

**COURTS OF PETTY SESSIONS (CIVIL CLAIMS)
ACT.**

New South Wales



ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

Act No. 11, 1970.

An Act to confer on courts of petty sessions jurisdiction in respect of certain civil claims; to repeal the Small Debts Recovery Act, 1912, and certain other enactments; and for purposes connected therewith. [Assented to, 26th March, 1970.]

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 :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Courts of Petty Sessions (Civil Claims) Act, 1970".

Short title
and com-
mencement.

(2)

Courts of Petty Sessions (Civil Claims).

(2) Except as provided in subsection three of this No. 11, 1970
 section, this Act shall commence upon a day to be appointed
 by the Governor and notified by proclamation published in
 the Gazette, which day is in this Act referred to as the
 commencement of this Act.

(3) This section and section eighty-five of this Act
 shall commence upon the day upon which the assent of Her
 Majesty to this Act is signified.

2. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—*ss.* 1–5.

PART II.—COURTS AND OFFICERS—*ss.* 6–11.

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Repeals and savings.

3. (1) The several Acts specified in the Schedule to this Act are to the extent therein expressed hereby repealed.

(2) Any person holding office as a bailiff at any court immediately before the commencement of this Act shall be deemed to have been appointed, in accordance with the provisions of this Act and the rules, as a bailiff for the service and execution, in the district for which that court is appointed to be held, of the processes, judgments and orders authorised by this Act or the rules.

(3) All proceedings under the Small Debts Recovery Act, 1912, commenced but not completed at the commencement of this Act may be continued and completed, and a judgment or order on those proceedings may be given, entered up or made under that Act as if this Act had not been enacted, but the provisions of Parts V, VII and VIII, of this Act and so much of Part VI as relates to interpleader by bailiffs shall apply to and in respect of any such judgment or order and proceedings thereon.

(4)

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(4) Any judgment or order under the Small Debts Recovery Act, 1912, may be enforced and proceedings may be taken thereon in all respects as if it had been given or entered up under this Act. No. 11, 1970

(5) Any summons, subpoena, writ of execution or garnishee order issued or made under the Small Debts Recovery Act, 1912, shall have the same force and effect, and proceedings thereon may be taken, as if it had been issued or made under this Act.

(6) Any amount that before the commencement of this Act was deposited with, and any security that before that commencement was given to, a bailiff under section fifty-two of the Small Debts Recovery Act, 1912, and any claim that before that commencement was made by a person to any goods or chattels taken or intended to be taken in execution under any process or to the proceeds or value thereof, being a claim referred to in section fifty-three of that Act, shall be dealt with in all respects as if this Act had not been enacted.

(7) Except as provided in this section, nothing in this section limits any saving in the Interpretation Act, 1897.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

“admitted set-off”, in relation to an action, means set-off admitted by the plaintiff in the plaint by which he commences the action or, where a defendant pleads a set-off, by the defendant in the prescribed notice of set-off or in the notice of defence, as the case may be;

“attorney” means an attorney of the Supreme Court;

“barrister” means a barrister-at-law admitted by the Supreme Court;

“commercial agent” means a licensed commercial agent within the meaning of the Commercial Agents and Private Inquiry Agents Act, 1963;

“court”

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“court” means court of petty sessions but does not include a court of petty sessions in respect of which an order under subsection three of section seventy-seven of this Act is in force;

“district” means a district appointed under the Justices Act, 1902, for which a court shall be held;

“garnishee” means a person who is required to make a payment under a garnishee order;

“garnishee order” means an order made under section forty-seven of this Act;

“rules” means rules made under this Act;

“subagent” means a subagent within the meaning of the Commercial Agents and Private Inquiry Agents Act, 1963, employed by a commercial agent;

“writ of execution” means a writ of execution issued under section fifty-eight of this Act.

(2) A reference in this Act to the court for a district shall where there is more than one court for a district be construed as a reference to any court for that district.

(3) A reference in this Act—

(a) to the giving of a judgment is a reference to the recording and delivering of a judgment, not being a judgment under section twenty-seven or twenty-eight of this Act, by a court; and

(b) to the entering up of a judgment is a reference to the entering up of a judgment in accordance with the provisions of section twenty-seven or twenty-eight of this Act.

Saving of
jurisdiction.

5. (1) Subject to subsection two of this section, the provisions of this Act have effect subject to the provisions (not being provisions repealed by this Act) of any other Act passed before the commencement of this Act conferring jurisdiction on courts.

(2)

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(2) Subject to section three of this Act, where under No. 11, 1970 any Act passed before the commencement of this Act jurisdiction in respect of any matter is conferred on a justice or justices exercising jurisdiction under the Small Debts Recovery Act, 1912, or on a court of petty sessions exercising that jurisdiction, the jurisdiction in respect of that matter shall not be exercised except by a court of petty sessions held before a stipendiary magistrate.

PART II.

COURTS AND OFFICERS.

DIVISION 1.—*Courts.*

6. The jurisdiction conferred on a court by or under this Act shall not be exercised except by a stipendiary magistrate sitting alone. Constitution of courts.

7. A court exercising jurisdiction under this Act or the rules shall be a court of record and a judgment of a court may be set up as a defence in any action brought in a court, in a District Court or in the Supreme Court. Courts to be courts of record.

DIVISION 2.—*Registrars and Bailiffs.*

8. (1) There shall be a registrar for every court. Registrar.

(2) The registrar of a court shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at the place at which the court is situated.

(3) The Governor may appoint a person to be a deputy registrar at any court.

(4)

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No. 11, 1970 (4) A person appointed as a deputy registrar at a court shall have and may exercise, under the registrar of that court, all the powers, authorities, duties and functions of that registrar.

Bailiffs. 9. (1) Bailiffs shall be appointed for the service and execution of the processes, judgments and orders authorised by this Act or the rules.

(2) A bailiff shall exercise and perform the powers, authorities, duties and functions conferred and imposed upon bailiffs by this Act and the rules.

(3) A bailiff, other than a bailiff holding office under subsection four of this section—

(a) shall not exercise or perform any of the powers, authorities, duties or functions conferred and imposed upon bailiffs by this Act and the rules that are specified in the instrument of his appointment as powers, authorities, duties or functions that he is not empowered to exercise or perform; and

(b) shall—

(i) where the instrument of his appointment does not specify a part or parts of the State in which he is empowered to exercise or perform the powers, authorities, duties or functions conferred and imposed on bailiffs by this Act and the rules, be entitled to exercise and perform those powers, authorities, duties and functions throughout the State; and

(ii) where the instrument of his appointment does specify any such part or parts, be entitled to exercise and perform those powers, authorities, duties and functions in that part or those parts.

(4) Every sheriff's officer shall be a bailiff for the purposes of this Act.

(5)

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(5) The appointment and termination of appointment No. 11, 1970 of bailiffs shall be in accordance with the rules.

DIVISION 3.—*Actions against persons acting under this Act.*

10. (1) An action for anything done or omitted to be done under this Act or the rules or under any Act or provisions hereby repealed by a person acting or purporting to act in execution thereof shall not be commenced after the expiration of six months from the date the cause of action arose. Limitation
of actions
against
officers.

(2) Such an action shall not be commenced until the expiration of one month after a notice specifying the cause of action, the name and place of abode of the person intending to bring the action and the name and place of business of his attorney, if any, has been delivered to or left at the usual place of abode of the person against whom it is intended to bring the action.

DIVISION 4.—*Right of appearance.*

11. (1) A party to an action or other proceeding under this Act may appear in person, by his spouse or employee authorised by him in writing in that behalf or by a barrister or attorney retained by or on behalf of that party. Appearance
of parties.

(2) A party to an action or other proceeding under this Act, being an action or other proceeding of a prescribed class, may appear by a commercial agent or by a subagent authorised by that party to act for him.

(3) A person appearing in an action or other proceeding may address the court and examine and cross-examine witnesses.

(4) A person who is not a barrister or attorney shall not be entitled to receive or recover a sum of money or other remuneration or consideration for appearing on behalf of another person in a court or before a registrar.

(5)

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No. 11, 1970 (5) Subsection four of this section does not operate to prevent an employee who appears on behalf of his employer in the ordinary course of his employment from receiving wages or salary for so appearing.

(6) Any plaint, summons, application, notice or affidavit that may be filed, made, given or sworn by any person for the purposes of this Act may be filed, made, given or sworn on behalf of that person by any person authorised by the rules to do so.

PART III.

JURISDICTION.

DIVISION 1.—*Amount.*

Limits of
jurisdiction.

12. (1) Subject to this Part, a court shall have jurisdiction to hear and determine actions for the recovery of any debt, demand or damage, whether liquidated or unliquidated, in which the amount claimed is not more than five hundred dollars, whether on a balance of account or after an admitted set-off or otherwise.

(2) Where the amount claimed in any action exceeds two hundred and fifty dollars, the defendant, or any one of two or more defendants, may, within such time and in such manner as may be prescribed, give notice that he intends to defend the action and that he objects to the action being heard and determined by a court, and where that notice is given, the registrar of the court in which the action was commenced shall order that the action be transferred to a District Court having jurisdiction in the matter under section seven of the District Courts Act, 1912.

(3) Where an order is made under subsection two of this section the registrar of the court in which the action was commenced shall forthwith deliver or send by post the whole record thereof, including the order for transfer, to the District Court to which the action is ordered to be transferred.

(4)

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(4) After an action has been transferred to a District Court under this section all proceedings therein shall, subject to the District Courts Act, 1912, and to any rules of court made thereunder, be taken in that District Court as if the action had been commenced therein on the date on which the plaintiff commenced the action was filed. No. 11, 1970

(5) Where under section fourteen of this Act the plaintiff has abandoned any amount for which he has a cause of action and the action on that cause is transferred to a District Court under this section, the action in the District Court shall be for the sum of the amount for which the plaintiff filed his plaint under this Act and the amount abandoned by him.

13. (1) In this section, "set-off" means a set-off that a defendant is entitled to plead under section fifteen of this Act. Actions not to be split or divided.

(2) Where a person splits or divides any cause of action against another person—

- (a) so as to bring an action for part of the amount for which an action may be brought on that cause; or
- (b) so as to plead a set-off for part of the amount for which an action may be brought on that cause,

in a court, and judgment is given or entered up, or a final order is made, on that action or set-off, that other person is entitled to judgment in any other action or set-off taken or pleaded on that cause (whether taken or pleaded in a court of petty sessions or in any other court).

(3) Where a party to an action has given two or more bills of exchange, promissory notes, bonds or other securities for any claim by another party, whether or not the amount of that claim exceeds five hundred dollars, that other party may, notwithstanding the provisions of subsection two of this section but subject to any other provision of this Act, bring an action on, or plead by way of set-off, each of those securities as if each of them formed a distinct cause of action and each of those actions were an action for the recovery of,
and

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No. 11, 1970 and each of those set-offs were a set-off claiming, a debt contracted at the place where the cause of action on which the claim is based arose.

Abandonment.

14. A plaintiff who has a cause of action for more than the amount for which a plaint may be filed under this Act may abandon the excess by stating the abandonment on the plaint, and where the abandonment is so stated—

- (a) the plaintiff's claim shall be reduced by the amount of the excess and the plaintiff shall, on proving his case, recover to an amount not exceeding the amount for which a plaint may be so filed;
- (b) judgment upon the plaint shall be in full discharge of all demands in respect of that cause of action; and
- (c) entry of the judgment in the records of the court shall be made accordingly.

Set-off.

15. (1) Subject to subsection two of this section, the defendant in an action in any court may plead by way of set-off any amount claimed by him against the plaintiff by way of debt, demand or damage, whether liquidated or unliquidated and whether or not the debt, demand or damage arose out of the same subject-matter as the claim of the plaintiff, where the amount claimed by way of set-off is not more than five hundred dollars, whether on a balance of account or after admitted set-off or otherwise.

(2) A defendant shall not be entitled to plead a set-off unless he has given the prescribed notice of set-off in accordance with the rules.

(3) Where a defendant has a cause of action against the plaintiff for more than the amount for which a plaint may be filed under this Act, he may, where he claims an amount arising out of that cause of action by way of set-off, abandon the excess.

(4)

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(4) Any such abandonment shall be stated in the prescribed notice of set-off, and where the abandonment is so stated—

- (a) the defendant's claim shall be reduced by the amount of the excess and the defendant shall, on proving his case, be entitled to judgment for an amount not exceeding the amount for which a plaint may be filed under this Act reduced by the amount, if any, for which judgment is given for the plaintiff;
- (b) judgment upon the set-off shall be in full discharge of all demands in respect of the cause of action in respect of which the defendant pleaded the set-off; and
- (c) entry of the judgment in the records of the court shall be made accordingly.

(5) A plea of set-off shall not be made unless the amount claimed by way of set-off is owing to or enforceable by all the defendants if there are more than one, and is due from or enforceable against all the plaintiffs if there are more than one.

(6) More than one claim may be pleaded by way of set-off in the same action but so that the total amount claimed does not exceed five hundred dollars, whether on a balance of account or after admitted set-off or abandonment or otherwise.

(7) Where judgment is given in an action and on a set-off pleaded by the defendant—

- (a) the judgments shall be set off by the court and judgment for the difference shall be given in favour of the party who recovered the higher amount; and
- (b) the judgments shall be in full discharge of all demands in respect of the plaintiff's cause of action and of all demands in respect of the cause of action to which the set-off relates.

(8)

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No. 11, 1970 (8) Where under this section the defendant in an action pleads a claim by way of set-off the registrar of the court in which the set-off is pleaded shall, on an application made to him by the plaintiff, strike out the plea if the amount claimed in the plea exceeds two hundred and fifty dollars.

(9) Where a plea is struck out in accordance with subsection eight of this section the defendant shall be at liberty to take such other proceedings as he may think fit in respect of the claim pleaded.

DIVISION 2.—*Place.*

Where
action may
be brought.

16. (1) Every court shall have jurisdiction in accordance with this Act.

(2) Where an action is commenced in a court other than—

(a) the court held for the district in which is situated the place where the defendant has his place of abode or business; or

(b) the court held for the district in which is situated the place where the cause of action arose;

the defendant or any one of two or more defendants may, by notice given within such time and in such manner as may be prescribed, state that he intends to defend the action and elect that the action be transferred to the court for such district as may be specified in the notice, being a district in which is situated a place referred to in paragraph (a) or (b) of this subsection.

(3) Where the defendant makes an election under subsection two of this section, the registrar shall deliver or send by post the whole record of the action to the court for the district specified in the notice of election and the action shall, subject to subsection four of this section and to section

eighteen

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eighteen of this Act, be heard and determined in that court No. 11, 1970 as if it had been commenced therein on the date on which the plaint commencing the action was filed.

(4) Where—

- (a) an action has been transferred to a court (in this subsection referred to as the “transferee court”) in accordance with this section; and
- (b) the plaintiff, after the action has been called on for hearing and before the hearing commences, satisfies the transferee court that it is not a court for a district in which is situated a place referred to in paragraph (a) or (b) of subsection two of this section,

the transferee court shall order that the action be transferred for hearing in a court specified in the order, being a court for a district in which is situated a place referred to in paragraph (a) or (b) of subsection two of this section.

(5) Where a court makes an order under subsection four of this section—

- (a) the registrar shall deliver or send by post the whole record of the action to the court for the district specified in the order and the action shall, subject to section eighteen of this Act, be heard and determined in that court as if it had been commenced therein on the date on which the plaint commencing the action was filed; and
- (b) the court may order the defendant to pay to the plaintiff such amount as it thinks fit for the costs and expenses of the plaintiff in appearing at that court.

(6) The provisions of this section shall have effect subject to the provisions of any other Act conferring jurisdiction on courts.

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No. 11, 1970 **17.** (1) A court shall have jurisdiction in accordance with this Act, notwithstanding that the defendant or one of two or more defendants is not within New South Wales.

Jurisdiction where defendant is out of the State.

(2) This section applies—

- (a) whether the defendant or one of two or more defendants has or has not ever been resident or carried on business in New South Wales; and
- (b) whether the cause of action arose before or after the commencement of this Act.

Change of venue.

18. (1) If a court is satisfied that any action or other proceeding therein pending can be more conveniently or fairly tried or determined by some other court, it may order that the venue be changed, and that the action or proceeding be sent for hearing to the other court.

(2) If a stipendiary magistrate exercising the jurisdiction of a court is interested in the matter of any action or other proceeding pending in that court, he shall not hear and determine the action or proceeding except with the consent of the parties, and shall at the request of either of the parties or of his own motion order that the venue be changed, and that the action or proceeding be sent for hearing to another court at which it may conveniently be tried or determined.

(3) Where a venue is changed the registrar shall forthwith deliver or send by post the whole record of the action or proceeding to the court to which the venue has been changed and the action or proceeding shall, subject to subsection two of this section, be heard and determined in that court as if it had been commenced therein on the date on which the plaint commencing the action was filed.

DIVISION 3.—Subject-Matter.

19. (1) A court shall not have jurisdiction under this Act in any of the following cases :—

Limitation of jurisdiction.

- (a) where the validity or effect of any devise, bequest or limitation under any will or settlement, or under any document in the nature of a settlement, is disputed;
- (b)

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- (b) actions for passing-off, wrongful arrest, false imprisonment or malicious prosecution, or for or in the nature of defamation, or for seduction or enticement, or for breach of promise of marriage; No. 11, 1970
- (c) actions for infringement of letters patent or copyright;
- (d) actions of detinue or replevin; or
- (e) actions in which the title to land is in question.

(2) If the title to land incidentally comes in question in an action, the court shall have power to decide the claim which it is the immediate object of the action to enforce, but the judgment of the court shall not be evidence of title between the parties or their privies in another action in that court or in any proceedings in any court, whether or not it is a court of petty sessions.

DIVISION 4.—*Parties.*

20. (1) Where a plaintiff has a cause of action against two or more persons jointly answerable, it shall be sufficient if any one or more of those persons is served with process, and judgment may be given or entered up and enforced 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. Persons jointly liable.

(2) A person against whom such a judgment is given or entered up and who satisfies the whole or any part of the judgment shall be entitled to demand and recover contribution from any other person jointly liable with him.

21. A person under the age of twenty-one years to whom any wages or any other sum arising out of the course of his employment are or is due may sue for and recover the wages or sum in a court in the same manner as if he were of full age. Infants.

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PART IV.

PROCEDURE.

DIVISION 1.—*Actions, how commenced.*

Plaint and
summons. **22.** Every action in a court shall be commenced by the plaintiff's filing with the registrar of the court a plaint and summons.

DIVISION 2.—*Ordinary Summons.*

23. A summons, other than a default summons, shall be an ordinary summons returnable at the court at which it is filed on a return date fixed by the registrar of that court.

DIVISION 3.—*Default Summons.*

Default
summons. **24.** In an action for the recovery of a debt or liquidated demand the plaintiff may file, instead of an ordinary summons, a default summons commencing that action at the court at which the summons is filed.

Defence to
default
summons. **25.** (1) The defendant may, at any time before judgment is entered up against him on a default summons, file with the registrar notice of defence specifying the grounds of defence, accompanied by an affidavit verifying the facts on which he intends to rely.

(2) The registrar shall forthwith notify the plaintiff that notice of defence has been so filed and list the action for hearing.

DIVISION 4.—*Judgment.*

Procedure
where a
party does
not appear. **26.** (1) If at the time set down (whether originally or on an adjournment) for the hearing in a court of an action in respect of which a judgment is not in force under section twenty-eight of this Act—

(a) the plaintiff does not appear the court—

(i) may non-suit the plaintiff and, if the defendant appears, may order the plaintiff to pay

to

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to the defendant such amount as it thinks fit for the reasonable expenses of the defendant; or

(ii) may adjourn the hearing and may assess such amount as it thinks fit for the reasonable expenses of the defendant; or

(b) the plaintiff does, but the defendant does not, appear the court—

(i) may, upon due proof of service of the summons on the defendant or, where the hearing of the action has been adjourned or the action has been transferred in accordance with section sixteen of this Act, of the defendant having been served with notice of the time and place of the hearing, proceed to the trial of the action on the part of the plaintiff only; or

(ii) may adjourn the hearing and may assess such amount as it thinks fit for the reasonable expenses of the plaintiff.

(2) Judgment on the trial of an action as referred to in paragraph (b) of subsection one of this section shall be as valid as if both parties had appeared at the trial.

(3) The court may for the purpose of exercising its powers under subsection one of this section have regard to any matter put before the court on behalf of any party excusing or explaining the failure of that party to appear.

(4) Where any expenses are assessed under subparagraph (ii) of paragraph (a), or subparagraph (ii) of paragraph (b), of subsection one of this section the amount for which judgment is given in the action shall be adjusted accordingly.

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No. 11, 1970 **27.** (1) Where the defendant has not filed notice of defence in accordance with section twenty-five of this Act, the plaintiff may, not earlier than fourteen days or later than twelve months after service on the defendant of the default summons, file with the registrar—

Default judgment.

- (a) an affidavit of service; and
- (b) a statement of—
 - (i) the amount then due to the plaintiff in respect of the cause of action for which the default summons was filed;
 - (ii) such amount, if any, as may be prescribed as costs for the filing, issuing and serving of the plaint and summons commencing the action and as has not been paid; and
 - (iii) where the plaint and summons by which the action was commenced specifies the name of an attorney acting on behalf of the plaintiff in the action, such amount, calculated in accordance with the prescribed scale, for professional costs as has not been paid,

verified by the oath of the plaintiff,

and the registrar, forthwith after the time when that affidavit and statement were filed, shall, subject to subsection two of this section, enter up judgment against the defendant for the amounts specified in the statement unless at that time judgment in respect of the cause of action for which the default summons was filed has been entered up under section twenty-eight of this Act.

(2) Where the registrar is satisfied that any costs referred to in subparagraph (ii) of paragraph (b) of subsection one of this section were improperly incurred by the plaintiff or were incurred by reason of his negligence, the registrar may reduce the amount for which judgment may be entered up under subsection one of this section accordingly.

(3)

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(3) Where judgment for any amount referred to in **No. 11, 1970** subparagraph (ii) or (iii) of paragraph (b) of subsection one of this section is entered up under this section, that amount shall not, notwithstanding the provisions of section thirty-three or thirty-four of this Act, thereafter be added to the judgment debt arising out of that judgment.

28. (1) At any time before judgment in an action commenced by filing a default summons, the defendant may sign a statement confessing to the amount or part of the amount of the claim of the plaintiff and may specify in that statement by what instalments payable at what times he is prepared to pay that amount. Judgment by confession or agreement.

(2) At any time before judgment whether in an action commenced by filing an ordinary summons or a default summons, the plaintiff and the defendant may enter into an agreement specifying the amount agreed to be then due to the plaintiff and may in that agreement specify by what instalments payable at what times that amount is to be paid.

(3) Any statement under subsection one of this section or agreement under subsection two of this section shall be in or to the effect of the prescribed form and shall have no force or effect for the purposes of this section unless the signature of every person executing it is witnessed by a prescribed person.

(4) Where a statement under subsection one of this section is filed with the registrar, the registrar shall as soon as practicable thereafter—

- (a) give or send by post to the plaintiff notice of the amount to which the defendant has confessed and of any terms of payment specified by the defendant in that statement; and
- (b) where the confession is to the whole of the amount of the claim of the plaintiff—
 - (i) enter up judgment for the plaintiff for that amount; and

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- (ii) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(5) Where—

- (a) the registrar gives or sends by post to the plaintiff a notice in accordance with subsection four of this section informing the plaintiff that the defendant has confessed only to part of the amount of the claim of the plaintiff; and
- (b) within the prescribed time, the plaintiff does not file with the registrar a notice refusing to accept in full satisfaction of his claim the amount confessed to by the defendant and does not file with the registrar a notice refusing to accept any terms of payment specified by the defendant in the statement made by him under subsection one of this section, the registrar shall forthwith after the expiration of that prescribed time—
 - (i) enter up judgment for the plaintiff for the amount to which the defendant has confessed; and
 - (ii) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(6) Where an agreement referred to in subsection two of this section is filed with the registrar, the registrar shall forthwith—

- (a) enter up judgment for the plaintiff for the amount specified in the agreement; and
- (b) where any terms of payment are specified in the agreement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(7)

Courts of Petty Sessions (Civil Claims).

(7) A judgment entered up under this section shall be in full discharge of all demands in respect of the cause of action in respect of which the statement or agreement was made. No. 11, 1970

(8) An order in respect of a judgment debt made under subparagraph (ii) of paragraph (b) of subsection four, or under subparagraph (ii) of paragraph (b) of subsection five, of this section shall be deemed to be an order made under subsection four of section forty of this Act pursuant to an application made by the judgment debtor under paragraph (a) of subsection two of that section.

(9) An order in respect of a judgment debt made under paragraph (b) of subsection six of this section shall be deemed to be an order made under subsection four of section forty of this Act pursuant to an agreement referred to in paragraph (b) of subsection two of that section.

(10) Where, within the prescribed period, the plaintiff does not file with the registrar a notice refusing to accept in full satisfaction of his claim the amount confessed to by the defendant, but files with the registrar a notice refusing to accept any of the terms of payment specified by the defendant in the statement made by him under subsection one of this section, the registrar shall enter up judgment for the plaintiff for the amount to which the defendant has confessed, and—

- (a) the registrar shall be deemed to have made an order under section forty of this Act that the judgment debt be paid by such instalments payable at such times as may be specified in the statement; and
- (b) the plaintiff's notice of refusal shall be deemed a notice of objection under subsection five of section forty of this Act.

(11) Where—

- (a) a statement under subsection one of this section is filed with the registrar confessing to part only of the amount claimed by the plaintiff;

(b)

- No. 11, 1970
- (b) the defendant defends the action of the plaintiff; and
 - (c) the amount for which judgment is given for the plaintiff at the trial, exclusive of any costs or witnesses' expenses, but together with any amount paid, between the date on which that statement was filed with the registrar and the date on which the judgment was given, by the defendant to the plaintiff in respect of the plaintiff's cause of action, does not exceed the amount confessed to by the defendant,

then notwithstanding the provisions of section thirty-five of this Act, the court, unless the plaintiff shows good cause to the contrary, shall not award any costs against the defendant in addition to those awarded by virtue of section thirty-three of this Act, and may if it thinks fit order the payment of such amount as may be specified in the judgment by the plaintiff to the defendant for or towards the reasonable costs of the defendant incurred since the statement of confession was filed.

Judgment against some only of defendants. **29.** Judgment against one or more of several defendants shall not preclude the plaintiff from proceeding to judgment and enforcing it against any other defendant or defendants, except in so far as satisfaction by any of them operates in favour of all.

Judgment may be set aside. **30.** A court, on sufficient cause being shown, may, on such terms as it thinks fit, set aside any judgment given or entered up or order made in that court.

Judgments —how recorded. **31.** The entry of a judgment in the records of a court shall be the record of that judgment, and that entry or a copy thereof, certified to be a true copy under the hand of the registrar, shall be received as evidence of that judgment.

32.

Courts of Petty Sessions (Civil Claims).

32. (1) A court may order, on such terms as it thinks fit, that any proceedings in any action or matter before that court be stayed at any stage of the proceedings. No. 11, 1970
Power to stay proceedings.

(2) The power conferred by subsection one of this section to order a stay of proceedings includes power to order a stay of enforcement of a judgment.

(3) Where a court is satisfied that a defendant in an action is maintaining proceedings against the plaintiff in a District Court or the Supreme Court and that those proceedings arise out of the same circumstances as the action, the court shall, on such terms as it thinks fit, order a stay of enforcement of any judgment given or entered up in the action.

(4) A stipendiary magistrate who is satisfied that because of urgent circumstances it is not practicable for the powers conferred by subsection one, two or three of this section to be exercised by the court on which they are conferred may exercise those powers.

DIVISION 5.—*Costs and Expenses.*

33. (1) Notwithstanding any other provision of this Act except subsection two of this section and subsection three of section twenty-seven of this Act, where judgment is given or entered up for the plaintiff or for a party in accordance with paragraph (a) of subsection seven of section fifteen of this Act, there shall be added to the judgment debt such amount, if any, as may be prescribed as costs for the filing, issuing and serving of any document filed, issued or served in connection with the action in which the judgment was given or entered up or for enforcing the judgment in any such action and any such amount shall form part of the judgment debt and may be enforced accordingly. Court costs.

(2) Where the court, or the registrar of a court, in which any judgment is given or entered up is satisfied that any costs referred to in subsection one of this section for the serving of any document or for the enforcement of any judgment

No. 11, 1970 judgment were improperly incurred by the judgment creditor or were incurred by reason of his negligence, the court or the registrar may direct that those costs shall not form part of the judgment debt and any such direction shall have effect accordingly.

Professional costs in undefended actions.

34. Where—

- (a) an action is not defended, whether the summons filed by the plaintiff was a default summons or an ordinary summons;
- (b) the plaint and summons by which the action was commenced specifies the name of an attorney acting on behalf of the plaintiff in the action; and
- (c) judgment is given or entered up for the plaintiff,

there shall, subject to subsection three of section twenty-seven of this Act, be added to the judgment debt an amount, calculated in accordance with the prescribed scale, for professional costs and any such amount shall form part of the judgment debt and may be enforced accordingly.

Professional costs in defended actions.

35. Where an action is defended, whether the summons filed by the plaintiff was a default summons or an ordinary summons, the court may in its judgment order the payment of such amount as may be specified in the judgment by one party to the other for or towards the reasonable professional costs incurred by that other party in having a barrister or attorney or both acting on behalf of that other party.

Modification of sections 28 (11), 34 and 35 of this Act.

36. (1) In this section—

“the amount in issue” means—

- (a) where judgment is given or entered up for an amount, whether on an action or a set-off—the sum of that amount (exclusive of any costs fees and witnesses’ expenses) and any amount paid, between the date the
plaint

Courts of Petty Sessions (Civil Claims).

plaint and summons were filed and the date No. 11, 1970
 on which the judgment was given or entered
 up, by the judgment debtor to the judgment
 creditor in respect of the cause of action on
 which the judgment was given or entered
 up; and

- (b) where judgment is given for the defendant
 on the plaintiff's action, or for the plaintiff
 on a set-off, the amount sued for in the
 action or claimed in the set-off, as the case
 may be;

“the prescribed amount” means—

- (a) where no amount has been prescribed for
 the purposes of this section—the sum of
 forty dollars; and
- (b) where an amount has been prescribed for
 the purposes of this section—that amount.

(2) Notwithstanding the provisions of subsection
 eleven of section twenty-eight, and of sections thirty-four and
 thirty-five, of this Act, no professional costs shall be payable
 by any party to another party in respect of an action or set-
 off unless the amount in issue in that action or set-off exceeds
 the prescribed amount.

37. No fees shall be allowed to a barrister or attorney for Profes-
sional
costs—
limitation.
 professional costs between party and party other than in
 accordance with section twenty-seven, subsection eleven of
 section twenty-eight, or section thirty-four or thirty-five, of
 this Act.

38. A court may in its judgment order the payment by Witnesses'
expenses.
 one party to the other of such amount as may be specified in
 the judgment for or towards witnesses' expenses incurred by
 that other party.

DIVISION

Courts of Petty Sessions (Civil Claims).

No. 11, 1970

DIVISION 6.—*Interest.*

Interest.

39. (1) Every judgment debt shall carry interest at the prescribed rate from the time when the judgment is given or entered up and the amount payable as interest under this subsection shall form part of the judgment debt and may be enforced accordingly.

(2) Subsection one of this section does not extend to a judgment debt in respect of which the judgment was given or entered up before the commencement of this Act or in respect of which the judgment is given or entered up in proceedings referred to in subsection three of section three of this Act.

 PART V.

ENFORCEMENT OF JUDGMENTS.

DIVISION 1.—*Payment by Instalments.*Payment
by instal-
ments.

40. (1) A court, in giving judgment in an action, may, of its own motion or on the application of either party, order that any judgment debt payable under the judgment be paid by such instalments payable at such times as it specifies in the order.

(2) Whether or not an order in respect of a judgment debt has been made under subsection one of this section and whether a judgment debt arises out of a judgment on a default summons or otherwise—

- (a) the judgment debtor may make an application in writing, supported by an affidavit as to his property and means, to the registrar of the court in which the
judgment

Courts of Petty Sessions (Civil Claims).

judgment is given or entered up to pay the judgment debt or the balance of the judgment debt then owing to the judgment creditor by such instalments payable at such times as may be specified in the application; or

- (b) the judgment creditor and the judgment debtor may enter into an agreement specifying the amount agreed to be then due to the judgment creditor and containing an undertaking by the judgment debtor to pay that amount by such instalments payable at such times as may be specified in the agreement.

(3) An agreement referred to in paragraph (b) of subsection two of this section shall be in or to the effect of the prescribed form and shall have no force or effect for the purposes of this section unless the signature of every person executing it is witnessed by a prescribed person.

(4) Where—

- (a) an application is made by a judgment debtor under paragraph (a) of subsection two of this section, the registrar shall forthwith consider and determine the application and may—
- (i) order that the judgment debt be paid by such instalments payable at such times as may be specified in the application; or
 - (ii) refuse to make such an order; or
- (b) an agreement referred to in paragraph (b) of subsection two of this section is filed with the registrar, the registrar shall forthwith order that the judgment debt be paid by such instalments payable at such times as may be specified in the undertaking contained in the agreement,

and where he makes an order under paragraph (a) or (b) of this subsection the registrar shall, as soon as practicable thereafter, give or send by post to the judgment creditor and judgment debtor notice of the order.

(5)

Courts of Petty Sessions (Civil Claims).

No. 11, 1970

(5) Where an order is made by a registrar under subsection four of this section pursuant to an application made by the judgment debtor under paragraph (a) of subsection two of this section, the judgment creditor may, within the prescribed period after notice of the order was given or sent to him under subsection four of this section by the registrar, file with the registrar notice of his objection to the payment of the judgment debt by the instalments specified in the order.

(6) Where under subsection four of this section the registrar refuses to make an order or the judgment creditor files with the registrar a notice of objection in accordance with subsection five of this section, the registrar shall set down the judgment debtor's application for hearing by the court in which the judgment was given or entered up and give or send by post to the judgment creditor and the judgment debtor notice of the time and place set down by him for the hearing of the judgment debtor's application and that court may, after hearing the judgment debtor and the judgment creditor or such of them as appears, deal with the application and—

(a) where the registrar refused to make the order—

(i) make an order that the judgment debt or the balance of the judgment debt then owing to the judgment creditor be paid by such instalments payable at such times as may be specified in the order of the court; or

(ii) refuse to make such an order; or

(b) where the judgment creditor has filed with the registrar such a notice of objection confirm, vary or vacate the order of the registrar.

(7) Upon an application, verified by affidavit, made by the judgment creditor on the ground that there has been a substantial increase in the property or means of the judgment debtor, the court may, if it is satisfied as to the truth of those

Courts of Petty Sessions (Civil Claims).

those grounds, vary or rescind any order under this section **No. 11, 1970** in respect of the judgment debt and, where the court refuses to grant the application, may order the judgment creditor to pay to the judgment debtor such amount as it thinks fit for the expenses of the judgment debtor in attending the court to oppose the application.

(8) Where—

- (a) an application is made by a judgment debtor under subsection two of this section and no application in respect of the judgment debt has previously been made under subsection one or two of this section; and
- (b) the application is refused by the registrar under subsection four of this section,

the application shall, until it is dealt with under subsection six of this section, operate as a stay of enforcement of the judgment in respect of which the application is made, except enforcement by way of a garnishee order to which section forty-eight of this Act applies made before the application was made to the registrar.

(9) Where the court or the registrar makes an order under this section the order of the court or of the registrar shall, while it remains in force, operate as a stay of enforcement of the judgment in respect of which the order was made, except enforcement by way of a garnishee order to which section forty-eight of this Act applies made before the order under this section was made.

(10) An order may be made under this section in respect of a judgment debt, notwithstanding that at the time the application or order is made there is in force an order under this section, but where there is in force an order under this section any subsequent order made in respect of the same judgment debt supersedes the former order.

(11)

- No. 11, 1970 (11) Notwithstanding any other provision of this section, where an order is in force under this section and default is made in the payment of any instalment payable under the order, the judgment in respect of which the order was made may be enforced for the balance of the judgment debt owing to the judgment creditor.

DIVISION 2.—Examination of Judgment Debtor.

Summons
for
examination
of judgment
debtor.

41. (1) Where a judgment debt has not been satisfied, the judgment creditor may file with the registrar of the court in which the judgment is given or entered up a summons (in this Division referred to as an “examination summons”) requiring the judgment debtor to be examined at the court for the district specified in the summons, being the district in which the judgment debtor has his place of abode, as to the matters referred to in paragraph (b) of subsection two of this section.

(2) An examination summons—

- (a) shall be made returnable at a court, determined by the registrar of the court in which it was filed, for the district specified by the judgment creditor in the summons and at a time on a return date fixed by that registrar;
- (b) shall require the judgment debtor to appear at that time and at that court to be orally examined by the judgment creditor before the registrar or by the registrar of that court as to his property and other means of satisfying the judgment debt and generally as to his financial circumstances; and
- (c) may require the judgment debtor to produce to the registrar, at the time and place specified in the summons, any books, deeds, papers and writings in the possession or control of the judgment debtor.

(3)

Courts of Petty Sessions (Civil Claims).

(3) A person is not bound to produce any book, deed, paper or document not specified or otherwise sufficiently described in the examination summons or which he would not be bound to produce on a subpoena duces tecum in the Supreme Court. No. 11, 1970

(4) Not later than the prescribed period before the date fixed for the examination of a judgment debtor under this Division, the judgment creditor may file with the registrar with whom the examination summons was filed a request that the examination of the judgment debtor be carried out by the registrar of the court at which the summons is returnable.

(5) Subsection four of section eleven of this Act does not prevent a fee being prescribed for the filing of a request referred to in subsection four of this section.

(6) Where a judgment creditor has filed an examination summons by reason of the judgment debt not having been satisfied he shall not file another examination summons by reason of that judgment debt not having been satisfied within three months after the judgment debtor has appeared for examination in answer to that firstmentioned examination summons or in proceedings under this Division taken against the judgment debtor consequent upon the filing by the judgment creditor of that firstmentioned examination summons.

42. (1) If at the time set down (whether originally or on an adjournment) for the examination of a judgment debtor at a court he fails to appear, the registrar of that court shall, unless he has information satisfying him that the judgment debt has been paid, report, in writing, to that court that the judgment debtor failed to appear, and that court may, upon due proof of service of the examination summons on the judgment debtor or, where the examination of the judgment debtor has been adjourned, of the judgment debtor having been served with notice of the time and place fixed for his examination

Penalty for failure to appear on examination summons.

Courts of Petty Sessions (Civil Claims).

No. 11, 1970 examination and upon due proof of the reasonable expenses of attending in accordance with the examination summons having been tendered to the person on whom the examination summons was served—

- (a) impose a penalty, not exceeding one hundred dollars, on the judgment debtor; or
- (b) adjourn the examination of the judgment debtor and order that he appear before the registrar at that court for examination at such time as may be specified in the order.

(2) Where a court imposes a penalty or makes an order under subsection one of this section, the registrar shall forthwith give notice to the judgment debtor of the action taken by the court or send by post such a notice to the judgment debtor at his address last known to the registrar.

(3) A penalty imposed under subsection one of this section—

- (a) shall not be enforceable until the expiration of a period of fourteen days after the penalty was imposed; and
- (b) may after the expiration of that period be enforced in accordance with section forty-three of this Act.

Imprisonment of judgment debtor refusing to be examined.

43. (1) Where a penalty has been imposed on a judgment debtor under section forty-two of this Act and that penalty has not been paid, the registrar, on the application in writing of the judgment creditor verified by his affidavit or in such other manner as may be prescribed, may, after the expiration of a period of fourteen days after the penalty was imposed, by warrant, commit the judgment debtor to prison for his failure to pay the amount of the penalty unless the judgment debtor has, by arrangement with the registrar of that court, appeared before that registrar for examination as to the matters referred to in paragraph (b) of subsection two of section forty-one of this Act since the penalty was imposed on him.

(2)

Courts of Petty Sessions (Civil Claims).

(2) Where a judgment debtor has pursuant to an No. 11, 1970 arrangement referred to in subsection one of this section duly appeared for examination in accordance with section forty-four of this Act, the registrar shall so certify in writing and thereupon the penalty imposed on the judgment debtor shall be deemed to have been remitted.

(3) Subject to this section, the provisions of the Justices Act, 1902, shall apply to a person committed to prison by a warrant of commitment issued under subsection one of this section in the same manner as those provisions apply to a person committed to prison by a warrant of commitment issued under that Act.

(4) A judgment debtor imprisoned in accordance with a warrant of commitment issued under subsection one of this section may at any time during his imprisonment make application, in writing, to the keeper of the gaol for his examination as to the matters referred to in paragraph (b) of subsection two of section forty-one of this Act.

(5) The keeper of a gaol to whom an application under subsection four of this section is made shall forthwith on receipt of the application inform the registrar of the nearest convenient court of the application, and that registrar shall as soon as possible after being so informed fix a time and date for the appearance before that registrar of the judgment debtor for examination and notify the keeper of the gaol of the time and date so fixed.

(6) The keeper of the gaol who has been so notified shall cause the judgment debtor referred to in the notification to be conveyed to the court specified in the notification for examination at the time so specified.

(7) Where a judgment debtor so conveyed to a court is duly examined in accordance with section forty-four of this Act the registrar shall so certify in writing and on delivery
of

Courts of Petty Sessions (Civil Claims).

No. 11, 1970 of a copy of the certificate to the gaoler who has the custody of the judgment debtor the judgment debtor—

- (a) shall be forthwith discharged from the custody in which he was held by reason of the warrant of commitment; and
- (b) shall not thereafter be liable to be further imprisoned by reason of that warrant of commitment.

(8) The payment of any penalty imposed under section forty-two of this Act or any imprisonment served by a judgment debtor pursuant to a warrant of commitment issued under this section shall not operate—

- (a) as a satisfaction of the judgment debt, or any part thereof, owed by the judgment debtor on whom that penalty was imposed or who served any such imprisonment;
- (b) to protect the judgment debtor from being again summoned under section forty-one of this Act by reason of that judgment debt not being satisfied; or
- (c) to prevent the judgment creditor from enforcing that judgment debt in any way provided by this Act.

Examina-
tion of
judgment
debtor.

44. (1) Where a judgment debtor appears before a registrar for examination in accordance with this Division he may be examined on oath as to any of the matters referred to in paragraph (b) of subsection two of section forty-one of this Act by the judgment creditor or, where the judgment creditor has filed a request referred to in subsection four of that section or the judgment debtor appears before the registrar pursuant to subsection six of section forty-three of this Act, by the registrar of the court at which the judgment debtor appears for examination and, if he is present, by the judgment creditor.

(2)

Courts of Petty Sessions (Civil Claims).

(2) After a judgment debtor has been duly examined before a registrar as to any of the matters referred to in paragraph (b) of subsection two of section forty-one of this Act, the registrar may make an order for the payment of the judgment debt or of the balance of the judgment debt then owing to the judgment creditor by such instalments payable at such times as may be specified in the order. No. 11, 1970

(3) An order made by a registrar under subsection two of this section shall be deemed to be an order made by the registrar under subsection four of section forty of this Act pursuant to an application made by the judgment debtor under paragraph (a) of subsection two of that section and the provisions of that section shall apply to the order accordingly.

(4) The registrar before whom a judgment debtor appears for examination under this Division may administer an oath to the judgment debtor for the purposes of that examination.

(5) Where a judgment debtor appears for examination in accordance with this Division, a stipendiary magistrate may exercise the powers of the registrar under this section.

45. Where a judgment debtor is a body corporate or other body of persons that may by law sue or be sued, whether in its own name or in the name of any officer or other person, an examination summons may be issued under section forty-one of this Act requiring a director or the manager or secretary of the judgment debtor to appear for examination under this Division as to the property of, and other means of satisfying the judgment debt available to, the judgment debtor and generally as to the financial circumstances of the judgment debtor, and the provisions of this Division shall apply to the person so summoned in the same way as if he were the judgment debtor. Where judgment debtor corporation.

46.

Courts of Petty Sessions (Civil Claims).

No. 11, 1970 **46.** A judgment debtor who attends for examination under this Division shall not—

Offences
where
judgment
debtor
attends for
examination.

- (a) without reasonable excuse, refuse to give evidence on oath at the examination;
- (b) give false information at the examination; or
- (c) without reasonable excuse, fail to produce any books, deeds, papers or writings that he is required by an examination summons to produce.

Penalty : One hundred dollars.

DIVISION 3.—*Attachment of Debts.*

Garnishee
orders.

47. (1) The registrar of a court in which a judgment is given or entered up may make an order that all debts due, owing, or accruing to the judgment debtor from any person specified in the order shall be attached to answer the judgment debt.

(2) A garnishee order shall take effect upon its being served on the garnishee, and upon its being so served—

- (a) except in a case to which paragraph (b) of this subsection applies or except in the case of an order to which section forty-eight of this Act applies, shall operate to attach in the hands of the garnishee all debts due, owing or accruing from him to the judgment debtor at the time of service of the garnishee order; and
- (b) in the case of an order expressed to be for the attachment of any wage or salary, not being an order to which section forty-eight of this Act applies, shall operate, subject to this Division, to attach the wage or salary next payable by the garnishee to the judgment debtor within four weeks after the service of the order on the garnishee.

(3)

Courts of Petty Sessions (Civil Claims).

(3) An application for a garnishee order may be made ex parte by, and shall be supported by an affidavit of, the judgment creditor. No. 11, 1970

(4) A garnishee order shall specify the amount of the judgment debt owing to the judgment creditor and shall require the garnishee to pay, in accordance with this Act and the rules, the debt due from the garnishee to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt specified in the order or the balance of the judgment debt specified in the order after deducting therefrom such amount, if any, as may be notified in writing to the garnishee by the judgment creditor or the registrar as having been paid or credited to the judgment creditor on account of the judgment debt otherwise than pursuant to the order.

(5) Where, by reason of the smallness of the judgment debt or of the amount to be recovered or of the debt sought to be attached or for any other reason, the registrar is of the opinion that a garnishee order should not be made, he may refuse to make the order.

48. (1) In this section, "instalment order" means an order made under section forty of this Act. Continuous
operation
of garnishee
order.

(2) This section applies to and in respect of a garnishee order expressed to be for the continuous attachment of the wage or salary of a judgment debtor if the applicant for the garnishee order, in his application, requests that the order be so expressed and the registrar so expresses the order.

(3) A garnishee order to which this section applies, upon its being served on the garnishee, shall, subject to this section, thereafter operate to attach any wage or salary payable by the garnishee to the judgment debtor from time to time until the expiration of a period of four weeks after the garnishee order is so served.

(4)

Courts of Petty Sessions (Civil Claims).

No. 11, 1970

(4) Where an instalment order is in force relating to a judgment debt the subject of a garnishee order to which this section applies and a copy of the instalment order is served on the garnishee, the garnishee order shall thereafter, unless any period specified in the instalment order for which it was to remain in force has expired, operate, to the extent necessary to secure payment of the instalments specified in that instalment order, to attach any wage or salary payable by the garnishee to the judgment debtor from time to time, but shall not so operate to an extent greater than is necessary to satisfy the judgment debt.

(5) A garnishee order made under this Act for the attachment of a wage or salary to answer the same judgment debt in respect of which an order to which this section applies is in force shall have no force or effect.

Limitation
on operation
of garnishee
orders
attaching
a wage or
salary.

49. (1) In this section—

“prescribed rate”, in relation to a wage or salary, means—

- (a) where no part of the wage or salary is otherwise attached under this or any other Act—a rate equal to eight dollars per week less than the Sydney basic wage; or
- (b) where any part of the wage or salary is otherwise attached under this or any other Act—a rate equal to eight dollars per week less than the Sydney basic wage increased by the amount so attached, calculated on a weekly basis;

“Sydney basic wage” means the basic wage for the time being in force within the meaning of Part V of the Industrial Arbitration Act, 1940, and appropriate for the judgment debtor;

“wage

Courts of Petty Sessions (Civil Claims).

“wage or salary” includes earnings that are not payable under a contract of employment, but that are either analogous to or in the nature of wages or salary, and the earnings of a share farmer or share worker.

(2) A garnishee order for the attachment of the wage or salary of a judgment debtor shall extend only—

- (a) where the wage or salary is payable for a period of one week, to that part of the wage or salary that is payable at a rate in excess of the prescribed rate; or
- (b) where the wage or salary is payable for a period greater than one week, to that part of the wage or salary payable for that period that is payable at a rate in excess of the prescribed rate.

50. (1) Subject to compliance with subsection two of this section, a garnishee required to make a payment under a garnishee order to which section forty-eight of this Act applies may deduct therefrom for his own use an amount equal to ten per centum thereof.

Payment
under
certain
attachment
orders.

(2) Where a garnishee makes a deduction in accordance with subsection one of this section, he shall forward to the judgment creditor, when making payment to the registrar or the judgment creditor of the balance of the payment due, a statement showing—

- (a) the amount deducted under the garnishee order from the wage or salary of the judgment debtor;
- (b) the amount deducted by the garnishee for his own use under subsection one of this section; and
- (c) the amount of the payment to the registrar or the judgment creditor, as the case may be.

(3)

No. 11, 1970

(3) Where a garnishee makes a payment in accordance with a garnishee order to which section forty-eight of this Act applies after making a deduction in accordance with subsection one of this section, the amount deducted shall for the purposes of section fifty-four of this Act be deemed to have been paid by the garnishee.

Limitation
of payment
under cer-
tain con-
current
attachment
orders.

51. (1) In this section, "instalment garnishee order" means a garnishee order that operates as provided by subsection four of section forty-eight of this Act and includes an attachment order, made under an Act other than this Act, that has a like operation.

(2) This section shall apply where a wage or salary is attached by more than one order, including at least one garnishee order, whether or not the other orders were made under this Act, and where, of the orders attaching the wage or salary, at least one is, and one is not, an instalment garnishee order.

(3) Subject to section forty-nine of this Act and except to the extent that, in the case of an order made under an Act other than this Act, that other Act otherwise provides, where this section applies the amount payable by the garnishee under any of the orders that is not an instalment garnishee order shall not, in respect of any payment of wage or salary attached under such an order, exceed—

- (a) where only one of the orders is an instalment garnishee order, the amount payable by the garnishee under that instalment garnishee order in respect of any payment of wage or salary; or
- (b) where more than one of the orders is an instalment garnishee order, the greater, or greatest, of the amounts payable by the garnishee under the instalment garnishee orders in respect of any payment of wage or salary.

52.

Courts of Petty Sessions (Civil Claims).

52. (1) Where a judgment creditor is satisfied that a garnishee order relating to the judgment debt has not been complied with by the garnishee on whom it was served, he may file with the registrar a summons requiring the garnishee to show cause at the court for the district specified in the summons, being the district in which the garnishee has his place of abode or business, why the garnishee should not comply with the garnishee order.

No. 11, 1970
 Procedure
 where
 garnishee
 order not
 complied
 with.

(2) A summons filed under subsection one of this section shall be made returnable at a court, determined by the registrar of the court in which it was filed, for the district specified by the judgment creditor in the summons and at a time and on a return date fixed by that registrar.

(3) If at the time set down (whether originally or on an adjournment) for his appearance to answer the summons, the garnishee—

- (a) fails to appear at the court determined by the registrar; or
- (b) appears at that court but does not satisfy the court that the debt alleged by the judgment creditor to be owing by the garnishee to the judgment debtor is bona fide in dispute,

the court may—

- (c) order execution to issue and it may be sued out accordingly without any other writ or process to levy the amount alleged to be due from the garnishee to the judgment debtor in payment of or towards satisfaction of the judgment debt; or
- (d) adjourn the matter and order that the garnishee appear before the court to show cause at such time as may be specified in the order why he should not comply with the garnishee order,

but shall not make an order under paragraph (c) of this subsection except upon due proof of service of the summons

on

Courts of Petty Sessions (Civil Claims).

No. 11, 1970 on the garnishee or, where the matter has been adjourned, of the garnishee having been served with notice of the time and place fixed for his appearance.

(4) Where a garnishee appears to show cause as mentioned in subsection three of this section and satisfies the court that the debt alleged by the judgment creditor to be owing by the garnishee to the judgment debtor is bona fide in dispute, the court shall—

(a) where it is satisfied that the debt, if payable—

(i) exceeds two hundred and fifty dollars; or

(ii) does not exceed that amount and is not for a wage or salary, is not payable by a banker out of a bank account with a banker of the judgment debtor or is not a debt of a prescribed class,

discharge the garnishee order which shall thereupon cease to have any force or effect; or

(b) where it is satisfied that the debt, if payable, does not exceed two hundred and fifty dollars and is for a wage or salary, is payable by a banker out of a bank account with a banker of the judgment debtor or is a debt of a prescribed class, order that the question of whether the garnishee is liable to pay the debt or any part of the debt to the judgment debtor be set down for hearing in the court at a time and on a date specified in the order.

(5) Where the court makes an order under paragraph (b) of subsection four of this section, the judgment creditor shall be deemed to have filed a plaint and summons to commence an action, at the court and at the time on the date specified in the order, against the garnishee for the recovery of an amount equal to so much of the debt alleged to be owing by the garnishee to the judgment debtor as will satisfy the judgment debt in whole or in part and, upon the

judgment

Courts of Petty Sessions (Civil Claims).

judgment creditor proving the debt, judgment against the garnishee shall be given in favour of the judgment creditor for that amount. **No. 11, 1970**

53. (1) A garnishee may apply in writing to the registrar of the court in which the garnishee order was made to pay to the judgment creditor the debt owing by the garnishee to the judgment debtor by such instalments payable at such times as may be specified in the application. **Garnishee may pay by instalments.**

(2) A judgment creditor for a judgment debt in respect of which a garnishee order has been served on a garnishee may enter into an agreement with the garnishee for the payment by the garnishee to the judgment creditor of the debt owing by the garnishee to the judgment debtor by such instalments payable at such times as may be specified in the agreement.

(3) An agreement referred to in subsection two of this section shall be in or to the effect of the prescribed form and shall have no force or effect for the purposes of this Act unless the signature of every person executing it is witnessed by a prescribed person.

(4) An application made under subsection one of this section, or an agreement referred to in subsection two of this section that is filed with the registrar of the court in which the garnishee order was made, shall be deemed to be an application made under paragraph (a) of subsection two of section forty of this Act or an agreement filed with the registrar as mentioned in subsection four of that section, as the case may be, and the provisions of that section shall apply to and in respect of the application and the agreement in all respects as if it were an application by a judgment debtor or an agreement between a judgment creditor and a judgment debtor in respect of a judgment debt.

54.

Courts of Petty Sessions (Civil Claims).

No. 11, 1970
Discharge
of
garnishee.

54. Payment made by or execution levied upon a garnishee shall satisfy the judgment debt, and be a valid discharge to him as against the judgment debtor, to the extent of the amount paid or levied, notwithstanding that the garnishee order or the judgment for the judgment debt may be set aside or the judgment reversed.

Payments
by garnishee
to judgment
creditor.

55. A payment under a garnishee order shall be made to the registrar, for payment to the judgment creditor, or, if the garnishee before making the payment notifies the judgment debtor that he proposes so to do, may be made to the judgment creditor.

Judgment
creditor
to account
for any
excess paid
by a
garnishee.

56. (1) Where a judgment creditor receives an amount paid under a garnishee order in excess of the amount required to satisfy the judgment debt he shall forthwith so notify the garnishee and the judgment debtor and on demand made by the judgment debtor pay the excess to the judgment debtor.

Penalty : One hundred dollars.

(2) Where an amount in excess of the amount required to satisfy the judgment debt is paid by a garnishee under a garnishee order, the excess shall be recoverable by the garnishee or the judgment debtor from the judgment creditor in any court of competent jurisdiction.

Registrar
may pay
amounts
received
from
garnishee
to judgment
creditor.

57. Any amounts received by the registrar from the garnishee under a garnishee order may be paid by him to the judgment creditor without further order.

DIVISION

*Courts of Petty Sessions (Civil Claims).*DIVISION 4.—*Execution.*

No. 11, 1970

58. (1) The registrar of a court in which a judgment is given or entered up may, on the application of the judgment creditor made at any time within twelve years after judgment is given or entered up, issue a writ of execution in the nature of a writ of fieri facias, which writ of execution shall be directed to all bailiffs appointed for the purposes of this Act, who, subject to section nine of this Act, are hereby empowered to execute the writ in any part of New South Wales in the same manner in all respects, subject to the provisions of this Act, as a process of a similar nature issuing out of the Supreme Court may be executed by the sheriff or a deputy sheriff of that court.

(2) A writ of execution issued under this section shall be in force for the prescribed period.

59. (1) A bailiff of any court may seize and take under any writ of execution whereby he is directed to levy any sum of money, and may cause to be sold, all the goods, chattels, and other personal property of or to which the person named in the writ is or may be possessed or entitled, or which he can, either at law or in equity, assign or dispose of, except wearing apparel, bedding, tools and implements of trade, of that person or any member of his family, to the value of one hundred dollars in respect of each such class of goods.

(2) A bailiff shall, before he sells any property, diligently inform himself whether it would be best, with the view of obtaining the highest prices for the property, to cause the sale to be at the place of levy or elsewhere, and shall sell at the place where, in his judgment, those prices are most likely to be obtained.

(3) A judgment debtor against whom a writ of execution has issued may inform a bailiff that his property available for execution is more than sufficient to satisfy the execution and point out to that bailiff what part or parts of

the

Courts of Petty Sessions (Civil Claims).

No. 11, 1970 the property he will have first sold, and that part or those parts shall be sold accordingly but, if that part or those parts is or are not sufficient to satisfy the execution, the bailiff shall proceed to sell the whole of the property or such other parts thereof as are sufficient to satisfy the execution.

(4) All property taken under a writ of execution shall be put up for sale as soon as possible with due regard to the interests of all parties but, if the bailiff cannot effect an early sale of any property without a sacrifice of its reasonable value, he may delay the sale.

(5) Where any property is to be sold pursuant to any such writ, the bailiff shall cause notice of the writ, of the intended day and place of the sale and of particulars of the property, to be published in such manner as may be prescribed.

(6) A bailiff may serve—

- (a) on a judgment debtor against whom a writ of execution has issued; or
- (b) on any person who has the custody of any personal property of such a judgment debtor,

a notice in writing informing the person so served that that person is responsible for the safekeeping of such of the property of the judgment debtor in his custody as has been seized under the writ of execution.

(7) A person (whether or not he is the judgment debtor), knowing that any property has been seized under subsection one of this section or is the subject of a notice under subsection six of this section, shall not, except with the consent in writing of the bailiff by whom the property was seized or by whom such a notice was given, interfere with or dispose of any such property or remove any such property from the place at which it was seized or at which it was situated when the notice was served.

Penalty : One hundred dollars.

(8) Nothing in this section affects the provisions of the Judgment Creditors' Remedies Act, 1901.

Courts of Petty Sessions (Civil Claims).

60. (1) Where a writ of execution issued under section No. 11, 1970 fifty-eight of this Act has been returned unsatisfied in whole or in part, the registrar, upon an application made by the judgment creditor, shall issue and deliver to the applicant a certificate certifying that judgment is unsatisfied and the amount outstanding.

Certificate
may issue
in respect
of un-
satisfied
judgment
or order.

(2) The judgment creditor may file the certificate in any District Court having jurisdiction within the district of the court in which the certificate was issued, or having jurisdiction where the judgment debtor resides.

(3) Where such a certificate is so filed, execution may, without any further or other process, be issued out of that District Court in the same manner as upon a judgment or order of that court for the amount outstanding, together with the fees paid for the certificate to the registrar and the fees paid in the District Court for filing the certificate and issuing execution, and the prescribed sum for costs.

(4) After the issue of such a certificate no further proceedings shall be taken under this Act on the judgment in respect of which the certificate was issued.

(5) When such a certificate has been filed in a District Court the provisions of the District Courts Act, 1912, relating to proceedings consequent on a judgment or order given or made in a District Court shall apply as if the judgment of the court in respect of which the certificate was issued were a judgment or order of that District Court.

61. No property shall be seized or taken under a writ of execution at any time between the hour of eight in the afternoon on one day and seven in the forenoon on the next day.

Time
when
execution
may be
made.

62. No real or leasehold property shall be liable to be levied upon under a writ of execution.

Realty and
leaseholds.

DIVISION

No. 11, 1970

DIVISION 5.—*Setting off of Judgments.*Enforce-
ment
where
judgment
given on
action and
set-off.

63. Where a set-off is pleaded in an action and judgment for the payment of an amount is given on the action and on the set-off—

- (a) the party in whose favour judgment is given for the lesser amount shall not be entitled to enforce that judgment; and
- (b) the party in whose favour judgment is given for the larger amount shall be entitled to enforce the judgment only for so much of that amount as exceeds the lesser amount.

Set-off
of
judgments.

64. (1) Where—

- (a) judgment in an action has been given or entered up in a court (in this section referred to as “the first court”); and
- (b) the judgment debtor under that judgment has had a judgment given or entered up in his favour in another action against his judgment creditor in the same or another court (in this section referred to as “the second court”),

that judgment debtor may apply to the first court for an order that the judgment against him be set off against the judgment in his favour.

(2) Where any such order has been made and—

- (a) the amount of the judgment in the first court is less than or equal to the amount of the judgment in the second court, the judgment in the first court shall be deemed to be satisfied, and the amount of the judgment in the second court shall be reduced by the amount of the judgment in the first court; or
- (b) the amount of the judgment in the first court is greater than the amount of the judgment in the second court, the amount of the judgment in the first

Courts of Petty Sessions (Civil Claims).

first court shall be reduced by the amount of the judgment in the second court, and the judgment in the second court shall be deemed to be satisfied. No. 11, 1970

PART VI.

INTERPLEADER.

65. (1) An application may be made for relief by way of interpleader— Inter-pleader by defendant or bailiff.

- (a) by a defendant in an action brought in a court for or in respect of any debt, money, goods or chattels to which some third party makes a claim; or
- (b) by a bailiff if a claim is made to any money, goods, or chattels, taken or intended to be taken in execution under a writ of execution, or to the proceeds or value of any such goods or chattels, by any person other than the person against whom the writ issued.

(2) An application under subsection one of this section shall be made to the registrar of the court in which the action is brought or of the court for the district in which the writ of execution is or is intended to be executed, as the case may be.

(3) Where the application is made by the defendant, it shall be supported by an affidavit showing—

- (a) that the applicant claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) that the applicant does not collude with the person making a claim as referred to in paragraph (a) of subsection one of this section; and
- (c) that the applicant is willing to pay or transfer the subject-matter in dispute into court.

No. 11, 1970

Claim by
third party
to property
seized by
bailiff
under writ
of execution.

66. (1) Where—

- (a) any property has been seized by a bailiff under a writ of execution;
- (b) a claim thereto, verified by the affidavit of the claimant (not being the judgment debtor) is made to that bailiff;
- (c) the property has not been sold under the writ; and
- (d) the claimant has—
 - (i) paid to the bailiff an amount equal to the value of the property; or
 - (ii) given to the bailiff security to the value of the property,

the property shall thereupon be released from execution under the writ, and the bailiff shall make an application for relief by way of interpleader under section sixty-five of this Act.

(2) The amount of such value and the nature of such security shall be as may be agreed upon between the claimant and the bailiff, or where they have not agreed shall be as determined by some competent person appointed by the registrar, and the costs of the determination shall be paid by the claimant, and, if the court so orders, may be added to the costs of the levy or of any proceedings under this Part.

(3) Any amount paid to the bailiff under subparagraph (i) of paragraph (d) of subsection one of this section shall be forthwith paid by him to the registrar of the court to which the application under subsection one of section sixty-five of this Act was made, and shall be paid out by the registrar in accordance with the order of the court hearing the claim.

(4) On the hearing of the application for relief by way of interpleader the cost of the levy on the goods claimed shall be either added to the amount of the costs charged in the execution or paid by the judgment creditor or by the party claiming the property, as the court may direct.

67.

Courts of Petty Sessions (Civil Claims).

67. (1) Upon an application being made under section No. 11, 1970 sixty-five of this Act, the registrar shall issue a summons calling upon the claimant to state the nature and particulars of his claim in such form and within such time as may be prescribed.

Registrar
to issue
summons
and enter
interpleader
plaint.

(2) Upon the issue of the summons and, where the application for relief is made by the defendant, upon the payment of the amount, or the transfer of the property the subject, of the claim into court or upon the claimant giving security to the value of that property, as may be required by the registrar, all proceedings in the action and in any other action which may have been brought in the Supreme Court, District Court or a court in respect of the claim shall be stayed.

(3) If the claimant complies with the summons, the registrar shall enter an interpleader plaint and issue an interpleader summons thereon calling before the court the execution creditor or the plaintiff in the action and the claimant, and the court shall adjudicate upon the claim, and—

- (a) make such order between the parties in respect thereof, of the costs of the proceedings and of the continuance of the actions in which proceedings have been stayed; and
- (b) where any amount has been paid, or security has been given, to a bailiff in respect of property the subject of the claim, make such order with respect to the payment of that amount or the enforcement or discharge of that security,

as may to it seem fit.

(4) An order made under subsection three of this section may be enforced in the same manner as a judgment in any other action brought in the court.

(5) If the claimant fails to comply with the summons issued under subsection one of this section—

- (a) the stay of proceedings shall be removed; and

(b)

Courts of Petty Sessions (Civil Claims).

No. 11, 1970 (b) the claimant shall be forever barred from prosecuting any claim in respect of the subject matter of the action,

unless the court otherwise orders upon satisfactory explanation made by the claimant in such manner and within such time as may be prescribed, and where any moneys have been paid into court by the defendant or the bailiff or any security has been given to the bailiff or registrar in respect of the property the subject of the claim the court may make such order with respect to the payment of those moneys or the enforcement or discharge of that security as it thinks fit.

(6) An order under subsection five of this section shall not be made except upon an application made by the plaintiff or the judgment creditor, as the case may be, or by the registrar.

Adverse titles.

68. Relief by way of interpleader may be granted though the titles of the persons claiming to the money, goods, or chattels in question, or to the proceeds or value thereof have not a common origin, but are adverse to and independent of each other.

PART VII.**APPEAL.**

Appeal. **69.** (1) Subject to subsection two of this section, all judgments and orders of a court exercising jurisdiction under this Act shall be final and conclusive.

(2) A party to proceedings under this Act who is dissatisfied with the judgment or order of the court as being erroneous in point of law, may appeal to the Supreme Court therefrom.

(3)

Courts of Petty Sessions (Civil Claims).

(3) The provisions of section one hundred and one to section 117A, both sections inclusive, of the Justices Act, 1902, apply, to the extent to which they are applicable, to appeals under subsection two of this section in the same way as they apply to appeals to the Supreme Court by way of special case under those provisions. No. 11, 1970

PART VIII.

MISCELLANEOUS.

70. Any order made under this Act by a court for the payment of an amount of money by one person to another shall, for the purposes of Division 6 of Part IV and Part V of this Act, be deemed to be a judgment. Certain orders to be deemed to be judgments.

71. Where—

- (a) the parties to an action in respect of which a court has jurisdiction agree between themselves that the action should not be tried before a court, but should be determined by means of arbitration; and
- (b) notice of the agreement is given to the registrar of the court in which the plaint commencing the action was filed,

Arbitration award may be entered up as a judgment.

the award made on the arbitration shall be binding on the parties, and judgment in accordance therewith may be entered in the records of that lastmentioned court for the plaintiff or the defendant, as the case may be.

72. (1) A party to any proceedings may obtain from a registrar a subpoena requiring a person to attend as a witness at those proceedings or to attend and produce at those proceedings any books, deeds, papers and writings in his possession or control. Witnesses.

(2)

Courts of Petty Sessions (Civil Claims).

No. 11, 1970

(2) A person is not bound to produce any book, deed, paper or writing not specified or otherwise sufficiently described in the subpoena or in a summons or warrant issued under subsection three of this section or which he would not be bound to produce upon a subpoena duces tecum in the Supreme Court.

(3) Where any person duly served with a subpoena obtained under subsection one of this section fails to appear in accordance with the subpoena when called upon in open court, and—

(a) by the oath of a credible person, it is made to appear to the court at which he was required to attend that—

(i) his non-appearance is without just cause or reasonable excuse; and

(ii) he is likely to be able to give material evidence, or to have in his possession or control any book, deed, paper or writing required for the purposes of evidence,

the court may order that a summons be issued requiring that person to attend as a witness or to attend and produce that book, deed, paper or writing, as the case may be, at that court at a time specified in the summons and thereafter as may be required by the court; or

(b) the court is satisfied by evidence on oath that it is probable that that person will not, unless compelled to do so, appear to give evidence or to produce any book, deed, paper or writing required for the purposes of evidence the court may order that a warrant be issued for the apprehension of that person.

(4)

Courts of Petty Sessions (Civil Claims).

(4) A warrant issued under subsection three of this No. 11, 1970 section may be executed by any member of the police force.

(5) Where a person is apprehended pursuant to a warrant issued under paragraph (b) of subsection three of this section he shall, as soon as practicable, be taken before the registrar of the nearest convenient court and if he does not enter into a recognizance in the sum of fifty dollars binding him to attend in accordance with the recognizance as a witness, or to attend and produce any book, deed, paper or writing to which the subpoena served on him relates, that registrar may by warrant commit him to prison and order him to be brought before the court at which he was required by the subpoena to attend at such time as may be specified in the warrant.

(6) Where a person is held in custody pursuant to a warrant issued under subsection five of this section he may enter into a recognizance in the sum of fifty dollars binding him to attend in accordance with the recognizance as a witness, or to attend and produce any book, deed, paper or writing to which the subpoena served on him relates and upon his doing so he shall be released from custody.

(7) A person before whom a recognizance is entered into in accordance with subsection five or six of this section shall forthwith transmit that recognizance to the registrar of the court at which the witness is bound to attend.

(8) Where a person who has been released on recognizance in accordance with subsection five or six of this section fails to appear at the time and place specified in the recognizance, the court may forfeit the recognizance and the provisions of subsection three of section eighty-four of the Justices Act, 1902, shall apply in the same way as they apply to a security referred to in that section and to a person who has given such a security.

(9)

Courts of Petty Sessions (Civil Claims).

No. 11, 1970 (9) A subpoena need not be obeyed by a person unless he is tendered his reasonable expenses for attending court in accordance with the subpoena.

Service of processes. **73.** (1) Service of any summons, subpoena, order, notice or other document under this Act may be effected by delivering a copy thereof to the person to be served, or in such other manner as may be prescribed.

(2) Without limiting the generality of subsection one of this section, the rules may provide for substituted service to be effected in such manner and in such circumstances as may be prescribed.

Proceedings may not be removed. **74.** Subject to this Act, a plaint filed in a court or any order or proceedings thereon under this Act, shall not be removed out of a court by writ of certiorari or otherwise.

Adjournment. **75.** (1) A court may from time to time adjourn any proceedings before it as it sees fit.

(2) When a stipendiary magistrate appointed to hold a court is not present to hold the court at any time appointed for the holding of the court, the registrar may adjourn any matters listed for hearing or determination by the court at that time.

(3) A registrar may from time to time adjourn any examination before him under this Act.

Contempt of court. **76.** A person shall not commit contempt in the face of a court or registrar.

Penalty : One hundred dollars.

Courts of Petty Sessions (Civil Claims).

77. (1) All proceedings pending under this Act in a court when it is abolished, may be continued and completed in such court as the Governor by order published in the Gazette may specify, and any judgment or order of a court that has been abolished may be enforced and proceedings taken thereon in the same manner as nearly as possible as if the proceedings had been commenced in, or the judgment had been given or entered up, or the order had been made, by the court specified in the order.

No. 11, 1970
Proceed-
ings after
abolition
of court.

(2) The Governor may in any such order direct that the records of the court that has been abolished shall be removed at or within a time stated in the order to the court specified therein.

(3) The Governor may, by order published in the Gazette, declare that the jurisdiction conferred by this Act shall be not exercised by any court specified in the order.

(4) A court in respect of which an order under subsection three of this section is in force and the registrar of such a court shall not have, exercise or perform any of the jurisdiction, powers, authorities, duties or functions conferred or imposed on courts and registrars by or under this Act.

(5) The provisions of subsections one and two of this section shall apply to a court in respect of which an order under subsection three of this section has been made as if that court had been abolished.

(6) An order under subsection one of this section may be included in an order abolishing a court, in an order made under subsection three of this section or may be published separately.

(7) An order may be made under subsection one of this section whether the court has been abolished before or after the commencement of this Act.

78. No privilege shall be allowed to any barrister, attorney or other person to exempt him from the provisions of this Act.

Privilege.
79.

Courts of Petty Sessions (Civil Claims).

No. 11, 1970 **79.** A person shall not assault, resist, interrupt or obstruct a bailiff in the exercise of any of his powers, authorities, duties or functions under this Act, or rescue or attempt to rescue any property seized or taken by a bailiff.

Obstructing bailiffs.

Penalty: Two hundred dollars or imprisonment for six months, or both.

80. Court fees, except fees in respect of the copying of documents, payable under this Act shall not be charged to or payable by the Government of New South Wales, or any Government department or statutory body whose expenditure is paid out of the Consolidated Revenue Fund, but nothing in this section prevents the recovery by the Crown or any such Government department or statutory body of any such fees that would, had they been paid, have been recoverable.

Court fees not charged to Government departments, etc.

81. All proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

Proceedings for offences.

82. Where a person convicted of an offence against this Act is a body corporate, every person who at the time of the commission of the offence was a director or officer of the body corporate shall be deemed to have committed the like offence and be liable to the penalty provided by this Act for the offence accordingly, unless he proves that the offence was committed without his knowledge, or that he used all due diligence to prevent the commission of the offence.

Provisions relating to offences by bodies corporate.

83. Notwithstanding any proceedings against any person for an offence against this Act (whether resulting in a conviction or otherwise) that person shall remain liable to all civil proceedings in like manner as if the proceedings for the offence had not been taken.

Civil remedy not affected by proceedings for an offence.

84.

Courts of Petty Sessions (Civil Claims).

84. (1) The Governor may make rules for or with respect No. 11, 1970
to— Rules.

- (a) regulating the practice and procedure in courts and in proceedings before registrars;
- (b) prescribing forms for the purposes of this Act, including the forms of any affidavits or other documents to be used for the purposes of this Act;
- (c) the powers and duties of registrars;
- (d) notices required to be given under this Act;
- (e) prescribing the fees to be paid to a registrar in respect of any matter or thing under this Act;
- (f) prescribing scales of expenses to be tendered to persons under subpoena or required to attend in accordance with examination summonses;
- (g) prescribing the times for doing any matter or thing for the purposes of this Act and authorising courts or registrars to substitute in such classes of cases as may be prescribed other times for those prescribed;
- (h) excusing non-compliance with the rules;
- (i) prescribing the manner of doing any matter or thing for the purposes of this Act;
- (j) prescribing the manner in which actions may be taken by or against persons in a representative capacity;
- (k) prescribing the manner of appointing persons as guardians ad litem or next friends for the purposes of actions against or by persons under incapacity;
- (l) amending any summons, plaint, notice of defence or other document used in any proceedings under this Act;
- (m) the joinder of defendants;
- (n)

Courts of Petty Sessions (Civil Claims).

No. 11, 1970

(n) all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Different rules may be made under subsection one of this section according to different circumstances.

Amendment
of Act No.
27, 1902.
Sec. 5 (2).
(Establish-
ment, &c.,
of Courts
of Petty
Sessions.)

85. The Justices Act, 1902, is amended by omitting from subsection two of section five the word "proclamation" and by inserting in lieu thereof the words "order published in the Gazette".

Courts of Petty Sessions (Civil Claims).

SCHEDULE.			No. 11, 1970
Year and number of Act.	Short title of Act.	Extent of repeal.	Sec. 3.
1909 No. 5 ..	Motor Traffic Act, 1909	Section 20 (3).	
1912 No. 30 ..	Government Railways Act, 1912 ..	Section 147.	
1912 No. 33 ..	Small Debts Recovery Act, 1912 ..	The whole.	
1919 No. 17 ..	Bills of Sale (Amendment) Act, 1919..	Section 3.	
1922 No. 4 ..	Small Debts Recovery (Amendment) Act, 1922.	The whole.	
1930 No. 18 ..	Transport Act, 1930	Section 254A (3).	
1931 No. 32 ..	State Transport (Co-ordination) Act, 1931.	Section 22 (5); section 39 (2).	
1933 No. 14 ..	Small Debts Recovery (Amendment) Act, 1933.	The whole.	
1940 No. 44 ..	Attachment of Wages Limitation Act, 1940.	Section 2 (4).	
1949 No. 34 ..	Motor Vehicles Taxation Management Act, 1949.	Section 13 (2).	
1955 No. 20 ..	District Courts (Amendment) Act, 1955.	Section 7; section 8 (2).	
1957 No. 28 ..	Attachment of Wages Limitation Act, 1957.	Section 4.	
1958 No. 6 ..	Road Maintenance (Contribution) Act, 1958.	Section 5 (4).	
1961 No. 18 ..	District Courts and Small Debts Recovery (Amendment) Act, 1961.	Section 4.	
1961 No. 29 ..	Industrial Arbitration (Basic Wage) Amendment Act, 1961.	So much of the First and Second Schedules as relates to the Small Debts Recovery Act, 1912.	
1964 No. 37 ..	Industrial Arbitration (Amendment) Act, 1964.	So much of the First and Second Schedules as relates to the Small Debts Recovery Act, 1912.	

SCHEDULE

Courts of Petty Sessions (Civil Claims).

No. 11, 1970

SCHEDULE—*continued.*

Year and number of Act.	Short title of Act.	Extent of repeal.
1965 No. 32 ..	Law Reform (Miscellaneous Provisions) Act, 1965.	Part IX; so much of the Schedule as relates to the Small Debts Recovery Act, 1912.
1965 No. 33 ..	Decimal Currency Act, 1965.. ..	So much of the First Schedule as relates to the Small Debts Recovery Act, 1912.
1967 No. 86 ..	Industrial Arbitration (Basic Wage) Amendment Act, 1967.	So much of the First and Second Schedules as relates to the Small Debts Recovery Act, 1912.
1968 No. 3 ..	Administration of Justice Act, 1968..	Part X; so much of the Schedule as relates to the Small Debts Recovery Act, 1912.

FIRE