

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

W. L. S. COOPER,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 14th November, 1929.*

New South Wales.



ANNO VICESIMO

GEORGII V REGIS.

Act No. , 1929.

An Act to amend the Small Debts Recovery Act, 1912, and certain other Acts; and for purposes connected therewith.

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

1. (1) This Act may be cited as the "Small Debts Short title. Recovery (Amendment) Act, 1929," and shall be read and construed with the Small Debts Recovery Act, 1912, as amended by the Bills of Sale (Amendment) Act, 1919, and the Small Debts Recovery (Amendment) Act, 1922.

Small Debts Recovery (Amendment).

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

(3) The Principal Act as amended by this Act may be cited as the Small Debts Recovery Act, 1912-1929.

2. (1) The Principal Act is amended by omitting from subsection two of section seven the words "sitting in some place appointed in that behalf by the Governor." Amendment of Act No. 23, 1912. Section 7 (2).

(2) The Principal Act is amended by inserting next after section seven the following new section:— Section 7A.

7A. (1) A court of petty sessions shall have jurisdiction as provided in this section, notwithstanding that the defendant is not within New South Wales, if the defendant carries on business or usually resides in any other State or part of the Commonwealth within fifty miles of the boundary of the district for which the court is held. Jurisdiction where defendant outside the State. cf. 1924, No 42, s. 10.

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

(a) where the debt sued for was contracted, or the liability for damages arose, within the district for which the court is held; or

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

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

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

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

(6) This section applies whether the cause of action arose before or after the commencement of the Small Debts Recovery (Amendment) Act, 1929.

(7)

Small Debts Recovery (Amendment).

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

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

(4) In respect of any contract for the sale of any goods unless the buyer has actually accepted part of the goods so sold and actually received the same or given something in earnest to bind the contract or in part payment or some note or memorandum of the contract has been made and signed by the party sought to be charged by such contract or his agent in that behalf.

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

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

(5) The Principal Act is amended by inserting after section twelve the following new section 12A:—

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

Provided that where a defendant has a debt or demand in respect of which he could institute an action in such court if the amount thereof were not more

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5 more than that for which a plaint may be entered
in that court the defendant may abandon the
excess, which abandonment shall be stated upon
the prescribed notice, and may plead by way of set
off such debt or demand to an amount not exceed-
ing that for which a plaint may be entered as
aforesaid.

10 (2) No set off shall be pleaded under this
section unless the prescribed notice contains or has
annexed to it shortly and in substance the cause of
action and the items constituting the particulars of
claim, and where the grounds of defence or notice
thereof are required to be verified by affidavit unless
15 there is filed with such prescribed notice an affidavit
by the defendant or his attorney that such grounds
are true in substance and in fact.

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

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

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

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

(7) Where the defendant under this section
pleads a debt or demand by way of set off the court
may, notwithstanding anything herein contained,
direct that such pleading be struck out if the court
40 is of opinion that the matter cannot be conveniently
or

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or ought not to be disposed of in the pending action. Where the pleading is so directed to be struck out the defendant shall be at liberty to take such other proceedings as he may think fit in respect of the debt or demand.

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(6) The Principal Act is amended—

Section 13.

(i) by omitting from subsection one of section thirteen the words "for debt" and the words "in such action";

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(ii) by inserting at the end of the same subsection the words "or the liability for the damages arose";

(iii) by omitting subsections two and four of the same section.

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(7) The Principal Act is amended by omitting section fourteen and by inserting the following section in lieu thereof:—

Section 14.

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14. (1) Where any plaintiff has any debt or demand recoverable under this Act against two or more persons jointly answerable, it shall be sufficient if any one or more of such persons is served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable have not been served or sued, or are not within the jurisdiction of the court.

Persons
jointly liable.
cf. 1912,
No. 23, s. 59.

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

(8) The Principal Act is amended by omitting section fifteen.

Section 15.

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(9) (a) The Principal Act is amended by inserting in section nineteen after the word "wife" the word "husband."

Section 19.

(b) By inserting at the end of the same section the following words:—

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Provided that where after calling at least on one previous occasion at the defendant's usual place of abode

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abode the bailiff of the court is unable to effect service in the manner prescribed by this section service may be effected by the said bailiff upon some person apparently of not less than sixteen
5 years of age at the said place of abode.

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

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

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

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

(14) The Principal Act is amended— Section 40.

(i) by omitting from section forty the words "on the cause list" and by inserting in lieu thereof the words "in the record book";
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(ii) by omitting from the same section the words "clerk of such petty sessions" and by inserting in lieu thereof the word "registrar."

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

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(16) The Principal Act is amended by omitting Section 42. subsection one of section forty-two and by inserting the following subsection in lieu thereof:—

5 42. (1) A court of petty sessions may at any time Payment by instalments. before the issue of execution and upon notice being given to the judgment creditor direct the amount of any judgment to be paid at such times and by such instalments as it thinks fit.

(17) The Principal Act is amended— Section 43.

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

15 (ii) by inserting in the same subsection after the words “decision was made” the words “or such judgment was entered up.”

(18) The Principal Act is amended— Section 51.

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

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

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

35 (iv) by omitting from subsection three of the same section the word “creditor” and by inserting in lieu thereof the word “debtor”;

 (v) by inserting at the end of subsection three of the same section the words: “Provided that

no

Small Debts Recovery (Amendment).

no such examination as to the property or means of the judgment debtor, other than debts due to him, shall be permitted without leave of the court."

5 (19) The Principal Act is amended by inserting Section 55.
in subsection one of section fifty-five after the words
"only by a" the words "stipendiary or."

(20) The Principal Act is amended— Section 56.

10 (i) by omitting from subsection one of section
fifty-six the words "court, or when it is not
sitting, the registrar thereof or a justice of
the peace" and by inserting in lieu thereof the
words "registrar of a court";

15 (ii) by inserting in the same subsection after the
the word "residing" the words "or carry-
ing on business";

(iii) by inserting in subsection three of the same
section after the word "resident" the words
"or carrying on business";

20 (iv) by omitting from subsection four of the
same section the words "court, or when it is
not sitting, the registrar thereof or a justice
of the peace may, in its" and by inserting
in lieu thereof the words "registrar may, in
25 his";

(v) by inserting at the end of the same section the
following new subsection:—

30 (6) In the preceding subsection the words
"wages or salary" include earnings which
are not under a contract of employment, but
which are, in the opinion of the court, either
analogous to or in the nature of wages or
salary, and the words "servant or employee"
include any person whose earnings are not
35 under a contract of employment, but are, in
the opinion of the court, either analogous to
or in the nature of wages or salary.

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

5 66. (1) Any party to an action may obtain at the Witnesses.
 office of the registrar a subpoena to a witness with cf. 1898, No.
 or without a clause requiring the production of 11, s. 12.
 books, deeds, papers, and writings in his possession
 or control, and every person subpoenaed as a witness
 10 attend pursuant to such subpoena unless he has
 just cause or reasonable excuse, and unless he has
 such cause or excuse shall produce any books,
 deeds, papers, or writings required by such subpoena
 to be produced.

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

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

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

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

Such security may be enforced by action for and
 on behalf of His Majesty the King in the court at

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5 which the witness was subpoenaed to attend, and such action may be brought and continued and all proceedings in connection therewith may be carried on, and any judgment recovered may be enforced by the registrar, for the time being, of that court under the title of his office.

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

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

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

15 67. Every court of petty sessions may punish for contempt in a summary way by fine not exceeding five pounds, recoverable in the same manner as a fine imposed by justices under the Justices Act, 1902, as amended, any plaintiff, defendant, witness, or person who is present in court and required to give evidence refusing without just or reasonable excuse to be sworn or to answer any lawful question or to produce any books, deeds, papers, or writings required to be produced by any subpoena duly served.

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

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

35 (24) The Principal Act is amended by omitting from section seventy-five the words "cause list" and by inserting in lieu thereof the words "record book."

Small Debts Recovery (Amendment).

(25) The Principal Act is amended—

(a) by omitting Form nine, Attachment for non-^{Form 9.} appearance to a subpoena, in the ^{Second} Second Schedule, and by inserting the following form ^{Schedule.} in lieu thereof:—

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

Court of petty sessions for the }
district of }

Plaint No. of 19

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Between , Plaintiff, and , Defendant.

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

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WHEREAS having been duly served with a subpoena to attend as a witness in this action at a court holden at at on the day of 19 , failed to appear when called upon in open Court and the due service of such subpoena on the said having been proved to the Court and it also having been proved to the Court that his non-appearance was without just cause or reasonable excuse and oath having been made that he will probably be able to give material evidence, these are therefore to command you and each of you to apprehend the said

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

30

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

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

35

Court of petty sessions holden at

(b) by inserting the following new Form sixteen ^{Form 16.} after Form fifteen in the ^{Second} Second Schedule:— ^{Schedule.}

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

To wit }

BE it remembered that on the day of in the year of Our Lord, one thousand nine hundred and of , in the

Small Debts Recovery (Amendment).

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

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

CONDITION.

The condition of the within written recognizance is such
 that whereas the within named has
 been apprehended under and by virtue of a warrant
 issued by the Court of petty sessions holden at
 in the said State for disobeying a subpoena to appear as a
 witness before such Court in a certain action in which
 was plaintiff and was
 defendant, if therefore the said shall appear
 before the said Court to be holden at on
 the day of 19 , at o'clock in the
 noon and testify what he shall know concerning the said
 action, then the said recognizance to be void or else to
 stand in full force and virtue.

Legislative Council.

No. , 1929.

A BILL

To amend the Small Debts Recovery Act, 1912, and certain other Acts; and for purposes connected therewith.

[MR. BOYCE;—22 October, 1929.]

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

1. (1) This Act may be cited as the "Small Debts Recovery (Amendment) Act, 1929," and shall be read and construed with the Small Debts Recovery Act, 1912, as amended by the Bills of Sale (Amendment) Act, 1919, and the Small Debts Recovery (Amendment) Act, 1922.

Short title.

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

(3) The Principal Act as amended by this Act may be cited as the Small Debts Recovery Act, 1912-1929. 5

Amendment of
Act No. 23,
1912.

Section 7 (2).

Section 7A.

Jurisdiction
where
defendant
outside the
State.

cf. 1924,
No. 42, s. 10.

2. (1) The Principal Act is amended by omitting from subsection two of section seven the words "sitting in some place appointed in that behalf by the Governor."

(2) The Principal Act is amended by inserting next after section seven the following new section:— 10

7A. (1) A court of petty sessions shall have jurisdiction as provided in this section, notwithstanding that the defendant is not within New South Wales, if the defendant carries on business or usually resides in any other State or part of the 15 Commonwealth within ten miles of the boundary of the district for which the court is held.

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

- (a) where the debt sued for was contracted, or 20 the liability for damages arose, within the district for which the court is held; or
- (b) where the defendant has given an engagement or promise in writing to pay any debt or sum at a particular place specified, and 25 such place is within the district for which the court is held.

(3) In any case coming within this section the provisions of any Act of the Parliament of the Commonwealth for the time being in force applying 30 to such case shall be complied with.

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

(5) This section applies whether the defen- 35 dant has or has not ever been resident or carried on business in New South Wales.

(6) This section applies whether the cause of action arose before or after the commencement of the Small Debts Recovery (Amendment) Act, 1929. 40

(7)

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

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

(4) In respect of any contract for the sale of any goods unless the buyer has actually accepted part of the goods so sold and actually received the same or given something in earnest to bind the contract or in part payment or some note or memorandum of the contract has been made and signed by the party sought to be charged by such contract or his agent in that behalf.

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

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

(5) The Principal Act is amended by inserting after section twelve the following new section 12A:—

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

Provided that where a defendant has a debt or demand in respect of which he could institute an action in such court if the amount thereof were not more

more than that for which a plaint may be entered in that court the defendant may abandon the excess, which abandonment shall be stated upon the prescribed notice, and may plead by way of set off such debt or demand to an amount not exceeding that for which a plaint may be entered as aforesaid. 5

(2) No set off shall be pleaded under this section unless the prescribed notice contains or has annexed to it shortly and in substance the cause of action and the items constituting the particulars of claim, and where the grounds of defence or notice thereof are required to be verified by affidavit unless there is filed with such prescribed notice an affidavit by the defendant or his attorney that such grounds are true in substance and in fact. 10 15

(3) No debt or demand shall be pleaded by way of set off unless it is owing to or enforceable by all the defendants if there are more than one, or is due from or enforceable against all the plaintiffs if there are more than one. 20

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

(5) In every action under this Act in which the defendant pleads by way of set off any debt or demand against the plaintiff, the defendant shall be entitled to recover in such action the amount, if any, by which the debt or demand so set off is found to exceed the debt or demand claimed and proved by the plaintiff, and shall have judgment and execution for the same accordingly. 25 30

(6) The judgment in any action in which the defendant pleads a debt or demand by way of set off shall be in full discharge of the cause of action so pleaded. 35

(7) Where the defendant under this section pleads a debt or demand by way of set off the court may, notwithstanding anything herein contained, direct that such pleading be struck out if the court is of opinion that the matter cannot be conveniently 40
or

or ought not to be disposed of in the pending action. Where the pleading is so directed to be struck out the defendant shall be at liberty to take such other proceedings as he may think fit in respect of the debt or demand.

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(6) The Principal Act is amended—

Section 13.

(i) by omitting from subsection one of section thirteen the words "for debt" and the words "in such action";

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(ii) by inserting at the end of the same subsection the words "or the liability for the damages arose";

(iii) by omitting subsections two and four of the same section.

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(7) The Principal Act is amended by omitting section fourteen and by inserting the following section in lieu thereof:—

Section 14.

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14. (1) Where any plaintiff has any debt or demand recoverable under this Act against two or more persons jointly answerable, it shall be sufficient if any one or more of such persons is served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable have not been served or sued, or are not within the jurisdiction of the court.

Persons
jointly liable.
cf. 1912,
No. 23, s. 59.

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

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(8) The Principal Act is amended by omitting section fifteen.

Section 15.

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(9) The Principal Act is amended by omitting from section twenty-eight the words: "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."

Section 28.

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Small Debts Recovery (Amendment).

- Section 29. (10) The Principal Act is amended by omitting from section twenty-nine the words "the next."
- Section 31. (11) The Principal Act is amended by inserting at the end of subsection one of section thirty-one the words: "Provided that where a verdict has been entered for the defendant under this subsection, the court, on sufficient cause being shown, may, on such terms as it thinks fit, set aside such verdict, and set down the action for trial at the same or any subsequent sittings of the court." 5 10
- Section 38. (12) The Principal Act is amended by inserting in subsection one of section thirty-eight after the word "actions" the words "applications or proceedings" and after the word "his" the words "spouse or."
- Section 40. (13) The Principal Act is amended— 15
 (i) by omitting from section forty the words "on the cause list" and by inserting in lieu thereof the words "in the record book";
 (ii) by omitting from the same section the words "clerk of such petty sessions" and by inserting in lieu thereof the word "registrar." 20
- Section 41. (14) The Principal Act is amended by inserting in section forty-one after the words "this Act" where first occurring the words "or where the defendant appears at the hearing in the manner prescribed by subsection one of section thirty-eight of this Act." 25
- Section 42. (15) The Principal Act is amended by omitting subsection one of section forty-two and by inserting the following subsection in lieu thereof:—
 42. (1) A court of petty sessions may at any time 30
 before the issue of execution and upon notice being given to the judgment creditor direct the amount of any judgment to be paid at such times and by such instalments as it thinks fit.
- Section 43. (16) The Principal Act is amended— 35
 (i) by inserting in subsection one of section forty-three after the word "money" the words "or whenever judgment has been entered under section twenty-eight of this Act by the registrar"; 40
 (ii) 40

Payment by instalments.

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

(17) The Principal Act is amended—

Section 54.

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

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

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

(iv) by omitting from subsection three of the same section the word "creditor" and by inserting in lieu thereof the word "debtor";

25 (v) by inserting at the end of subsection three of the same section the words: "Provided that no such examination as to the property or means of the judgment debtor, other than debts due to him, shall be permitted without leave of the court."

30 (18) The Principal Act is amended by inserting in subsection one of section fifty-five after the words
"only by a" the words "stipendiary or." Section 55.

(19) The Principal Act is amended—

Section 56.

35 (i) by omitting from subsection one of section fifty-six the words "court, or when it is not sitting, the registrar thereof or a justice of the peace" and by inserting in lieu thereof the words "registrar of a court";

40 (ii) by inserting in the same subsection after the the word "residing" the words "or carrying on business";

(iii)

- (iii) by inserting in subsection three of the same section after the word "resident" the words "or carrying on business";
- (iv) by omitting from subsection four of the same section the words "court, or when it is 5 not sitting, the registrar thereof or a justice of the peace may, in its" and by inserting in lieu thereof the words "registrar may, in his";
- (v) by inserting at the end of the same section the 10 following new subsection:—

(6) In the preceding subsection the words "wages or salary" include earnings which are not under a contract of employment, but which are, in the opinion of the court, either 15 analogous to or in the nature of wages or salary, and the words "servant or employee" include any person whose earnings are not under a contract of employment, but are, in the opinion of the court, either analogous to 20 or in the nature of wages or salary.

Section 66.

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

Witnesses.
cf. 1898, No.
11, s. 13.

66. (1) Any party to an action may obtain at the 25 office of the registrar a subpoena to a witness with or without a clause requiring the production of books, deeds, papers, and writings in his possession or control, and every person subpoenaed as a witness to attend any of the courts of petty sessions shall 30 attend pursuant to such subpoena unless he has just cause or reasonable excuse, and unless he has such cause or excuse shall produce any books, deeds, papers, or writings required by such subpoena 35 to be produced.

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

(3) Where any person duly served with a subpoena to attend as a witness fails to appear when called upon in open court, the court may, 40 upon proof of such service, and also that his non-appearance

5 non-appearance is without just cause or reasonable
excuse, and upon oath that he will probably be able
to give material evidence, issue a warrant in the
form provided in the Second Schedule to bring him
before the court to give evidence.

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

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

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

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

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

(21) The Principal Act is amended by omitting Section 67.
section sixty-seven and by inserting in lieu thereof the
following section:—

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

Punishment
for contempt.

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

Section 68. (22) The Principal Act is amended by omitting 5
section sixty-eight and by inserting in lieu thereof the following section:—

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

Section 75. (23) The Principal Act is amended by omitting 10
from section seventy-five the words "cause list" and by inserting in lieu thereof the words "record book."

(24) The Principal Act is amended—

Form 9. (a) by omitting Form nine, Attachment for non- 15
Second appearance to a subpoena, in the Second
Schedule. Schedule, and by inserting the following form
in lieu thereof:—

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

Court of petty sessions for the } 20
district of }

Plaint No. of 19

Between , Plaintiff, and , Defendant.

To the bailiffs of the Court of petty sessions for the
district of and their deputies, and to each 25
and every of them.

WHEREAS having been duly served with a
subpoena to attend as a witness in this action at a court
holden at at on the day of
19 , failed to appear when called upon in open Court and 30
the due service of such subpoena on the said
having been proved to the Court and it also having been
proved to the Court that his non-appearance was without
just cause or reasonable excuse and oath having been made
that he will probably be able to give material evidence, 35
these are therefore to command you and each of you to
apprehend the said
wherever you may find him, and safely and securely keep
him so that you may bring and have him before the Court
of petty sessions holden at , on the 40
day

day of _____, 19____, at _____ o'clock, in the _____ noon,
to testify what he shall know concerning the above action,
or so that he may be otherwise dealt with according to law.

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

5

(L.S.)

(L.S.)

Court of petty sessions holden
at _____

10

(b) by inserting the following new Form sixteen Form 16.
after Form fifteen in the Second Schedule :— Second
Schedule.

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

15

To wit }

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

25

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

30

CONDITION.

The condition of the within written recognizance is such
that whereas the within named _____ has
35 been apprehended under and by virtue of a warrant
issued by the Court of petty sessions holden at _____
in the said State for disobeying a subpoena to appear as a
witness before such Court in a certain action in which
_____ was plaintiff and _____ was
40 defendant, if therefore the said _____ shall appear
before the said Court to be holden at _____ on
the _____ day of _____ 19____, at _____ o'clock in the
noon and testify what he shall know concerning the said
action, then the said recognizance to be void or else to
45 stand in full force and virtue.

45

