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

Legislative Assembly Chamber, Sydney, 22 November, 1881.

STEPHEN W. JONES. Clerk of Legislative Assembly.

New South Wales.



ANNO QUADRAGESIMO QUINTO

VICTORIÆ REGINÆ.

No.

An Act for the better recovery of Judgment Debts in District Courts and in Courts of Petty Sessions.

MHEREAS it is expedient that provision be made for the better Preamble. recovery of Judgment Debts in District Courts and in Courts of Petty Sessions Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council 5 and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :-

1. In construing this Act the term "Court" shall if not incon- Interpretation sistent with the context be taken to mean the District Court Judge clause in any proceeding in a District Court or the Police Magistrate in any

10 proceeding in a Court of Petty Sessions and the word "officer" shall if not inconsistent with the context be taken to mean the Registrar of the District Court or Court of Petty Sessions.

2. It shall be lawful for any creditor who has obtained a judg- Examination of ment in any District Court or Court of Petty Sessions to lodge with Judgment Debtor as to debts due to 15 the officer of the Court in which he has obtained such judgment an him. 351 - Aaffidavit

Small Debts Recovery.

affidavit stating the name address and description of any person or persons who are residing within the jurisdiction of such Court and whom he considers are debtors to the judgment debtor and the Court shall thereupon issue an order addressed to the judgment debtor com-5 manding him to appear and produce all necessary books and documents

and shall orally examine him as to any or what debts are due owing or accruing to him from any person or persons mentioned in such affidavit and every judgment debtor who shall refuse or neglect to obey such order shall for every such offence forfeit a sum not exceeding forty 10 shillings.

3. It shall be lawful for the Court upon the ex parte application Court may order an of any creditor who has obtained a judgment in that Court either attachment of debts. before or after such oral examination as is provided in the last pre-

- ceding section and upon affidavit by such judgment creditor or his 15 attorney or agent stating that the judgment has been recovered and that it is still unsatisfied and to what amount and that any other person is indebted to the judgment debtor and is within the jurisdiction to order that all debts due owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be
- 20 attached to answer the judgment debt and by the same or any subsequent order the Court may summon the garnishee to appear to show cause why he should not pay to the officer 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.
- 4. Service of an order on the garnishee that debts due owing or Attachment order to 25 accruing to the judgment debtor shall be attached or notice to the bind debts. 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.
- 5. If the garnishee does not forthwith pay to the officer on Proceedings to levy behalf of the judgment creditor the amount due from him to the amounts due from judgment debtor or an amount equal to the judgment debt and does ment debtor. 30 not dispute the debt due or claimed to be due from him to the judgment debtor or if he does not appear upor summons then the Court
- 35 may order execution to issue and it may be sued for 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.
- 6. If the garnishee disputes his liability the Court instead of Where judgment 40 making an order that execution shall issue may order that the judg- creditor to sue garnishee. ment creditor shall be at liberty to enter a plaint against the garnishee to obtain payment to him of the amount of the debt due from him to the judgment debtor and where the garnishee does not reside or carry on business within the jurisdiction of the Court the judgment creditor
- 45 shall lodge a certificate of the judgment together with an affidavit as provided for by the third section herein with the officer of the Court in the district in which the garnishee resides or carries on business and such last-mentioned Court may thereupon order that the judgment creditor shall be at liberty to enter a plaint against the garnishee to
- 50 obtain payment to him of the amount of the debt due from him to the judgment debtor and every cause set down under and by virtue of this section shall be heard and determined as if the debt due from the garnishee to the judgment debtor had been due to the judgment creditor.
- 55 7. Where the garnishee shall pay all debts due owing or No costs when accruing from him to the judgment debtor or so much thereof as is garnishee pays. 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.

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8.

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

9. Whenever in proceedings to obtain an attachment of debts Proceedings when 5 as herein provided it is suggested that any debt sought to be attached to have lien upon belongs to some third person who has a lien or charge upon it the debt. Court may order such third person to appear and state the nature and particulars of his claim upon such debt and after hearing the evidence

10 of such third person or in case of such third person not appearing upon such order the Court may order execution to issue to levy the amount due from such garnishee or may order that the judgment creditor shall be at liberty to enter a plaint against the garnishee as hereinbefore provided.

10. In proceedings to obtain an attachment of debts as herein Court may refuse to 15 provided the Court may in its discretion refuse to interfere where from interfere in proceed-the smallness of the indemont debt on of the amount to be and interfere in grocedthe 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 and subject to any other 20 provisions contained in this Act The costs of any application for an

attachment of debt under this Act and of any proceeding arising from or incidental to such application shall be in the discretion of the Court.

11. In each District Court or Court of Petty Sessions presided Attachment Book to over by a Police Magistrate the officer shall keep a Debt Attachment be kept. 25 Book in which book entries shall be made of all attachments and proceedings thereon with names dates and statements of the amounts recovered as is in the Schedule hereunder provided and copies of any entries made therein may be taken by any person upon application to the officer and upon payment of the fee provided.

12. The District Court Judges for the time being or any three Power to make rules 30 of them shall have power to make such general rules as they shall think courts. fit for regulating the practice and proceedings of the District Courts in reference to this Act the fees to be allowed to barristers and attorneys and the expenses to be paid to witnesses and also to frame forms for

35 every matter or proceeding in the said District Courts under this Act and to alter or vary the forms so made or those provided for by this Act and also to fix the Court fees payable in such District Courts for any proceeding under this Act and from time to time to alter or vary any such rules or forms and the rules so made shall not take effect until 40 one month after the publication thereof in the Government Gazette.

13. The Courts of Petty Sessions in each Police District shall Power to make rules have power to make such rules as they shall think fit for regulating Petty Sessions. the practice and proceedings of each of such Courts under this Act and for the fixing of Court fees payable thereunder but such rules shall 45 have no effect until approved of by Her Majesty's Attorney General

for the time being.

14. The several Courts of Petty Sessions in the Colony shall Power to fix with the approval of Her Majesty's Attorney General for the time being bailiff's fees. have power from time to time to fix the amount of the fees payable 50 to every bailiff under such Courts notwithstanding the provisions of the

Act tenth Victoria number ten.

15. The several forms in the Schedules to this Act or as near Forms in Schedules thereto as the nature of the case will permit shall be used in all pro-ceedings in the District Courts and Courts of Petty Sessions until the

55 same shall be altered as is hereinbefore provided.

16. This Act shall be styled and may be cited as the "Small short title. Debts Recovery Act."

SCHEDULES.

SCHEDULES.

SCHEDULE A.

Section 2.

Section 2.

4

Affidavit of Judgment Creditor in support of order for examination of Judgment Debtor. No.

5	a the District Court of
	holden at
	(Seal.)
	or in proceedings in Petty Sessions.
7	a the Court of Petty Sessions for the the day of 188
10	District of the day of 188
10	
	Between Judgment Creditor and Judgment Debtor.
]	of the abovenamed judgment creditor [or attorney or agent for the
1	bovenamed judgment creditor] make oath and say as follows :
	(1.) By a judgment given in this action and dated the day of 188
15	[a verified copy of which judgment is annexed hereto] it was adjudged that I
	[or the abovenamed creditor] should recover against the abovenamed judg-
	ment debtor the sum of \pounds s. d. and costs [to be taxed] and the
	said costs were allowed at \pounds
	(2.) The said still remains unsatisfied [to the extent of] and
2 0	interest amounting to \pounds s. d.
	(3.) The said judgment debtor is within the jurisdiction of the Court and resides
	at
	(4.) I am [or the judgment creditor is] desirous that the said judgment creditor
25	
	should produce all necessary books and documents.
	Sworn at the day of 188 before me
25	should be orally examined by this Court as to whether any or what debts are owing to him by any party or parties and that upon such examination he should produce all necessary books and documents.

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

SCHEDULE B.

30 Order for examination of Judgment Debtor. No. In the District Court of 3 holden at or in proceedings in Petty Sessions. 35 In the Court of Petty Sessions for the } District of Between Judgment Creditor and Judgment Debtor. UPON reading the affidavit of filed this day of 188 and 40 it is ordered that the abovenamed judgment debtor attend this Court on the day of 188 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 and that the costs of this application be

45 day of Dated this 188

By the Court.

Registrar.

To the abovenamed judgment debtor.

SCHEDULE C.



(And it is further ordered that the said garnishee attend this Court on the 20 day of 188 at of the clock in the noon on an application that the said garnishee 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) And that the cost of this application be

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30

35

Dated this

188 day of

By the Court.

Registrar.

To the abovenamed garnishee. (To the abovenamed judgment debtor.)

SCHEDULE D. Summons upon a Garnishee.

Section 3.

No. In the District Court of holden at (Seal.)

or in proceedings in Petty Sessions.

In the Court of Petty Sessions for the ? District of

Between A.B. Judgment Creditor [address and description] and C.D. Judgment Debtor [address and description] and E.F. Garnishee [address and description].

40 WHEREAS the at a Court holden at on the day of 188

obtained a judgment against C.D. of [name address and description] for the sum of and costs which judgment remains unsatisfied : £

And whereas the plaintiff has filed an affidavit stating that you are indebted to the said C.D. You are hereby summoned to appear at a Court holden at day of 188 at the hour of in the noon on the noon to show cause 45 why an order should not be made upon you for payment of the amount of the said judgment or so much thereof as shall be equal to the amount of the debts due owing

and accruing from you to the said C.D. And take notice that from and after the service of the summons upon you all

50 such debts are attached to answer the said judgment. And further take notice that if you shall pay to the Registrar of this Court the amount of such debts or so much thereof as will satisfy the judgment debt five clear days before the day you are required to appear you will incur no costs. Dated this

188 day of

Garnishee.

55

To

Registrar.

SCHEDULE E.

Section 3.

Small Debts Recovery.

SCHEDULE E.

Affidavit for leave to summon Garnishee.

No. In the District Court of holden at (Seal.)

Between

or in proceedings in Petty Sessions

In the Court of Petty Sessions for the ? District of

10 T

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Judgment Creditor and Judgment Debtor.

- the abovenamed judgment creditor make oath and sayof That I on the day of last past recovered judgment in the District Court holden at [or in the Court of Petty Sessions at] against the abovenamed judgment debtor for the sum of £ and costs.
 That the said judgment is still wholly unsatisfied [or is still unsatisfied to the sum of £]
- 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.

188 before me this day of Sworn at

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

SCHEDULE F.

Judgment against Garnishee.

No. 25 In the District Court

(Seal.)

holden at

or in proceedings in Petty Sessions

In the Court of Petty Sessions for the ?

30 District of

> Between A.B. Judgment Creditor and C.D. Judgment Debtor and E.F. Garnishee. WHEREAS A.B. at a Court holden at on the day of

obtained a judgment against C.D. for the sum of £ and costs and which judgment remains now unsatisfied And whereas the said A.B. having filed an affidavit stating 35 that the abovenamed garnishee was indebted to the said C.D. the said garnishee was 35 that the abovenamed garnishee was indebted to the said C.D. the said garnishee was summoned to show cause why he should not be ordered to pay the amount of the said judgment or so much thereof as should be equal to the amount of the debts due owing and accruing from him to the said C.D. And the abovenamed garnishee having failed to appear before the Court this day [or appeared before the Court this day and having 40 failed to show cause why he should not be ordered to pay such debts]
It is ordered that the said A.B. the abovenamed judgment creditor do recover are instable of the said A.B. the sum of f.

against the said E.F. the abovenamed garnishee the sum of \pounds [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 \pounds for costs amounting altogether to the sum of \pounds the judgment debt] and £ Dated this day of 188 45

SCHEDULE G.

Execution against Garnishee.

Section 5.

Folio in Ledger.

No. No. of Warrant. 50 In the District Court of

holden at (Seal.)

or in proceedings in Petty Sessions.

In the Court of Petty Sessions for the ? District of 55

Between A.B. Judgment Creditor and C.D. Judgment Debtor and E.F. Garnishee. WHEREAS on the
into Court the sum of \pounds day of
being the [or so much of the] amount of debts found
[here insert address and description] a judgment debtor of A.B. And

6

Section 3.

Section 5.

Small Debts Recovery.

And whereas default has been made in payment of 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. wheresoever they may be found (except the wearing apparel and bedding of him and his family and the tools and implements of his trade if any to 5 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 specialties or securities for money of the defendant which may there be found or such part or so much thereof as may be sufficient to satisfy this execution and the cost such part or so much thereof as may be sufficient to satisfy this execution and the cost 10 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 By the Court

188

Registrar.

15 To the Bailiff of the said Court.

Amount for which judgment was obtained.

			£	s. d.
Paid into Court				
Costs adjudged Remaining due				
Remaining due				
Mileage				
Total amount t	o be lev	ied	£	

NOTICE.-The goods and chattels are not to be sold until after the end of five 25 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 day of 188 noon of the the hour of in the

SCHEDULE H.

Section 6.

30

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Order for Plaint against Garnishee.

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	No.	
	In the District Court	2
	holden at	5
	(Seal.)	
35		or in proceedings in Petty Sessions.

In the Court of Petty Sessions

in the District of

Between A.B. Judgment Creditor and C.D. Judgment Debtor and E.F. Garnishee

40

WHEREAS the Judgment Creditor at a Court holden at on the day of 188 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. the said E.F. was summoned before this Court and appeared in obedience thereto and alleges that he is not indebted to the said C.D. as alleged in the said effidavit 45 affidavit

It is ordered that the said A.B. be at liberty to enter a plaint in this Honorable Court against the said E.F. to recover the sum of \mathcal{E} alleged to be due (owing or accruing to) from the said E.F. to the said C.D.

day of 188 Dated this

50

Registrar.

SCHEDULE J.

Small Debts Recovery.

SCHEDULE J.

Order on third person to appear.

No. In the District Court 5 holden at (Seal.)

or in proceedings in Petty Sessions.

}

2

In the Court of Petty Sessions in the District of

10 Between A.B. Judgment Creditor C.D. Judgment Debtor E.F. Garnishee and M.M. Claimant.

Claimant.WHEREAS A.B. at a Court holden at on the day of 188 .obtained a judgment against C.D. for the sum of \pounds and costs and whereas an affidavit has been filed in this Court that one E.F. is indebted to the said C.D. in the sum of \pounds and whereas it is alleged that M.M. of (description) has a lien or a charge upon or is otherwise entitled to the said debt so due from the said E.F. to the said C.D. as aforesaid.It is ordered that the side that the side that the side that the said C.D. as aforesaid. 15 sum of £

It is ordered that the said M.M. and the said A.B. C.D. and E.F. appear before this Court on the day of 188 to state the nature and particulars 20 of their respective claims to such debt and maintain or relinquish the same and abide by such order as may be made therein.

Dated this day of 188

holden at

To M.M. Claimant.

District Court

25

[cr Court of Petty Sessions at

SCHEDULE K.

Section 11.

]

Registrar.

	Attachment Book.	
30	No. Plaintiff Defendant	
	For whom judgment given Amount of judgment Costs	
35	Order for examination of judgment debtor Garnishee order attaching debts Summons upon garnishee	
40	Name of garnishee Description Address	
	Order for plaint against garnishee Order on third person to appear Name	
45	Description Address For whom judgment given Amount of judgment Costs	
	Order	

Section 9.

8

SCHEDULE L.

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Small Debts Recovery.

			SCHED	ULE L.			Section 11.
	District Court	holden at	[0	r Court of	Petty Session	s at]
		Certificate	e of entry i	n Attachme	ent Book.		
	No.			(ca a) early	a briefs up rain		
5	Plaintiff						
	Defendan						
	For whom	judgment give	en				
		fjudgment					
	Costs						
10	Order for	examination of	fjudgment	debtor			
	Garnishee	order for atta	ching debts	8			
	Name of g	upon garnishe	e		and the second		
	Desc	ription					
15	Addr	ess					
10		plaint against	garnishee				
	Order on t	third person to	appear				
	Name	8					
	Desc	ription					
20	Addr	ess					
	For whom	i judgment give	en				
		ofjudgment					
	Costs						
	Order						
25 0	I hereby cer f the District Cou	tify that the abo rt at	ove is a tru (or Court	e copy of of Petty S	an entry in the Sessions at	Attach	ment Book
	Dated this	day o		188			
						R	egistrar.

Sydney : Thomas Richards, Government Printer.-1881:

[9d.]

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351—B



SMALL DEBTS RECOVERY BILL.

SCHEDULE of the Amendments referred to in Message of 16th December, 1881.

JOHN J. CALVERT, Clerk of the Parliaments.

Page 1, clause 2, lines 14 and 15. Omit "lodge with the officer of" insert "apply to" Pages 1 and 2, clause 2, lines 15 to 20 and 1 to 5. Omit "an affidavit stating the name

address and description of any person or persons who are residing within the jurisdiction of such Court and whom he considers are debtors to the judgment debtor and the Court shall thereupon issue an order addressed to the judgment debtor commanding him to appear and produce all necessary books and documents and shall orally examine him as to any or what debts are due owing or accruing to him from any person or persons mentioned in such affidavit" *insert* "for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him and the Court may thereupon make an order for the examination of such judgment debtor and for the production of any books or documents and shall cause him to be orally examined to unknown." examined touching the premises"

Page 2, clause 2, line 6. After "shall" omit remainder of clause insert "be subject to all the penalties to which a witness duly subpœnaed to attend at such Court and failing to appear at the time appointed would be subject'

After "Court" insert "or in any other District Court or clause 3, line 11. ,, Court of Petty Sessions"

After "and" omit "is within the jurisdiction" insert "resides clause 3, line 17. ,, within the jurisdiction of the Court to which such application is made'

clause 6, line 41. After "garnishee" insert "appears upon summons and"

, 6, line 42. After "may order" omit remainder of clause insert "the hearing of such summons to stand adjourned until some 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 or 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 by him to the judgment debtor.

Page 3, clause 7, lines 1 to 3. *Before* "where" *insert* "The costs of any application for an attachment of debt and of any proceedings arising from or inci-dental to such application shall be in the discretion of the Court but"

clause 9. Omit Clause 9.

,,

,,

- 11. 10, line 33. Omit "as is in the Schedule hereunder provided"
 12. 11, line 41. Omit "in the said District Courts" ,, ,,
- .. "
- •• ..
- 12.
 11, line 46.
 Omit "Government"

 16.
 15, line 61.
 Omit "shall be styled and"
 ,, "

Pages 4 to 9, Schedules A to L. Omit Schedules A to L inclusive insert new Schedules A to F inclusive.

c 106-



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

Legislative Assembly Chamber, Sydney, 22 November, 1881.

STEPHEN W. JONES, Clerk of Legislative Assembly.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

Legislative Council Chamber, Sydney, 16th December, 1881. JOHN J. CALVERT, Clerk of the Parliaments.

New South Wales.



ANNO QUADRAGESIMO QUINTO

VICTORIÆ REGINÆ.

No.

An Act for the better recovery of Judgment Debts in District Courts and in Courts of Petty Sessions.

HEREAS it is expedient that provision be made for the better Preamble. VV recovery of Judgment Debts in District Courts and in Courts of Petty Sessions Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council

1. In construing this Act the term "Court" shall if not incon- Interpretation sistent with the context be taken to mean the District Court Judge clause

in any proceeding in a District Court or the Police Magistrate in any 10 proceeding in a Court of Petty Sessions and the word "officer" shall if not inconsistent with the context be taken to mean the Registrar of the District Court or Court of Petty Sessions.

2. It shall be lawful for any creditor who has obtained a judg-Examination of Judgment Debtor ment in any District Court or Court of Petty Sessions to lodge with the as to debts due to 15 officer of apply to the Court in which he has obtained such judgment an him.

affidavit stating the name address and description of any person or persons who are residing within the jurisdiction of such Court and whom he considers are debtors to the judgment debtor and the Court shall thereupon issue an order addressed to the judgment debtor com-20 manding him to appear and produce all necessary books and documents and shall orally examine him as to any or what debts are due owing or accruing to him from any person or persons mentioned in such affidavit for 351--A

Note .-- The words to be critted are ruled through ; those to be inserted are printed in black letter.

Small Debts Recovery.

for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him and the Court may thereupon make an order for the examination of such judgment debtor and for the production of any books or documents and shall cause him to be orally 5 examined touching the premises and every judgment debtor who shall refuse or neglect to obey such order shall for-every-such-offence-forfeit-a sum not exceeding forty shillings be subject to all the penalties to which a witness duly subpænaed to attend at such Court and failing to appear at the time appointed would be subject.

3. It shall be lawful for the Court upon the *ex parte* application Court may order an of any creditor who has obtained a judgment in that Court or in ^{attachment of debts.} any other District Court or Court of Petty Sessions either before or 10 after such oral examination as is provided in the last preceding

- section and upon affidavit by such judgment creditor or his attorney 15 or agent stating that the judgment has been recovered and that it is still unsatisfied and to what amount and that any other person is indebted to the judgment debtor and is-within-the-jurisdiction resides within the jurisdiction of the Court to which such application is made to order that all debts due owing or accruing from such third person
- 20 (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt and by the same or any subsequent order the Court may summon the garnishee to appear to show cause why he should not pay to the officer on behalf of the judgment creditor the debt due from him to the judgment
- 25 debtor or so much thereof as may be sufficient to satisfy the judgment debt.

4. Service of an order on the garnishee that debts due owing or Attachment order to accruing to the judgment debtor shall be attached or notice to the bind debts. garnishee of the making of such order shall attach in the hands of the

30 garnishee all debts due owing or accruing from him to the judgment debtor.

5. If the garnishee does not forthwith pay to the officer on Proceedings to levy behalf of the judgment creditor the amount due from him to the amounts due from judgment debtor or an amount equal to the judgment debt and does ment debtor.

- 35 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 for 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
- 40 of the same.

6. If the garnishee appears upon summons and disputes his liability Where judgment the Court instead of making an order that execution shall issue may order creditor to sue garnishee. that the judgment creditor shall beat liberty to enter a plaint against the

- garnishee to obtain playment to him of the amount of the debt due from him 45 to the judgment debtor and where the garnishee does not reside or carry on business within the jurisdiction of the Court the judgment creditor shall lodge a certificate of the judgment together with an affidavit as provided for by the third section herein with the officer of the Court in the district in which the garnishee resides or carries on business
- 50 and such last-mentfioned Court may thereupon order that the judgment creditor shall be at liberty to enter a plaint against the garnishee to obtain payment to him of the amount of the debt due from him to the judgment debtor and every cause set down under and by virtue of this section shall be heard and determined as if the debt due from the
- 55 garnishee to the judgment debtor had been due to the judgment ereditor the hearing of such summons to stand adjourned until some 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 or determined and the order for such adjourn-
- 60 ment 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 by him to the judgment debtor. 7.

	7. The costs of any application for an attachment of debt and N_0 of any proceedings arising from or incidental to such application shall gard	costs when nishee pays.
	be in the discretion of the Court but where the garnishee shall pay	in orbuitter, i
	all debts due owing or accruing from him to the judgment debtor or	
5	5 so much thereof as is sufficient to satisfy the judgment debt into Court	
Ū	five clear days before the return day of the summons he shall not be	
	liable for any costs incurred by the judgment creditor.	
	8. Payment made by or execution levied upon the garnishee Gar	Handly Alland
	under any proceeding herein provided shall be a valid discharge to disc	nishee harged
10	0 him as against the judgment debtor to the amount paid or levied	al o
-0	although such proceeding may be set aside or the judgment reversed.	
	9. Whenever in proceedings to obtain an attachment of debts Pro	1
	as herein provided it is suggested that any debt sought to be attached thir	d person alleged
	as herein provided it is suggested that any debt sought to be attached thir belongs to some third person who has a lien or charge upon it the deb	nave lien upon
15	5 Court may order such third person to appear and state the nature and	L. B
	particulars of his claim upon such debt and after hearing the evidence	I
	of such third person or in case of such third person not appearing upon	abovename
	such order the Court may order execution to issue to levy the amount	(J) 14
	due from such garnishee or may order that the judgment creditor shall be	a la
20	0 at liberty to enter a plaint against the garnishee as hereinbefore provided.	
	10. 9. In proceedings to obtain and attachment of debts as herein Con	rt may refuse to
	provided the Court may in its discretion refuse to interfere where from inte	rfere in proceed-
	the smallness of the judgment debt or of the amount to be recovered	o ablach debt.
	or of the debt sought to be attached or otherwise the remedy sought	8
25	5 would be inadequate worthless or vexatious and subject to any other	
	provisions contained in this Act The costs of any application for an	25 1 25
	attachment of debt under this Act and of any proceeding arising from	
	or incidental to such application shall be in the discretion of the Court.	
	11. 10. In each District Court or Court of Petty Sessions presided Atta	achment book to
30	0 over by a Police Magistrate the officer shall keep a debt attachment ^{be k}	ept.
	book in which book entries should be made of all attachments and pro-	
	ceedings thereon with names dates and statements of the amounts	
	recovered as is in the Schedule herounder-provided and copies of any	
35	entries made therein may be taken by any person upon application to 5 the officer and upon payment of the fee provided.	
00	12. 11. The District Court Judges for the time being or any three Pow	an to make unles
	of them shall have power to make such general rules as they shall think ^{&c.} _{Cou}	in District
	fit for regulating the practice and proceedings of the District Courts in	
	reference to this Act the fees to be allowed to barristers and attorneys	20 10
40		In the Die
		bild
	and to alter or vary the forms so made or those provided for by this	
		ws-Id the Co
	any proceeding under this Act and from time to time to alter or vary	
45	5 any such rules or forms and the rules so made shall not take effect until	
	one month after the publication thereof in the Government Gazette.	UPON Tea
	19 10 The Compter (D-4) C ' ' IDI' D'(') III	hite

13. 12. The Courts of Petty Sessions in each Police District shall have Power to make rules power to make such rules as they shall think fit for regulating the practice &c. in Courts of and proceedings of each of such Courts under this Act and for the for and proceedings of each of such Courts under this Act and for the fixing 50 of Court fees payable thereunder but such rules shall have no effect

until approved of by Her Majesty's Attorney General for the time being. 14. 13. The several Courts of Petty Sessions in the Colony shall Power to fix with the approval of Her Majesty's Attorney General for the time bailiff's fees.

being have power from time to time to fix the amount of the fees pay-55 able to every bailiff under such Courts notwithstanding the provisions

of the Act tenth Victoria number ten.

15. 14. The several forms in the Schedules to this Act or as near Forms in Schedules thereto as the nature of the case will permit shall be used in all pro- to be used. ceedings in the District Courts and Courts of Petty Sessions until the

60 same shall be altered as is hereinbefore provided.

16. 15. This Act shall-be-styled and may be cited as the "Small Short title. Debts Recovery Act."

Small Debts Recovery.

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SCHEDULES.

		Instant Caure of	
		1	190.01
		SCHEDULE A. Section	n 2 .
	Affidavit of Judgmen	t Creditor in support of order for examination of Judgment Debtor.	
	No.		
5	In the District Court holden at	of }	
	(Seal.)		
		or in proceedings in Petty Sessions.	
6	In the Court of Pett District of	Sessions for the the day of 188	
10	District of Between	Judgment Creditor and Judgment Debtor.	
	I of	the abovenamed judgment creditor [or a torney or agent for the	
	abovenamed judgment	creditor make oath and say as follows:-	
	(1.) By a judgme	ent given in this action and dated the day of 188	
15	[a verified co	by of which judgment is annexed hereto] it was adjudged that I venamed creditor] should recover against the abovenamed judg-	
	ment debtor	the sum of \pounds s. d. and costs to be taxed and the	
0		still remains unsatisfied [to the extent of] and	
20	(2.) The said interest amo	unting to £ s. d.	
-	(3.) The said ju	dgment debtor is within the jurisdiction of the Court and resides	
	(4) I am [or t]	he judgment creditor is] desirous that the said judgment creditor	
	should be or	ally examined by this Court as to whether any or what debts are	
25	owing to hi	n by any party or parties and that upon such examination ne	
		the day of 188 before me	
	Sworn at	the day of 188 before me	
	mhia affidanit	t is filed on behalf of the abovenamed judgment creditor.	
	This amoayn	the med on behan of the abovenamed Judghent creater.	
		· · · · · · · · · · · · · · · · · · ·	
		SCHEDULE B. Sector	n 2.
		Order for examination of Judgment Debtor.	
30	No.	Oraci jor examination of Daugment Dector.	
	In the District Court	f }	
	holden at	J The Charles States	
		or in proceedings in Petty Sessions.	
35	In the Court of Pett District of	y Dessions for the	
	Between	Judgment Creditor and Judgment Debtor.	
	UPON reading the at		
	and	A finite set of the providence of the second set of the set of the second set of the second second set of the second s	
40		dovenamed judgment debtor attend this Court on the day the th hour of the clock in the noon and be examined	
	as to whether any ar	what debts are owing to him and that the said judgment debtor	
	produce all necessary	pooks and documents at the time of the examination and that	
	the costs of this appli Dated this	day of 188	
45	Dateu tins	By the Court.	
	m (1 1	Registrar.	
	To the above	enamed judgment debtor.	

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Small Debts Recovery.

		SCHEDULE C.	Section 3.
		Garnishee order attaching Debt.	
	No.		
5	In the District Court of holden at		
0	(Seal.)		
		or in proceedings in Petty Sessions.	
	In the Court of Petty S District of	essions for the {	in tonues inclutione in resolution
.0		ent Creditor and Judgment Debtor	and Garnishee.
	Upon hearing		d the day of
	188 and ur	on	herenemed carnishee
	It is ordered that all d	ebts owing and accruing due from the nent debtor be attached to answer a judge	nent recovered against
15	the said judgment debt	br by the abovenamed judgment creditor	III the District court
	of holden at	Low in the Court of Petty Sessions III	n which judgment the
	sum of f. s d	remains due and unpaid.	and some white the little the state
20	(And it is furthe	ordered that the said garnishee attend th	oon on an application
40	day of 188 : that the said garnishee	pay into Court the debt due from him	to the said judgment
	debtor or so much there	of as may be sufficient to satisfy the salu	udgment) And that
	the cost of this applicat	on be	
		and the second second second	
	Dated this	day of 188 .	
25		By the	Court.
		and but the way well show which as touther	Registrar.
	To the abovenamed	garnishee.	
	(To the abovename	judgment debtor.)	were at the subscript product of the
			and the second s
			er het heren erforsterde entre s
		SCHEDULE D.	Section 3.
30)	Summons upon a Garnishee.	and and a second second
	No.		much bist in a
	In the District Court of	}	3.8 - 10 -
	holden at (Seal.)	,	
35	5	or in proceedings in Petty Sessions.	
	In the Court of Petty	Sessions for the }	
	District of Retween A B Judgmer	Creditor [address and description] and	D Indoment Debtor
	Laddress and d	for Crounder Langerood and accordential and	J.D. Judginent Debioi
4	1 uuur 000 unu u	escription] and E.F. Garnishee [address and	description].
	Warman the	escription] and E.F. Garnisnee [address and	day of 188
	0 WHEREAS the obtained a judgment	scription] and E.F. Garnisnee [address and at a Court holden at on the grainst C.D. of [name address and descri	day of 188
	0 WHEREAS the obtained a judgment : £ and costs whic And whereas th	ascription] and E.F. Garnisnee [address and at a Court holden at on the against C.D. of [name address and description] I judgment remains unsatisfied :	day of 188 ption] for the sum of at you are indebted to
	D WHEREAS the obtained a judgment a £ and costs whic And whereas th the said C.D. You are	ascription] and E.F. Garnisnee [address and at a Court holden at on the against C.D. of [name address and description] in judgment remains unsatisfied : a plaintiff has filed an affidavit stating the hereby summoned to appear at a Court h	day of 188 ption] for the sum of at you are indebted to plden at on the
4	0 WHEREAS the obtained a judgment :	ascription] and E.F. Garnisnee [address and at a Court holden at on the against C.D. of [name address and descri- l judgment remains unsatisfied : e plaintiff has filed an affidavit stating the hereby summoned to appear at a Court has a the hour of in the rot he made upon you for payment of t	day of 188 ption] for the sum of at you are indebted to olden at on the noon to show cause he amount of the said
	O WHEREAS the obtained a judgment : £ and costs whic And whereas th the said C.D. You are 5 day of why an order should : indement or so much t	at a Court holden at on the against C.D. of [name address and described] by plaintiff has filed an affidavit stating the plaintiff has filed an affidavit stating the hereby summoned to appear at a Court hereby at the hour of in the table be made upon you for payment of the hereof as shall be equal to the amount of the state of the second state	day of 188 ption] for the sum of at you are indebted to olden at on the noon to show cause he amount of the said
	 WHEREAS the obtained a judgment a function of the second secon	ascription] and E.F. Garnisnee [address and at a Court holden at on the against C.D. of [name address and descri- l judgment remains unsatisfied : e plaintiff has filed an affidavit stating th thereby summoned to appear at a Court h 188 at the hour of in the not be made upon you for payment of t bereof as shall be equal to the amount of to the said C.D.	day of 188 ption] for the sum of at you are indebted to olden at on the noon to show cause he amount of the said f the debts due owing
4	O WHEREAS the obtained a judgment of and costs whice And whereas the the said C.D. You are day of why an order should judgment or so much t and accruing from you And take notice	ascription] and E.F. Garnisnee [address and at a Court holden at on the against C.D. of [name address and descr. I judgment remains unsatisfied : e plaintiff has filed an affidavit stating the hereby summoned to appear at a Court h 188 at the hour of in the not be made upon you for payment of t hereof as shall be equal to the amount of to the said C.D. that from and after the service of the s	day of 188 ption] for the sum of at you are indebted to olden at on the noon to show cause ne amount of the said f the debts due owing summons upon you all
4	 WHEREAS the obtained a judgment a function of the stand costs which and costs which and costs which the said C.D. You are been as a cost of the stand of the stand accruing from you and take notice of the stand further take a further take a further take a further take a standard furthe	ascription] and E.F. Garnisnee [address and at a Court holden at on the against C.D. of [name address and descr. I judgment remains unsatisfied : e plaintiff has filed an affidavit stating the hereby summoned to appear at a Court h 188 at the hour of in the not be made upon you for payment of t hereof as shall be equal to the amount of to the said C.D. that from and after the service of the s l to answer the said judgment. e notice that if you shall pay to the Regi	day of 188 ption] for the sum of at you are indebted to olden at on the noon to show cause ne amount of the said of the debts due owing summons upon you all strar of this Court the
4	 WHEREAS the obtained a judgment a function of the said C.D. You are the said C.D. You are the said C.D. You are to day of why an order should fudgment or so much the and accruing from you And take notice Such debts are attached and further tak amount of such debts 	ascription] and E.F. Garnisnee [address and at a Court holden at on the against C.D. of [name address and descr. I judgment remains unsatisfied : e plaintiff has filed an affidavit stating th behereby summoned to appear at a Court h 188 at the hour of in the not be made upon you for payment of t bereof as shall be equal to the amount of to the said C.D. that from and after the service of the s l to answer the said judgment. e notice that if you shall pay to the Regi or so much thereof as will satisfy the jun	day of 188 ption] for the sum of at you are indebted to olden at on the noon to show cause ne amount of the said if the debts due owing ummons upon you all strar of this Court the gment debt five clear
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4	 WHEREAS the obtained a judgment a function of the said C.D. You are the said cruing from you and take notice of the same are the same	ascription] and E.F. Garnisnee [address and at a Court holden at on the against C.D. of [name address and descri- l judgment remains unsatisfied : a plaintiff has filed an affidavit stating the hereby summoned to appear at a Court h 188 at the hour of in the bot be made upon you for payment of t bereof as shall be equal to the amount of to the said C.D. that from and after the service of the sail to answer the said judgment. a notice that if you shall pay to the Regi or so much thereof as will satisfy the ju- n are required to appear you will incur no	day of 188 ption] for the sum of at you are indebted to olden at on the noon to show cause he amount of the said f the debts due owing ummons upon you all strar of this Court the agment debt five clear costs.
4	 WHEREAS the obtained a judgment a function of the said C.D. You are the said cruing from you and take notice of the same are the same are	description] and E.F. Garnisnee [address and at a Court holden at on the against C.D. of [name address and descri- l judgment remains unsatisfied : a plaintiff has filed an affidavit stating the hereby summoned to appear at a Court h 188 at the hour of in the not be made upon you for payment of t hereof as shall be equal to the amount of to the said C.D. that from and after the service of the sail to answer the said judgment. a notice that if you shall pay to the Regi- or so much thereof as will satisfy the ju- n are required to appear you will incur no day of 188 .	day of 188 ption] for the sum of at you are indebted to olden at on the noon to show cause ne amount of the said if the debts due owing ummons upon you all strar of this Court the gment debt five clear
4	 WHEREAS the obtained a judgment a function of the said C.D. You are the said cruing from you and take notice of the same are the same	ascription] and E.F. Garnisnee [address and at a Court holden at on the against C.D. of [name address and descri- l judgment remains unsatisfied : a plaintiff has filed an affidavit stating the hereby summoned to appear at a Court h 188 at the hour of in the bot be made upon you for payment of t bereof as shall be equal to the amount of to the said C.D. that from and after the service of the sail to answer the said judgment. a notice that if you shall pay to the Regi or so much thereof as will satisfy the ju- n are required to appear you will incur no	day of 188 ption] for the sum of at you are indebted to olden at on the noon to show cause he amount of the said f the debts due owing ummons upon you all strar of this Court the agment debt five clear costs.
4	 WHEREAS the obtained a judgment a function of the said C.D. You are the said cruing from you and take notice of the same are the same are	description] and E.F. Garnisnee [address and at a Court holden at on the against C.D. of [name address and descri- l judgment remains unsatisfied : a plaintiff has filed an affidavit stating the hereby summoned to appear at a Court h 188 at the hour of in the not be made upon you for payment of t hereof as shall be equal to the amount of to the said C.D. that from and after the service of the sail to answer the said judgment. a notice that if you shall pay to the Regi- or so much thereof as will satisfy the ju- n are required to appear you will incur no day of 188 .	day of 188 ption] for the sum of at you are indebted to olden at on the noon to show cause he amount of the said f the debts due owing ummons upon you all strar of this Court the agment debt five clear costs.
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Small Debts Recovery.

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	SCHEDULE E.	Section 3.
No.	nit for leave to summon Garnishee.	O Daisis I faite of C
In the District Court of	}	(lave)
5 holden at (Seal.)		Adonto
or in In the Court of Petty Sessions	a proceedings in Petty Sessions	Totomaid
District of	in and reading the allidavit of the second field the	inghina ni z
	gment Creditor and Judgment Debtor. enamed judgment creditor make of th and say-	tes original the
(1) That I on the District Court holden	day of last past recovered judgment in t at [or in the Court of Perty Sessions at]
15 (2) That the said judgmen	ed judgment debtor for the sum of $\hat{\mathcal{L}}$ and cos at is still wholly unsatisfied [or is still unsatisfied to the	
sum of £] (3) That E.F. of [state de. sum of £	scription] is indebted to the said judgment debtor in t	the
	ides within the jurisdiction of this Court.	n phi ta an io a chit le tace
20 Sworn at this This affidavit is filed	day of 188 before me on behalf of the abovenamed judgment creditor.	Calific Land
	on senari of the abovenamed judghent creditor.	Dated
	Course of the second	
and Distantian and Anna	nine bi that there are a should be a should be	
	annoted indicate spectra (active and second second second	roda addad)
the state of the state of the state	on behave of the thereasterned this sear The line of and i	
	SCHEDULE F.	Section 5.
BaciltoB	SCHEDULE F.	Beetion 5.
No.	Tudgment against Garnishee.	Section 5.
No. 25 In the District Court	A STORING STORY	Beeton 5.
No.	A STORING STORY	
No. 25 In the District Court holden at (Seal.) or in	Judgment against Garnishee. } n proceedings in Petty Sessions	
No. 25 In the District Court holden at (Seal.) In the Court of Petty Sessions 30 District of	Indgment against Garnishee. } n proceedings in Petty Sessions for the }	ha I seriel C hol en as (sal) (sal) ho C inte of Diversion of
No. 25 In the District Court holden at (Seal.) In the Court of Petty Sessions 30 District of Between A.B. Judgment Cree	Judgment against Garnishee.	ho Daniel C hol en ne (Bal) (Bal) De Cinet of
No. 25 In the District Court holden at (Seal.) In the Court of Petty Sessions 30 District of Between A.B. Judgment Cree WHEREAS A.B. at a Court hold obtained a judgment against C.	In proceedings in Petty Sessions for the } editor and C.D. Judgment Debtor and E.F. Garnishee. ten at on the day of 188 D. for the sum of £ and costs and which judgment	ent
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Small Debts Recovery.



	Small Debts Recovery.
	SCHEDULE L. Section 11.
	District Court hollen at [or Court of Petty Sessions at]
	Certificate of entry in Attachment Book.
5	No. Plaintiff
	Defendant
	For whom judgment given Amount of judgment
	Costs
10	Order for examination of judgment debtor
	Garnishee order for attaching debts Summons upon garnishee
	Name of garnishee
15	Description Address
	Order for plaint against garnishee
	Order on third person to appear Name
	Description
20	Address
	For whom judgment given Amount of judgment
	Costs
25	Order Thereby certify that the above is a true copy of an optry in the Attachment Book
20	I hereby certify that the above is a true copy of an entry in the Attachment Book of the District Court at (or Court of Petty Sessions at)
	Dated this day of 188
	Registrar.
	SCHEDULE A.
30	Order for examination of Judgment Debtor. Section 2.
	No. In the District Court of
	holden at
05	or in proceedings in Petty Sessions.
35	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
40	188 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.
45	Dated this day of 188
40	By the Court. Registrar.
	To the abovenamed judgment debtor.
	SCHEDULE B. Section 3.
	Affidavit to ground Garnishee order.
	No. In the District Court of
	holden at
	(Seal.)
55	or in proceedings in Petty Sessions. 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-
60	(1) That I [or the abovenamed judgment creditor] on the day of
	last past recovered judgment in the District Court holden at [or in the Court of Petty Sessions at] against the abovenamed judgment
	debtor for the sum of \pounds and costs.
65	(2) That the said judgment is still wholly unsatisfied [or is still unsatisfied to the extent of the sum of \pounds
	(3) That E.F. of [state description] is indebted to the said judgment debtor in
	sum of £
	(4) That the said E.F. resides within the jurisdiction of this Court.Sworn atthisday of188before me
70	Sworn at this day of 188 before me This affidavit is filed on behalf of the abovenamed judgment creditor.

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SCHEDULE C.

Small Debts Recovery. SCHEDULE C. Section 3. Garnishee order attaching debt. No. In the District Court of holden at 5 (Seal.) or in proceedings in Petty Sessions. In the Court of Petty Sessions for the ? District of Judgment Creditor and Between Judgment Debtor and 10 Garnishee. Upon hearing and reading the affidavit of filed the day of 188 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 15 recovered against the said judgment debtor by the abovenamed judgment creditor in the District Court of Petty Sessions in the District of holden at [or in the Court of f 188 for the day of on the sum of £ d. on which judgment the sum of £ S. d. remains due s. and unpaid. (And it is further ordered that the said garnishee attend this Court on the day of 188 at of the clock in the noon to show 20 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.) 25Dated this day of 188 . By the Court. 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 30 execution to issue against him. SCHEDULE D. Section 5. 35 No. Judgment against Garnishee. In the District Court holden at (Seal.) or in proceedings in Petty Sessions. 40 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 Acknowledgment against the said E.F. the abovenamed garnishee the sum of \pounds [insert of payment into the amount of the judgment debt or so much thereof as the debts amount to Court. 45 against the said E.F. the abovenamed garnishee the sum of £ when the same are less than the judgment debt] and £ amounting altogether to the sum of £ and it is furth £ s. d. for costs and it is further ordered that the garnishee do pay the same to the Registrar of the Court on the 188 [or by instalments of for every day of for every days the 50 day of first instalment to be paid on the 188 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 188 . 55 SCHEDULE E. Section 5. Execution againt Garnishee. Folio in Ledger. No. No. of Warrant. 60 In the District Court of holden at (Seal.) or in proceedings in Petty Sessions. In the Court of Petty Sessions for the **District** of 65 Between A.B. Judgment Creditor and C.D. Judgment Debtor and E.F. Garnishee. 188 the judgment creditor obtained a judgment Whereas on the day of in this Court against the garnishee for the sum of £ being [portion of] the amount



amount due by him to the judgment debtor and it was thereupon ordered that

day of

the garnishee should pay the sum to the Registrar on the

188 or by instalments of days.] for every And whereas default has been made in payment according to the said order 5 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. wheresoever 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 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 10 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 specialties or securities for money of the defendant 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 15 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 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 188 By the Court. 20 Registrar. To the Bailiff of the said Court and others the Assistant Bailiffs thereof. Amount for which judgment was obtained. £ s. d. 25 Amount of Judgment ... Costs Mileage Paid into Court 30 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 188 SCHEDULE F. Section 6. Order for trial. No. 40 In the District Court holden at (Seal.) or in proceedings in Petty Sessions. In the Court of Petty Sessions 45 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 188 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.E. was indebted to the said C.D. a summons was issued calling upon the garnishee to 50 of £ 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 ⁵⁵ 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 188 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 \pounds according to the particulars hereunto annexed be tried and determined [or insert any special direction as to question to 60 be tried]. Dated this day of 188 Registrar. £ d. S. 65 Debt or claim ... Cost of summons Attorney's costs £ Sydney: Thomas Richards, Government Printer,-1881. [9d.]



New South Wales.



ANNO QUADRAGESIMO QUINTO

VICTORIÆ REGINÆ.

No. XXVII.

An Act for the better recovery of Judgment Debts in District Courts and in Courts of Petty Sessions. [Assented to, 20th December, 1881.]

THEREAS it is expedient that provision be made for the better Preamble. recovery of Judgment Debts in District Courts and in Courts of Petty Sessions Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :-

1. In construing this Act the term "Court" shall if not incon- Interpretation sistent with the context be taken to mean the District Court Judge in any proceeding in a District Court or the Police Magistrate in any proceeding in a Court of Petty Sessions and the word "officer" shall if not inconsistent with the context be taken to mean the Registrar of the District Court or Court of Petty Sessions.

2. It shall be lawful for any creditor who has obtained a judg- Examination of ment in any District Court or Court of Petty Sessions to apply to the Judgment Debtor Court in which he has obtained such judgment for an order that the him. judgment debtor be orally examined as to whether any and what debts are owing to him and the Court may thereupon make an order for the examination of such judgment debtor and for the production of any books or documents and shall cause him to be orally examined touching the premises and every judgment debtor who shall refuse or A

Court may order an attachment of debts.

or neglect to obey such order shall be subject to all the penalties to which a witness duly subpœnaed to attend at such Court and failing to appear at the time appointed would be subject.

3. It shall be lawful for the Court upon the *ex parte* application of any creditor who has obtained a judgment in that Court or in any other District Court or Court of Petty Sessions either before or after such oral examination as is provided in the last preceding section and upon affidavit by such judgment creditor or his attorney or agent stating that the judgment has been recovered and that it is still unsatisfied and to what amount and that any other person is indebted to the judgment debtor and resides within the jurisdiction of the Court to which such application is made to order that all debts due owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt and by the same or any subsequent order the Court may summon the garnishee to appear to show cause why he should not pay to the officer 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.

Attachment order to bind debts.

Proceedings to levy amounts due from garnishee to judgment debtor.

Where judgment creditor to sue garnishee.

No costs when garnishee pays.

Garnishee discharged.

Court may refuse to interfere in proceedings to attach debt. 4. Service of an order on the garnishee that debts due owing or accruing to the judgment debtor shall be attached 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.

5. If the garnishee does not forthwith pay to the officer 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 for 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.

6. 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 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 or 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 by him to the judgment debtor.

7. The costs of any application for an attachment of debt and of any proceedings arising from or incidental to such application shall be in the discretion of the Court but where the garnishee shall pay 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.

8. 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.

although such proceeding may be set aside or the judgment reversed. 9. In proceedings to obtain an attachment of debts as herein provided the Court 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 and subject to any other provisions contained in this Act The costs of any application for an attachment

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Small Debts Recovery.

attachment of debt under this Act and of any proceeding arising from or incidental to such application shall be in the discretion of the Court.

10. In each District Court or Court of Petty Sessions presided Attachment Book to over by a Police Magistrate the officer shall keep a debt attachment be kept. book in which book entries shall be made of all attachments and proceedings thereon with names dates and statements of the amounts recovered and copies of any entries made therein may be taken by any person upon application to the officer and upon payment of the fee provided.

11. The District Court Judges for the time being or any three Power to make rules of them shall have power to make such general rules as they shall think ^{&c.} in District Courts. fit for regulating the practice and proceedings of the District Courts in reference to this Act the fees to be allowed to barristers and attorneys and the expenses to be paid to witnesses and also to frame forms for every matter or proceeding under this Act and to alter or vary the forms so made or those provided for by this Act and also to fix the Court fees payable in such District Courts for any proceeding under this Act and from time to time to alter or vary any such rules or forms and the rules so made shall not take effect until one month after the publication thereof in the Gazette.

12. The Courts of Petty Sessions in each Police District shall have Power to make rules power to make such rules as they shall think fit for regulating the practice &c. in Courts of and proceedings of each of such Courts under this Act and for the former Petty Sessions. and proceedings of each of such Courts under this Act and for the fixing of Court fees payable thereunder but such rules shall have no effect until

approved of by Her Majesty's Attorney General for the time being. 13. The several Courts of Petty Sessions in the Colony shall Power to fix with the approval of Her Majesty's Attorney General for the time being bailift's fees. have power from time to time to fix the amount of the fees payable to every bailiff under such Courts notwithstanding the provisions of the Act tenth Victoria number ten.

14. The several forms in the Schedules to this Act or as near Forms in Schedules thereto as the nature of the case will permit shall be used in all pro- to be used. ceedings in the District Courts and Courts of Petty Sessions until the same shall be altered as is hereinbefore provided. 15. This Act may be cited as the "Small Debts Recovery Act." Short title.

SCHEDULES.

SCHEDULES.

SCHEDULE A.

Order for examination of Judgment Debtor.

No. In the District Court of holden at

To

or in proceedings in Petty Sessions.

In the Court of Petty Sessions for the ?

District of

BetweenJudgment Creditor andJudgment Debtor.UPON the application of the abovenamed judgment creditor it is ordered that the abovenamed judgment debtor attend this Court on theday of188at theth hour of the clock in thenoon and be examined as to whether anyand what debts are owing to him and that the said judgment debtor produce all necessarybooks and documents at the time of the examination.Dated thisday of188

By the Court.

Registrar.

the abovenamed judgment debtor.

SCHEDULE B.

A.ffidavit to ground Garnishee order.

No. In the District Court of holden at (Seal.)

or in proceedings in Petty Sessions.

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 District Court holden at [or in the last past recovered judgment debtor

- Court of Petty Sessions at] against the abovenamed judgment debtor for the sum of \mathcal{L} and costs.
- (2) That the said judgment is still wholly unsatisfied [or is still unsatisfied to the extent of the sum of \pounds]
- (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 188 before me

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

SCHEDULE C.

Garnishee order attaching Debt.

No. In the District Court of 3 holden at (Seal.) or in proceedings in Petty Sessions In the Court of Petty Sessions for the ? District of Judgment Creditor and Between Judgment Debtor and Garnishee. UPON hearing and reading the affidavit of filed the day of and upon 188

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

Section 3.

Section 2.

Section 3.

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the said judgment debtor by the abovenamed judgment creditor in the District Court of holden at [or in the Court of Petty Sessions in the District of] on the day of 188 for the sum of \pounds s. d. on which judgment the day of s. sum of £ £ s. d. remains due and unpaid. (And it is further ordered that the said garnishee attend this Court on the day of 188 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 188 By the Court. 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. SCHEDULE D. Judgment against Garnishee. Section 5. No. In the District Court holden at (Seal.) or in proceedings in Petty Sessions. 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 Acknowledgment of the said E.F. the abovenamed garnishee the sum of \pounds [insert the amount of the payment into Court. judgment debt or so much thereof as the debts amount to when the same are less than the \pounds s. d. judgment debt] and \pounds for costs amounting altogether to the sum of \pounds

 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 188 [or by instalments of for every days the first instalment to be paid on the day of 188]

 [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 188 SCHEDULE E. Execution against Garnishee. Section 5. No. Folio in Ledger. No. of Warrant. In the District Court of 3 holden at (Seal.) or in proceedings in Petty Sessions. In the Court of Petty Sessions for the } District of Between A.B. Judgment Creditor and C.D. Judgment Debtor and E.F. Garnishee. WHEREAS on the day of 188 the judgr judgment in this Court against the garnishee for the sum of £ 188 the judgment creditor obtained a 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 188 [or by instalments of for every days.] for every days.] And whereas default has been made in payment according to the said order These are And whereas detault 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. wheresoever 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 bands specialties or securities for manay of

cheques bills of exchange promissory-notes bonds specialties or securities for money of the defendant which may there be found or such part or so much thereof as may be

sufficient

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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 188

By the Court

Registrar

To the Bailiff of the said Court and others the Assistant Bailiffs thereof.

Amount for which judgment was obtained.

		£ s.	d.
Amount of Judgment		id matriable	
Costs			
Mileage			
Paid into Court			
Total amount to be le	vied	£	

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 188 day of

Section 6.

SCHEDULE F.

Order for Trial.

No. In the District Court holden at (Seal.)

or in proceedings in Petty Sessions.

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

day of 188 obtained a judgment against C.D. of for the sum of \pounds 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 amount the said 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 188 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 188

Registrar.

on the

		£	s.	d.
Debt or claim	 			
Cost of summons	 			
Attorney's costs	 			

£

[6d.]

By Authority : THOMAS RICHARDS, Government Printer, Sydney, 1881.