

No. XXIII.

An Act to facilitate the Recovery of Judgments against Debtors who have removed into adjacent Colonies, and the enforcement of Judgments obtained in such Colonies against Debtors who have removed therefrom into New South Wales.
[30th May, 1889.]

INTERCOLONIAL
DEBTS.

BE it 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 (that is to say):—

1. In this Act, which may be cited as the "Intercolonial Debts Short title, &c. Act, 1889," and which shall be read with the District Courts Acts Interpretation. expression—

"Clerk" means clerk, registrar, or other proper officer of the Court in connection with which the term is used,—

"Colony" means any Colony or Province in Australia or in Tasmania or New Zealand,—

"District Courts Acts" means the "District Courts Act of 1858" together with every Act amending that Act,—

"Local Court" includes District Court and any inferior Court being a Court of record, and having jurisdiction, in actions of debt or for a liquidated sum, to the amount of two hundred pounds.

2. If in any Colony there be any law in force by which effect Governor may apply Act to any Australian Colony in which a similar Act is in force. may be given by the Local Courts thereof to the judgments of the District Courts of New South Wales, the Governor, with the advice of the Executive Council, may, by proclamation, declare that the provisions of this Act shall apply to the judgments of the Local Courts of such Colony, and that process issuing out of such Local Courts may be served in New South Wales, and that certificates of judgments obtained in District Courts in New South Wales may, at the request of the judgment creditors, be forwarded to such Colony; and thereupon the provisions of this Act shall so apply, and the registrars of District Courts shall, subject to the provisions of this Act, give certificates of judgments obtained in such Courts for registration in the Local Courts of such Colony.

3. (i) Any summons issued under the authority of the District Courts Acts for a debt or liquidated demand in money, whether on balance of account or otherwise, not exceeding in the whole the sum of two hundred pounds (if such summons bear an endorsement under the seal of the District Court whence it issues to the effect that it is for service out of the jurisdiction), may be served out of the jurisdiction. District Court summons may be served out of jurisdiction.

(ii) Before any such summons is so endorsed and sealed, the plaintiff, or some person on his behalf, shall file an affidavit, in the form in the First Schedule hereto or to the like effect, stating that the defendant is resident out of the jurisdiction, and that the plaintiff has a good cause of action which arose within the jurisdiction, and the nature of the same and the amount sought to be recovered. Affidavit to be filed First Schedule.

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(III) Such affidavit shall also state that the claim is for a debt or a liquidated demand in money not exceeding in the whole the sum of two hundred pounds, or that if it originally exceeded that sum it has been reduced, by payment or admitted set-off or by abandonment of excess, to a sum not exceeding two hundred pounds, and shall set forth what is believed to be the defendant's then place of residence and the distance in miles (approximately) of such place of residence from the Court in which such summons is issued.

(IV) Proof shall also be given to the satisfaction of the Judge of the District Court whence such summons issues, or to the satisfaction of a Stipendiary or Police Magistrate acting for the District in which such District Court is holden, or should there be no such Magistrate to the satisfaction of a Justice of the Peace for the Colony of New South Wales that, *prima facie*, a good cause of action exists, and that apparently justice will be done by allowing the summons to be so endorsed and sealed and the plaintiff to proceed under this Act.

Service and proof of summons.

4. Every such summons shall be served personally, and proof of such service shall be made by affidavit before any Justice of the Peace of the Colony in which such summons was served, or before a commissioner for taking affidavits in the Supreme Court of New South Wales resident in such Colony ; but if it be made to appear to the Judge of the District Court whence any such summons issued, that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to such defendant's knowledge, and that he wilfully neglects to appear to such summons, or if it be made to appear to such Judge that the defendant has removed, or is living, out of the jurisdiction in order to defeat or delay his creditors or deprive the plaintiff of the relief to which he is entitled, such Judge may, on the application of the plaintiff, order that personal service may be dispensed with, and that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Judge may seem fit, although the summons has not been served personally upon the defendant, and thereupon the plaintiff may proceed in the action against such defendant accordingly.

Issue service and return of summons.

5. Where the defendant resides within twenty miles of the District Court at which any summons issued for service out of the jurisdiction is returnable, such summons shall be issued six clear days, and served four clear days at least, before the return day thereof ; where he resides beyond twenty and within fifty miles of such Court, such summons shall be issued eight clear days, and served six clear days at least, before the return day thereof ; and where he resides beyond fifty miles from such Court, the respective periods to elapse between the issue and the service of the summons and the return day thereof shall be fixed by the Judge of such Court or Stipendiary or Police Magistrate or Justice as aforesaid after the affidavit aforesaid has been filed and before the issue of the summons, and in fixing such periods regard shall be had to the distance of the place of residence of the defendant from such Court.

On affidavit of judgment certificate of judgment to be prepared.

Second Schedule.

6. (1) Any person who obtains a judgment in any action in any District Court may file with the Registrar of such Court an affidavit by himself or some person on his behalf cognizant of the facts. Such affidavit shall be in the form in the Second Schedule hereto or to the like effect, and shall set forth that a judgment has been obtained in such Court in respect of a cause of action which arose within the jurisdiction, for a debt or a liquidated demand in money, and shall specify the nature of the cause of action and the amount recovered, and shall state that the time for appealing has expired and that no appeal is pending, that such judgment is still in full force and remains unsatisfied

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unsatisfied (or if partly satisfied, to what extent, and the amount or balance remaining due and unsatisfied), and that the person against whom such judgment was recovered is resident out of the jurisdiction.

(II) Any such person obtaining a judgment as aforesaid may, after such affidavit has been filed, deliver to such registrar a notice, in the form in the Third Schedule hereto or to the like effect, Third Schedule. requiring such registrar to prepare a certificate of such judgment and to forward the same as hereinafter provided; and thereupon such registrar shall prepare a certificate of such judgment in the form in the Fourth Schedule hereto or to the like effect, and the same shall be Fourth Schedule. signed by him and shall be authenticated by the seal of such Court. Such certificate shall state that such judgment was obtained in such Court in respect of a cause of action which arose within the jurisdiction for a debt or liquidated demand in money not exceeding the sum of two hundred pounds, and shall specify the nature of the cause of action and the amount recovered, and shall state that the same is in full force and remains unsatisfied (or if partly satisfied the amount or balance remaining due and unsatisfied), and shall be addressed to the clerk of such Local Court of a Colony in which this Act has been proclaimed to be in force as such person may require, and shall be forwarded by the Registrar of the Court giving the same through the post by registered letter addressed to the clerk of such Local Court.

7. The Registrar of any District Court in which a judgment has been obtained and of which judgment a certificate as aforesaid has been given shall (upon receipt of a certificate in the form in the Fifth Schedule hereto or to the like effect under the hand of the clerk of any Local Court of a Colony in which this Act has been proclaimed to be in force and authenticated by the seal of such Court stating that such judgment has been satisfied either wholly or in part) enter up satisfaction in the register of such District Court to the amount mentioned in such last-mentioned certificate. Entry of satisfaction. Fifth Schedule.

8. (I) The Registrar of any District Court shall upon receipt through the post of a registered letter containing a certificate (in the form in the Sixth Schedule hereto or to the like effect addressed to him as such registrar under the hand of the clerk of any Local Court of a Colony in which this Act has been proclaimed to be in force and authenticated by the seal of such Court) of a judgment obtained in such Local Court against any person resident in New South Wales stating that such judgment was obtained in such Local Court in respect of a cause of action which arose within the jurisdiction thereof for a debt or liquidated demand in money not exceeding the sum of two hundred pounds, and specifying the nature of the cause of action and the amount recovered, and stating that the same is in full force and remains unsatisfied (or if partly satisfied the amount or balance remaining due and unsatisfied), enter up judgment in the register of such District Court for the amount appearing in such certificate to be due in favour of the person named therein as the judgment creditor and against the person named therein as the judgment debtor. Judgment of Local Court may be entered up in District Court of New South Wales. Sixth Schedule.

(II) The Registrar of such District Court shall on the receipt of such certificate forthwith send by post a notice in the form in the Seventh Schedule hereto or to the like effect addressed to the defendant Seventh Schedule. at his address specified in such certificate.

(III) Such judgment shall thereupon be deemed to be a judgment of such District Court, and shall have the same force and effect as if such judgment had been obtained in such District Court, and the like proceedings may be had and taken upon and under the same accordingly.

(IV) The Supreme Court or a Judge thereof may, on the application of any person against whom judgment has been so entered

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up, either set aside such judgment or direct a stay of execution or of proceedings on such judgment; or the Judge of such District Court or a Stipendiary or Police Magistrate acting for the District within which the person against whom judgment has been so entered up resides, or should there be no such Magistrate, a Justice of the Peace for the Colony of New South Wales may on the application of such person direct a stay of execution, or of proceedings, on such judgment; and on the hearing of any such application such Court, Judge, District Court Judge, Stipendiary or Police Magistrate, or Justice may enter upon the merits of the whole case, but the judgment so entered up shall be regarded as *prima facie* proof of the plaintiff's case.

(v) The setting aside such judgment or stay of execution or of proceedings may be ordered by such Court, Judge, District Court Judge, Stipendiary or Police Magistrate, or Justice upon such terms as to giving security or payment of costs, or as to making application to the Local Court in which the judgment was originally made to set aside the same, or otherwise, as to the said Supreme Court Judge, District Court Judge, Stipendiary or Police Magistrate, or Justice may seem fit.

9. On the satisfaction, either wholly or in part, of any judgment entered up in the register of any District Court under the provisions of the last preceding section, the Registrar of such District Court shall forthwith give notice in the form in the Eighth Schedule hereto or to the like effect of such satisfaction or part satisfaction (as the case may be) to the clerk of the Local Court in which such judgment was originally obtained, and from whom he received the certificate thereof. All moneys received or paid into Court in satisfaction of such judgment shall, after the cost of remitting the same has been deducted therefrom, be remitted to the clerk of such Local Court.

Certificate of satisfaction.

Eighth Schedule.

SCHEDULES.

FIRST SCHEDULE.

COLONY OF NEW SOUTH WALES.

In the District Court at _____ No. of plaint
 Between A.B., of [address and description], plaintiff,
 and
 C.D., of [address and description], defendant.

I, A.B., of [address and description], make oath and say as follows:—

That I am informed and verily believe that the said C.D. is resident out of the jurisdiction, at _____

That I have a good cause of action which arose within the jurisdiction against the said C.D. for the sum of _____ for [here state shortly the amount sought to be recovered and nature of the suit or cause of action; if the amount originally due has been reduced by payment or admitted set-off or by abandonment of excess the same must be stated and particulars given], and that I am informed and verily believe that the said C.D. now resides at _____ and that the same is distant about _____ miles from this Court.

(Signed) _____ A.B.

Sworn at _____ in the Colony of New South Wales this _____ day of one thousand eight hundred and _____ before me, G.H., a District Court Judge, &c., in the Colony of New South Wales [or a Commissioner for taking affidavits in the Supreme Court of the Colony of New South Wales, or Justice of the Peace of the Colony of New South Wales, or a Registrar or Deputy-Registrar of the District Court at in the Colony of New South Wales.]

SECOND

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SECOND SCHEDULE.

COLONY OF NEW SOUTH WALES.

In the District Court at No. of plaint

Between A.B., plaintiff,
and
C.D., defendant.

I, A.B., of [address and description] make oath and say as follows:—

That on the day of one thousand eight hundred judgment in the District Court at in a certain cause [No. of plaint] wherein I am plaintiff and C.D. is defendant was recovered by me in respect of a cause of action which arose within the Colony of New South Wales for a debt [or liquidated demand in money] not exceeding the sum of two hundred pounds, to wit the sum of

including costs of suit against the said C.D., that such judgment was obtained in an action for [here state cause of action and give particulars; also if the amount originally due was reduced before action by payment, admitted set-off, or abandonment of excess, so state and give particulars], and that the time for appealing against such judgment has expired, and that no appeal is pending, and that such judgment is still in force and unsatisfied [or that such judgment has been satisfied in part by the payment of the sum of but is still in force and remains unsatisfied to the extent of the sum of

], and that I am informed and verily believe that the said C.D. is resident out of the jurisdiction at [address].

Sworn at in the Colony of New South Wales this day of one thousand eight hundred before me, G.H., a District Court Judge, &c., in the Colony of New South Wales [or Commissioner for taking affidavits in the Supreme Court of the Colony of New South Wales, or Justice of the Peace of the Colony of New South Wales, or a Registrar or Deputy-Registrar of the District Court at in the Colony of New South Wales.

THIRD SCHEDULE.

COLONY OF NEW SOUTH WALES.

In the District Court at No. of plaint

Between A.B. plaintiff,
and
C.D. defendant.

I, A.B., of [address and description] the abovenamed plaintiff do hereby require you to give a certificate of judgment in the above action and to forward the same to the clerk of the Local Court of [or at] in the Colony of [Signed] A.B.

To the Registrar of the District Court at

FOURTH SCHEDULE.

COLONY OF NEW SOUTH WALES.

Certificate of Judgment.

In the District Court at No. of plaint

Between A.B. plaintiff,
and
C.D. defendant. (Seal)

I, W.J., the Registrar of the District Court at in the Colony of New South Wales and the person having the lawful custody of all records, books, process, and other proceedings, and of the seal of the said Court, do hereby certify that A.B. of [address and description] did in the said District Court at on the day of one thousand eight hundred and recover judgment against the said C.D. now of out of the jurisdiction in respect of a cause of action which arose within the Colony of New South Wales for a debt or liquidated demand in money not exceeding the sum of two hundred pounds, to wit the sum of including costs of suit, that such judgment was obtained in an action for [here state cause of action and give particulars; also if the amount originally due was reduced before action by payment, admitted set-off, or abandonment of excess, so state and give particulars], and that the time for appealing against such judgment has expired and that no appeal is pending, and that such judgment is still unsatisfied and in full force [or that such judgment has been satisfied in part by the payment of the sum of but is still in force and unsatisfied to the extent of the sum of].

Given under my hand and the seal of the District Court at this day of 18 .

W.J.,

(L.S.) Registrar of the said District Court at

To the clerk of the Local Court of [or at]
in the Colony of

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FIFTH SCHEDULE.

I, E.F., the clerk of the Local Court of [or at] in the Colony of and the person having the lawful custody of all records, books, process, and other proceedings, and of the seal of the said Court, do hereby certify that the judgment mentioned in the certificate of judgment dated the day of one thousand eight hundred and given under the hand of W.J. the registrar of the District Court at in the Colony of New South Wales, and the seal of the said Court in a certain action in the said District Court at in the said Colony of New South Wales, wherein A.B. is plaintiff and C.D. is defendant, has been wholly paid and satisfied [or has been satisfied to the extent of the sum of].

Given under my hand and the seal of the Local Court of [or at] in the Colony of this day of 18 .
 (L.S.) E.F.,
 Clerk of the said Local Court of [or at]

To the Registrar of the District Court at
 in the Colony of New South Wales.

SIXTH SCHEDULE.

Certificate of Judgment.

In the Local Court of [or at]	No. of plaint
Between A.B. plaintiff, and C.D. defendant.	(Seal)

I, E.F., the clerk of the Local Court of [or at] in the Colony of and the person having the lawful custody of all records, books, process, and other proceedings, and of the seal of the said Court, do hereby certify that A.B. of [address and description] did in the said Local Court of [or at] on the day of one thousand eight hundred and recover judgment against the said C.D. of in the Colony of New South Wales in respect of a cause of action which arose within the Colony of for a debt or liquidated demand in money not exceeding the sum of two hundred pounds, to wit the sum of including costs of suit, that such judgment was obtained in an action for [cause of action to be stated and particulars given; also if amount originally due was reduced before action by payment, admitted set-off, or abandonment of excess, the same should be stated and particulars given], and that the time for appealing against such judgment has expired and that no appeal is pending, and that such judgment is still unsatisfied and in full force [or that such judgment has been satisfied in part by the payment of the sum of but is still in force and unsatisfied to the extent of the sum of].

Given under my hand and the seal of the Local Court of [or at] this day of 18 .
 (L.S.) E.F.,
 Clerk of the said Local Court of [or at]

To the Registrar of the District Court at
 in the Colony of New South Wales.

SEVENTH SCHEDULE.

In the District Court at	(Seal)
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To C.D. of [address and description]

I, W.J., the Registrar of the District Court at do hereby give you notice that a judgment has been obtained against you by A.B. of [address and description] in respect of a cause of action which arose within the Colony of for a debt or liquidated demand in money not exceeding the sum of two hundred and fifty pounds, to wit the sum of including costs of suit in the Local Court of [or at] , that such judgment was obtained in an action for [here state cause of action and give particulars; also if the amount originally due was reduced by payment, admitted set-off, or abandonment of excess, so state and give particulars], and that the time for appealing against such judgment has expired and that no appeal is pending, and that such judgment is still unsatisfied and in full force [or that such judgment has been satisfied in part by the payment of the sum of but is unsatisfied to the extent of the sum of].

Given under my hand and the seal of the District Court at this day of 18 .

W.J.,
 Registrar of the said District Court at

Sydney Central Police Court.

EIGHTH SCHEDULE.

In the District Court at

(Seal)

I, W.J., the Registrar of the District Court at [redacted] in the Colony of New South Wales, and the person having the lawful custody of all records, books, process, and other proceedings, and of the seal of the said Court, do hereby certify that the judgment mentioned in the certificate of judgment dated the [redacted] day of one thousand eight hundred and [redacted] under the hand of E.F., the clerk of the Local Court of [or at] [redacted] in the Colony of [redacted] and the seal of the said Court in a certain action in the said Local Court of [or at] [redacted] wherein A.B. is plaintiff and C.D. is defendant, has been wholly paid and satisfied [or has been satisfied to the extent of the sum of [redacted]].

Given under my hand and the seal of the District Court at [redacted] in the Colony of New South Wales this [redacted] day of [redacted] 18 [redacted].

(L.S.) W.J.,
Registrar of the District Court at

To the clerk of the Local Court of [or at]
in the Colony of [redacted]
