

SMALL DEBTS ORDINANCE, 1912.⁽¹⁾

No. 17 of 1912.

An Ordinance to consolidate and amend the Enactments relating to Small Debts Courts.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Small Debts Ordinance*, Short title. 1912.⁽¹⁾

It shall commence on a day to be fixed by the Lieutenant-Governor by Proclamation published in the *Gazette*.⁽¹⁾

It is divided into parts as follows:—

Part I.—Preliminary.

Part II.—Jurisdiction.

Part III.—Procedure.

Part IV.—Miscellaneous.

2. The enactments mentioned in the First Schedule to this Ordinance are to the extent therein expressed hereby repealed. Repeal.
First Schedule.

Notwithstanding such repeal—

all courts established at the commencement of this Ordinance shall be deemed to have been established for the purposes of this Ordinance; and all officers appointed under the enactments hereby repealed and in office at the commencement of this Ordinance shall remain in office and shall be deemed to have been appointed under this Ordinance;

Saving clause.
N.S.W. No. 13
of 1899, s. 2.

the limits of the petty sessions districts⁽²⁾ existing at the time of passing this Ordinance shall be deemed to have been defined hereunder;

(1) Particulars of this Ordinance are as follows:—

Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
16.7.1912	(a)	7.5.1913 (Papua Govt. Gaz. of 7.5.1913)

(a) No notice of non-disallowance has been published in Papua Govt. Gaz.

(2) See footnote (5) printed on p. 1000.

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all rules⁽³⁾ made under the authority of any enactment hereby repealed and being in force at the time of the passing of this Ordinance shall be deemed to have been made under the authority of this Ordinance.

Application of Ordinance.

3. This Ordinance shall be in force and apply to all parts of the Territory.

Power to define limits of petty sessions districts.

4. The Lieutenant-Governor⁽⁴⁾ may by Proclamation⁽⁵⁾ in the *Gazette* define or alter the limits of any petty sessions district for the purposes of this Ordinance and after any such Proclamation has been published in the *Gazette* the provisions of this Ordinance 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.

Courts are courts of record.
Q. 31 Vic.
No. 29, s. 3.

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 Central Court:⁽⁴⁾

Provided that in respect of any action for trespass to land tried in any court of petty sessions where the right to the possession shall be shown to have been in dispute and any action for rent not being between the original parties to the letting where the right to receive or the liability to pay such rent shall have been in dispute and any action for contribution to the erection or repair of any dividing fence where the defendant's liability to contribute shall have been in dispute the judgment of the court of petty sessions as to such right or liability shall be conclusive only as to the particular act or acts or trespass or amount of rent or contribution then in question and shall not be taken to have determined any of those questions generally between the parties.

Interpretation.
Q. 1b. s. 1.
N.S.W. No. 13
of 1899, s. 6.

6.—(1.) In this Ordinance unless the context or subject-matter otherwise indicates or requires—

“Admitted Set-off” means set-off admitted by the plaintiff at the time he brings the action;

(3) At the date of the adoption of the *Small Debts Act of 1867* (Queensland) by the Possession of British New Guinea, no rules had been made under that Act in Queensland. No rules under the *Small Debts Act of 1867* (Queensland, adopted) have been published in British N.G. *Govt. Gaz.* or in Papua *Govt. Gaz.*

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(5) No proclamation made under the *Small Debts Ordinance, 1912*, has been published in Papua *Govt. Gaz.* The districts continued in force by Section 2 were defined in a Proclamation (dated 10.3.1913, published in the Papua *Govt. Gaz.* of 11.3.1913, and printed on p. 975), made under *The Courts and Laws Adopting Ordinance of 1888* and *The Justices Act of 1886* (Queensland, adopted). These districts have been altered from time to time by proclamations expressed to be made under the *Justices Ordinance, 1912-1940* (for particulars of which, see the Table printed on p. 957), but in view of the wording of Section 4 of the *Small Debts Ordinance, 1912* *quere*, whether these proclamations “define or alter the limits of any petty sessions district for the purpose of” the *Small Debts Ordinance, 1912*, pursuant to Section 4 of that Ordinance.

Small Debts Ordinance, 1912.

- “Court” means a court of petty sessions;
- “Court of Petty Sessions” means any resident magistrate sitting for purposes of this Ordinance at the usual place of meeting of justices in petty sessions; Pap. No. 4 of 1888, s. 5.
- “Garnishee” means a person who is indebted to a judgment debtor; Pap. 7b. s. 6.
- “Garnishee Order” means an order directing the attachment of a debt due owing or accruing from a garnishee to answer a judgment debt;
- “Registrar” means the Registrar of a court of petty sessions;
- “Resident Magistrate” includes an acting resident magistrate and an assistant or acting assistant resident magistrate.

(2.) In this or any Ordinance unless the contrary intention appears the term “small debts court” shall be taken to mean any court held under this Ordinance.

PART II.—JURISDICTION.

7.—(1.) All courts now established or that may hereafter be established shall within their respective districts have power and authority to hear and determine in a summary way (against persons liable as hereinafter mentioned to be summoned to such court and every defendant sued jointly with such persons) all actions whatsoever— Jurisdiction. Q. 31 Vic. No. 29, s. 2. Pap. No. 3 of 1890, s. 1.

- (a) for the recovery of any debt only whether liquidated or unliquidated to an amount in any case not exceeding One hundred pounds whether on balance of account or after admitted set-off or otherwise; Debt up to £100. Q. 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 One hundred pounds. Other demand or damage up to £100.

(2.) Such courts shall in like manner have authority to hear and determine all disputes and differences between partners not exceeding the sum of Thirty pounds. Partnership disputes up to £30.

8. 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 Ordinance but which bills or notes are separately security for a sum not exceeding Twenty 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 Ordinance. Notes or bills for sums not exceeding £20. Q. 31 Vic. No. 29, s. 11. N.S.W. No. 13 of 1899, s. 10.

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Limitation of jurisdiction.

Q. 31 Vic. No. 29, s. 2.

N.S.W. No. 13 of 1899, s. 11.

9. 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 His 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 six years before the issuing of the summons unless there has 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 authorized;
- (5) in cases of trespass to land if the title to the freehold therein be *bonâ fide* in dispute between the parties;
- (6) in any case of seduction;
- (7) in any case where the title to land or the validity of any devise bequest or limitation under any will or settlement shall be in question.

Q. 33 Vic. No. 4, s. 1.

Where court no jurisdiction case to be struck out.

Q. 58 Vic. No. 10, s. 18.

10. When an action is brought in a court which the court has no jurisdiction to try the resident magistrate shall order the action to be struck out and shall have power to award costs to the same extent and recoverable in the same manner as if the court had jurisdiction in the matter of the action and the plaintiff had been nonsuited.

Actions not to be split.

N.S.W. *Id.* s. 12.

11.—(1.) 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.

Plaintiff may abandon excess. Judgment to be in full discharge.

Q. 31 Vic. No. 29, s. 10.

S.A. 386 of 1886, s. 34.

(2.) But any plaintiff having cause of action for more than the sum for which a plaint might be entered under this Ordinance may abandon the excess and thereupon the plaintiff shall on proving his case recover an amount not exceeding the sum competent to be awarded by such court; and the judgment of the court upon such plaint shall be in full discharge of all demands in respect of such cause of action and entry of judgment shall be made accordingly.

PART III.—PROCEDURE.

Actions How Commenced.

12.—(1.) Every action shall be commenced by a plaint in writing. Plaint.
Q. 31 Vic. No. 29, ss. 15, 19.
N.S.W. No. 13 of 1899, s. 15.

(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. Contents of
plaint.

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

(4.) Any plaintiff who has omitted to file particulars of demand or who has filed insufficient particulars of demand may be allowed to file or amend particulars (as the case may be) if the court shall think fit on such terms as the court shall impose. Amendment of
particulars.
Q. 33 Vic.
No. 4, s. 4.

(5.) 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.

13. The original summons or a duplicate thereof shall be served on the defendant. Summons.
Q. 31 Vic.
No. 29, s. 15.

14.—(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.
Q. Ib. s. 20.

(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 of good service upon the defendant.

Place Where Action may be Brought.

15.—(1.) Actions for debt may be brought either in the court holden in and for the district where the defendant in such action carries on business or usually resides or in the court holden in and for the district in which the debt sued for was contracted or the cause of action arose. For debt.
Q. Ib. s. 12.
N.S.W. Ib. s. 18.

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For damages.

(2.) Actions for damages shall be brought in the court holden in and for the district where the defendant in such action carries on business or usually resides.

Party liable for damage removing to another district.

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 summons the defendant to the court holden for the district in which such liability for damages 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.

(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.

Application of section to joint defendant.

(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.

Power to determine questions as to defendant's residence.

Q. 31 Vic.
No. 29, s. 13.
N.S.W. No. 13
of 1899, s. 18.

(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.

Action Against Joint Defendants.

Where joint defendants reside in different districts.

Q. *Ib.* s. 13.
N.S.W. *Ib.* s. 19.

16.—(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.

Defendant served may notify others.

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

Action to proceed although other defendants do not appear.

(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.

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(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.

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

Right to contribution from joint defendants.

Q. 31 Vic. No. 29, s. 12.

N.S.W. No. 13 of 1899, s. 19.

Judgment in action when evidence.

(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.

(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.

Defences.

18. Defences shall be made in conformity with the notice given by the summons and may be in the prescribed form or to the like effect.

Defences.

Q. *Ib.* s. 23.

19. A defendant shall be let in to defend and to file a notice of defence as of course at any time before final judgment on swearing that he has a good defence on the merits on such terms as the court shall think just; and the court may in any case make orders granting time to the plaintiff or defendant to proceed in the prosecution of the action or defence and may also from time to time adjourn the court or the trial or further trial of any cause for any purpose in such manner and upon such terms as the court thinks fit.

Defences after time and adjournment.

Q. 33 Vic. No. 4, s. 5.

Set-Off or Counter-Claim.

20. In every action the defendant may set-off or counter-claim for any debt or demand due by the plaintiff to him recoverable in a small debts court whether it does or does not exceed the amount of the plaintiff's claim.

Defendant may set-off or claim any debt or demand.

Q. 56 Vic. No. 21, s. 1.

21. In every action in which the defendant sets-off or claims for any debt or demand recoverable by him from the plaintiff in a court such defendant whether the plaintiff shall be nonsuited or shall have judgment given against him shall be entitled to recover in such action the amount (if any) which the debt or demand so set-off or claimed and proved exceeds the debt or demand claimed and proved by the plaintiff and shall have judgment and execution for the same accordingly.

Defendant may recover excess of set-off.

Q. *Ib.* s. 2.

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Non-Appearence of Party.

Default of appearance by plaintiff.

N.S.W. No. 18 of 1905, s. 14.
Cf. Q. 31 Vic. No. 29, s. 26.

When defendant admits claim.

22.—(1.) If a notice of defence has been filed and the plaintiff does not appear in the action and the defendant appears according to the summons the court may nonsuit the plaintiff or enter a verdict for the defendant.

(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. If in any such case neither party appears the action shall be struck out.

Non-appearance by defendant.

Q. *Ib.* s. 27.
N.S.W. No. 13 of 1899, s. 22.

23.—(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 the court shall if no notice of defence has been filed upon due proof of the service of the summons give judgment for the plaintiff if the plaint discloses a sufficient cause of action triable in a small debts court. But if a notice of defence has been filed the court may 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.

On cause shown judgment may be set aside.

N.S.W. No. 13 of 1905, s. 13.
Cf. Q. *Ib.* s. 27.

(2.) 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.

Actions by Infants Executors &c.

Actions by infants.

Q. *Ib.* s. 16.
N.S.W. No. 13 of 1899, s. 23.

24. Whenever any wages or any other sum whatsoever not exceeding the sum of Fifty 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.

Q. *Ib.* s. 17.
N.S.W. *Ib.* s. 24.

25.—(1.) Executors and administrators may sue and be sued in the court 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.

Q. *Ib.* s. 18.

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

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

Actions by trustees.
Q. 31 Vic. No. 29, s. 18.

27. A plaintiff suing as trustee of an insolvent shall so describe himself in the plaint filed.

Actions by trustees of insolvents.
Q. *Ib.* s. 18.

Fees and Costs.

28. In every action or proceeding in a court the court may award to the successful party such costs for court process attendance of witnesses and attorney's or agent's fees such sum as in its discretion it thinks fit but not exceeding for the matters therein respectively specified the sums mentioned in the Third and Fourth and Fifth Schedules hereto.

Costs of action.
Q. *Ib.* s. 9.
Q. 33 Vic. No. 4, s. 3.
N.S.W. No. 18 of 1905, s. 27.

29. The fees set forth in the Third Schedule hereto shall be paid in respect of the matters therein specified and such fees shall be paid in the first instance and in advance by the party in whose behalf any such proceeding is to be taken.

Court and bailiff's fees.
Third Schedule.
Q. 31 Vic. No. 29, s. 7.
Pap. No. 3 of 1890, s. 5.

30.—(1.) In all actions the plaintiff and defendant may appear and each conduct his case by himself or by his attorney or agent.

Parties may appear personally &c.
Q. *Ib.* s. 9.
N.S.W. No. 13 of 1899, s. 29.

(2.) No attorney or agent shall be allowed or shall demand to take more by way of fees for work done by him than the sums set forth in the Fourth Schedule hereto.

Attorney and agent's fees.
Fourth Schedule.

31. The costs and mileage to be allowed for witnesses' attendance to give evidence in any case in any court shall be in the discretion of the court but shall not exceed the sums set forth in the Fifth Schedule hereto.

Witnesses' fees and mileage.
Q. 33 Vic. No. 4, s. 3.
Fifth Schedule.

32. 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.
Q. 58 Vic. No. 10, s. 11.

Judgment on Confession or Agreement.

33.—(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

Statement of confession or agreement may be made signed.
N.S.W. No. 18 of 1905, s. 15.

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(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.

N.S.W. No. 18 of 1905, s. 16.

34. 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.

N.S.W. *Ib.* s. 17.

35. 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.

Judgments—How Recorded.

Entry of judgment.

Q. 31 Vic. No. 29, s. 3.

N.S.W. No. 13 of 1899, s. 32.

36. The entry of 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.

Judgment not to be recorded without affidavit of service.

N.S.W. *Ib.* s. 33.

Q. *Ib.* s. 22.

37. 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 Central Court⁽⁴⁾ or before a justice of the peace deposed to have been duly served upon the defendant in the manner directed by this Ordinance or the defendant shall appear on the hearing of the case.

Enforcement of Judgment and Orders.

Payment by instalments.

Q. *Ib.* s. 36.

N.S.W. *Ib.* s. 34.

38.—(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.

(4) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

(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 instalments.

39. If there shall be cross judgments between the parties execution shall be taken out by that party only who has obtained judgment for the larger sum and for so much only as shall remain after deducting the smaller sum and satisfaction for the remainder shall be entered as well as satisfaction for the smaller sum and if both sums shall be equal satisfaction shall be entered upon both judgments.

In cross judgments execution only to be taken out for the larger sum.

Q. 31 Vic. No. 29, s. 37.

40. Whenever any court of petty sessions shall have made an order for the payment of money the amount shall be recoverable in case of default or failure of payment thereof forthwith or at the time or times and in the manner directed by execution against the goods and chattels of the party against whom such order shall be made.

Execution to issue against party failing to pay in pursuance of order.

Q. Ib. s. 38.

41.—(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 *feri 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 Territory in the same manner and in all respects as process of a similar nature issuing out of the Central Court⁽⁴⁾ may be executed.

Execution of process.

Q. Ib. s. 44.

N.S.W. No. 13 of 1899, s. 35.

(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.

Q. Ib. s. 48.

N.S.W. Ib. s. 35.

42. 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.

N.S.W. Ib. s. 36.

43.—(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.

Q. Ib. s. 47.

N.S.W. Ib. s. 37.

(4) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

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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 endorsement 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 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.

Registrar and
court bailiffs
not to be
responsible.

(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.

Time when
execution may
be made.
Q. 31 Vic.
No. 29, s. 45.
N.S.W. No. 13
of 1899, s. 38.

44. 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.

When goods
seized landlord
may claim
certain rent in
arrear.
Q. 56 Vic.
No. 21, s. 7.

45. The landlord of any premises in which goods are taken in execution may at any time within five clear days from the date of the taking or at any time before the removal of the goods claim any rent in arrear by delivering to the officer making the levy a writing signed by himself or his agent stating the amount of rent in arrear claimed and the period in respect of which the rent is due.

If such a claim is made the officer making the levy shall in addition to levying for the amount for which the precept was issued keep possession of the goods by way of distress for the rent so claimed and the cost of the possession and shall not within five clear days next after the notice sell any part of the goods taken unless they are of a perishable nature except upon the request in writing of the person whose goods are taken.

The bailiff shall afterwards sell so much of the goods taken under the execution as is sufficient to satisfy—

- (1) the costs of and incident to the levy and sale;
- (2) the claim of the landlord not exceeding the rent for four weeks when the premises are let by the week the rent for two months when the premises are let by the month or the rent for three months in any other case; and
- (3) the amount for which the precept was issued.

If a replevin is made of any goods so taken the bailiff shall notwithstanding the replevin sell such portion of the goods as will satisfy the costs of and incident to the levy and sale under the execution and the amount for which the precept was issued and the surplus (if any) arising from the sale and the residue of the goods shall be returned to the defendant.

The poundage of the bailiff and broker for appraisalment and sale under the possession by way of distress shall be the same as would have been payable if no claim had been made for rent and no other fees shall be demanded or taken in respect thereof.

Interpleader.

46.—(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.
Q. 31 Vic.
No. 29, s. 51.
N.S.W. No. 13
of 1899, s. 40.
Q. 56 Vic.
No. 21, s. 8.

(2.) The court may make such order as appears to be just according to the circumstances and the costs of the proceedings shall be in the discretion of the court.

Order may be made by Registrar &c. N.S.W. No. 18 of 1905, s. 19.

47. Any application under the preceding section 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.

Property Protected from Execution.

Realty and leaseholds.

Q. 31 Vic. No. 29, s. 44.

N.S.W. No. 13 of 1899, s. 41.

Exemption of certain goods.

Q. 56 Vic. No. 21, s. 6.

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

The wearing apparel bedding tools and implements of trade of the person against whom a precept for execution is issued and his family to the value of Ten pounds on the whole shall be protected from seizure under the precept.

Attachment of Debts Due from Garnishees.

Examination of judgment debtor as to debts due to him.

Q. 58 Vic. No. 10, s. 5.

N.S.W. 1b. s. 44.

49.—(1.) Any creditor who has obtained a judgment in 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.) 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 such court and failing to appear at the time appointed would be subject.

Penalty for disobeying order.

Orders may be granted by Registrar &c. N.S.W. No. 18 of 1905, s. 25.

50. Any application under the foregoing section 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.

N.S.W. No. 13 of 1899, s. 46.

Q. 58 Vic. No. 10, ss. 6, 9.

51.—(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.

(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 of the judgment debtor.

Application for order.

Small Debts Ordinance, 1912.

(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.

(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 Ordinance.

Court may refuse to interfere in certain cases.

52. 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.
N.S.W. No. 13 of 1899, s. 47.
Q. 58 Vic. No. 10, s. 6.

53. Any application and any garnishee order and any directions thereunder and any summons under the two last preceding sections 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.

Garnishee order may be granted by Registrar &c.
N.S.W. No. 18 of 1905, s. 26.
Q. *Ib.* s. 6.

54. 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.
N.S.W. No. 13 of 1899, s. 48.
Q. *Ib.* s. 7.

55. 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 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.

Proceedings to levy amounts due from garnishee to judgment debtor.
N.S.W. *Ib.* s. 49.
Q. *Ib.* s. 8.

Where garnishee
disputes liability.
N.S.W. No. 13
of 1899, s. 50.
Q. 58 Vic. No.
10, s. 10.

56. If the garnishee appears upon the 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.
N.S.W. *Ib.* s. 51.

57. 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.
N.S.W. *Ib.* s. 52.

58.—(1.) In each court of petty sessions 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.

Judgment Summons.

On summons
court may
examine
defendant and
call witnesses.
Q. 31 Vic.
No. 29, s. 41.

59. It shall be lawful for any party who has obtained any unsatisfied judgment or order in any court held by virtue of this Ordinance for the payment of any debt or damages or costs to obtain a summons from the court of petty sessions for the town within the limits of which such party shall then dwell or carry on his business such summons to be in such form as shall be directed by any rules⁽⁶⁾ made as aforesaid for regulating the practice of the courts of petty sessions and to be served personally upon the person to whom it is directed or left at his last known place of abode requiring him to appear at such time as shall be directed by the said rules to answer such things as are named in such summons; and if he shall appear in pursuance of such summons he may be examined upon oath touching his estate and effects and the manner or circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him and as to the means and expectation he then had and as to the property and means he still hath of discharging the said debt or damages or liability and as to the disposal he may have made of any property; and the person

(6) No rules made under the *Small Debts Ordinance, 1912*, have been published in *Papua Govt. Gaz.*

obtaining such summons as aforesaid and all other witnesses whom the court shall think requisite may be examined upon oath touching the inquiries authorized to be made as aforesaid and the costs of such summons and of all proceedings thereon shall be deemed costs in the cause.

60. It shall be lawful for any court before whom such summons shall be heard if it shall to such court appear fitting to rescind or alter any order that shall have been previously made against any defendant so summoned before such court for the payment by instalments or otherwise of any debt or damages recovered and to make any further or other order either for the payment of the whole of such debt or damages and costs forthwith or by any instalments or in any other manner as to such court may seem reasonable and just.

Court may alter or rescind any order or make further orders.
Q. 31 Vic. No. 29, s. 42.

61. If it shall at any time appear to the satisfaction of the court by the oath or affirmation of any person or otherwise that any defendant is unable from sickness or other sufficient cause to pay and discharge the debt or damages recovered against him or any instalment thereof ordered to be paid as aforesaid it shall be lawful for the court in its discretion to suspend or stay any judgment order or execution given made or issued in such action for such time and on such terms as the said court shall think fit and so from time to time until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased.

Court may suspend or stay any judgment order or execution.
Q. *Ib.* s. 43.

Witnesses.

62.—(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 Central Court.⁽⁴⁾

Attendance of witnesses.
Q. *Ib.* s. 24.
N.S.W. No. 13 of 1899, s. 53.

(2.) Nothing in this Ordinance 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 compel any witness to attend without tender of his reasonable expenses.

Expenses.
N.S.W. *Ib.* s. 53.

63. Every court of petty sessions may punish 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.
N.S.W. *Ib.* s. 54.
Q. *Ib.* s. 24.

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

COURTS—

Appeals.

Appeal.
Q. 31 Vic. No.
29, s. 34.

64. If either party to any cause in which the judgment of the court or the sum sued for shall amount to the sum of Ten pounds or upwards shall be dissatisfied with the determination or direction of the court such party may appeal to the Central Court:⁽⁴⁾

Provided that such party (if a defendant) shall within five clear days give notice in writing to the opposite party or his attorney of his intention to appeal and shall within one week after such adjudication enter into a recognizance before the Registrar of the said court of petty sessions in double the amount of the debt and costs (to be approved of by the Registrar) conditioned to abide the event of the appeal and pay such debt and costs as the court shall award or in lieu of giving such security deposit in the hands of the Registrar the amount of the judgment together with the sum of Ten pounds to answer the costs of such appeal.

And in case of a plaintiff appealing he shall give a like notice of appeal and security in the sum of Ten pounds (to be approved of by the Registrar) conditioned to answer the costs of the appeal if such appeal should be dismissed or in lieu of such security deposit in the hands of the Registrar the sum of Ten pounds with like condition.

And the Central Court⁽⁴⁾ shall hear and determine the matter of the said appeal and may either order a new trial on such terms as the Central Court⁽⁴⁾ may think fit or may order judgment to be entered for either party as the case may be and make such order with respect to the taxation of costs of the said appeal as such court may think proper.

Evidence on
appeals from
small debts
court.
Q. 55 Vic.
No. 33, s. 156.

65. In any case in a small debts court in which the sum sued for amounts to Ten pounds or upwards the resident magistrate shall take notes of the evidence and shall append the same to the proceedings and in case of appeal the notes and proceedings shall be forthwith transmitted by him to the Registrar of the Central Court⁽⁴⁾ and shall be the only evidence received upon the appeal unless both parties consent to the reception of fresh evidence or the judge directs such reception; and after the determination of the appeal the Registrar of the Central Court⁽⁴⁾ shall append to the notes and proceedings the judgment given on the appeal and shall return the same to the clerk and effect shall be given to the judgment according to its tenor.

Judge may
allow costs and
expenses of
witnesses.
Q. *Ib.* s. 157.

66. In any case of appeal from a small debts court to the Central Court⁽⁴⁾ the judge may award costs and allow expenses of witnesses.

(4) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

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New Trial.

67. Any party dissatisfied with the decision of a small debts court may at any time within seven days from such decision apply for a new trial to any resident magistrate sitting in the court where the cause was heard and the resident magistrate hearing the application may grant the same upon such terms as to costs or otherwise as he thinks fit or at his discretion may refuse the same with or without reasonable costs: Provided that three days' notice of any application for a new trial shall be given to the opposite party.

Application for
new trial.
Q. 33 Vic.
No. 4, s. 8.

PART IV.—MISCELLANEOUS.

Officers.

68. The clerk of the courts of petty sessions or the resident magistrate or other the person for the time being discharging the duties of such clerk shall discharge the duties of Registrar.

Clerk and
Registrar.
Q. 31 Vic.
No. 29, s. 7.
N.S.W. No. 13
of 1899, s. 55.

69. 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 authorized by this Ordinance.

Bailiffs.
Q. *Ib.* s. 7.
N.S.W. *Ib.* s. 56.

70. 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 resident magistrate of the court of petty sessions out of which such process issued may upon complaint and due proof thereof made upon the oath of any credible witness order such bailiff or deputy or officer to pay the sum of money for which such execution was awarded or such part thereof as the said resident magistrate 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.
Q. *Ib.* s. 54.
N.S.W. *Ib.* s. 57.

Action Against Officers.

71. All sheriffs and deputy sheriffs keepers of prisons or other persons whosoever who do anything under this Ordinance 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 resident magistrate justice of the peace or officer of any court of petty sessions for performing any duty of his office in pursuance of this Ordinance such sheriff resident magistrate 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

Indemnity to
officers.
Q. *Ib.* s. 53.
N.S.W. *Ib.* s. 58.

Officer may
plead general
issue and give
special matters
in evidence.

COURTS—

discontinue his action or a verdict pass against him or judgment be had for the defendant upon demurrer such defendant shall have double costs.

Limitation of actions against officers.

Q. 31 Vic.
No. 29, s. 52.
N.S.W. No. 13
of 1899, s. 59.

72. All actions for anything done under the provisions of this Ordinance by persons acting in execution thereof shall be commenced within six months after the fact was committed and no writ shall be sued against nor process served upon any resident magistrate 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 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.

Rules.

Rules.

N.S.W. No. 18
of 1905, s. 23.

73. The Lieutenant-Governor in Council⁽⁴⁾ may make general rules⁽⁷⁾ to be in force in the several districts for carrying out the provisions of this Ordinance and the procedure and practice of courts of petty sessions under this Ordinance and may in and by such rules cancel or alter any forms in and add any forms to any schedule to this Ordinance.

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

Miscellaneous.

Proceedings may not be removed.

Q. *Ib.* s. 32.
N.S.W. No. 13
of 1899, s. 61.

74. No plaint entered in the court of petty sessions nor any order or proceeding had thereon by virtue of this Ordinance shall be removed out of the said courts by writ or *certiorari* or otherwise howsoever.

Process not to be set aside for technical errors only.

N.S.W. *Ib.* s. 62.
Q. *Ib.* s. 31.

75.—(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 and to allow the same to be amended at any time.

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(7) No rules have been published in *Papua Govt. Gaz.*

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(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.

76.—(1.) Any court of petty sessions may at all times amend all defects and errors in any proceeding in such court whether there is anything in writing to amend by or not and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs and upon such terms as to the court shall seem fit.

Amendments.
Q. 53 Vic.
No. 4, s. 6.

(2.) All such amendments as may be necessary for determining in the existing suit the real question in controversy between the parties shall be so made.

77. 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 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.

Arbitration
award may be
entered as a
judgment.
Q. 31 Vic.
No. 29, s. 40.
N.S.W. No. 13
of 1899, s. 63.

78. 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.
N.S.W. *Ib.* s. 67.

79. 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 Ordinance.

Forms.
Second Schedule.
N.S.W. *Ib.* s. 68.
Q. *Ib.* s. 15.

80. The rules of evidence observed in the Central Court⁽⁴⁾ shall be applicable to and observed in the trial of all questions of fact in the small debts court except in cases under Ten pounds which shall be heard and determined according to equity and good conscience.

Rules of
evidence.
Q. *Ib.* s. 29.

81. Every solicitor or other officer of the Central Court⁽⁴⁾ shall be subject to several processes judgments and executions of the said court of petty sessions in the same manner as other persons are subject to the same.

Officers of
Central Court
not exempt.
Q. *Ib.* s. 14.

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

COURTS—

SCHEDULES.

Section 2.

FIRST SCHEDULE.

Reference to Enactment.	Title or short title.	Extent of repeal.
31 Vic. No. 29 (Queensland adopted)	<i>Small Debts Act of 1867</i>	The whole.
33 Vic. No. 4 (Queensland adopted)	<i>The Small Debts Courts Act of 1867 Amendment Act</i>	The whole.
Ordinance No. 3 of 1890	<i>The Small Debts Acts Amending Ordinance of 1890</i>	The whole.

Section 79.

SECOND SCHEDULE.

FORMS OF PLAINT.

The following shall be the forms of such plaints in all cases to which they can be applied—

IN THE CASE OF GOODS SOLD.

A.B. of (*Samarai 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 OF DEMAND FOR RENT.

For three months' rent due from the said C.D. to the said A.B. on or about the first of 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 Samarai 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 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*

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be) provided by the said A.B. for the said C.D. and used in such work and labour.

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 consideration therein mentioned to pay to the said A.B. the sum of £ _____ together with the 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. _____ 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 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 C.D. 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 that 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 that he may be adjudged to pay the amount of the said damage.

COURTS—

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

The said C.D. on &c. assaulted beat and ill-treated the said A.B. (or "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 in the district of 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.

Papua.

Court of petty sessions for } day of , 19 .
the district of }
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
- 2nd
- 3rd

(State each ground as shortly as possible but with sufficient clearness particularly as to times places persons sums securities or written instruments &c.)

To A.B.
the above-named plaintiff.

SUMMONS.

Papua.

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 o'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 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 , 19 .
By the court
A.B. Registrar.

Small Debts Ordinance, 1912.

PRECEPT IN THE NATURE OF A FIERI FACIAS.

Papua.

EXECUTION AGAINST GOODS.

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 authorized 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 , 19 , 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 , 19

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.

SUBPENA FOR WITNESS.

Papua.

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 of 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 SUBPENA.

Papua.

A.B. plaintiff
C.D. defendant
Court of petty sessions for the }
district of }

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

COURTS—

At a court of petty sessions for the district of _____ held on the _____ day of _____, 19____, it appearing to this court that _____ has been duly served with a copy of a subpoena 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 subpoena 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 subpoena.

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 above-named judgment debtor⁽⁸⁾ it is ordered that the above-named judgment debtor attend this court on the _____ day of _____, 19____, at the _____ 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 _____, 19____
 By the court _____ Registrar.

To _____ the above-named judgment debtor.

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 above-named judgment creditor [or attorney or agent for the above-named judgment creditor] make oath and say—
 (1) That I [or the above-named judgment creditor] on the _____ day of _____ last past recovered judgment in the court of petty sessions at _____ against the above-named judgment debtor for the sum of £ _____ and costs;
 (2) that the said judgment is still wholly 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 _____, 19____
 before me _____
 This affidavit is filed on behalf of the above-named judgment creditor.

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 _____, 19____, and upon _____

(8) The word "debtor" appeared in the original Ordinance. It has now been omitted and the word "creditor" inserted in its stead by the Second Schedule of the Ordinances Reprint and Revision Ordinance 1947 of the Territory of Papua-New Guinea.

Small Debts Ordinance, 1912.

It is ordered that all debts owing and accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the court of petty sessions in the district of _____ on the _____ day of _____, 19____, for the sum of £ _____ s. _____ d. on which judgment of £ _____ s. _____ d. remains due and unpaid.

(And it is further ordered that the said garnishee attend this court on the _____ day of _____, 19____, at _____ of the clock in the _____ noon to show why he should not pay into the 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 _____, 19____. By the court Registrar.

To the above-named garnishee. (To the above-named 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 above-named judgment creditor do recover against the said E.F. the above-named garnishee the sum of £ _____ [insert the amount of the judgment debt or so much thereof as the debts amount to when the same are less than the judgment debt] and £ _____ for costs amounting altogether to the sum of £ _____; and it is further ordered that the garnishee do pay the same to the Registrar of the court on the _____ day of _____, 19____ [or by instalments of _____ for every _____ days the first instalment to be paid on the _____ day of _____, 19____].

Acknowledgement of payment into court. £ s. d.

In case default be made in payment of any one of such instalments and execution issue it shall be for the whole of the above amount then remaining due. Dated this _____ day of _____, 19____.

EXECUTION 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.

Whereas on the _____ day of _____, 19____, 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 _____, 19____, [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

COURTS—

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 _____, 19 ____ .
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 _____, 19 ____ .

ORDER FOR TRIAL.

No. _____
In the court of petty sessions in the }
district of _____ }
Between A.B. judgment creditor and C.D. judgment debtor and E.F. garnishee.

Whereas the judgment creditor at a court holden at _____ on the _____ day of _____, 19 ____, 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 _____, 19 ____, 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 _____, 19 ____ .
Registrar.

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

Small Debts Ordinance, 1912.

THIRD SCHEDULE.

Section 29

FEEs TO BE PAID TO THE SEVERAL OFFICERS UNDERMENTIONED ON THE SEVERAL OCCASIONS SET AGAINST THE SAME.

	In cases not exceeding £50.	In cases exceeding £50.
	£ s. d.	£ s. d.
To the Registrar on entering every plaint and cause for trial	0 2 0	0 4 0
To the Registrar for drawing plaint and particulars if requested by plaintiff	0 2 0	0 2 0
To the Registrar for copy of summons to be served on defendant	0 1 6	0 1 6
To the Registrar for every inspection of the record	0 1 0	0 1 0
To the Registrar for drawing and issuing every writ of execution or attachment	0 2 0	0 4 0
To the Registrar for every subpoena	0 1 0	0 2 0
To the Registrar for filing every defence or plea	0 1 0	0 2 0
To the Registrar for drawing same if requested by defendant	0 2 0	0 2 0
To the Registrar for drawing any other document requested by the party	0 2 0	0 3 0
To the Registrar for a copy of any document required by a party not provided for herein for every folio or part of folio of seventy-two words	0 0 6	0 0 6
To the bailiff for serving summons or subpoena at request of plaintiff or defendant and making affidavit of service if service be made	0 3 0	0 4 0
To the bailiff for every levy or caption	0 4 0	0 5 0
To the bailiff for every mile or fraction of a mile over two 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 such sum to be fixed by the court but not to exceed per mile	0 2 0	0 2 0
To the bailiff for possession money such sum to be fixed by the court not exceeding per day	0 10 0	0 10 0

FOURTH SCHEDULE.

Section 30.

ATTORNEY'S AND AGENT'S 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	1 0 0
For an advocate's fee for each day's attendance in court in a case exceeding £10 and not exceeding £50	3 0 0
For an advocate's fee for each day's attendance in court in a case exceeding £50	4 0 0
For solicitor's or agent's fee getting up case for trial—exceeding £10 but not exceeding £50	1 0 0
For solicitor's or agent's fee getting up case for trial—exceeding £50	2 0 0

FIFTH SCHEDULE.

Section 31.

WITNESSES' EXPENSES.

	£ s. d.
Witnesses' expenses (including attendance of plaintiff and defendant) per day a sum not exceeding	0 10 0
Mileage for each mile (over the first three miles) to be allowed for one way only a sum not exceeding per mile	0 2 0