

SMALL DEBTS RECOVERY (AMENDMENT) ACT.

Act No. 14, 1933.

An Act to enlarge the jurisdiction of Courts of Petty Sessions in certain cases; and for this and certain other purposes to amend the Small Debts Recovery Act, 1912, and certain other Acts; and for purposes connected therewith. [Assented to, 23rd October, 1933.]

BE it enacted by the King'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:—

1. (1) This Act may be cited as the “ Small Debts Recovery (Amendment) Act, 1933,” and shall be read and construed with the Small Debts Recovery Act, 1912, as amended by the Bills of Sale (Amendment) Act, 1919, and the Small Debts Recovery (Amendment) Act, 1922.

(2) The Small Debts Recovery Act, 1912, as so amended, is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the Small Debts Recovery Act, 1912-1933.

2. (1) The Principal Act is amended—

- (a) by omitting from subsection two of section seven the words “ sitting in some place appointed in that behalf by the Governor”; Section 7
(2).
(Jurisdiction.)
- (b) by omitting from the same subsection the words, “ under subsection one (a),” and by inserting in lieu thereof the words “ under paragraph (a) or paragraph (c) of subsection one.”

(2)

No. 14, 1933.New section
7A.**Jurisdiction**
where
defendant
outside the
State.
cf. 1924,
No. 42, s. 10.

(2) The Principal Act is amended by inserting next after section seven the following new section:—

7A. (1) A court of petty sessions shall have jurisdiction as provided in this section, notwithstanding that the defendant is not within New South Wales, if the defendant carries on business or usually resides in any other State or part of the Commonwealth within fifty miles of the boundary of the district for which the court is held.

(2) Such jurisdiction shall extend only to the following cases, that is to say—

- (a) where the debt sued for was contracted, or the liability for damages arose, within the district for which the court is held; or
- (b) where the defendant has given an engagement or promise in writing to pay any debt or sum at a particular place specified, and such place is within the district for which the court is held.

(3) In any case coming within this section the provisions of any Act of the Parliament of the Commonwealth for the time being in force applying to such case shall be complied with.

(4) Nothing in this section shall authorise the service outside New South Wales of any default summons.

(5) This section applies whether the defendant has or has not ever been resident or carried on business in New South Wales.

(6) This section applies whether the cause of action arose before or after the commencement of the Small Debts Recovery (Amendment) Act, 1933.

(7) In this section “defendant” means, where there are more than one, any defendant not within New South Wales.

Section 11.**(Limitation**
of jurisdiction.)

(3) The Principal Act is amended by omitting paragraph four of section eleven and by inserting in lieu thereof the following subsection:—

(4) In respect of any contract for the sale of any goods unless the buyer has actually accepted part of the goods so sold and actually received the same or given something in earnest to bind the contract

or

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or in part payment or some note or memorandum of the contract has been made and signed by the party sought to be charged by such contract or his agent in that behalf.

(4) The Principal Act is amended by inserting at the end of section twelve the words—

**Section 12.
(Actions not
to be split.)**

Provided that any plaintiff having a cause of action for more than the amount for which a plaint may be entered under this Act may abandon the excess, which abandonment shall be stated upon the plaint, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding the amount for which a plaint may be so entered, and judgment upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

(5) The Principal Act is amended by inserting after section twelve the following new section:—

**New section
12A.**

12A. (1) The defendant in an action in any court **Set off.** may, upon the prescribed notice thereof being given, plead by way of set off any debt or demand against the plaintiff in respect of which the defendant may institute an action in the same court against the plaintiff whether such debt or demand sound in damages or not and whether it arises out of the same subject-matter as the claim of the plaintiff or not:

Provided that where a defendant has a debt or demand in respect of which he could institute an action in such court if the amount thereof were not more than that for which a plaint may be entered in that court the defendant may abandon the excess, which abandonment shall be stated upon the prescribed notice, and may plead by way of set off such debt or demand to an amount not exceeding that for which a plaint may be entered as aforesaid.

(2) No set off shall be pleaded under this section unless the prescribed notice contains or has annexed to it shortly and in substance the cause of action and the items constituting the particulars of claim

claim, and where the grounds of defence or notice thereof are required to be verified by affidavit unless there is filed with such prescribed notice an affidavit by the defendant or his attorney that such grounds are true in substance and in fact.

(3) No debt or demand shall be pleaded by way of set off unless it is owing to or enforceable by all the defendants if there are more than one, or is due from or enforceable against all the plaintiffs if there are more than one.

(4) More than one debt or demand may be pleaded by way of set off in the same action.

(5) In every action under this Act in which the defendant pleads by way of set off any debt or demand against the plaintiff, the defendant shall be entitled to recover in such action the amount, if any, by which the debt or demand so set off is found to exceed the debt or demand claimed and proved by the plaintiff, and shall have judgment and execution for the same accordingly.

(6) The judgment in any action in which the defendant pleads a debt or demand by way of set off shall be in full discharge of the cause of action so pleaded.

(7) Where the defendant under this section pleads a debt or demand by way of set off the court may, notwithstanding anything herein contained, direct that such pleading be struck out if the court is of opinion that the matter cannot be conveniently or ought not to be disposed of in the pending action. Where the pleading is so directed to be struck out the defendant shall be at liberty to take such other proceedings as he may think fit in respect of the debt or demand.

(6) The Principal Act is amended—

- (a) by omitting from subsection one of section thirteen the words "for debt" and the words "in such action";
- (b) by inserting at the end of the same subsection the words "or the liability for the damages arose";
- (c) by omitting subsections two and four of the same section.

(7)

(7) The Principal Act is amended by omitting ^{No. 14, 1933.} section fourteen and by inserting the following section ^{Section 14.} in lieu thereof:—

14. (1) Where any plaintiff has any debt or ^{Persons} demand recoverable under this Act against two ^{jointly} liable. or more persons jointly answerable, it shall be ^{cf. 1912,} sufficient if any one or more of such persons is ^{No. 23, s. 59.} served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable have not been served or sued, or are not within the jurisdiction of the court.

(2) Every such person against whom such judgment is obtained under this Act, and who satisfies the whole or any part of such judgment, shall be entitled to demand and recover in a court having jurisdiction under this Act contribution from any other person jointly liable with him.

(8) The Principal Act is amended by omitting ^{Section 15.} section fifteen.

(9) (a) The Principal Act is amended by inserting ^{Section 19.} in section nineteen after the word "wife" the word ^(Service of summons.) "husband."

(b) By inserting at the end of the same section the following words:—"but if service cannot be so effected after one attempt, service may be made by delivering such summons or duplicate to some person apparently of not less than sixteen years of age at the said place of abode."

(10) The Principal Act is amended by omitting ^{Section 28.} from section twenty-eight the words: "Where judgment ^(Judgment in default of defence.) has been entered up by the court or the registrar under this section the court may, on the application of the defendant, direct the said amount and costs to be paid at such times and by such instalments as it may think fit."

(11) The Principal Act is amended by omitting ^{Section 29.} from section twenty-nine the words "the next." ^(Trial.)

(12)

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Section 31. (Non-suit.) (12) The Principal Act is amended by inserting at the end of subsection one of section thirty-one the words: " Provided that where a verdict has been entered for the defendant under this subsection, the court, on sufficient cause being shown, may, on such terms as it thinks fit, set aside such verdict, and set down the action for trial at the same or any subsequent sittings of the court."

Section 38. (Appearance.) (13) The Principal Act is amended by inserting in subsection one of section thirty-eight after the word "actions" the words "applications or proceedings" and after the word "his" the words "spouse or."

Section 40. (Entry of judgment.) (14) The Principal Act is amended—
 (a) by omitting from section forty the words "on the cause list" and by inserting in lieu thereof the words "in the record book";
 (b) by omitting from the same section the words "clerk of such petty sessions" and by inserting in lieu thereof the word "registrar."

Section 41. (Affidavit of service.) (15) The Principal Act is amended by inserting in section forty-one after the words "this Act" where first occurring the words "or where the defendant appears at the hearing in the manner prescribed by subsection one of section thirty-eight of this Act."

Section 42. (16) The Principal Act is amended by omitting subsection one of section forty-two and by inserting the following subsection in lieu thereof:—
 (1) A court of petty sessions in which a judgment has been given may at any time before or after the issue of execution thereon, upon the application of the judgment debtor, and upon notice given in the prescribed manner to the judgment creditor, direct the amount unpaid on the judgment to be paid at such times and by such instalments as it thinks fit.
 Every such application shall be supported by affidavit in the prescribed form, and upon lodgment with the Registrar of such court shall operate as a stay of proceedings upon the judgment until the hearing of the application:
 Provided that such stay of proceedings shall not operate for a greater period than ten days except upon the order of a police or stipendiary magistrate, which

Payment by instalments.

which order such magistrate is hereby empowered to grant ex parte, upon such terms as to security or otherwise as he shall see fit:

Provided that no stay of proceedings shall operate in respect of any second or subsequent application under this section in respect of the same judgment.

On the hearing of any application under this section the court may receive evidence either orally or by affidavit, and shall have power to award costs other than professional costs, to the judgment creditor, and the costs so awarded shall be added to the judgment debt.

Nothing in this subsection shall abridge or curtail the provisions of section twenty-eight of the Moratorium Act, 1932.

(17) The Principal Act is amended—

Section 43.

(a) by inserting in subsection one of section forty-three after the word "money" the words "or whenever judgment has been entered under section twenty-eight of this Act by the registrar";

(b) by inserting in the same subsection after the words "decision was made" the words "or such judgment was entered up."

(18) The Principal Act is amended—

(a) (i) by omitting from subsection one of section fifty-four the words "court in which he obtained judgment, or when the court is not sitting, to the registrar thereof or a justice of the peace" and by inserting in lieu thereof the words "registrar thereof";

(ii) by omitting from the same subsection the word "whether" and by inserting in lieu thereof the words "his property or means available for the satisfaction of such judgment and in particular as to";

(iii) by omitting from the same subsection the words "court, or when it is not sitting, the registrar thereof or a justice of the peace" and by inserting in lieu thereof the word "registrar";

(b)

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- (b) (i) by omitting from subsection three of the same section the word "creditor" and by inserting in lieu thereof the word "debtor";
- (ii) by inserting at the end of the same subsection the words: "Provided that no such examination as to the property or means of the judgment debtor, other than debts due to him, shall be permitted without leave of the court."

Section 55.
(Court.)

- (19) The Principal Act is amended by inserting in subsection one of section fifty-five after the words "only by a" the words "stipendiary or."

(20) The Principal Act is amended—

Section 56.
(Garnishee
orders.)

- (a) (i) by omitting from subsection one of section fifty-six the words "court, or when it is not sitting, the registrar thereof or a justice of the peace" and by inserting in lieu thereof the words "registrar of a court";
- (ii) by inserting in the same subsection after the word "residing" the words "or carrying on business";
- (b) by inserting in subsection three of the same section after the word "resident" the words "or carrying on business"; and by inserting after the words "court to" the words "the registrar of";
- (c) by omitting from subsection four of the same section the words "court, or when it is not sitting, the registrar thereof or a justice of the peace may, in its" and by inserting in lieu thereof the words "registrar may, in his";
- (d) by omitting the proviso to subsection five of the same section;
- (e) by inserting at the end of the same section the following new subsection:—

(6) In this section the words "wages or salary" include earnings which are not under a contract of employment, but which are either analogous to or in the nature of wages or salary, including the earnings of a share farmer or share worker, and the words "servant or employee"

employee " include any person whose earnings are not under a contract of employment, but are either analogous to or in the nature of wages or salary, including the earnings of a share farmer or share worker.

(21) The Principal Act is amended by omitting **Section 57.** from section fifty-seven the words " the court, or when it is not sitting, the registrar thereof or a justice of the peace may, by the garnishee order or any subsequent order, summon the garnishee to appear " and by inserting in lieu thereof the words " The registrar of a court may, by the garnishee order or any subsequent order, summon the garnishee to appear before the court. "

(22) The Principal Act is amended by inserting at the end of section sixty-two the words " and a payment by the garnishee to the registrar before the return day of the summons shall be deemed to be a payment made under a proceeding herein provided. "

(23) The Principal Act is amended by omitting **Section 66.** section sixty-six and by inserting the following section in lieu thereof:—

66. (1) Any party to an action may obtain at the **Witnesses.** office of the registrar a subpoena to a witness with **cf. 1898, No. 11, s. 13.** or without a clause requiring the production of books, deeds, papers, and writings in his possession or control, and every person subpoenaed as a witness to attend any of the courts of petty sessions shall attend pursuant to such subpoena unless he has just cause or reasonable excuse, and unless he has such cause or excuse shall produce any books, deeds, papers, or writings required by such subpoena to be produced.

(2) Every subpoena shall be served personally or in such other manner as is directed by the rules.

(3) Where any person duly served with a subpoena to attend as a witness fails to appear when called upon in open court, the court may, upon proof of such service, and also that his non-appearance is without just cause or reasonable excuse, and upon oath that he will probably be able to give material

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material evidence, issue a warrant in the form provided in the Second Schedule to bring him before the court to give evidence.

Such warrant may be addressed to the bailiffs and deputy bailiffs of any court of petty sessions and may be executed by any of them.

When apprehended, such person may be released from custody upon giving to the satisfaction of the registrar of any court of petty sessions, or of a justice of the peace, security, in the form provided in the Second Schedule, in the sum of ten pounds, with or without a surety or sureties, for his appearance at such time and place as such registrar or justice may appoint.

Such security may be enforced by action for and on behalf of His Majesty the King in the court at which the witness was subpœnaed to attend, and such action may be brought and continued and all proceedings in connection therewith may be carried on, and any judgment recovered may be enforced by the registrar, for the time being, of that court under the title of his office.

Any moneys so recovered shall be applied as the court directs.

(4) No witness shall be compelled to attend at any court of petty sessions without tender of his reasonable expenses. The scales of reasonable expenses may be prescribed by the rules.

(5) Nothing in this section shall affect any provision of Part IV of the Evidence Act, 1898.

Section 67.

(24) The Principal Act is amended by omitting section sixty-seven and by inserting in lieu thereof the following section:—

Punishment
for con-
tempt.

67. Every court of petty sessions may punish for contempt in a summary way by fine not exceeding five pounds, recoverable in the same manner as a fine imposed by justices under the Justices Act, 1902, as amended, any plaintiff, defendant, witness, or person who is present in court and required to give evidence refusing without just or reasonable excuse to

to be sworn or to answer any lawful question or to produce any books, deeds, papers, or writings required to be produced by any subpoena duly served.

(25) The Principal Act is amended by omitting ~~Section 68.~~ section sixty-eight and by inserting in lieu thereof the following section:—

68. The clerk of the court of petty sessions shall Registrar. discharge the duties of registrar.

(26) The Principal Act is amended by omitting ~~Section 75.~~ from section seventy-five the words "cause list" and by ^(Award of arbitrator.) inserting in lieu thereof the words "record book."

(27) The Principal Act is amended—

(a) by inserting at the end of the Form No. 6 in the Second Schedule the following additional notes:—

Under section 29 of the Sale of Goods Act, 1923, upon receipt of this precept, the Bailiff shall endorse upon the back thereof the hour, day, month, and year when he received same.

Under section 4 of the Judgment Creditors' Remedies Act, 1901, the Bailiff may seize and take in execution any money, bank notes, cheque, bill of exchange, promissory note, bond, specialty, or other security for money belonging to the person against whom this precept is sued out.

(b) by omitting Form nine, *Attachment for non-appearance to a subpoena*, in the Second Schedule, and by inserting the following form in lieu thereof:—

9. *Warrant where a witness has not obeyed a subpoena.*

Court of petty sessions for the }
district of }

Plaint No. of 19

Between , Plaintiff, and , Defendant.

To the bailiffs of the Court of petty sessions for the district of and their deputies, and to each and every of them.

WHEREAS having been duly served with a subpoena to attend as a witness in this action at a court held at on the day of 19 , failed to appear when called upon in open Court and the due service of such subpoena on the said having been proved to the Court and it also having been proved to the Court that his non-appearance was without just

just cause or reasonable excuse and oath having been made that he will probably be able to give material evidence, these are therefore to command you and each of you to apprehend the said

wherever you may find him, and safely and securely keep him so that you may bring and have him before the Court of petty sessions holden at , on the day of , 19 , at o'clock, in the noon, to testify what he shall know concerning the above action, or so that he may be otherwise dealt with according to law.

Given under the seal of the Court this day of , 19 .

(L.S.)
(L.S.)

Court of petty sessions holden
at

Form 16.
Second
Schedule.

(c) by inserting the following new Form sixteen after Form fifteen in the Second Schedule:—

16. *Recognition of witness who has been apprehended for disobeying subpoena.*

To wit }

BE it remembered that on the day of in the year of Our Lord, one thousand nine hundred and , of , in the State of New South Wales (occupation) , of , in the said State (occupation), and , of , in the said State (occupation), personally came before me, Registrar of the Court of petty sessions holden at [(or) one of His Majesty's Justices of the Peace for the said State] and severally acknowledged themselves to owe to Our Sovereign Lord the King the sum of ten pounds each of good and lawful money, if the said shall fail in the condition endorsed.

Taken and acknowledged the day and year first abovementioned at in the said State before me.

CONDITION.

The condition of the within written recognizance is such that whereas the within named has been apprehended under and by virtue of a warrant issued by the Court of petty sessions holden at in the said State for disobeying a subpoena to appear as a witness before such Court in a certain action in which was plaintiff and was defendant,

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defendant, if therefore the said shall appear before the said Court to be holden at on the day of , 19 , at o'clock in the noon and testify what he shall know concerning the said action, then the said recognizance to be void or else to stand in full force and virtue.

3. The amendments made by this Act in section fifty- ~~Saving.~~ six of the Principal Act shall not affect any proceedings taken to enforce the payment of the amount of any judgment obtained before the commencement of this Act.
