

## No. X.

SMALL DEBTS  
RECOVERY.

An Act to amend the Law respecting the recovery of small Debts in all parts of the Colony. [30th October, 1846.]

Repealing  
3 Wil. IV. No. 2

3 Vic. No. 6

4 Vic. No. 25

Preamble. **W**HEREAS it is expedient to consolidate and amend the Laws now in force in New South Wales relating to the recovery of small Debts and causes of action in the manner hereinafter contained Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That from and after the passing of this Act an Act passed in the third year of the reign of King William the Fourth intituled "*An Act for better regulating Courts of Requests in the Colony of New South Wales*" and also an Act passed in the third year of the reign of Her Majesty Queen Victoria intituled "*An Act to establish Courts of Requests at the Towns of Melbourne and Port Macquarie in the Colony of New South Wales*" and also an Act passed in the fourth year of the reign of Her Majesty Queen Victoria intituled "*An Act to amend an Act intituled 'An Act for better regulating Courts of Requests in New South Wales'*" and also an Act passed in the sixth year of the reign of Her

*Small Debts Recovery.*

Her Majesty Queen Victoria intituled "*An Act to consolidate and amend the Law relating to Courts of Requests and to extend the jurisdiction of such Courts in the County of Cumberland*" shall be and the same are hereby repealed save and except so much of the said last recited Act as relates to Courts of Requests established and hereafter to be established in the County of Cumberland aforesaid and all actions plaints and suits which shall have been commenced and shall be still pending in any Courts of Requests established by virtue of the said last recited Act shall from and after the passing of this Act be continued heard and determined under the provisions hereinafter contained.

and 6 Vic. No. 35

except as to the Courts of Requests in the County of Cumberland.

2. Provided always and be it enacted That nothing herein contained shall be deemed to apply to any Court of Requests for the Town of Melbourne and County of Bourke in the District of Port Phillip and that from and after the first day of January which will be in the year of our Lord one thousand eight hundred and forty-seven the Courts of Requests to be holden in and for the Town of Melbourne and County of Bourke in the said District of Port Phillip shall exercise such and the same jurisdiction in all respects as the Courts of Requests in the said County of Cumberland and that the said last recited Act shall from the said first day of January be in force and apply to the said Town of Melbourne and County of Bourke and to the Courts of Requests to be held therein.

Extending to Courts of Requests in the Town of Melbourne and County of Bourke the same jurisdiction as exercised by those in the County of Cumberland.

3. Provided always and be it enacted That any Court of Requests now or hereafter established in the Counties of Cumberland or Bourke shall have jurisdiction for the recovery of any debt demand or damage whether liquidated or unliquidated to an amount in any case not exceeding thirty pounds subject nevertheless to the proviso in the fourth clause of this Act contained for the limitation of the jurisdiction of the Courts of Petty Sessions hereby created and that all actions tried in any such Court of Requests for the recovery of any sum between ten pounds and thirty pounds shall be heard and determined in a summary way and according to equity and good conscience in like manner as any sum under ten pounds is now recoverable in any such Court Provided however that the summary jurisdiction hereby created shall not interfere with so much of the said last recited Act as establishes trial by a Commissioner assisted by Assessors.

Thirty pounds jurisdiction under limitation extended to Counties of Cumberland and Bourke.

4. And be it enacted That all Courts of Petty Sessions now established or that may hereafter be established in the said Territory shall within their respective districts have power and authority to hear and determine in a summary way and according to equity and good conscience all actions whatsoever (against persons liable as hereinafter mentioned to be summoned to such Court and every defendant sued jointly with such person) for the recovery of any debt demand or damage whether liquidated or unliquidated to an amount in any case not exceeding ten pounds or (where the party intended to be sued shall by writing under his hand have consented thereto) to an amount not exceeding thirty pounds Provided that such Courts shall not have jurisdiction in any case where the matter in question relates to the taking of any duty to Her Majesty or any fee of office or to any annual rent or other matter in which rights in future may be bound or to any general right or duty nor where the debt sought to be recovered is for any money or thing won at or by means of any race match wager raffle or any kind of play or game nor in any case where the debt or claim shall have arisen more than three years before the issuing of the summons unless there hath been in writing an acknowledgment of or promise to pay the same within that period nor in respect of any contract for the sale of goods unless the buyer shall have actually received the same or part thereof or have given something in earnest

Courts of Petty Sessions to be Courts of Requests.

Jurisdiction of such Courts.

to

*Small Debts Recovery.*

to bind the bargain or in part payment or some note or memorandum in writing of the bargain shall have been signed by the party sought to be charged by such contract or his agent thereunto lawfully authorized Provided also that in every case of trespass to land if the title to the freehold therein shall *bonâ fide* be in dispute between the parties the Court of Petty Sessions shall have no power to adjudicate therein.

One Magistrate to have jurisdiction in certain cases.

5. And be it enacted That in every case in which the plaintiff shall seek to recover no more than the sum of five pounds or in case the sum in dispute exceeds the sum of five pounds and does not exceed thirty pounds but both parties consent thereto (which consent shall be specially entered in the record book at the commencement of the hearing) it shall be lawful for one Justice of the Peace sitting at the usual place and time of meeting of any Court of Petty Sessions to hear and determine such cases which shall thereupon be proceeded with in every respect as if the same were heard and determined by two or more Justices and in every case the decision of such Justice or Justices shall be final and conclusive.

Officers of such Courts.

6. And be it enacted That the Clerk of the Bench or other Clerk of the said Courts of Petty Sessions as may from time to time be directed by such Courts respectively shall discharge the duties of Registrar of the said Courts and shall in addition to any other authorized emoluments receive to his own use the fees mentioned in the Schedule hereunto annexed marked A as payable on the entry of every plaint and the said Courts of Petty Sessions shall from time to time appoint a bailiff or bailiffs for the service and execution of the processes orders and judgments authorized by this Act which bailiff or bailiffs shall receive to their own use the fees mentioned in the Schedule hereunto annexed marked A as payable to such bailiff or bailiffs.

Proceeding when plaintiff does not appear.

7. And be it enacted That if upon the day of the return of any summons or at any adjournment of the said Court of Petty Sessions or of the cause for which the said summons shall have been issued the plaintiff shall not appear either in person or by some person authorized on his behalf or appearing shall not make proof of his claim or demand to the satisfaction of the said Court it shall be lawful for the said Court if it shall think fit (when the defendant personally or by some one duly authorized on his behalf shall appear and shall not admit the claim or demand) to award to the defendant by way of costs and satisfaction for his trouble and attendance such sum as the Court in its discretion shall think fit and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage can be recovered Provided always that if the plaintiff shall not appear when called upon and the defendant or some one duly authorized on his behalf shall appear and admit the cause of action to the full amount claimed or a part thereof the Court may if it shall think fit proceed to give judgment according to such admission.

Proceeding if defendant does not appear.

8. And be it enacted That if on the day so named in the summons or at any adjournment of the Court or cause in which the summons was issued the defendant shall not appear either personally or by some one on his behalf sufficiently to excuse his absence or shall neglect to answer the claim or demand the Court upon due proof of service of the summons may proceed to the trial of the cause on the part of the plaintiff only and the judgment thereupon shall be as valid as if both parties had attended Provided always that the Court may in such case at the next sitting of the Court or otherwise set aside any judgment given in the absence of the defendant and the execution thereupon upon such terms as the said Court may think fit on sufficient cause shewn for that purpose and grant a new trial of the cause upon the

*Small Debts Recovery.*

the defendant paying the costs of the first trial and giving such security as such Court shall think fit to require for the costs of the new trial.

9. And be it enacted That it shall not be lawful to split or divide any cause of action for the purpose of bringing the same within the jurisdiction of any Court of Petty Sessions and in case it shall appear to the said Court in any stage of the proceedings that any cause of action has been so split or divided such Court shall dismiss the action brought thereupon with costs. Actions not to be split.

9. Provided always and be it enacted That in case the defendant in any action shall appear to have given bills of exchange or promissory notes for the payment of any debt originally above the amount of jurisdiction created by this Act but which bills or notes are separately security for a sum not exceeding ten pounds each bill or note shall be regarded as forming a distinct and separate contract and may be sued upon and recovered in the same way as any other debt recoverable under this Act. Notes or bills for sums not exceeding £10.

11. And be it enacted That the said Courts of Petty Sessions shall be Courts of Record and that the judgments of any of the said Courts may be set up as a defence in any action brought either in any of the said Courts or in the Supreme Court Provided that the entry of the judgment on the Cause List of the Court of Petty Sessions shall be deemed and held to be a record of such judgment and that the same or a certified copy thereof under the hand of the Clerk of such Petty Sessions shall (on proof of such signature and of the identity of the claim and parties) be received as evidence of such judgment Provided also that in respect of any action for trespass to land tried in any Court of Petty Sessions where the right to the possession shall be shewn to have been in dispute and any action for rent not being between the original parties to the letting where the right to receive or the liability to pay such rent shall have been in dispute and any action for contribution to the erection or repair of any dividing fence where the defendant's liability to contribute shall have been in dispute the judgment of the Court of Petty Sessions as to such right or liability shall be conclusive only as to the particular act or acts of trespass or amount of rent or contribution then in question and shall not be taken to have determined any of those questions generally between the parties. Courts of Petty Sessions to be Courts of Record.

12. And be it enacted That in every action which shall after the commencement of this Act be brought in the Supreme Court where the plaintiff shall recover no more than ten pounds debt or damages he shall have judgment only for the sum recovered without any costs whatsoever unless the Judge before whom the cause was tried shall certify either that the same was not within the jurisdiction of any Court of Petty Sessions or that the action was in his opinion not vexatiously brought in the superior Court but was one proper to be tried therein and no costs shall be allowed in any such action (where the sum recovered shall be no more than ten pounds) if the cause of action shall have arisen more than three years before the commencement of the same action unless there shall have been within three years a promise in writing to pay the amount or an acknowledgment in writing of the same being due and the defendant may by leave of the Judge who tried the cause enter a suggestion on the record to deprive the plaintiff of his costs in every such case. Costs when party sues in Supreme Court.

13. And be it enacted That in every case where any such certificate shall be given the plaintiff shall nevertheless recover costs only according to the scale of costs set forth in Schedule D hereunto annexed. Reduced scale of costs.

14. And be it enacted That in all actions hereafter to be brought in the Supreme Court where the sum demanded shall not exceed thirty pounds In actions for sums not exceeding £30 no Court fees to be demanded.

*Small Debts Recovery.*

pounds no Court fees whatever shall be demanded or paid at any stage of the proceedings.

Writs of inquiry and trial 4 Vic. No. 22 s. 26 and 5 Vic. No. 9 s. 20.

15. And whereas by the Act of Council passed in the fourth year of Her Majesty's reign to provide for the administration of justice as amended in that behalf by an Act passed in the fifth year of Her Majesty's reign writs of inquiry and writs of trial may in certain cases be issued directed to any Commissioner of the Supreme Court where the damages sought to be recovered shall not exceed fifty pounds which inquiry or trial shall be by such Commissioner and two Assessors to be named and summoned by him Be it enacted and declared That any such writ may be issued (notwithstanding any higher amount or sum inserted in the declaration) where the debts damages or sum sought to be recovered shall be in fact not more than fifty pounds and may be so issued at the instance of either party plaintiff or defendant and that every Commissioner to whom any such writ shall be directed shall for the purposes thereof have the same powers as a Sheriff in England hath or may exercise to whom a writ of trial shall have been directed by one of Her Majesty's Courts or Judges at Westminster.

Commissioner's fee for writ of trial.

16. And be it enacted That in every such action as aforesaid the Commissioner's fee for executing a writ of trial shall be two guineas which shall include the charge for summoning Assessors and returning the writ duly indorsed.

Commissioner's notes of evidence &c.

17. And be it enacted That every such Commissioner shall together with the writ and the indorsement of the verdict thereon return to the Supreme Courts his notes of the evidence on such inquiry or trial and it shall be lawful for the said Court or any Judge thereof to permit any amendment of the said indorsement in accordance with such notes and not being repugnant to the verdict but so as to give effect to the same Provided that where justice shall appear to have been done by such verdict on the merits the same shall not in any case be set aside or impeached for any mere omission to find any issue or for any technical defect or error whatsoever Provided also that where any application shall be made to the Court or a Judge either to set aside such verdict or to amend the indorsement thereof on the writ such reasonable terms may be imposed on the parties and such order made respecting the costs as to such Court or Judge shall seem meet.

Servants &c. under age may sue for wages.

18. And be it enacted That in every case where any wages or any other sum whatsoever not exceeding the sum of ten pounds shall be due to any person under the age of twenty-one years it shall be lawful for such person to sue for and recover such debt in any of the said Courts of Petty Sessions in the same manner as if he were of full age.

Officers of Supreme Court not exempt.

19. And be it enacted That no person shall be exempt from the jurisdiction of the said Courts of Petty Sessions by reason of his being an attorney solicitor or other officer of the Supreme Court but that all such attorneys solicitors and officers shall be subject to the several processes orders judgments and executions of the said Courts of Petty Sessions in the same manner as other persons are subject to the same.

Actions in Courts of Petty Sessions how commenced.

20. And be it enacted That every action in any Court of Petty Sessions shall be commenced by a demand or plaint in writing in which demand the plaintiff shall shortly and in substance set forth his cause of action and shall also state the place of his abode or the place of abode of his attorney if he sue by an attorney and the place of abode of the defendant and shall cause such demand or plaint to be filed with the Registrar of the said Court at such times before the sitting of the Court at which the cause is to be tried as shall be prescribed by rules to be from time to time made by the said Court and approved of by Her Majesty's Attorney General for the time being and such Registrar shall annex the same or a copy thereof to a copy of

*Small Debts Recovery.*

of the summons to be retained in Court the original or duplicate of which shall be served on the defendant and which summons shall be in the form set forth in the Schedule hereunto annexed or as near thereto as the nature of the case will admit always preserving the substance of the same.

21. And be it enacted That the summons hereinbefore directed to be served on the defendant may be served by delivering such summons to the wife or servant of the defendant at the defendant's usual place of abode and in case the messenger or bailiff who shall be employed to serve the summons shall demand admittance into the house where the defendant usually resides and such admittance shall be refused it shall be lawful for him to put such copy into the house or to fix such copy upon the door of the house and the same shall in such case be deemed to be good service upon the defendant. How summons to be served.

22. And be it enacted That no judgment shall be recorded by any Court of Petty Sessions in any case unless the process in such cause shall be by the affidavit of at least one credible witness before the said Court or the Registrar or a Commissioner of the Supreme Court or before a Justice of the Peace be deposed to have been duly served upon the defendant in the manner hereinbefore directed. Affidavit of service to be made.

23. And be it enacted That every action which shall be brought in any Court of Petty Sessions shall be brought in the Court which shall be holden in and for the district where the defendant in such action shall usually reside unless there be two or more joint defendants in which case the plaintiff may proceed as is hereinafter directed. Provided always that in case the defendant in any action shall have given an engagement or promise in writing to pay any debt or sum in a particular place specified the plaintiff may cause such defendant to be summoned to attend the Court which shall be holden in and for the district within which the place so specified is situated. Provided also that if any party after having in one district contracted a debt or become liable for any damage recoverable in the Courts of Petty Sessions shall become resident in another district previously to the issuing of a summons for the recovery of such debt or damage it shall be lawful for the plaintiff to summon the defendant to the Court of Petty Sessions holden for the district in which such debt was contracted or liability for damage incurred originally in the same manner as if he had continued a resident of such district. Actions to be brought in Court of Petty Sessions for the district where the defendant resides.

24. And be it enacted That where in case of persons jointly liable all the persons so liable shall not reside within the jurisdiction of the same Court of Petty Sessions it shall be lawful for the plaintiff to bring his action before any Court of Petty Sessions within the jurisdiction of which any of the persons jointly liable shall reside by serving any of such persons with a summons in the manner hereinbefore directed and such person may serve the other persons so jointly liable with a notice of such summons in order that they may appear and join in defending such action and in case such other persons shall not so appear and join the action may proceed and judgment be obtained and execution issued against the person who shall have been served with the plaintiff's summons notwithstanding the others jointly liable may not have been served with any summons or joined in such action and no plea in abatement shall be allowed for or advantage be taken of the non-joinder of the person or persons so jointly liable. Provided always that the person against whom execution may have been issued shall retain any right which he may have to demand contribution from the other persons jointly liable with him and in case he shall have caused such other persons to be personally served with a copy of the plaintiff's summons upon him in such action three days before the day appointed for appearing and answering to the same the judgment or a copy thereof

*Small Debts Recovery.*

thereof certified by the Registrar recovered against him in such action shall be admissible in evidence in any action for contribution afterwards brought by him against the persons so personally served by him as aforesaid for the purpose of proving their liability to such contribution but in case he shall not have caused such other persons to be personally served as aforesaid then the liability of such persons to contribution shall be proved in the ordinary manner. Provided also that as often as any question shall arise as to the district in which the defendant shall be deemed to be a resident the same shall be determined by the Court of Petty Sessions as incident to the cause.

Plaintiffs and defendants may be examined on oath &c.

25. And for the better discovery of the truth and more satisfactorily obtaining the ends of justice be it enacted That it shall be lawful for any Court of Petty Sessions if the presiding Justice or Justices shall in their or his discretion think it proper so to do to examine the plaintiff or defendant *vivâ voce* on their several corporal oaths and in case any person who shall be examined on oath or if a Quaker or other person allowed by law to give evidence on affirmation by any such Court by virtue of this Act shall commit wilful and corrupt perjury or falsely affirm and shall thereof be duly convicted according to law or shall commit wilful and corrupt perjury in false swearing or affirming in any affidavit or affirmation by this Act required or allowed to be made before any such Court or any Justice of the Peace and be thereof convicted according to law such person shall incur and suffer the like pains and penalties as any person convicted of wilful and corrupt perjury and in every such case it shall be lawful for the said Court of Petty Sessions to commit the party and to direct a prosecution for perjury to be forthwith instituted against him in order that he may be prosecuted for the same according to law.

Witnesses not attending and persons guilty of contempt.

Penalty.

26. And be it enacted That every person summoned as a witness to attend any of the said Courts of Petty Sessions shall attend pursuant to such summons and shall be subject to the like actions (to be brought in one of the said Courts) for disobeying such summons as he would be subject to for disobedience to a subpoena issuing out of the Supreme Court and that it shall be lawful for every such Court of Petty Sessions to punish as for contempt in a summary way by fine not exceeding forty shillings to be levied upon the goods and chattels of the offender or by imprisonment for any time not exceeding fourteen days any plaintiff defendant or witness refusing to be sworn or to answer any lawful question or any person guilty of contempt before any such Court. Provided always that nothing in this Act contained shall be construed to compel the attendance at any Court of Petty Sessions of any witness who may not be resident in the district where the cause in which he is summoned to give evidence is to be tried nor to compel any witness to go more than three miles from his home without tender of his reasonable expenses.

Execution of process.

27. And be it enacted That in any case where any Court of Petty Sessions shall make any order or decision for the payment of money it shall be lawful for the Registrar of the said Court on the application of the party in whose favour such order or decision has been made to issue a precept in the nature of a writ of *fieri facias* which precept shall be directed to any bailiff of any of the said Courts or his deputies who are hereby empowered to execute the same in any part of the said Territory in the same manner in all respects as process of a similar nature issuing out of the Supreme Court may be executed by the Sheriff or Deputy Sheriff. Provided always that no real or leasehold property be liable to be levied upon under writs of execution out of the said Courts.

Form of writs of execution.

28. And be it enacted That writs of execution shall be in the form set forth in the Schedule hereunto annexed or as near thereto as the

*Small Debts Recovery.*

the nature of the case will permit always preserving the substance of the same.

29. And be it enacted That if any person summoned to appear shall appear according to the summons and the party complaining shall make default the Court shall adjudge the plaint to be disproved or if he shall appear and the judgment of the Court be for the defendant the said Court shall at its discretion in either case adjudge to the said defendant his reasonable costs in like manner as for the party complaining and the said defendant shall be entitled to the like process of execution for the same as the plaintiff would be entitled to if he had established his claim against the defendant.

Defendant when entitled to a writ.

30. And be it enacted That the Registrar of any of the said Courts shall grant a special writ of execution when demanded by the plaintiff or defendant as the case may be in any suit wherein such writ may be issued and such Registrar shall appoint one or more special bailiffs to be named by the party applying for it to execute such writ Provided that every person appointing a bailiff to act under any special writ shall together with two sufficient sureties execute to the Registrar of the Court from which the writ issues a bond in the penalty of fifty pounds or for a larger sum not exceeding one hundred pounds if the said Court shall so direct conditioned for the proper performance of the duties of his office and such bond shall vest in the Registrar of the Court for the time being and may from time to time be sued in his own name or in the name of any person to whom it may be assigned under any order of the Court which assignment shall be made by an indorsement by the Registrar for the time being and any person who shall sustain any damage by the neglect or misconduct of any such bailiff may proceed before any Court of competent jurisdiction (the amount of such damage not exceeding fifty pounds or the sum specially directed by the Court as aforesaid) and the bond so given shall stand and be an additional security for such damages and shall if necessary be put in suit to recover the sum and costs from the parties thereto or any of them.

Special writ at peril of party applying.

31. And whereas persons residing in and contracting debts within the limits of one of the said Courts of Petty Sessions to avoid execution upon judgments recovered against them may occasionally remove into the limits of another of the said Courts whereby plaintiffs will be prevented from recovering their debts by reason of the defendants not being resident within the jurisdiction in which such judgments have been obtained Be it therefore enacted That the removal by any defendant from one of the said jurisdictions into another shall not prevent any plaintiff proceeding against such defendant in the jurisdiction where such defendant may happen to be resident at the time of issuing execution and it shall be lawful for the bailiff or his deputy of any Court of Petty Sessions to take such defendant into custody or to dispose of his goods in like manner as if he had been a resident of the district in which judgment was recovered against him.

Defendant contracting debts in one district and removing into another.

32. And be it enacted That if previously to the sale of any property levied upon such property being in the actual or ostensible possession of the party against whom the writ is directed a claim shall be made to it by any third person and such claim shall be deposed to before a Justice of the Peace and in such deposition it shall be averred that the party in whose actual or ostensible possession such property so levied upon be found is not the true owner but the baillee thereof such property shall be released from execution and the cost of the levy if any shall be either added to the amount of the costs charged in the execution or defrayed by the party claiming such property as the Court of Petty Sessions shall in its discretion direct Provided always that no absolute or conditional bill of sale or mortgage of chattel

Proceeding as to disputed property levied upon.

*Small Debts Recovery.*

property whatever shall protect such property so levied upon from sale unless such bill of sale or mortgage be produced to the bailiff And provided also that such bill of sale or mortgage shall have been executed at least fourteen days before the summons shall have been served upon the defendant in the case in which the writ of execution issued and unless there be expressed in such mortgage a certain time for the payment of the principal sum for which such instrument was given as security and such time does not exceed one year from the date of the instrument and at the expiration of that time the holder of such bill of sale or mortgage shall not renew it but either assume possession or proceed to the sale of the property so secured or relinquish all claim to the protection of it from the debts of other creditors And provided likewise that such bill of sale or mortgage shall have been registered by the Registrar at the nearest Court of Petty Sessions within one week of the date of the execution of such bill of sale or deed of mortgage Provided further that protection from sale under any circumstances shall only extend to such articles of chattel property as are specifically set forth and enumerated in a Schedule to be annexed to such bill of sale or mortgage as the case may be and provided also that the party entitled thereto may nevertheless proceed to enforce the levy and sale by taking out a special writ of execution in manner hereinbefore directed and that in every case in which a special writ of execution is taken out neither the Registrar nor bailiffs of the Courts of Petty Sessions shall be responsible for any act done under or in respect of such process by color thereof but the person aggrieved by any such act shall have a remedy and right of action against the party or his sureties to whom the writ of execution was granted.

Executors and administrators.

33. And be it enacted That all executors and administrators shall have power to sue and be liable to be sued in the said Courts of Petty Sessions and that judgments which have been obtained by plaintiffs but not satisfied previous to their decease as well as all causes of action shall survive to their proper personal representative who may sue out execution in his own name in the same way that the plaintiffs themselves if living might have done.

Relief of bailiffs in charge of goods under execution.

34. And whereas difficulties may sometimes arise in the execution of process against goods and chattels issued under the authority of the Courts of Petty Sessions by reason of claims made to such goods and chattels by persons not being the parties against whom such process has issued whereby bailiffs and other officers may be exposed to the hazard and expense of actions and it is reasonable to afford relief and protection in such cases to such bailiffs and other officers Be it therefore enacted that when any such claims shall be made to any goods or chattels taken or intended to be taken in execution under any such process or to the proceeds or value thereof it shall be lawful for the Court from which such process issued upon application of such bailiff or officer made before or after the return of such process and as well before as after any action brought against such bailiff or other officer to call before it by an order for that purpose made as well the party issuing such process as the party making such claim and thereupon to pronounce its decision in a summary manner for the adjustment of such claim and the relief and protection of the bailiff or other officer which decision shall be final and conclusive against the said parties and all persons claiming by from or under them and to make such order as shall appear to be just according to the circumstances of the case and the cost of all such proceedings shall be in the discretion of the said Court of Petty Sessions.

Levy on goods when made.

35. And be it enacted That no judgment of any of the said Courts of Petty Sessions against the goods and chattels of the defendant in any suit or action brought therein shall be executed at any time after

*Small Debts Recovery.*

after sunset and before sunrise and if any person shall execute any such judgment after sunset and before sunrise such person shall be liable to a fine of ten pounds which shall be imposed and if necessary enforced by any order of the Court of Petty Sessions for the distress and sale of the offender's goods.

36. And be it enacted That no execution awarded against the goods of any party shall deprive any landlord of the power vested in such landlord by an Act passed in the eighth year of the reign of Her late Majesty Queen Anne intituled "*An Act for the better security of Rents and to prevent Frauds committed by Tenants*" of recovering one year's rent in pursuance of the said Act. Rights of landlords.

37. And be it enacted That no plaint entered in the said Courts of Petty Sessions nor any order or proceeding had thereon by virtue of this Act shall be removed out of the said Courts by writ of *recordari facias loquelam* or by writ of *certiorari* or otherwise however but all orders made by the said Courts of Petty Sessions shall be final and conclusive to all intents and purposes whatsoever. No plaints to be removed.

38. And be it enacted That all Sheriffs and Deputy Sheriffs keepers of prisons or other persons whosoever who shall do anything under this Act in obedience to any legal order of any such Court of Petty Sessions shall be and they are hereby indemnified for whatsoever shall be done by them respectively in obedience thereto and if any action whatsoever shall be brought against any such Sheriff keeper or person or against any Justice of the Peace or officer of any such Court of Petty Sessions for performing any duty of his office in pursuance of this Act such Sheriff Justice keeper officer or other person may plead the general issue and give the special matter in evidence thereupon and if the plaintiff be nonsuited or shall discontinue his action or a verdict shall pass against him or judgment be had for the defendant upon demurrer such defendant shall have double costs. Sheriff and other persons indemnified.

39. And for the protection of persons acting in execution of this Act be it enacted That all actions for anything done under the provisions thereof shall be commenced within six months after the fact was committed and that no writ shall be sued against nor process served upon any Justice of the Peace Registrar bailiff or other officer of any Court of Petty Sessions for anything done in the execution of or by reason of his office until one calendar month next after notice in writing shall have been delivered to him or left at his usual place of abode by the attorney or agent for the party who intends to sue out such writ as aforesaid in which notice shall be clearly and explicitly contained the cause of action the name and place of abode of the person who is to bring such action and the name and place of abode of the attorney or agent and that a fee of twenty shillings shall be paid for preparing or serving every such notice and no more. Limitation of actions against officers.

40. And be it enacted That the several fees and sums of money expressed in the Schedule hereunto annexed and no other shall be taken by the several officers of the said Courts therein mentioned for their respective services in the execution of this Act. Fees to be taken.

41. And be it enacted That if any bailiff deputy bailiff or other officer of any Court of Petty Sessions employed to execute any process of execution shall by connivance wilful neglect or omission cause or suffer the goods of the party against whom such execution shall be awarded to be rescued or carried away so that such execution shall not have its due effect it shall be lawful for any Justice of the Court of Petty Sessions out of which such process shall have issued upon complaint and due proof thereof made upon the oath of one credible witness to order such bailiff deputy or officer to pay the sum of money for which such execution was awarded or such part thereof as the said Justice may think proper to the party complaining and to enforce the payment

*Small Debts Recovery.*

payment thereof by the same means as are herein provided for the recovery of debts.

Process not to be set aside for technical errors only.

42. And be it enacted That no process or proceeding of any of the said Courts of Petty Sessions shall be set aside on account of any technical error or mistake only and it shall be competent to every Court of Petty Sessions to decide what is a verbal or technical error or mistake in any action or proceeding and all errors or mistakes which have not a tendency to misinform or mislead the opposite party shall in all cases be deemed merely verbal or technical.

By consent of parties causes may be tried by arbitration.

43. And be it enacted That if both parties in any cause shall agree between themselves not to try their cause before the Court of Petty Sessions but by means of arbitration and shall notify such agreement by a memorandum in writing signed by themselves or their agents the award made on such arbitration shall be binding on both parties and judgment in accordance therewith may be entered in the cause list of the said Court of Petty Sessions for the plaintiff or defendant as the case may be.

Parties may conduct case by attorney.

44. And whereas it is expedient that suitors should be entitled to the aid of the legal profession Be it enacted That in all actions the plaintiff and defendant may appear and each conduct his case by himself his clerk or servant or employ any person admitted an Attorney of the Supreme Court or in the District of Port Phillip to practise as an advocate and attorney before the Court of Petty Sessions Provided always that no attorney so practising shall demand or take more by way of fees for work by him done than the sums allowed by the Schedule C hereunto annexed and provided also that the costs of such professional assistance shall be paid by the party requiring such professional assistance.

Any Court of Petty Sessions may suspend any attorney or agent &c.

45. And be it enacted That it shall be lawful for any Court of Petty Sessions if it shall appear to such Court that any attorney or other agent has in any cause in such Court practised corruptly contemptuously or in any respect knowingly and wilfully against his duty as an attorney or agent to make an order (to remain with the Registrar of the said Court) either to suspend such attorney or agent from practising for a specified time or to prohibit such attorney or agent from practising for ever in such Court.

Interpretation.

46. And be it enacted and declared That throughout this Act the singular number shall be taken and is intended to include equally the plural both with respect to things and persons and every clause and provision in terms affecting males to include equally females unless there be something in the context in either case repugnant to that construction and that the term Court of Petty Sessions (or the word Court indicating a Court of Petty Sessions) shall be taken and is intended to mean any two or more Justices of the Peace or (in cases where one is under this Act authorized to adjudicate) any one Justice of the Peace sitting for the purposes of this Act at the usual place of meeting of Justices in Petty Sessions.

*Small Debts Recovery.*

## SCHEDULES REFERRED TO.

## A.

## FEES TO BE PAID TO THE SEVERAL OFFICERS UNDERMENTIONED ON THE SEVERAL OCCASIONS SET AGAINST THE SAME.

	£	s.	d.
To the Registrar on entering every plaint and cause for trial ... ..	0	1	0
To the Registrar for drawing plaint and particulars if requested by plaintiff	0	1	0
To the Registrar for copy of summons to be served on defendant ... ..	0	1	0
To the Registrar for every inspection of the record ... ..	0	0	6
To the Registrar for drawing and issuing every writ of execution or attachment	0	1	0
To the Registrar for every subpoena ... ..	0	0	6
To the Registrar for filing every defence or plea ... ..	0	1	0
To the Registrar for drawing same if requested by defendant ... ..	0	1	0
To the Bailiff for serving summons or subpoena at request of plaintiff or defendant and making affidavit of service if service be made ... ..	0	2	0
To the Bailiff for every levy or caption... ..	0	1	0
To the Bailiff for every mile or fraction of a mile over two miles from the Court which he may have to travel to serve summons or execute other process of the Court but not counting the return journey ... ..	0	0	6
To the Bailiff for possession money by the day... ..	0	3	6

## B.

## EXECUTORS &amp;C. MAY SUE OR BE SUED.

If the plaintiff sues as executor or trustee of an insolvent or other estate he shall so describe himself in the plaint filed as A. B. executor of C. D. or A. B. and C. D. trustees to the insolvent estate of E. F. as the case may be.

## PARTICULARS.

In all cases the items constituting the particulars of claim shall be stated and filed with the plaint or declaration or appended thereto.

## FORMS OF PLAINT.

The following shall be the forms of such plaints in all cases to which they can be applied :—

## IN THE CASE OF GOODS SOLD.

“ A. B. of (Sydney in this district) complains of C. D. of the same place baker that the said C. D. is indebted to him in the sum of five pounds sterling for corn (or hay or other things briefly describing them) sold and delivered by the said A. B. to the said C. D. in or about the month of February last which sum the said C. D. refuses to pay and the said A. B. prays that he may be adjudged to pay the same.”

## IN THE CASE OF DEMAND FOR RENT.

“ For three months rent due from the said C. D. to the said A. B. on or about the 1st February last in respect of the occupation by the said C. D. of a house and garden of the said A. B. (as the case may be) situate at Sydney which sum” &c.

## FOR LODGING.

“ For meat drink washing lodging and other things found and provided by the said A. B. for the said C. D. between the months of December and February last which sum” &c.

## FOR HIRE OF HORSES.

“ For the hire of a horse (or as the case may be) and cart of the said A. B. hired and used by the said C. D. for three weeks in or about the month of February last which sum” &c.

## FOR AGISTMENT.

“ For the agistment depasturing and keeping of fifty oxen and one hundred sheep by the said A. B. for the said C. D. between the months of December and February last.”

## FOR WORK AND LABOR.

“ For the work and labor of the said A. B. performed for the said C. D. on or about” &c.

FOR

*Small Debts Recovery.*

## FOR WORK AND LABOR OF SERVANTS.

"For the work and labor of the servants of and belonging to the said A. B. performed for the said C. D."

## FOR WORK AND LABOR OF SERVANTS HORSES AND CARRIAGES.

"For the work and labor of the said A. B. by himself (or his servants or horses carts and carriages as the case may be) performed by the said A. B. (or his servants &c.) for the said C. D. and for timber nails &c. (as the case may be) provided by the said A. B. for the said C. D. and used in such work and labor."

## FOR WAGES.

"For wages due and payable from the said C. D. to the said A. B. for his service performed as the servant of the said C. D. between the months of December and February last."

## FOR MONEY LENT.

"For money lent by the said A. B. to the said C. D. in or about the month of February last."

## ON A PROMISSORY NOTE OR BILL OF EXCHANGE.

"For principal and interest due to the said A. B. on a promissory note drawn by the said C. D. payable to one E. F. or order and by him indorsed to the said A. B. (or on a bill of exchange drawn by one E. F. and accepted by the said C. D. payable to the said A. B.)"

## ON A BOND.

"For principal and interest due on a bond bearing date the                      day of  
made and entered into by the said C. D. for the payment of £                      and interest  
on the                      day of                      last."

## FOR MONEY DUE ON AN AGREEMENT.

"For principal and interest upon and by virtue of a certain agreement bearing date &c. (date of agreement) and made between &c. whereby the said C. D. agreed for the considerations therein mentioned to pay to the said A. B. the sum of £  
together with lawful interest on the same on the                      day of                      now past."

## ON AN AWARD.

"For money due to the said A. B. upon and by virtue of a certain award made by E. F. upon a submission by the said A. B. and the said C. D. to the arbitration of the said E. F. concerning certain matters in difference between them and upon which reference the said E. F. awarded and ordered that the said C. D. should pay the sum of £  
to the said A. B. on a certain day now past."

## FOR UNLAWFUL DETENTION OF PROPERTY.

"A. B. of                      complains that C. D. of the same place hath possessed himself of a cow (or waggon or horse or other thing detained) of the value of £  
or thereabouts which he unjustly detains from the said A. B. and the said A. B. prays he may be adjudged to restore to him the said cow &c. or pay him the value of the same."

## FOR UNLAWFUL DETENTION OF PROPERTY DEPOSITED.

"That the said A. B. on or about the month of                      last deposited and left several articles of household furniture and wearing apparel the property of the said A. B. of the value of £                      or thereabout with the said C. D. to be safely kept by the said A. B. until he should have occasion for them and the said A. B. saith that he has demanded the said household furniture &c. (or caused the same to be demanded for him) but the said C. D. refuses to deliver up and unjustly detains the same and the said A. B. prays the said C. D. may be adjudged to restore to him the said household furniture &c. or pay him the value of the same."

## FOR DAMAGE SUSTAINED BY IMPROPER DRIVING.

"That on or about the                      day of                      last the said A. B. (or the servant of the said A. B.) was driving his cart &c. on the public road between                      and                      and the said C. D. (or the servant of the said C. D.) was also on the said road with a certain carriage &c. under his care and direction and the said C. D. (or the servant of the said C. D.) so improperly drove and directed his carriage and horses that thereby his carriage was forced and driven with great violence against the cart of the said A. B. and broke to pieces one of the wheels thereof and the said A. B. was thereby damaged to the amount of £                      and the said C. D. refuses to make amends for the same and the said A. B. prays he may be adjudged to pay the amount of the said damage."

## FOR AN ASSAULT OR INJURY TO THE PERSON WIFE &amp;C.

"That the said C. D. on &c. assaulted beat and illtreated the said A. B. (or 'the wife' or 'child' or 'servant' of the said A. B.) to the damage of the said A. B. of £                      and the said A. B. prays" &c.

FOR



*Small Debts Recovery.*

of Judgment and Costs which in the said Court he was adjudged to pay to the said  
and after levy duly made thereof forthwith to pay the same  
into this office And what you shall do herein certify and return to this Court at the  
expiration of one calendar month from the date hereof or within three days after this  
warrant shall be executed if that shall sooner happen.

Dated this                      day of                      184  
By the Court  
A.B. Registrar.

£ s. d.  
Judgment .....  
Costs .....  
Execution .....  
Alias .....

£

N.B.—The Bailiff shall certify to the Court under his hand (and on the back of the precept  
where it remains in his possession) the *date* of execution and what in particular he  
shall have done and if *unexecuted* why it is so.

## SUBPŒNA FOR WITNESS.

NEW SOUTH WALES.

Court of Petty Sessions for the } To A. B. of  
District of } C. D. of  
E. F. of

You are hereby severally commanded setting all excuses aside to appear in this Court  
at                      on                      the                      day                      next at                      of the clock  
in the forenoon precisely to testify the truth in a cause therein depending between  
A. B.                      of                      plaintiff and C. D.  
of                      defendant on the part of the said A. B. [or C. D. as the case may be]  
(adding if necessary) and to bring with you a certain agreement or note &c. (sufficiently  
describing it as to date and otherwise) and herein fail not at your peril.

By the Court  
Registrar or Clerk of the Court.

## ATTACHMENT FOR NON-APPEARANCE TO A SUBPŒNA.

A. B. Plaintiff. }  
C. D. Defendant. } Victoria I Regina

Court of Petty Sessions for the }  
District of }

To

Bailiffs and their Deputies and to each and every of them.

At a Court of Petty Sessions for the District of                      held on the  
day                      184                      it appearing to this Court that                      has been  
duly served with a copy of a subpoena to attend this Court in the above case and though  
duly called came not You and each of you are hereby commanded to attach the said  
wherever you may find him for a disobedience to the said subpoena  
and him safely and securely keep so that you may have him before a Justice of the Peace  
of the said Court on                      the                      day of                      to hear and abide such  
order as shall then be made touching the contempt of the said                      in  
disobedience of such subpoena.

## ATTORNEYS' COSTS.

	£	s.	d.
For drawing and copying plaint with the particulars ... ..	0	2	6
For summons with the particulars ... ..	0	1	0
For defence or set-off with the particulars ... ..	0	2	6
For an Advocate's fee in a case not exceeding £10 not more than	1	1	0
For an Advocate's fee in a case not less than £10 nor exceeding £30 not more than ... ..	3	3	0

*Sufferance Wharves.*

## D.

	£	s.	d.
Letter before action ... ..	0	5	0
Instructions for declaration or other pleadings ...	0	5	0
Drawing all pleadings per fo. 72 words ...	0	0	8
Copies or engrossing ditto ... ..	0	0	4
Entries on the Roll ditto ... ..	0	0	4
Every common attendance ... ..	0	2	6
Drawing and engrossing any short affidavit ...	0	4	0
Drawing special affidavits per fo. ... ..	0	0	8
Copies or engrossing ditto ... ..	0	0	4
Instructions for special affidavit ... ..	0	5	0
Ditto for briefs... ..	0	6	8
Drawing briefs per sheet ... ..	0	5	0
Copy ditto ... ..	0	2	6
Drawing any common notice including copy and service	0	3	0
Copy and service of any summons order or common rule	0	4	0
Drawing subpoena ... ..	0	7	6
Copy and service each witness ... ..	0	4	0
Counsel settling pleadings (where necessary) ...	0	10	6
Drawing particulars .. ..	0	3	0
Copy thereof ... ..	0	2	0
Attending Court cause in paper not tried ... ..	0	5	0
Ditto on trial ... ..	0	13	4
Fee to Counsel (one allowed only) ... ..	{ not exceeding 3 Guineas		
Term fee (one Term only) ... ..			
For writ of trial per fo. including drawing and engrossing ... ..	0	0	9
Attending Commissioner on writ of trial ... ..	1	1	0