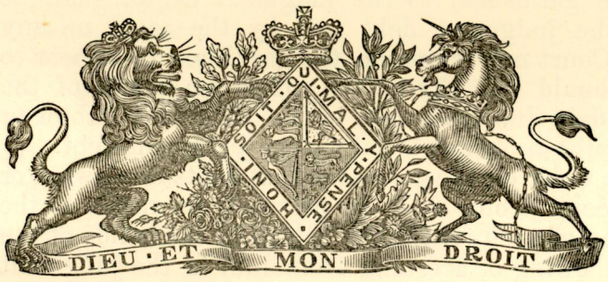
This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

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.

WHEREAS it is expedient that provision be made for the better 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:— **Preamble.**

1. In construing this Act the term "Court" shall if not inconsistent 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. **Interpretation clause.**

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

affidavit

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 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.

Court may order an attachment of debts.

3. It shall be lawful for the Court upon the *ex parte* application of any creditor who has obtained a judgment in that Court 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 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 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.

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.

Proceedings to levy amounts due from garnishee to 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.

Where judgment creditor to sue garnishee.

6. If the garnishee disputes his liability the Court instead of making an order that execution shall issue may 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 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 and such last-mentioned 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 garnishee to the judgment debtor had been due to the judgment creditor.

No costs when garnishee pays.

7. 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. Garnishee discharged.

9. Whenever in proceedings to obtain an attachment of debts as herein provided it is suggested that any debt sought to be attached belongs to some third person who has a lien or charge upon it the 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 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. Proceedings when third person alleged to have lien upon debt.

10. 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 of debt under this Act and of any proceeding arising from or incidental to such application shall be in the discretion of the Court. Court may refuse to interfere in proceedings to attach debt.

11. In each District Court or Court of Petty Sessions presided over by a Police Magistrate the officer shall keep a Debt Attachment 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. Attachment Book to be kept.

12. The District Court Judges for the time being or any three of them shall have power to make such general rules as they shall think 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 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 one month after the publication thereof in the *Government Gazette*. Power to make rules &c. in District Courts.

13. The Courts of Petty Sessions in each Police District shall have power to make such rules as they shall think fit for regulating 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 have no effect until approved of by Her Majesty's Attorney General for the time being. Power to make rules &c. in Courts of Petty Sessions.

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

15. The several forms in the Schedules to this Act or as near thereto as the nature of the case will permit shall be used in all proceedings in the District Courts and Courts of Petty Sessions until the same shall be altered as is hereinbefore provided. Forms in Schedules to be used.

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

SCHEDULES.

SCHEDULES.

SCHEDULE A.

Section 2.

Affidavit of Judgment Creditor in support of order for examination of Judgment Debtor.

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 } the day of 188

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 as follows:—

(1.) By a judgment given in this action and dated the day of 188 [a verified copy of which judgment is annexed hereto] it was adjudged that I [*or* the abovenamed creditor] should recover against the abovenamed judgment debtor the sum of £ s. d. and costs [to be taxed] and the said costs were allowed at £

(2.) The said still remains unsatisfied [to the extent of] and interest amounting to £ 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 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.

Sworn at the day of 188 before me

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

SCHEDULE B.

Section 2.

Order for examination of Judgment Debtor.

No.

In the District Court of }
holden at }

or in proceedings in Petty Sessions.

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

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

Dated this day of 188

By the Court.

Registrar.

To the abovenamed judgment debtor.

SCHEDULE C.

SCHEDULE C. Section 3.

Garnishee order attaching Debt.

No.

In the District Court of }
5 holden at }
(Seal.)

or in proceedings in Petty Sessions.

In the Court of Petty Sessions for the }
District of }

10 Between Judgment Creditor and Judgment Debtor and 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 recovered against 15 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 £ s. d. on which judgment the sum of £ s. d. remains due and unpaid.

(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

Dated this day of 188 .

25 By the Court.

Registrar.

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

SCHEDULE D. Section 3.

30 *Summons upon a Garnishee.*

No.

In the District Court of }
holden at }
(Seal.)

35 *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 on the 45 day of 188 at the hour of in the noon to show cause 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 day of 188 .

55 Registrar.

To Garnishee.

SCHEDULE E.

SCHEDULE E. Section 3.

Affidavit for leave to summon Garnishee.

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

or in proceedings in Petty Sessions

In the Court of Petty Sessions for the }
District of }

10 Between Judgment Creditor and Judgment Debtor.

I of the abovenamed judgment creditor make oath and say—

(1) 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.

15 (2) That the said judgment is still wholly unsatisfied [*or* is still unsatisfied to the sum of £]

(3) That E.F. of [*state description*] is indebted to the said judgment debtor in the sum of £

(4) That the said E.F. resides within the jurisdiction of this Court.

20 Sworn at this day of 188 before me

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

SCHEDULE F. Section 5.

Judgment against Garnishee.

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

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 188 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 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 against the said E.F. the abovenamed garnishee the sum of £ [*insert the amount of the judgment debt or so much thereof as the debts amount to when the same are less than the judgment debt*] and £ for costs amounting altogether to the sum of £

45 Dated this day of 188 .

SCHEDULE G. Section 5.

Execution against Garnishee.

No. Folio in Ledger.
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 }
55 District of }

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

WHEREAS on the day of 188 it was ordered that E.F. should pay into Court the sum of £ being the [*or* so much of the] amount of debts found due from him to C.D. of [*here insert address and description*] a judgment debtor of A.B.

And

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 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 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.

Amount for which judgment was obtained.

	£	s.	d.
Paid into Court...			
Costs adjudged			
Remaining due			
Mileage			
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 H.

Section 6.

Order for Plaint against Garnishee.

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 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 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 £ alleged to be due (owing or accruing to) from the said E.F. to the said C.D.

Dated this day of 188

Registrar.

SCHEDULE J.

Section 9.

Order on third person to appear.

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 C.D. Judgment Debtor E.F. Garnishee and M.M. Claimant.

WHEREAS A.B. at a Court holden at on the day of 188 . obtained a judgment against C.D. for the sum of £ 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 £ 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 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 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

Registrar.

To M.M.
Claimant.

SCHEDULE K.

Section 11.

District Court holden at [*or* Court of Petty Sessions at]

Attachment Book.

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

SCHEDULE L. Section 11.

District Court holden at [*or* Court of Petty Sessions at]

Certificate of entry in Attachment Book.

No.
5 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
Description
15 Address
Order for plaint against garnishee
Order on third person to appear
Name
Description
20 Address
For whom judgment given
Amount of judgment
Costs
Order

25 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.

Sydney: Thomas Richards, Government Printer.—1881.

[9*d*.]

351—B

SMALL DEBTS RECOVERY BILL.

SCHEDULE of the Amendments referred to in Message of 16*th 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 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**"

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

,, clause 3, line 17. *After* "and" *omit* "is within the jurisdiction" *insert* "**resides 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 incidental 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.

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.

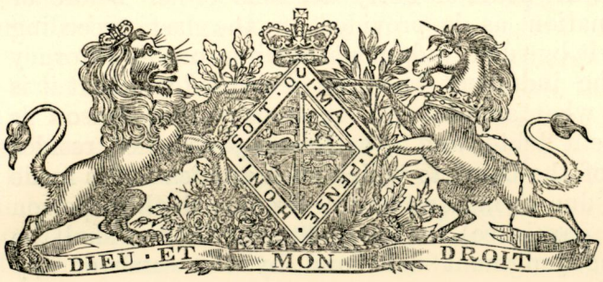
STEPHEN W. JONES,
Clerk of Legislative Assembly.

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

Legislative Council Chamber,
Sydney, 16*th 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.

WHEREAS it is expedient that provision be made for the better 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 :— Preamble.

1. In construing this Act the term "Court" shall if not inconsistent 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. Interpretation clause.

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

NOTE.—The words to be *omitted* are *ruled through*; those to be *inserted* are printed in **black letter.**

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 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 subpœnaed to attend at such Court and failing to appear at the time appointed would be subject.

Court may order an attachment of debts.

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 ~~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 (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.

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.

Proceedings to levy amounts due from garnishee to 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.

Where judgment creditor to sue garnishee.

6. If the garnishee appears upon summons and disputes his liability the Court instead of making an order that execution shall issue may 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 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 and such last-mentioned 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 garnishee to the judgment debtor had been due to the judgment ~~creditor~~ 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.

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. No costs when garnishee pays.

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. Garnishee discharged.

9. Whenever in proceedings to obtain an attachment of debts as herein provided it is suggested that any debt sought to be attached belongs to some third person who has a lien or charge upon it the 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 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. Proceedings when third person alleged to have lien upon debt.

~~10.~~ **9.** In proceedings to obtain and 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 of debt under this Act and of any proceeding arising from or incidental to such application shall be in the discretion of the Court. Court may refuse to interfere in proceedings to attach debt.

~~11.~~ **10.** In each District Court or Court of Petty Sessions presided over by a Police Magistrate the officer shall keep a debt attachment book in which book entries should 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. Attachment book to be kept.

~~12.~~ **11.** The District Court Judges for the time being or any three of them shall have power to make such general rules as they shall think 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 ~~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 one month after the publication thereof in the ~~Government~~ *Gazette*. Power to make rules &c. in District Courts.

~~13.~~ **12.** The Courts of Petty Sessions in each Police District shall have power to make such rules as they shall think fit for regulating 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 have no effect until approved of by Her Majesty's Attorney General for the time being. Power to make rules &c. in Courts of Petty Sessions.

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

~~15.~~ **14.** The several forms in the Schedules to this Act or as near thereto as the nature of the case will permit shall be used in all proceedings in the District Courts and Courts of Petty Sessions until the same shall be altered as is hereinbefore provided. Forms in Schedules to be used.

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

SCHEDULES.

SCHEDULES.

SCHEDULE A.

Section 2.

Affidavit of Judgment Creditor in support of order for examination of Judgment Debtor.

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 } the day of 188

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 as follows:—

(1.) By a judgment given in this action and dated the day of 188 [a verified copy of which judgment is annexed hereto] it was adjudged that I [*or* the abovenamed creditor] should recover against the abovenamed judgment debtor the sum of £ s. d. and costs [to be taxed] and the said costs were allowed at £

(2.) The said still remains unsatisfied [to the extent of] and interest amounting to £ 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 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.

Sworn at the day of 188 before me

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

SCHEDULE B.

Section 2.

Order for examination of Judgment Debtor.

No.

In the District Court of } holden at }

or in proceedings in Petty Sessions.

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

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

Dated this day of 188

By the Court.

Registrar.

To the abovenamed judgment debtor.

SCHEDULE C.

SCHEDULE C.

Section 3.

Garnishee order attaching Debt.

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 and 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 recovered against 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 £ s. d. on which judgment the 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 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

Dated this day of 188 .

By the Court.

Registrar.

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

SCHEDULE D.

Section 3.

Summons upon a Garnishee.

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*].

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 on the day of 188 at the hour of in the noon to show cause 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 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 day of 188 .

Registrar.

To Garnishee.

SCHEDULE E.

SCHEDULE E.

Section 3.

Affidavit for leave to summon Garnishee.

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 make oath and say—

(1) 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.

(2) That the said judgment is still wholly unsatisfied [*or* is still unsatisfied to the sum of £]

(3) That E.F. of [*state description*] is indebted to the said judgment debtor in the sum of £

(4) That the said E.F. resides within the jurisdiction of this Court.

Sworn at this day of 188 before me

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

SCHEDULE F.

Section 5.

Judgment against Garnishee.

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.

WHEREAS A.B. at a Court holden at on the day of 188 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 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 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 against the said E.F. the abovenamed garnishee the sum of £ [*insert the amount of the judgment debt or so much thereof as the debts amount to when the same are less than the judgment debt*] and £ for costs amounting altogether to the sum of £

Dated this day of 188 .

SCHEDULE G.

SCHEDULE G.

Section 5.

Execution against Garnishee.

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

Folio in Ledger.

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 it was ordered that E.F. should pay into Court the sum of £ being the [*or* so much of the] amount of debts found due from him to C.D. of [*here insert address and description*] a judgment debtor of A.B. 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 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 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.

Amount for which judgment was obtained.

	£	s.	d.
Paid into Court...			
Costs adjudged			
Remaining due			
Mileage			
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 H.

Section 6.

Order for Plaint against Garnishee.

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 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 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 £ alleged to be due (owing or accruing to) from the said E.F. to the said C.D.

Dated this day of 188

Registrar.

SCHEDULE J.

SCHEDULE J.

Section 9.

Order on third person to appear.

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 C.D. Judgment Debtor E.F. Garnishee and M.M. Claimant.

WHEREAS A.B. at a Court holden at on the day of 188 . obtained a judgment against C.D. for the sum of £ 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 £ 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 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 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

Registrar.

To M.M.
Claimant.

SCHEDULE K.

Section 11.

District Court holden at [*or* Court of Petty Sessions at]

Attachment Book.

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

SCHEDULE L.

SCHEDULE L. Section 11.

District Court holden at [*or* Court of Petty Sessions at]

Certificate of entry in Attachment Book.

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

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. Section 2.

Order for examination of Judgment Debtor.

No.

In the District Court of holden at }
or in proceedings in Petty Sessions.
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 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.

Dated this day of 188

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.)
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 Court of Petty Sessions at] against the abovenamed judgment debtor for the sum of £ and costs.

(2) That the said judgment is still wholly unsatisfied [or is still unsatisfied to the extent of the sum of £]

(3) That E.F. of [state description] is indebted to the said judgment debtor in 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.

SCHEDULE C. Section 3.

Garnishee order attaching debt.

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

or in proceedings in Petty Sessions.

In the Court of Petty Sessions for the }
District of }

10 Between Judgment Creditor and Judgment Debtor and 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 holden at [or in the Court of Petty Sessions in the District of] on the day of 188 for the sum of £ s. d. on which judgment the sum of £ s. d. remains due and unpaid.

20 (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.)

25 Dated this day of 188 .

By the Court.

Registrar.

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

30 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. Section 5.

35 Judgment against Garnishee.

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

40 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
45 against the said E.F. the abovenamed garnishee the sum of £ [insert the amount of the judgment debt or so much thereof as the debts amount to when the same are less than the judgment debt] and £ for costs amounting altogether to the sum of £ and it is further ordered that the garnishee do pay the same to the Registrar of the Court on the day of
50 188 [or by instalments of for every days the first instalment to be paid on the day of 188]

Acknowledgment of payment into Court.
£ s. d.

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

55 Dated this day of 188 .

SCHEDULE E. Section 5.

Execution againt Garnishee.

No. Folio in Ledger.
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 }
65 District of }

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

Whereas on the day of 188 the judgment creditor obtained a judgment 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 the garnishee should pay the sum to the Registrar on the day of 188 [or by instalments of for every days.]
And whereas default has been made in payment according to the said order These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said E.F. 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 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 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			
Costs			
Mileage			
Paid into Court...			
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.
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.

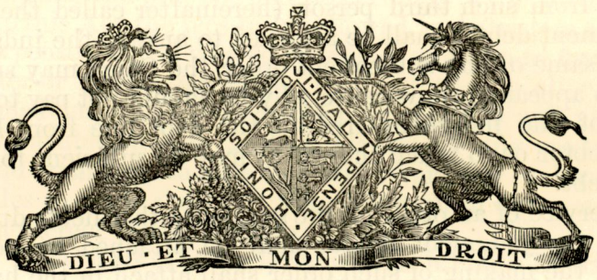
Whereas the Judgment Creditor at a Court holden at on the day of 188 obtained a judgment against C.D of for the sum of £ and costs and which judgment now remains unsatisfied And whereas the judgment creditor having filed an affidavit stating that the said E.E. was indebted to the said C.D. a summons was issued calling upon the garnishee to show cause why he should not pay into Court the amount so due or so much thereof as might be sufficient to satisfy the judgment debt and the said garnishee appeared upon the said summons and disputed his liability It is ordered that the hearing of the said summons be adjourned until the day of 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.

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

Sydney: Thomas Richards, Government Printer.—1881.

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.]

WHEREAS it is expedient that provision be made for the better 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 :— Preamble.

1. In construing this Act the term "Court" shall if not inconsistent 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. Interpretation clause.

2. It shall be lawful for any creditor who has obtained a judgment in any District Court or Court of Petty Sessions to apply to the Court in which he has obtained such judgment 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 touching the premises and every judgment debtor who shall refuse Examination of Judgment Debtor as to debts due to him.

 or

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.

Court may order an attachment of debts.

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.

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.

Proceedings to levy amounts due from garnishee to 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.

Where judgment creditor to sue garnishee.

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.

No costs when garnishee pays.

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.

Garnishee discharged.

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.

Court may refuse to interfere in proceedings to attach debt.

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

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 over by a Police Magistrate the officer shall keep a debt attachment 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. **Attachment Book to be kept.**

11. The District Court Judges for the time being or any three of them shall have power to make such general rules as they shall think 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*. **Power to make rules &c. in District Courts.**

12. The Courts of Petty Sessions in each Police District shall have power to make such rules as they shall think fit for regulating 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 have no effect until approved of by Her Majesty's Attorney General for the time being. **Power to make rules &c. in Courts of Petty Sessions.**

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

14. The several forms in the Schedules to this Act or as near thereto as the nature of the case will permit shall be used in all proceedings in the District Courts and Courts of Petty Sessions until the same shall be altered as is hereinbefore provided. **Forms in Schedules to be used.**

15. This Act may be cited as the "Small Debts Recovery Act." **Short title.**

SCHEDULES.

SCHEDULES.

SCHEDULE A.

Section 2.

Order for examination of Judgment Debtor.

No.

In the District Court of holden at }

or in proceedings in Petty Sessions.

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 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.

Dated this day of 188

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.)

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 Court of Petty Sessions at] against the abovenamed judgment debtor for the sum of £ and costs.

(2) That the said judgment is still wholly unsatisfied [*or* is still unsatisfied to the extent of the sum of £]

(3) That E.F. of [*state description*] is indebted to the said judgment debtor in the sum of £

(4) That the said E.F. resides within the jurisdiction of this Court.

Sworn at this day of 188 before me

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

SCHEDULE C.

Section 3.

Garnishee order attaching Debt.

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 and 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 recovered against the

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 £ s. d. on which judgment the 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.

Acknowledgment of payment into Court.

IT is ordered that the said A.B. the abovenamed judgment creditor do recover against the said E.F. the abovenamed garnishee the sum of £ [*insert the amount of the judgment debt or so much thereof as the debts amount to when the same are less than the judgment debt*] and £ for costs amounting altogether to the sum of £ £ s. d. 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.
No. of Warrant. Folio in Ledger.
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 and C.D. Judgment Debtor and E.F. Garnishee.

WHEREAS on the day of 188 the judgment creditor obtained a judgment in this Court against the garnishee for the sum of £ being [*portion of*] the amount due by him to the judgment debtor and it was thereupon ordered that the garnishee should pay the sum to the Registrar on the day of 188 [*or* by instalments of for every days.]

And whereas default has been made in payment according to the said order These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said E.F. 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 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

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...			
Costs			
Mileage			
Paid into Court			
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 .

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 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. a summons was issued calling upon the garnishee to show cause why he should not pay into Court the amount so due or so much thereof as might be sufficient to satisfy the judgment debt and the said garnishee appeared upon the said summons and disputed his liability It is ordered that the hearing of the said summons be adjourned until the day of 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.

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

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