

No. 6230.

COUNTY COURT ACT 1958.

An Act to consolidate the Law relating to the County Court.

[30th September, 1958.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as the *County Court Act 1958*, and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*, and is divided into Parts and Divisions as follows:—

Short title
commence-
ment and
division.

Preliminary ss. 1-3.

Part I. — Court
Judges Officers
Counsel and
Practitioners ss.
4-34.

Division 1. — Establishment of the County Court ss. 4-6.
Division 2.—Time and Place for holding Court s. 7.
Division 3.—Judges ss. 8-17.
Division 4.—Registrars ss. 18-22.
Division 5.—Bailiffs ss. 23 and 24.
Division 6. — Registrars, Bailiffs and other Officers ss. 25-27.
Division 7.—Court Fees s. 28.
Division 8. — Actions against Officers ss. 29-32.
Division 9. — Counsel and Practitioners — Costs ss. 33 and 34.

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| Part II.—Jurisdiction
ss. 35-55. | } | Division 1. — Local Limits of
Jurisdiction ss. 35 and 36.
Division 2. — Common Law
Jurisdiction ss. 37 and 38.
Division 3.—Replevin s. 39.
Division 4.—Ejectment s. 40.
Division 5. — Equitable
Jurisdiction ss. 41-45.
Division 6. — Arbitration and
Reference for Inquiry ss.
46-48.
Division 7. — Power to grant
Relief ss. 49-53.
Division 8.—Contempt of Court
s. 54.
Division 9. — Costs where no
Jurisdiction s. 55. |
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- Part III.—Commencement of Action s. 56.
- Part IV.—Remitting and Transferring Actions ss. 57-64.
- Part V.—Trial ss. 65-72.
- Part VI.—Judgment, New Trial and Appeal ss. 73-77.
- Part VII.—Rules, Forms, Scales of Costs ss. 78 and 79.
- Part VIII.—Miscellaneous ss. 80-83.

Repeal.
First
Schedule.

2. (1) The Acts mentioned in the First Schedule to the extent thereby expressed to be repealed are hereby repealed accordingly.

(2) Except as in this Act expressly or by necessary implication provided—

- (a) all persons things and circumstances appointed or created by or under either of the repealed Acts or existing or continuing under either of such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed;
- (b) in particular and without affecting the generality of the foregoing paragraph, such repeal shall not disturb the continuity of status operation or effect of any proclamation regulation rule order validation application determination decision direction certificate appointment commission notice

fee liability or right made effected issued granted given presented passed fixed accrued incurred or acquired or existing or continuing by or under either of such Acts before the commencement of this Act; nor shall such repeal prejudice or affect the operation or effect of sub-section (3) to (6) of section two of the *County Court (Amendment) Act 1952*, or of sub-sections (2) and (4) of section four or sub-section (4) of section eight of the *County Court Act 1957*.

3. In this Act and in the rules, unless the context or subject-matter otherwise requires— Interpretation.
No. 6117 s. 3.

- “ Action ” includes suit and means every proceeding in the court which may be commenced as prescribed by “ Action.”
plaint.
- “ Chairman ” means chairman of judges of the county “ Chairman.”
court.
- “ Counsel ” means a barrister and solicitor instructed by “ Counsel.”
another barrister and solicitor.
- “ Court ” means the county court. “ Court.”
- “ Judge ” means a judge or acting judge of the court. “ Judge.”
- “ Judgment ” includes decree. “ Judgment.”
- “ Matter ” includes every proceeding in the court “ Matter.”
commenced otherwise than by plaint and whether
in an action or not.
- “ Party ” includes a party to an action or matter and every “ Party.”
person served with notice thereof or attending on
the hearing of the same although not named as a
party thereto and includes a body politic or corporate.
- “ Practitioner ” means either (1) a barrister and solicitor “ Practi-
tioner.”
instructing counsel, or (2) a barrister and solicitor
acting for a client without the intervention of another
barrister and solicitor.
- “ Registrar ” means a registrar deputy registrar or assistant “ Registrar.”
registrar of the county court.
- “ Rules ” means rules made under this Act. “ Rules.”

PART I.—COURT JUDGES OFFICERS COUNSEL AND PRACTITIONERS.

DIVISION 1.—ESTABLISHMENT OF THE COUNTY COURT.

4. (1) There shall be a court to be styled “ The County Court ” in and for the State of Victoria for the determination of actions at law and in equity under this Act or under any other Act conferring jurisdiction on the county court. Establishment
of the
County
Court.
No. 6117 s. 4.

(2) The county court shall be held at such places as are from time to time directed by the Governor in Council and the Governor in Council may from time to time direct that any place of holding of the court be altered or that the holding of the court at any place be discontinued.

Records and pending proceedings when court discontinued at any place.
No. 6117 s. 5.

5. (1) When the Governor in Council directs that the holding of the court at any place be discontinued he may at the same or any later time by notice published in the *Government Gazette* direct the books and other records of the court at that place and of the registrar or registrars thereof to be by such registrar or registrars delivered to the registrar or registrars of the court at some other place.

(2) All actions or matters pending in the court at such first mentioned place at the time of the discontinuance shall be heard determined and had in the court at such other place, and the court at such other place shall have all the same powers and jurisdiction in respect of such pending actions or matters or in respect of any action or matter heard determined or had in the court at such first mentioned place as the court at that place would have had if it had not been discontinued, and in respect thereof the registrar or registrars of the court at such other place shall have all the rights and be charged with all the duties of the registrar or registrars of the court at such first mentioned place.

Seal of the court.
No. 6117 s. 6.

6. At every place at which the court is held under this Act there shall be a seal of the court, and all summonses and other process issuing out of the court shall be sealed or stamped with the seal of the court. The seal of any county court in use at any place before the commencement of the *County Court Act 1957* may be continued in use as the seal of the court at that place under this Act.

DIVISION 2.—TIME AND PLACE FOR HOLDING COURT.

Judge to hold court where directed and appoint days of sitting.
No. 6117 s. 7.

7. (1) At each place at which the Governor in Council directs that the court be held a judge shall attend and hold the court on such days and at such times as the chairman from time to time appoints.

(2) Notice of the days on which and the times at which the court is to be held shall be put up in some conspicuous place in the court house and in the office of the registrar of the court at the place where the court is to be held, and no other notice thereof shall be needed unless a judge otherwise directs.

(3) The chairman may from time to time alter the days and times for the holding of the court at any place, and when any day so appointed is altered, notice of the intended alteration and of

the time when it will take effect shall be put up in some conspicuous place in the court house and in the office of the registrar.

(4) If a judge does not arrive at the court house before one o'clock in the afternoon of any day upon which the holding of the court has been fixed the registrar may open the court and adjourn the same to the following day or to such other day as he is directed by a judge either by order under his hand or by telegram.

DIVISION 3.—JUDGES.

8. (1) The Governor in Council shall appoint as many persons as are needed to be judges of the county court under this Act, each of whom shall be a barrister or a barrister and solicitor of Victoria, and shall have practised as a barrister or a barrister and solicitor in Victoria for seven years; and when any judge under this Act dies resigns retires or is removed another judge may be appointed in his stead.

Appointment and qualification of judges.
No. 6117 s. 8.

(2) No more than thirteen such persons shall hold the office of judge under this Act unless addresses praying for a greater number and specifying such number are presented to the Governor by the Legislative Council and Legislative Assembly.

(3) No person who has attained the age of seventy-two years shall be appointed to be a judge under this Act.

(4) Any reference to a judge of county courts in any other Act or in any proclamation, order, rule, regulation, by-law or other instrument or document shall, where the context allows, be read and construed as a reference to a judge of the county court.

(5) The Governor in Council may from time to time appoint one of the judges of the county court to be the chairman of judges of the court and may at any time revoke any such appointment.

Chairman of judges.

(6) Any reference to the senior judge of county courts or of any county court or other reference of like import (however expressed) in any other Act or in any proclamation, order, rule, regulation, by-law or other instrument or document shall, where the context allows, be read and construed as a reference to the chairman of judges of the court.

9. (1) Subject to the provisions of this section and section fourteen of this Act all persons being judges at the commencement of this Act and all persons who may be appointed judges after the said commencement shall hold their offices during good behaviour.

Judges to hold office during good behaviour.
No. 6117 s. 9.

(2) The Governor in Council may remove any such judge who becomes incapable or who neglects to perform the duties of his office or upon the address of both Houses of the Legislature.

Salaries and allowances of county court judges.
No. 6117 s. 10.

10. (1) Each judge shall be entitled to receive an annual salary of Three thousand seven hundred and fifty pounds and an annual allowance at the rate of One hundred and fifty pounds.

(2) For the purposes of computation of pensions under section fourteen of this Act or retiring allowances under sub-sections (1) and (2) of section thirteen of the *County Court Act 1928* as in force immediately before the twenty-fifth day of October One thousand nine hundred and forty-nine the annual allowance payable under this sub-section shall be treated as if it were part of the annual salary of the judge.

Judges and acting judges of courts of mines.
No. 6117 s. 11.

11. All judges and acting judges of the county court shall without any further or other appointment than this Act be judges and acting judges respectively of all courts of mines in Victoria anything contained in the *Mines Act 1958* to the contrary notwithstanding.

Judges' commissions of appointment.
No. 6117 s. 12.

12. Every person hereafter appointed a judge or acting judge of the county court shall be appointed by one commission judge or acting judge of the county court and judge or acting judge of courts of mines for the whole of Victoria and shall under such commission be empowered to act in the county court or any court of mines throughout the whole of Victoria.

Judges not to practise or sit in Parliament.
No. 6117 s. 13.

13. No judge under this Act shall during his continuance in such office practise as a barrister or solicitor or as a barrister and solicitor or be capable of being elected or of sitting as a member of the Legislative Council or Legislative Assembly or of the Commonwealth Parliament.

Provision for pensions to county court judges and their widows.
No. 6117 s. 14.

14. (1) Every judge who attains the age of seventy-two years shall thereupon retire from his judgeship.

(2) Every judge who—

(a) has served for not less than fifteen years in the office of judge under this Act (including any period as judge under the *County Court Act 1957* and as judge of county courts under the *County Court Act 1928*); or

(b) has become afflicted with some permanent incapacity disabling him from the due execution of his office—

shall upon resignation or upon retirement as aforesaid from his office be entitled to a pension payable fortnightly at the rate per annum of forty per centum of the annual salary which he was receiving immediately before his resignation or retirement.

(3) Upon the death—

- (a) of any judge under this Act or the *County Court Act 1957*; or
- (b) of any person who was formerly a judge under this Act or a judge of county courts under the *County Court Act 1928*—

his widow shall until her death or re-marriage be entitled to a pension payable fortnightly at the rate of twenty per centum of the annual salary which such judge was receiving immediately before his death or (as the case may be) such former judge was receiving immediately before his resignation or retirement:

Provided that no pension shall be payable to the widow of any former judge in any case where she married such former judge after his resignation or retirement.

(4) All pensions under this section shall be payable out of the Consolidated Revenue which is hereby appropriated accordingly.

(5) For the purposes of this section—

- (a) if any judge under this Act is or has been at any time after his appointment appointed to be an acting judge of the Supreme Court his service as an acting judge of the Supreme Court shall count as service in the office of judge under this Act but in the computation of pensions under this section the salary he was receiving immediately before his resignation retirement or death (as the case may be) shall in every case be deemed to be the salary then applicable to the office of judge under this Act;
- (b) any reference to a judge under this Act or the *County Court Act 1957* or under the *County Court Act 1928* shall not be deemed to include a reference to a deputy judge or an acting judge.

(6) The foregoing provisions of this section shall not apply—

- (a) to any person—
 - (i) who ceased to be a judge of county courts before the twenty-fifth day of October One thousand nine hundred and forty-nine; or
 - (ii) who, having been a judge of county courts before that day and having continued to be such a judge thereafter, did not elect that sub-section (4) of section thirteen

Non-application of this section to certain judges &c. and continuation of earlier provisions in respect of such judges.

of the *County Court Act 1928* as amended by section five of the *Judges Pensions Act 1949* should apply to him; or

(b) to the widow of any such person—

but in respect of any person referred to in paragraph (a) of this sub-section the provisions of sub-sections (1) and (2) of section thirteen of the *County Court Act 1928* as in force immediately before the twenty-fifth day of October One thousand nine hundred and forty-nine shall so far as applicable continue to apply notwithstanding the repeal of those provisions by this Act.

Power of county court judge to sit in place of another.
No. 6117 s. 15.

15. Notwithstanding anything in any Act any power duty or act which might have been exercised or performed either in court or in chambers by any judge of the county court but for his having ceased for any reason to be a judge of the county court or for his absence on leave or vacation or in consequence of sickness or otherwise shall be exercisable or performable by any other judge of the county court.

Acting judges.
No. 6117 s. 16.

16. (1) In case of the illness or absence on leave of a judge the Governor in Council may appoint some other person qualified as aforesaid to be an acting judge of the county court during such illness or absence.

(2) The Governor in Council may also appoint an acting judge, who is qualified as aforesaid, to act for any judge for any time.

Power to appoint an acting judge of county court in place of any judge acting as Supreme Court judge.

(3) If any judge is at any time appointed to be an acting judge of the Supreme Court, the Governor in Council may if he thinks fit appoint any person qualified as aforesaid for the office of judge of the county court to be an acting judge of the county court for the period during which such judge is acting as a judge of the Supreme Court and for no longer.

(4) Every acting judge so appointed during the time for which he is so appointed shall have all the powers and privileges and perform all the duties of a judge of the county court.

Appointment of judges temporarily or during pleasure valid.
No. 6117 s. 17.

17. All commissions of appointment of qualified persons as judges or as deputy judges, to hold office or to act temporarily or during pleasure made before the commencement of this Act shall be and shall be held in all courts to be and to have been valid and effectual notwithstanding any existing Act or law to the contrary and all commissions of appointment of qualified persons as judges or as acting judges, to hold office or to act temporarily or during pleasure to be made after the said commencement shall be and shall be held in all courts to be valid and effectual notwithstanding any existing Act or law to the contrary.

DIVISION 4.—REGISTRARS.

18. At every place at which the court is held there shall be one or more registrars, and in any case in which it appears to be expedient two or more persons may be appointed to perform the duties of registrar, or one of such persons may be appointed as registrar and the other or others as assistant registrar or registrars under such regulations as to the division and performance of the duties as are from time to time made by order of the chairman or as may be made by the rules.

Appointment
of registrars
of court.
No. 6117 s. 18.

19. (1) The registrar at any place at which the court is held with the approval of a judge, or in case of inability of the registrar to make such appointment a judge may from time to time appoint a deputy to act for such registrar at any time when he is prevented by illness or unavoidable absence from acting in such office and a judge may remove such deputy at his pleasure.

Deputy
registrar.
No. 6117 s. 19.

(2) When the registrar or his lawful deputy is absent from any sitting of the court, the judge may appoint a deputy to act on behalf of the registrar.

(3) Such deputy while acting under such appointment shall have the like powers and privileges and be subject to the like provisions duties and penalties for misbehaviour as if he were the registrar of the court at that place for the time being.

20. (1) The Governor in Council may appoint an assistant registrar to act at any place at which the court is not held.

Governor in
Council to
appoint
assistant
registrars at
other places.
No. 6117 s. 20.

(2) Such assistant registrar shall enter plaints and other process and issue plaint summonses and all other process and proceedings returnable at such place or places at which the court is held as the Governor in Council directs.

(3) All persons so appointed shall so far as is appropriate have the same powers and privileges and be subject to the same general provisions duties and penalties for misbehaviour as registrars appointed under this Act.

Return of
process to be
forwarded to
registrar of
court.

(4) Such assistant registrar shall, within eight days before any plaint summons is returnable, forward to the registrar of the court at the place at which the same is returnable a list arranged numerically and in order of date of all plaints entered and of all plaint summonses issued by him together with certified copies of such plaint summonses, and which plaint summonses shall have written or printed upon them the name of the place at which the same are issued and of the place at which the same are returnable, and which last-named place shall be deemed to be the place of sitting of the court at which the action is depending.

(5) All process whatever in such action may be issued either by the registrar or assistant registrar, and such assistant registrar shall also, so frequently as may be directed by the rules, forward lists and certified copies of all other process or proceedings entered or issued by him to the said registrar.

Plaints
summonses
&c. issued to
be as
effective and
judges or
court to have
same powers
&c. as if
process issued
by registrar
of court.

(6) All plaints plaint summonses and other process and proceedings entered and issued under this section shall be as effective and the judges before whom or the court at the place at which the same are made returnable shall have the same powers jurisdiction and authority to hear and determine the several actions and matters in or with reference to which the same have been entered or issued as though such plaint plaint summons process or proceedings had been entered or issued by the registrar.

Registrar of
court to enter
plaint
summons
&c. in cause
list in the order
prescribed by
rules.

(7) The registrar of the court at the place at which any such plaint summons or other process is made returnable shall enter the same in the cause list for hearing before the court or the judge at that place in such order and in such manner as may be prescribed by the rules.

Duties of
registrar.
No. 6117 s. 21.

21. (1) The registrar or deputy registrar of the court at each place at which the court is held and such assistant registrars as aforesaid in cases requiring the same shall—

- (a) issue all summonses precepts and warrants;
- (b) make lists of all actions and matters for hearing further hearing or rehearing;
- (c) make entries in the register of all verdicts orders and judgments of the court at that place;
- (d) discharge all other duties and powers imposed or conferred on them under or in pursuance of this Act or according to the rules and keep an account of all proceedings of the court at that place;
- (e) take charge of and keep an account of all court fees and fines payable or paid into court at that place and of all moneys paid into and out of court at that place; and
- (f) enter an account of all such fees fines and moneys in such manner and form and in such books or otherwise as are prescribed by the rules.

(2) Such entries in the said register and books respectively, or a copy thereof respectively bearing the seal of the court and signed and certified as a true copy by the registrar of the court at that place shall at all times be admitted in all courts and places whatsoever as evidence of such entries and of the proceedings referred to by such entry or entries and of the regularity of such proceedings without any further proof, and no record of any plaint verdict judgment order or decree other than the entry or entries as aforesaid shall be necessary.

22. (1) Every registrar deputy registrar and assistant registrar may take and administer affidavits depositions declarations oaths and affirmations in relation to any action or matter.

Power to registrar to administer oaths.
No. 6117 s. 22.
Persons authorized to take affidavits.

(2) Any affidavit to be used in the court shall and may be sworn before a registrar or deputy registrar or assistant registrar, or before any judge of the Supreme Court, or before any judge of the court or of any court of mines or before any justice or any Commissioner of the Supreme Court for taking affidavits or any commissioner for taking declarations and affidavits.

DIVISION 5.—BAILIFFS.

23. (1) The Governor in Council may appoint persons (whether or not officers of the public service) to be bailiffs of the county court at any place or places.

Appointment of bailiffs and assistant bailiffs of county court.
No. 6117 s. 23.

(2) Without affecting the operation of sub-section (1) of this section the member of the police force who is for the time being in charge of any police station specified for the time being for the purposes of this section by Order of the Governor in Council published in the *Government Gazette* shall be a bailiff of the county court at the place or places so specified for the purposes of this section.

(3) Any such bailiff may from time to time in writing appoint any member of the police force to assist such bailiff.

24. (1) The said bailiffs or one of them shall if required by a judge attend every sitting of the court at any place for which they are appointed, unless when their absence is allowed for reasonable cause by the judge; and shall by themselves or by the officers appointed to assist them as aforesaid serve all such summonses issued out of the court at that place as are delivered to them for service, and shall execute all the writs and other process issued out of the court at that place.

Bailiff's duty.
No. 6117 s. 24.

(2) The said bailiffs and officers shall in the execution of their duties conform to the rules, and subject thereunto to the order and direction of the judge.

Fees payable to bailiffs.

(3) The said bailiffs shall receive from the registrar and retain for their own use for and in respect of such duties as have been performed by them or by the officers appointed to assist them all fees and sums of money allowed as hereinafter mentioned in the name of fees payable to the bailiff, out of which they shall provide for the execution of the duties for which such fees are allowed and for the payment of the officers appointed to assist them; and such fees shall be paid to the bailiff upon the performance of such duties but not before.

(4) Every such bailiff shall be responsible for all the acts and defaults of himself and of the officers appointed to assist him in like manner as the sheriff of Victoria is responsible for the acts and defaults of himself and his officers.

(5) In respect of every place at which the court is held under this Act and at which the fees allowed to be taken by the bailiffs appear to be more than sufficient, the Governor in Council may declare that a certain specified part only of their fees shall be paid to them respectively; and in that case and so long as such order is in force, the amount of the residue of such fees shall be accounted for paid and applied in the same manner as all other fees payable to such registrar.

DIVISION 6.—REGISTRARS, BAILIFFS AND OTHER OFFICERS.

Penalty on
officers for
corrupt
practices.
No. 6117 s. 25.

25. Every registrar bailiff or other officer employed in putting this Act or any of the powers thereof in execution, who wilfully and corruptly exacts takes or accepts any fee or reward whatsoever, other than and except such fees as are appointed and allowed respectively as aforesaid for or on account of anything done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall on conviction thereof forfeit and pay any sum not exceeding Fifty pounds, and shall be for ever incapable of serving or being employed under this Act in any office of profit or emolument.

Registrar and
bailiff to be
distinct
persons and
not to act as
solicitor.
No. 6117 s. 26.

26. (1) No registrar or partner of any such registrar or person in the service or employment of any such registrar or of his partner shall act as bailiff and no bailiff or partner of any such bailiff or person in the service or employment of any such bailiff or of his partner shall act as registrar; and no officer of the court shall either by himself or by his partner be directly or indirectly engaged as counsel practitioner or agent for any party in any proceedings in the court.

Penalty.

(2) Every person who being a registrar of the court or the partner of any such registrar or a person in the service or employment of any such registrar or of his partner accepts the office of bailiff of the court, or who being a bailiff of the court or the partner of any such bailiff or a person in the service or employment of any such bailiff or of his partner accepts the office of registrar in the execution of this Act, and also every officer of the court who is by himself or his partner or in any way directly or indirectly concerned as counsel practitioner or agent for any party in any proceeding in the court, shall for every such offence forfeit and pay the sum of One hundred pounds with full costs of suit to any person who sues for the same by action in the Supreme Court.

27. Every registrar and bailiff of the court who receives any moneys in the execution of his duty shall give security for such sum and in such manner and form as the Governor in Council from time to time directs for the due performance of their several offices, and for the due accounting for and payment of all moneys received by them under this Act or which they may become liable to pay for any misbehaviour in their office.

Registrar and
bailiff to give
security.
No. 6117 s. 27.

DIVISION 7.—COURT FEES.

28. (1) There shall be payable on every proceeding in the court to the registrar and assistant registrar of the court at or for the place where the proceeding is returnable such fees as are allowed in the manner next hereinafter mentioned and none other; and a table of such fees shall be put up in some conspicuous place in the court house and in the registrar's and assistant registrar's office; and the fees on every proceeding shall be paid in the first instance by the party on whose behalf such proceeding is to be had on or before such proceeding; and the fees upon execution or commitment shall be paid into court before or at the time of the issue of the writ or other process.

Court fees
payable by
sutors.
No. 6117 s. 28.

(2) The Governor in Council may direct what amount of fees and in respect of what steps taken process issued or duties performed fees shall be taken in the court in such manner as he thinks fit, and lessen or increase the same.

(3) Such fees may be regulated by way of percentage on the amount of the demand; and the Governor in Council may appoint instead of all or any of the fees which may from time to time be payable as aforesaid other fees by way of percentage or otherwise to be payable on such proceedings under this Act as the Governor in Council may direct.

DIVISION 8.—ACTIONS AGAINST OFFICERS.

29. (1) In every action against a registrar deputy registrar or assistant registrar for anything done in obedience to any warrant or other process issued by him under this Act, it shall be a sufficient justification for such registrar deputy registrar or assistant registrar to plead the judgment or order of the court or of a judge thereof and the warrant or other process thereon, without alleging or setting forth the previous proceedings or that the cause of action for which such judgment was recovered was cognizable by or accrued within the jurisdiction of the court or judge.

Actions
against
registrars
&c. how
defended.
No. 6117 s. 29.

(2) In any such case proof of the matters so pleaded shall be sufficient evidence in support of such plea.

Actions
against
bailiffs &c.
acting
under this
Act.
No. 6117 s. 30.

30. (1) In every action against a bailiff or any officer servant or agent of such bailiff or against the keeper of any gaol for anything done by such bailiff or by his command or authority or by such keeper in obedience to any warrant or other process issued under this Act, it shall be sufficient justification for such bailiff officer servant or agent or for such keeper to plead that he acted under such warrant or other process alone, without alleging that the same was made and issued within the jurisdiction of the court and without alleging or setting forth the judgment or previous proceedings in the same manner as the sheriff can and may justify under any writ issued out of the Supreme Court.

(2) In any such case proof of the matters so pleaded shall be sufficient evidence in support of such plea.

Tender of
amends by
defendant.
No. 6117 s. 31.

31. (1) The defendant in any action against any person for anything done in pursuance of this Act at any time before plea pleaded or notice of defence served, may tender or cause to be tendered any sum of money as amends for the injury complained of to the plaintiff or to his practitioner, and if the same is not accepted the defendant may pay such sum tendered or any other sum into court and give the special matter of his defence and also such payment into court in evidence by virtue of this Act.

(2) No such plaintiff shall be entitled to recover in any such action if the jury or judge trying the same is of opinion that the sum of money paid into court by the defendant is sufficient amends for the injury complained of.

Costs.

(3) If the plaintiff discontinues such action, or if judgment is given for the defendant or if the plaintiff is non-suited, the defendant shall be entitled to recover his full costs, as between solicitor and client, and shall have the like remedy for the recovery of the same as any defendant has by law in other cases.

Protection to
bailiffs &c.
No. 6117 s. 32.

32. (1) All members of the police force shall aid in the execution of every writ warrant or other process of execution under the provisions of this Act.

(2) If any officer or bailiff is assaulted while in the execution of his duty, or if any rescue is made or attempted to be made of any goods levied under process of the court, every person so offending shall be liable to a penalty of not more than Fifty pounds to be recovered upon proof of such offence by order of a justice having jurisdiction where the offender resides or the offence was committed.

(3) Such fine shall be directed to be paid either forthwith or within a certain time to be specified in such order, and if the same is not paid in the time specified therein the defendant shall be imprisoned for a term of not more than three calendar months unless such fine is sooner paid.

DIVISION 9.—COUNSEL AND PRACTITIONERS—COSTS.

33. The fees to be allowed to counsel and practitioners respectively practising in the court and the expenses to be paid to witnesses shall be those fixed by the scale in the rules under this Act but the costs of employing counsel or solicitor either by the plaintiff or defendant shall not be allowed as costs in the cause in any case in which the amount recovered does not exceed Ten pounds unless the judge allows the same.

Fees to barristers and solicitors to be fixed by the judges.
No. 6117 s. 33.

34. (1) A judge may, upon the application of any person who has employed any counsel or practitioner in an action or matter, issue a summons requiring such practitioner or such counsel (if in the opinion of the judge he has not been *bona fide* instructed by a practitioner) to appear before such judge at a time and place named in the summons, and at such time and place upon the appearance of such practitioner or counsel or upon proof of the service of such summons such judge shall proceed to tax the charges and fees of such practitioner or counsel for any such action or matter.

Power to recover excessive fees.
No. 6117 s. 34.

(2) If in the opinion of the judge the charges or fees of such practitioner or counsel are unreasonable, he may, unless there is some special contract between the parties, order such practitioner or counsel to repay any part of such charges or fees.

PART II.—JURISDICTION.

DIVISION 1.—LOCAL LIMITS OF JURISDICTION.

35. (1) The county court (wherever held) shall have jurisdiction throughout the whole of Victoria.

Local limits of the jurisdiction.
No. 6117 s. 35.
Court of record.
Concurrent sittings in different places.

(2) The county court shall be a court of record.

(3) The sittings of the county court may be held simultaneously in all or any of such places as may be or may have been directed pursuant to the provisions of this Act or any corresponding previous enactment.

(4) Whenever and as often as it becomes necessary or convenient for the more speedy disposal of business that two or more judges should hold sittings of the court or sit in chambers concurrently for the disposal of business at the same place, two or more judges may hold sittings of the court and sit in chambers at the same place and exercise all or any of the jurisdictions of the court or of judges thereof in relation to all or any business which may be disposed of at such place either concurrently or at such times as are convenient for the disposal of such business.

Concurrent sittings in same place.

(5) Sittings of the court at any court-house—

(a) which is within a radius of ten miles from the post office at the corner of Bourke-street and Elizabeth-street in the City of Melbourne; and

- (b) which is specified by the Attorney-General in that behalf (whether generally or for a particular occasion or period) by notice in writing to the chairman—

shall for the purposes of this Act be sittings of the court at Melbourne.

Cause of action arising outside Victoria.
No. 6117 s. 36.

36. The court shall have power to hear and determine every action in respect of which jurisdiction is conferred upon it by this or any other Act, notwithstanding that part of the cause of action arose outside Victoria, provided that a material part of the cause of action arose within Victoria, and shall have power to hear and determine every such action notwithstanding that the whole cause of action arose outside Victoria, provided that the defendant resided within Victoria at the time of the service of the summons upon such defendant.

DIVISION 2.—COMMON LAW JURISDICTION.

What common law actions cognizable in the county court.
No. 6117 s. 37.

37. The court shall have jurisdiction to hear and determine—

- (a) all personal actions where the amount value or damages sought to be recovered is not more than—

(i) in the case of any action arising out of any accident in which any vehicle is involved—Two thousand five hundred pounds;

(ii) in any other case—One thousand pounds—whether on balance of account or otherwise;

- (b) all personal actions, whether commenced in the county court or in the Supreme Court, where the amount value or damages sought to be recovered is more than the appropriate sum aforesaid if both parties or their respective solicitors consent thereto in writing;

- (c) all other actions in respect of which jurisdiction is given to the court by this or any other Act.

No action on a judgment of Supreme Court.
No. 6117 s. 38.

38. No action shall be brought in the court upon a judgment of the Supreme Court.

DIVISION 3.—REPLEVIN.

Replevin jurisdiction.
No. 6117 s. 39.

39. (1) Any action of replevin where the goods seized do not exceed in value One thousand pounds may be commenced heard and determined at the sittings of the court nearest to the place in which the goods have been distrained.

Warrant of replevin.

(2) When any such action has been so commenced the plaintiff may obtain from the registrar a warrant to be called a warrant of replevin directed to the bailiff, requiring him to replevy the said

goods and chattels, and the registrar is hereby authorized to issue such warrant which shall be in the form contained in the Second Schedule to this Act, and shall have the same effect as a writ of replevin issued from the Supreme Court.

Second Schedule

(3) The bailiff shall in all cases in which in an action of replevin in the Supreme Court the sheriff would be required to do so upon good security (by the bond of the plaintiff and two responsible persons as sureties conditioned to prosecute the action with effect and without delay) being given to him, or upon a deposit of the value of the goods distrained together with the sum of Ten pounds, execute such warrant and return the warrant with a correct and proper statement indorsed thereon of the manner in which the same has been executed or the cause why the same has not been executed to the court within a reasonable time next after such warrant has been delivered to him.

Security to be taken.

(4) The value of the property so distrained shall be ascertained by the said bailiff in like manner as the value of goods distrained is now ascertained by the sheriff in taking security in replevin, and the said bonds shall be assignable under like circumstances and in like manner and shall be available to the assignee thereof as is by law now authorized and directed with reference to bonds in replevin.

Value of property.

Bonds to be assignable.

(5) Such action of replevin shall be commenced proceeded in and the decision therein enforced in the mode prescribed by the rules.

DIVISION 4.—EJECTMENT.

40. (1) The court shall have jurisdiction to hear and determine any action of ejectment to recover possession of any land where the value thereof does not exceed Two hundred and fifty pounds by the year or where the rent exclusive of ground rent (if any) payable in respect thereof does not exceed Two hundred and fifty pounds by the year.

Ejectment jurisdiction. No. 6117 s. 40.

(2) It shall not be necessary for the plaintiff to aver or prove the value of such land.

(3) Any such action shall be commenced, proceeded in, and the decision therein enforced in the mode prescribed by the rules.

DIVISION 5.—EQUITABLE JURISDICTION.

41. The court shall have the jurisdiction and exercise all the powers and authority of the Supreme Court in the actions or matters hereinafter mentioned (that is to say):—

Actions and matters in which county court shall have jurisdiction. No. 6117 s. 41.

(a) In all actions by creditors legatees (whether specific pecuniary or residuary) devisees (whether in trust or otherwise) heirs-at-law or next of kin, in which the personal or real or personal and real estate

Administrators and account

against or for an account or administration of which the demand may be made does not exceed in amount or value the sum of One thousand pounds.

Execution of trusts.

(b) In all actions for the execution of trusts in which the trust estate or fund does not exceed in amount or value the sum of One thousand pounds.

Foreclosure and redemption.

(c) In all actions for foreclosure or redemption or for enforcing any charge or lien, where the mortgage charge or lien does not exceed in amount the sum of One thousand pounds.

Specific performance and rectification of contract.

(d) In all actions for specific performance of or for the rectifying delivering up or cancelling of any agreement whatever, where the amount in dispute or the value of the property affected does not exceed the sum of One thousand pounds.

Proceedings under *Trustee Act*.

(e) In all proceedings under the *Trustee Act* 1958 except section seventy of that Act in which the trust estate or fund to which the proceeding relates does not exceed in amount or value the sum of One thousand pounds.

Infants.

(f) In all proceedings relating to the maintenance or advancement or the appointment of a guardian to the property or person of infants, in which the property of the infant does not exceed in amount or value the sum of One thousand pounds.

Partnerships and companies.

(g) In all actions whether for declaration of partnership or for dissolution thereof or otherwise relating to any partnership and in all proceedings for the winding up of any joint stock or other company created by or registered under any Act of Parliament in which the whole property stock and credits of such partnership or joint stock or other company do not exceed in amount or value the sum of One thousand pounds.

Injunctions.

(h) In all actions or proceedings for injunctions or for orders in the nature of injunctions where the same are requisite for granting relief in any matter in which jurisdiction is given by this or any other Act to the court, or for a stay of proceedings at law to recover any debt provable under a decree for the administration of an estate made by the court.

42. In all the actions or matters referred to in the last preceding section, the judges shall, in addition to the powers and authorities now possessed by them or conferred upon them by this Act, have all the powers and authorities for the purposes of this Act of the judges of the Supreme Court, and each and every one of them, and the registrars bailiffs and other officers of the court shall in all such actions or matters discharge any duties which an officer of the Supreme Court can discharge either under the order of a judge of such court or under the practice thereof, and all officers of the court shall in discharging such duties conform to the rules.

In matters under the equity jurisdiction of this Act judges and officers of the county court to have the powers and authorities of the judges and officers of the Supreme Court.

No. 6117 s. 42.

43. (1) Any legacy or sum of money to which any person who is an infant or absent beyond seas may be found or declared entitled by the court in any action or matter under this Act may be ordered by the court to be paid to the registrar of the court at the place where the action or matter was tried or heard.

Power to judge to order certain legacies to be paid to registrar.

No. 6117 s. 43.

(2) If default be made in such payment the judge may direct a warrant of execution to issue to the bailiff of the court at that place, who by such warrant shall be empowered to levy or cause to be levied by distress and sale of goods and chattels of the person who has been ordered to make the said payment a sum of money equal in amount to the sum which he was ordered to pay to the registrar and to the costs incurred by reason of such default, and the sum so levied shall be paid to and be receivable by the registrar under the direction of the court.

Proceedings on default.

(3) All amounts so paid to the registrar with any dividends thereon shall be paid or transferred to the person or persons entitled thereto, or otherwise applied for his or their benefit on application to a judge.

44. (1) Any moneys annuities stocks or securities vested in any persons as trustees executors administrators or otherwise upon trusts within the meaning of the *Trustee Act* 1958, where the same do not exceed in amount or value the sum of One thousand pounds, upon the filing by such trustees or other persons or by the major part of them with the registrar of the court at the place at which the court is held nearest to where they or any of them reside, of an affidavit shortly describing according to the best of their knowledge the instrument creating the trust, may—

Power to trustees to pay trust moneys or transfer stock into court.

No. 6117 s. 44.
Affidavit to be filed.

(a) in the case of money be paid into a branch of the State Savings Bank of Victoria established at the place in which the court is held or of any chartered or incorporated banking company at the said place to be named by the registrar to the account

and in the name of the registrar of the court at that place in the matter of the particular trust (describing the same by the names of the parties as accurately as may be for the purpose of distinguishing it), in trust, to attend the order of the court;

(b) in the case of stocks or securities be transferred into or deposited in any such branch or company as aforesaid in the name of the registrar of the court at that place in the matter of the particular trust (describing the same as before directed in the case of money), in trust, to attend the order of the court.

Receipt to be filed.

(2) Upon such persons filing with the registrar the receipt or document given to them by the officer or the said bank or company in respect of the money so paid, the registrar shall record the same and give to them an acknowledgment in such form as may be directed by any rule of practice, which acknowledgment shall be a sufficient discharge to such persons for the money so paid.

Certificate.

(3) The certificate of the proper officer of the transfer or deposit of such stocks or securities shall be a sufficient discharge to such persons for the stocks or securities so transferred or deposited.

(4) For the above purposes all the powers and authorities of the Supreme Court shall be possessed and exercised by the court, and any order made by the court shall fully protect and indemnify all persons acting under or in pursuance of such order.

Administration by court of both legal and equitable remedies, although both not sought in plaint.
No. 6117 s. 45.

45. The court or judge may adjudicate upon and determine in one and the same action or matter legal and equitable rights, whether a decision upon both classes of rights or upon one class of rights only is sought by the plaint or other proceeding by which the action or matter is instituted.

DIVISION 6.—ARBITRATION AND REFERENCE FOR INQUIRY.

Arbitration by agreement.
No. 6117 s. 46.

46. (1) If the plaintiff and the defendant in any action or matter agree to refer to arbitration the subject of such action or matter or such subject and all or any other matters in dispute between the parties, whether such other matters are within the jurisdiction of the court or not, and notify such agreement to a judge in writing signed by themselves or their practitioners naming one or two persons as arbitrators, such agreement shall be filed by the registrar, and the judge shall order such reference and on such terms as to costs and fees to arbitrators as may be reasonable.

Filing of agreement and reference thereon.

(2) The arbitrators where two are named shall have power in the event of their disagreement to choose an umpire, and the award of such arbitrator or arbitrators or umpire shall unless set aside be binding final and conclusive on both parties; and judgment shall be entered for the plaintiff or defendant in accordance therewith whether the court is sitting or not, and such reference shall not be revocable by either party thereto except by leave of the judge.

(3) The judge may enlarge the time for making such award, or may with the consent of both parties revoke the reference or order another reference to be made in manner aforesaid.

Power to enlarge time or revoke reference.

(4) The judge may, if he thinks fit, on application to him at the first court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may refer such award back to the arbitrator or arbitrators or umpire.

Power to set aside award.

47. If the plaintiff and the defendant in any action agree in writing to refer the subject of such action or any other matters in dispute between the parties whether such other matters are within the jurisdiction of the court or not, and notify such agreement to a judge, such judge may if he thinks fit act as arbitrator, and shall make an award thereon upon which he shall cause to be entered up judgment in the court, with such costs as he thinks reasonable, and such award and the judgment thereon shall not be subject to question or appeal in any court whatever.

Arbitration by judge.
No. 6117 s. 47.

48. (1) Subject to the rules, the court or a judge may, in any case, with the consent of the parties, refer any action or matter or any question arising therein to a referee for inquiry and report, and may direct how such reference shall be conducted, and may remit any report for further inquiry and report, and on consideration of any report or further report the judge may give such judgment or make such order in the action or matter as may be just, without prejudice to any right of appeal.

Power to refer matters for inquiry and report.
No. 6117 s. 48.

(2) The powers conferred by this section shall be in addition to the powers of referring to arbitration conferred by section forty-six of this Act.

DIVISION 7.—POWER TO GRANT RELIEF.

49. The court or a judge shall as regards any action or matter within its or his jurisdiction for the time being have power to grant, and shall grant, in any action or matter, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall have power to make any order that could be made in regard to any action or matter, and shall in every

Power of court.
No. 6117 s. 49.

such action or matter give such and the like effect to every ground of defence or counter-claim, equitable or legal, in as full and ample a manner as might and ought to be done in the like case by the Supreme Court or a judge thereof.

Rules of law to apply to county court.
No. 6117 s. 50.

50. The several rules of law enacted by Part VII. of the *Supreme Court Act 1958* shall unless express provision is otherwise made be in force and receive effect in the court, so far as the matters to which such rules are respectively cognizable by it.

Counter-claims in county court and transfers therefrom
No. 6117 s. 51.

51. (1) Where in any action before the court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the court, such defence or counter-claim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counter-claim.

(2) In such case a judge of the Supreme Court may, if he thinks fit, on the application of any party order that the whole action be transferred to the Supreme Court.

Facts necessary to give jurisdiction need not appear upon any proceeding.
No. 6117 s. 52.
Mode of enforcing orders.
No. 6117 s. 53.

52. It shall not be necessary in any case that the facts necessary to give jurisdiction should appear by recital averment or otherwise upon any proceeding in or issuing out of the court.

53. The court or a judge shall have and may exercise the same power and authority for compelling obedience to and for punishing disobedience of any judgment or order made by the court or any judge thereof as the Supreme Court or any judge thereof may exercise for compelling obedience to or punishing disobedience of any judgment or order.

DIVISION 8.—CONTEMPT OF COURT.

Contempt of court by witnesses, &c.
No. 6117 s. 54.

54. (1) If any person—

- (a) wilfully insults any judge or any juror or any registrar bailiff clerk or officer of the court during his sitting or attendance in court or any judge in going to or returning from court; or
- (b) wilfully interrupts proceedings of the court; or
- (c) having been summoned personally or in such other manner as is directed by the rules and having been paid or tendered a reasonable sum for travelling expenses and subsistence refuses or neglects without sufficient cause to appear or to produce any books deeds papers or writings required by the summons to be produced; or

- (d) being summoned or examined as a witness in any action or matter or being present in court and required to give evidence refuses to be sworn or to answer any lawful questions; or
- (e) in the opinion of the judge is guilty of wilful prevarication; or
- (f) misbehaves in court in any manner—

the judge may direct the apprehension of any such person and if he thinks fit may commit any such offender to prison for any time not exceeding one month or may impose on any such offender a fine of not more than Twenty pounds for every such offence and in default of immediate payment thereof may commit the offender to goal for any period not exceeding one month unless such fine is sooner paid.

(2) An order in the form in the Third Schedule to this Act or to the like effect may be issued by the judge and shall be good and valid in law without any other order summons or adjudication whatsoever.

Third
Schedule.

(3) No fine or commitment under this section shall exempt any person from any action for disobeying any summons to appear or to produce any books deeds papers or writings.

DIVISION 9.—COSTS WHERE NO JURISDICTION.

55. Whenever an action or matter is commenced over which the court has no jurisdiction, the judge shall, unless the parties consent to the court having jurisdiction, order it to be struck out, and shall have power to award costs in the same manner, to the same extent, and recoverable in the same manner as if the court had jurisdiction therein and the plaintiff had not appeared or had appeared and failed to prove his demand or complaint.

Court may
award costs
where action
or matter is
struck out
for want of
jurisdiction.
No. 6117 s. 55.

PART III.—COMMENCEMENT OF ACTION.

56. (1) Save as is hereinafter provided no pleading shall be allowed in the Court.

Actions by
plaint.
No. 6117 s. 56.

(2) Subject to the rules—

- (a) on the application of any person desiring to bring an action under this Act, the registrar of the court at the place where the application is made shall enter in a book to be kept for this purpose in his office a plaint in writing, stating the names and the last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it is entered;

- (b) thereupon a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall be issued under the seal of the court, 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 action is to be tried, as is prescribed by the rules, and delivery of such summons to the defendant, or in such other manner as is so prescribed, shall be deemed good service;
- (c) no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

PART IV.—REMITTING AND TRANSFERRING ACTIONS.

Remitting
actions to
county court.
No. 6117 s. 57

57. Where, in any action of tort or contract brought in the Supreme Court, the claim—

- (a) does not exceed the limit in point of amount to which the jurisdiction of the county court is limited; or
- (b) though it originally exceeded such limit is reduced by payment or an admitted set-off or otherwise to a sum not exceeding such limit—

if the whole or part of the demand of the plaintiff is contested, a judge of the Supreme Court shall, unless he considers that under all the circumstances of the case it is advisable that the action should be tried in the Supreme Court, on the application of any of the parties thereto, order such action to be tried in the county court at a place to be named in the order.

Remitting
actions where
plaintiff
without visible
means of
paying costs.
No. 6117 s. 58.

58. In any action of tort or contract brought in the Supreme Court (whatever may be the amount claimed), a judge thereof may on the application of the defendant supported by an affidavit of the defendant showing that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff order that—

- (a) unless the plaintiff, within a time to be named in the order, gives security for the said costs to the satisfaction of the prothonotary, or satisfies a judge of the Supreme Court that under all the circumstances of the case it is advisable that the action should be tried in the Supreme Court, all proceedings in the action shall be stayed; or
- (b) in the event of the plaintiff being unable or unwilling to give such security or failing to satisfy the judge as aforesaid, that the action be tried in the county court at a place to be named in the order.

59. When any action or matter is pending in the Supreme Court which might have been commenced in the county court under section forty-one of this Act, a judge of the Supreme Court may upon the application of any of the parties thereto, or without such application if he thinks fit, order such action or matter to be tried or heard in the county court at a place to be named in the order.

Remitting actions within equity jurisdiction.
No. 6117 s. 59.

60. Upon an order being made under section fifty-seven, section fifty-eight, or section fifty-nine of this Act the action or matter shall be carried on, heard and taken in the county court at the place named in the order, and as if the action or matter had been originally commenced in the county court.

Proceedings after order to remit.
N. 6117 s. 60

61. In any action where the amount claimed exceeds One hundred pounds, or in any action or matter under section forty-one of this Act, a judge of the Supreme Court, on the application of any of the parties thereto may, if he considers that under all the circumstances it is advisable, order such action or matter to be tried or heard in the Supreme Court on such terms as he thinks fit.

Removal into Supreme Court of actions above £100 and actions within equity jurisdiction.
No. 6117 s. 61.

62. (1) In any action of ejectment or for damages for injury to realty, the defendant in any such action of ejectment or his landlord, or the defendant in any such action for damages for injury to realty may apply to a judge of the Supreme Court for an order that such action be tried in the Supreme Court on the ground that the title to land of greater annual value than Two hundred and fifty pounds would be affected by the decision in such action.

Removal of action of ejectment or trespass.
No. 6117 s. 62

(2) The judge may thereupon if satisfied that the title to land would be so affected, order such action to be tried in the Supreme Court.

63. (1) If during the progress of any action or matter under section forty-one of this Act it is made to appear to the court that the subject-matter exceeds the limit in point of amount to which the jurisdiction of the court is limited, it shall not affect the validity of any order or judgment already made, but it shall be the duty of the court to direct the said action or matter to be transferred to the Supreme Court.

When amount of subject-matter of action exceeds limit of the jurisdiction of county court power to transmit to the Supreme Court
No. 6117 s. 63.

(2) Thereupon all proceedings in the county court shall be discontinued, and the record or other documents or papers in the action or matter shall be transmitted by the registrar to the Supreme Court, and the said action or matter shall proceed in the Supreme Court; and a judge of the Supreme Court

shall have power on the application of either party to regulate the whole of the procedure in the said action or matter when so transferred.

(3) Notwithstanding anything in the foregoing provisions of this section any party may apply to such judge for an order authorizing and directing the action or matter to be carried on and prosecuted in the county court, notwithstanding such excess in the amount of the limit to which equitable jurisdiction is by this Act given to the county court; and the judge may, if he deems it right to summon the other parties or any of them to appear before him for that purpose, after hearing such parties or on default of the appearance of all or any of them, make such order.

Proceedings
after
transfer.
No. 6117 s. 64.

64. Upon an order being made under section fifty-one, sixty-one, or sixty-two, all proceedings in the county court shall be discontinued, and the record or other documents or papers in the action shall be transmitted by the registrar to the Supreme Court, and a judge of the Supreme Court shall have power on the application of any party to regulate the whole of the procedure in the said action or matter when transferred.

PART V.—TRIAL.

Trial to be
by judge.
No. 6117 s. 65.

65. In all actions or matters the judge shall alone determine all questions as well of fact as of law, and his decision shall be the judgment of the court unless jurors are summoned as hereinafter provided.

Judge may
reserve his
decision and
forward it in
writing for
registrar
to read.
No. 6117 s. 66.

66. (1) In any action or matter the judge may if he thinks fit reserve his decision on any question of fact or of law.

(2) Where any such judge has so reserved his decision he may give the same at any continuation or adjournment of the court or at any subsequent holding thereof or he may draw up such decision in writing, and having duly signed the same forward it to the registrar of the court.

(3) Upon the receipt of such decision in writing such registrar shall notify the parties or their respective counsel or practitioners of his intention to proceed at some convenient time by him specified to read the same in the court house at which the court is held or other convenient place, and he shall read the same accordingly, and thereupon such decision shall be of the same force and effect as if given by such judge in open court at the trial or hearing or such action or matter.

Trial may be
by judge and
jurors
if required.
No. 6117 s. 67.

67. (1) In all actions where the amount claimed exceeds Twenty pounds the plaintiff or defendant and in actions brought for the recovery of unliquidated damages the judge may require a jury to try the said action.

(2) In case of either party requiring such jury such party shall give the registrar of the court or leave at his office such notice thereof as is directed by the rules, and shall also cause notice thereof to be communicated to the other party to the said action, either by post or by causing the same to be delivered at his usual or last-known place of abode or business.

(3) It shall not be necessary for either party to prove on the trial that such notice was communicated to the other party; but if the same has not been so communicated, the party in default shall pay to the other all costs occasioned by such omission, and the same shall be added to or deducted from the amount which would otherwise be recovered in such action.

68. (1) In any case where no demand of a jury has been made and the judge on application or otherwise thinks the action proper to be tried by a jury, he shall direct the said action to be placed in the list of jury cases, and it shall be tried by a jury accordingly.

Judge may
direct trial
by jurors.
No. 6117 s. 68.

(2) When the judge of his own motion has required any action to be tried by a jury, neither party shall be liable to pay the jury fees.

(3) The judge may in all cases in which he is authorized to require a jury give general instructions in writing to the registrar to issue a precept for a jury in any description of action which he thinks fit to particularize, and in that case the registrar shall after the summons is filed with him as served issue a jury precept accordingly.

69. Whenever a jury is required to try any action the registrar shall *mutatis mutandis* issue all precepts and do all such things as by any Act for the time being in force are directed to be done by the proper officer of the Supreme Court for summoning a jury of special jurors, and the requisite number of jurors shall be summoned accordingly.

Method of
summoning
jurors.
No. 6117 s. 69.

70. (1) Whenever a jury has been required to try any action, four jurors or (when any party to the action so requires and on payment by such party of Ten pounds in addition to the usual jury fee) six jurors shall be impanelled and sworn and shall sit apart from the judge in like manner as a jury in the Supreme Court.

Verdict of
jurors.
No. 6117 s. 70.

(2) Notwithstanding anything contained in the *Juries Act* 1958, the verdict of a majority of such jurors shall be received in the same manner as an unanimous verdict; but where the jury has remained six or more hours in deliberation and the majority do not agree as to the verdict to be given such jury

may be discharged by the court from giving any verdict and the action set down for re-hearing at such time as the judge may appoint, with a jury if either of the parties wish a jury, otherwise without a jury.

(3) When a verdict is given judgment shall be entered in accordance with the verdict, subject to the provisions of reservation of judgment new trials and nonsuit herein contained.

Provisions
as to
juries suitors
and witnesses
extended to
suitors and
witnesses
in the equity
jurisdiction
under this Act
No. 6117 s. 71.

71. (1) Whenever it is required that a jury should be summoned for the trial of any issue of fact arising out of the equity jurisdiction given to the court by this Act a judge may direct any such issue to be tried by a jury of special jurors.

(2) The foregoing provisions of this Act relating to the summoning impanelling and swearing of jurors in the court, and to the number of jurors and their verdict, shall apply to all jurors summoned under the equitable jurisdiction of this Act.

(3) The duties and obligations of and upon all jurors suitors and witnesses, and their liability to penalty and punishment, shall, in any proceeding under the equitable jurisdiction, be the same as those created authorized and imposed by the foregoing provisions of this Act.

Jury may be
had on
re-hearing of
county court
action in
Supreme
Court.
No. 6117 s. 72.

72. (1) When any party to any action or matter has appealed from any judgment or order to the Full Court and a re-hearing of the action or matter has been directed before a judge of the Supreme Court, any of the parties thereto shall be entitled (if the case was in the county court tried before a jury or if the Full Court at the time of directing the re-hearing so orders) if he so desires to have such re-hearing before such judge and a jury of twelve or six men.

(2) The plaintiff may have a jury by giving the prothonotary and the defendant a notice in writing to the effect that he requires a jury of twelve or of six men (as the case may be) when giving notice of trial and by paying the proper jury fees.

(3) The defendant may have a jury by giving the prothonotary and the plaintiff within four days after receiving notice of trial notice in writing to the effect that he requires a jury of twelve men (unless the plaintiff has already given notice that he requires a jury of twelve) or that he requires a jury of six men (unless the plaintiff has already given notice that he requires a jury) and by paying the proper jury fees.

PART VI.—JUDGMENT, NEW TRIAL AND APPEAL.

Judgments
to be final.
No. 6117 s. 73.

73. (1) Every judgment and order made by the court or a judge, except as in this Act provided, shall be final and conclusive between the parties.

(2) The judge may nonsuit the plaintiff in every case in which the plaintiff appears but does not make proof of his demand to the satisfaction of the judge or in which satisfactory proof is not given to him entitling either the plaintiff or defendant to a verdict or judgment.

Nonsuit.

(3) The judge may also in every case whatever, and as often as he thinks fit, order a new trial to be had upon such terms as he thinks reasonable, and may in the meantime stay proceedings.

New trial.

74. (1) Any party to an action or matter who is dissatisfied with any judgment or order of the court or a judge, not being an order of commitment, may appeal from the same to the Supreme Court, notwithstanding that such action or matter may have been brought in the county court by consent as provided by this Act.

Appeal to the
Supreme
Court.

No. 6117 s. 74.

(2) (a) Such party shall within fourteen days after such judgment or order give notice in writing of such appeal, together with the grounds thereof to the other party or his practitioner.

Notice of
appeal.

(b) Any such notice of appeal may be amended at any time as the Supreme Court thinks fit.

(3) The Supreme Court shall decide the matter of such appeal and shall have power to draw any inference of fact and shall on the hearing of such appeal make such order as is just, and may either dismiss such appeal or reverse or vary the judgment or order appealed from, and may direct the action or matter to be reheard before a judge of the Supreme Court or of the county court, but shall not in any case unless the Supreme Court otherwise specially directs remit the action or matter for rehearing before the judge before whom the same was originally heard, and may make such order with respect to the costs of the said appeal and of the action or matter in which the judgment or order has been given or made, as such court may think proper and such orders shall be final.

Power of
Supreme
Court.

(4) No such appeal shall operate as a stay of proceedings unless the judge of the county court so orders, or unless within fourteen days after the judgment or order appealed from a deposit is made of or security given to the satisfaction of the said judge for a sum to be fixed by the said judge not exceeding the amount of the money or the value of the property affected by the said judgment or order.

Appeal not
a stay.

(5) The rules for the time being in force with respect to ordering security for the costs of appeals from the Supreme Court to the Full Court shall, so far as practicable, apply to and govern appeals from the county court.

Security.

Matters not
subject to
appeal.

(6) Nothing herein contained shall authorize any party to appeal against any decision of the court given upon any question as to the value of any real or personal property for the purpose of determining the question of the jurisdiction of the court under this Act nor to appeal against the decision of the court on the ground that the proceedings might or should have been taken at any other place of sitting of the county court.

Parties may
agree not to
appeal.

(7) No appeal shall lie from any judgment or order of the court or a judge, if before it is pronounced the parties agree, in writing signed by themselves or their practitioners, that it shall be final.

Appeal may
be made
within
fourteen days
without
stating special
case.
No. 6117 s. 75.

75. (1) Any party to an action or matter in respect of which an appeal is provided by this Act who is dissatisfied with any judgment or order of the court or with any order of a judge not being an order of commitment, may at any time within fourteen days after such judgment or order, appeal against such judgment or order by motion to the Supreme Court instead of by appeal under the last preceding section.

(2) Such motion shall be *ex parte* in the first instance and may be granted on such terms as to costs, security, or stay of proceedings as to the said Supreme Court seems fit; and if the said court is not then sitting, such motion may be made before any judge thereof sitting in chambers.

Judge to take
note if
requested.

(3) At the trial or hearing of any such action or matter, the judge at the request of any party shall make a note of any question of law raised at such trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the action or matter. And he shall, at the expense of any party requiring the same for the purpose of appeal, furnish a copy of such note or allow a copy to be taken of the same by or on behalf of such party, and he shall sign such copy, and the copy so signed shall be used and received on such motion and at the hearing of such appeal.

(4) Nothing in this section contained shall be deemed to take away the right of any person aggrieved by the judgment or order of the court or a judge to appeal under the last preceding section to the Supreme Court.

Judge may
reserve
question for
opinion of the
Supreme
Court.
No. 6117 s. 76.

76. (1) The judge who tries or hears any action or matter may if he thinks fit reserve any question in the form of a special case for the opinion of the Full Court, which opinion shall be given.

(2) In such case no judgment or order shall be given or made in respect of any matter on which such question has been reserved until such opinion has been given, and the said Full Court may make such order as it thinks proper as to the costs of and occasioned by the hearing of such case.

77. No judgment determination or other order given or made by any judge in any action or matter brought before him or pending in the court shall be removed by writ of error writ of *certiorari* or otherwise, but every final decision by which the merits of the case may be concluded of a judge of the court given or made in any such action or matter before the court or a judge shall be subject to review by way of appeal as hereinbefore provided. *Certiorari.*
No. 6117 s. 77.

PART VII.—RULES, FORMS, SCALES OF COSTS.

78. (1) A majority of the judges for the time being may make rules for all or any of the following purposes:— Power to
make rules
of practice.
No. 6117 s. 78.

- (a) For regulating any matters relating to the costs of proceedings in the court, and for regulating and prescribing the scales of fees and costs to be paid to counsel and practitioners;
- (b) For regulating and prescribing the expenses to be paid to witnesses;
- (c) For regulating the keeping of all registers, books, entries and accounts by registrars and other officers;
- (d) For regulating the sittings of the court and of the judges sitting in chambers;
- (e) For prescribing in what cases trials in the court are to be with a jury and in what cases they are to be without a jury;
- (f) For regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given in any proceedings or on any application in connexion with or at any stage of any proceedings;
- (g) For regulating the enforcement of judgments and orders;
- (h) For regulating and prescribing the form of cases upon appeal to the Supreme Court and the time within which such appeal shall be prosecuted;

(i) For regulating and prescribing the practice and procedure of the court in any case within the cognizance of the court as to which rules of the Supreme Court have been or might lawfully be made for cases within the cognizance of the Supreme Court; and

(j) Generally for regulating and prescribing the practice and procedure of the court and the forms of proceedings therein, and any matters incidental to or relating to such practice or procedure.

(2) A majority of the judges for the time being may frame forms of proceedings in the court and may fix scales of fees costs and expenses to be paid to counsel practitioners and witnesses.

(3) The power given by this section shall extend and apply to all proceedings by or against the Crown.

(4) A majority of the judges for the time being may rescind revoke amend or vary any such rules forms or scales.

(5) Any rules forms and scales hereafter certified under the hands of a majority of the judges for the time being shall be submitted to a law officer, who if he thinks fit may publish the same as hereinafter mentioned; and the rules forms and scales or amended rules forms and scales so published shall be laid before both Houses of Parliament within fourteen days after the day of such publication if Parliament is then sitting, and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament and shall from the time of the said publication thereof be in force and come into operation in the court, from a day to be named in such rules, and shall be of the same force and effect as if the same had been enacted by the Legislature and shall be unimpeachable in any court of justice.

Rules not impeachable in any court.

(6) In any case not provided for in this Act or by the said rules, the general principles of practice and the rules observed in the Supreme Court may be adopted and applied to any action or matter with such modifications as the different constitutions of the two courts may render necessary at the discretion of the judge before whom the action or matter is depending.

When practice of Supreme Court may be followed.

(7) All rules forms and scales made under any corresponding previous enactment and in force immediately before the commencement of this Act shall remain in force until rescinded revoked amended or varied as aforesaid.

Saving.

Orders and rules to be gazetted.
No. 6117 s. 79.

79. Every Order in Council made for the purposes of this Act, and all rules forms and scales made under the power hereinbefore contained shall be published in the *Government Gazette* and shall be judicially noticed by all courts judges and justices.

PART VIII.—MISCELLANEOUS.

80. (1) The judge may if he thinks fit make an order prohibiting the publication of a report of any proceedings or any part thereof in any action or matter being heard or which has been heard before him which in his opinion ought not to be published. Nothing herein contained shall prevent the publication of a report of such parts of or of the facts connected with such proceedings as are not included in the prohibition.

Prohibition of publication of report of proceedings.
No. 6117 s. 80.

(2) When any such order has been made as aforesaid a copy thereof shall be posted by the registrar or other officer on one of the outer doors of the court house in which such action or matter is then being heard or in some other conspicuous place where notices are usually posted at such court house.

Copy of order to be posted on door of court house.

(3) Any person publishing a report of any such proceedings or any part thereof in respect of which any such order as aforesaid has been made and posted shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding One hundred pounds or imprisonment for a term not exceeding three months.

Penalty for disobeying order.

81. (1) The judge may if it appears desirable on grounds of public decency and morality order that all or any persons or any class or description of persons shall be excluded from the court during all or any part of the proceedings in any action or matter then being heard before such judge.

Power to exclude the public from court on grounds of public decency.
No. 6117 s. 81.

(2) Nothing in this section contained shall be construed to authorize the exclusion from the court of the mother or any female friend of any prisoner or party to or witness actually being examined in such action or matter or of any party to or witness in such action or matter or of any counsel or practitioner.

(3) Nevertheless all witnesses in any action or matter may at any time be ordered to leave the court in the same manner as though this section had not been passed.

82. No privilege shall be allowed to any counsel or practitioner or other person to exempt him from the provisions of this Act.

No privilege to exempt persons from provisions of Act.
No. 6117 s. 82.

83. (1) If any action is instituted in the Supreme Court for any debt (other than on a bill of exchange or promissory note for Fifty pounds or upwards) for which a plaint might have been entered under this Act, a judge of such court may before an appearance is entered by the defendant, if final judgment has not been signed by the plaintiff, order that upon payment by the defendant to the plaintiff within a time to be named in such order of the debt for which such action is brought without costs all further proceedings shall be stayed.

Certain actions in Supreme Court to be stayed.
No. 6117 s. 83.

(2) Thereupon in case default is made in payment of such debt the plaintiff may at once sign final judgment for the said debt and for the costs hereinafter mentioned as if no such order had been made; and in that case the costs of and occasioned by the said application as well as the costs of such action shall be taxed in the ordinary way, and the plaintiff may upon such judgment issue execution according to the course and practice of the court.

SCHEDULES.

FIRST SCHEDULE

Section 2.

Number of Act.	Title of Act.	Extent of Repeal.
5797 ..	Judges (Powers) Act 1954	So much as is not already repealed.
6117 ..	County Court Act 1957	The whole.

SECOND SCHEDULE.

Section 39.

In the County Court at

To bailiff of the court at

Whereas one A.B. has lately in this court commenced his action against C.D. of &c. [address and description], and intends to prosecute the same against him for a return of certain cattle goods and chattels of the said A.B. which the said C.D. hath taken and unjustly detains: This is therefore to require you that you forthwith cause to be replevied to the said A.B. the said cattle goods and chattels, and in what manner you shall have executed this warrant make appear to this court immediately after the execution hereof and have there then this warrant.

Given under my hand and the seal of the court this day of

Y.Z.

Registrar [or Assistant Registrar] of the Court.

To the Registrar of the Court at

In obedience to this warrant, I have replevied and caused to be delivered to the within-named the within-mentioned goods and chattels [or cattle].

Dated this day of 19

Bailiff.

THIRD SCHEDULE.

Section 54.

To the bailiff of the County Court at and to the keeper of the gaol at

These are to command you the said bailiff to apprehend and convey him to the said gaol and to deliver him to the said keeper thereof, and you the said keeper are hereby required to receive him into your custody in the said gaol and him there safely to keep for the term of (unless the sum of £ shall be sooner paid). I, the undersigned, the judge of the said court, having now here adjudged the said (to pay a fine of and in default of immediate payment thereof) to be imprisoned for the said term for that he the said has [here state the case as follows:—In open court wilfully insulted me the said judge [or a registrar bailiff &c., as the case may be] of the court during my sitting [or] on my way going to [or] on my way returning from the court [or] interrupted the proceedings of the court [or] having been summoned or examined as a witness in an action or matter [or] being present in court and required to give evidence refused or neglected without sufficient cause to appear [or] to produce certain books deeds papers or writings required by the summons to be produced [or] refused to be sworn [or] being sworn as a witness before me refused to answer a certain lawful question, that is to say, whether, &c., [or] being a witness has been guilty in the opinion of me the said judge of wilful prevarication as such witness [or] misbehaved himself in the court].

Given under my hand and sealed with the seal of the court this day of

Judge of the Court.