

Act No. 18, 1905.

An Act to amend the Small Debts Recovery Act, 1899; to provide for the collection of fees in a court of petty sessions; and for purposes consequent thereon or incidental thereto. [28th September, 1905.]

SMALL DEBTS  
RECOVERY  
(AMENDING).

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

*Preliminary.*

1. This Act may be cited as the "Small Debts Recovery (Amending) Act, 1905," and shall come into force on the first day of October, one thousand nine hundred and five, and shall be construed with the Principal Act. Short title.

2. In this Act—

Definitions.

"Admitted set off" means set off admitted by the plaintiff at the time he brings the action.

"Principal Act" means Small Debts Recovery Act, 1899.

"Stipendiary magistrate" includes a deputy stipendiary magistrate.

Other expressions have the meanings given to them in the Principal Act.

3. The sections and subsections of the Principal Act mentioned in Schedule One to this Act are repealed: Repeal.

Provided that such repeal shall not affect any rules made under that Act.

*Small Debts Recovery (Amending).**Jurisdiction.*

Extension of jurisdiction.

4. (1) The jurisdiction of a court established or to be established under the Principal Act anywhere in New South Wales is extended to include any action for the recovery of any debt or liquidated demand not exceeding fifty pounds, whether on balance of account or after admitted set-off or otherwise.

Actions by infants.

(2) Section twenty-three of the Principal Act is amended by inserting the words "fifty pounds" instead of the words "ten pounds" in that section.

Exclusive jurisdiction of stipendiary or police magistrate.

(3) Provided that where the debt or liquidated demand exceeds thirty pounds, such jurisdiction shall be exercised only by a stipendiary or police magistrate sitting in some place appointed in that behalf by the Governor.

Saving.

(4) Provided also that this section shall not apply to the jurisdiction of one justice of the peace under section eight of the Principal Act.

Extension of period of limitation.

5. Subsection three of section eleven of the Principal Act is amended by inserting the words "six years" instead of the words "three years" in that subsection.

Power of medical practitioner to sue for fees.  
District Courts Act, 1901, s. 48.

6. Any doctor of medicine or other legally qualified medical practitioner may sue for the recovery of any fees or other remuneration as such practitioner in like manner as any surgeon or other person may sue for the recovery of any debt or demand under the Principal Act and this Act.

*Default summons and procedure thereon.*

Default summons.  
See *ibid.* s. 52.

7. In any action in a court for the recovery of a debt or liquidated demand with or without interest, the plaintiff may, in lieu of the summons mentioned in the Principal Act, cause to be issued a summons in the form prescribed by rules made under this Act, and until such rules are made, such summons may be in the form of a default summons in the present District Court rules, *mutatis mutandis*, or as near thereto as practicable.

Service of default summons.  
See *ibid.* ss. 52 and 53.

8. A default summons shall when practicable be served personally on the defendant:

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

- (a) the defendant wilfully evades service of the summons; or
- (b) the summons has been served in the manner directed by the

Principal Act in respect of a summons under that Act, such magistrate may order, on such conditions as may be thought fit, that the plaintiff may proceed as if personal service had been effected.

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

Ground of defence to be in writing lodged with registrar.

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

District Courts Act, 1901, s. 62 (4).

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

Judgment in default of defence. *Ibid.* s. 54.

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

Trial.

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

Defence lodged after time. *Ibid.* s. 55.

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

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

*Setting aside of judgment.*

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

Judgment may be set aside.

*Non-appearance*

*Small Debts Recovery (Amending).**Non-appearance of plaintiff.*

Where plaintiff does not appear he may be nonsuited.

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

*Judgment on confession or agreement.*

Statement of confession or agreement may be made, signed.

**15.** (1) In any action—

- (a) the defendant may sign a statement confessing the amount of the debt or demand for which the plaint has been issued, or any part thereof ; or
- (b) the plaintiff and defendant may sign a statement of any agreement upon the amount of such debt or demand, and of the terms and conditions upon which the same is to be paid or satisfied.

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

Statement received by registrar and judgment entered up.

**16.** The registrar shall receive such statement of confession or agreement as aforesaid, and shall, as soon as convenient thereafter, send notice of any such confession to the plaintiff.

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

*Judgment where several defendants.*

Where judgment given against some only of defendants.

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

*Execution.*

Execution in six years without revival. C.L.P. Act, 1899, s. 144.

**18.** During the lives of the parties to a judgment in any court, or those of them during whose lives execution may at present issue within a year and a day without a seire facias, and within six years from the recovery of the judgment, execution may issue without a revival of the judgment.

*Interpleader*

*Small Debts Recovery (Amending).**Interpleader.*

**19.** Any application under section forty of the Principal Act to call before the court the party issuing any process and the claimant of any goods or chattels taken in execution under such process, and any order thereupon may, in the absence of the court, be made to and granted by the registrar or a justice of the peace. Such order so made shall be of the same effect as if made by the court; and the court shall thereupon pronounce its decision and make its orders in accordance with the said section.

Application under section 40 of Principal Act.

**20.** (1) Where, under section forty-two of the Principal Act, a third person claims any property levied upon, and such claim is deposited to as in that section provided, the following additional things, or one of them, shall be done by the claimant before the property is released from execution—

Property in possession of bailor. Section 42.

- (a) he may deposit with the bailiff an amount equal to the value of the property, such amount to be paid by the bailiff into court to abide the decision of the court upon the claim; or
- (b) he may give to the bailiff security to the value of the property.

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

*Change of venue.*

**21.** (1) If a court is satisfied that any action or other proceeding therein pending can be more conveniently or fairly tried or determined by some other court, it may order that the venue be changed, and that the action or proceeding be sent for hearing to such other court.

Change of venue. District Courts Act, 1901, s. 10.

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

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

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

*Court*

*Small Debts Recovery (Amending).**Court fees.*

Court fees to be denoted by stamps.

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

Court fees not charged to Government departments.

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

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

Process and witnesses expenses.

**24.** In all actions or proceedings in a court, the court may award to the successful party, by way of costs for court process and attendance of witnesses, such sum as in its discretion it thinks fit.

*Attachment of debts.*

Orders under section 44 of Principal Act.

**25.** Any application under section forty-four of the Principal Act to examine a judgment debtor, and any order thereupon may, when the court is not sitting, be made to and granted by the registrar thereof or a justice of the peace. Any such order so made shall be of the same effect as if made by the court, and the court shall cause such debtor to be examined under the said section.

Garnishee orders, ss. 46 and 47 of Principal Act.

**26.** Any application under section forty-six of the Principal Act, and any garnishee order and any directions thereunder, and any summons under section forty-seven of the said Act may, when the court is not sitting, be made to and granted by the registrar thereof or by a justice of the peace. Any such order, direction, or summons so made shall be of the same effect as if made by the court.

*Execution.*

Certificate may issue in respect of unsatisfied judgment or order.

**27.** (1) Where a judgment or order of a court of petty sessions for the payment of money has been given, signed, or made in favour of any person, the registrar, upon the application of such person or of his solicitor or agent, shall, on proof that a warrant of execution on such judgment or order has been returned unsatisfied in whole or in part, issue and deliver to such person, solicitor, or agent, a certificate in the form of Schedule Two or to the like effect, and shall make a minute or memorandum thereof against the entry of the judgment on the cause list.

(2)

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

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

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

(5) When such certificate has been filed in the district court all the provisions of the District Courts Act, 1901, relating to proceedings consequent on a judgment or order given or made in a district court shall apply as if the judgment or order of the court of petty sessions were a judgment or order of the district court. Provisions of District Courts Act to apply.

*Rules.*

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

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

*Formal amendments in Principal Act.*

29. Section sixteen of the Principal Act is amended by inserting the words "or a duplicate thereof" next after the word "summons" in that section. Amendment of section 16.

30. Subsections one and two of section eighteen of the Principal Act are amended by inserting the words "carries on business or" before the words "usually resides" in those subsections. Amendment of section 18.

31. The following amendments are made in sections nineteen and twenty of the Principal Act:— Amendments of sections 19 and 20.

- (a) The words "persons jointly liable" are substituted for the words "joint defendants" where occurring in subsections one, two, and three of section nineteen, or in any subsection of section twenty.
- (b) The words "person jointly liable" are substituted for the words "joint defendant or joint defendants" in subsection four of section nineteen.
- (c)

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- (c) The word "person" is substituted for the word "defendant" in subsections one, two, and three of section nineteen, and in any subsection of section twenty.
- (d) The words "any one of" are substituted for the words "any of" in subsection one of section nineteen.
- (e) The words "in the action" are substituted for the words "in the defence" in subsection three of section nineteen.

SCHEDULES.

SCHEDULE ONE.

*Sections and subsections of the Principal Act repealed.*

- Subsection one of section twenty-one.
- Subsection two of section twenty-two.
- Section twenty-eight.
- Section thirty.
- Section sixty-five.

SCHEDULE TWO.

THE SMALL DEBTS RECOVERY (AMENDING) ACT, 1905.

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

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

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

I certify that this certificate correctly and fully sets forth the particulars of the judgment (*or* order) and of the return unsatisfied of execution issued on such judgment (*or* order) therein described of the Court of Petty Sessions for district of \_\_\_\_\_, sitting under the Small Debts Recovery Act, 1899, and the Acts amending the same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

A.B.,  
Registrar.

Act