the Treasurer of the State for the purposes of the General Revenue.

Suitors' money unclaimed for six years to go to general revenue, saving disability.
386, 1886, s. 280.

(2) No time during which the person entitled to claim any such sum of money was an infant or of unsound mind or beyond the seas shall be taken into account in estimating the said period of six years.

(3) Upon receiving a certificate under the hand of the Judge or the special magistrate, certifying to the claimant's right to the money, and the fact and duration of his disability as above mentioned, the Treasurer shall pay the money to the claimant or his solicitor at any time within six years after the termination of such disability.

315. All fines or penalties imposed by any local court, Judge, special magistrate, or justice under the authority of this Act shall, except where otherwise specially appropriated, be paid to the Treasurer for the purposes of the General Revenue of the State.

Appropriation of penalties.
Ibid., s. 281.

Appropriation of moneys.
386, 1886,
s. 282.

316. All moneys received as fees or penalties under this Act, unless otherwise expressly appropriated, shall be paid to the Treasurer for the purposes of the General Revenue of the State.

SCHEDULES.

THE FIRST SCHEDULE.

ACTS REPEALED.

Title of Act.	Number and Year of Act.
Local Courts Act, 1886.. . . .	No. 386 of 1886
Local Court Appeals Amendment Act, 1887.. . . .	No. 411 of 1887
The Local Courts Amendment Act, 1888.. . . .	No. 431 of 1888
The Local Courts Act Amendment Act, 1889.. . . .	No. 464 of 1889
The Local Courts Act Further Amendment Act, 1913	No. 1112 of 1913

THE SECOND SCHEDULE.

FEES ON COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

	Under £30.	£30 and Upwards.
	£ s. d.	£ s. d.
Instructions for order or commission.. . . .	0 6 8	0 6 8
Drawing and engrossing affidavit.. . . .	0 6 8	0 13 4
Application for order or commission.. . . .	0 10 0	1 0 0
Obtaining appointment from Commissioner for examination.	0 6 8	0 6 8
Copies of order or commission.. . . .	6d. per folio	
Drawing notice to serve on witnesses.. . . .	1s. per folio	
Copying.. . . .	6d. per folio	
Service of copy order or commission with notice.. . . .	{ the same as for service of a subpoena	
Attending examination, per day.. . . .	1 1 0	2 2 0
Fee to clerk of court or other commissioner, per day.. . . .	1 1 0	2 2 0
Journeys of clerk of court or other commissioner to place of examination, each way.. . . .	6d. per mile	
Attending for office copy of depositions.. . . .	0 3 4	0 3 4

THE THIRD SCHEDULE.

COURT FEES.

[As varied by proclamation: *Gazette* 5th November, 1936, p. 1005.]

	Under £10 .	£10 and under £20.	£20 and under £50.	£50 and under £100.	£100 and over.
	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>
Filing claim and issuing ordinary summons	2 0	3 0	7 0	10 0	15 0
Filing claim and issuing special summons	3 0	5 0	10 0	15 0	20 0
Unsatisfied judgment summons	2 0	3 0	4 0	5 0	5 0
Each copy above one copy of ordinary or special summons	1 0	1 0	1 0	1 0	1 0
Entering appearance for each defendant separately appearing, inclusive of notice of trial to both parties	2 0	3 0	5 0	10 0	10 0
Filing reply	2 0	2 0	3 0	5 0	5 0
Subpoena (any number of witnesses)	1 0	2 0	3 0	4 0	5 0
Signing judgment in default of appearance or in case of partial appearance or judgment by consent before trial	5 0	5 0	10 0	15 0	20 0
Entering judgment in ejectment	10 0	10 0	10 0	10 0	10 0
Hearing fee at trial of action, including consent to judgment on trial	5 0	8 0	15 0	20 0	20 0
Hearing fee in any appeal	20 0	20 0	20 0	20 0	20 0
Taxing costs	2 0	3 0	4 0	5 0	7 0
Warrant of every description except under Part XII.	5 0	7 0	10 0	15 0	20 0
Interpleader summons	2 0	3 0	7 0	10 0	15 0
Interlocutory summons	1 0	2 0	3 0	4 0	5 0
Summons in ejectment under Part XI.	5 0	5 0	5 0	5 0	5 0
Each copy above one copy	1 0	1 0	1 0	1 0	1 0
Certificate of judgment or order for any other certificate	5 0	5 0	5 0	5 0	5 0
Certified copy of any document or record	2 6	2 6	2 6	2 6	2 6
Registration of certificate of judgment or order ...	5 0	5 0	5 0	5 0	5 0
Filing affidavit or declaration other than an affidavit of service of any summons	1 0	2 0	2 0	2 0	2 0
Bonds of every description	1 0	3 0	5 0	7 0	10 0
Order of every description	2 0	3 0	4 0	5 0	6 0
On any application to search for and inspect any document or record	1 0	1 0	1 0	1 0	1 0
Transmission fee, where a summons or warrant is taken out in one Local Court for service from another	1 0	1 0	1 0	1 0	1 0
Receiving and paying fee if amount paid into court ..	3 0	3 0	3 0	3 0	3 0

Filing notice of appeal against any assessment, 2s.

In actions under Part XII. the same fees shall be taken as in actions where £100 and over is claimed, and in addition, on reference to the clerk of the court for every hour or part of an hour the clerk is occupied, 5s.

When advertisements are inserted by the court or an officer thereof, the actual cost thereof.

The hearing fees prescribed by this schedule shall be payable in respect of the first period of five hours occupied in the actual trial or hearing of the action. In respect of each subsequent hour, or part of an hour so occupied, one fifth of such fee shall be also payable, but no fractions of 1s. shall be payable.

There shall be taken in Local Courts a fee of 6d. per folio of 72 words for typing copies of evidence and notes made at a trial for forwarding to the Master of the Supreme Court, pursuant to section 65.

In actions under Part X. the fees to be charged for a summons or for any other step or proceeding in connection therewith shall be calculated as if the claim were one for a liquidated amount equivalent to the annual rental of the premises for one year, and in addition the amount of arrears of rent, if any: Provided that where an amount is assessed for mesne profits such amount shall also be added to the claim in calculating the fees to be charged for all proceedings subsequent thereto. Provided further that where possession of the premises is given after the issue of the summons the amount of the claim for this purpose shall thereafter be reduced by an amount equivalent to the annual rental previously referred to herein.

NOTE.—A fee of 2s. on filing notice of appeal against any assessment is fixed by proclamation, *Gazette* 13th September, 1934, p. 529.

THE FOURTH SCHEDULE.

BAILIFFS' FEES.

Bailiffs' Fees.	Under £10.	£10 and under £20.	£20 and under £50.	£50 and over.
	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>
Service of ordinary summons, interpleader summons, or garnishee order or summons	2 0	3 0	4 0	5 0
Service of special summons and unsatisfied judgment summons	3 0	4 0	5 0	5 0
Service of every other summons, order, or notice	2 0	3 0	4 0	5 0
Service of subpoena each witness	1 6	2 6	4 0	5 0
Service of warrant of execution	3 0	5 0	7 6	10 0

Other Bailiffs' Fees.

£ s. d.

Added by
Rule of Court,
Gazette 20th
October,
1932, p. 802.

Mileage for service of any process, 1s. per mile beyond the first mile.

One mileage fee only shall be payable where it appears that two or more parties in the one action may be served together: Provided that where two or more such parties are separately served and more than one attempt has been made to affect service, a mileage fee for service on each of such parties may be subsequently allowed by the clerk of the court.

Executing any warrant of imprisonment or attachment... 0 10 0

Executing any warrant to arrest absconding debtor, 10s., and 1s. per mile, unless officer travels by railway or water, then the actual charge; and 10s. per day for expenses if engaged more than one day in the execution of such warrant.

Executing any warrant in the nature of a writ of *capias ad satisfaciendum* one mile or within one mile of his court... 1 1 0

Executing any warrant in the nature of a writ of *capias ad satisfaciendum* over one mile but within seven miles of his court... 1 11 6

Executing any warrant in the nature of a writ of *capias ad satisfaciendum* beyond seven miles from his court, £1 11s. 6d., and an additional shilling for every mile one way beyond seven miles, and a further shilling per mile on return journey if prisoner is in charge.

Serving any summons for the recovery of premises under Part X. .. 0 5 0

Serving any summons in ejectment, under Part XI. 0 5 0

Service of summons, with particulars annexed, under Part XII. .. 0 5 0

Executing any warrant to give possession, under Parts X. or XI. .. 0 5 0

Levying any distress... 0 5 0

Possession of goods on the premises under execution—per day .. 0 12 6

Cartage on removal of goods, storage of same, if any, costs of feeding horses or cattle seized—the amount actually paid.

If goods sold, seven pounds ten shillings per centum on the amount realised, to include all charges of the auctioneer.

In case where any bailiff shall remain in possession under more than one warrant of execution, one possession fee only shall be chargeable.

In actions under Part XII., the same fees may be charged as are chargeable in actions where £50 or over is claimed.

THE FIFTH SCHEDULE.

PRACTITIONERS' FEES.

	Up to £5.	Over £5 and up to £20.	Over £20 and up to £30.	Over £30 and up to £100.	Over £100 and up to £250.	Over £250.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
For taking instructions, letter before action, issuing summons, and entering appearance	—	0 10 0	1 0 0	2 0 0	3 0 0	4 0 0
Getting up case for trial, preparing summons for witnesses, notice to admit and produce	0 10 0	0 10 0	0 10 0	1 10 0	2 0 0	4 0 0
Obtaining order for discovery, filing affidavit, perusing and making inspection and copies of documents	—	—	—	0 15 0	1 0 0	2 0 0
Obtaining order for interrogatories and filing interrogatories and answers	—	—	—	0 15 0	1 0 0	2 0 0
Counsel's fee	1 1 0	1 1. 0	1 1 0	4 4 0	5 5 0	10 10 0
Attending for unsatisfied judgment summons and appearing at hearing	0 10 6	0 10 6	0 10 6	1 1 0	1 11 6	2 2 0
Notice by claimant to bailiff, with particulars to be filed under Part XI. (other charges same as in ordinary action)	0 7 6	0 7 6	0 7 6	0 10 0	1 0 0	1 0 0
Instructions for and affidavit under Part XIII., other charges same as in ordinary action	0 7 6	0 7 6	0 7 6	0 10 0	—	—
Replevin bond (other charges are the same as in ordinary action) ..	0 10 0	0 10 0	0 10 0	1 0 0	—	—
Application for order for attachment of debts, including affidavit in support	0 15 0	0 15 0	0 15 0	1 0 0	2 0 0	2 0 0
Hearing of application to make order absolute, including necessary affidavits	0 15 0	0 15 0	0 15 0	1 0 0	2 0 0	2 0 0
Summons under Part X.	5 per centum of the rent calculated at per annum, whether the premises are let by the year or not.					

For service of all documents, the same as allowed to bailiff.

In the application of the scale of costs as between party and party, the amount recovered or the value of the property in litigation shall regulate the scale of the plaintiff's costs, and the amount sought to be recovered or the value of the property in litigation the scale of the defendant's costs, but as between solicitor and client the amount sued for or the value of the property in litigation shall regulate the scale without reference to the result.

Under Part X. the rent is, for the purpose of ascertaining the scale of costs, to be calculated at per annum, whether the premises are let by the year or not.

For proceedings in ejectment where the value of the land sought to be recovered does not exceed £100, the fees will be on the same scale as that which applies in ordinary actions where £100 is claimed, except in cases where, although the value of the land does not exceed £100, the value of the land, together with the amount of the claims properly joined, exceeds £100. Where the value of the land sought to be recovered exceeds £100, or where the value of the land together with the amount of the claims properly joined, exceeds £100, the fees will be regulated by the above schedule, according to the scale therein provided.

If any question or issue is directed to be tried in any garnishee proceedings, charges shall be allowed in respect thereof as if the amount sought to be garnisheed was the amount claimed by a plaintiff in an ordinary action, and the trial was the trial of such an action. Where proof of any document, of which the original is in the custody of any public officer, is given by means of a copy, the costs reasonably and properly paid to the public officer for preparing and for certifying such copy may be allowed.

The counsel fee in the above schedule shall be allowed in respect of the first period of five hours occupied in the actual trial or hearing of the action. In respect of each subsequent hour, or part of an hour, so occupied, one-fifth of such fee shall be also allowed, but no fractions of one shilling shall be allowed.

Rules of Court.

The following rules of court were in force under this Act on the 26th April, 1937:—

GENERAL RULES OF COURT—

Gazette—24th February, 1927, p. 413.

RULES OF COURT AS TO LOCAL COURT APPEALS—

Gazette—31st March, 1927, p. 745.

FURTHER RULES OF COURT AS TO LOCAL COURT ACTIONS—

Gazette—19th December, 1929, p. 1344.
17th September, 1931, p. 494.

RULES OF COURT AS TO BAILIFFS' FEES—

Gazette—20th October, 1932, p. 802.

RULES OF COURT AS TO TRANSFERRING JUDGMENTS—

Gazette—26th December, 1935, p. 1635.

Special Jurisdictions.

RULES OF COURT AS TO APPLICATIONS UNDER SECTION 5 OF THE HIRE-PURCHASE AGREEMENTS ACT, 1931—

Gazette—18th February, 1932, p. 312.

RULES OF COURT AS TO PROCEDURE UNDER THE LANDLORD AND TENANT (RENT REDUCTION) ACT, 1932-1936—

Gazette—22nd December, 1932, p. 1209.

REGULATIONS AS TO APPLICATIONS UNDER SECTION 10 OF THE MARINE STORES ACT, 1898-1936—

Gazette—22nd June, 1899, p. 1357.

RULES OF COURT AS TO APPLICATIONS UNDER THE MORTGAGORS RELIEF ACT, 1931-1936—

Gazette—28th January, 1932, p. 158.

RULES OF COURT AS TO APPEALS AGAINST REFUSAL OF DRIVERS' LICENCES UNDER THE ROAD TRAFFIC ACT, 1934-1936—

Gazette—4th March, 1937, p. 484.

Rules of Court—continued.

REGULATIONS AS TO APPLICATIONS TO LOCAL COURTS UNDER
THE SECOND-HAND DEALERS ACT, 1919-1934—

Gazette—26th March, 1936, p. 705.

RULES OF COURT UNDER THE WORKMEN'S COMPENSATION
ACT, 1932-1935—

Gazette—4th May, 1933, p. 723.

RULES OF COURT UNDER THE WORKMEN'S LIENS ACT, 1893-
1936—

Gazette—21st February, 1895, p. 453.

REGULATIONS UNDER THE LAND AGENTS ACT, 1925-1936—

Gazette—28th January, 1926, p. 153.

11th February, 1926, p. 267.

18th March, 1926, p. 794.

9th February, 1928, p. 262.

16th February, 1928, p. 331.

24th October, 1929, p. 954.

END OF VOLUME 4.