CHAPTER 50.

An Act to amend the Acts relating to the County Courts. [2d August 1875.]

WHEREAS it is desirable to amend the Acts relating to the county courts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

In respect of certain demands plaintiff may require defendant to give notice of intention to defend, on pain of judgment by default.

1. In any action in a county court for a debt or liquidated money demand, the plaintiff may, at his option, cause to be issued a summons in the ordinary form, or (upon filing an affidavit to the effect set forth in the form in Schedule (A.) to this Act) a summons in the form or to the effect given in Schedule (B.) to this Act, and if such last-mentioned summons be issued it shall be personally served on the defendant, and if the defendant shall not, within sixteen days after service of the summons, inclusive of the day of service, give notice in writing, signed by himself or his attorney, to the registrar of the court from which the summons issued, of his intention to defend, the plaintiff may, after sixteen days and within two months from the day of service, upon proof of its service, or of an order for leave to proceed as if personal service had been effected, have judgment entered up against the defendant for the amount of his claim and costs, such costs to be taxed by the registrar.

The order upon such judgment shall be for payment forthwith, or at such time or times, and by such instalments, if any, as the plaintiff, or his attorney, shall in writing have consented to take at the time of the entry of the plaint or of the judgment.

Where the defendant shall have given notice of defence, the registrar shall, immediately upon the receipt of such notice, send a letter to the plaintiff or his attorney by post, stating therein that the defendant has given notice of his intention to defend, and shall send by post, to both plaintiff and defendant, notice of the day upon which he shall have fixed that the trial shall take place, at least six clear days before the day so fixed.

Where the defendant shall neglect to give such notice of defence, the judge or registrar shall, upon an affidavit disclosing a defence upon the merits, and satisfactorily explaining his neglect, let in the defendant to defend, upon such terms as he may think just.

Where personal service cannot be effected, and the judge or registrar is satisfied by affidavit that reasonable efforts have been made to effect such service, and either that the summons has come to the knowledge of the defendant, or that he wilfully evades service of the same, it shall be lawful for the judge or registrar to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as to the judge or registrar may seem fit.

Provided always, that no other summons than a summons in the ordinary form shall, without leave of the judge or registrar, be issued where the amount claimed shall not exceed five pounds, unless the action is for the price, value, or hire of goods which, or some part of which, were sold and delivered or let on hire to the defendant to be used or dealt with in the way of his trade, profession, or calling, and the leave of the judge or registrar shall be given in accordance with regulations to be prescribed by rules of court.

Summonses to witnesses.

2. Either of the parties to an action or any other proceeding may obtain of the registrar of the court summonses to witnesses, with or without a clause requiring the production of books, deeds, papers, and writings in the possession or control of the person summoned as a witness; and such summonses, and any summonses which are now or may be required to be served personally, may, under such regulations as may be prescribed by rules of court, be served by a bailiff of the court or otherwise.

How service of summonses by a bailiff may be proved.

3. Where any summons or other process of the court is served by a bailiff of any county court, the service may be proved by endorsement on a copy of the summons or process under the hand of such bailiff, showing the fact and mode of the service of such summons or process; and any such bailiff wilfully and corruptly endorsing any false statement on the copy of a summons or other process shall be guilty of a misdemeanor,

and on conviction thereof shall be removed from his office or employment, and shall incur the same penalties as are or may be incurred by persons convicted of wilful and corrupt perjury.

Judge may do certain things within or without his circuit.

4. A judge of county courts shall, whether within the district of any of his courts or not, have jurisdiction to make any order, or exercise, on an ex parte application, any authority or jurisdiction in any action or proceeding pending in any of the courts of which he is judge, which, if the same related to an action or proceeding pending in one of Her Majesty's superior courts, might be given, made, or exercised by a judge of such last-mentioned courts in chambers, and, with the consent of both parties to an action or proceeding, to hear and decide any matter at any place either within or without any such district.

As to appointment of assessors.

5. In any action or proceeding it shall be lawful for the judge, if he think fit, on the application of either party, to summon to his assistance, in such manner as may be prescribed by rules of court, one or more persons of skill and experience in the matter to which the action or proceeding relates, who may be willing to sit with the judge and act as assessors; and their remuneration for so sitting shall be at such rate as may be prescribed by rules of court, and shall be costs in the cause or proceeding, unless otherwise ordered by the judge; but where any person is proposed to be summoned as an assessor, objection to him, either personally or in respect of his qualification, may be taken by either party in manner to be prescribed by rules of court.

Appeal may be made within eight days without stating special case.

6. In any cause, suit, or proceeding, other than a proceeding in bankruptcy, tried or heard in any county court, and in which any person aggrieved has a right of appeal, it shall be lawful for any person aggrieved by the ruling, order, direction, or decision of the judge, at any time within eight days after the same shall have been made or given, to appeal against such ruling, order, direction, or decision by motion to the court to which such appeal lies, instead of by special case, such motion to be ex parte in the first instance, and to be granted on such terms as to costs, security, or stay of proceedings as to the court to which such motion shall be made shall seem fit. And if the court to which such appeal lies be not then sitting, such motion may be made before any judge of a superior court sitting in chambers. And at the trial or hearing of any such cause, suit, or proceeding, the judge, at the request of either 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 cause, suit, or proceeding, and he shall, at the expense of any person or persons, being party or parties in any such cause, suit, or proceeding 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 person or persons, 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.

Remuneration of officers under this and other Acts passed or to be passed.

7. The Treasury shall direct whether any and what remuneration shall be allowed to any person performing any duties under this Act, or under any Act passed heretofore or to be passed, where by such Act no remuneration is or shall be given for the performance of duties by officers of the courts; and such remuneration shall be paid out of the fees which the Treasury, with the consent of the Lord Chancellor, is empowered by section seventy-nine of "The County Courts Act, 1856," to order to be taken on proceedings which were then authorised or might thereafter be authorised to be taken in the county courts.

This section shall not apply to the City of London Court.

Scale of costs to be framed by the judges.

8. The judges of county courts appointed or to be appointed by the Lord Chancellor from time to time to frame rules and orders for regulating the practice of the courts and forms of proceeding therein under the thirty-second section of "The County Courts Act, 1856," shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings which are now, or shall hereafter be, authorised to be taken in such courts, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such judges, or any three or more of them, shall be submitted to the Lord Chancellor, who from time to time may allow or disallow or alter the same, and the scale or amended scale, so allowed or altered, shall, from a day to be named by the Lord Chancellor, be in force in every county court.

Appointment of high bailiff as registrar to vacate high bailiffship.

9. The appointment of a high bailiff of a county court as registrar of a county court shall vacate the office of high bailiff held by such appointee.

As to appeals to the Queen in Council in Admiralty causes.

10. There shall be no appeal from a decree or order of the High Court of Admiralty of England made on appeal from the county court when such decree or order affirms the judgment of the county court, except by express permission of the judge of the High Court of Admiralty. When upon an appeal the High Court of Admiralty alters the judgment of the county court no leave to appeal to Her Majesty in Council shall be necessary.

In what cases assessors shall be summoned.

11. Where an Admiralty cause has been heard in the county court with the assistance of nautical assessors, elder brethren of the Trinity House shall be summoned to assist on the hearing of an appeal by the High Court of Admiralty if either party shall require the same, and the judge of the High Court shall be of opinion that the assistance of the elder brethren is necessary or desirable.

Enactments in Schedule (C.) repealed.

12. The several enactments specified in Schedule (C.) to this Act are hereby repealed to the extent mentioned in the third column of the said schedule; but this repeal shall not affect the course of any proceeding taken before such repeal.

This Act and other County Courts Acts to be construed together.

13. This Act and "The County Courts Act, 1846," and the several Acts altering or amending the same, shall be construed together as one Act, and this Act may be cited as "The County Courts Act, 1875."

Commencement of Act.

14. This Act shall come into operation on the second day of November next after the passing hereof.

SCHEDULE (A.)

Affidavit.

I, *A.B.*, of, *&c.*, make oath and say, that *C.D.*, of [*address, occupation, and description*] is indebted to me in the sum of for [*add, where the action is brought for a demand not exceeding five pounds*, and I further say that the were sold and delivered [*or* let on hire] to the said *C.D.* to be used or dealt with in the way of his trade [*or* profession or calling] of a].

Sworn at, *&c.* *A.B.*

NOTE.—[*When affidavit is made by a clerk alter the form accordingly, and add the following:* That I am a person in the employ of *A.B.*, and that I am duly authorised by him to make this affidavit, and that it is within my own knowledge that the aforesaid debt was incurred, and for the consideration above stated, and that such debt to the best of my knowledge and belief, still remains unpaid and unsatisfied.]

SCHEDULE (B.)

Summons to obtain Judgment by Default on Personal Service.

No. [*of plaint*].

In the [*title of court issuing summons*].

[*Seal.*]

Between *A.B.* [*address and description*], Plaintiff,
and
C.D. [*address and description*], Defendant.

TAKE NOTICE, That, unless within sixteen days after the personal service of this summons on you, inclusive of the day of such service, you return to the registrar of this court at [*place of office*] the notice given below, dated and signed by yourself or your attorney, you will not afterwards be allowed to make any defence to the claim which the Plaintiff makes on you, as per margin, the particulars of which are hereunto annexed; but the Plaintiff may, without giving any further proof in support of such claim than the affidavit filed in court herein, proceed to judgment and execution. If you return such notice to the registrar within the time specified, the registrar will send you by post notice of the day upon which the action will be tried.

	£	s.	d.
Claim - - -	...	...	...
Fee for plaint -	...	...	...
Attorney's costs (where payable)	...	...	...
Total amount of debt and costs	...	...	...

Dated this day of 18 .

Registrar of the Court.

To the Defendant. *See* below.

[*Notice of intention to defend or to object to the jurisdiction of the Court.*]

No. [*of plaint*].
In the [*title of court*].

A.B. v. *C.D.*

I intend to defend this cause [*or* to object to the jurisdiction of the court].

Dated this day of 18 .

_____(*) Defendant.

[*To be endorsed on the Summons.*]

If you pay the debt and costs, as per margin on the other side, into the registrar's office, within sixteen days after the service of this summons, and without returning the notice of intention to defend, you will avoid further costs.

If you do not return the notice of intention to defend, but allow judgment against you by default, you will *save half the hearing fee*, and the order upon such judgment will be to pay the debt and costs forthwith [*or* by instalments, *to be specified as in Plaintiff's written consent*].

If you admit a part only of the claim, you must return the notice of intention to defend within the time specified on the summons; and you may, by paying into the registrar's office at the same time the amount so admitted, together with costs proportionate to the amount you pay in, avoid further costs, unless the Plaintiff at the trial shall prove a claim against you exceeding the sum so paid.

If you intend to dispute the Plaintiff's claim on any of the following grounds,—

1. That the Plaintiff owes you a debt which you claim should be set off against it;
2. That you were under twenty-one when the debt claimed was contracted;
3. That you were then, or are now, a married woman;
4. That the debt claimed is more than six years old;
5. That you have been discharged from the Plaintiff's claim under a Bankrupt or Insolvent Act;

you must, in addition to the notice of intention to defend, give to the registrar notice of such special defence; and such last-mentioned notice must contain the particulars required by the rules of the court; and you must deliver to the registrar as many copies of such notice as there are Plaintiffs, and an additional copy for the use of the court. If your defence be a set-off, you must, with the notice thereof, also deliver to the registrar a statement of the particulars thereof. If your defence be a tender, you must pay into court, before or at the trial, the amount tendered.

If you give such notice of intention to defend within the time specified, you may, *if the debt exceeds five pounds*, have the case tried by a jury, on giving notice in writing at the registrar's office three clear days before the trial, and on payment of five shillings for the use of such jury.

SCHEDULE (C.)

Reference to Act.	Title of Act.	Extent of Repeal.
9 & 10 Vict. c. 95. -	An Act for the more easy recovery of small debts and demands in England.	So much of section sixty-two as requires the service of a summons or other process to be proved by affidavit, and the whole of sections eighty-five and one hundred and three.
19 & 20 Vict. c. 108. -	An Act to amend the Acts relating to County Courts.	The whole of the sections numbered respectively twenty-eight and twenty-nine.
29 & 30 Vict. c. 4. -	An Act for the abolition of the offices of Treasurer and of High Bailiff of County Courts as vacancies shall occur, and to provide for the payment of future Registrars of County Courts.	The whole of sections six and seven.
30 & 31 Vict. c. 142. -	An Act to amend the Acts relating to the jurisdiction of the County Courts.	The whole of sections two and thirty-two.
31 & 32 Vict. c. 71. -	An Act for conferring Admiralty jurisdiction on the County Courts.	The whole of section twenty-nine.

(*) Here must be signed the name of defendant or of his attorney, and in the last case the words "attorney for" must be added.