

Act No. 33, 1912.

An Act to consolidate the Acts relating to the
Recovery of Small Debts in Courts of Petty
Sessions. [26th November, 1912.]

SMALL DEBTS
RECOVERY.
—

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Small Debts Recovery Act, Short title. 1912," and is divided into Parts, as follows:—

PART I.—PRELIMINARY—ss. 1-6.

PART II.—JURISDICTION—

Amount—s. 7.

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PART

PART III.—PROCEDURE—

*Actions, how commenced—ss. 18-24.**Default summons and procedure thereon—ss. 25-30.**Default of appearance—ss. 31-33.**Judgment on confession or agreement—ss. 34-36.**Setting aside judgment—s. 37.**Appearance by attorney or agent—s. 38.**Costs—s. 39.**Judgments, how recorded—ss. 40, 41.**Enforcement of judgments and orders—ss. 42-51.**Interpleader—ss. 52, 53.**Attachment of debts—ss. 54-64.**Amendment—s. 65.**Witnesses—ss. 66, 67.**Officers—ss. 68-72.*

PART IV.—MISCELLANEOUS—ss. 73-79.

Repeal of Acts.
Saving clause.

2. The Acts mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.

Notwithstanding the repeal of the Acts hereby repealed:—

All courts established at the commencement of this Act shall be deemed to have been established for the purposes of this Act and all officers appointed under the Acts hereby repealed and in office at the commencement of this Act shall remain in office, and shall be deemed to have been appointed under this Act.

The limits of the petty sessions districts existing at the time of the passing of this Act, shall be deemed to have been defined hereunder.

All rules made under the authority of any Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to have been made under the authority of this Act.

Any form referring to any Act hereby repealed shall be as good and valid for all purposes under this Act as it would have been under such repealed Act immediately prior to the passing of this Act.

Application of Act.
No. 13, 1899, s. 3.

3. This Act shall be in force and apply to all parts of the State.

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4. The Governor may by proclamation in the Gazette define the limits of any petty sessions district for the purposes of this Act, and after any such proclamation has been published in the Gazette the provisions of this Act shall be in force, and the jurisdiction and other powers hereby conferred shall be exercisable within the limits of any petty sessions district defined in such proclamation.

Power to define limits of petty sessions districts. No. 13, 1899, s. 4.

5. Courts of petty sessions shall be courts of record, and the judgment of any of the said courts may be set up as a defence in any action brought either in any of the said courts or in the Supreme Court.

Courts of petty sessions to be courts of record. *Ibid.* s. 5.

6. In this Act, unless the context or subject matter otherwise indicates or requires:—

Interpretation.

“ Admitted set-off ” means set-off admitted by the plaintiff at the time when he brings the action.

No. 18, 1905, s. 2.

“ Court ” means a court of petty sessions.

No. 13, 1899, s. 6.

“ Court of petty sessions ” means—

(a) any two or more justices of the peace sitting for the purposes of this Act at the usual place of meeting of justices in petty sessions;

Ibid.

(b) one justice of the peace when so sitting in cases where, by this Act, a single justice is authorised to adjudicate;

Ibid.

(c) a police magistrate when so sitting in cases where, by this Act, he is vested with exclusive jurisdiction;

Ibid.

(d) a police or stipendiary magistrate when so sitting in any case where a police or stipendiary magistrate is authorised, in the absence of other justices, to do alone whatever may be done by two or more justices sitting in petty sessions;

Ibid.

(e) A stipendiary magistrate when so sitting in his own district under any Act whereby stipendiary magistrates are vested with exclusive jurisdiction in petty sessions.

Ibid.

“ Garnishee ” means a person who is indebted to a judgment debtor.

Ibid.

“ Garnishee order ” means an order directing the attachment of a debt due, owing, or accruing from a garnishee to answer a judgment debt.

Ibid.

“ Prescribed ” means prescribed by this Act or rules made thereunder.

Ibid.

“ Registrar ” means the registrar of a court of petty sessions.

Ibid.

“ Stipendiary magistrate ” includes a deputy stipendiary magistrate.

No. 18, 1905, s. 2.

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PART II.

JURISDICTION.

- Amount.
No. 13, 1899, s. 7. **7.** (1) Save as hereinafter provided, all courts now established or that may hereafter be established shall, within their respective districts, have power and authority to hear and determine in a summary way, and according to equity and good conscience (against persons liable as hereinafter mentioned to be summoned to such court, and every defendant sued jointly with such persons), all actions whatsoever—
- No. 18, 1905, s. 4. (a) for the recovery of any debt or liquidated demand not exceeding thirty pounds, whether on balance of account, or after admitted set-off, or otherwise;
- No. 13, 1899, s. 7. (b) for the recovery of any unliquidated debt to an amount in any case not exceeding thirty pounds;
- Ibid.* (c) for the recovery of any demand or damage, other than debt, whether liquidated or unliquidated, to an amount in any case not exceeding ten pounds, or (where the party intended to be sued by writing under his hand consents thereto) to an amount not exceeding thirty pounds.
- Stipendiary or police magistrate specially appointed.
No. 13, 1899, s. 9.
No. 18, 1905, s. 4. (2) A stipendiary or police magistrate sitting in some place appointed in that behalf by the Governor shall, in addition to the power and authority conferred by subsection one of this section, have power and authority to hear and determine as aforesaid all actions under subsection one (a) of this section to an amount in any case not exceeding fifty pounds.
- One justice.
No. 13, 1899, s. 8.
No. 18, 1905, s. 4. (3) (i) One justice of the peace, sitting outside the boundaries for the time being of the metropolitan police district, shall have power and authority to hear and determine as aforesaid all cases—
 (a) in which the plaintiff seeks to recover no more than the sum of five pounds;
 (b) in which the sum in dispute exceeds five but does not exceed thirty pounds, and both parties consent thereto.
- Ibid.* (ii) The consent of the parties shall be specially entered in the record book at the commencement of the hearing.
- Ibid.* (iii) Every such case shall be proceeded with in every respect as if the same were heard and determined by two or more justices.
- Ibid.* (iv) Where the sum sued for is claimed on balance of account, the jurisdiction conferred by this subsection shall be exercised only if the amounts credited to the defendant in such account have been admitted by the defendant before action brought.
- Notes or bills for sums not exceeding amount of court's jurisdiction.
No. 13, 1899, s. 10. **8.** In case the defendant in any action appears to have given bills of exchange or promissory notes for the payment of any debt originally above the amount of jurisdiction created by this Act, but which bills or notes are separately security for a sum not exceeding the

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the amount of jurisdiction of the court in which the action is tried, each bill or note shall be regarded as forming a distinct and separate contract, and may be sued upon and recovered in the same way as any other debt recoverable under this Act.

9. Any doctor of medicine or other legally qualified medical practitioner may sue for the recovery of any fees or other remuneration as such practitioner in like manner as any surgeon or other person may sue for the recovery of any debt or demand under this Act. Power of medical practitioner to sue for fees. No. 18, 1905, s. 6.

10. Every attorney, solicitor, or other officer of the Supreme Court shall be subject to the several processes, orders, judgments, and executions of the courts of petty sessions in the same manner as other persons are subject to the same. Officers of Supreme Court not exempt. No. 13, 1899, s. 14.

11. No court shall have jurisdiction in any of the following cases:— Limitation of jurisdiction.

- (1) Where the matter in question relates to the taking of any duty to His Majesty or any fee of office or to any annual rent or other matter in which rights in future may be bound or to any general right or duty. No. 13, 1899, s. 11.
- (2) Where the debt sought to be recovered is for any money or thing won at or by means of any race, match, wager, raffle, or any kind of play or game. Ibid.
- (3) Where the debt or claim has arisen more than six years before the issuing of the summons unless there hath been in writing an acknowledgment of or promise to pay the same within that period. Ibid. and No. 18, 1905, s. 5.
- (4) In respect of any contract for the sale of goods unless the buyer has actually received the same or part thereof, or given something in earnest to bind the bargain or in part payment, or some note or memorandum in writing of the bargain has been signed by the party sought to be charged by such contract or his agent thereunto lawfully authorised. No. 13, 1899, s. 11.
- (5) In cases of trespass to land if the title to the freehold therein be bona fide in dispute between the parties. Ibid.

12. It shall not be lawful to split or divide any cause of action for the purpose of bringing the same within the jurisdiction of any court of petty sessions, and in case it appears to the said court at any stage of the proceedings that any cause of action has been so split or divided such court shall dismiss the action brought thereupon with costs. Actions not to be split. Ibid. s. 12.

Place where action may be brought.

13. (1) Actions for debt may be brought either in the court holden in and for the district where the defendant in such action carries on business or usually resides, or in the court holden in and for the district in which the debt sued for was contracted. For debt. No. 13, 1899, s. 18. No. 18, 1905, s. 30.

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For damages.
No. 18, 1905, s. 30.

(2) Actions for damage shall be brought in the court holden in and for the district where the defendant in such action carries on business or usually resides.

Party liable for damage removing to another district.
No. 13, 1899, s. 18.

If any party, after having in one district incurred a liability for any damage recoverable in the courts of petty sessions becomes resident in another district previously to the issuing of a summons for the recovery of such damage, the plaintiff may summon the defendant to the court holden for the district in which such liability for damage was incurred originally, in the same manner as if he had continued a resident of such district.

Where promise made to pay in a particular place.
Ibid.

(3) In case the defendant in any action has given an engagement or promise in writing to pay any debt or sum in a particular place specified the plaintiff may cause such defendant to be summoned to attend the court holden in and for the district within which the place so specified is situated.

Application of section to joint defendants.
Ibid. and No. 18, 1905, s. 31.

(4) This section shall apply where there are two or more persons jointly liable all residing within the jurisdiction of the same court, but in cases where all the persons jointly liable do not reside within the jurisdiction of the same court the plaintiff may proceed as directed in the next following section.

Power to determine questions as to defendant's residence.
No. 13, 1899, s. 18.

(5) Whenever any question arises as to the district in which the defendant is a resident the same shall be determined by the court of petty sessions as incident to the cause.

Where joint defendants reside in different districts.
Ibid. s. 19, and No. 18, 1905, s. 31.
Plaintiff may serve any one.
Ibid.

14. (1) Where there are two or more persons jointly liable, all of whom do not reside within the jurisdiction of the same court, the plaintiff may bring his action before any court within the jurisdiction of which any of the persons jointly liable resides by serving any such person with a summons in the manner hereinafter directed.

Defendant served may notify others.
Ibid.

(2) The person upon whom the plaintiff serves the summons may serve the other persons jointly liable with a notice of such summons in order that they may appear and join in defending the action.

Action to proceed although other defendants do not appear.
Ibid.

(3) If the other persons jointly liable do not appear and join in the defence the action may proceed and judgment be obtained and execution issued against the person who has been served with the plaintiff's summons, although the other persons jointly liable have not either been served with any summons or joined in the defence.

No plea in abatement for non-joinder.
Ibid.

(4) No plea in abatement shall be allowed for nor advantage be taken of the non-joinder of a person jointly liable.

Right to contribution from joint defendants.
No. 13, 1899, s. 20, and No. 18, 1905, s. 31.

15. (1) The person against whom execution is issued shall retain any right which he may have to demand contribution from the other persons jointly liable.

Judgment in action when evidence.
Ibid.

(2) If such person causes the other persons jointly liable to be personally served with a copy of the plaintiff's summons upon him in the action three days before the day appointed for appearing and answering to the same the judgment recovered against him in the action

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or a copy thereof, certified by the registrar, shall be admissible in evidence in any action for contribution afterwards brought by him against the other persons jointly liable for the purpose of proving their liability to such contribution.

(3) If such person does not cause the other persons jointly liable to be personally served as aforesaid, then their liability to contribution shall be proved in the ordinary manner.

Proof of liability to contribute in other cases.
No. 18, 1905, s. 31.

Change of venue.

16. (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 such other court.

Change of venue.
Ibid. s. 21.

(2) If a court or any member of a court is interested in the matter of any action or proceeding pending in such court, it shall not hear and determine the action or proceeding except with the consent of the parties, and shall at the request of the plaintiff order that the venue be changed, and that the action or proceeding be sent for hearing to the nearest court at which it may conveniently be tried or determined.

(3) Where a venue is changed, the registrar shall forthwith transmit by post to the registrar of the court to which the action or proceeding is to be sent for hearing all documents in his possession relating to the action or proceeding.

(4) Such last-mentioned court shall appoint a day for the hearing, notice whereof shall be sent by the registrar, by post or otherwise, to the parties, and shall hear and determine such action or proceeding.

Judgment final and conclusive.

17. All judgments and orders of a court of petty sessions shall be final and conclusive:

Decision of court of petty sessions to be final and conclusive.
No. 13, 1899, s. 13.

Provided that in actions for trespass to land where the right to the possession is shown to be in dispute, and in actions for rent not being between the original parties to the letting where the right to receive or the liability to pay such rent is in dispute, and in actions for contribution to the erection or repair of any dividing fence where the defendant's liability to contribute is in dispute, the judgment of the court as to such right or liability shall be conclusive only as to the particular act of trespass or amount of rent or contribution then in question, and shall not be taken to determine any of those questions generally between the parties.

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PART III.

PROCEDURE.

Plaint and summons.

Plaint.
No. 13, 1899, s. 15.
Contents of plaint.
Ibid.
Second Schedule,
No. 1.

18. (1) Every action shall be commenced by a plaint in writing.

(2) The plaintiff shall, in his plaint, shortly and in substance set forth his cause of action, and shall also state the place of his abode (or the place of abode of his attorney if he sue by an attorney) and the place of abode of the defendant.

Particulars.
Ibid.

(3) The items constituting the particulars of claim shall be appended to the plaint or stated and filed therewith.

Filing.
Ibid.
Second Schedule,
No. 2.

(4) The plaintiff shall cause his plaint to be filed with the registrar of the court at which the action is to be tried at the prescribed time before the sitting of the said court, and the registrar shall annex the plaint or a copy thereof to a copy of the summons hereinafter mentioned, and shall retain the same in court.

Summons.
Ibid., s. 16, and
No. 18, 1905, s. 29.

19. The original summons or a duplicate thereof shall be served on the defendant, either personally or by delivering the same to the wife or servant of the defendant at the defendant's usual place of abode.

Service of summons.
No. 13, 1899, s. 17.

20. In case the messenger or bailiff employed to serve the summons demands admittance into the house where the defendant usually resides and such admittance is refused, he may put such summons or duplicate thereof into the house, or fix it upon the door of the house, and such service shall be good service upon the defendant.

Actions by infants.
No. 13, 1899, s. 23,
and No. 18, 1905,
s. 4 (2).

21. Whenever any wages or any other sum whatsoever not exceeding the sum of fifty pounds is due to any person under the age of twenty-one years, such person may sue for and recover such debt in any court of petty sessions in the same manner as if he were of full age.

Actions by executors
and administrators.
No. 13, 1899, s. 21.

22. (1) Executors and administrators may sue and be sued in the courts of petty sessions, and judgments which have been obtained by plaintiffs but not satisfied previous to their decease, as well as all causes of action, shall survive to their proper personal representative, who may sue out execution in his own name in the same way that the plaintiffs themselves, if living, might have done.

[*Ex parte Brown*,
Knox 320.]

(2) A plaintiff suing as executor or administrator shall so describe himself in the plaint filed.

Actions by trustees.
Ibid., s. 25.

23. A plaintiff suing as trustee shall so describe himself in the plaint filed.

Actions by official
assignees or trustees
of bankrupts.
Ibid., s. 26.

24. A plaintiff suing as official assignee or trustee of a bankrupt or insolvent shall so describe himself in the plaint filed.

Default

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Default summons and procedure thereon.

25. In any action in a court for the recovery of a debt or liquidated demand, with or without interest, the plaintiff may, in lieu of the summons hereinbefore mentioned, cause to be issued a summons in the form number four in the Second Schedule hereto. Such summons is hereinafter referred to as a default summons.

Default summons.
No. 18, 1905, s. 7.
Second Schedule,
No. 4.

26. A default summons or duplicate thereof shall, when practicable, be served personally on the defendant:

Service of default
summons.
Ibid. s. 8.

Provided that where prompt personal service cannot be effected on a defendant, and a stipendiary or police magistrate is satisfied by affidavit that reasonable efforts have been made to effect such service, and that—

- (a) the defendant wilfully evades service of the summons; or
- (b) the summons has been served in the manner directed by sections nineteen and twenty of this Act;

such magistrate may order, on such conditions as may be thought fit, that the plaintiff may proceed as if personal service had been effected.

27. Notice of the grounds of defence to an action in which a default summons has been issued shall be in writing in the form prescribed, signed by the defendant or his attorney, and shall, together with an affidavit verifying it, or stating such facts as the court in the circumstances deems sufficient in that behalf, be filed in duplicate with the registrar.

Ground of defence
to be in writing
lodged with
registrar.
Ibid. s. 9.
Second Schedule,
No. 5.

The registrar shall forthwith communicate any ground of defence so filed to the plaintiff or his attorney by posting the notice to, or by leaving it at, his residence or usual place of abode or business.

28. If, in such action, the defendant does not, within ten days after personal service on him of a default summons, or where service has not been personal within fourteen days after leave to proceed as aforesaid, file notice of grounds of defence and affidavit as aforesaid, the plaintiff within three months after the expiration of the time for filing such notice, upon filing an affidavit of personal service, or of an order of leave to proceed, and an account of what he claims to be due to him verified by the oath of the plaintiff, his attorney or agent, may have judgment entered up by the court or registrar against the defendant for the amount of the claim, and a sum for costs to be prescribed. Where judgment has been entered up by the court or the registrar under this section the court may, on the application of the defendant, direct the said amount and costs to be paid at such times and by such instalments as it may think fit.

Judgment in default
of defence.
Ibid. s. 10.

29. Where in any such action the defendant has filed a notice of grounds of defence and affidavit as aforesaid, the action shall go to trial at the next sittings of the court held not less than four clear days after the day on which such notice was filed.

Trial.
Ibid. s. 11.

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Defence lodged after time.
No. 18, 1905, s. 12.

30. The defendant may, at any time before judgment, file with the registrar notice of grounds of defence and affidavit as aforesaid.

When such notice and affidavit are filed after the time mentioned in section twenty-eight the defendant may be let in to defend—

- (a) if the plaintiff consents in writing thereto; or
- (b) by leave of the court upon filing an affidavit disclosing a defence on the merits and satisfactorily explaining the neglect, and upon such terms as the court thinks fit.

Default of appearance.

Where plaintiff does not appear he may be nonsuited.

Ibid. s. 14.

When defendant admits claim.
No. 13, 1899, s. 21 (2).

31. (1) If the plaintiff does not appear in any action, and the defendant appears according to the summons, the court may nonsuit the plaintiff or enter a verdict for the defendant.

(2) If upon the day of the return of any summons, or at any adjournment of the court or of the cause for which the summons was issued, the plaintiff does not appear when called upon and the defendant appears and admits the cause of action in full or in part, the court may, if it thinks fit, proceed to give judgment according to such admission.

If plaintiff does not appear a sum may be awarded to defendant.

Ibid. s. 27.

32. If upon the return day of any summons, or at any adjournment of the court or of the cause in which the summons was issued, the plaintiff does not appear, the court may (when the defendant appears and does not admit the claim or demand) award to the defendant by way of costs and satisfaction for his trouble and attendance such sum as in its discretion it thinks fit.

By defendant.

Ibid. s. 22 (1).

Trial may be proceeded with ex parte.

33. If on the day named in the summons, or at any adjournment of the court or cause in which the summons was issued, the defendant does not appear, or does not by some one on his behalf sufficiently excuse his absence, or neglects to answer the claim or demand, the court may, upon due proof of service of the summons, proceed to the trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended.

Judgment on confession or agreement.

Statement of confession or agreement may be made, signed.
No. 18, 1905, s. 15.

34. (1) In any action—

- (a) the defendant may sign a statement confessing the amount of the debt or demand for which the plaint has been issued, or any part thereof; or

(b)

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(b) the plaintiff and defendant may sign a statement of any agreement upon the amount of such debt or demand, and of the terms and conditions upon which the same is to be paid or satisfied.

(2) Any such statement shall be signed in the presence of the registrar of the court in which such plaint has been entered, or of an attorney, or a justice of the peace.

35. The registrar shall receive such statement of confession or agreement as aforesaid, and shall, as soon as convenient thereafter, send notice of any such confession to the plaintiff. Statement received by registrar and judgment entered up. No. 18, 1905, s. 16.

On such statement being so received, and on proof by affidavit of the signature or signatures of the party or parties who signed such confession or agreement where such signature or signatures were not made in the presence of the registrar, the court or registrar may enter up judgment in the terms of such statement.

36. In any action for a debt or liquidated demand, judgment by default or confession against one or more of several defendants shall not preclude the plaintiff from proceeding to judgment and issuing execution against any other defendant or defendants, except in so far as satisfaction by any of them operates in favour of all. Where judgment given against some only of defendants. Ibid. s. 17.

Setting aside judgment.

37. The court, on sufficient cause being shown, may, on such terms as it thinks fit, set aside any judgment entered up in the absence of the defendant, or for neglect to file notice of grounds of defence, and any execution thereupon, and let in the defendant to defend. Judgment may be set aside. Ibid. s. 13.

Appearance by attorney or agent.

38. (1) In all actions the plaintiff and the defendant may each appear by himself, his clerk, or servant, or an attorney of the Supreme Court. Parties may appear personally or by clerk or attorney. No. 13, 1899, s. 29(1).

(2) No attorney practising before a court of petty sessions shall demand or take more, by way of fees for work by him done, than the sums set forth in the Third Schedule hereto. Attorney's fees. Ibid. Third Schedule.

(3) If it appears to a court of petty sessions that any attorney or agent has, in any cause in such court, practised corruptly, contemptuously, or in any respect knowingly and wilfully against his duty as an attorney or agent, the court may make an order (to remain with the registrar of the said court) either suspending such attorney or agent from practising for a specified time or prohibiting such attorney or agent from practising for ever in such court. Attorney or agent may be suspended or prohibited. Ibid. s. 66.

Costs.

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Process and witnesses' expenses; professional costs.
No. 18, 1905, s. 24.
No. 13, 1899, s. 29 (2).

39. In all actions or proceedings in a court the court may award to the successful party, by way of costs for court process and attendance of witnesses, such sum as in its discretion it thinks fit; but the costs of professional assistance shall be paid by the party requiring such professional assistance.

Judgments—how recorded.

Entry of judgment.
No. 13, 1899, s. 32.

40. The entry of the judgment on the cause list of the court of petty sessions shall be deemed and held to be a record of such judgment, and the same or a certified copy thereof, under the hand of the clerk of such petty sessions shall (on proof of such signature and of the identity of the claim and parties) be received as evidence of such judgment.

Judgment not to be recorded without affidavit of service.
Ibid. s. 33.

41. Save in the case of judgment entered up under sections twenty-eight, or thirty-five, or seventy-five of this Act, no judgment shall be recorded by any court of petty sessions in any case unless upon proof, by affidavit, of the service of the summons upon the defendant in the manner directed by sections nineteen and twenty of this Act. Such affidavit may be sworn before the registrar, or a commissioner of affidavits, or a justice of the peace.

Enforcement of judgments and orders.

Payment by instalments.
No. 13, 1899, s. 31.

42. (1) A court of petty sessions, whenever it makes an order or decision for the payment of money, may direct such money to be paid at such times and by such instalments as it thinks fit.

Default in payment of instalment.
Ibid.

(2) If default is made in the payment of any one such instalment execution may be had for the whole amount remaining due upon the judgment.

Execution of process.
Ibid. s. 35.
Second Schedule, No. 6.

43. (1) Whenever any court of petty sessions makes any order or decision for the payment of money the registrar of the said court may, on the application of the party in whose favour such order or decision was made, issue a precept in the nature of a writ of fieri facias, which precept shall be directed to any bailiff of any of the said courts or his deputies, who are hereby empowered to execute the same in any part of the State in the same manner in all respects as process of a similar nature issuing out of the Supreme Court may be executed by the sheriff or deputy sheriff.

Where defendant removes into another district after judgment obtained.
Ibid.

(2) The removal by any defendant, after judgment recovered against him, from the jurisdiction of one court into the jurisdiction of another shall not prevent any plaintiff from proceeding against such defendant in the jurisdiction where such defendant happens to be resident at the time of issuing execution, and the bailiff of any court

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court or his deputy may dispose of the goods of such defendant in like manner as if he were a resident of the district in which judgment was recovered against him.

44. Where a court adjudges costs to the defendant he shall be entitled to the like process of execution for his costs as the plaintiff would be entitled to if he had established his claim against the defendant. Defendant entitled to execution for costs. No. 13, 1899, s. 36.

45. (1) Where a judgment or order of a court of petty sessions for the payment of money has been entered up or made in favour of any person, the registrar, upon the application of such person or of his solicitor or agent, shall, on proof that a warrant of execution on such judgment or order has been returned unsatisfied in whole or in part, issue and deliver to such person, solicitor, or agent a certificate in the form in the Second Schedule or to the like effect, and shall make a minute or memorandum thereof against the entry of the judgment on the cause list. Certificate may issue in respect of unsatisfied judgment or order. No. 18, 1905, s. 27. Second Schedule, No. 7.

(2) Such person may file, or cause to be filed, the said certificate in any district court having jurisdiction within the district of such court of petty sessions, or having jurisdiction where the judgment debtor resides. Certificate may be filed in district court.

(3) Thereupon, without any further or other process, execution may be issued out of such district court in the same manner as upon a judgment or order of such court for the sum mentioned in such certificate to be unpaid, together with the fees paid for the certificate to the registrar of the court of petty sessions and the fees paid in the district court for filing the certificate and issuing execution, and the prescribed sum for costs. Execution may issue out of district court.

(4) After the issue of such certificate no further proceedings shall be taken in the court of petty sessions in respect of such judgment or order. No further proceedings in court of petty sessions.

(5) When such certificate has been filed in the district court all 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 or order of the court of petty sessions were a judgment or order of the district court. Provisions of District Courts Act to apply.

46. (1) The registrar of any court shall grant a special writ of execution when demanded by the plaintiff or defendant, as the case may be, in any suit wherein such writ may be issued. Special writs. No. 13, 1899, s. 37.

(2) The registrar shall appoint one or more special bailiffs nominated by the applicant to execute such writ. Registrar to appoint special bailiff.

(3) The party obtaining the appointment of a bailiff to act under any special writ shall, together with two sufficient sureties, execute to the registrar of the court from which the writ issues a bond in the penalty of fifty pounds or for a larger sum not exceeding one hundred pounds if the said court shall so direct, conditioned for the proper performance by the bailiff of the duties of his office. Party applying to give security. (4)

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- Bond to vest in registrar.** (4) The bond shall vest in the registrar of the court for the time being, and may from time to time be sued upon in his name or in the name of any person to whom it may be assigned under any order of the court.
- Assignment of bond.** (5) The assignment of the bond shall be made by an indorsement by the registrar for the time being.
- Mode of assignment.** (6) Any person who sustains any damage by the neglect or misconduct of any such bailiff may proceed before any court of competent jurisdiction (the amount of such damage not exceeding fifty pounds or the sum specially directed by the court as aforesaid), and the bond so given shall stand and be an additional security for such damages, and shall, if necessary, be put in suit to recover the sum and costs from the parties thereto or any of them.
- Damages for misconduct of special bailiff.** (7) In every case in which a special writ of execution is taken out neither the registrar nor bailiffs of the courts of petty sessions shall be responsible for any act done under or in respect of such process by colour thereof, but the person aggrieved by any such act shall have a remedy and right of action against the party or his sureties to whom the writ of execution was granted.
- Registrar and courts bailiffs not to be responsible.** 10 Vic. No. 10, s. 32.
- Execution in six years without revival.** No. 18, 1905, s. 18.
- 47.** During the lives of the parties to a judgment in any court, or those of them during whose lives execution may at present issue within a year and a day without a scire facias, and within six years from the recovery of the judgment, execution may issue without a revival of the judgment.
- Time when execution may be made.** No. 13, 1899, s. 38.
- 48.** No judgment of any of the courts of petty sessions shall be executed at any time after sunset and before sunrise, and if any person executes any such judgment after sunset and before sunrise he shall be liable to a fine of ten pounds, which may be imposed and enforced by an order of the court for the distress and sale of the offender's goods.
- Rights of landlords.** *Ibid.* s. 39.
- 49.** No execution awarded against the goods of any party shall deprive any landlord of the power vested in such landlord by an Act passed in the eighth year of the reign of her late Majesty Queen Anne, entitled "An Act for the better Security of Rents and to prevent Frauds committed by Tenants," of recovering one year's rent in pursuance of the said Act.
- Realty and leaseholds.** *Ibid.* s. 41.
- 50.** No real or leasehold property shall be liable to be levied upon under writs of execution issued out of courts of petty sessions.
- Property comprised in a bill of sale.** *Ibid.* s. 43.
- 51.** (1) No absolute or conditional bill of sale or mortgage of chattel property whatever shall protect such property so levied upon from sale unless—

- (a) the bill of sale or mortgage be produced to the bailiff; and
- (b) the bill of sale or mortgage was executed at least fourteen days before the summons was served upon the defendant in the case in which the writ of execution issued; and

(c)

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- (c) there be expressed in the bill of sale or mortgage a certain time for the payment of the principal sum for which the instrument was given as security, and such time does not exceed one year from the date of the instrument and at the expiration of that time the holder of the bill of sale or mortgage shall not renew it, but either assume possession or proceed to the sale of the property so secured, or relinquish all claim to the protection of it from the debts of other creditors under judgments recovered under this Act or any Act hereby repealed; and
- (d) the bill of sale or mortgage was registered by the registrar at the nearest court of petty sessions within one week of the date of its execution.

Notwithstanding the provisions of this subsection the party entitled thereto may proceed to enforce the levy and sale by taking out a special writ of execution in manner directed by section forty-six of this Act. Levy may be enforced by taking special writ.

(2) Protection from sale under any circumstances shall only extend to such articles of chattel property as are specifically set forth and enumerated in a schedule to be annexed to the bill of sale or mortgage, as the case may be. Limit of protection. No. 13, 1899, s. 32.

Interpleader.

52. (1) If, previously to the sale of any property levied upon, such property being in the actual or ostensible possession of the party against whom the writ is directed, a claim is made to it by any third person, and such claim is deposed to before a justice of the peace, and in such deposition it is averred that the party in whose actual or ostensible possession such property so levied upon be found is not the true owner, but the bailee thereof, the claimant— Claim by person not party against whom execution issued. Ibid. s. 42.

(a) may deposit with the bailiff an amount equal to the value of the property, such amount to be paid by the bailiff into court to abide the decision of the court upon the claim; or No. 18, 1905, s. 20.

(b) may give to the bailiff security to the value of the property. Ibid.

(2) The amount of such value and the nature of such security shall be agreed upon between the claimant and the bailiff, or in case of difference shall be determined by some competent person appointed by the registrar, and the costs (if any) of such determination shall be paid by the claimant, and, if the court so orders, may be added to the costs of the levy. Ibid.

(3) If the claimant, previously to the sale of such property, deposits with the bailiff the amount aforesaid, or gives security as aforesaid, such property shall thereupon, but not otherwise, be released from execution, and the cost of the levy (if any) shall be either added to the amount of the costs charged in the execution or defrayed by the party claiming such property, as the court in its discretion directs. No. 13, 1899, s. 42.

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Interpleader.

No. 13, 1899, s. 40.

No. 18, 1905, s. 19.

53. (1) Whenever a claim is made by a person not being the party against whom execution has issued to any goods or chattels taken or intended to be taken in execution under any process or to the proceeds or value thereof, the court from which the process issued, or, in the absence of the court, the registrar or a justice of the peace, may, upon the application of the bailiff or officer made before or after the return of such process, and as well before as after any action brought against him, call before the court, by an order for that purpose, the party issuing the process and the claimant.

No. 13, 1899, s. 40.

(2) The court may thereupon pronounce its decision in a summary manner for the adjustment of the claim, and the relief and protection of the bailiff or other officer, and may make such order as appears to be just according to the circumstances; and its decision shall be final and conclusive against the party issuing the process and the claimant, and also against all persons claiming by, from, or under them.

Attachment of debts due from garnishees.

Examination of judgment debtor as to debts due to him.

No. 13, 1899, s. 44, and No. 18, 1905, s. 25.

Second Schedule, No. 9.

54. (1) Any creditor who has obtained a judgment in any court of petty sessions may apply to the court in which he obtained such judgment, or, when the court is not sitting, to the registrar thereof or a justice of the peace, for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him, and the court, or, when it is not sitting, the registrar thereof or a justice of the peace, may thereupon make an order for the examination of such judgment debtor and for the production of any books or documents.

Penalty for disobeying order.

No. 13, 1899, s. 44.

(2) Every judgment debtor who refuses or neglects to obey such order shall be subject to all the penalties to which a witness duly subpoenaed to attend at such court, and failing to appear at the time appointed, would be subject.

Ibid.

(3) The court shall cause such judgment creditor to be orally examined touching the premises.

Police magistrate.

No. 13, 1899, s. 45.

55. (1) Save where therein otherwise provided, the jurisdiction given by the seven next following sections shall be exercisable only by a police magistrate.

No. 18, 1905, s. 26.

(2) Wherever in the said sections it is provided that when the court is not sitting any application, order, direction, or summons may be made to and granted by the registrar thereof or a justice of the peace, any such order, direction, or summons so made shall be of the same effect as if made by the court.

Garnishee orders.

No. 13, 1899, s. 46, and No. 18, 1905, s. 26.

Second Schedule, No. 11.

56. (1) The court or, when it is not sitting, the registrar thereof or a justice of the peace, may make an order that all debts due, owing, or accruing from a garnishee residing within the jurisdiction of such court to a judgment debtor shall be attached to answer the judgment debt.

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(2) An application for a garnishee order may be made ex parte by any creditor who has obtained a judgment in any court of petty sessions, either before or after such examination as is provided in section fifty-four.

Application for order.
No. 13, 1899, s. 46.

(3) The application shall be supported by an affidavit of the judgment creditor, or his attorney or agent, stating that the judgment has been recovered and is still unsatisfied, and to what amount, and that a person resident within the jurisdiction of the Court to which the application is made is indebted to the judgment debtor.

Affidavit in support.
Ibid.
Second Schedule,
No. 10.

(4) In proceedings to obtain a garnishee order the court or, when it is not sitting, the registrar thereof, or a justice of the peace, may, in its discretion, refuse to interfere where, from the smallness of the judgment debt or of the amount to be recovered or of the debt sought to be attached or otherwise, the remedy sought would be inadequate, worthless, or vexatious.

Court may refuse to interfere in certain cases.
Ibid. and No. 18,
1905, s. 26.

(5) No order for the attachment of wages or salary of any servant or employee shall be made in any case where such wages or salary do or does not exceed the rate of two pounds per week; and where such wages or salary are or is at a greater rate than two pounds per week, an order shall be made only for the attachment of amounts of the wages or salary in excess of that rate: Provided that no debt contracted prior to the seventeenth day of August, in the year one thousand nine hundred, shall be affected by this subsection.

Wages or salary of £2 per week or under not to be attached.
No. 6, 1900, s. 1.

57. The court or, when it is not sitting, the registrar thereof or a justice of the peace may, by the garnishee order or any subsequent order, summon the garnishee to appear to show cause why he should not pay to the registrar, on behalf of the judgment creditor, the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

Summons to garnishee to show cause.
Ibid.

58. Service on the garnishee of a garnishee order or notice to the garnishee of the making of such order shall attach in the hands of the garnishee all debts due, owing, or accruing from him to the judgment debtor.

Attachment of debts by garnishee order.
No. 13, 1899, s. 48.

59. If the garnishee does not forthwith pay to the registrar, on behalf of the judgment creditor, the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the court may order execution to issue, and it may be sued out accordingly without any other previous writ or process to levy the amount due from such garnishee in payment of the judgment debt or towards satisfaction of the same.

Proceedings to levy amounts due from garnishee to judgment debtor.
Ibid. s. 49.
Second Schedule,
Nos. 12, 13.

60. If the garnishee appears upon summons and disputes his liability the court, instead of making an order that execution shall issue, may order the hearing of such summons to stand adjourned until some day

Where garnishee disputes liability.
Ibid. s. 50.
Second Schedule,
No. 14.

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day to be appointed for that purpose, and may direct that, upon such adjourned hearing, any question necessary for determining the liability of the garnishee be tried and determined, and the order for such adjournment shall be served upon the garnishee, and shall operate as a plaint entered against him to obtain payment of the sum claimed to be due from him to the judgment debtor.

Payment by instalments.
No. 13, 1899, s. 46(4),
and No. 18, 1905,
s. 26.

61. In any order for the payment of money by a garnishee, or upon an application at any time made by him, the court, or, when it is not sitting, the registrar thereof or a justice of the peace, may direct such payment to be made at such times and by such instalments as the said court or registrar or justice of the peace, as the case may be, thinks fit, and if default be made in the payment of any one such instalment execution may issue for so much of the amount then due by the garnishee as will satisfy the judgment debt remaining unpaid at the time of such default.

Discharge of garnishee.
No. 13, 1899, s. 51.

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

Garnishee book to be kept.
Ibid. s. 52.

63. (1) In each court of petty sessions presided over by a police magistrate the registrar shall keep a garnishee book, in which entries shall be made of all garnishee orders and proceedings thereon, with names, dates, and statements of the amounts recovered.

(2) Copies of any such entries may be taken by any person upon application to the registrar, and upon payment of the prescribed fee.

Costs in garnishee proceedings.
Ibid. s. 31.

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

Amendment.

Ibid. s. 62.

65. (1) No process or proceeding of any court of petty sessions shall be set aside on account of any technical error or mistake only.

(2) It shall be competent to every court of petty sessions to decide what is a verbal or technical error or mistake in any action or proceeding.

(3) All errors or mistakes which have not a tendency to misinform or mislead the opposite party shall, in all cases, be deemed merely verbal or technical.

Witnesses

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Witnesses.

66. (1) Every person summoned as a witness to attend any, of the said courts of petty sessions shall attend pursuant to such summons, and shall be subject to the like actions (to be brought in one of the said courts) for disobeying such summons as he would be subject to for disobedience to a subpoena issuing out of the Supreme Court.

Attendance of witnesses.
No. 13, 1899, s. 53.
Second Schedule,
No. 8.

(2) Nothing in this Act contained shall be construed to compel the attendance at any court of petty sessions of any witness who is not resident in the district where the cause in which he is summoned to give evidence is to be tried, nor to compel any witness to go more than three miles from his home, without tender of his reasonable expenses.

Expenses.
Ibid.

67. Every court of petty sessions may punish as for contempt in a summary way by fine not exceeding forty shillings, to be levied upon the goods and chattels of the offender, or by imprisonment for any time not exceeding fourteen days, any plaintiff, defendant, or witness refusing to be sworn or to answer any lawful question.

Penalty for refusing to be sworn or answer.
Ibid. s. 54.

Officers.

68. The clerk of the bench or other clerk of the courts of petty sessions, as may from time to time be directed by such courts respectively, shall discharge the duties of registrar.

Clerk and registrar.
Ibid. s. 55.

69. (1) The courts of petty sessions shall from time to time appoint a bailiff or bailiffs for the service and execution of the processes, orders, and judgments authorised by this Act.

Bailiffs.
Ibid. s. 56.

(2) Any such courts may appoint a sergeant of police or police constable of their respective districts to be a bailiff of the court appointing him, who shall not therefore become incapable of acting as or forfeit his appointment of such sergeant or constable, anything in any Act to the contrary notwithstanding:

Police sergeant or constable may be a bailiff.

Provided that no such sergeant or constable shall be appointed without his consent.

70. If any bailiff, deputy bailiff, or other officer of any court of petty sessions employed to execute any process of execution, by connivance, wilful neglect, or omission, causes or suffers the goods of the party against whom such execution is awarded to be rescued or carried away, so that such execution has not its due effect, any justice of the peace may, upon complaint and due proof thereof made upon oath, order such bailiff, deputy, or officer to pay the sum of money for which such execution was awarded, or such part thereof as the said justice thinks proper, to the party complaining, and may enforce the payment thereof by the same means as are herein provided for the recovery of debts.

Breach of duty in levying execution.
Ibid. s. 57.

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Indemnity to
officers.
No. 13, 1899, s. 58.

Officer may plead
general issue and
give special matter in
evidence.

Limitation of actions
against officers.
Ibid. s. 59.

71. All justices of the peace, officers of courts of petty sessions, keepers of prisons, or other persons who do anything under this Act in obedience to any legal order of any court of petty sessions, are hereby indemnified for whatsoever is done by them respectively in obedience thereto, and if any action is brought against any such keeper, or person, or justice, or officer for performing any duty of his office in pursuance of this Act, such justice, keeper, officer, or other person may plead the general issue, and give the special matter in evidence thereupon, and if the plaintiff be nonsuited or discontinue his action, or a verdict pass against him or judgment be had for the defendant upon demurrer, such defendant shall have double costs.

72. All actions for anything done under the provisions of this Act or any Act hereby repealed by persons acting in execution thereof shall be commenced within six months after the fact was committed, and no writ shall be sued against nor process served upon any justice of the peace, registrar, bailiff, or other officer of any court of petty sessions for anything done in the execution of or by reason of his office until one month after notice in writing has been delivered to him or left at his usual place of abode by the attorney or agent for the party who intends to sue out such writ as aforesaid, in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person bringing such action, and the name and place of abode of the attorney or agent.

A fee of twenty shillings and no more shall be paid for preparing and serving every such notice.

PART IV.

MISCELLANEOUS.

Perjury.
Ibid. s. 60.

73. (1) Whosoever commits wilful and corrupt perjury or falsely affirms when under examination by a court of petty sessions by virtue of this Act, or commits wilful and corrupt perjury in false swearing or affirming in any affidavit or affirmation by this Act required or allowed to be made before any such court or a justice of the peace, shall on conviction be liable to incur and suffer the like pains and penalties as any person convicted of wilful and corrupt perjury.

Court of petty
sessions may commit.

(2) A court of petty sessions may commit for trial and direct a prosecution for perjury to be forthwith instituted against any person who commits perjury or falsely affirms as in the last preceding subsection mentioned.

Proceedings may not
be removed.
Ibid. s. 61.

74. No plaint entered in a court of petty sessions, nor any order or proceeding had thereon by virtue of this Act, shall be removed out of the said court by writ of certiorari or otherwise howsoever.

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75. If both parties in any cause agree between themselves not to try their cause before the court of petty sessions, but by means of arbitration, and notify such agreement by a memorandum in writing, signed by themselves or their agents, the award made on such arbitration shall be binding on both parties, and judgment in accordance therewith may be entered in the cause list of the said court of petty sessions for the plaintiff or defendant as the case may be.

Arbitration award may be entered as a judgment. No. 13, 1899, s. 63.

76. The provisions of sections thirty-four, thirty-five, thirty-six, and thirty-seven of the Supreme Court and Circuit Courts Act, 1900, relating to the collection of the fees to be demanded and paid in the Supreme Court, shall *mutatis mutandis* apply to the fees to be demanded and paid in any court of petty sessions acting within the jurisdiction conferred by this Act.

Court fees to be denoted by stamps. No. 18, 1905, s. 22.

77. (1) No court fees, except fees in respect of the copying of documents, payable to a registrar shall be charged to or payable by the Government of New South Wales, or any department or board whose expenditure is paid out of the Consolidated Revenue Fund.

Court fees not charged to Government departments. *Ibid.* s. 23.

(2) But the said Government department or board may include the amount of such fees in any costs which it may be entitled to receive from any person, and may recover the same as if such fees had been charged and paid; and when recovered such fees shall be paid to the registrar and accounted for by him as directed by the Audit Act, 1902.

78. The forms contained in the Second Schedule hereto, or as near thereto as the nature of the case will permit, shall be used in proceedings under this Act.

Forms. Second Schedule. No. 13, 1899, s. 68.

79. The Governor may make general rules to be in force in the several districts for carrying out the provisions of this Act, and the procedure and practice of courts of petty sessions under this Act, and may in and by such rules alter any forms in any Schedule to this Act.

Rules made by Governor. No. 18, 1905, s. 28.

Such rules shall have the same force and effect as if they formed part of this Act.

Act No. 33, 1912.

Small Debts Recovery.

SCHEDULES.

FIRST SCHEDULE.

Reference to Acts.	Title or Short Title.	Extent of Repeal.
No. 13, 1899 ...	Small Debts Recovery Act, 1899.	The whole, except— (a) Section 64, portion of 65 and the Third Schedule (which were repealed by No. 14, 1904, s. 2). (b) Sections 21 (1), 22 (2), 23, 30, and the remainder of section 65 (which were repealed by No. 18, 1905, s. 3). (c) Section 67 (which was repealed by No. 24, 1909, s. 27).
No. 6, 1900 ...	Attachment of Wages Limitation Act, 1900.	So much of the Act as refers to the attachment of debts in courts of petty sessions.
No. 14, 1904 ...	Justices (Fees) Act, 1904.	So much of Schedule as refers to Act No. 13, 1899.
No. 18, 1905 ...	Small Debts Recovery Amending Act, 1905.	The whole.
No. 24, 1909 ...	Justices (Amendment) Act, 1909.	Section 27.

No. 13, 1899.
Second Schedule.

SECOND SCHEDULE.

FORMS.

1. *Plaints.*

IN THE CASE OF GOODS SOLD.

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

IN THE CASE OF DEMAND FOR RENT.

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

FOR LODGING.

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

FOR HIRE OF HORSES.

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

FOR

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FOR AGISTMENT.

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

FOR WORK AND LABOUR.

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

FOR WORK AND LABOUR OF SERVANTS.

“For the work and labour of the servants of and belonging to the said A.B. performed for the said C.D.”

FOR WORK AND LABOUR OF SERVANTS, HORSES, AND CARRIAGES.

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

FOR WAGES.

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

FOR MONEY LENT.

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

ON A PROMISSORY NOTE OR BILL OF EXCHANGE.

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

ON A BOND.

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

FOR MONEY DUE ON AN AGREEMENT.

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

ON AN AWARD.

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

FOR UNLAWFUL DETENTION OF PROPERTY.

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

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FOR UNLAWFUL DETENTION OF PROPERTY DEPOSITED.

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

FOR DAMAGE SUSTAINED BY IMPROPER DRIVING.

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

FOR AN ASSAULT OR INJURY TO THE PERSON, WIFE, &C.

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

FOR BREAKING AND DESTROYING FENCES, &C., AND FOR INJURIES TO LAND OR CATTLE.

"That the said C.D. on or about the _____ day of _____ broke down and destroyed a fence of the said A.B. at Sydney, in the _____ district, whereby the said A.B. hath sustained damage to the amount of £ _____, &c. [or 'broke down the door of the house of the said A.B. and disturbed him in the peaceable possession thereof,' or 'cut down two trees of the said A.B. of the value of £ _____,' or 'wrongfully trampled down, destroyed, and ate the corn or grass of the said A.B.,' or 'drove about and injured the sheep or cattle,' or 'killed or wounded a dog, horse, &c.,' of the said A.B., of the value of £ _____], and the said A.B. prays," &c.

No. 13, 1899.
Second Schedule.

2. *Ordinary Summons.*

New South Wales.

In the Court of petty sessions for }
the district

To

of

You are hereby summoned to appear in this Court at _____ on _____, the day of _____ next, at ten of the clock in the forenoon of the same day precisely, to answer the following plaint [*insert copy of plaint and particulars as filed with the registrar*], otherwise, upon proof of the due service of this summons, the cause when called on for hearing may be tried, and judgment be given against you for whatever may appear to be due together with such costs as the Court may think fit to award. And take notice that, if you intend to defend upon any matter of set-off or excuse, you must file particulars of the same in the office of the Registrar ... clear days

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days at the least before the day herein named for the hearing of the cause, otherwise the evidence you may bring forward to support such excuse, or set-off, cannot be admitted.

Dated this day of , one thousand nine hundred and By the Court, A.B. Registrar.

3. Defence to Ordinary Summons. New South Wales.

Rules 7, 13, Gazette, 25 May, 1910. No. 13, 1899. Second Schedule.

Court of petty sessions for the district of day of 19 Plaintiff Between A.B. and C.D. Defendant.

Take notice that I intend to defend this action for the following reason [or reasons as the case may be]—

- 1st [State each ground as shortly as possible, but with sufficient clearness, particularly as to times, places, persons, sums, securities, or written instruments, &c.]
2nd
3rd

To A.B., The abovenamed plaintiff.

4. Default Summons.

No. 18, 1905, s. 7. Schedule 2 to rules, Gazette, 25 May, 1910.

In the Court of petty sessions for the district of No. of plaint, of 19 Between , plaintiff, and , defendant.

TAKE NOTICE that unless within ten days after personal service of this summons on you, or, where such service has not been personal, within fourteen days after leave to proceed as if personal service had been effected has been given, you file with the Registrar of this Court at , a notice in duplicate of any grounds of defence you may have to this action, dated and signed by yourself or your attorney, together with an affidavit verifying it, or stating such facts as the Court in the circumstances deems sufficient in that behalf, you will not afterwards be allowed to make any defence to the claim which the plaintiff makes on you, as per margin, the particulars of which are hereunto annexed; but the plaintiff may proceed to judgment and execution without giving any further notice.

If you file such notice with the Registrar within the time specified, the action shall go to trial at the next sittings of this Court to be held not less than four clear days after the day on which you file such notice.

Dated this day of , 19 Registrar of the Court.

£ s. d. Claim Fees for plaint and service Total amount of debt and costs

£

Act No. 33, 1912.

Small Debts Recovery.

No. 18, 1905, s. 9, and Schedule 3 to rules, Gazette, 25 May, 1910.

5. *Notice of grounds of defence to an action in which a default summons has been issued.*

(To be filed in duplicate with an affidavit of verification.)

In the Court of petty sessions for }
the district of }

No. of plaint, , of 19 .

Between , plaintiff, and , defendant.

TAKE NOTICE that I intend to defend this action, and to rely upon the following grounds of defence, namely:—*[Here enumerate grounds of defence.]*

Dated this day of , 19 .

Defendant—

Address—

(An address at which proceedings or notices may be left or sent by post, must be given.)

No. 13, 1899, s. 35. and Second Schedule.

6. *Precept in the nature of a fieri facias.*

EXECUTION AGAINST GOODS.

Court of petty sessions for the }
district of }

To , of , bailiffs of the Court of petty sessions for the district of , and to the deputy bailiffs duly authorised and appointed to execute the processes of this Court, and to each and every of them.

In pursuance and by virtue of a decision of the Court of petty sessions for the district of , made on the day of , 19 , you are hereby required to levy of the goods and chattels of , to satisfy for the amount of pounds shillings and pence, being the amount of judgment and costs which in the said Court he was adjudged to pay to the said , and after levy duly made thereof, forthwith to pay the same into this office. And what you shall do herein certify and return to this Court at the expiration of one month from the date hereof, or within three days after this warrant shall be executed, if that shall sooner happen.

Dated this day of , 19 .

By the Court,
A.B., Registrar.

£ s. d.

Judgment

Costs

Execution

Alias

£

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

Small Debts Recovery.

7. *Certificate of unsatisfied execution on a judgment or order.*

No. 13, 1905.
Schedule Two.

In the Court of petty sessions for the }
district of }

Title of action and date of commencement.	Form or nature of action.	Name, addition, and residence of party in whose favour judgment given or order made.	Name, addition, and address of party against whom judgment given or order made.	Date of judgment or order.	Abstract of judgment or order.	Date of issue of <i>f. fa.</i>	Date of return of <i>f. fa.</i>	Abstract of return.	Amount of judgment or order unpaid.	Remarks.

I certify that this certificate correctly and fully sets forth the particulars of the judgment (*or* order) and of the return unsatisfied of execution issued on such judgment (*or* order) therein described of the Court of petty sessions for the district of sitting under the Small Debts Recovery Act, 1912.

Dated this day of 19 .

A.B.,
Registrar.

8. *Subpœna for witness.*

No. 13, 1899.
Second Schedule.

New South Wales.

Court of petty sessions for the }
district of }

To A.B. of
C.D. of
E.F. of

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

By the Court,
Registrar or Clerk of the Court.

9. *Attachment for non-appearance to a subpœna.*

A.B. plaintiff }
C.D. defendant }

Court of petty sessions for the }
district of }

To bailiffs and their deputies to each and every of them.

No. 13, 1899.
Second Schedule.

At a court of petty sessions for the district of held on the day of 19 it appearing to this court that has been duly served with a copy of a subpœna to attend this court in the above case and though duly called came not. You and each of you are hereby commanded to attach the said wherever you may find him for a disobedience to the said subpœna and him safely and securely keep so that you may have him before a justice of the peace of the said court on the day of , to hear and abide such order as shall then be made touching the contempt of the said , in disobedience of such subpœna.

Small Debts Recovery.

No. 13, 1899.
Second Schedule.

10. *Order for examination of judgment debtor.*

No.

In the Court of petty sessions for the }
district of }

Between , judgment creditor, and , judgment debtor.

UPON the application of the abovenamed judgment creditor it is ordered that the abovenamed judgment debtor attend this Court on the day of , 19 , at the th hour of the clock in the noon, and be examined as to whether any and what debts are owing to him, and that the said judgment debtor produce all necessary books and documents at the time of the examination.

Dated this day of , 19 .

By the Court [*or by the registrar, or by* , J.P., when the Court was not sitting.]

Registrar.

To , the abovenamed judgment debtor.

No. 13, 1899.
Second Schedule.

11. *Affidavit to ground garnishee order.*

No.

In the Court of petty sessions for the }
district of }

Between , judgment creditor, and , judgment debtor.

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

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

Sworn at this day of , 19 , before me

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

No. 13, 1899.
Second Schedule.

12. *Garnishee order attaching debt.*

No.

In the Court of petty sessions for the }
district of }

Between , judgment creditor, and , judgment debtor, and garnishee.

UPON hearing and reading the affidavit of filed the day of , 19 , and upon

It is ordered that all debts owing and accruing due from the abovenamed garnishee to the abovenamed judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the abovenamed judgment creditor in the Court of petty sessions in the district of on the day of , 19 , for the sum of £ s. d., on which judgment the sum of £ s. d. remains due and unpaid.

(And

Small Debts Recovery.

(And it is further ordered that the said garnishee attend this Court on the day of , 19 , at of the clock in the noon, to show cause why he should not pay into Court the debt due from him to the said judgment debtor or so much thereof as may be sufficient to satisfy the said judgment.)

Dated this day of , 19 .

By the Court [or by the registrar, or by , J.P., when the Court was not sitting].

Registrar.

To the abovenamed garnishee.

(To the abovenamed judgment debtor.)

NOTE.--If the garnishee pay the amount of debt or so much thereof as will satisfy the judgment debt into Court five clear days before the hearing of this summons he will incur no costs. If the garnishee does not appear and dispute the debt the Court may order execution to issue against him.

13. Judgment against garnishee.

No. 13, 1899. Second Schedule.

No. In the Court of petty sessions for the district of

Between A.B., judgment creditor, and C.D., judgment debtor, and E.F., garnishee. It is ordered that the said A.B., the abovenamed judgment creditor, do recover against the said E.F., the abovenamed garnishee, the sum of [insert the amount of the judgment debt, or so much thereof as the debts amount to when the same are less than the judgment debt], and £ for costs, amounting altogether to the sum of £ ; and it is further ordered that the garnishee do pay the same to the Registrar of the Court on the day of 19 . [or by instalments of for every days, the first instalment to be paid on the day of 19 .

Acknowledgment of payment into Court. £ s. d.

In case default be made in payment of any one of such instalments and execution issue, it shall be for the whole of the above amount then remaining due.

Dated this day of , 19 .

14. Execution against garnishee.

No. 13, 1899. Second Schedule.

No. In the Court of petty sessions for the district of Folio in ledger.

Between A.B., judgment creditor, and C.D., judgment debtor, and E.F., garnishee. WHEREAS on the day of 19 , the judgment creditor obtained a judgment in this Court against the garnishee for the sum of £ , being [portion of] the amount due by him to the judgment debtor, and it was thereupon ordered that the garnishee should pay the sum to the Registrar on the day of 19 [or by instalments of for every days]. And whereas default has been made in payment according to the said order: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said E.F., wheresover they may be found, within the district of this Court (except the wearing apparel and bedding of him and his family and the tools and implements of his trade, if any, to the value of ten pounds), the sum stated at the foot of this warrant, being the amount due to the said A.B. under this order, including the costs of this execution, and also to seize and take any money or bank-notes, cheques, bills of exchange, promissory notes, bonds, specialities, or securities for money of the said E.F. which

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which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution and the cost of making and executing the same, and to pay what you shall have so levied to the Registrar of this Court, and to make return of what you have done under this warrant immediately upon the execution thereof.

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

Registrar.

To the bailiff of the said Court and others the assistant bailiffs thereof.

Amount of which judgment was obtained.

	£	s.	d.
Amount of judgment..
Costs
Mileage
Paid into Court
<hr/>			
Total amount to be levied ..	£		

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

Application was made to the Registrar for the warrant at minutes past the hour of in the noon of the day of , 19 .

No. 13, 1899.
Second Schedule.

15. *Order for trial where garnishee disputes debt.*

No.
In the Court of petty sessions in the }
district of }

Between A.B., judgment creditor, and C.D., judgment debtor, and E.F., garnishee.

WHEREAS the judgment creditor at a Court holden at on the day of , 19 , obtained a judgment against C.D., of , for the sum of £ and costs, and which judgment now remains unsatisfied: And whereas the judgment creditor having filed an affidavit stating that the said E.F. was indebted to the said C.D., a summons was issued calling upon the garnishee to show cause why he should not pay into Court the amount so due or so much thereof as might be sufficient to satisfy the judgment debt, and the said garnishee appeared upon the said summons and disputed his liability: It is ordered that the hearing of the said summons be adjourned until the day of , 19 , at the hour of in the noon, and that upon such adjournment the liability of the garnishee to pay to the judgment debtor the sum of £ , according to the particulars hereunto annexed, be tried and determined [or insert any special direction as to question to be tried].

Dated this day of 19 .

Registrar.

	£	s.	d.
Debt or claim
Cost of summons
Attorney's costs
<hr/>			
	£		

Small Debts Recovery.

THIRD SCHEDULE.

Attorney's costs.

	Section 38 (2). No. 13, 1899.		
	£	s.	d.
For drawing and copying plant, with the particulars	0	2	6
For summons, with the particulars	0	1	0
For defence or set-off, with the particulars	0	2	6
For an Advocate's fee in a case not exceeding £10, not more than	1	1	0
For an Advocate's fee in a case exceeding £10	3	3	0
