

District Courts.

This Act to be deemed part of "The Marriage Act, 1854." Short Title.

16. This Act shall be deemed and taken to be part of "The Marriage Act, 1854," and shall be construed accordingly.

17. The Short Title of this Act shall be "The Marriage Act Amendment Act, 1858."

Schedule C.

SCHEDULE C.

1855.—MARRIAGES IN THE DISTRICT OF [AUCKLAND].

No.	When Married, and where.	Names and Surnames.	Age.	Rank or Profession.	Condition.	Name of Officiating Minister [or Registrar].	When Registered.
5	4th February, 1855, St. Paul's Church, Auckland.	John Cox. Mary Thompson.	Full. Minor.	Clerk. Dressmaker.	Bachelor. Spinster.	A. B., Officiating Minister [or Registrar].	4th Feb., 1855.

Married, after the delivery to me of the certificate required by the Act of the General Assembly of New Zealand, intituled "The Marriage Act, 1854," by A. B., [Officiating Minister or Registrar].

This Marriage was solemnized between us,
 John Cox, } In the presence { John Hastings, [Place of abode and calling].
 Mary Thompson, } of us, { Geoffry Mitchell, [Place of abode and calling].

No. XXX.

DISTRICT COURTS.

AN ACT to establish District Courts in the Colony of New Zealand. [16th July, 1858.]

Preamble.

WHEREAS it is expedient that the laws relating to Courts of inferior jurisdiction should be amended, and that further provision should be made for the administration of justice in civil and criminal cases :

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—

Acts and Ordinances repealed.

1. The several Acts and Ordinances specified in the Schedule to this Act are hereby repealed, but all proceedings in execution of the said Acts and Ordinances taken before the commencement of this Act shall be as valid to all intents and purposes, and may be continued executed and enforced after this Act shall come into operation, in the same manner as if this Act had not been passed.

CREATION AND CONSTITUTION OF COURTS.

District Courts created.

2. There shall be within the Colony Courts of Record, possessing civil and criminal jurisdiction, to be called District Courts.

Districts to be constituted.

3. It shall be lawful for the Governor, from time to time as he shall think fit, by Proclamation in the *New Zealand Gazette*, to constitute throughout the Colony, or in any part thereof, districts within which such Courts shall be respectively held, and such districts to abolish and the boundaries thereof to define or alter, and also to declare by what local name each such Court shall be designated.

Appointment of Judges.

4. It shall also be lawful for the Governor, in the name and on behalf of Her Majesty, to appoint for every such District Court a fit and proper person, being a barrister or solicitor of the Supreme Court, to be the Judge thereof: Provided always that for any such district it shall be lawful for the Governor to appoint any fit and proper person to be the Judge thereof to exercise only the jurisdiction conferred by this

District Courts.

this Act over cases of a civil nature in which the claim or demand shall exceed twenty pounds and shall not exceed one hundred pounds, and the jurisdiction conferred by the twenty-eighth section of this Act as to the recovery of the possession of tenements, and no other jurisdiction under this Act.

5. Every such Judge shall be called a District Judge, and shall hold office during the pleasure of the Governor. Name and tenure of office.

6. The same person may be appointed Judge of any two or more District Courts, and may hold such office in conjunction with any other office which the Governor shall not deem incompatible therewith. Judge may hold other office not incompatible.

7. No District Judge shall practice as a solicitor or conveyancer under a penalty of one hundred pounds for each offence, to be recovered by action in the Supreme Court by any person who shall sue for the same; but any such Judge, if otherwise qualified, may practice as a barrister in the Supreme Court. District Judges not to practice as solicitors.

8. It shall be lawful for the Governor at any time to appoint any fit and proper person to be the Deputy of any Judge, to act in case of his death illness or unavoidable absence; and such Deputy shall, during the time he shall so act, have all the powers and privileges and perform all the duties of the Judge for whom he shall have been appointed Deputy, and shall hold office during the Governor's pleasure; but he shall not be precluded from practising as a solicitor or conveyancer, except as a solicitor in the Court of which he is Deputy Judge, during such time as he is acting. Governor may appoint Deputy Judge.

9. Whenever the Judge of any Court shall die, the Deputy Judge shall act as such from the day of such death, and in the case of illness or absence shall act as such from such day as the District Judge shall certify under his hand to the Deputy Judge that he is ill and unable to perform his duties, or that he is about to leave his district; and such Deputy Judge shall cease to act as such on the day on which he shall receive from the District Judge a certificate under his hand to the effect that he has resumed his duties. No District Judge shall have power to act during such term as his Deputy Judge shall be lawfully acting. When Deputy Judge to act.

10. There shall be for every such Court a Clerk, who shall be appointed by and hold office during the pleasure of the Governor: Provided always that it shall be lawful for the Judge of the Court to appoint from time to time a Deputy to act for the Clerk of the Court at any time when he shall be prevented by illness or any other cause whatever from acting in his office; and in case of the death of the Clerk to appoint a Deputy till the Governor's pleasure shall be known, and any such Deputy to remove at his pleasure; and every Deputy while acting under any such appointment shall have the like powers and privileges, and shall perform the same duties and be subject to the like provisions and penalties, as if he were the Clerk of the said Court for the time being. Clerk to be appointed by the Governor.

11. The Clerk of each Court shall issue all summonses warrants precepts and writs of execution, and register all orders and judgments of the said Court, and keep an account of all proceedings of the Court, and shall take charge of and keep an account of all Court fees and fines payable or paid into Court, and of all moneys paid into and out of Court, and shall enter an account of all such fees fines and moneys in a book belonging to the Court to be kept by him for that purpose, and shall do and perform all other acts and duties properly incident to the office of Clerk. Duties of Clerks.

12. There shall also be a bailiff and such other ministerial officers of the said Court as may be necessary, who shall be appointed by and hold office during the pleasure of the Judge thereof. Bailiffs and inferior officers to be appointed by Judge.

District Courts.

Duties of bailiffs.

13. The said bailiff shall attend every sitting of the Court for such time as shall be required by the Judge unless when his absence shall be allowed for reasonable cause by the Judge, and shall when required serve all the summonses and orders and execute all the warrants precepts and writs issued out of the Court; and the said bailiff shall in the execution of his duties conform to all such rules and regulations as shall from time to time be made as hereinafter provided, and, subject thereunto, to the order and direction of the Judge; and every such bailiff shall be responsible for all the acts and defaults of himself and those acting under him and by his authority, in like manner as any Sheriff in New Zealand is responsible for the acts and defaults of himself and his officers.

Seal.

14. Every District Court shall have a Seal, and all summonses and processes issuing out of the said Court shall be sealed or stamped with the Seal of the said Court.

JURISDICTION OF COURTS.

Civil.

Cases exceeding £20
and not exceeding
£100 cognizable by
District Courts.

15. Every District Court shall have jurisdiction over all cases of a civil nature, whether legal or equitable, in which the claim or demand shall exceed twenty pounds and not exceed one hundred pounds, whether on balance of account or otherwise, and where the cause of action arose either wholly or in some material point within the district in which the action is brought, or where the party sought to be charged shall reside or carry on business or be served with the process of the Court within such district.

Exceptions.

16. Provided always that no District Court shall have cognizance of any action in which the title to real estate or the validity of any devise or bequest shall be in question, or the limitations under any will or settlement shall be disputed, or of any action for a malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or for breach of promise of marriage.

Any action may be
tried by consent.

17. Provided also that in respect of any action whatever in which both parties shall agree, by a memorandum signed by them, or by their respective solicitors, that any District Court named in such memorandum shall have power to try such action, such District Court shall have jurisdiction to try the same accordingly.

Title incidentally
coming in question,
Judge may determine
claim by consent.

18. In any action in any District Court in which the title to any corporeal or incorporeal hereditaments shall incidentally come in question, the Judge shall have the power to decide the claim which it is the immediate object of the action to enforce if both parties at the hearing consent, in writing signed by them or their solicitors, to the Judge having such power; but the judgment of the Court shall not be evidence of title between the parties or their privies in any proceedings in that or any other Court, and such consent shall not prejudice or affect any right of appeal.

Division of causes of
action not permitted.

19. It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any District Court; but any plaintiff having a cause of action for more than one hundred pounds, for which an action might be brought if not for more than one hundred pounds, may abandon the excess, and thereupon the said plaintiff shall on proving his case recover to an amount not exceeding one hundred pounds, and the judgment of the Court shall be in full discharge to the defendant of all demands in respect of such cause of action.

Minor may sue for
wages.

20. It shall be lawful for any person under the age of twenty-one years to prosecute a suit for wages or piece work or for work as a servant, in any District Court in the same manner as if such person were of full age.

21. It

District Courts.

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

Executors may sue and be sued.

22. No privilege shall be allowed to any solicitor or other person to exempt him from the jurisdiction of any Court held under this Act.

No privilege allowed.

23. Where any plaintiff shall have any demand recoverable under this Act against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process; and judgment may be obtained and enforced against the person or persons so served notwithstanding that others jointly liable may not have been served or sued, or may not be within the district or within the Colony; and every such person against whom judgment shall have been obtained under this Act, and who shall have satisfied such judgment, shall have a right of action for contribution against the persons so jointly liable.

One of several persons jointly liable may be sued.

24. The Judge of the District Court, in all actions brought in the said Court, shall be sole Judge, and shall determine all questions as well of fact as of law unless a jury be summoned as hereinafter provided.

Judge to determine all questions unless a jury summoned.

25. Whenever a Judge of the Supreme Court shall not reside within any district constituted under this Act, or shall be absent therefrom, the Judge of such district shall have the same power as the Supreme Court to grant and dissolve any injunctions to prevent irreparable injury to property: Provided always that any injunction granted by a Judge of a District Court may at any time be dissolved by the Supreme Court or any Judge thereof as though such injunction had issued from the Supreme Court.

Injunctions.

26. Whenever a Judge of the Supreme Court shall not reside within any district constituted under this Act, or shall be absent therefrom, the Judge of such district shall have the same powers in all cases as the Supreme Court to grant a writ of arrest for the purpose of holding to bail a defendant who is about to quit the Colony, and also to order the person arrested to be discharged from custody, or the bail-bond to be given up that it may be cancelled, or the writ of arrest to be set aside: Provided always that it shall not be necessary, in cases where the debt or damages shall not exceed one hundred pounds, to issue a writ of summons in the Supreme Court before a writ of arrest may be granted by a Judge of a District Court in places where there is no Supreme Court Office out of which such writ can be issued: Provided always that any writ of arrest and all proceedings thereon may be dealt with by a Judge of the Supreme Court as though such writ had issued from that Court.

Arrest.

27. Whenever a Judge of the Supreme Court shall not reside within any district constituted under this Act, or shall be absent therefrom, the Judge of the Court of such district shall have the same power as the Supreme Court to grant probates of wills and letters of administration of the estates and effects of deceased persons, who shall have been at the time of their decease within such district; and such probate and letters of administration shall have the same force and effect throughout the Colony as if the same had been granted by the Supreme Court, and shall for all purposes be deemed to have been granted by that Court.

Probates and administration.

28. When the term and interest of the tenant of any corporeal hereditament, where neither the value of the hereditament nor the rent payable in respect thereof shall have exceeded fifty pounds by the year and upon which no fine or premium shall have been paid, shall have expired

Recovery of possession of tenements.

District Courts.

expired or shall have been determined either by the landlord or by the tenant by a legal notice to quit, and such tenant or any other person holding or claiming by through or under him shall neglect or refuse to deliver up possession accordingly, or when the landlord shall be entitled to possession on account of non-payment of rent, the Court of the district within which such hereditaments are situate shall have jurisdiction in any such case to entertain a suit for the recovery of the possession of the same.

Criminal.

Crimes and offences.

29. Every District Court shall have cognizance of all crimes and offences (except perjury) committed within the district over which its jurisdiction extends, and punishable by fine or imprisonment, or both, or by transportation not exceeding seven years, or by penal servitude not exceeding four years.

Appeals against summary convictions.

30. Every District Court shall have a concurrent jurisdiction with the Supreme Court to hear and determine appeals upon summary convictions for offences committed within the district, subject to such regulations and provisions as are prescribed in an Ordinance passed by the Governor and Legislative Council of New Zealand, No. 5, Session II., intituled "*An Ordinance to regulate Summary Proceedings before Justices of the Peace,*" and subject to such other regulations and provisions as may from time to time be in force for regulating appeals against summary convictions: Provided always that whenever any Judge of a District Court shall be also a Resident Magistrate or Justice of the Peace, the Supreme Court alone shall have jurisdiction to hear and determine appeals against convictions by such Resident Magistrate or Justice.

PROCEDURE AND PRACTICE OF THE COURT.

In Civil Cases.

Judge of Supreme Court may in certain cases depute powers under Supreme Court rules to Judge of District Court.

31. With a view to facilitate proceedings in the Supreme Court during the absence of the Judges thereof, it shall be lawful for any Judge of the Supreme Court from time to time, by writing under his hand, to give and depute generally or in any particular case to the Judge of any District Court the powers to do and perform any of the acts which such Judge of the Supreme Court is empowered to do or perform by any rules which now are or any time hereafter shall be in force for regulating the practice and procedure of the Supreme Court, and any such deputation at any time to annul vary or amend.

Minutes of proceedings to be kept.

32. The Clerk of every District Court shall cause a note of all complaints and summonses, and of all orders, and of all judgments and executions and returns thereto, and of all fines, and of all other proceedings of the Court, to be fairly entered from time to time in books belonging to the Court, which shall be kept at the office of the Court, and such entries in the said books, or copies thereof, bearing 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 whatever as evidence of such entries, and of the proceedings referred to by such entries, and of the regularity of such proceedings, without any further proof.

Party may appear personally or by solicitor of Supreme Court.

33. It shall be lawful for the party to any suit or proceeding to be commenced or taken under this Act to appear and act personally or by a barrister or solicitor of the Supreme Court, and not otherwise, except under special circumstances it shall be lawful for the Judge to permit any party to appear by an agent not being a barrister or solicitor.

Suits to be by plaintiff.

34. On the application of any person desirous of bringing a suit under

District Courts.

under this Act, the Clerk shall enter, in the book to be kept for that purpose, a plaint in writing stating the names and the last known places of abode of the parties and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered.

35. Whereupon a summons shall be issued according to such form, and be served on the defendant so many days before the day on which the Court shall be held at which the cause is to be tried, as shall be directed by the rules to be made as hereinafter provided for regulating the practice of the Court.

Summons to be issued.

36. Such summons may be issued against any defendant residing or being without the district within which the Court has jurisdiction but not out of the Colony, upon the application of any plaintiff who will depose on oath, which oath such Clerk is hereby authorized to administer, that his cause of action has arisen wholly or in some material point within the jurisdiction of the Court.

Summons may be issued against defendant out of district but in Colony.

37. Delivery of the summons to the defendant, or service of the same, in such manner as shall be specified in the said rules of practice, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, provided that the person or place be therein described so as to be commonly known.

Summons how to be served.

38. Any summons under this Act may be served by the bailiff of the Court, or by the plaintiff, or by any person either the bailiff or the plaintiff may employ for that purpose; and service thereof may be proved on oath before the Judge of the Court, or by an affidavit of service sworn as hereinafter provided.

Proof of service.

39. Any person against whom a plaint shall be entered in any District Court may if he think fit, whether he be summoned upon such plaint or not, in the presence of the Clerk of the Court in which such plaint shall have been entered, or in the presence of a solicitor of the Supreme Court, sign a statement confessing and admitting the amount of the debt or demand, or a part of the amount of the debt or demand, for which such plaint shall have been entered, and thereupon it shall not be necessary for the said plaintiff to prove the debt or demand or the part thereof so confessed and admitted as aforesaid, but the Judge of such Court, at the next sitting thereof, whether the parties or either of them attend such Court or not, shall upon proof by affidavit of the signature of the party, if such statement were not signed in the presence of the Clerk, proceed to give judgment for the debt or demand or the part thereof so confessed and admitted in the same manner and subject to the same conditions as if he had tried the cause and given judgment thereupon.

Confession of debt or part of debt &c., and judgment thereupon.

40. If the person against whom a plaint shall be entered in any District Court can agree, with the person on whose behalf such plaint shall have been entered, upon the amount of the debt or demand in respect of which such plaint shall have been entered, and upon the terms and conditions upon which the same shall be paid or satisfied, it shall be lawful for such persons respectively, in the presence of the Clerk of the Court in which such plaint shall have been entered, or in the presence of a solicitor of the Supreme Court, to sign a statement of the amount of the debt or demand so agreed upon between them, and of the terms and conditions upon which the same shall be paid or satisfied; and such Clerk shall receive such statement, and shall thereupon, upon proof by affidavit of the signature of the party if such statement were not made in the presence of the Clerk, enter up judgment for the plaintiff for the amount of the debt or demand so agreed upon upon the terms and conditions mentioned in such statement,

Agreement as to the amount of debt &c., and condition for payment.

District Courts.

and such judgment shall to all intents and purposes be the same and have the same effect and shall be enforced and enforceable in the same manner as if it had been a judgment of the Judge of the said Court.

Payment into Court.

41. Any defendant may, within such time as shall be directed by the said rules, pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and the said sum of money and costs shall be paid to the plaintiff; but if he shall elect to proceed and shall recover no further sum in the action than shall have been so paid into Court, the plaintiff shall pay to such defendant the costs incurred by him in the said action after such payment, and the Court shall give judgment for the same accordingly.

Summons to witness.

42. Either party may obtain, at the office of the Clerk of the Court, summonses to witnesses to be served at the option of such party either by himself or his agent or by the bailiff of the Court, with or without a clause requiring the production of books deeds papers and writings in their possession or under their control.

Penalty for non-attendance.

43. Every person on whom such summons shall have been served personally or in such other manner as shall be directed by the rules of practice, and to whom at the same time payment or a tender of his expenses shall have been made on the scale to be fixed by such rules, and who shall refuse or neglect without sufficient cause to appear or to produce any books deeds papers or writings required by such summons to be produced, and also every person present in Court who shall be required to give evidence and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine not exceeding twenty pounds as the Judge shall set on him, but no such conviction shall exempt such person from any action for disobeying such summons.

Judge may issue warrant for bringing up a prisoner to give evidence.

44. The Judge of a District Court in any case where he shall see fit, upon application on affidavit by either party, may issue an order under his hand and the Seal of the Court for bringing up before such Court any prisoner or person confined in any gaol prison or place under any sentence or under commitment for trial or otherwise, except under process in any civil action suit or proceeding, to be examined as a witness in any cause or matter depending or to be inquired of or determined in or before such Court; and the person required by any such warrant or order to be brought before such Court shall be so brought under the same care and custody and to be dealt with in like manner in all respects as a prisoner required by any writ of *habeas corpus* awarded by Her Majesty's Supreme Court of New Zealand to be brought before such Court to be examined as a witness in any cause or matter depending before such Court is now by law required to be dealt with: Provided always that the person having the custody of such prisoner or person shall not be bound to obey such order unless a tender be made to him of a reasonable sum for the conveyance and maintenance of a proper officer or officers, and of the prisoner or person, in going to remaining at and returning from such District Court.

Judge may make order respecting production of documents.

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

District Courts.

such affidavit being made, the Judge may make such further rule or order thereon as shall be just.

46. Where it is shown to the satisfaction of the Court by affidavit that certain parts of the books or documents to be produced do not relate to the matters in dispute, the party producing the same shall be allowed to seal up such parts.

Parts of documents not relating to matters in dispute may be sealed up.

47. If a Judge of a District Court shall be satisfied by either party to a cause pending in his Court that such cause can be more conveniently or fairly tried in some other District Court, he shall order that the venue be changed and that the same be sent for hearing to such other District Court; or if the Judge shall be interested in the matter of any cause pending in his Court, he shall order that the venue be changed and that the cause be sent for hearing to some convenient District Court of which he is not the Judge, at his discretion; and in either case the Clerk of the Court in which the plaint was entered shall forthwith transmit to the Clerk of the Court to which the same is to be sent, a certified copy of the plaint as entered in the Plaint Book, the duplicate copy of the summons and particulars served on the defendant, and a certified copy of the order for changing the venue; and the Judge of such last-mentioned Court shall appoint a day for the hearing, notice whereof shall be given, in such manner as such Judge shall direct, to both parties.

Power to Judge to change venue.

48. On the day named in the summons, if the plaintiff shall appear, the defendant shall be required to answer the plaint, and on an answer being made in Court the Judge shall proceed in a summary way to try the cause and give judgment without further pleading or formal joinder of issue.

Proceedings at hearing.

49. No evidence shall be given by the plaintiff on the trial of any cause of action except such cause of action as shall be stated in the summons.

No evidence to be given except as to cause of action mentioned in summons.

50. No defendant shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence and to claim and have the benefit of infancy coverture or any statute of limitations, or of a discharge under any Act relating to bankruptcy or for the relief of insolvent debtors, without the consent of the plaintiff, unless such notice thereof as shall be directed by the rules made for regulating the practice of the Court shall have been given to the Clerk of the Court: Provided always that whenever any such notice shall have been given to the Clerk of the Court, he shall, on the same being required by the plaintiff, deliver to him a copy of such notice.

Special defence not admissible unless notice shall have been given.

51. If at the time and place of trial, or at any continuation or adjournment of the Court or cause, the plaintiff shall fail to appear, the cause shall (unless the Court shall otherwise order) be "struck out," and shall be thereupon ended and determined, and a memorandum to that effect shall be entered by the Clerk of the said Court in the register; but such entry shall not bar any future action for the same cause: Provided always that it shall be lawful for the Judge to order any such cause to be reinstated if he shall think fit.

Proceedings when the plaintiff does not appear.

52. If at the time and place of trial, or at any continuation or adjournment of the Court or cause, the plaintiff shall appear but not make proof of his demand to the satisfaction of the Court, it shall be lawful for the Judge to nonsuit the plaintiff or give judgment for the defendant, and if the defendant shall appear and shall not admit the demand, to adjudge to the defendant by way of costs such sum as the Judge in his discretion shall think fit: Provided always that if the plaintiff shall not appear when called upon, and the defendant or some one duly authorized on his behalf shall appear and admit the

Proceedings when plaintiff appears but does not prove his case.

cause

District Courts.

cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the Court if it shall think fit may proceed to give judgment as if the plaintiff had appeared.

Proceedings when defendant does not appear.

53. If at the time and place of trial, or at any continuation or adjournment of the Court or cause, the defendant shall not appear or sufficiently excuse his absence, or shall neglect to answer when called in Court, the Judge upon due proof of service of the summons may proceed to the trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: Provided always that the Judge in any such case at the same or any subsequent Court may set aside any judgment so given in the absence of the defendant and the execution thereupon, and may grant a new trial of the cause upon such terms (if any) as to the payment of costs, giving security for or paying into Court debt and costs or any part thereof, or upon such other terms as he may think fit, on sufficient cause shown to him for that purpose.

Costs in discretion of Judge.

54. All the costs of any action or proceeding in any Court holden under this Act shall be paid or apportioned between the parties in such manner as the Judge shall think fit, but in default of any special direction such costs shall abide the event of the action.

Costs to be allowed plaintiff's solicitor.

55. Every solicitor employed by or on behalf of the plaintiff shall in every case be entitled to have and recover in full for his costs and fees, in addition to the costs actually paid by him out of pocket, a sum after the rate of five per cent. on the amount for which the judgment shall be given and no more: Provided always that he shall in no case, whether judgment be given for the plaintiff or defendant, be entitled to a less sum than three guineas in addition to the costs actually paid out of pocket.

Costs to be allowed defendant's solicitor.

56. Every solicitor employed by or on behalf of the defendant shall, in every case in which judgment shall be given for the defendant, be entitled to have and recover in full for his costs and fees, in addition to the costs actually paid by him out of pocket, a sum after the rate of five per cent. on the amount for which the summons shall have been issued; and if judgment shall be given for the plaintiff, then a sum after the rate of five per cent. on the amount recovered by such judgment: Provided always that he shall in no case, whether judgment be given for the plaintiff or defendant, be entitled to a less sum than three guineas in addition to the costs actually paid out of pocket.

Court fees payable.

57. It shall be lawful for the Governor in Council from time to time to fix alter and abolish all fees payable in respect of proceedings which are by this Act or shall hereafter be authorized to be taken in any District Court; and all such fees, except such as may be payable in respect of keeping possession or appraising or selling goods seized, shall be paid in the first instance by the party on whose behalf any such proceeding shall be taken; and in default of the payment of any fees, payment thereof shall, by order of the Judge, be enforced by such means as might be employed to recover any debt adjudged by the Court to be paid; and a table of all fees shall be posted in some conspicuous place in every Clerk's office.

Fees to be prepaid.

58. It shall be lawful for the Judge or any officer of a District Court to refuse to do any act for which a fee shall be demandable unless such fee be first paid.

Interest when not otherwise agreed to be at rate of 8 per cent. per annum.

59. Where interest upon any sum shall be recovered or allowed in any suit, but the rate of such interest shall not have been previously agreed upon by the parties, the party entitled to such interest shall recover and be allowed the same after the rate of eight pounds per centum per annum.

District Courts.

60. In order to abolish the expense occasioned by the taxation of the costs, the Judge shall, when the cause is called on, if the same be not tried, or during the trial thereof if the same be tried, ascertain the amount that each person (whether witness or party) is entitled to receive for costs and expenses; and in case there shall be a verdict for the plaintiff, the amount ascertained as aforesaid, and the fees payable to the Clerk of such Court, or so much thereof respectively as the plaintiff shall be entitled to recover, shall be added to such verdict, and shall therewith form the amount for which judgment shall be entered by the Clerk.

Plaintiff's costs how taxed and recovered.

61. In case there shall be judgment for the defendant, the amount so ascertained as aforesaid and the fees so payable as aforesaid, or so much thereof respectively as the defendant shall be entitled to recover, shall form and be the amount for which judgment shall be entered by the Clerk.

Defendant's costs how taxed and recovered.

62. In any action whatever it shall be lawful for either the plaintiff or the defendant to require a jury to be summoned to try the said action.

Cases may be tried by jury.

63. The party requiring the jury to be summoned shall, at least seven days before the day fixed for the hearing of the case, give written notice thereof to the Clerk of the Court either personally or by leaving the same at his office, and shall pay into Court the costs from time to time to be fixed for the summoning of the said jury, together with the sum of two pounds for the payment of the jury.

Party demanding jury to give notice.

64. Upon receiving such notice the Clerk of the Court shall summon or cause to be summoned twelve jurors residing within ten miles of the place where the sittings thereof shall be held, chosen from time to time in alphabetical order as their names shall appear on the Jury List: Provided always that it shall not be necessary to summon more than twelve jurors to attend any one sitting of the Court, and the jurors summoned for the trial of any one cause shall be deemed to have been summoned for the trial of all jury causes to be tried at the same sittings of the Court: Provided also that it shall be lawful for the Governor from time to time, by notification in the *New Zealand Gazette*, to appoint in respect of any District Court that jurors residing at a greater or less distance than ten miles from the place where the sittings of such Court shall be held may be summoned as jurors to attend the sittings of such Court, and any such appointment at any time to alter or revoke.

Clerk to summon twelve jurors.

65. Every such summons shall be served on each juror personally, or by leaving the same at his ordinary place of abode, at least three days before the sitting of the Court: And every person summoned as a jurymen under this act and failing to attend shall be liable to a penalty not exceeding ten pounds, to be imposed at the discretion of the Court, and in default of payment shall be imprisoned for a term not exceeding fourteen days.

Summons when to be served.

66. When the jurors shall be in attendance, if their number shall be odd the Clerk shall strike off one, and the number being even the plaintiff and defendant alternately shall each strike off one, until the number be reduced to four, and the four thus remaining shall be impanelled and sworn to give their verdict in the cause to be brought before them; and every such jurymen shall be entitled to receive from the Clerk of the Court the sum of ten shillings, and the expenses thereby incurred shall be the costs in cause: Provided always that if either party shall neglect or refuse to strike the jury as herein provided, or the defendant shall be absent, it shall be lawful for the Clerk of the Court to strike the jury instead of such neglecting refusing or absent party.

Jury to be reduced to four by challenge.

District Courts.

Jury when they cannot agree to a verdict to be discharged.

67. In every trial the jury shall give a unanimous verdict and judgment shall be entered accordingly; but where the jury shall have remained six hours in deliberation, and shall be unable to agree upon a verdict, the Court shall order them to be discharged; and in every such case no judgment shall be given but the action may be again tried at such Court as the plaintiff may think fit on his giving ten days' notice thereof in writing to the defendant either personally or by leaving the same at his last known place of abode.

Judgment entered upon verdict to have same effect as judgment of Judge.

68. Every judgment entered up in pursuance of the verdict of a jury shall have the same force and effect and for all purposes thereafter be as though such judgment were entered in pursuance of the determination of the Judge of the Court alone as hereinbefore provided.

Judgments to be final.

69. Every order and judgment shall be final and conclusive between the parties, but the Judge shall have power to nonsuit the plaintiff in any case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the Court; and shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

Judgment debt to carry interest.

70. Every judgment debt shall carry interest at the rate of eight per cent. per annum from the time of entering up judgment until the same shall be satisfied, and such interest may be levied by a warrant of distress.

Entry of judgment on register to be sufficient record.

71. Every judgment and the time (if any) limited for satisfying the same shall be entered in a register to be kept for that purpose, and no other record thereof shall be necessary.

When judgment obtained no second suit to be brought in another Court.

72. If any party shall sue another in any District Court for any debt or cause of action for which he has already sued him and obtained judgment in any other Court, the proof of such former suit having been brought and judgment obtained may be given, and the party so suing shall not be entitled to recover in such second suit, and shall be adjudged to pay besides the costs thereof any sum not exceeding twenty pounds as the Judge of the Court shall order.

Court may order payment by instalments.

73. It shall be lawful for the Judge to make such order as he may think fit concerning the times and by what instalments any debt or damages or costs for which judgment shall be obtained in the said Court shall be paid, and all such money shall be paid into Court unless the Judge shall otherwise direct.

Cross judgments to be set off.

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

But not to prejudice solicitor's lien for costs.

75. No such set-off of one judgment against another shall be allowed to the prejudice of the solicitor's lien for costs due to him in the particular action against which the set-off is sought.

Judge may stay proceedings, grant time, or adjourn.

76. The Judge may in any case make orders for staying proceedings until security shall be given for costs, or for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit, and may also from time to time adjourn any Court or the hearing of any cause in such manner and on such terms as to payment of costs or otherwise as to the Judge may seem fit.

Execution against goods.

77. Whenever the Judge shall have given judgment or made an order for the payment of money, the amount shall be recoverable in case of default or failure of payment thereof forthwith, or at the time

or

District Courts.

or times and in the manner thereby directed, by execution against the goods and chattels of the party against whom such judgment or order shall be given or made.

78. And the Clerk of the said Court, at the request of the party prosecuting such judgment or order, shall issue under the Seal of the Court a writ of *feri facias* as a warrant of execution to the bailiff of the Court, who by such warrant shall be empowered to levy or cause to be levied such sum of money as shall be ordered or adjudged to be paid, and also the costs of the execution, by distress and sale of the goods and chattels of such party wherever the same may be found; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant.

Clerk at request of party to issue *feri facias*.

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

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

80. Every bailiff or officer executing any process of execution issuing out of a District Court against the goods and chattels of any person, may by virtue thereof seize and take any of the goods and chattels of such person, (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of five pounds, which shall to that extent be protected from such seizure,) and may also seize and take any money or bank notes, and any cheques bills of exchange promissory notes bonds specialties or securities for money belonging to any such person against whom any execution shall have issued as aforesaid.

What goods may be taken in execution.

81. The bailiff shall deliver to the Clerk of the Court all cheques bills of exchange promissory notes bonds specialties or other securities for money which shall have been so seized or taken as aforesaid as security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby when the time of payment thereof shall have arrived.

Disposal of securities seized by bailiff.

82. The precise time when any application shall be made to a Clerk to issue a warrant against the goods of a party shall be entered by him in the Execution Book and on the warrant, and when more than one such warrant shall be issued they shall be executed in the order of the times so entered.

Priority of executions issuing out of District Court.

83. When a writ against the goods of a party has issued from the Supreme Court, and a warrant against the goods of the same party has issued from a District Court, the right to the goods seized shall be determined by the priority of the time of the delivery of the writ to the Sheriff to be executed, or of the application to the Clerk for the issue of the warrant to be executed, and the Sheriff on demand shall inform the bailiff in writing of the precise time of such delivery of the writ, and the bailiff on demand shall show his warrant to any Sheriff's officer, and such writing purporting to be so signed and the indorsement on the warrant shall respectively be sufficient justification to any Sheriff or bailiff acting thereon.

Priority of executions issuing out of Supreme and District Courts.

84. Where any claim shall be made to or in respect of any goods taken in execution under the process of a District Court, the claimant may

Claimant of goods taken in execution must deposit their

District Courts.

value, pay costs of keeping possession, or give security, otherwise goods shall be sold.

may deposit with the bailiff either the amount of the value of the goods claimed (such value to be fixed by appraisement in case of dispute) to be by such bailiff paid into Court to abide the decision of the Judge upon such claim, and the sum which the bailiff shall be allowed to charge as costs for keeping possession of such goods until such decision can be obtained, or in lieu thereof may give such security for such an amount as may be satisfactory to the bailiff; and 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 Judge.

Regulating the sale of goods taken in execution.

85. No sale of any goods which shall be taken in execution as aforesaid shall be made until after the end of five days next following the day on which such goods shall have been so taken, unless such goods shall be of a perishable nature or upon the request in writing of the party whose goods shall have been taken; and until such sale the goods shall be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person to be put in possession by the bailiff.

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

86. If any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any Court, or in respect of the proceeds or value thereof, by any landlord for rent or by any person not being the party against whom such process has issued, it shall be lawful for the Clerk of the Court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons calling before the said Court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in Her Majesty's Supreme Court or in any local or inferior Court in respect of such claim shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the District Court; and the Judge of the District Court shall adjudicate upon such claim, and make such order between the parties in respect thereof and of the proceedings as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such Court.

Penalty for assaulting bailiff or rescuing goods taken in execution.

87. If any officer or bailiff of any Court shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the Court, the person so offending shall be liable to a fine not exceeding twenty pounds, to be recovered by order of the Court or before a Justice of the Peace; and it shall be lawful for such officer or bailiff of the Court, or for any peace officer, in any such case to take the offender into custody (with or without warrant) and bring him before such Court or Justice accordingly.

Execution to be superseded on payment of debt and costs.

88. In and upon every warrant of execution issued against the goods and chattels of any person whomsoever, the Clerk of the Court shall cause to be inserted or indorsed the sum of money and costs adjudged, with the sums allowed as increased costs for the execution of such warrant; and if the party against whom such execution shall be issued shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the Clerk of the Court out of which such warrant of execution has issued, or to the bailiff holding the warrant of execution, such sum of money and costs as aforesaid, or such part thereof as the person entitled thereto shall agree to accept in full for his debt or damages and costs, together with the fees herein directed

District Courts.

directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty.

89. The landlord of any tenement in which any goods shall be so taken in execution under this Act, or his agent, may claim the rent thereof at any time within five clear days from the date of such taking or before the removal of the goods, by delivering to the bailiff or officer making the levy any writing, signed by himself or his agent, which shall state the amount of rent claimed to be in arrear and the time for and in respect of which such rents is due; and if such claim be made, the bailiff or officer making the levy shall in addition thereto distrain for the rent so claimed and the cost of such distress, and shall not within five days next after such distress sell any part of the goods taken unless they be of a perishable nature, or upon the request in writing of the party, whose goods shall have been taken; and the bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy, first, the costs of and incident to the sale; next the claim of such landlord, not exceeding the rent of eight weeks where the tenement is let by the week, the rent of two terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case; and lastly the amount for which the warrant issued.

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

90. If any replevin be made of the goods so taken, the bailiff shall notwithstanding sell such portion thereof as will satisfy the costs of and incident to the sale under the execution and the amount for which the warrant issued; and in any event the overplus of the sale (if any) and the residue of the goods shall be returned to the defendant; and the poundage of the bailiff for keeping possession and sale under each distress shall be the same as would have been payable if the distress had been an execution of the District Court, and no other fees shall be demanded or taken in respect thereof.

When such goods replevied.

91. If it shall appear upon the return of the warrant or writ of *feri facias* that no goods and chattels can be found, or not sufficient for payment of the sum to be levied, the Clerk of the Court shall, upon the request of the party in whose favour judgment shall have been given, issue a warrant of execution to the bailiff, who by virtue thereof shall be empowered to take in execution the body of the defendant named therein.

If goods insufficient, execution may issue against body.

92. Every warrant of commitment which shall issue from a District Court shall, on whatever day it may be issued, bear date on the day on which the order for commitment was made, and shall continue in force for one year from such date and no longer, but no order for commitment shall be drawn up or served.

Warrant of commitment.

93. In executing any process of the Court the bailiff shall have such powers and be subject to such liabilities as any Sheriff hath or is subject to in like cases in executing the process of the Supreme Court.

In executing process bailiff to have same power as Sheriff.

94. Every person who shall be taken in execution under any such warrant shall be committed to the common gaol of the district within which the Court shall be holden, and shall remain in custody for such time from the day of his commitment as shall be mentioned in such warrant, or until he be discharged by due course of law.

Persons taken in execution to be imprisoned in common gaol for limited time.

95. The time of imprisonment shall be as follows, that is to say,— Where the sum for which the person shall have been taken in execution shall not exceed fifty pounds, four months; and where such sum shall exceed fifty pounds, six months.

Scale of terms of imprisonment.

96. If any money goods or chattels be found and proved to be the property of any person imprisoned under process from a District Court, the same may be seized under warrant issued from the Court,

Goods of persons imprisoned may be seized and sold.

District Courts.

and sold for the benefit of the party at whose suit he shall have been so imprisoned.

Writs of execution to run through Colony.

97. Every writ or warrant issued in execution of any judgment under this Act may be executed in any part of the Colony by the bailiff of the Court, or by the bailiff of any other District Court, or by any other person to whom the same may be specially directed.

Debtors to be discharged from custody on payment of debt and costs.

98. Any person imprisoned under this Act who shall have paid or satisfied the debt or demand or the instalments thereof payable and costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order and all subsequent costs, shall be discharged out of custody upon the certificate of such payment for satisfaction signed by the Clerk of the Court, by leave of the Judge of the Court in which the order of imprisonment was made.

Persons not to be imprisoned twice for the same debt.

99. Where any person shall have been imprisoned under the provisions of this Act, he shall not be liable at any time thereafter to be again taken in execution for the debt or sum of money with respect to which he shall have been so imprisoned: Provided always that, as against the estate and effects of such prisoner whatsoever and wheresoever, the judgment under which he shall have been so imprisoned as aforesaid shall be of as full force and effect as if the body of such prisoner had never been taken in execution by virtue thereof.

Bailiffs answerable for neglect to levy execution.

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

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

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

Parties aggrieved may appeal.

102. If either party in any cause of the amount to which jurisdiction is given to the District Courts by this Act shall be dissatisfied with the determination or direction of the Court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to the Supreme Court, provided that such party shall, within ten days after such determination or direction, give notice

District Courts.

notice of such appeal to the other party or his solicitor, and also give security, to be approved by the Clerk of the Court, for the costs of the appeal whatever may be the event of the appeal, and for the amount of the judgment if he be defendant and the appeal be dismissed: Provided nevertheless that such security as far as regards the amount of the judgment shall not be required in any case where the Judge of the District Court shall have ordered the party appealing to pay the amount of such judgment into the hands of the Clerk of the District Court in which such action shall have been tried, and the same shall have been paid accordingly; and the said Court of Appeal may either order a new trial on such terms as it thinks fit, or order judgment to be entered for either party, as the case may be, and may make such order with respect to the costs of the said appeal as such Court shall think proper, and such orders shall be final.

103. Such appeal shall be in the form of a case agreed on by both parties, or their solicitors, and if they cannot agree, the Judge of the District Court, upon being appealed to by them or their solicitors, shall settle the case and sign it, and such case shall be transmitted by the Appellant to the Registrar of the Supreme Court.

Appeal to be in form of a case.

104. The Chief Justice of the Supreme Court shall from time to time make general rules or orders for regulating the proceedings on appeals, and the costs and fees to be paid in respect of the same.

Chief Justice to make general orders regulating proceedings and costs on appeal.

105. No appeal shall lie from the decision of a District Court if before such decision is pronounced both parties shall agree, in writing signed by themselves or their solicitors or agents, that the judgment of the District Court shall be final.

Parties may agree not to appeal.

106. In proceedings for the recovery of corporeal hereditaments the landlord may enter a plaint, at his option, either against the tenant or against the person neglecting or refusing to deliver up possession, in the Court of the district in which the premises lie, for the recovery of the same, and thereupon a summons shall issue to such tenant or such person so neglecting or refusing; and if the defendant shall not, at the time named in the summons, show good cause to the contrary, then on proof of his still neglecting or refusing to deliver up possession of the premises, and of the yearly value and rent of the premises, and of the holding and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the title of the plaintiff, if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the Judge may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff either forthwith or on or before such day as the Judge shall think fit to name; and if such order be not obeyed, the Clerk, whether such order can be proved to have been served or not, shall at the instance of the plaintiff issue a warrant authorizing and requiring the bailiff of the Court to give possession of such premises to the plaintiff.

Proceedings for the recovery of possession of corporeal hereditaments in certain cases.

107. In any such plaint against a tenant as in the last preceding section is specified, the plaintiff may add a claim for rent and mesne profits, or both, down to the day appointed for the hearing, or to any preceding day named in the plaint, so as the same shall not exceed fifty pounds, and any misdescription in the nature of such claim may be amended at the trial.

Plaintiff may claim rent and mesne profits.

108. When the rent of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect thereof exceeds fifty pounds by the year, shall be in arrear for three months, and the landlord shall have a right by law to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a plaint in the Court of the district in which the premises lie for the recovery thereof,

Summons may issue for recovery of possession of small tenements by landlord for non-payment of rent.

District Courts.

thereof, and thereupon a summons shall issue to the tenant the service whereof shall stand in lieu of a demand or re-entry.

Proceedings thereupon.

109. If the tenant shall five days before the return day of such summons pay into Court all the rent in arrear and the costs the said action shall cease, but if he shall not make such payment and shall not at the time named in the summons show good cause why the premises should not be recovered, then, on proof of the yearly value and rent of the premises, and of the fact that three months' rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to countervail such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear, and of the title of the plaintiff if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the Judge may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff on or before such day, not being less than four weeks from the day of hearing, as the Judge shall think fit to name, unless within that period all the rent in arrear and the costs be paid into Court; and if such order be not obeyed, and such rent and costs be not so paid, the Clerk shall, whether such order can be proved to have been served or not, at the instance of the plaintiff, issue a warrant authorizing and requiring the bailiff of the Court to give possession of such 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, so long as the order of the Court remains unreversed, be barred from all relief in equity or otherwise.

On plaints to recover possession of premises how summonses may be served.

110. A summons for the recovery of a tenement may be served like other summonses to appear to plaints in District Courts, and if the defendant cannot be found, and his place of dwelling shall either not be known or admission thereto cannot be obtained for serving any such summons, a copy of the summons may 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 recover possession must give notice to his immediate landlord, who may come in and defend.

111. Where any summons for the recovery of a tenement as is hereinbefore specified shall be served on or come to the knowledge of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant, being an occupier of the whole or of a part of the premises sought to be recovered, shall forthwith give notice thereof to his immediate landlord, under penalty of forfeiting not exceeding three years' rack-rent of the premises held by such sub-tenant to such landlord, to be recovered by such landlord by action in the Court from which such summons shall be issued; and such landlord, on the receipt of such notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question.

Warrants to bailiffs sufficient to justify entering on premises.

112. Any warrant to a bailiff to give possession of a tenement shall justify him in entering upon the premises named therein, with such assistants as he shall deem necessary, and in giving possession accordingly; but no entry under any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

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

113. Every such warrant shall, on whatever day it may be issued, bear date on the day next after the last day named by the Judge in his order for the delivery of possession of the premises in question, and shall continue in force for three months from such date and no longer; but no order for delivery or possession need be drawn up and served.

Judges &c. not liable to actions on account of proceedings taken.

114. It shall not be lawful to bring any action or prosecution against the Judge or against the Clerk of the Court by whom any such warrant as aforesaid shall have been issued, or against any bailiff or other

District Courts.

other person by whom such warrant may be executed or summons affixed, for issuing such warrant or executing the same or affixing such summons respectively, by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises.

115. Where the landlord at the time of applying for such warrant as aforesaid had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said landlord nor his agent 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 for obtaining possession under the authority of this Act, but the party aggrieved may if he think fit bring an action and recover for special damage: Provided always if the special damage be not proved the defendant shall be entitled to a verdict, and if proved but assessed by the jury at a sum not exceeding forty shillings, the plaintiff shall recover no more costs than damages, unless the Judge before whom the trial shall have been held shall certify that in his opinion full costs ought to be allowed.

Where landlord has a lawful title he shall not be deemed a trespasser.

116. Any action commenced in a District Court may be removed by writ of *certiorari* into the Supreme Court if such Court or a Judge thereof shall deem it desirable that the cause shall be tried in such Court, and if the party applying for such writ shall give security, to be approved of by the Registrar of the Supreme Court, for the amount of the claim and the costs (not exceeding fifty pounds) of the trial, and shall further assent to such terms if any as the Supreme Court or Judge shall think fit to impose.

Certiorari may be granted in certain cases at discretion of Supreme Court.

117. The granting by the Supreme Court, or by a Judge thereof, of a rule or summons to show cause why a writ of *certiorari* or prohibition should not issue to a District Court shall, if the Supreme Court or a Judge thereof so direct, operate as a stay of proceedings in the cause to which the same shall relate until the determination of such rule or summons or until such Supreme Court or Judge shall otherwise order; and the Judge of the District Court shall from time to time adjourn the hearing of such cause to such day as he shall think fit, until such determination or until such order be made; but if a copy of such rule or summons shall not be served, by the party who obtained it, on the opposite party and on the Clerk of the District Court three days before the day fixed for the hearing of the cause, the Judge of the District Court may in his discretion order the party who obtained the rule or summons to pay all the costs of the day, or so much thereof as he shall think fit, unless the Supreme Court or a Judge thereof shall have made some order respecting such costs.

Rule or summons to show cause why a writ of *certiorari* or prohibition should not issue to be a stay of proceedings.

118. No judgment order or determination given or made by any Judge of a District Court, nor any cause or matter brought before him or pending in his Court, shall be removed by appeal motion writ of error *certiorari* or otherwise into any Court whatever save and except in the manner and according to the provisions hereinbefore mentioned.

No actions &c. to be removed into Supreme Court except as herein provided.

119. No judgment or execution shall be stayed delayed or reversed upon or by writ of error or *supersedeas* thereon to be sued out for the revising of any judgment given in any Court held under the provisions of this Act.

No judgment or execution to be stayed &c. by writ of error or *supersedeas*.

120. Where an application shall be made to the Supreme Court or a Judge thereof for a writ of prohibition to be addressed to a Judge of a District Court, the matter shall be finally disposed of by rule or order, and no declaration or further proceedings in prohibition shall be allowed.

Application for a writ of prohibition shall be finally disposed of by rule or order.

121. No writ of *mandamus* shall issue to a Judge or any officer of a District Court for refusing to do any act relating to the duties of his

Rule or order substituted for writ of *mandamus* to a

District Courts.

Judge or officer of a District Court.

his office, but any party requiring such act to be done may apply to the Supreme Court or to a Judge thereof, upon an affidavit of the facts, for a rule or summons calling upon the Judge or officer of the District Court, and also the party to be affected by such act, to show cause why such act should not be done; and if after the service of such rule or summons good cause shall not be shown, the Supreme Court or a Judge thereof may by rule or order direct the act to be done, and the Judge or officer of the District Court upon being served with such rule or order shall obey the same on pain of attachment; and in any event the Supreme Court or the Judge thereof may make such order with respect to costs as to such Court or Judge shall seem fit.

In certain cases Judge of Supreme Court may order cause to be heard in District Court.

122. Where in any action of contract brought in the Supreme Court the claim indorsed on the writ does not exceed one hundred pounds, or where such claim, though it originally exceeded one hundred pounds, is reduced by payment into Court, payment, an admitted set-off, or otherwise, to a sum not exceeding one hundred pounds, a Judge of the Supreme Court, on the application of either party, after issue joined, may in his discretion and on such terms as he shall think fit order that the cause be tried in any District Court which he shall appoint; and thereupon the plaintiff shall lodge with the Clerk of such Court such order and the issue, and the Judge of such Court shall appoint a day for the hearing of the cause, notice whereof shall be given in such manner as such Judge shall direct to both parties or to their solicitors.

Proceedings after the hearing of such cases.

123. After such hearing the Clerk shall certify the result to the Registrar of the Supreme Court, and judgment in accordance with such certificate may be signed in such Supreme Court.

Plaintiff recovering in Supreme Court a sum not exceeding £100, when District Courts have jurisdiction, to have no costs.

124. If in any action commenced in the Supreme Court for any cause of action which might have been tried in a District Court the plaintiff shall recover a sum not exceeding one hundred pounds, the plaintiff shall have judgment to recover such sum only and no costs, except in cases hereinafter provided and except in the case of judgment by default; and it shall not be necessary to enter any suggestion on the record to deprive such plaintiff of costs, nor shall any such plaintiff be entitled to costs by reason of any privilege as a solicitor or officer of such Court or otherwise.

Judge at trial may certify to entitle the plaintiff to costs.

125. Provided always that if the plaintiff shall in any such action recover a sum not exceeding one hundred pounds by verdict, and the Judge before whom such verdict shall be obtained shall certify on the back of the record that it appeared to him at the trial that the cause of action was one for which a plaint could not have been entered in any such District Court as aforesaid, or that it appeared to him at the trial that there was a sufficient reason for bringing the said action in the Supreme Court, the plaintiff in such case shall have the same judgment to recover his costs that he would have had if this Act had not been passed.

If the Court or a Judge at Chambers make an order, the plaintiff to have costs.

126. Provided also that if in any such action, whether there be a verdict in such action or not, the plaintiff shall make it appear to the satisfaction of the Supreme Court, or to the satisfaction of a Judge at Chambers, upon summons, that the said action was brought for a cause for which no plaint could have been entered in any District Court, or that the said cause was removed from a District Court by *certiorari*, or that there was apparent reason for bringing such action in the Supreme Court, then and in any of such cases the Supreme Court or the said Judge at Chambers may, by rule or order, direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have the same judgment to recover his costs that he would have had if this Act had not been passed.

District Courts.

127. If an action be brought by an officer of a District Court in the Court of which he is an officer, the Judge shall, at the request of the defendant, order that the venue be changed and that the cause be sent for hearing to the Court of some convenient district of which he is not Judge, and the Clerk of the first-mentioned Court shall forthwith transmit to the Clerk of such last-mentioned Court a certified copy of the plaint, as entered in the Plaint Book, the duplicate copy of the summons and particulars served on the defendant, and a certified copy of the order for changing the same, as entered in the Minute Book; and the Judge of such last-mentioned Court shall appoint a day for the hearing, notice whereof shall be given to both parties in such manner as such Judge shall direct.

If officer of Court be plaintiff in his own Court, defendant may remove cause to an adjoining district.

128. The Judge of any District Court may in any case, with the consent of both parties to the suit, order the same, with or without other matters in the jurisdiction of the Court in dispute between the parties, to be referred to arbitration to such persons and in such manner and on such terms as he shall think reasonable and just; and such reference shall not be revocable by either party except by consent of the Judge; and the award of the arbitrators or umpire shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the Judge.

Suits may be settled by arbitration.

129. It shall be lawful for the Judge, if he think fit, on application to him at the first Court held after the expiration of one week after the entry of such award as a judgment of the Court, to set aside any such award and judgment so given and entered as aforesaid; or he may with the consent of both parties revoke the reference, or order another reference to be made in the manner aforesaid; and no execution shall issue without leave of the Judge until after such first Court shall have been held.

Award may be set aside by Judge.

130. A Judge proposing to sue any person dwelling or carrying on business in any district of which he is the Judge, may bring his action in the Court of any adjoining district of which he is not the Judge; and any person proposing to sue a Judge may bring his action in any Court of a district adjoining the district of which the defendant is Judge.

Where Judge of District Court can sue and be sued.

131. If an action be brought against an officer of a District Court, the summons may issue in the district of which he is an officer, or in any adjoining district, the Judge of which is not the Judge of a Court of which the defendant is an officer.

Where officer of District Court may be sued.

132. In order to secure uniformity in the practice of the several District Courts of the Colony, it shall be lawful for the Chief Justice of New Zealand to frame general rules and orders for regulating the practice of the Courts and the forms of proceedings therein, and from time to time to amend such rules orders and forms, and such original or amended rules orders and forms shall be in force in each of such Courts respectively from a day to be fixed by the Chief Justice.

Chief Justice to frame rules.

133. Where the time within which or where the mode in which any proceeding should be taken in the District Courts is not prescribed in this Act, such time and mode shall be appointed by the rules of practice orders and forms to be made as herein provided.

Time and mode of certain proceedings to be regulated by rules of practice.

134. All actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be commenced within three months after the fact committed, and not afterwards; and notice in writing of any such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action be brought, and if after action brought a sufficient sum of money shall

Limitation of actions for proceedings in execution of this Act.

District Courts.

shall have been paid into Court with costs by or on behalf of the defendant.

Production of warrant of District Court sufficient proof of authority.

135. If any action or suit shall be brought against any person for anything done in pursuance of this Act, the warrant under the Seal of the District Court being produced in any such action or suit shall be deemed sufficient proof of the authority of the said District Court previous to the issuing of such warrant.

Proceedings not invalid for want of form.

136. No order verdict or judgment or other proceeding concerning any of the matters aforesaid shall be quashed or vacated for want of form.

As to amendments of defects and errors in proceedings.

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

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

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

How securities under District Courts Act to be given and enforced.

139. Where by this Act a party is required to give security, such security shall be at the cost of the party giving it, and in the form of a bond, with sureties, to the other party or intended party in the action or proceeding: Provided always that the Court in which any action on the bond shall be brought may by rule or order give such relief to the obligors as may be just, and such rule or order shall have the effect of a defeasance of such bond.

Where security is required to be given, a deposit of money may be made in lieu thereof.

140. Where by this Act a party is required to give security, he may in lieu thereof deposit with the Clerk, if the security is required to be given in a District Court, or with the Registrar of the Supreme Court if the security is required to be given in such Court, a sum equal in amount to the sum for which he would be required to give security, together with a memorandum, to be approved of by such Clerk or Registrar, and to be signed by such party, his solicitor or agent, setting forth the conditions on which such money is deposited, and the Clerk or Registrar shall give to the party paying a written acknowledgment of such payment; and the Judge of the District Court when the money shall have been so deposited in such Court, or a Judge of the Supreme Court when the money shall have been deposited in the Supreme Court, may, on the same evidence as would be required to enforce or avoid such bond as in the last preceding section is mentioned, order such sum so deposited to be paid out to such party as to him shall seem just.

No action to be brought in District Court on judgment of Supreme Court. But action may be brought in Supreme Court on judgment of District Court.

141. No action shall be brought in a District Court on any judgment of the Supreme Court.

142. An action may be brought in the Supreme Court on a Judgment of a District Court, but no costs shall be allowed in such action unless the Supreme Court or a Judge thereof shall certify that the action was necessary and proper for the enforcement of the judgment of the District Court against the person or property of the defendant.

143. The

District Courts.

143. The payment of any fine imposed by any Court under the authority of this Act may be enforced upon the order of a Judge in like manner as payment of any debt adjudged in the said Court.

Payment of fines how enforced.

144. The bankruptcy or insolvency of the plaintiff in any action in a District Court which the assignees might maintain for the benefit of the creditors, shall not cause the action to abate if the assignees elect to continue such action, and to give security for the costs thereof, within such reasonable time as the Judge shall order, but the hearing of the cause may be adjourned until such election is made; and in case the assignees 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 bankruptcy or insolvency as a defence to the action.

Bankruptcy and insolvency of plaintiff not to cause action to abate if assignees elect to continue.

PROCEDURE AND PRACTICE OF COURTS.

Criminal Cases.

145. For the purpose of bringing a criminal case under the cognizance of the Court, an indictment shall be signed by the Attorney-General of the Colony or by the Crown Prosecutor of the district, and such indictment so signed shall be as valid and effectual in all respects as if the same had been presented by a grand jury.

Indictment to be signed by Attorney-General or Crown Prosecutor instead of presented by grand jury.

146. Every man shall be tried for any felony misdemeanour or indictable offence by a jury of twelve men, to be summoned as hereinafter provided.

Jury to consist of twelve.

147. The Judge of the Court shall, ten days at least before the sitting of any such Court for the despatch of criminal business, issue a precept to the bailiff of the Court, requiring him to summon jurors to attend the sittings of the Court at such time and place as shall be therein mentioned.

Judge to issue precept to summon jury.

148. Such precept shall require not more than thirty-six nor less than twenty-four persons, duly qualified to serve as petit jurors, to attend at one sitting of the Court.

Not more than thirty-six or less than twenty-four to be summoned.

149. Every such precept and any subpoena commanding the attendance of witnesses in criminal cases shall be issued in the name of Her Majesty, tested in the name of the Judge, and sealed with the Seal of the Court.

Form of precept.

150. Upon receiving the precept, the bailiff shall summon the number of jurymen mentioned therein, to be taken from time to time in alphabetical order as their names shall appear on the Jury List, by personally serving a summons on each juror, or by leaving the same at his usual place of abode, five days before the sitting of the Court.

How jurors to be chosen and summoned.

151. For the purpose of enforcing the attendance of jurors witnesses and others, the production of books papers and writings, and for the summary punishment of contempt, any such Court, while sitting as a Court of Criminal Jurisdiction, shall have and may exercise such powers as the Supreme Court may exercise by any law for the time being in force: Provided always that the process for the recovery of any amount of any fine or recognizance forfeited at any sitting of the Court for the despatch of criminal business shall be signed by the Judge of the Court.

Power of Court to enforce attendance of jurors &c.

152. It shall be lawful for the Judge of any District Court, if he shall think fit, to reserve any point of law arising in any criminal case for the opinion of the Supreme Court, and to defer giving judgment thereon until such opinion shall have been given, when such judgment shall be in conformity with the opinion given.

Point of law may be reserved for opinion of Supreme Court.

153. If it shall appear to the Judge of any District Court that any felony misdemeanour or other offence which may at any time be brought

Power to leave cases to be tried by Supreme Court.

District Courts.

brought before it ought, from its nature or magnitude or any legal difficulty which it may present, to be tried by the Supreme Court, it shall be lawful for such Court to leave the case for trial before the Supreme Court, and to take recognizances, with or without sureties, for the appearance of the parties and witnesses thereat, which recognizances shall, as soon as may be, be returned to the Supreme Court.

Course of procedure and practice to be same as in Supreme Court.

154. In all respects except as herein provided the procedure of a District Court as a Court of Criminal Jurisdiction shall be the same as in the Supreme Court in like matters.

MISCELLANEOUS.

Civil and Criminal.

Sittings of Court.

155. It shall be lawful for the Governor from time to time, by notification in the *New Zealand Gazette*, to fix the times and places within the district at which every such Court shall be held, and in like manner such times and places to alter or abolish as he shall think fit.

If Court cannot be held, to be adjourned.

156. Where by reason of the death or absence of a Judge a District Court cannot be held, the Clerk, or in his absence the bailiff, shall adjourn the Court to such day as he shall deem convenient.

District Judges may make regulations.

157. It shall be lawful for the Judge of any District Court to prescribe such regulations as he may from time to time deem necessary for the orderly transaction of the business of his Court.

Affidavits how to be sworn.

158. All affidavits to be used in the Courts held under this Act shall and may be sworn before any Judge of the said Courts, or any person authorized to take affidavits in the Supreme Court, or before any Justice of the Peace having jurisdiction in the place where any such affidavit may be sworn.

Power of committal for contempt.

159. If any person shall wilfully insult the Judge, or any Juror, or any bailiff, clerk, or officer of any District Court for the time being during his sitting or attendance in Court, or in going to or returning from the Court, or shall wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, it shall be lawful for any bailiff or officer of the Court, with or without the assistance of any other person, by order of the Judge, to take such offender into custody and detain him until the rising of the Court; and the Judge shall be empowered, if he shall think fit, by a warrant under his hand and sealed with the Seal of the Court, to commit any such offender to prison for any time not exceeding fifteen days, or to impose upon any such offender a fine not exceeding ten pounds, for every such offence, and in default of payment thereof to commit the offender to prison for any time not exceeding fifteen days, unless the said fine be sooner paid.

Sums received under this Act to be for use of Provinces.

160. All sums of money which shall be received under or by virtue of this Act by way of fees fines or penalties, shall be paid to the Colonial Treasurer for the public use of the Province in which the same shall arise.

Expenditure to be charged to Province within which incurred

161. All money which shall be expended in carrying out the provisions of this Act shall be charged by the Colonial Treasurer in account against the Province within which the same shall be expended, and may be deducted from any sums of money which shall from time to time be payable by the Colonial Treasurer to such Province.

Provision where district comprises parts of more Provinces than one.

162. Provided always that if any district to be constituted under the third section of this Act shall comprise portions of more than one Province, an equitable apportionment of such sums of money and such costs and expenses shall be made between such several Provinces as the Governor shall think fit to direct.

Interpretation.

163. In the construction of this Act, unless there be something in the subject or context repugnant to such construction, the words
"District

Audit.

“District Court” or “the Court” shall be understood to mean a Court constituted by this Act; the term “Landlord” shall mean the person entitled to the immediate reversion of the lands, or, if the property be held in joint tenancy co-parcenary or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion.

164. This Act shall come into operation on the first day of January, one thousand eight hundred and fifty-nine. Commencement of Act.

165. The Short Title of this Act shall be “*The District Courts Act, 1858.*” Short Title.

SCHEDULE.

ORDINANCES AND ACTS REPEALED BY THIS ACT.

Session and Number.	By what Legislature passed.	Title.
Session I., No. 4.	Governor and Legislative Council.	“An Ordinance for instituting and regulating Courts of General and Quarter Sessions in the Colony of New Zealand, and to authorize the holding of Petty Sessions within the same, and for defining their respective powers and determining places at which the same shall be holden, and for repealing within the Colony of New Zealand certain Acts of the Governor and Council of New South Wales, adopted and now in force within the said Colony.”
Session I., No. 6.	Governor and Legislative Council.	“An Ordinance for instituting Courts of Civil Jurisdiction, to be called Courts of Requests, in different parts of the Colony of New Zealand and its dependencies.”
Session II., No. 2.	Governor and Legislative Council.	“An Ordinance for establishing County Courts of Civil and Criminal Jurisdiction, and for repealing an Ordinance for establishing Courts of Requests, Session I., No. 6, and for repealing part of an Ordinance for establishing Courts of Quarter Sessions, Session I., No. 4.”
Session VII., No. 20.	Lieut.-Governor and Legislative Council.	“An Ordinance for establishing Courts of Sessions of the Peace.”
Session IV., No. 29.	General Assembly.	“An Act to extend the Jurisdiction of Resident Magistrates’ Courts in Civil Cases.”

No. XXXI.

AN ACT to provide for the Audit of the Public Accounts of the Colony of New Zealand. [21st July, 1858.]

AUDIT.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. Within one month after the passing of this Act, the Governor, in the name and on behalf of Her Majesty, shall by Commission under the Great Seal of the Colony appoint a fit and proper person to be the Auditor of the Public Accounts of the General Government of the Colony, and from time to time afterwards, in case of the death resignation or removal of any such Auditor, shall appoint some other fit and proper

Governor to appoint Auditor.