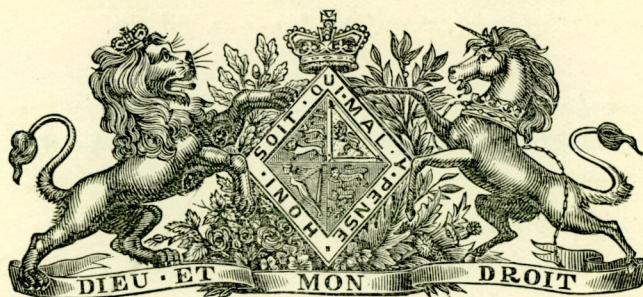


New South Wales.



ANNO SEXAGESIMO TERTIO

VICTORIÆ REGINÆ.

Act No. 13, 1899.

An Act to consolidate the Acts relating to the Recovery of Small Debts in Courts of Petty Sessions. [Assented to, 20th November, 1899.]

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

PART I.

PRELIMINARY.

1. This Act may be cited as the "Small Debts Recovery Short title. Act 1899" and is divided into Parts as follows :—

PART I.—PRELIMINARY—ss. 1-6.

A

PART

Small Debts Recovery.

PART II.—JURISDICTION—

*Outside the metropolitan police district—ss. 7 8.**Within the metropolitan police district—s. 9.**Generally—ss. 10–14.*

PART III.—PROCEDURE—

*Actions how commenced—ss. 15–17.**Place where action may be brought—s. 18.**Actions against joint defendants—ss. 19 20.**Default of appearance—ss. 21, 22.**Actions by infants executors &c.—ss. 23–26.**Costs—ss. 27–31.**Judgments—how recorded—ss. 32, 33.**Enforcement of judgments and orders—ss. 34–39.**Interpleader—s. 40.**Property protected from execution—ss. 41–43.**Attachment of debts due from garnishees—ss. 44–52.**Witnesses—ss. 53 54.**Officers—ss. 55–57.**Actions against officers—ss. 58 59.*

PART IV.—MISCELLANEOUS—ss. 60–68.

Repeal of Acts.
Saving clause.

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 The Acts mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.

Notwithstanding the repeal of the Acts hereby repealed:—

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shall be deemed to have been established for the purposes of this Act and all officers appointed under the Acts hereby repealed and in office at the commencement of this Act shall remain in office and shall be deemed to have been appointed under this Act.

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

All rules made under the authority of any Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to have been made under the authority of this Act.

Enactment of Act.
Vic. No. 15 s. 1.

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

Power to define
limits of petty
sessions districts.
43 Vic. No. 34 s. 1.

4. The Governor may by proclamation in the Gazette define the limits of any petty sessions district for the purposes of this Act and after any such proclamation has been published in the Gazette the provisions

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provisions of this Act shall be in force and the jurisdiction and other powers hereby conferred shall be exercisable within the limits of any petty sessions district defined in such proclamation.

5. Courts of petty sessions shall be courts of record and the judgments of any of the said Courts may be set up as a defence in any action brought either in any of the said Courts or in the Supreme Court. Courts of petty sessions to be courts of record. 10 Vic. No. 10 s. 11.

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

“ Court ” means a Court of petty sessions. 10 Vic. No. 10 s. 46.

“ Court of petty sessions ” means—

(a) any two or more justices of the peace sitting for the purposes of this Act at the usual place of meeting of justices in petty sessions 10 Vic. No. 10 s. 46.

(b) one justice of the peace when so sitting in cases where by this Act a single justice is authorised to adjudicate 10 Vic. No. 10 s. 46. [See s. 8 of the Act.]

(c) a police magistrate when so sitting in cases where by this Act he is vested with exclusive jurisdiction 45 Vic. No. 27 s. 1. [See s. 45 of the Act.]

(d) a police or stipendiary magistrate when so sitting in any case where a police or stipendiary magistrate is authorised in the absence of other justices to do alone whatever may be done by two or more justices sitting in petty sessions [17 Vic. No. 39 s. 11.] [R. v. O'Brien 14 S.C.R. 196.]

(e) a stipendiary or deputy stipendiary magistrate when so sitting in his own district under any Act whereby stipendiary magistrates are vested with exclusive jurisdiction in petty sessions. 45 Vic. No. 17. 47 Vic. No. 14. 60 Vic. No. 18.]

“ Garnishee ” means a person who is indebted to a judgment debtor. 45 Vic. No. 27 s. 3.

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

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

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

PART II.

JURISDICTION.

Outside the metropolitan police district.

7. All Courts now established or that may hereafter be established outside the boundaries for the time being of the metropolitan police district shall within their respective districts have power and authority to hear and determine in a summary way and according to equity Jurisdiction outside metropolitan police district. 10 Vic. No. 10 s. 4 and 55 Vic. No. 19 s. 1.

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equity and good conscience (against persons liable as hereinafter mentioned to be summoned to such Court and every defendant sued jointly with such persons) all actions whatsoever—

Debt up to £30.
55 Vic. No. 19 s. 1.

Other demand or
damage up to £10
or £30 by consent.
10 Vic. No. 10 s. 4.

One justice to have
jurisdiction in
certain cases.
10 Vic. No. 10 s. 5.

- (a) for the recovery of any debt only whether liquidated or unliquidated to an amount in any case not exceeding thirty pounds
- (b) for the recovery of any demand or damage other than debt whether liquidated or unliquidated to an amount in any case not exceeding ten pounds or (where the party intended to be sued by writing under his hand consents thereto) to an amount not exceeding thirty pounds.

8. (1) One justice of the peace may hear and determine all cases—

- (a) in which the plaintiff seeks to recover no more than the sum of five pounds
- (b) in which the sum in dispute exceeds five but does not exceed thirty pounds and both parties consent thereto.

(2) The consent of the parties shall be specially entered in the record book at the commencement of the hearing.

(3) Every such case shall be proceeded with in every respect as if the same were heard and determined by two or more justices.

Within the metropolitan police district.

Jurisdiction within
metropolitan police
district.

Ibid. s. 4.
55 Vic. No. 19 s. 1.

Debt demand or
damage up to £10.

By consent up to £30.

9. All Courts now established or that may hereafter be established within the boundaries for the time being of the metropolitan police district shall within their respective districts have power and authority to hear and determine in a summary way and according to equity and good conscience (against persons liable as hereinafter mentioned to be summoned to such Court and every defendant sued jointly with such persons) all actions whatsoever for the recovery of any debt demand or damage whether liquidated or unliquidated to an amount in any case not exceeding ten pounds or (where the party intended to be sued by writing under his hand consents thereto) to an amount not exceeding thirty pounds.

Generally.

Notes or bills for
sums not exceeding
£10.

10 Vic. No. 10 s. 10.

10. In case the defendant in any action appears to have given bills of exchange or promissory notes for the payment of any debt originally above the amount of jurisdiction created by this Act but which bills or notes are separately security for a sum not exceeding ten pounds each bill or note shall be regarded as forming a distinct and separate contract and may be sued upon and recovered in the same way as any other debt recoverable under this Act.

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11. No Court shall have jurisdiction in any of the following cases :— Limitation of jurisdiction.
10 Vic. No. 10 s. 4.

- (1) Where the matter in question relates to the taking of any duty to Her Majesty or any fee of office or to any annual rent or other matter in which rights in future may be bound or to any general right or duty.
- (2) Where the debt sought to be recovered is for any money or thing won at or by means of any race match wager raffle or any kind of play or game.
- (3) Where the debt or claim has arisen more than three years before the issuing of the summons unless there hath been in writing an acknowledgment of or promise to pay the same within that period.
- (4) In respect of any contract for the sale of goods unless the buyer has actually received the same or part thereof or given something in earnest to bind the bargain or in part payment or some note or memorandum in writing of the bargain has been signed by the party sought to be charged by such contract or his agent thereunto lawfully authorised.
- (5) In cases of trespass to land if the title to the freehold therein be bona fide in dispute between the parties.

12. It shall not be lawful to split or divide any cause of action for the purpose of bringing the same within the jurisdiction of any Court of petty sessions and in case it appears to the said Court at any stage of the proceedings that any cause of action has been so split or divided such Court shall dismiss the action brought thereupon with costs. Actions not to be split.
Ibid. s. 9.

13. All judgments and orders of a Court of petty sessions shall be final and conclusive : Decision of Court of petty sessions to be final and conclusive.

Provided that in actions for trespass to land where the right to the possession is shown to be in dispute and in actions for rent not being between the original parties to the letting where the right to receive or the liability to pay such rent is in dispute and in actions for contribution to the erection or repair of any dividing fence where the defendant's liability to contribute is in dispute the judgment of the Court as to such right or liability shall be conclusive only as to the particular act of trespass or amount of rent or contribution then in question and shall not be taken to determine any of those questions generally between the parties. *Ibid.* ss. 5 and 37.
Ibid. s. 11 second proviso.

14. Every attorney solicitor or other officer of the Supreme Court shall be subject to the several processes orders judgments and executions of the Courts of petty sessions in the same manner as other persons are subject to the same. Officers of Supreme Court not exempt.
Ibid. s. 13.

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PART III.

PROCEDURE.

Actions how commenced.

Plaint.
10 Vic. No. 10 s. 20.
Contents of plaint.
Ibid.

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

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

Particulars.
Ibid. Schedule B.

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

Filing.
Ibid. s. 20.

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

Summons.
Ibid. s. 20.
Service of summons.
Ibid. s. 21.

16. The original summons shall be served on the defendant.

17. (1) The summons hereinbefore directed to be served on the defendant may be served by delivering such summons to the wife or servant of the defendant at the defendant's usual place of abode.

(2) In case the messenger or bailiff employed to serve the summons demands admittance into the house where the defendant usually resides and such admittance is refused he may put such copy into the house or fix it upon the door of the house and the same shall in such case be deemed to be good service upon the defendant.

Place where action may be brought.

For debt.
Ibid. s. 23.
55 Vic. No. 19 s. 2.

18. (1) Actions for debt may be brought either in the Court holden in and for the district where the defendant in such action usually resides or in the Court holden in and for the district in which the debt sued for was contracted.

For damages.
10 Vic. No. 10 s. 23.

(2) Actions for damage shall be brought in the Court holden in and for the district where the defendant in such action usually resides.

Party liable for
damage removing to
another district.
Ibid.

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

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

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

(4)

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

Application of section to joint defendants.
10 Vic. No. 10 s. 23.

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

Power to determine questions as to defendant's residence.
Ibid. s. 24.

Actions against joint defendants.

19. (1) Where there are two or more joint defendants all of whom do not reside within the jurisdiction of the same Court the plaintiff may bring his action before any Court within the jurisdiction of which any of the joint defendants resides by serving any such defendant with a summons in the manner hereinbefore directed.

Where joint defendants reside in different districts.
Ibid. s. 24.
Plaintiff may serve any one.
Ibid.

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

Defendant served may notify others.
Ibid.

(3) If the other joint defendants do not appear and join in the defence the action may proceed and judgment be obtained and execution issued against the defendant who has been served with the plaintiff's summons although the other joint defendants have not been served with any summons nor joined in the defence.

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

(4) No plea in abatement shall be allowed for nor advantage be taken of the non-joinder of a joint defendant or joint defendants.

No plea in abatement for non-joinder.
Ibid.

20. (1) The defendant against whom execution is issued shall retain any right which he may have to demand contribution from the other joint defendants.

Right to contribution from joint defendants.
Ibid.

(2) If such defendant causes the other joint defendants to be personally served with a copy of the plaintiff's summons upon him in the action three days before the day appointed for appearing and answering to the same the judgment recovered against him in the action or a copy thereof certified by the registrar shall be admissible in evidence in any action for contribution afterwards brought by him against the other joint defendants for the purpose of proving their liability to such contribution.

Judgment in action when evidence.
Ibid.

(3) If such defendant does not cause the other joint defendants to be personally served as aforesaid then their liability to contribution shall be proved in the ordinary manner.

Proof of liability to contribute in other cases.
Ibid.

Default of appearance.

21. (1) If the plaintiff makes default of appearance and the defendant appears according to the summons the Court shall adjudge the plaintiff to be disproved.

By plaintiff.
Ibid. s. 29.

(2)

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When defendant
admits claim.
10 Vic. No. 10 s. 7.
Proviso.

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

By defendant.
Ibid. s. 8.

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

Trial may be
proceeded with ex
parte.

On cause shown
judgment may be set
aside and new trial
granted.

(2) The Court may on sufficient cause being shown at the next sitting of the Court or otherwise set aside any judgment given in the absence of the defendant and the execution thereupon upon such terms as it thinks fit and may grant a new trial of the cause upon the defendant paying the costs of the first trial and giving security to the satisfaction of the Court for the costs of the new trial.

Actions by infants executors &c.

Actions by infants.
Ibid. s. 18.

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

Actions by executors
and administrators.
Ibid. s. 33, and
Schedule B.

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

[*Ex parte Brown*
Knox 320.]

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

Actions by trustees.
Ibid. Schedule B.

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

Actions by official
assignees or trustees
of bankrupts.
Ibid. Schedule B.

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

Costs.

If plaintiff does not
appear a sum may be
awarded to
defendant.
Ibid. s. 7.

27. If upon the return day of any summons or at any adjournment of the Court or of the cause in which the summons was issued the plaintiff does not appear or appears but fails to prove his claim or demand

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demand to the satisfaction of the Court the Court may (when the defendant appears and does not admit the claim or demand) award to the defendant by way of costs and satisfaction for his trouble and attendance such sum as in its discretion it thinks fit.

28. Whenever the Court adjudges a plaintiff to be disproved for default of appearance or gives judgment for the defendant it may at its discretion allow the defendant his reasonable costs in like manner as for the party complaining.

Where plaintiff disproved or judgment for defendant.

10 Vic. No. 10 s. 29

29. (1) In all actions the plaintiff and defendant may appear and each conduct his case by himself his clerk or servant or employ any person admitted an attorney of the Supreme Court to practise as an advocate and attorney before the Court of petty sessions.

Parties may appear personally or by clerk or attorney.

Ibid. s. 44.

(2) The costs of professional assistance shall be paid by the party requiring such professional assistance.

Cost of professional assistance.

Ibid.

(3) No attorney practising before a Court of petty sessions shall demand or take more by way of fees for work by him done than the sums set forth in the Fourth Schedule hereto.

Attorney's fees.

Ibid.

Fourth Schedule.

30. The cost of all proceedings under section forty shall be in the discretion of the Court.

Under s. 40.

Ibid. s. 34.

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

Costs in garnishee proceedings.

45 Vic. No. 27 ss. 7

Judgments—how recorded.

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

Entry of judgment.

10 Vic. No. 10 s. 11.

33. No judgment shall be recorded by any Court of petty sessions in any case unless the process in such cause is by the affidavit of at least one credible witness before the said Court or the registrar or a commissioner of the Supreme Court or before a justice of the peace deposed to have been duly served upon the defendant in the manner directed by sections sixteen and seventeen of this Act.

Judgment not to be recorded without affidavit of service.

Ibid. s. 22.

Enforcement of judgments and orders.

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

Payment by instalments.

56 Vic. No. 37 s. 1.

(2)

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Default in payment
of instalment.
56 Vic. No. 37 s. 1.

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

Execution of process.
10 Vic. No. 10 s. 27.

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

Where defendant
removes into another
district after
judgment obtained.
Ibid. s. 31.

(2) The removal by any defendant after judgment recovered against him from the jurisdiction of one Court into the jurisdiction of another shall not prevent any plaintiff from proceeding against such defendant in the jurisdiction where such defendant happens to be resident at the time of issuing execution and the bailiff of any Court or his deputy may take such defendant into custody or dispose of his goods in like manner as if he were a resident of the district in which judgment was recovered against him.

Defendant entitled to
execution for costs.
Ibid. s. 29.

36. Where a Court adjudges costs to the defendant he shall be entitled to the like process of execution for his costs as the plaintiff would be entitled to if he had established his claim against the defendant.

Special writs.
Ibid. s. 30.

37. (1) The registrar of any Court shall grant a special writ of execution when demanded by the plaintiff or defendant as the case may be in any suit wherein such writ may be issued.

Registrar to appoint
special bailiff.

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

Party applying to
give security.

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

Bond to vest in
registrar.

(4) The bond shall vest in the registrar of the Court for the time being and may from time to time be sued upon in his name or in the name of any person to whom it may be assigned under any order of the Court.

Assignment of bond.

Mode of assignment.

(5) The assignment of the bond shall be made by an indorsement by the registrar for the time being.

Damages for
misconduct of special
bailiff.

(6) Any person who sustains any damage by the neglect or misconduct of any such bailiff may proceed before any Court of competent jurisdiction (the amount of such damage not exceeding fifty pounds or the sum specially directed by the Court as aforesaid) and the bond

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bond so given shall stand and be an additional security for such damages and shall if necessary be put in suit to recover the sum and costs from the parties thereto or any of them.

(7) In every case in which a special writ of execution is taken out neither the registrar nor bailiffs of the Courts of petty sessions shall be responsible for any act done under or in respect of such process by colour thereof but the person aggrieved by any such act shall have a remedy and right of action against the party or his sureties to whom the writ of execution was granted.

Registrar and Court
bailiffs not to be
responsible.
10 Vic. No. 10 s. 32.

38. No judgment of any of the Courts of petty sessions against the goods and chattels of the defendant in any suit or action brought therein shall be executed at any time after sunset and before sunrise and if any person executes any such judgment after sunset and before sunrise he is liable to a fine of ten pounds which shall be imposed and if necessary enforced by an order of the Court of petty sessions for the distress and sale of the offender's goods.

Time when execution
may be made.
Ibid. s. 35.

39. No execution awarded against the goods of any party shall deprive any landlord of the power vested in such landlord by an Act passed in the eighth year of the reign of her late Majesty Queen Anne entitled an Act for the better security of rents and to prevent Frauds committed by Tenants of recovering one year's rent in pursuance of the said Act.

Rights of landlords.
Ibid. s. 36.

Interpleader.

40. (1) Whenever a claim is made by a person not being the party against whom execution has issued to any goods or chattels taken or intended to be taken in execution under any process or to the proceeds or value thereof the Court from which the process issued may upon application of the bailiff or officer made before or after the return of such process and as well before as after any action brought against him call before it by an order for that purpose the party issuing the process and the claimant and thereupon pronounce its decision in a summary manner for the adjustment of the claim and the relief and protection of the bailiff or other officer.

Claim by person not
the party against
whom execution
issued.

Ibid. s. 34.

(2) The Court may make such order as appears to be just according to the circumstances and its decision shall be final and conclusive against the party issuing the process and the claimant and also against all persons claiming by from or under them.

Property protected from execution.

41. No real or leasehold property is liable to be levied upon under writs of execution out of Courts of petty sessions.

Realty and lease-
holds.
Ibid. s. 27.

42. If previously to the sale of any property levied upon such property being in the actual or ostensible possession of the party against whom the writ is directed a claim is made to it by any third person

Property in
possession of a
bailee.
Ibid. s. 32.

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person and such claim is deposed to before a justice of the peace and in such deposition it is averred that the party in whose actual or ostensible possession such property so levied upon be found is not the true owner but the bailee thereof such property shall be released from execution and the cost of the levy (if any) shall be either added to the amount of the costs charged in the execution or defrayed by the party claiming such property as the Court of petty sessions in its discretion directs.

Property comprised
in a bill of sale.
10 Vic. No. 10 s. 32.

43. (1) No absolute or conditional bill of sale or mortgage of chattel property whatever shall protect such property so levied upon from sale unless—

- (a) the bill of sale or mortgage be produced to the bailiff and
- (b) the bill of sale or mortgage was executed at least fourteen days before the summons was served upon the defendant in the case in which the writ of execution issued and
- (c) there be expressed in the bill of sale or mortgage a certain time for the payment of the principal sum for which the instrument was given as security and such time does not exceed one year from the date of the instrument and at the expiration of that time the holder of the bill of sale or mortgage shall not renew it but either assume possession or proceed to the sale of the property so secured or relinquish all claim to the protection of it from the debts of other creditors under judgments recovered under this Act and
- (d) the bill of sale or mortgage was registered by the registrar at the nearest Court of petty sessions within one week of the date of its execution.

Levy may be enforced
by taking special
writ.

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

Limit of protection.
Ibid. s. 32.

(2) Protection from sale under any circumstances shall only extend to such articles of chattel property as are specifically set forth and enumerated in a schedule to be annexed to the bill of sale or mortgage as the case may be.

Attachment of debts due from garnishees.

Examination of
judgment debtor as
to debts due to him.
43 Vic. No. 27 s. 2.

44. (1) Any creditor who has obtained a judgment in any Court of petty sessions may apply to the Court in which he obtained such judgment 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.

(2)

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(2) Every judgment debtor who refuses or neglects to obey such order shall be subject to all the penalties to which a witness duly subpoenaed to attend at such Court and failing to appear at the time appointed would be subject. Penalty for disobeying order. 45 Vic. No. 27 s. 2.

45. The jurisdiction given by the seven next following sections shall be exercisable only by a police magistrate. Police magistrate. Ibid. s. 1.

46. (1) The Court may make an order that all debts due owing or accruing from a garnishee residing within the jurisdiction of such Court to a judgment debtor shall be attached to answer the judgment debt. Garnishee orders. Ibid. s. 3.

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

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

(4) In any order for the payment of money by a garnishee or upon an application at any time made by him the Court may direct such payment to be made at such times and by such instalments as the said Court thinks fit and if default be made in the payment of any one such instalment execution may issue for so much of the amount then due by the garnishee as will satisfy the judgment debt remaining unpaid at the time of such default. Payment by instalments. 56 Vic. No. 37 s. 2.

(5) In proceedings to obtain a garnishee order 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. Court may refuse to interfere in certain cases. 45 Vic. No. 27 s. 9.

47. The Court may by the garnishee order or any subsequent order summon the garnishee to appear to show cause why he should not pay to the registrar on behalf of the judgment creditor the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment debt. Summons to garnishee to show cause. Ibid. s. 3.

48. Service on the garnishee of a garnishee order or notice to the garnishee of the making of such order shall attach in the hands of the garnishee all debts due owing or accruing from him to the judgment debtor. Attachment of debts by garnishee order. Ibid. s. 4.

49. If the garnishee does not forthwith pay to the registrar on behalf of the judgment creditor the amount due from him to the judgment debtor or an amount equal to the judgment debt and does not dispute the debt due or claimed to be due from him to the judgment Proceedings to levy amounts due from garnishee to judgment debtor. Ibid. s. 5.

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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 garnishee
disputes liability.
45 Vic. No. 27 s. 6.

50. 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 and determined and the order for such adjournment shall be served upon the garnishee and shall operate as a plaint entered against him to obtain payment of the sum claimed to be due from him to the judgment debtor.

Discharge of
garnishee.
Ibid. s. 8.

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

Garnishee book to
be kept.
Ibid. s. 10.

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

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

Witnesses.

Attendance of
witnesses.
10 Vic. No. 10 s. 25.

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

Expenses.
Ibid.

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

Penalty for refusing
to be sworn or
answer.
Ibid.

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

Officers.

Small Debts Recovery.

Officers.

55. The clerk of the bench or other clerk of the Courts of petty sessions as may from time to time be directed by such Courts respectively shall discharge the duties of registrar. Clerk and registrar. 10 Vic. No. 10 s. 6.

56. (1) The Courts of petty sessions shall from time to time appoint a bailiff or bailiffs for the service and execution of the processes orders and judgments authorised by this Act. Bailiffs. Ibid. s. 6.

(2) Any such Courts may appoint a sergeant of police or police constable of their respective districts to be a bailiff of the Court appointing him who shall not therefore become incapable of acting as or forfeit his appointment of such sergeant or constable anything in any Act to the contrary notwithstanding Police sergeant or constable may be a bailiff. 42 Vic. No. 15 s. 2.

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

57. If any bailiff deputy bailiff or other officer of any Court of petty sessions employed to execute any process of execution by connivance wilful neglect or omission causes or suffers the goods of the party against whom such execution is awarded to be rescued or carried away so that such execution has not its due effect any justice of the Court of petty sessions out of which such process issued may upon complaint and due proof thereof made upon the oath of one credible witness order such bailiff deputy or officer to pay the sum of money for which such execution was awarded or such part thereof as the said justice thinks proper to the party complaining and may enforce the payment thereof by the same means as are herein provided for the recovery of debts. Penalty for neglect of duty. 10 Vic. No. 10 s. 41.

Actions against officers.

58. All sheriffs and deputy sheriffs keepers of prisons or other persons whosoever who do anything under this Act in obedience to any legal order of any Court of petty sessions are hereby indemnified for whatsoever is done by them respectively in obedience thereto and if any action whatsoever is brought against any such sheriff keeper or person or against any justice of the peace or officer of any Court of petty sessions for performing any duty of his office in pursuance of this Act such sheriff justice keeper officer or other person may plead the general issue and give the special matter in evidence thereupon and if the plaintiff be nonsuited or discontinue his action or a verdict pass against him or judgment be had for the defendant upon demurrer such defendant shall have double costs. Indemnity to officers. Ibid. s. 38. Officer may plead general issue and give special matter in evidence.

59. All actions for anything done under the provisions of this Act by persons acting in execution thereof shall be commenced within six months after the fact was committed and no writ shall be sued against Limitation of actions against officers. Ibid. s. 39.

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against nor process served upon any justice of the peace registrar bailiff or other officer of any Court of petty sessions for anything done in the execution of or by reason of his office until one calendar month next after notice in writing has been delivered to him or left at his usual place of abode by the attorney or agent for the party who intends to sue out such writ as aforesaid in which notice shall be clearly and explicitly contained the cause of action the name and place of abode of the person bringing such action and the name and place of abode of the attorney or agent.

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

PART IV.

MISCELLANEOUS.

Perjury.

10 Vic. No. 10 s. 25

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

Court of petty

sessions may commit.

Ibid. s. 25.

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

Proceedings may not
be removed.

Ibid. s. 37.

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

Process not to be set
aside for technical
errors only.

Ibid. s. 42.

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

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

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

Arbitration.

Award may be
entered as a
judgment.

Ibid. s. 43.

63. If both parties in any cause agree between themselves not to try their cause before the Court of petty sessions but by means of arbitration and notify such agreement by a memorandum in writing signed

Small Debts Recovery.

signed by themselves or their agents the award made on such arbitration shall be binding on both parties and judgment in accordance therewith may be entered in the cause list of the said Court of petty sessions for the plaintiff or defendant as the case may be.

64. The several fees and sums of money expressed in the Third Schedule hereto and no other shall be taken by the several officers of the said Courts therein mentioned for their respective services in the execution of this Act

Fees to be taken.
Third Schedule.
10 Vic. No. 10 ss. 6,
40.

Provided that the several Courts of petty sessions may with the approval of the Attorney-General from time to time fix the amount of the fees payable to every bailiff under such Courts.

Power to fix bailiff's
fees.
45 Vic. No. 27 s. 13.

65. (1) The Governor may from time to time frame rules to be in force in the several districts for the carrying out of the provisions of this Act except the provisions contained in sections forty-four to fifty-two inclusive.

General power to
make rules.
43 Vic. No. 34 s. 3.

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

(2) The Courts of petty sessions in each police district may make such rules as they think fit for regulating the practice and proceedings of each of such Courts under sections forty-four to fifty-two inclusive of this Act and for the fixing of Court fees payable thereunder but such rules shall have no effect until approved of by the Attorney-General.

In garnishee
proceedings.
45 Vic. No. 27 s. 12.

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

Attorney or agent
may be suspended or
prohibited.
10 Vic. No. 10 s. 45.

67. Any person guilty of contempt before a Court of petty sessions may be punished in a summary way by fine not exceeding forty shillings to be levied upon his goods and chattels or by imprisonment for any time not exceeding fourteen days.

Contempt before
Court.
10 Vic. No. 10 s. 26.

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

Forms.
Second Schedule.
10 Vic. No. 10 ss.
20, 28; Schedules
B and C.
45 Vic. No. 27 s. 14.

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SCHEDULES.

Section 2.

FIRST SCHEDULE.

Reference to Acts.	Title or short title.	Extent of repeal.
10 Vic. No. 10 ...	An Act to amend the law respecting the recovery of Small Debts in all parts of the Colony.	The whole Act except sections fifteen sixteen and seventeen.
33 Vic. No. 11 ...	An Act to extend the provisions of the Small Debts Act, 10 Vic. No. 10.	The whole Act.
42 Vic. No. 15 ...	An Act to further extend the provisions of the Small Debts Act, 10 Vic. No. 10.	The whole Act.
43 Vic. No. 34 ...	Small Debts Act Amendment Act of 1880.	The whole Act.
45 Vic. No. 27 ...	Small Debts Recovery Act ...	So much thereof as applies to Courts of petty sessions.
55 Vic. No. 19 ...	An Act to extend the jurisdiction of Courts of petty sessions.	The whole Act.
56 Vic. No. 37 ...	Debts Recovery Act, 1893 ...	Section one and so much of section two as applies to Courts of petty sessions.

Section 68.

10 Vic. No. 10.
Schedule B.

SECOND SCHEDULE.

FORMS.

Plaints.

IN THE CASE OF GOODS SOLD.

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

IN THE CASE OR DEMAND FOR RENT.

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

FOR LODGING.

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

FOR HIRE OF HORSES.

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

FOR

Small Debts Recovery.

FOR AGISTMENT.

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

FOR WORK AND LABOUR.

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

FOR WORK AND LABOUR OF SERVANTS.

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

FOR WORK AND LABOUR OF SERVANTS HORSES AND CARRIAGES.

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

FOR WAGES.

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

FOR MONEY LENT.

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

ON A PROMISSORY NOTE OR BILL OF EXCHANGE.

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

ON A BOND.

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

FOR MONEY DUE ON AN AGREEMENT.

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

ON AN AWARD.

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

FOR UNLAWFUL DETENTION OF PROPERTY.

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

FOR

Small Debts Recovery.

FOR UNLAWFUL DETENTION OF PROPERTY DEPOSITED.

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

FOR DAMAGE SUSTAINED BY IMPROPER DRIVING.

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

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

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

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

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

Section 63.
10 Vic. No. 10.
Schedule B.

Defence.

NEW SOUTH WALES.

Court of petty sessions for the } day of _____
district of _____ 18 ____

Between { A.B. and Plaintiff
 { C.D. Defendant

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

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

To A.B.

The above-named plaintiff

Summons.

Small Debts Recovery.

Summons.

NEW SOUTH WALES.

Section 68.

10 Vic. No. 10.

Schedule B.

In the Court of petty sessions for }
the district }

To _____ of _____
You are hereby summoned to appear in this Court at _____ on _____ the
day of _____ next at ten of the clock in the forenoon of the same day
precisely to answer the following plaint [*insert copy of plaint and particulars as filed
with the registrar*] otherwise upon proof of the due service of a copy of this summons
the cause when called on for hearing will be tried and judgment be given against you
for whatever may appear to be due together with such costs as the Court may think
fit to award And take notice that if you intend to defend upon any matter of set-off
or excuse you must file particulars of the same in the office of the registrar
clear days at the least before the day herein named for the hearing of the cause other-
wise the evidence you may bring forward to support such set-off cannot be admitted.

Dated this _____ day of _____ one thousand eight hundred and _____

By the Court

A.B. Registrar.

Precept in the nature of a fieri facias.

EXECUTION AGAINST GOODS.

Section 68.

10 Vic. No. 10.

Schedule C.

Court of petty sessions for the }
district of }

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

In pursuance and by virtue of a decision of the Court of petty sessions for the
district of _____ made on the _____ day of _____ 18 _____ you are hereby required to
levy of the goods and chattels of _____ to satisfy _____ for the amount of
pounds _____ shillings and _____ pence being the amount of judgment and costs
which in the said Court he was adjudged to pay to the said _____ and after levy duly
made thereof forthwith to pay the same into this office And what you shall do herein
certify and return to this Court at the expiration of one calendar month from the date
hereof or within three days after this warrant shall be executed if that shall sooner
happen.

Dated this _____ day of _____ 18 _____

By the Court

A.B. Registrar.

£ s. d.

Judgment.....

Costs.....

Execution.....

Alias.....

£ _____

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

Subpœna

Small Debts Recovery.

Section 68.
10 Vic. No. 10.
Schedule C.

Subpœna for witness.

NEW SOUTH WALES.

Court of petty sessions for the }
District of }

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

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

By the Court
Registrar or Clerk of the Court.

Section 68.
10 Vic. No. 10.
Schedule C.

Attachment for non-appearance to a subpœna.

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

Victoria Regina.

Court of petty sessions for the }
District of }

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

At a Court of petty sessions for the district of held on the day of 18 it appearing to this Court that has been duly served with a copy of a subpœna to attend this Court in the above case and though duly called came not You and each of you are hereby commanded to attach the said wherever you may find him for a disobedience to the said subpœna and him safely and securely keep so that you may have him before a justice of the peace of the said Court on the day of to hear and abide such order as shall then be made touching the contempt of the said in disobedience of such subpœna.

Section 68.
45 Vic. No. 27.
Schedule A.

Order for examination of judgment debtor.

No.

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

Between judgment creditor and judgment debtor.

UPON the application of the abovenamed judgment creditor it is ordered that the abovenamed judgment debtor attend this Court on the day of 189 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 189

By the Court.
Registrar.

To the abovenamed judgment debtor.

Affidavit

Small Debts Recovery.

Affidavit to ground garnishee order.

Section 68.
45 Vic. No. 27.
Schedule B.

No.

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

Between judgment creditor and judgment debtor.

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

- (1) That I [or the abovenamed judgment creditor] on the day of last past recovered judgment in the Court of petty sessions at the abovenamed judgment debtor for the sum of £ and costs against
- (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 189 before me

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

Garnishee order attaching debt.

Section 68.
45 Vic. No. 27.
Schedule C.

No.

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

Between judgment creditor and judgment debtor and garnishee.

UPON hearing and reading the affidavit of filed the day of 189 and upon

It is ordered that all debts owing and accruing due from the abovenamed garnishee to the abovenamed judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the abovenamed judgment creditor in the Court of petty sessions in the district of on the day of 189 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 189 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 189 .

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.

Judgment against garnishee.

Section 68.
45 Vic. No. 27.
Schedule D.

No.

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

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

It is ordered that the said A.B. the abovenamed judgment creditor do recover against the said E.F. the abovenamed garnishee the sum of £ [insert the amount of the judgment]

Acknowledgment of payment into Court.
£ s. d.

Small Debts Recovery.

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 189 [or by instalments of for every days the first instalment to be paid on the day of 189 .]

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 189 .

Section 68.

45 Vic. No. 27.
Schedule E.

Execution against garnishee.

No.

Folio in ledger.

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 189 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 189 [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 189 .
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 189 .

Order

Small Debts Recovery.

Order for trial.

Section 63.
45 Vic. No. 27.
Schedule F.

No.

In the court of 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 _____ 189 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 _____ 189 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 _____ 189 .

Registrar.

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

THIRD SCHEDULE.

Section 64.
10 Vic. No. 10 ss. 6
and 40 and Schedule
A.

*Fees to be paid to the several officers undermentioned on the several occasions set against
the same.*

	£	s.	d.
To the Registrar on entering every plaint and cause for trial	0	1	0
To the Registrar for drawing plaint and particulars if requested by plaintiff ...	0	1	0
To the Registrar for copy of summons to be served on defendant	0	1	0
To the Registrar for every inspection of the record	0	0	6
To the Registrar for drawing and issuing every writ of execution or attachment	0	1	0
To the Registrar for every subpoena	0	0	6
To the Registrar for filling every defence or plea	0	1	0
To the Registrar for drawing same if requested by defendant	0	1	0
To the Bailiff for serving summons or subpoena at request of plaintiff or defendant and making affidavit of service if service be made	0	2	0
To the Bailiff for every levy or caption	0	1	0
To the Bailiff for every mile or fraction of a mile over 2 miles from the Court which he may have to travel to serve summons or execute other process of the Court but not counting the return journey	0	0	6
To the Bailiff for possession money by the day	0	3	6

Small Debts Recovery.

Section 29 (3).
10 Vic. No. 10 s. 44.
Schedule C.

FOURTH SCHEDULE.

Attorneys' costs.

	£	s.	d.
For drawing and copying plaint with the particulars	0	2	6
For summons with the particulars	0	1	0
For defence or set-off with the particulars	0	2	6
For an Advocate's fee in a case not exceeding £10 not more than ...	1	1	0
For an Advocate's fee in a case not less than £10 nor exceeding £30 not more than	3	3	0

By Authority: WILLIAM APPLEGATE GULLICK, Government Printer, Sydney, 1899.

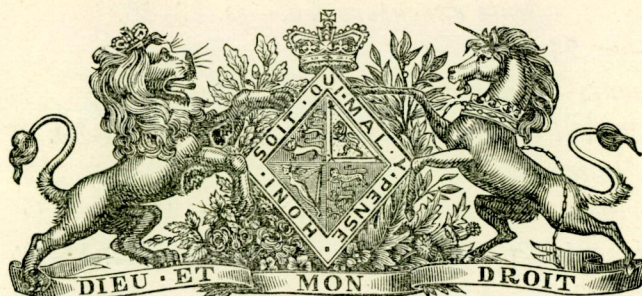
[1s. 3d.]

I Certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Legislative Council Chamber,
Sydney, 8th November, 1899.* }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SEXAGESIMO TERTIO

VICTORIÆ REGINÆ.

Act No. 13, 1899.

An Act to consolidate the Acts relating to the Recovery of Small Debts in Courts of Petty Sessions. [Assented to, 20th November, 1899.]

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

PART I.

PRELIMINARY.

1. This Act may be cited as the "Small Debts Recovery Short title. Act 1899" and is divided into Parts as follows:—

PART I.—PRELIMINARY—ss. 1-6.

PART

Small Debts Recovery.

PART II.—JURISDICTION—

*Outside the metropolitan police district—ss. 7 8.**Within the metropolitan police district—s. 9.**Generally—ss. 10–14.*

PART III.—PROCEDURE—

*Actions how commenced—ss. 15–17.**Place where action may be brought—s. 18.**Actions against joint defendants—ss. 19 20.**Default of appearance—ss. 21, 22.**Actions by infants executors &c.—ss. 23–26.**Costs—ss. 27–31.**Judgments—how recorded—ss. 32, 33.**Enforcement of judgments and orders—ss. 34–39.**Interpleader—s. 40.**Property protected from execution—ss. 41–43.**Attachment of debts due from garnishees—ss. 44–52.**Witnesses—ss. 53 54.**Officers—ss. 55–57.**Actions against officers—ss. 58 59.*

PART IV.—MISCELLANEOUS—ss. 60–68.

Repeal of Acts.
Saving clause.

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

Notwithstanding the repeal of the Acts hereby repealed:—

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

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

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

Application of Act.
42 Vic. No. 15 s. 1.

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

Power to define
limits of petty
sessions districts.
43 Vic. No. 31 s. 1.

4. The Governor may by proclamation in the Gazette define the limits of any petty sessions district for the purposes of this Act and after any such proclamation has been published in the Gazette the provisions

Small Debts Recovery.

provisions of this Act shall be in force and the jurisdiction and other powers hereby conferred shall be exercisable within the limits of any petty sessions district defined in such proclamation.

5. Courts of petty sessions shall be courts of record and the judgments of any of the said Courts may be set up as a defence in any action brought either in any of the said Courts or in the Supreme Court. Courts of petty sessions to be courts of record. 10 Vic. No. 10 s. 11.

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

“ Court ” means a Court of petty sessions. 10 Vic. No. 10 s. 46.

“ Court of petty sessions ” means—

- (a) any two or more justices of the peace sitting for the purposes of this Act at the usual place of meeting of justices in petty sessions 10 Vic. No. 10 s. 46.
- (b) one justice of the peace when so sitting in cases where by this Act a single justice is authorised to adjudicate 10 Vic. No. 10 s. 46. [See s. 8 of the Act.]
- (c) a police magistrate when so sitting in cases where by this Act he is vested with exclusive jurisdiction 45 Vic. No. 27 s. 1. [See s. 45 of the Act.]
- (d) a police or stipendiary magistrate when so sitting in any case where a police or stipendiary magistrate is authorised in the absence of other justices to do alone whatever may be done by two or more justices sitting in petty sessions [17 Vic. No. 39 s. 11.] [R. v. O'Brien 14 S.C.R. 195.]
- (e) a stipendiary or deputy stipendiary magistrate when so sitting in his own district under any Act whereby stipendiary magistrates are vested with exclusive jurisdiction in petty sessions. 45 Vic. No. 17. 47 Vic. No. 14. 60 Vic. No. 18.]

“ Garnishee ” means a person who is indebted to a judgment debtor. 45 Vic. No. 27 s. 3.

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

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

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

PART II.

JURISDICTION.

Outside the metropolitan police district.

7. All Courts now established or that may hereafter be established outside the boundaries for the time being of the metropolitan police district shall within their respective districts have power and authority to hear and determine in a summary way and according to equity Jurisdiction outside metropolitan police district. 10 Vic. No. 10 s. 4 and 55 Vic. No. 19 s. 1.

Small Debts Recovery.

equity and good conscience (against persons liable as hereinafter mentioned to be summoned to such Court and every defendant sued jointly with such persons) all actions whatsoever—

Debt up to £30.

55 Vic. No. 19 s. 1.

Other demand or
damage up to £10
or £30 by consent.

10 Vic. No. 10 s. 4.

(a) for the recovery of any debt only whether liquidated or unliquidated to an amount in any case not exceeding thirty pounds

(b) for the recovery of any demand or damage other than debt whether liquidated or unliquidated to an amount in any case not exceeding ten pounds or (where the party intended to be sued by writing under his hand consents thereto) to an amount not exceeding thirty pounds.

One justice to have
jurisdiction in
certain cases.

10 Vic. No. 10 s. 5.

8. (1) One justice of the peace may hear and determine all cases—

(a) in which the plaintiff seeks to recover no more than the sum of five pounds

(b) in which the sum in dispute exceeds five but does not exceed thirty pounds and both parties consent thereto.

(2) The consent of the parties shall be specially entered in the record book at the commencement of the hearing.

(3) Every such case shall be proceeded with in every respect as if the same were heard and determined by two or more justices.

Within the metropolitan police district.

Jurisdiction within
metropolitan police
district.

Ibid. s. 4.

55 Vic. No. 19 s. 1.

Debt demand or
damage up to £10.

By consent up to £30.

9. All Courts now established or that may hereafter be established within the boundaries for the time being of the metropolitan police district shall within their respective districts have power and authority to hear and determine in a summary way and according to equity and good conscience (against persons liable as hereinafter mentioned to be summoned to such Court and every defendant sued jointly with such persons) all actions whatsoever for the recovery of any debt demand or damage whether liquidated or unliquidated to an amount in any case not exceeding ten pounds or (where the party intended to be sued by writing under his hand consents thereto) to an amount not exceeding thirty pounds.

Generally.

Notes or bills for
sums not exceeding
£ 0.

10 Vic. No. 10 s. 10.

10. In case the defendant in any action appears to have given bills of exchange or promissory notes for the payment of any debt originally above the amount of jurisdiction created by this Act but which bills or notes are separately security for a sum not exceeding ten pounds each bill or note shall be regarded as forming a distinct and separate contract and may be sued upon and recovered in the same way as any other debt recoverable under this Act.

Small Debts Recovery.

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

Limitation of jurisdiction.
10 Vic. No. 10 s. 4.

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

Actions not to be split.
Ibid. s. 9.

13. All judgments and orders of a Court of petty sessions shall be final and conclusive :

Decision of Court of petty sessions to be final and conclusive.
Ibid. ss. 5 and 37.
Ibid. s. 11 second proviso.

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

14. Every attorney solicitor or other officer of the Supreme Court shall be subject to the several processes orders judgments and executions of the Courts of petty sessions in the same manner as other persons are subject to the same.

Officers of Supreme Court not exempt.
Ibid. s. 19.

Small Debts Recovery.

PART III.

PROCEDURE.

Actions how commenced.

Plaint.
10 Vic. No. 10 s. 20.
Contents of plaint.
Ibid.

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

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

Particulars.
Ibid. Schedule B.

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

Filing.
Ibid. s. 20.

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

Summons.
Ibid. s. 20.
Service of summons.
Ibid. s. 21.

16. The original summons shall be served on the defendant.

17. (1) The summons hereinbefore directed to be served on the defendant may be served by delivering such summons to the wife or servant of the defendant at the defendant's usual place of abode.

(2) In case the messenger or bailiff employed to serve the summons demands admittance into the house where the defendant usually resides and such admittance is refused he may put such copy into the house or fix it upon the door of the house and the same shall in such case be deemed to be good service upon the defendant.

Place where action may be brought.

For debt.
Ibid. s. 23.
55 Vic. No. 19 s. 2.

18. (1) Actions for debt may be brought either in the Court holden in and for the district where the defendant in such action usually resides or in the Court holden in and for the district in which the debt sued for was contracted.

For damages.
10 Vic. No. 10 s. 23.

(2) Actions for damage shall be brought in the Court holden in and for the district where the defendant in such action usually resides.

Party liable for
damage removing to
another district.
Ibid.

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

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

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

(4)

Small Debts Recovery.

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

Application of section to joint defendants.
10 Vic. No. 10 s. 23.

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

Power to determine questions as to defendant's residence.
Ibid. s. 24.

Actions against joint defendants.

19. (1) Where there are two or more joint defendants all of whom do not reside within the jurisdiction of the same Court the plaintiff may bring his action before any Court within the jurisdiction of which any of the joint defendants resides by serving any such defendant with a summons in the manner hereinbefore directed.

Where joint defendants reside in different districts.
Ibid. s. 24.
Plaintiff may serve any one.
Ibid.

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

Defendant served may notify others.
Ibid.

(3) If the other joint defendants do not appear and join in the defence the action may proceed and judgment be obtained and execution issued against the defendant who has been served with the plaintiff's summons although the other joint defendants have not been served with any summons nor joined in the defence.

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

(4) No plea in abatement shall be allowed for nor advantage be taken of the non-joinder of a joint defendant or joint defendants.

No plea in abatement for non-joinder.
Ibid.

20. (1) The defendant against whom execution is issued shall retain any right which he may have to demand contribution from the other joint defendants.

Right to contribution from joint defendants.
Ibid.

(2) If such defendant causes the other joint defendants to be personally served with a copy of the plaintiff's summons upon him in the action three days before the day appointed for appearing and answering to the same the judgment recovered against him in the action or a copy thereof certified by the registrar shall be admissible in evidence in any action for contribution afterwards brought by him against the other joint defendants for the purpose of proving their liability to such contribution.

Judgment in action when evidence.
Ibid.

(3) If such defendant does not cause the other joint defendants to be personally served as aforesaid then their liability to contribution shall be proved in the ordinary manner.

Proof of liability to contribute in other cases.
Ibid.

Default of appearance.

21. (1) If the plaintiff makes default of appearance and the defendant appears according to the summons the Court shall adjudge the plaintiff to be disproved.

By plaintiff.
Ibid. s. 29.

(2)

Small Debts Recovery.

When defendant
admits claim.
10 Vic. No. 10 s. 7.
Proviso.

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

By defendant.
Ibid. s. 8.

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

Trial may be
proceeded with ex
parte.

On cause shown
judgment may be set
aside and new trial
granted.

(2) The Court may on sufficient cause being shown at the next sitting of the Court or otherwise set aside any judgment given in the absence of the defendant and the execution thereupon upon such terms as it thinks fit and may grant a new trial of the cause upon the defendant paying the costs of the first trial and giving security to the satisfaction of the Court for the costs of the new trial.

Actions by infants executors &c.

Actions by infants.
Ibid. s. 18.

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

Actions by executors
and administrators.
Ibid. s. 33, and
Schedule B.

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

[*Ex parte Brown*
Knox 320.]

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

Actions by trustees.
Ibid. Schedule B.

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

Actions by official
assignees or trustees
of bankrupts.
Ibid. Schedule B.

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

Costs.

If plaintiff does not
appear a sum may be
awarded to
defendant.
Ibid. s. 7.

27. If upon the return day of any summons or at any adjournment of the Court or of the cause in which the summons was issued the plaintiff does not appear or appears but fails to prove his claim or demand

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demand to the satisfaction of the Court the Court may (when the defendant appears and does not admit the claim or demand) award to the defendant by way of costs and satisfaction for his trouble and attendance such sum as in its discretion it thinks fit.

28. Whenever the Court adjudges a plaint to be disproved for default of appearance or gives judgment for the defendant it may at its discretion allow the defendant his reasonable costs in like manner as for the party complaining.

Where plaint disproved or judgment for defendant.

10 Vic. No. 10 s. 29

29. (1) In all actions the plaintiff and defendant may appear and each conduct his case by himself his clerk or servant or employ any person admitted an attorney of the Supreme Court to practise as an advocate and attorney before the Court of petty sessions.

Parties may appear personally or by clerk or attorney.

Ibid. s. 44.

(2) The costs of professional assistance shall be paid by the party requiring such professional assistance.

Cost of professional assistance.

Ibid.

(3) No attorney practising before a Court of petty sessions shall demand or take more by way of fees for work by him done than the sums set forth in the Fourth Schedule hereto.

Attorney's fees.

Ibid.

Fourth Schedule.

30. The cost of all proceedings under section forty shall be in the discretion of the Court.

Under s. 40.

Ibid. s. 34.

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

Costs in garnishee proceedings.

45 Vic. No. 27 ss. 7

Judgments—how recorded.

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

Entry of judgment.

10 Vic. No. 10 s. 11.

33. No judgment shall be recorded by any Court of petty sessions in any case unless the process in such cause is by the affidavit of at least one credible witness before the said Court or the registrar or a commissioner of the Supreme Court or before a justice of the peace deposed to have been duly served upon the defendant in the manner directed by sections sixteen and seventeen of this Act.

Judgment not to be recorded without affidavit of service.

Ibid. s. 22.

Enforcement of judgments and orders.

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

Payment by instalments.

56 Vic. No. 37 s. 1.

(2)

Small Debts Recovery.

Default in payment
of instalment.
56 Vic. No. 37 s. 1.

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

Execution of process.
10 Vic. No. 10 s. 27.

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

Where defendant
removes into another
district after
judgment obtained.
Ibid. s. 31.

(2) The removal by any defendant after judgment recovered against him from the jurisdiction of one Court into the jurisdiction of another shall not prevent any plaintiff from proceeding against such defendant in the jurisdiction where such defendant happens to be resident at the time of issuing execution and the bailiff of any Court or his deputy may take such defendant into custody or dispose of his goods in like manner as if he were a resident of the district in which judgment was recovered against him.

Defendant entitled to
execution for costs.
Ibid. s. 29.

36. Where a Court adjudges costs to the defendant he shall be entitled to the like process of execution for his costs as the plaintiff would be entitled to if he had established his claim against the defendant.

Special writs.
Ibid. s. 30.

37. (1) The registrar of any Court shall grant a special writ of execution when demanded by the plaintiff or defendant as the case may be in any suit wherein such writ may be issued.

Registrar to appoint
special bailiff.

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

Party applying to
give security.

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

Bond to vest in
registrar.

(4) The bond shall vest in the registrar of the Court for the time being and may from time to time be sued upon in his name or in the name of any person to whom it may be assigned under any order of the Court.

Assignment of bond.

Mode of assignment.

(5) The assignment of the bond shall be made by an indorsement by the registrar for the time being.

Damages for
misconduct of special
bailiff.

(6) Any person who sustains any damage by the neglect or misconduct of any such bailiff may proceed before any Court of competent jurisdiction (the amount of such damage not exceeding fifty pounds or the sum specially directed by the Court as aforesaid) and the bond

Small Debts Recovery.

bond so given shall stand and be an additional security for such damages and shall if necessary be put in suit to recover the sum and costs from the parties thereto or any of them.

(7) In every case in which a special writ of execution is taken out neither the registrar nor bailiffs of the Courts of petty sessions shall be responsible for any act done under or in respect of such process by colour thereof but the person aggrieved by any such act shall have a remedy and right of action against the party or his sureties to whom the writ of execution was granted.

Registrar and Court
bailiffs not to be
responsible.
10 Vic. No. 10 s. 32.

38. No judgment of any of the Courts of petty sessions against the goods and chattels of the defendant in any suit or action brought therein shall be executed at any time after sunset and before sunrise and if any person executes any such judgment after sunset and before sunrise he is liable to a fine of ten pounds which shall be imposed and if necessary enforced by an order of the Court of petty sessions for the distress and sale of the offender's goods.

Time when execution
may be made.
Ibid. s. 35.

39. No execution awarded against the goods of any party shall deprive any landlord of the power vested in such landlord by an Act passed in the eighth year of the reign of her late Majesty Queen Anne entitled an Act for the better security of rents and to prevent Frauds committed by Tenants of recovering one year's rent in pursuance of the said Act.

Rights of landlords.
Ibid. s. 36.

Interpleader.

40. (1) Whenever a claim is made by a person not being the party against whom execution has issued to any goods or chattels taken or intended to be taken in execution under any process or to the proceeds or value thereof the Court from which the process issued may upon application of the bailiff or officer made before or after the return of such process and as well before as after any action brought against him call before it by an order for that purpose the party issuing the process and the claimant and thereupon pronounce its decision in a summary manner for the adjustment of the claim and the relief and protection of the bailiff or other officer.

Claim by person not
the party against
whom execution
issued.
Ibid. s. 34.

(2) The Court may make such order as appears to be just according to the circumstances and its decision shall be final and conclusive against the party issuing the process and the claimant and also against all persons claiming by from or under them.

Property protected from execution.

41. No real or leasehold property is liable to be levied upon under writs of execution out of Courts of petty sessions.

Realty and lease-
holds.
Ibid. s. 27.

42. If previously to the sale of any property levied upon such property being in the actual or ostensible possession of the party against whom the writ is directed a claim is made to it by any third person

Property in
possession of a
bailee.
Ibid. s. 32.

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person and such claim is deposed to before a justice of the peace and in such deposition it is averred that the party in whose actual or ostensible possession such property so levied upon be found is not the true owner but the bailee thereof such property shall be released from execution and the cost of the levy (if any) shall be either added to the amount of the costs charged in the execution or defrayed by the party claiming such property as the Court of petty sessions in its discretion directs.

Property comprised
in a bill of sale.
10 Vic. No. 10 s. 32.

43. (1) No absolute or conditional bill of sale or mortgage of chattel property whatever shall protect such property so levied upon from sale unless—

- (a) the bill of sale or mortgage be produced to the bailiff and
- (b) the bill of sale or mortgage was executed at least fourteen days before the summons was served upon the defendant in the case in which the writ of execution issued and
- (c) there be expressed in the bill of sale or mortgage a certain time for the payment of the principal sum for which the instrument was given as security and such time does not exceed one year from the date of the instrument and at the expiration of that time the holder of the bill of sale or mortgage shall not renew it but either assume possession or proceed to the sale of the property so secured or relinquish all claim to the protection of it from the debts of other creditors under judgments recovered under this Act and
- (d) the bill of sale or mortgage was registered by the registrar at the nearest Court of petty sessions within one week of the date of its execution.

Levy may be enforced
by taking special
writ.

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

Limit of protection.
Ibid. s. 32.

(2) Protection from sale under any circumstances shall only extend to such articles of chattel property as are specifically set forth and enumerated in a schedule to be annexed to the bill of sale or mortgage as the case may be.

Attachment of debts due from garnishees.

Examination of
judgment debtor as
to debts due to him.
45 Vic. No. 27 s. 2.

44. (1) Any creditor who has obtained a judgment in any Court of petty sessions may apply to the Court in which he obtained such judgment 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.

(2)

Small Debts Recovery.

(2) Every judgment debtor who refuses or neglects 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. Penalty for disobeying order. 45 Vic. No. 27 s. 2.

45. The jurisdiction given by the seven next following sections shall be exercisable only by a police magistrate. Police magistrate. Ibid. s. 1.

46. (1) The Court may make an order that all debts due owing or accruing from a garnishee residing within the jurisdiction of such Court to a judgment debtor shall be attached to answer the judgment debt. Garnishee orders. Ibid. s. 3.

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

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

(4) In any order for the payment of money by a garnishee or upon an application at any time made by him the Court may direct such payment to be made at such times and by such instalments as the said Court thinks fit and if default be made in the payment of any one such instalment execution may issue for so much of the amount then due by the garnishee as will satisfy the judgment debt remaining unpaid at the time of such default. Payment by instalments. 56 Vic. No. 37 s. 2.

(5) In proceedings to obtain a garnishee order 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. Court may refuse to interfere in certain cases. 45 Vic. No. 27 s. 9.

47. The Court may by the garnishee order or any subsequent order summon the garnishee to appear to show cause why he should not pay to the registrar on behalf of the judgment creditor the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment debt. Summons to garnishee to show cause. Ibid. s. 3.

48. Service on the garnishee of a garnishee order or notice to the garnishee of the making of such order shall attach in the hands of the garnishee all debts due owing or accruing from him to the judgment debtor. Attachment of debts by garnishee order. Ibid. s. 4.

49. If the garnishee does not forthwith pay to the registrar on behalf of the judgment creditor the amount due from him to the judgment debtor or an amount equal to the judgment debt and does not dispute the debt due or claimed to be due from him to the judgment debtor. Proceedings to levy amounts due from garnishee to judgment debtor. Ibid. s. 5.

Small Debts Recovery.

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 garnishee
disputes liability.
45 Vic. No. 27 s. 6.

50. 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 and determined and the order for such adjournment shall be served upon the garnishee and shall operate as a plaint entered against him to obtain payment of the sum claimed to be due from him to the judgment debtor.

Discharge of
garnishee.
Ibid. s. 8.

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

Garnishee book to
be kept.
Ibid. s. 10.

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

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

Witnesses.

Attendance of
witnesses.
10 Vic. No. 10 s. 23.

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

Expenses.
Ibid.

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

Penalty for refusing
to be sworn or
answer.
Ibid.

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

Officers.

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Officers.

55. The clerk of the bench or other clerk of the Courts of petty sessions as may from time to time be directed by such Courts respectively shall discharge the duties of registrar. Clerk and registrar. 10 Vic. No. 10 s. 6.

56. (1) The Courts of petty sessions shall from time to time appoint a bailiff or bailiffs for the service and execution of the process orders and judgments authorised by this Act. Bailiffs. Ibid. s. 6.

(2) Any such Courts may appoint a sergeant of police or police constable of their respective districts to be a bailiff of the Court appointing him who shall not therefore become incapable of acting as or forfeit his appointment of such sergeant or constable anything in any Act to the contrary notwithstanding. Police sergeant or constable may be a bailiff. 42 Vic. No. 15 s. 2.

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

57. If any bailiff deputy bailiff or other officer of any Court of petty sessions employed to execute any process of execution by connivance wilful neglect or omission causes or suffers the goods of the party against whom such execution is awarded to be rescued or carried away so that such execution has not its due effect any justice of the Court of petty sessions out of which such process issued may upon complaint and due proof thereof made upon the oath of one credible witness order such bailiff deputy or officer to pay the sum of money for which such execution was awarded or such part thereof as the said justice thinks proper to the party complaining and may enforce the payment thereof by the same means as are herein provided for the recovery of debts. Penalty for neglect of duty. 10 Vic. No. 10 s. 41.

Actions against officers.

58. All sheriffs and deputy sheriffs keepers of prisons or other persons whosoever who do anything under this Act in obedience to any legal order of any Court of petty sessions are hereby indemnified for whatsoever is done by them respectively in obedience thereto and if any action whatsoever is brought against any such sheriff keeper or person or against any justice of the peace or officer of any Court of petty sessions for performing any duty of his office in pursuance of this Act such sheriff justice keeper officer or other person may plead the general issue and give the special matter in evidence thereupon and if the plaintiff be nonsuited or discontinue his action or a verdict pass against him or judgment be had for the defendant upon demurrer such defendant shall have double costs. Indemnity to officers. Ibid. s. 38.

59. All actions for anything done under the provisions of this Act by persons acting in execution thereof shall be commenced within six months after the fact was committed and no writ shall be sued against Officer may plead general issue and give special matter in evidence. Limitation of actions against officers. Ibid. s. 39.

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against nor process served upon any justice of the peace registrar bailiff or other officer of any Court of petty sessions for anything done in the execution of or by reason of his office until one calendar month next after notice in writing has been delivered to him or left at his usual place of abode by the attorney or agent for the party who intends to sue out such writ as aforesaid in which notice shall be clearly and explicitly contained the cause of action the name and place of abode of the person bringing such action and the name and place of abode of the attorney or agent.

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

PART IV.

MISCELLANEOUS.

Perjury.

10 Vic. No. 10 s. 25

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

Court of petty sessions may commit.

Ibid. s. 25.

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

Proceedings may not be removed.

Ibid. s. 37.

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

Process not to be set aside for technical errors only.

Ibid. s. 42.

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

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

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

Arbitration.

Award may be entered as a judgment.

Ibid. s. 43.

63. If both parties in any cause agree between themselves not to try their cause before the Court of petty sessions but by means of arbitration and notify such agreement by a memorandum in writing signed

Small Debts Recovery.

signed by themselves or their agents the award made on such arbitration shall be binding on both parties and judgment in accordance therewith may be entered in the cause list of the said Court of petty sessions for the plaintiff or defendant as the case may be.

64. The several fees and sums of money expressed in the Third Schedule hereto and no other shall be taken by the several officers of the said Courts therein mentioned for their respective services in the execution of this Act

Fees to be taken.

Third Schedule.

10 Vic. No. 10 ss. 6, 40.

Provided that the several Courts of petty sessions may with the approval of the Attorney-General from time to time fix the amount of the fees payable to every bailiff under such Courts.

Power to fix bailiff's fees.

45 Vic. No. 27 s. 13.

65. (1) The Governor may from time to time frame rules to be in force in the several districts for the carrying out of the provisions of this Act except the provisions contained in sections forty-four to fifty-two inclusive.

General power to make rules.

43 Vic. No. 34 s. 3.

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

(2) The Courts of petty sessions in each police district may make such rules as they think fit for regulating the practice and proceedings of each of such Courts under sections forty-four to fifty-two inclusive of this Act and for the fixing of Court fees payable thereunder but such rules shall have no effect until approved of by the Attorney-General.

In garnishee proceedings.

45 Vic. No. 27 s. 12.

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

Attorney or agent may be suspended or prohibited.

10 Vic. No. 10 s. 45.

67. Any person guilty of contempt before a Court of petty sessions may be punished in a summary way by fine not exceeding forty shillings to be levied upon his goods and chattels or by imprisonment for any time not exceeding fourteen days.

Contempt before Court.

10 Vic. No. 10 s. 26.

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

Forms.

Second Schedule.

10 Vic. No. 10 ss.

20, 23; Schedules

B and C.

45 Vic. No. 27 s. 14.

SCHEDULES.

Small Debts Recovery.

SCHEDULES.

Section 2.

FIRST SCHEDULE.

Reference to Acts.	Title or short title.	Extent of repeal.
10 Vic. No. 10 ...	An Act to amend the law respecting the recovery of Small Debts in all parts of the Colony.	The whole Act except sections fifteen sixteen and seventeen.
33 Vic. No. 11 ...	An Act to extend the provisions of the Small Debts Act, 10 Vic. No. 10.	The whole Act.
42 Vic. No. 15 ...	An Act to further extend the provisions of the Small Debts Act, 10 Vic. No. 10.	The whole Act.
43 Vic. No. 34 ...	Small Debts Act Amendment Act of 1880.	The whole Act.
45 Vic. No. 27 ...	Small Debts Recovery Act ...	So much thereof as applies to Courts of petty sessions.
55 Vic. No. 19 ...	An Act to extend the jurisdiction of Courts of petty sessions.	The whole Act.
56 Vic. No. 37 ...	Debts Recovery Act, 1893 ...	Section one and so much of section two as applies to Courts of petty sessions.

Section 68.

10 Vic. No. 10.
Schedule B.

SECOND SCHEDULE.

FORMS.

Plaints.

IN THE CASE OF GOODS SOLD.

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

IN THE CASE OR DEMAND FOR RENT.

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

FOR LODGING.

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

FOR HIRE OF HORSES.

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

FOR

Small Debts Recovery.

FOR AGISTMENT.

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

FOR WORK AND LABOUR.

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

FOR WORK AND LABOUR OF SERVANTS.

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

FOR WORK AND LABOUR OF SERVANTS HORSES AND CARRIAGES.

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

FOR WAGES.

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

FOR MONEY LENT.

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

ON A PROMISSORY NOTE OR BILL OF EXCHANGE.

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

ON A BOND.

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

FOR MONEY DUE ON AN AGREEMENT.

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

ON AN AWARD.

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

FOR UNLAWFUL DETENTION OF PROPERTY.

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

FOR

Small Debts Recovery.

FOR UNLAWFUL DETENTION OF PROPERTY DEPOSITED.

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

FOR DAMAGE SUSTAINED BY IMPROPER DRIVING.

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

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

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

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

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

Section 63.
10 Vic. No. 10.
Schedule B.

Defence.

NEW SOUTH WALES.

Court of petty sessions for the } day of
district of } 18 .
Between { A.B. and Plaintiff
{ C.D. Defendant

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

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

To A.B.

The above-named plaintiff

Summons.

Small Debts Recovery.

Summons.

NEW SOUTH WALES.

Section 68.

10 Vic. No. 10.
Schedule B.

In the Court of petty sessions for }
the district }

To

of

You are hereby summoned to appear in this Court at on the
day of next at ten of the clock in the forenoon of the same day
precisely to answer the following plaint [*insert copy of plaint and particulars as filed
with the registrar*] otherwise upon proof of the due service of a copy of this summons
the cause when called on for hearing will be tried and judgment be given against you
for whatever may appear to be due together with such costs as the Court may think
fit to award And take notice that if you intend to defend upon any matter of set-off
or excuse you must file particulars of the same in the office of the registrar
clear days at the least before the day herein named for the hearing of the cause other-
wise the evidence you may bring forward to support such set-off cannot be admitted.

Dated this day of one thousand eight hundred and

By the Court

A.B. Registrar.

Precept in the nature of a fieri facias.

EXECUTION AGAINST GOODS.

Section 68.

10 Vic. No. 10.
Schedule C.

Court of petty sessions for the }
district of }

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

In pursuance and by virtue of a decision of the Court of petty sessions for the
district of made on the day of 18 you are hereby required to
levy of the goods and chattels of to satisfy for the amount of
pounds shillings and pence being the amount of judgment and costs
which in the said Court he was adjudged to pay to the said and after levy duly
made thereof forthwith to pay the same into this office And what you shall do herein
certify and return to this Court at the expiration of one calendar month from the date
hereof or within three days after this warrant shall be executed if that shall sooner
happen.

Dated this day of 18 .

By the Court

A.B. Registrar.

£ s. d.

Judgment.....

Costs.....

Execution.....

Alias.....

£

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

Subpoena

Small Debts Recovery.

Section 68.
10 Vic. No. 10.
Schedule C.

Subpœna for witness.

NEW SOUTH WALES.

Court of petty sessions for the } To A.B. of
District of } C.D. of
E.F. of

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

By the Court
Registrar or Clerk of the Court.

Section 68.
10 Vic. No. 10.
Schedule C.

Attachment for non-appearance to a subpœna.

A.B. plaintiff }
C.D. defendant } Victoria Regina.
Court of petty sessions for the }
District of }

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

At a Court of petty sessions for the district of held on the day of 18 it appearing to this Court that has been duly served with a copy of a subpœna to attend this Court in the above case and though duly called came not You and each of you are hereby commanded to attach the said wherever you may find him for a disobedience to the said subpœna and him safely and securely keep so that you may have him before a justice of the peace of the said Court on the day of to hear and abide such order as shall then be made touching the contempt of the said in disobedience of such subpœna.

Section 68.
45 Vic. No. 27.
Schedule A.

Order for examination of judgment debtor.

No.

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

Between judgment creditor and judgment debtor.

UPON the application of the abovenamed judgment creditor it is ordered that the abovenamed judgment debtor attend this Court on the day of 189 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 189

By the Court.
Registrar.

To the abovenamed judgment debtor.

Affidavit

Small Debts Recovery.

Affidavit to ground garnishee order.

No.

Section 68.
45 Vic. No. 27.
Schedule B.

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

Between judgment creditor and judgment debtor.

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

- (1) That I [or the abovenamed judgment creditor] on the day of last past recovered judgment in the Court of petty sessions at the abovenamed judgment debtor for the sum of £ and costs against
- (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 189 before me

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

Garnishee order attaching debt.

No.

Section 68.
45 Vic. No. 27.
Schedule C.

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 189 and upon

It is ordered that all debts owing and accruing due from the abovenamed garnishee to the abovenamed judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the abovenamed judgment creditor in the Court of petty sessions in the district of on the day of 189 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 189 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 189 .

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.

Judgment against garnishee.

No.

Section 68.
45 Vic. No. 27.
Schedule D.

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

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

It is ordered that the said A.B. the abovenamed judgment creditor do recover against the said E.F. the abovenamed garnishee the sum of £ [insert the amount of the judgment] £ s. d. Acknowledgment of payment into Court.

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 189 [or by instalments of for every days the first instalment to be paid on the day of 189 .]

Dated this day of 189 .

Folio in ledger.

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

WHEREAS on the day of 189 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 189 [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.

Registrar.

Amount for which judgment was obtained.

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.

Order

*Small Debts Recovery.**Order for trial.*

No.

In the court of sessions }
in the district of }

Section 68.

45 Vic. No. 27.

Schedule F.

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 _____ 189__ 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 _____ 189__ 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 _____ 189__ .

Registrar.

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

THIRD SCHEDULE.

Section 64.

*Fees to be paid to the several officers undermentioned on the several occasions set against
the same.*

10 Vic. No. 10 ss. 6
and 40 and Schedule
A.

	£	s.	d.
To the Registrar on entering every plaint and cause for trial	0	1	0
To the Registrar for drawing plaint and particulars if requested by plaintiff ...	0	1	0
To the Registrar for copy of summons to be served on defendant	0	1	0
To the Registrar for every inspection of the record	0	0	6
To the Registrar for drawing and issuing every writ of execution or attachment	0	1	0
To the Registrar for every subpœna	0	0	6
To the Registrar for filling every defence or plea	0	1	0
To the Registrar for drawing same if requested by defendant	0	1	0
To the Bailiff for serving summons or subpœna at request of plaintiff or defendant and making affidavit of service if service be made	0	2	0
To the Bailiff for every levy or caption	0	1	0
To the Bailiff for every mile or fraction of a mile over 2 miles from the Court which he may have to travel to serve summons or execute other process of the Court but not counting the return journey	0	0	6
To the Bailiff for possession money by the day	0	3	6

FOURTH

Small Debts Recovery.

Section 29 (3).
10 Vic. No. 10 s. 44.
Schedule C.

FOURTH SCHEDULE.

Attorneys' costs.

	£	s.	d.
For drawing and copying plaint with the particulars	0	2	6
For summons with the particulars	0	1	0
For defence or set-off with the particulars	0	2	6
For an Advocate's fee in a case not exceeding £10 not more than ...	1	1	0
For an Advocate's fee in a case not less than £10 nor exceeding £30 not more than	3	3	0

In the name and on the behalf of Her Majesty I assent to this Act.

BEAUCHAMP,
Governor.

Government House,
Sydney, 20th November, 1899.

Memo. and Certificate to accompany the Small Debts Recovery Bill.

THIS Bill consolidates the whole or part of the following Acts :

10 Vic. No. 10 ;
33 Vic. No. 11 ;
42 Vic. No. 15 ;
43 Vic. No. 34 ;
45 Vic. No. 27 ;
55 Vic. No. 19 ;
56 Vic. No. 37.

Clause 6.—It has been found necessary to insert a fuller definition of the term “Court of Petty Sessions” than is given in sec. 46 of the 10 Vic. No. 10. That now adopted is believed to be comprehensive and accurate.

Clauses 7 and 9.—In the Act 55 Vic. No. 19 sec. 1 the extended jurisdiction to £30 is given “except within the boundaries for the time being of the several Petty Sessions Districts of Sydney and the suburbs thereof.” This loose phrase is in practice construed to mean the Metropolitan police district and this more accurate expression has therefore been here adopted.

Clause 28.—The words in sec. 29 of the original Act, “in like manner as for the party complaining” seem to have no meaning, for there seems to be no provision for giving any costs to the party complaining. As however rules have been made under the Act by which in certain cases limited costs can be allowed to a successful plaintiff the words are left in as possibly throwing some light on the intention of the Legislature. The point, left doubtful in the original Acts, whether professional costs can be awarded under 45 Vic. No. 27, secs. 7 and 9, and under sec. 42 of 10 Vic. No. 10, is not decided one way or the other in this consolidation.

Clause 43.—Section 32 of 10 Vic. No. 10 is very confusedly drawn and some verbal changes have been made and some words added to make what seems to be its meaning more clear.

Clause 44.—It has been resolved, after consideration, that the powers under sec. 2 of the 45 Vic. No. 27 are not confined to police magistrates, but may be exercised by the Court before which the judgment was obtained, and this has accordingly been made clear.

Clause 60 (2).—There is some doubt whether this power, in sec. 25 of 10 Vic. No. 10, extended to proceedings under the Garnishee Act (45 Vic. No. 27), but it has been considered that the proper way to deal with the latter Act is to regard it, in some respects, as an Act amending, and to be read with, the 10 Vic. No. 10. This power of the earlier Acts would therefore apply also to the later.

Clause 65.—Section 20 of 10 Vic. No. 10, which gave the local Courts power to make rules with the approval of the Attorney-General as to the times of filing plaints, appears to be superseded by the general powers given to the Governor in sec. 3 of 43 Vic. No. 34. It has therefore been omitted. There is still an unfortunate division of authority in the power to make rules which it has been found impossible to remove. The Governor's power to make rules does not include the garnishee clauses, while the Courts of Petty Sessions can make rules *only* as to the garnishee clauses.

There are a number of verbal omissions and changes, for the sake of greater clearness and terseness, which in no way alter the sense.

I certify that, except as hereinbefore explained, this Bill solely consolidates and in no way alters, adds to, or amends the law as contained in the Acts thereby consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Small Debts Recovery Act, 1899.

TABLE showing how the sections of Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
10 VICTORIA No. 10.		
Preamble	Omitted.	
1	Omitted ...	This section kept in force the Act 6 Vic. No. 15 for a limited purpose. The Act 6 Vic. No. 15 has been repealed by the "District Courts Act, 1858," section 24.
2	Omitted ...	Extension to Melbourne.
3	Omitted ...	Obsolete since repeal of 6 Vic. No. 15, and passing of 42 Vic. No. 15.
4	7, 9, 11	
5	8, 13	
6	55, 56 (1), 64	
7	21 (2), 27	
8	22	
9	12	
10	10	
11	5, 13, 32	
12	Omitted ...	} Repealed by 12 Vic. No. 1, section 1.
13	Omitted ...	
14	Omitted ...	
15	} Omitted ...	{ Repealed by 60 Vic. No. 19, s. 1.
16		
17		
18	23	{ To be consolidated under the subject "Supreme Court."
19	14	
20	15, 16, 68	
21	17	The power to make rules as to certain matters appears to be superseded by s. 3 of 43 Vic. No. 34.
22	33	
23	18 (1), (2), (3), (4)	
24	18 (5), 19, 20	The power to examine given by s. 25 is now provided for in the general provision contained in s. 33 of the Interpretation Act of 1897.
25	60	
26	53, 54, 67	
27	35 (1), 41	"Colony" substituted for "Territory." Section 68 is a general section enjoining the use of the forms in the Second Schedule.
28	68	
29	21 (1), 28, 36	
30	37 (1)-(6)	Preamble to section 31 omitted.
31	35 (2)	
32	37 (7), 42, 43	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
10 VICTORIA No. 10— <i>continued</i> .		
33	24 (1)	Preamble to section 34 omitted.
34	30, 40	
35	38	
36	39	
37	13, 61	
38	58	
39	59	
40	64	
41	57	
42	62	
43	63	Preamble to section 44 omitted.
44	29	
45	66	Partly provided for in "Interpretation Act of 1897."
46	6	
Schedule A	... Sec. 64, Third Schedule.	
" B	... { 15 (3), 24 (2), 25, 26, 68 Second Schedule.	
" C	... Sec. 68, Second and Fourth Schedule.	
" D	... Omitted	Repealed by 12 Vic. No. 1, s. 1.
33 VICTORIA No. 11.		
Preamble	Omitted.	Obsolete since 42 Vic. No. 15.
1	Omitted	
42 VICTORIA No. 15.		
Preamble	Omitted.	As to jurisdiction of stipendiary magistrates see now 45 Vic. No. 17 and 47 Vic. No. 14.
1	3	
2	56, (2)	
43 VICTORIA No. 34.		
Preamble	Omitted.	Operation exhausted.
1	4	
2	Omitted	
3	65 (1)	
4	Omitted	Short title.
45 VICTORIA No. 27.		
Preamble	Omitted.	
1	6, 45	
2	44	
3	6, 46 (1), (2), (3), 47	

Section of Repealed Acts.		Section of Consolidated Act.	Remarks.
45 VICTORIA No. 27— <i>continued</i> .			
4		48	
5		49	
6		50	
7		31	
8		51	
9		31, 46 (5)	The latter portion of section 9 is identical with the first portion of section 7. The words are therefore not repeated in clause 46 (5) of the Bill.
10		52	
11	Omitted	...	Applicable only to District Courts, and to be consolidated with District Courts Acts.
12		65 (2)	
13		64, Proviso.	
14		68	The power to alter forms given by sections 11 and 14 seems to be confined to District Court Judges.
Schedule A	...	Section 68 and Second Schedule.	
" B	...		
" C	...		
" D	...		
" E	...		
" F	...		
NOTE.—The Consolidating Act only repeals so much of 45 Vic. No. 27 as applies to courts of petty sessions. The provisions applicable to District Courts will be incorporated in the Act consolidating the District Courts Acts.			
55 VICTORIA No. 19.			
Preamble		Omitted.	
1		7 (a), 9	
2		18 (1)	
3		Omitted	Construction.
56 VICTORIA No. 37.			
1		34	
2		46 (4)	
3	Omitted	...	Short title.
NOTE.—The Consolidating Act only repeals so much of 56 Vic. No. 37 as applies to courts of petty sessions. The provisions applicable to District Courts will be incorporated in the Act consolidating the District Courts Acts.			

UNITED STATES DEPARTMENT OF AGRICULTURE

Report of the Director of the Bureau of Plant Industry

for the year ending June 30, 1911

Presented to the Senate and House of Representatives

at their respective sessions

January 10, 1912

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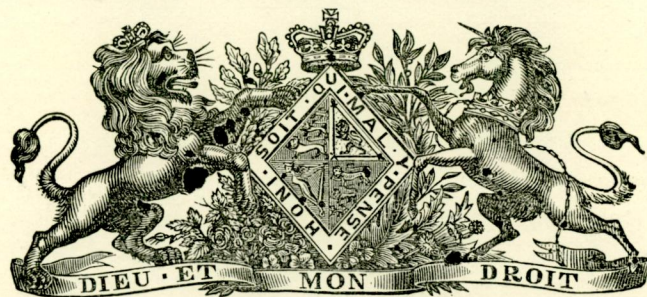
1912

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

*Legislative Council Chamber,
Sydney, 2nd August, 1899. }*

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SEXAGESIMO TERTIO

VICTORIÆ REGINÆ.

Act No. , 1899.

An Act to consolidate the Acts relating to the Recovery of
Small Debts in Courts of Petty Sessions.

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

PART I.

PRELIMINARY.

1. This Act may be cited as the "Small Debts Recovery short title.
Act 1899" and is divided into Parts as follows:—

PART I.—PRELIMINARY—ss. 1-6.

C 8—A

PART

Small Debts Recovery.

PART II.—JURISDICTION—

Outside the metropolitan police district—ss. 7 8.

Within the metropolitan police district—s. 9.

Generally—ss. 10-14.

PART III.—PROCEDURE—

Actions how commenced—ss. 15-17.

Place where action may be brought—s. 18.

Actions against joint defendants—ss. 19 20.

Default of appearance—ss. 21, 22.

Actions by infants executors &c.—ss. 23-26.

Costs—ss. 27-31.

Judgments—how recorded—ss. 32, 33.

Enforcement of judgments and orders—ss. 34-39.

Interpleader—s. 40.

Property protected from execution—ss. 41-43.

Attachment of debts due from garnishees—ss. 44-52.

Witnesses—ss. 53 54.

Officers—ss. 55-57.

Actions against officers—ss. 58 59.

PART IV.—MISCELLANEOUS—ss. 60-68.

2. The Acts mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed. Repeal of Acts.
Saving clause:

Notwithstanding the repeal of the Acts hereby repealed:—

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

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

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

3. This Act shall be in force and apply to all parts of the Colony. Application of Act.
42 Vic. No. 15 s. 1.

4. The Governor may by proclamation in the Gazette define the limits of any petty sessions district for the purposes of this Act and after any such proclamation has been published in the Gazette the provisions Power to define
limits of petty
sessions districts.
43 Vic. No. 34 s. 1.

Small Debts Recovery.

provisions of this Act shall be in force and the jurisdiction and other powers hereby conferred shall be exercisable within the limits of any petty sessions district defined in such proclamation.

5. Courts of petty sessions shall be courts of record and the judgments of any of the said Courts may be set up as a defence in any action brought either in any of the said Courts or in the Supreme Court. Courts of petty sessions to be courts of record. 10 Vic. No. 10 s. 11.

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

“Court” means a Court of petty sessions. 10 Vic. No. 10 s. 46.

“Court of petty sessions” means—

(a) any two or more justices of the peace sitting for the purposes of this Act at the usual place of meeting of justices in petty sessions 10 Vic. No. 10 s. 43.

(b) one justice of the peace when so sitting in cases where by this Act a single justice is authorised to adjudicate 10 Vic. No. 10 s. 46. [See s. 8 of the Act.]

(c) a police magistrate when so sitting in cases where by this Act he is vested with exclusive jurisdiction 45 Vic. No. 27 s. 1. [See s. 45 of the Act.]

(d) a police or stipendiary magistrate when so sitting in any case where a police or stipendiary magistrate is authorised in the absence of other justices to do alone whatever may be done by two or more justices sitting in petty sessions [17 Vic. No. 39 s. 11.] [R. v. O'Brien 14 S.C.R. 196.]

(e) a stipendiary or deputy stipendiary magistrate when so sitting in his own district under any Act whereby stipendiary magistrates are vested with exclusive jurisdiction in petty sessions. 45 Vic. No. 17. 47 Vic. No. 14. 60 Vic. No. 18.]

“Garnishee” means a person who is indebted to a judgment debtor. 45 Vic. No. 27 s. 3.

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

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

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

PART II.

JURISDICTION.

Outside the metropolitan police district.

7. All Courts now established or that may hereafter be established outside the boundaries for the time being of the metropolitan police district shall within their respective districts have power and authority to hear and determine in a summary way and according to equity Jurisdiction outside metropolitan police district. 10 Vic. No. 10 s. 4 and 55 Vic. No. 19 s. 1.

Small Debts Recovery.

equity and good conscience (against persons liable as hereinafter mentioned to be summoned to such Court and every defendant sued jointly with such persons) all actions whatsoever—

- (a) for the recovery of any debt only whether liquidated or unliquidated to an amount in any case not exceeding thirty pounds Debt up to £30. 55 Vic. No. 19 s. 1.
- (b) for the recovery of any demand or damage other than debt whether liquidated or unliquidated to an amount in any case not exceeding ten pounds or (where the party intended to be sued by writing under his hand consents thereto) to an amount not exceeding thirty pounds. Other demand or damage up to £10 or £30 by consent. 10 Vic. No. 10 s. 4.

8. (1) One justice of the peace may hear and determine all cases— One justice to have jurisdiction in certain cases.

- (a) in which the plaintiff seeks to recover no more than the sum of five pounds 10 Vic. No. 10 s. 5.
- (b) in which the sum in dispute exceeds five but does not exceed thirty pounds and both parties consent thereto.

(2) The consent of the parties shall be specially entered in the record book at the commencement of the hearing.

(3) Every such case shall be proceeded with in every respect as if the same were heard and determined by two or more justices.

Within the metropolitan police district.

9. All Courts now established or that may hereafter be established within the boundaries for the time being of the metropolitan police district shall within their respective districts have power and authority to hear and determine in a summary way and according to equity and good conscience (against persons liable as hereinafter mentioned to be summoned to such Court and every defendant sued jointly with such persons) all actions whatsoever for the recovery of any debt demand or damage whether liquidated or unliquidated to an amount in any case not exceeding ten pounds or (where the party intended to be sued by writing under his hand consents thereto) to an amount not exceeding thirty pounds. Jurisdiction within metropolitan police district. *Ibid.* s. 4. 55 Vic. No. 19 s. 1. Debt demand or damage up to £10. By consent up to £30.

Generally.

10. In case the defendant in any action appears to have given bills of exchange or promissory notes for the payment of any debt originally above the amount of jurisdiction created by this Act but which bills or notes are separately security for a sum not exceeding ten pounds each bill or note shall be regarded as forming a distinct and separate contract and may be sued upon and recovered in the same way as any other debt recoverable under this Act. Notes or bills for sums not exceeding £10. 10 Vic. No. 10 s. 10.

Small Debts Recovery.

11. No Court shall have jurisdiction in any of the following cases :— Limitation of jurisdiction.
10 Vic. No. 10 s. 4.

- (1) Where the matter in question relates to the taking of any duty to Her Majesty or any fee of office or to any annual rent or other matter in which rights in future may be bound or to any general right or duty.
- (2) Where the debt sought to be recovered is for any money or thing won at or by means of any race match wager raffle or any kind of play or game.
- (3) Where the debt or claim has arisen more than three years before the issuing of the summons unless there hath been in writing an acknowledgment of or promise to pay the same within that period.
- (4) In respect of any contract for the sale of goods unless the buyer has actually received the same or part thereof or given something in earnest to bind the bargain or in part payment or some note or memorandum in writing of the bargain has been signed by the party sought to be charged by such contract or his agent thereunto lawfully authorised.
- (5) In cases of trespass to land if the title to the freehold therein be bona fide in dispute between the parties.

12. It shall not be lawful to split or divide any cause of action for the purpose of bringing the same within the jurisdiction of any Court of petty sessions and in case it appears to the said Court at any stage of the proceedings that any cause of action has been so split or divided such Court shall dismiss the action brought thereupon with costs. Actions not to be split.
Ibid. s. 9.

13. All judgments and orders of a Court of petty sessions shall be final and conclusive: Decision of Court of petty sessions to be final and conclusive.
Ibid. ss. 5 and 37.
Ibid. s. 11 second proviso.

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

14. Every attorney solicitor or other officer of the Supreme Court shall be subject to the several processes orders judgments and executions of the Courts of petty sessions in the same manner as other persons are subject to the same. Officers of Supreme Court not exempt.
Ibid. s. 19.

Small Debts Recovery.

PART III.

PROCEDURE.

Actions how commenced.

15. (1) Every action shall be commenced by a plaint in writing. Plaint. 10 Vic. No. 10 s. 20.
 (2) The plaintiff shall in his plaint shortly and in substance set forth his cause of action and shall also state the place of his abode Contents of plaint. Ibid. (or the place of abode of his attorney if he sue by an attorney) and the place of abode of the defendant.
 (3) The items constituting the particulars of claim shall be appended to the plaint or stated and filed therewith. Particulars. Ibid. Schedule B.
 (4) The plaintiff shall cause his plaint to be filed with the registrar of the Court at which the action is to be tried at the prescribed times before the sitting of the said Court and the registrar shall annex the plaint or a copy thereof to a copy of the summons hereinafter mentioned and shall retain the same in Court. Filing. Ibid. s. 20.
16. The original summons shall be served on the defendant. Summons. Ibid. s. 20.
17. (1) The summons hereinbefore directed to be served on the defendant may be served by delivering such summons to the wife or servant of the defendant at the defendant's usual place of abode. Service of summons. Ibid. s. 21.
 (2) In case the messenger or bailiff employed to serve the summons demands admittance into the house where the defendant usually resides and such admittance is refused he may put such copy into the house or fix it upon the door of the house and the same shall in such case be deemed to be good service upon the defendant.

Place where action may be brought.

18. (1) Actions for debt may be brought either in the Court holden in and for the district where the defendant in such action usually resides or in the Court holden in and for the district in which the debt sued for was contracted. For debt. Ibid. s. 23. 55 Vic. No. 19 s. 2.
 (2) Actions for damage shall be brought in the Court holden in and for the district where the defendant in such action usually resides. For damages. 10 Vic. No. 10 s. 23.
- If any party after having in one district incurred a liability for any damage recoverable in the Courts of petty sessions becomes resident in another district previously to the issuing of a summons for the recovery of such damage the plaintiff may summon the defendant to the Court holden for the district in which such liability for damage was incurred originally in the same manner as if he had continued a resident of such district. Party liable for damage removing to another district. Ibid.
- (3) In case the defendant in any action has given an engagement or promise in writing to pay any debt or sum in a particular place specified the plaintiff may cause such defendant to be summoned to attend the Court holden in and for the district within which the place so specified is situated. Where promise made to pay in a particular place. Ibid.
- (4)

Small Debts Recovery.

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

Application of section to joint defendants.

10 Vic. No. 10 s. 23.

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

Power to determine questions as to defendant's residence.

Ibid. s. 24.

Actions against joint defendants.

19. (1) Where there are two or more joint defendants all of whom do not reside within the jurisdiction of the same Court the plaintiff may bring his action before any Court within the jurisdiction of which any of the joint defendants resides by serving any such defendant with a summons in the manner hereinbefore directed.

Where joint defendants reside in different districts.

Ibid. s. 24.

Plaintiff may serve any one.

Ibid.

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

Defendant served may notify others.

Ibid.

(3) If the other joint defendants do not appear and join in the defence the action may proceed and judgment be obtained and execution issued against the defendant who has been served with the plaintiff's summons although the other joint defendants have not been served with any summons nor joined in the defence.

Action to proceed although other defendants do not appear.

Ibid.

(4) No plea in abatement shall be allowed for nor advantage be taken of the non-joinder of a joint defendant or joint defendants.

No plea in abatement for non-joinder.

Ibid.

20. (1) The defendant against whom execution is issued shall retain any right which he may have to demand contribution from the other joint defendants.

Right to contribution from joint defendants.

Ibid.

(2) If such defendant causes the other joint defendants to be personally served with a copy of the plaintiff's summons upon him in the action three days before the day appointed for appearing and answering to the same the judgment recovered against him in the action or a copy thereof certified by the registrar shall be admissible in evidence in any action for contribution afterwards brought by him against the other joint defendants for the purpose of proving their liability to such contribution.

Judgment in action when evidence.

Ibid.

(3) If such defendant does not cause the other joint defendants to be personally served as aforesaid then their liability to contribution shall be proved in the ordinary manner.

Proof of liability to contribute in other cases.

Ibid.

Default of appearance.

21. (1) If the plaintiff makes default of appearance and the defendant appears according to the summons the Court shall adjudge the plaintiff to be disproved.

By plaintiff.

Ibid. s. 29.

(2)

Small Debts Recovery.

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

When defendant admits claim.
10 Vic. No. 10 s. 7.
Proviso.

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

By defendant.
Ibid. s. 8.

Trial may be proceeded with ex parte.

(2) The Court may on sufficient cause being shown at the next sitting of the Court or otherwise set aside any judgment given in the absence of the defendant and the execution thereupon upon such terms as it thinks fit and may grant a new trial of the cause upon the defendant paying the costs of the first trial and giving security to the satisfaction of the Court for the costs of the new trial.

On cause shown judgment may be set aside and new trial granted.

Actions by infants executors &c.

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

Actions by infants.
Ibid. s. 18.

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

Actions by executors and administrators.
Ibid. s. 33, and Schedule B.

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

[*Ex parte Brown*
Knox 320.]

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

Actions by trustees.
Ibid. Schedule B.

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

Actions by official assignees or trustees of bankrupts.
Ibid. Schedule B.

Costs.

27. If upon the return day of any summons or at any adjournment of the Court or of the cause in which the summons was issued the plaintiff does not appear or appears but fails to prove his claim or demand

If plaintiff does not appear a sum may be awarded to defendant.
Ibid. s. 7.

Small Debts Recovery.

demand to the satisfaction of the Court the Court may (when the defendant appears and does not admit the claim or demand) award to the defendant by way of costs and satisfaction for his trouble and attendance such sum as in its discretion it thinks fit.

28. Whenever the Court adjudges a plaintiff to be disproved for default of appearance or gives judgment for the defendant it may at its discretion allow the defendant his reasonable costs in like manner as for the party complaining.

Where plaintiff disproved or judgment for defendant.

10 Vic. No. 10 s. 29

29. (1) In all actions the plaintiff and defendant may appear and each conduct his case by himself his clerk or servant or employ any person admitted an attorney of the Supreme Court to practise as an advocate and attorney before the Court of petty sessions.

Parties may appear personally or by clerk or attorney.

Ibid. s. 44.

(2) The costs of professional assistance shall be paid by the party requiring such professional assistance.

Cost of professional assistance.

Ibid.

(3) No attorney practising before a Court of petty sessions shall demand or take more by way of fees for work by him done than the sums set forth in the Fourth Schedule hereto.

Attorney's fees.

Ibid.

Fourth Schedule.

30. The cost of all proceedings under section forty shall be in the discretion of the Court.

Under s. 40.

Ibid. s. 34.

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

Costs in garnishee proceedings.

45 Vic. No. 27 ss. 7, 9.

Judgments—how recorded.

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

Entry of judgment.

10 Vic. No. 10 s. 11.

33. No judgment shall be recorded by any Court of petty sessions in any case unless the process in such cause is by the affidavit of at least one credible witness before the said Court or the registrar or a commissioner of the Supreme Court or before a justice of the peace deposed to have been duly served upon the defendant in the manner directed by sections sixteen and seventeen of this Act.

Judgment not to be recorded without affidavit of service.

Ibid. s. 22.

Enforcement of judgments and orders.

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

Payment by instalments.

56 Vic. No. 37 s. 1.

(2)

Small Debts Recovery.

(2) If default is made in the payment of any one such instalment execution may be had for the whole amount remaining due upon the judgment. Default in payment of instalment. 56 Vic. No. 37 s. 1.

35. (1) Whenever any Court of petty sessions makes any order or decision for the payment of money the registrar of the said Court may on the application of the party in whose favour such order or decision was made issue a precept in the nature of a writ of fieri facias which precept shall be directed to any bailiff of any of the said Courts or his deputies who are hereby empowered to execute the same in any part of the Colony in the same manner in all respects as process of a similar nature issuing out of the Supreme Court may be executed by the sheriff or deputy sheriff. Execution of process. 10 Vic. No. 10 s. 27.

(2) The removal by any defendant after judgment recovered against him from the jurisdiction of one Court into the jurisdiction of another shall not prevent any plaintiff from proceeding against such defendant in the jurisdiction where such defendant happens to be resident at the time of issuing execution and the bailiff of any Court or his deputy may take such defendant into custody or dispose of his goods in like manner as if he were a resident of the district in which judgment was recovered against him. Where defendant removes into another district after judgment obtained. Ibid. s. 31.

36. Where a Court adjudges costs to the defendant he shall be entitled to the like process of execution for his costs as the plaintiff would be entitled to if he had established his claim against the defendant. Defendant entitled to execution for costs. Ibid. s. 29.

37. (1) The registrar of any Court shall grant a special writ of execution when demanded by the plaintiff or defendant as the case may be in any suit wherein such writ may be issued. Special writs. Ibid. s. 30.

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

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

(4) The bond shall vest in the registrar of the Court for the time being and may from time to time be sued upon in his name or in the name of any person to whom it may be assigned under any order of the Court. Bond to vest in registrar. Assignment of bond.

(5) The assignment of the bond shall be made by an indorsement by the registrar for the time being. Mode of assignment.

(6) Any person who sustains any damage by the neglect or misconduct of any such bailiff may proceed before any Court of competent jurisdiction (the amount of such damage not exceeding fifty pounds or the sum specially directed by the Court as aforesaid) and the bond Damages for misconduct of special bailiff.

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bond so given shall stand and be an additional security for such damages and shall if necessary be put in suit to recover the sum and costs from the parties thereto or any of them.

(7) In every case in which a special writ of execution is taken out neither the registrar nor bailiffs of the Courts of petty sessions shall be responsible for any act done under or in respect of such process by colour thereof but the person aggrieved by any such act shall have a remedy and right of action against the party or his sureties to whom the writ of execution was granted.

Registrar and Court
bailiffs not to be
responsible.
10 Vic. No. 10 s. 32.

38. No judgment of any of the Courts of petty sessions against the goods and chattels of the defendant in any suit or action brought therein shall be executed at any time after sunset and before sunrise and if any person executes any such judgment after sunset and before sunrise he is liable to a fine of ten pounds which shall be imposed and if necessary enforced by an order of the Court of petty sessions for the distress and sale of the offender's goods.

Time when execution
may be made.
Ibid. s. 35.

39. No execution awarded against the goods of any party shall deprive any landlord of the power vested in such landlord by an Act passed in the eighth year of the reign of her late Majesty Queen Anne entitled an Act for the better security of rents and to prevent Frauds committed by Tenants of recovering one year's rent in pursuance of the said Act.

Rights of landlords.
Ibid. s. 36.

Interpleader.

40. (1) Whenever a claim is made by a person not being the party against whom execution has issued to any goods or chattels taken or intended to be taken in execution under any process or to the proceeds or value thereof the Court from which the process issued may upon application of the bailiff or officer made before or after the return of such process and as well before as after any action brought against him call before it by an order for that purpose the party issuing the process and the claimant and thereupon pronounce its decision in a summary manner for the adjustment of the claim and the relief and protection of the bailiff or other officer.

Claim by person not
the party against
whom execution
issued.
Ibid. s. 34.

(2) The Court may make such order as appears to be just according to the circumstances and its decision shall be final and conclusive against the party issuing the process and the claimant and also against all persons claiming by from or under them.

Property protected from execution.

41. No real or leasehold property is liable to be levied upon under writs of execution out of Courts of petty sessions.

Realty and lease-
holds.
Ibid. s. 27.

42. If previously to the sale of any property levied upon such property being in the actual or ostensible possession of the party against whom the writ is directed a claim is made to it by any third person

Property in
possession of a
bailee.
Ibid. s. 32.

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person and such claim is deposed to before a justice of the peace and in such deposition it is averred that the party in whose actual or ostensible possession such property so levied upon be found is not the true owner but the bailee thereof such property shall be released from execution and the cost of the levy (if any) shall be either added to the amount of the costs charged in the execution or defrayed by the party claiming such property as the Court of petty sessions in its discretion directs.

43. (1) No absolute or conditional bill of sale or mortgage of chattel property whatever shall protect such property so levied upon from sale unless—

Property comprised in a bill of sale.
10 Vic. No. 10 s. 32.

- (a) the bill of sale or mortgage be produced to the bailiff and
- (b) the bill of sale or mortgage was executed at least fourteen days before the summons was served upon the defendant in the case in which the writ of execution issued and
- (c) there be expressed in the bill of sale or mortgage a certain time for the payment of the principal sum for which the instrument was given as security and such time does not exceed one year from the date of the instrument and at the expiration of that time the holder of the bill of sale or mortgage shall not renew it but either assume possession or proceed to the sale of the property so secured or relinquish all claim to the protection of it from the debts of other creditors under judgments recovered under this Act and
- (d) the bill of sale or mortgage was registered by the registrar at the nearest Court of petty sessions within one week of the date of its execution.

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

Levy may be enforced by taking special writ.

(2) Protection from sale under any circumstances shall only extend to such articles of chattel property as are specifically set forth and enumerated in a schedule to be annexed to the bill of sale or mortgage as the case may be.

Limit of protection.
Ibid. s. 32.

Attachment of debts due from garnishees.

44. (1) Any creditor who has obtained a judgment in any Court of petty sessions may apply to the Court in which he obtained such judgment 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.

Examination of judgment debtor as to debts due to him.
45 Vic. No. 27 s. 2.

(2)

Small Debts Recovery.

(2) Every judgment debtor who refuses or neglects to obey such order shall be subject to all the penalties to which a witness duly subpoenaed to attend at such Court and failing to appear at the time appointed would be subject. Penalty for disobeying order. 45 Vic. No. 27 s. 2.

45. The jurisdiction given by the seven next following sections shall be exercisable only by a police magistrate. Police magistrate. Ibid. s. 1.

46. (1) The Court may make an order that all debts due owing or accruing from a garnishee residing within the jurisdiction of such Court to a judgment debtor shall be attached to answer the judgment debt. Garnishee orders. Ibid. s. 3.

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

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

(4) In any order for the payment of money by a garnishee or upon an application at any time made by him the Court may direct such payment to be made at such times and by such instalments as the said Court thinks fit and if default be made in the payment of any one such instalment execution may issue for so much of the amount then due by the garnishee as will satisfy the judgment debt remaining unpaid at the time of such default. Payment by instalments. 56 Vic. No. 37 s. 2.

(5) In proceedings to obtain a garnishee order 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. Court may refuse to interfere in certain cases. 45 Vic. No. 27 s. 9.

47. The Court may by the garnishee order or any subsequent order summon the garnishee to appear to show cause why he should not pay to the registrar on behalf of the judgment creditor the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment debt. Summons to garnishee to show cause. Ibid. s. 3.

48. Service on the garnishee of a garnishee order or notice to the garnishee of the making of such order shall attach in the hands of the garnishee all debts due owing or accruing from him to the judgment debtor. Attachment of debts by garnishee order. Ibid. s. 4.

49. If the garnishee does not forthwith pay to the registrar on behalf of the judgment creditor the amount due from him to the judgment debtor or an amount equal to the judgment debt and does not dispute the debt due or claimed to be due from him to the judgment debtor. Proceedings to levy amounts due from garnishee to judgment debtor. Ibid. s. 5.

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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.

50. 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 and determined and the order for such adjournment shall be served upon the garnishee and shall operate as a plaint entered against him to obtain payment of the sum claimed to be due from him to the judgment debtor.

Where garnishee disputes liability.
45 Vic. No. 27 s. 6.

51. 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.

Discharge of garnishee.
Ibid. s. 8.

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

Garnishee book to be kept.
Ibid. s. 10.

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

Witnesses.

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

Attendance of witnesses.
10 Vic. No. 10 s. 23.

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

Expenses.
Ibid.

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

Penalty for refusing to be sworn or answer.
Ibid.

Officers.

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Officers.

55. The clerk of the bench or other clerk of the Courts of petty sessions as may from time to time be directed by such Courts respectively shall discharge the duties of registrar. Clerk and registrar. 10 Vic. No. 10 s. 6.

56. (1) The Courts of petty sessions shall from time to time appoint a bailiff or bailiffs for the service and execution of the processes orders and judgments authorised by this Act. Bailiffs. Ibid. s. 6.

(2) Any such Courts may appoint a sergeant of police or police constable of their respective districts to be a bailiff of the Court appointing him who shall not therefore become incapable of acting as or forfeit his appointment of such sergeant or constable anything in any Act to the contrary notwithstanding Police sergeant or constable may be a bailiff. 42 Vic. No. 15 s. 2.

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

57. If any bailiff deputy bailiff or other officer of any Court of petty sessions employed to execute any process of execution by connivance wilful neglect or omission causes or suffers the goods of the party against whom such execution is awarded to be rescued or carried away so that such execution has not its due effect any justice of the Court of petty sessions out of which such process issued may upon complaint and due proof thereof made upon the oath of one credible witness order such bailiff deputy or officer to pay the sum of money for which such execution was awarded or such part thereof as the said justice thinks proper to the party complaining and may enforce the payment thereof by the same means as are herein provided for the recovery of debts. Penalty for neglect of duty. 10 Vic. No. 10 s. 41.

Actions against officers.

58. All sheriffs and deputy sheriffs keepers of prisons or other persons whosoever who do anything under this Act in obedience to any legal order of any Court of petty sessions are hereby indemnified for whatsoever is done by them respectively in obedience thereto and if any action whatsoever is brought against any such sheriff keeper or person or against any justice of the peace or officer of any Court of petty sessions for performing any duty of his office in pursuance of this Act such sheriff justice keeper officer or other person may plead the general issue and give the special matter in evidence thereupon and if the plaintiff be nonsuited or discontinue his action or a verdict pass against him or judgment be had for the defendant upon demurrer such defendant shall have double costs. Indemnity to officers. Ibid. s. 38. Officer may plead general issue and give special matter in evidence.

59. All actions for anything done under the provisions of this Act by persons acting in execution thereof shall be commenced within six months after the fact was committed and no writ shall be sued against Limitation of actions against officers. Ibid. s. 39.

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against nor process served upon any justice of the peace registrar bailiff or other officer of any Court of petty sessions for anything done in the execution of or by reason of his office until one calendar month next after notice in writing has been delivered to him or left at his usual place of abode by the attorney or agent for the party who intends to sue out such writ as aforesaid in which notice shall be clearly and explicitly contained the cause of action the name and place of abode of the person bringing such action and the name and place of abode of the attorney or agent.

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

PART IV.

MISCELLANEOUS.

60. (1) Whosoever commits wilful and corrupt perjury or Perjury. falsely affirms when under examination by a Court of petty sessions 10 Vic. No. 10 s. 25. by virtue of this Act or commits wilful and corrupt perjury in false swearing or affirming in any affidavit or affirmation by this Act required or allowed to be made before any such Court or a justice of the peace shall on conviction be liable to incur and suffer the like pains and penalties as any person convicted of wilful and corrupt perjury.

(2) A Court of petty sessions may commit for trial and direct a prosecution for perjury to be forthwith instituted against any person who commits perjury or falsely affirms as in the last preceding subsection mentioned. Court of petty sessions may commit. Ibid. s. 25.

61. No plaint entered in the Courts of petty sessions nor any order or proceeding had thereon by virtue of this Act shall be removed out of the said Courts by writ of certiorari or otherwise howsoever. Proceedings may not be removed. Ibid. s. 37.

62. (1) No process or proceeding of any Court of petty sessions shall be set aside on account of any technical error or mistake only. Process not to be set aside for technical errors only. Ibid. s. 42.

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

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

63. If both parties in any cause agree between themselves not to try their cause before the Court of petty sessions but by means of arbitration and notify such agreement by a memorandum in writing signed Arbitration. Award may be entered as a judgment. Ibid. s. 43.

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signed by themselves or their agents the award made on such arbitration shall be binding on both parties and judgment in accordance therewith may be entered in the cause list of the said Court of petty sessions for the plaintiff or defendant as the case may be.

64. The several fees and sums of money expressed in the Third Schedule hereto and no other shall be taken by the several officers of the said Courts therein mentioned for their respective services in the execution of this Act Fees to be taken. Third Schedule. 10 Vic. No. 10 ss. 6, 40.

Provided that the several Courts of petty sessions may with the approval of the Attorney-General from time to time fix the amount of the fees payable to every bailiff under such Courts. Power to fix bailiff's fees. 45 Vic. No. 27 s. 13.

65. (1) The Governor may from time to time frame rules to be in force in the several districts for the carrying out of the provisions of this Act except the provisions contained in sections forty-four to fifty-two inclusive. General power to make rules. 43 Vic. No. 34 s. 3.

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

(2) The Courts of petty sessions in each police district may make such rules as they think fit for regulating the practice and proceedings of each of such Courts under sections forty-four to fifty-two inclusive of this Act and for the fixing of Court fees payable thereunder but such rules shall have no effect until approved of by the Attorney-General. In garnishee proceedings. 45 Vic. No. 27 s. 12.

66. If it appears to a Court of petty sessions that any attorney or other agent has in any cause in such Court practised corruptly contemptuously or in any respect knowingly and wilfully against his duty as an attorney or agent the Court may make an order (to remain with the registrar of the said Court) either suspending such attorney or agent from practising for a specified time or prohibiting such attorney or agent from practising for ever in such Court. Attorney or agent may be suspended or prohibited. 10 Vic. No. 10 s. 45.

67. Any person guilty of contempt before a Court of petty sessions may be punished in a summary way by fine not exceeding forty shillings to be levied upon his goods and chattels or by imprisonment for any time not exceeding fourteen days. Contempt before Court. 10 Vic. No. 10 s. 26.

68. The forms contained in the Second Schedule hereto or as near thereto as the nature of the case will permit shall be used in proceedings under this Act. Forms. Second Schedule. 10 Vic. No. 10 ss. 20, 28; Schedules B and C. 45 Vic. No. 27 s. 14.

Small Debts Recovery.

SCHEDULES.

FIRST SCHEDULE.

Section 2.

Reference to Acts.	Title or short title.	Extent of repeal.
10 Vic. No. 10 ...	An Act to amend the law respecting the recovery of Small Debts in all parts of the Colony.	The whole Act except sections fifteen sixteen and seventeen.
33 Vic. No. 11 ...	An Act to extend the provisions of the Small Debts Act, 10 Vic. No. 10.	The whole Act.
42 Vic. No. 15 ...	An Act to further extend the provisions of the Small Debts Act, 10 Vic. No. 10.	The whole Act.
43 Vic. No. 34 ...	Small Debts Act Amendment Act of 1880.	The whole Act.
45 Vic. No. 27 ...	Small Debts Recovery Act ...	So much thereof as applies to Courts of petty sessions.
55 Vic. No. 19 ...	An Act to extend the jurisdiction of Courts of petty sessions.	The whole Act.
56 Vic. No. 37 ...	Debts Recovery Act, 1893 ...	Section one and so much of section two as applies to Courts of petty sessions.

SECOND SCHEDULE.

Section 68.

FORMS.

10 Vic. No. 10.

Plaints.

Schedule B.

IN THE CASE OF GOODS SOLD.

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

IN THE CASE OR DEMAND FOR RENT.

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

FOR LODGING.

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

FOR HIRE OF HORSES.

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

FOR

Small Debts Recovery.

FOR AGISTMENT.

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

FOR WORK AND LABOUR.

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

FOR WORK AND LABOUR OF SERVANTS.

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

FOR WORK AND LABOUR OF SERVANTS HORSES AND CARRIAGES.

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

FOR WAGES.

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

FOR MONEY LENT.

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

ON A PROMISSORY NOTE OR BILL OF EXCHANGE.

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

ON A BOND.

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

FOR MONEY DUE ON AN AGREEMENT.

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

ON AN AWARD.

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

FOR UNLAWFUL DETENTION OF PROPERTY.

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

FOR

Small Debts Recovery.

FOR UNLAWFUL DETENTION OF PROPERTY DEPOSITED.

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

FOR DAMAGE SUSTAINED BY IMPROPER DRIVING.

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

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

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

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

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

Defence.

NEW SOUTH WALES.

Court of petty sessions for the } day of
district of } 18 .
Between { A.B. Plaintiff
and
{ C.D. Defendant

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

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

To A.B.

The above-named plaintiff

Section 68.

10 Vic. No. 10.
Schedule B.

Summons.

Summons.

NEW SOUTH WALES.

To

of

You are hereby summoned to appear in this Court at _____ on _____ the _____ day of _____ next at ten of the clock in the forenoon of the same day precisely to answer the following plaint [*insert copy of plaint and particulars as filed with the registrar*] otherwise upon proof of the due service of a copy of this summons the cause when called on for hearing will be tried and judgment be given against you for whatever may appear to be due together with such costs as the Court may think fit to award And take notice that if you intend to defend upon any matter of set-off or excuse you must file particulars of the same in the office of the registrar clear days at the least before the day herein named for the hearing of the cause otherwise the evidence you may bring forward to support such set-off cannot be admitted.

Dated this day of one thousand eight hundred and

By the Court

A.B. Registrar.

Section 68.

10 Vic. No. 10.
Schedule B.

Precept in the nature of a fieri facias.

EXECUTION AGAINST GOODS.

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

In pursuance and by virtue of a decision of the Court of petty sessions for the district of _____ made on the _____ day of _____ 18____ you are hereby required to levy of the goods and chattels of _____ to satisfy _____ for the amount of _____ pounds _____ shillings and _____ pence being the amount of judgment and costs which in the said Court he was adjudged to pay to the said _____ and after levy duly made thereof forthwith to pay the same into this office And what you shall do herein certify and return to this Court at the expiration of one calendar month from the date hereof or within three days after this warrant shall be executed if that shall sooner happen.

Dated this day of 18 .

By the Court

A.B. Registrar.

£ s. d.

Judgment.....
Costs.....
Execution.....
Alias.....

£

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

Subpœna

Small Debts Recovery.

Subpœna for witness.

NEW SOUTH WALES.

Court of petty sessions for the }
District of } To A.B. of
C.D. of
E.F. of

Section 68.
10 Vic. No. 10.
Schedule C.

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

By the Court
Registrar or Clerk of the Court.

Attachment for non-appearance to a subpœna.

A.B. plaintiff }
C.D. defendant } Victoria Regina.
Court of petty sessions for the }
District of }

Section 68.
10 Vic. No. 10.
Schedule C.

To bailiffs and their deputies and to each and every of them.
At a Court of petty sessions for the district of held on the day of 18 it appearing to this Court that has been duly served with a copy of a subpœna to attend this Court in the above case and though duly called came not You and each of you are hereby commanded to attach the said wherever you may find him for a disobedience to the said subpœna and him safely and securely keep so that you may have him before a justice of the peace of the said Court on the day of to hear and abide such order as shall then be made touching the contempt of the said in disobedience of such subpœna.

Order for examination of judgment debtor.

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

Section 68.
45 Vic. No. 27.
Schedule A.

Between udgment 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 189 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 189

By the Court.
Registrar.

To the abovenamed judgment debtor.

Affidavit

Small Debts Recovery.

Affidavit to ground garnishee order.

No.

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

Between judgment creditor and judgment debtor.

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

- (1) That I [or the abovenamed judgment creditor] on the day of last past recovered judgment in the Court of petty sessions at the abovenamed judgment debtor for the sum of £ and costs against
- (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 189 before me

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

Section 68.
45 Vic. No. 27.
Schedule B.

Garnishee order attaching debt.

No.

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

Between judgment creditor and judgment debtor and garnishee.
Upon hearing and reading the affidavit of filed the day of 189 and upon

It is ordered that all debts owing and accruing due from the abovenamed garnishee to the abovenamed judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the abovenamed judgment creditor in the Court of petty sessions in the district of on the day of 189 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 189 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 189 .

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.

Judgment against garnishee.

No.

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

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

It is ordered that the said A.B. the abovenamed judgment creditor do recover against the said E.F. the abovenamed garnishee the sum of £ [insert the amount of the judgment

Section 68.
45 Vic. No. 27.
Schedule D.

Acknowledgment of
payment into Court.
£ s. d.

Small Debts Recovery.

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 189 [or by instalments of for every days the first instalment to be paid on the day of 189 .]

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 189 .

Execution against garnishee.

No.

Folio in ledger. Section 68.
45 Vic. No. 27.
Schedule E.

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 189 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 189 [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 specialities 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 189 .
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 189 .

Order

*Small Debts Recovery.**Order for trial.*

Section 63.

45 Vic. No. 27.

Schedule F.

No.

In the court of 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 _____ 189__ 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 _____ 189__ 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 _____ 189__ .

Registrar.

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

THIRD SCHEDULE.

Section 64.

*Fees to be paid to the several officers undermentioned on the several occasions set against
the same.*

10 Vic. No. 10 ss. 6
and 40 and Schedule
A.

	£	s.	d.
To the Registrar on entering every plaint and cause for trial	0	1	0
To the Registrar for drawing plaint and particulars if requested by plaintiff...	0	1	0
To the Registrar for copy of summons to be served on defendant	0	1	0
To the Registrar for every inspection of the record	0	0	6
To the Registrar for drawing and issuing every writ of execution or attachment	0	1	0
To the Registrar for every subpoena	0	0	6
To the Registrar for filling every defence or plea	0	1	0
To the Registrar for drawing same if requested by defendant...	0	1	0
To the Bailiff for serving summons or subpoena at request of plaintiff or defendant and making affidavit of service if service be made	0	2	0
To the Bailiff for every levy or caption	0	1	0
To the Bailiff for every mile or fraction of a mile over 2 miles from the Court which he may have to travel to serve summons or execute other process of the Court but not counting the return journey... ..	0	0	6
To the Bailiff for possession money by the day	0	3	6

Small Debts Recovery.

FOURTH SCHEDULE.

Section 29 (3).

10 Vic. No. 10 s. 44.
Schedule C.*Attorneys' costs.*

	£	s.	d.
For drawing and copying plaint with the particulars	0	2	6
For summons with the particulars	0	1	0
For defence or set-off with the particulars	0	2	6
For an Advocate's fee in a case not exceeding £10 not more than ...	1	1	0
For an Advocate's fee in a case not less than £10 nor exceeding £30 not more than	3	3	0

Sydney: William Applegate Gullick, Government Printer.—1899.

[1s. 6d.]

Memo. and Certificate to accompany the Small Debts Recovery Bill.

THIS Bill consolidates the whole or part of the following Acts :

10 Vic. No. 10 ;
33 Vic. No. 11 ;
42 Vic. No. 15 ;
43 Vic. No. 34 ;
45 Vic. No. 27 ;
55 Vic. No. 19 ;
56 Vic. No. 37.

Clause 6.—It has been found necessary to insert a fuller definition of the term “Court of Petty Sessions” than is given in sec. 46 of the 10 Vic. No. 10. That now adopted is believed to be comprehensive and accurate.

Clauses 7 and 9.—In the Act 55 Vic. No. 19 sec. 1 the extended jurisdiction to £30 is given “except within the boundaries for the time being of the several Petty Sessions Districts of Sydney and the suburbs thereof.” This loose phrase is in practice construed to mean the Metropolitan police district and this more accurate expression has therefore been here adopted.

Clause 28.—The words in sec. 29 of the original Act, “in like manner as for the party complaining” seem to have no meaning, for there seems to be no provision for giving any costs to the party complaining. As however rules have been made under the Act by which in certain cases limited costs can be allowed to a successful plaintiff the words are left in as possibly throwing some light on the intention of the Legislature. The point, left doubtful in the original Acts, whether professional costs can be awarded under 45 Vic. No. 27, secs. 7 and 9, and under sec. 42 of 10 Vic. No. 10, is not decided one way or the other in this consolidation.

Clause 43.—Section 32 of 10 Vic. No. 10 is very confusedly drawn and some verbal changes have been made and some words added to make what seems to be its meaning more clear.

Clause 44.—It has been resolved, after consideration, that the powers under sec. 2 of the 45 Vic. No. 27 are not confined to police magistrates, but may be exercised by the Court before which the judgment was obtained, and this has accordingly been made clear.

Clause 60 (2).—There is some doubt whether this power, in sec. 25 of 10 Vic. No. 10, extended to proceedings under the Garnishee Act (45 Vic. No. 27), but it has been considered that the proper way to deal with the latter Act is to regard it, in some respects, as an Act amending, and to be read with, the 10 Vic. No. 10. This power of the earlier Acts would therefore apply also to the later.

Clause 65.—Section 20 of 10 Vic. No. 10, which gave the local Courts power to make rules with the approval of the Attorney-General as to the times of filing plaints, appears to be superseded by the general powers given to the Governor in sec. 3 of 43 Vic. No. 34. It has therefore been omitted. There is still an unfortunate division of authority in the power to make rules which it has been found impossible to remove. The Governor's power to make rules does not include the garnishee clauses, while the Courts of Petty Sessions can make rules *only* as to the garnishee clauses.

There are a number of verbal omissions and changes, for the sake of greater clearness and terseness, which in no way alter the sense.

I certify that, except as hereinbefore explained, this Bill solely consolidates and in no way alters, adds to, or amends the law as contained in the Acts thereby consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

15-4

CONFIDENTIAL

MEMORANDUM FOR THE DIRECTOR, FBI

SUBJECT: [Illegible]

1. [Illegible]

2. [Illegible]

3. [Illegible]

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99. [Illegible]

100. [Illegible]

Approved: _____

Special Agent in Charge

15-4

Small Debts Recovery Act, 1899.

TABLE showing how the sections of Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
10 VICTORIA No. 10.		
Preamble	Omitted.	
1	Omitted ...	This section kept in force the Act 6 Vic. No. 15 for a limited purpose. The Act 6 Vic. No. 15 has been repealed by the "District Courts Act, 1858," section 24.
2	Omitted ...	Extension to Melbourne.
3	Omitted ...	Obsolete since repeal of 6 Vic. No. 15, and passing of 42 Vic. No. 15.
4	7, 9, 11	
5	8, 13	
6	55, 56 (1), 64	
7	21 (2), 27	
8	22	
9	12	
10	10	
11	5, 13, 32	
12	Omitted ...	} Repealed by 12 Vic. No. 1, section 1.
13	Omitted ...	
14	Omitted ...	
15	} Omitted ...	{ Repealed by 60 Vic. No. 19, s. 1.
16		
17	} Omitted ...	{ To be consolidated under the subject "Supreme Court."
18		
19	23	
20	14	
21	15, 16, 68	The power to make rules as to certain matters appears to be superseded by s. 3 of 43 Vic. No. 34.
22	17	
23	33	
24	18 (1), (2), (3), (4)	
25	18 (5), 19, 20	
26	60	The power to examine given by s. 25 is now provided for in the general provision contained in s. 33 of the Interpretation Act of 1897.
27	53, 54, 67	
28	35 (1), 41	"Colony" substituted for "Territory."
29	68	Section 68 is a general section enjoining the use of the forms in the Second Schedule.
30	21 (1), 28, 36	
31	37 (1)-(6)	
32	35 (2)	Preamble to section 31 omitted.
	37 (7), 42, 43	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
10 VICTORIA No. 10— <i>continued</i> .		
33	24 (1)	Preamble to section 34 omitted.
34	30, 40	
35	38	
36	39	
37	13, 61	
38	58	
39	59	
40	64	
41	57	
42	62	
43	63	Preamble to section 44 omitted.
44	29	
45	66	
46	6	Partly provided for in "Interpretation Act of 1897."
Schedule A	... Sec. 64, Third Schedule.	
" B	... { 15 (3), 24 (2), 25, 26, 68	
" C	... { Second Schedule.	
" D	... Sec. 68, Second and Fourth Schedule.	
"	... Omitted ...	Repealed by 12 Vic. No. 1, s. 1.
33 VICTORIA No. 11.		
Preamble	Omitted.	Obsolete since 42 Vic. No. 15.
1	Omitted ...	
42 VICTORIA No. 15.		
Preamble	Omitted.	As to jurisdiction of stipendiary magistrates see now 45 Vic. No. 17 and 47 Vic. No. 14.
1	3	
2	56, (2)	
43 VICTORIA No. 34.		
Preamble	Omitted.	Operation exhausted.
1	4	
2	Omitted ...	Short title.
3	65 (1)	
4	Omitted ...	
45 VICTORIA No. 27.		
Preamble	Omitted.	
1	6, 45	
2	44	
3	6, 46 (1), (2), (3), 47	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
45 VICTORIA No. 27—continued.		
4	48	
5	49	
6	50	
7	31	
8	51	
9	31, 46 (5)	The latter portion of section 9 is identical with the first portion of section 7. The words are therefore not repeated in clause 46 (5) of the Bill.
10	52	
11	Omitted ...	Applicable only to District Courts, and to be consolidated with District Courts Acts.
12	65 (2)	
13	64, Proviso.	
14	68	The power to alter forms given by sections 11 and 14 seems to be confined to District Court Judges.
Schedule A	Section 68 and Second Schedule.	
" B		
" C		
" D		
" E		
" F		
NOTE.—The Consolidating Act only repeals so much of 45 Vic. No. 27 as applies to courts of petty sessions. The provisions applicable to District Courts will be incorporated in the Act consolidating the District Courts Acts.		
55 VICTORIA No. 19.		
Preamble	Omitted.	
1	7 (a), 9	
2	18 (1)	
3	Omitted ...	Construction.
56 VICTORIA No. 37.		
1	34	
2	46 (4)	
3	Omitted ...	Short title.
NOTE.—The Consolidating Act only repeals so much of 56 Vic. No. 37 as applies to courts of petty sessions. The provisions applicable to District Courts will be incorporated in the Act consolidating the District Courts Acts.		

Section of Repealed Act	Section of Consolidated Act	Remarks
		45 Victoria No. 27—continued.
4	45	
5	46	
6	47	
7	48	
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9	50	
10	51	
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12	53	
13	54	
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Legislative Council.

No. , 1899.

A BILL

To consolidate the Acts relating to the Recovery of Small Debts in Courts of Petty Sessions.

[MR. HUGHES ;—27 *July*, 1899.]

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

PART I.

PRELIMINARY.

1. This Act may be cited as the "Small Debts Recovery Short title. Act 1899" and is divided into Parts as follows :—

PART I.—PRELIMINARY—*ss.* 1-6.

c 8—A

PART

PART II.—JURISDICTION—

*Outside the metropolitan police district—ss. 7 8.**Within the metropolitan police district—s. 9.**Generally—ss. 10-14.*

PART III.—PROCEDURE—

*Actions how commenced—ss. 15-17.**Place where action may be brought—s. 18.**Actions against joint defendants—ss. 19 20.**Default of appearance—ss. 21, 22.**Actions by infants executors &c.—ss. 23-26.**Costs—ss. 27-31.**Judgments—how recorded—ss. 32, 33.**Enforcement of judgments and orders—ss. 34-39.**Interpleader—s. 40.**Property protected from execution—ss. 41-43.**Attachment of debts due from garnishees—ss. 44-52.**Witnesses—ss. 53 54.**Officers—ss. 55-57.**Actions against officers—ss. 58 59.*

PART IV.—MISCELLANEOUS—ss. 60-68.

Repeal of Acts.
Saving clause.

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

Notwithstanding the repeal of the Acts hereby repealed:—

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

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

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

Application of Act,
42 Vic. No. 15 s. 1.

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

Power to define
limits of petty
sessions districts,
43 Vic. No. 34 s. 1.

4. The Governor may by proclamation in the Gazette define the limits of any petty sessions district for the purposes of this Act and after any such proclamation has been published in the Gazette the provisions

provisions of this Act shall be in force and the jurisdiction and other powers hereby conferred shall be exercisable within the limits of any petty sessions district defined in such proclamation.

5. Courts of petty sessions shall be courts of record and the judgments of any of the said Courts may be set up as a defence in any action brought either in any of the said Courts or in the Supreme Court. Courts of petty sessions to be courts of record. 10 Vic. No. 10 s. 11.

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

“ Court ” means a Court of petty sessions. 10 Vic. No. 10 s. 46.

“ Court of petty sessions ” means—

(a) any two or more justices of the peace sitting for the purposes of this Act at the usual place of meeting of justices in petty sessions 10 Vic. No. 10 s. 46.

(b) one justice of the peace when so sitting in cases where by this Act a single justice is authorised to adjudicate 10 Vic. No. 10 s. 46. [See s. 8 of the Act.]

(c) a police magistrate when so sitting in cases where by this Act he is vested with exclusive jurisdiction 45 Vic. No. 27 s. 1. [See s. 45 of the Act.]

(d) a police or stipendiary magistrate when so sitting in any case where a police or stipendiary magistrate is authorised in the absence of other justices to do alone whatever may be done by two or more justices sitting in petty sessions [17 Vic. No. 39 s. 11.] [R. v. O'Brien 14 S.C.R. 196.]

(e) a stipendiary or deputy stipendiary magistrate when so sitting in his own district under any Act whereby stipendiary magistrates are vested with exclusive jurisdiction in petty sessions. 45 Vic. No. 17. 47 Vic. No. 14. 60 Vic. No. 18.]

“ Garnishee ” means a person who is indebted to a judgment debtor. 45 Vic. No. 27 s. 3.

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

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

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

PART II.

JURISDICTION.

Outside the metropolitan police district.

7. All Courts now established or that may hereafter be established outside the boundaries for the time being of the metropolitan police district shall within their respective districts have power and authority to hear and determine in a summary way and according to equity Jurisdiction outside metropolitan police district. 10 Vic. No. 10 s. 4 and 55 Vic. No. 19 s. 1.

equity and good conscience (against persons liable as hereinafter mentioned to be summoned to such Court and every defendant sued jointly with such persons) all actions whatsoever—

Debt up to £30.
55 Vic. No. 19 s. 1.

Other demand or
damage up to £10
or £30 by consent.
10 Vic. No. 10 s. 4.

One justice to have
jurisdiction in
certain cases.
10 Vic. No. 10 s. 5.

(a) for the recovery of any debt only whether liquidated or unliquidated to an amount in any case not exceeding thirty pounds

(b) for the recovery of any demand or damage other than debt whether liquidated or unliquidated to an amount in any case not exceeding ten pounds or (where the party intended to be sued by writing under his hand consents thereto) to an amount not exceeding thirty pounds.

8. (1) One justice of the peace may hear and determine all cases—

(a) in which the plaintiff seeks to recover no more than the sum of five pounds

(b) in which the sum in dispute exceeds five but does not exceed thirty pounds and both parties consent thereto.

(2) The consent of the parties shall be specially entered in the record book at the commencement of the hearing.

(3) Every such case shall be proceeded with in every respect as if the same were heard and determined by two or more justices.

Within the metropolitan police district.

Jurisdiction within
metropolitan police
district.

Ibid. s. 4.
55 Vic. No. 19 s. 1.

Debt demand or
damage up to £10.

By consent up to £30.

9. All Courts now established or that may hereafter be established within the boundaries for the time being of the metropolitan police district shall within their respective districts have power and authority to hear and determine in a summary way and according to equity and good conscience (against persons liable as hereinafter mentioned to be summoned to such Court and every defendant sued jointly with such persons) all actions whatsoever for the recovery of any debt demand or damage whether liquidated or unliquidated to an amount in any case not exceeding ten pounds or (where the party intended to be sued by writing under his hand consents thereto) to an amount not exceeding thirty pounds.

Generally.

Notes or bills for
sums not exceeding
£10.
10 Vic. No. 10 s. 10.

10. In case the defendant in any action appears to have given bills of exchange or promissory notes for the payment of any debt originally above the amount of jurisdiction created by this Act but which bills or notes are separately security for a sum not exceeding ten pounds each bill or note shall be regarded as forming a distinct and separate contract and may be sued upon and recovered in the same way as any other debt recoverable under this Act.

11. No Court shall have jurisdiction in any of the following cases :— Limitation of jurisdiction.
10 Vic. No. 10 s. 4.

- (1) Where the matter in question relates to the taking of any duty to Her Majesty or any fee of office or to any annual rent or other matter in which rights in future may be bound or to any general right or duty.
- (2) Where the debt sought to be recovered is for any money or thing won at or by means of any race match wager raffle or any kind of play or game.
- (3) Where the debt or claim has arisen more than three years before the issuing of the summons unless there hath been in writing an acknowledgment of or promise to pay the same within that period.
- (4) In respect of any contract for the sale of goods unless the buyer has actually received the same or part thereof or given something in earnest to bind the bargain or in part payment or some note or memorandum in writing of the bargain has been signed by the party sought to be charged by such contract or his agent thereunto lawfully authorised.
- (5) In cases of trespass to land if the title to the freehold therein be bona fide in dispute between the parties.

12. It shall not be lawful to split or divide any cause of action for the purpose of bringing the same within the jurisdiction of any Court of petty sessions and in case it appears to the said Court at any stage of the proceedings that any cause of action has been so split or divided such Court shall dismiss the action brought thereupon with costs. Actions not to be split.
Ibid. s. 9.

13. All judgments and orders of a Court of petty sessions shall be final and conclusive: Decision of Court of petty sessions to be final and conclusive.
Ibid. ss. 5 and 37.
Ibid. s. 11 second proviso.

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

14. Every attorney solicitor or other officer of the Supreme Court shall be subject to the several processes orders judgments and executions of the Courts of petty sessions in the same manner as other persons are subject to the same. Officers of Supreme Court not exempt.
Ibid. s. 19.

PART III.

PROCEDURE.

Actions how commenced.

Plaint.
10 Vic. No. 10 s. 20.
Contents of plaint.
Ibid.

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

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

Particulars.
Ibid. Schedule B.

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

Filing.
Ibid. s. 20.

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

Summons.
Ibid. s. 20.
Service of summons.
Ibid. s. 21.

16. The original summons shall be served on the defendant.

17. (1) The summons hereinbefore directed to be served on the defendant may be served by delivering such summons to the wife or servant of the defendant at the defendant's usual place of abode.

(2) In case the messenger or bailiff employed to serve the summons demands admittance into the house where the defendant usually resides and such admittance is refused he may put such copy into the house or fix it upon the door of the house and the same shall in such case be deemed to be good service upon the defendant.

Place where action may be brought.

For debt.
Ibid. s. 23.
55 Vic. No. 19 s. 2.

18. (1) Actions for debt may be brought either in the Court holden in and for the district where the defendant in such action usually resides or in the Court holden in and for the district in which the debt sued for was contracted.

For damages.
10 Vic. No. 10 s. 23.

(2) Actions for damage shall be brought in the Court holden in and for the district where the defendant in such action usually resides.

Party liable for
damage removing to
another district.
Ibid.

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

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

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

(4)

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

Application of section to joint defendants: 10 Vic. No. 10 s. 23.

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

Power to determine questions as to defendant's residence.

Ibid. s. 24.

Actions against joint defendants.

19. (1) Where there are two or more joint defendants all of whom do not reside within the jurisdiction of the same Court the plaintiff may bring his action before any Court within the jurisdiction of which any of the joint defendants resides by serving any such defendant with a summons in the manner hereinbefore directed.

Where joint defendants reside in different districts. *Ibid.* s. 24.

Plaintiff may serve any one. *Ibid.*

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

Defendant served may notify others. *Ibid.*

(3) If the other joint defendants do not appear and join in the defence the action may proceed and judgment be obtained and execution issued against the defendant who has been served with the plaintiff's summons although the other joint defendants have not been served with any summons nor joined in the defence.

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

(4) No plea in abatement shall be allowed for nor advantage be taken of the non-joinder of a joint defendant or joint defendants.

No plea in abatement for non-joinder. *Ibid.*

20. (1) The defendant against whom execution is issued shall retain any right which he may have to demand contribution from the other joint defendants.

Right to contribution from joint defendants. *Ibid.*

(2) If such defendant causes the other joint defendants to be personally served with a copy of the plaintiff's summons upon him in the action three days before the day appointed for appearing and answering to the same the judgment recovered against him in the action or a copy thereof certified by the registrar shall be admissible in evidence in any action for contribution afterwards brought by him against the other joint defendants for the purpose of proving their liability to such contribution.

Judgment in action when evidence. *Ibid.*

(3) If such defendant does not cause the other joint defendants to be personally served as aforesaid then their liability to contribution shall be proved in the ordinary manner.

Proof of liability to contribute in other cases. *Ibid.*

Default of appearance.

21. (1) If the plaintiff makes default of appearance and the defendant appears according to the summons the Court shall adjudge the plaintiff to be disproved.

By plaintiff. *Ibid.* s. 29.

(2)

When defendant
admits claim.

10 Vic. No. 10 s. 7.
Proviso.

By defendant.

Ibid. s. 8.

Trial may be
proceeded with *ex*
parte.

On cause shown
judgment may be set
aside and new trial
granted.

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

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

(2) The Court may on sufficient cause being shown at the next sitting of the Court or otherwise set aside any judgment given in the absence of the defendant and the execution thereupon upon such terms as it thinks fit and may grant a new trial of the cause upon the defendant paying the costs of the first trial and giving security to the satisfaction of the Court for the costs of the new trial.

Actions by infants executors &c.

Actions by infants.

Ibid. s. 18.

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

Actions by executors
and administrators.

Ibid. s. 33, and
Schedule B.

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

[*Ex parte Brown*
Knox 320.]

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

Actions by trustees.

Ibid. Schedule B.

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

Actions by official
assignees or trustees
of bankrupts.

Ibid. Schedule B.

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

Costs.

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

Ibid. s. 7.

27. If upon the return day of any summons or at any adjournment of the Court or of the cause in which the summons was issued the plaintiff does not appear or appears but fails to prove his claim or demand

demand to the satisfaction of the Court the Court may (when the defendant appears and does not admit the claim or demand) award to the defendant by way of costs and satisfaction for his trouble and attendance such sum as in its discretion it thinks fit.

28. Whenever the Court adjudges a plaintiff to be disproved for default of appearance or gives judgment for the defendant it may at its discretion allow the defendant his reasonable costs in like manner as for the party complaining.

Where plaintiff disproved or judgment for defendant.

10 Vic. No. 10 s. 29

29. (1) In all actions the plaintiff and defendant may appear and each conduct his case by himself his clerk or servant or employ any person admitted an attorney of the Supreme Court to practise as an advocate and attorney before the Court of petty sessions.

Parties may appear personally or by clerk or attorney.

Ibid. s. 44.

(2) The costs of professional assistance shall be paid by the party requiring such professional assistance.

Cost of professional assistance.

Ibid.

(3) No attorney practising before a Court of petty sessions shall demand or take more by way of fees for work by him done than the sums set forth in the Fourth Schedule hereto.

Attorney's fees.

Ibid.

Fourth Schedule.

30. The cost of all proceedings under section forty shall be in the discretion of the Court.

Under s. 40.

Ibid. s. 34.

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

Costs in garnishee proceedings.

45 Vic. No. 27 ss. 7 2.

Judgments—how recorded.

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

Entry of judgment.

10 Vic. No. 10 s. 11.

33. No judgment shall be recorded by any Court of petty sessions in any case unless the process in such cause is by the affidavit of at least one credible witness before the said Court or the registrar or a commissioner of the Supreme Court or before a justice of the peace deposed to have been duly served upon the defendant in the manner directed by sections sixteen and seventeen of this Act.

Judgment not to be recorded without affidavit of service.

Ibid. s. 22.

Enforcement of judgments and orders.

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

Payment by instalments.

56 Vic. No. 37 s. 1.

(2)

Default in payment
of instalment.

56 Vic. No. 37 s. 1.

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

Execution of process.

10 Vic. No. 10 s. 27.

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

Where defendant
removes into another
district after
judgment obtained.

Ibid. s. 31.

(2) The removal by any defendant after judgment recovered against him from the jurisdiction of one Court into the jurisdiction of another shall not prevent any plaintiff from proceeding against such defendant in the jurisdiction where such defendant happens to be resident at the time of issuing execution and the bailiff of any Court or his deputy may take such defendant into custody or dispose of his goods in like manner as if he were a resident of the district in which judgment was recovered against him.

Defendant entitled to
execution for costs

Ibid. s. 29.

36. Where a Court adjudges costs to the defendant he shall be entitled to the like process of execution for his costs as the plaintiff would be entitled to if he had established his claim against the defendant.

Special writs.

Ibid. s. 30.

37. (1) The registrar of any Court shall grant a special writ of execution when demanded by the plaintiff or defendant as the case may be in any suit wherein such writ may be issued.

Registrar to appoint
special bailiff.

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

Party applying to
give security.

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

Bond to vest in
registrar.

(4) The bond shall vest in the registrar of the Court for the time being and may from time to time be sued upon in his name or in the name of any person to whom it may be assigned under any order of the Court.

Assignment of bond.

Mode of assignment.

(5) The assignment of the bond shall be made by an indorsement by the registrar for the time being.

Damages for
misconduct of special
bailiff.

(6) Any person who sustains any damage by the neglect or misconduct of any such bailiff may proceed before any Court of competent jurisdiction (the amount of such damage not exceeding fifty pounds or the sum specially directed by the Court as aforesaid) and the bond

bond so given shall stand and be an additional security for such damages and shall if necessary be put in suit to recover the sum and costs from the parties thereto or any of them.

(7) In every case in which a special writ of execution is taken out neither the registrar nor bailiffs of the Courts of petty sessions shall be responsible for any act done under or in respect of such process by colour thereof but the person aggrieved by any such act shall have a remedy and right of action against the party or his sureties to whom the writ of execution was granted.

Registrar and Court
bailiffs not to be
responsible.
10 Vic. No. 10 s. 32.

38. No judgment of any of the Courts of petty sessions against the goods and chattels of the defendant in any suit or action brought therein shall be executed at any time after sunset and before sunrise and if any person executes any such judgment after sunset and before sunrise he is liable to a fine of ten pounds which shall be imposed and if necessary enforced by an order of the Court of petty sessions for the distress and sale of the offender's goods.

Time when execution
may be made.
Ibid. s. 35.

39. No execution awarded against the goods of any party shall deprive any landlord of the power vested in such landlord by an Act passed in the eighth year of the reign of her late Majesty Queen Anne entitled an Act for the better security of rents and to prevent Frauds committed by Tenants of recovering one year's rent in pursuance of the said Act.

Rights of landlords.
Ibid. s. 36.

Interpleader.

40. (1) Whenever a claim is made by a person not being the party against whom execution has issued to any goods or chattels taken or intended to be taken in execution under any process or to the proceeds or value thereof the Court from which the process issued may upon application of the bailiff or officer made before or after the return of such process and as well before as after any action brought against him call before it by an order for that purpose the party issuing the process and the claimant and thereupon pronounce its decision in a summary manner for the adjustment of the claim and the relief and protection of the bailiff or other officer.

Claim by person not
the party against
whom execution
issued.
Ibid. s. 34.

(2) The Court may make such order as appears to be just according to the circumstances and its decision shall be final and conclusive against the party issuing the process and the claimant and also against all persons claiming by from or under them.

Property protected from execution.

41. No real or leasehold property is liable to be levied upon under writs of execution out of Courts of petty sessions.

Realty and lease-
holds.
Ibid. s. 27.

42. If previously to the sale of any property levied upon such property being in the actual or ostensible possession of the party against whom the writ is directed a claim is made to it by any third person

Property in
possession of a
bailee.
Ibid. s. 32.

person and such claim is deposed to before a justice of the peace and in such deposition it is averred that the party in whose actual or ostensible possession such property so levied upon be found is not the true owner but the bailee thereof such property shall be released from execution and the cost of the levy (if any) shall be either added to the amount of the costs charged in the execution or defrayed by the party claiming such property as the Court of petty sessions in its discretion directs.

Property comprised
in a bill of sale.
10 Vic. No. 10 s. 32.

43. (1) No absolute or conditional bill of sale or mortgage of chattel property whatever shall protect such property so levied upon from sale unless—

- (a) the bill of sale or mortgage be produced to the bailiff and
- (b) the bill of sale or mortgage was executed at least fourteen days before the summons was served upon the defendant in the case in which the writ of execution issued and
- (c) there be expressed in the bill of sale or mortgage a certain time for the payment of the principal sum for which the instrument was given as security and such time does not exceed one year from the date of the instrument and at the expiration of that time the holder of the bill of sale or mortgage shall not renew it but either assume possession or proceed to the sale of the property so secured or relinquish all claim to the protection of it from the debts of other creditors under judgments recovered under this Act and
- (d) the bill of sale or mortgage was registered by the registrar at the nearest Court of petty sessions within one week of the date of its execution.

Levy may be enforced
by taking special
writ.

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

Limit of protection.
Ibid. s. 32.

(2) Protection from sale under any circumstances shall only extend to such articles of chattel property as are specifically set forth and enumerated in a schedule to be annexed to the bill of sale or mortgage as the case may be.

Attachment of debts due from garnishees.

Examination of
judgment debtor as
to debts due to him.
45 Vic. No. 27 s. 2.

44. (1) Any creditor who has obtained a judgment in any Court of petty sessions may apply to the Court in which he obtained such judgment 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.

(2)

(2) Every judgment debtor who refuses or neglects to obey such order shall be subject to all the penalties to which a witness duly subpoenaed to attend at such Court and failing to appear at the time appointed would be subject. Penalty for disobeying order. 45 Vic. No. 27 s. 2.

45. The jurisdiction given by the seven next following sections shall be exercisable only by a police magistrate. Police magistrate. Ibid. s. 1.

46. (1) The Court may make an order that all debts due owing or accruing from a garnishee residing within the jurisdiction of such Court to a judgment debtor shall be attached to answer the judgment debt. Garnishee orders. Ibid. s. 3.

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

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

(4) In any order for the payment of money by a garnishee or upon an application at any time made by him the Court may direct such payment to be made at such times and by such instalments as the said Court thinks fit and if default be made in the payment of any one such instalment execution may issue for so much of the amount then due by the garnishee as will satisfy the judgment debt remaining unpaid at the time of such default. Payment by instalments. 56 Vic. No. 37 s. 2.

(5) In proceedings to obtain a garnishee order 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. Court may refuse to interfere in certain cases. 45 Vic. No. 27 s. 9.

47. The Court may by the garnishee order or any subsequent order summon the garnishee to appear to show cause why he should not pay to the registrar on behalf of the judgment creditor the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment debt. Summons to garnishee to show cause. Ibid. s. 3.

48. Service on the garnishee of a garnishee order or notice to the garnishee of the making of such order shall attach in the hands of the garnishee all debts due owing or accruing from him to the judgment debtor. Attachment of debts by garnishee order. Ibid. s. 4.

49. If the garnishee does not forthwith pay to the registrar on behalf of the judgment creditor the amount due from him to the judgment debtor or an amount equal to the judgment debt and does not dispute the debt due or claimed to be due from him to the judgment Proceedings to levy amounts due from garnishee to judgment debtor. Ibid. s. 5.

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 garnishee
disputes liability.
45 Vic. No. 27 s. 6.

50. 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 and determined and the order for such adjournment shall be served upon the garnishee and shall operate as a plaint entered against him to obtain payment of the sum claimed to be due from him to the judgment debtor.

Discharge of
garnishee.
Ibid. s. 8.

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

Garnishee book to
be kept.
Ibid. s. 10.

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

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

Witnesses.

Attendance of
witnesses.
10 Vic. No. 10 s. 25.

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

Expenses.
Ibid.

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

Penalty for refusing
to be sworn or
answer.
Ibid.

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

Officers.

Officers.

55. The clerk of the bench or other clerk of the Courts of petty sessions as may from time to time be directed by such Courts respectively shall discharge the duties of registrar. Clerk and registrar. 10 Vic. No. 10 s. 6.

56. (1) The Courts of petty sessions shall from time to time appoint a bailiff or bailiffs for the service and execution of the processes orders and judgments authorised by this Act. Bailiffs. Ibid. s. 6.

(2) Any such Courts may appoint a sergeant of police or police constable of their respective districts to be a bailiff of the Court appointing him who shall not therefore become incapable of acting as or forfeit his appointment of such sergeant or constable anything in any Act to the contrary notwithstanding Police sergeant or constable may be a bailiff. 42 Vic. No. 15 s. 2.

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

57. If any bailiff deputy bailiff or other officer of any Court of petty sessions employed to execute any process of execution by connivance wilful neglect or omission causes or suffers the goods of the party against whom such execution is awarded to be rescued or carried away so that such execution has not its due effect any justice of the Court of petty sessions out of which such process issued may upon complaint and due proof thereof made upon the oath of one credible witness order such bailiff deputy or officer to pay the sum of money for which such execution was awarded or such part thereof as the said justice thinks proper to the party complaining and may enforce the payment thereof by the same means as are herein provided for the recovery of debts. Penalty for neglect of duty. 10 Vic. No. 10 s. 41.

Actions against officers.

58. All sheriffs and deputy sheriffs keepers of prisons or other persons whosoever who do anything under this Act in obedience to any legal order of any Court of petty sessions are hereby indemnified for whatsoever is done by them respectively in obedience thereto and if any action whatsoever is brought against any such sheriff keeper or person or against any justice of the peace or officer of any Court of petty sessions for performing any duty of his office in pursuance of this Act such sheriff justice keeper officer or other person may plead the general issue and give the special matter in evidence thereupon and if the plaintiff be nonsuited or discontinue his action or a verdict pass against him or judgment be had for the defendant upon demurrer such defendant shall have double costs. Indemnity to officers. Ibid. s. 38. Officer may plead general issue and give special matter in evidence.

59. All actions for anything done under the provisions of this Act by persons acting in execution thereof shall be commenced within six months after the fact was committed and no writ shall be sued against Limitation of actions against officers. Ibid. s. 39.

against nor process served upon any justice of the peace registrar bailiff or other officer of any Court of petty sessions for anything done in the execution of or by reason of his office until one calendar month next after notice in writing has been delivered to him or left at his usual place of abode by the attorney or agent for the party who intends to sue out such writ as aforesaid in which notice shall be clearly and explicitly contained the cause of action the name and place of abode of the person bringing such action and the name and place of abode of the attorney or agent.

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

PART IV.

MISCELLANEOUS.

Perjury.

10 Vic. No. 10 s. 25.

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

Court of petty sessions may commit.

Ibid. s. 25.

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

Proceedings may not be removed.

Ibid. s. 37.

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

Process not to be set aside for technical errors only.

Ibid. s. 42.

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

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

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

Arbitration.

Award may be entered as a judgment.

Ibid. s. 43.

63. If both parties in any cause agree between themselves not to try their cause before the Court of petty sessions but by means of arbitration and notify such agreement by a memorandum in writing signed

signed by themselves or their agents the award made on such arbitration shall be binding on both parties and judgment in accordance therewith may be entered in the cause list of the said Court of petty sessions for the plaintiff or defendant as the case may be.

64. The several fees and sums of money expressed in the Third Schedule hereto and no other shall be taken by the several officers of the said Courts therein mentioned for their respective services in the execution of this Act

Fees to be taken.

Third Schedule.

10 Vic. No. 10 ss. 6, 40.

Provided that the several Courts of petty sessions may with the approval of the Attorney-General from time to time fix the amount of the fees payable to every bailiff under such Courts.

Power to fix bailiff's fees.

45 Vic. No. 27 s. 13.

65. (1) The Governor may from time to time frame rules to be in force in the several districts for the carrying out of the provisions of this Act except the provisions contained in sections forty-four to fifty-two inclusive.

General power to make rules.

43 Vic. No. 34 s. 3.

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

(2) The Courts of petty sessions in each police district may make such rules as they think fit for regulating the practice and proceedings of each of such Courts under sections forty-four to fifty-two inclusive of this Act and for the fixing of Court fees payable thereunder but such rules shall have no effect until approved of by the Attorney-General.

In garnishee proceedings.

45 Vic. No. 27 s. 12.

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

Attorney or agent may be suspended or prohibited.

10 Vic. No. 10 s. 45.

67. Any person guilty of contempt before a Court of petty sessions may be punished in a summary way by fine not exceeding forty shillings to be levied upon his goods and chattels or by imprisonment for any time not exceeding fourteen days.

Contempt before Court.

10 Vic. No. 10 s. 26.

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

Forms.

Second Schedule.

10 Vic. No. 10 ss.

20, 28; Schedules

B and C.

45 Vic. No. 27 s. 14.

SCHEDULES.

Section 2.

FIRST SCHEDULE.

Reference to Acts.	Title or short title.	Extent of repeal.
10 Vic. No. 10 ...	An Act to amend the law respecting the recovery of Small Debts in all parts of the Colony.	The whole Act except sections fifteen sixteen and seventeen.
33 Vic. No. 11 ...	An Act to extend the provisions of the Small Debts Act, 10 Vic. No. 10.	The whole Act.
42 Vic. No. 15 ...	An Act to further extend the provisions of the Small Debts Act, 10 Vic. No. 10.	The whole Act.
43 Vic. No. 34 ...	Small Debts Act Amendment Act of 1880.	The whole Act.
45 Vic. No. 27 ...	Small Debts Recovery Act	So much thereof as applies to Courts of petty sessions.
55 Vic. No. 19 ...	An Act to extend the jurisdiction of Courts of petty sessions.	The whole Act.
56 Vic. No. 37 ...	Debts Recovery Act, 1893	Section one and so much of section two as applies to Courts of petty sessions.

Section 68.

10 Vic. No. 10.
Schedule B.

SECOND SCHEDULE.

FORMS.

Plaints.

IN THE CASE OF GOODS SOLD.

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

IN THE CASE OR DEMAND FOR RENT.

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

FOR LODGING.

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

FOR HIRE OF HORSES.

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

FOR

FOR AGISTMENT.

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

FOR WORK AND LABOUR.

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

FOR WORK AND LABOUR OF SERVANTS.

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

FOR WORK AND LABOUR OF SERVANTS HORSES AND CARRIAGES.

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

FOR WAGES.

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

FOR MONEY LENT.

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

ON A PROMISSORY NOTE OR BILL OF EXCHANGE.

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

ON A BOND.

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

FOR MONEY DUE ON AN AGREEMENT.

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

ON AN AWARD.

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

FOR UNLAWFUL DETENTION OF PROPERTY.

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

FOR

FOR UNLAWFUL DETENTION OF PROPERTY DEPOSITED.

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

FOR DAMAGE SUSTAINED BY IMPROPER DRIVING.

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

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

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

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

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

Section 68.
10 Vic. No. 10.
Schedule B.

Defence.

NEW SOUTH WALES.

Court of petty sessions for the } day of
district of 18 .
Between { A.B. Plaintiff
 { C.D. and Defendant

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

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

To A.B.

The above-named plaintiff

Summons.

Summons.

NEW SOUTH WALES.

Section 68.
10 Vic. No. 10.
Schedule B.

In the Court of petty sessions for }
the district }

To _____ of _____
You are hereby summoned to appear in this Court at _____ on _____ the
day of _____ next at ten of the clock in the forenoon of the same day
precisely to answer the following plaint [*insert copy of plaint and particulars as filed
with the registrar*] otherwise upon proof of the due service of a copy of this summons
the cause when called on for hearing will be tried and judgment be given against you
for whatever may appear to be due together with such costs as the Court may think
fit to award And take notice that if you intend to defend upon any matter of set-off
or excuse you must file particulars of the same in the office of the registrar
clear days at the least before the day herein named for the hearing of the cause other-
wise the evidence you may bring forward to support such set-off cannot be admitted.

Dated this _____ day of _____ one thousand eight hundred and _____

By the Court

A.B. Registrar.

Precept in the nature of a fieri facias.

EXECUTION AGAINST GOODS.

Section 68.
10 Vic. No. 10.
Schedule C.

Court of petty sessions for the }
district of }

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

In pursuance and by virtue of a decision of the Court of petty sessions for the
district of _____ made on the _____ day of _____ 18 _____ you are hereby required to
levy of the goods and chattels of _____ to satisfy _____ for the amount of
pounds _____ shillings and _____ pence being the amount of judgment and costs
which in the said Court he was adjudged to pay to the said _____ and after levy duly
made thereof forthwith to pay the same into this office And what you shall do herein
certify and return to this Court at the expiration of one calendar month from the date
hereof or within three days after this warrant shall be executed if that shall sooner
happen.

Dated this _____ day of _____ 18 _____

By the Court

A.B. Registrar.

£ s. d.

Judgment.....

Costs.....

Execution.....

Alias.....

£ _____

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

Subœpna

Small Debts Recovery.

Section 68.
10 Vic. No. 10.
Schedule C.

Subpœna for witness.

NEW SOUTH WALES.

Court of petty sessions for the }
District of }

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

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

By the Court
Registrar or Clerk of the Court.

Section 68.
10 Vic. No. 10.
Schedule C.

Attachment for non-appearance to a subpœna.

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

Victoria Regina.

Court of petty sessions for the }
District of }

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

At a Court of petty sessions for the district of held on the day of 18 it appearing to this Court that has been duly served with a copy of a subpœna to attend this Court in the above case and though duly called came not You and each of you are hereby commanded to attach the said wherever you may find him for a disobedience to the said subpœna and him safely and securely keep so that you may have him before a justice of the peace of the said Court on the day of to hear and abide such order as shall then be made touching the contempt of the said in disobedience of such subpœna.

Section 68.
45 Vic. No. 27.
Schedule A.

Order for examination of judgment debtor.

No.

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

Between judgment creditor and judgment debtor.

UPON the application of the abovenamed judgment creditor it is ordered that the abovenamed judgment debtor attend this Court on the day of 189 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 189

By the Court.
Registrar.

To the abovenamed judgment debtor.

Affidavit

Affidavit to ground garnishee order.

No.

Section 68.
45 Vic. No. 27.
Schedule B.

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

Between judgment creditor and judgment debtor.

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

- (1) That I [or the abovenamed judgment creditor] on the day of last past recovered judgment in the Court of petty sessions at the abovenamed judgment debtor for the sum of £ and costs against
- (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 189 before me

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

Garnishee order attaching debt.

No.

Section 68.
45 Vic. No. 27.
Schedule C.

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 189 and upon

It is ordered that all debts owing and accruing due from the abovenamed garnishee to the abovenamed judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the abovenamed judgment creditor in the Court of petty sessions in the district of on the day of 189 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 189 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 189 .

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.

Judgment against garnishee.

No.

Section 68.
45 Vic. No. 27.
Schedule D.

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

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

It is ordered that the said A.B. the abovenamed judgment creditor do recover against the said E.F. the abovenamed garnishee the sum of £ [insert the amount of the judgment] payment into Court. £ s. d.

Small Debts Recovery.

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 189 [or by instalments of for every days the first instalment to be paid on the day of 189 .]

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 189 .

Section 68.
45 Vic. No. 27.
Schedule E.

Execution against garnishee.

Folio in ledger.

No.

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

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

WHEREAS on the day of 189 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 189 [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 specialities 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 189 .

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 189 .

Order

Order for trial.

Section 63.
45 Vic. No. 27.
Schedule F.

No.

In the court of 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 _____ 189 _____ 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 _____ 189 _____ 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 _____ 189 _____.

Registrar.

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

THIRD SCHEDULE.

Section 64.
10 Vic. No. 10 ss. 6
and 40 and Schedule A.

Fees to be paid to the several officers undermentioned on the several occasions set against the same.

	£	s.	d.
To the Registrar on entering every plaint and cause for trial	0	1	0
To the Registrar for drawing plaint and particulars if requested by plaintiff ...	0	1	0
To the Registrar for copy of summons to be served on defendant	0	1	0
To the Registrar for every inspection of the record	0	0	6
To the Registrar for drawing and issuing every writ of execution or attachment	0	1	0
To the Registrar for every subpœna	0	0	6
To the Registrar for filling every defence or plea	0	1	0
To the Registrar for drawing same if requested by defendant	0	1	0
To the Bailiff for serving summons or subpœna at request of plaintiff or defendant and making affidavit of service if service be made	0	2	0
To the Bailiff for every levy or caption	0	1	0
To the Bailiff for every mile or fraction of a mile over 2 miles from the Court which he may have to travel to serve summons or execute other process of the Court but not counting the return journey	0	0	6
To the Bailiff for possession money by the day	0	3	6

Small Debts Recovery.

FOURTH SCHEDULE.

Attorneys' costs.

Section 29 (3).

10 Vic. No. 19 s. 44.
Schedule C.

	£	s.	d.
For drawing and copying plaint with the particulars	0	2	6
For summons with the particulars	0	1	0
For defence or set-off with the particulars	0	2	6
For an Advocate's fee in a case not exceeding £10 not more than ...	1	1	0
For an Advocate's fee in a case not less than £10 nor exceeding £30 not more than	3	3	0

Sydney: William Applegate Gullick, Government Printer.—1899.

[1s. 6d.]