

No. XXVII.

SMALL DEBTS
RECOVERY.

An Act for the better recovery of Judgment Debts in District Courts and in Courts of Petty Sessions. [20th December, 1881.]

Preamble.

WHEREAS it is expedient that provision be made for the better recovery of Judgment Debts in District Courts and in Courts of Petty Sessions Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Interpretation clause.

1. In construing this Act the term "Court" shall if not inconsistent with the context be taken to mean the District Court Judge in any proceeding in a District Court or the Police Magistrate in any proceeding in a Court of Petty Sessions and the word "officer" shall if not inconsistent with the context be taken to mean the Registrar of the District Court or Court of Petty Sessions.

Examination of Judgment Debtor as to debts due to him.

2. It shall be lawful for any creditor who has obtained a judgment in any District Court or Court of Petty Sessions to apply to the Court in which he has obtained such judgment for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him and the Court may thereupon make an order for the examination of such judgment debtor and for the production of any books or documents and shall cause him to be orally examined touching the premises and every judgment debtor who shall refuse or neglect to obey such order shall be subject to all the penalties to which a witness duly subpoenaed to attend at such Court and failing to appear at the time appointed would be subject.

Court may order an attachment of debts.

3. It shall be lawful for the Court upon the *ex parte* application of any creditor who has obtained a judgment in that Court or in any other District Court or Court of Petty Sessions either before or after such oral examination as is provided in the last preceding section and upon affidavit by such judgment creditor or his attorney or agent stating that the judgment has been recovered and that it is still unsatisfied and to what amount and that any other person is indebted to the judgment debtor and resides within the jurisdiction of the Court to which such application is made to order that all debts due owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt and by the same or any subsequent order the Court may summon the garnishee to appear to show cause why he should not pay to the officer on behalf of the judgment creditor the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment debt.

Attachment order to bind debts.

4. Service of an order on the garnishee that debts due owing or accruing to the judgment debtor shall be attached or notice to the garnishee of the making of such order shall attach in the hands of the garnishee all debts due owing or accruing from him to the judgment debtor.

Proceedings to levy amounts due from garnishee to judgment debtor.

5. If the garnishee does not forthwith pay to the officer on behalf of the judgment creditor the amount due from him to the judgment debtor or an amount equal to the judgment debt and does not

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not dispute the debt due or claimed to be due from him to the judgment debtor or if he does not appear upon summons then the Court may order execution to issue and it may be sued for accordingly without any other previous writ or process to levy the amount due from such garnishee in payment of the judgment debt or towards satisfaction of the same.

6. If the garnishee appears upon summons and disputes his liability the Court instead of making an order that execution shall issue may order the hearing of such summons to stand adjourned until some day to be appointed for that purpose and may direct that upon such adjourned hearing any question necessary for determining the liability of the garnishee be tried or determined and the order for such adjournment shall be served upon the garnishee and shall operate as a plaint entered against him to obtain payment of the sum claimed to be due by him to the judgment debtor.

7. The costs of any application for an attachment of debt and of any proceedings arising from or incidental to such application shall be in the discretion of the Court but where the garnishee shall pay all debts due owing or accruing from him to the judgment debtor or so much thereof as is sufficient to satisfy the judgment debt into Court five clear days before the return day of the summons he shall not be liable for any costs incurred by the judgment creditor.

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

9. In proceedings to obtain an attachment of debts as herein provided the Court may in its discretion refuse to interfere where from the smallness of the judgment debt or of the amount to be recovered or of the debt sought to be attached or otherwise the remedy sought would be inadequate worthless or vexatious and subject to any other provisions contained in this Act. The costs of any application for an attachment of debt under this Act and of any proceeding arising from or incidental to such application shall be in the discretion of the Court.

10. In each District Court or Court of Petty Sessions presided over by a Police Magistrate the officer shall keep a debt attachment book in which book entries shall be made of all attachments and proceedings thereon with names dates and statements of the amounts recovered and copies of any entries made therein may be taken by any person upon application to the officer and upon payment of the fee provided.

11. The District Court Judges for the time being or any three of them shall have power to make such general rules as they shall think fit for regulating the practice and proceedings of the District Courts in reference to this Act the fees to be allowed to barristers and attorneys and the expenses to be paid to witnesses and also to frame forms for every matter or proceeding under this Act and to alter or vary the forms so made or those provided for by this Act and also to fix the Court fees payable in such District Courts for any proceeding under this Act and from time to time to alter or vary any such rules or forms and the rules so made shall not take effect until one month after the publication thereof in the *Gazette*.

12. The Courts of Petty Sessions in each Police District shall have power to make such rules as they shall think fit for regulating the practice and proceedings of each of such Courts under this Act and for the fixing of Court fees payable thereunder but such rules shall have no effect until approved of by Her Majesty's Attorney General for the time being.

Where judgment creditor to sue garnishee.

No costs when garnishee pays.

Garnishee discharged.

Court may refuse to interfere in proceedings to attach debt.

Attachment Book to be kept.

Power to make rules &c. in District Courts.

Power to make rules &c. in Courts of Petty Sessions.

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Power to fix
bailiff's fees.

Forms in Schedules
to be used.

Short title.

13. The several Courts of Petty Sessions in the Colony shall with the approval of Her Majesty's Attorney General for the time being have power from time to time to fix the amount of the fees payable to every bailiff under such Courts notwithstanding the provisions of the Act tenth Victoria number ten.

14. The several forms in the Schedules to this Act or as near thereto as the nature of the case will permit shall be used in all proceedings in the District Courts and Courts of Petty Sessions until the same shall be altered as is hereinbefore provided.

15. This Act may be cited as the "Small Debts Recovery Act."

SCHEDULES.

Section 2.

SCHEDULE A.*Order for examination of Judgment Debtor.*

No.

In the District Court of
holden at

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or in proceedings in Petty Sessions.

In the Court of Petty Sessions for the
District of

Between Judgment Creditor and Judgment Debtor.

UPON the application of the abovenamed judgment creditor it is ordered that the abovenamed judgment debtor attend this Court on the day of 188 at the th hour of the clock in the noon and be examined as to whether any and what debts are owing to him and that the said judgment debtor produce all necessary books and documents at the time of the examination.

Dated this day of 188

By the Court.

Registrar.

To the abovenamed judgment debtor.

Section 3.

SCHEDULE B.*Affidavit to ground Garnishee order.*

No.

In the District Court of
holden at
(Seal.)

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or in proceedings in Petty Sessions.

In the Court of Petty Sessions for the
District of

Between Judgment Creditor and Judgment Debtor.

I of the abovenamed judgment creditor [or attorney or agent for the abovenamed judgment creditor] make oath and say—

- (1) That I [or the abovenamed judgment creditor] on the day of last past recovered judgment in the District Court holden at [or in the Court of Petty Sessions at] against the abovenamed judgment debtor for the sum of £ and costs.
- (2) That the said judgment is still wholly unsatisfied [or is still unsatisfied to the extent of the sum of £]
- (3) That E.F. of [state description] is indebted to the said judgment debtor in the sum of £
- (4) That the said E.F. resides within the jurisdiction of this Court.

Sworn at this day of 188 before me

This affidavit is filed on behalf of the abovenamed judgment creditor.

SCHEDULE C.

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the garnishee should pay the sum to the Registrar on the day of
 188 [or by instalments of for every days.]
 And whereas default has been made in payment according to the said order. These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said E.F. wheresoever they may be found within the district of this Court (except the wearing apparel and bedding of him and his family and the tools and implements of his trade if any to the value of ten pounds) the sum stated at the foot of this warrant being the amount due to the said A.B. under this order including the costs of this execution and also to seize and take any money or bank-notes cheques bills of exchange promissory-notes bonds specialties or securities for money of the defendant which may there be found or such part or so much thereof as may be sufficient to satisfy this execution and the cost of making and executing the same and to pay what you shall have so levied to the Registrar of this Court and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of this Court this day of 188 .

By the Court

To the Bailiff of the said Court and others the Assistant Bailiffs thereof. Registrar.

Amount for which judgment was obtained.

| | £ | s. | d. |
|-------------------------------|----------|-----|-----|
| Amount of Judgment... | ... | ... | ... |
| Costs ... | ... | ... | ... |
| Mileage ... | ... | ... | ... |
| Paid into Court ... | ... | ... | ... |
| Total amount to be levied | ...£ | | |

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized unless they be of a perishable nature or at the request of the said E.F.

Application was made to the Registrar for the warrant at minutes past the hour of in the noon of the day of 188 .

Section 6.

SCHEDULE F.

Order for Trial.

No.
 In the District Court }
 holden at }
 (Seal.) }

or in proceedings in Petty Sessions.

In the Court of Petty Sessions }
 in the District of }

Between A.B. Judgment Creditor and C.D. Judgment Debtor and E.F. Garnishee.

WHEREAS the Judgment Creditor at a Court holden at on the day of 188 obtained a judgment against C.D. of for the sum of £ and costs and which judgment now remains unsatisfied. And whereas the judgment creditor having filed an affidavit stating that the said E.F. was indebted to the said C.D. a summons was issued calling upon the garnishee to show cause why he should not pay into Court the amount so due or so much thereof as might be sufficient to satisfy the judgment debt and the said garnishee appeared upon the said summons and disputed his liability. It is ordered that the hearing of the said summons be adjourned until the day of 188 at the hour of in the noon and that upon such adjournment the liability of the garnishee to pay to the judgment debtor the sum of £ according to the particulars hereunto annexed be tried and determined [or insert any special direction as to question to be tried].

Dated this day of 188

Registrar.

| | £ | s. | d. |
|----------------------|----------|-----|-----|
| Debt or claim ... | ... | ... | ... |
| Cost of summons ... | ... | ... | ... |
| Attorney's costs ... | ... | ... | ... |
| £ | ...£ | | |