

Subsidiary Legislation made under s.69.

Petty Debt (Recovery) Rules

1961.12.21

Commencement

1.1.1962

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SCHEDULE.

Title.

1. These rules may be cited as the Petty Debt (Recovery) Rules.

Application of rules.

2. These rules shall apply to any proceedings in respect of which jurisdiction is conferred upon the magistrates' court by section 26 of the Act.

Executors may sue and be sued.

3. It shall be lawful for any executor or administrator to sue and be sued before the court in the like manner as if he were a party in his own right, and judgment and execution shall be such, so far as relates to personal property, as in the like case would be given or issued in any superior court.

Actions, how commenced.

4. All proceedings under the authority of section 26 of the Act shall be commenced by summons under the hand of a justice. Service of such summons may be effected in the manner provided for the service of a summons in rule 70 of the Magistrates' Court Rules 1968.

Summons to be heard and adjudicated.

5. A summons issued under these rules shall be heard and finally adjudicated on by the court, and on such hearing the court shall examine the witnesses produced on both sides, and shall give judgment on the case, and award execution in manner hereinafter directed:

Provided that it shall be lawful for the court in its discretion to postpone the hearing of any case from time to time upon a sufficient cause shown.

Counterclaim and set-off allowed.

6. In the hearing of any case the court may allow any plea in the nature of set-off or counterclaim for any amount not exceeding £5 to be put forward by the defendant, and may adjudicate upon it together with the original claim, so as, in so far as possible, to decide upon all matters at issue between the parties, that may be within the jurisdiction of the court, without it being necessary for a fresh summons to be issued by either party.

Default of appearance of plaintiff.

7. If upon the day of the return of any summons, or upon any day to which the hearing of the cause for which the summons shall have been issued may be postponed, the plaintiff shall not

appear, the cause shall be struck out, and if he shall appear, but shall not make proof of his demand to the satisfaction of the court, it shall be lawful for the court to nonsuit the plaintiff or to give judgment for the defendant, and in either case where the defendant shall appear and shall not admit the demand, to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the court in its discretion shall think fit, and all such sums shall be recoverable from the plaintiff by such ways and means as any debt or damages ordered to be paid by the court under these rules can be recovered :

Provided that if the plaintiff shall not appear when called upon and the defendant, or some one duly authorized on his behalf, shall appear and admit the cause of action to the full amount claimed, the court may proceed to give judgment as if the plaintiff had appeared.

Default of appearance of defendant.

8. If on the day so named in the summons, or at any continuation or adjournment of the cause in which the summons was issued, the defendant shall not appear or sufficiently excuse his absence, or shall neglect to answer when called, the court, upon due proof of the service of the summons, may proceed to the hearing or 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:

Provided that the court in any such case may set aside any judgment so given in the absence of the defendant and the execution thereupon, and may grant a new trial of the cause upon such terms (if any) as to the payment of costs, giving security for debt or costs, or upon such other terms as the court may think fit, on sufficient cause shown to it for that purpose.

Court may grant further time or, adjourn the case.

9. The court may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the action, and also may from time to time adjourn the hearing or further hearing of any case in such manner as the court may deem fit.

Who may be examined.

10. On the hearing or trial of any action, or on any other proceeding before the court under these rules, the parties thereto and all witnesses, may be examined either on behalf of the plaintiff or defendant upon oath or affirmation in those cases in which persons are by law allowed to make affirmation instead of taking an oath.

Witnesses may be summoned.

11. A party to any action or proceeding under these rules may obtain from the court summonses for witnesses, to be served by any police officer or by the party obtaining the same, or any other person authorized by him for the purpose and any such summons may, at the option of

the party obtaining it, be framed to contain a demand requiring the production of books, deeds, papers and writings in the possession or control of the party to whom it is directed.

Penalty on witness not attending.

12. Any person, on whom any such summons shall have been served, who refuses or neglects, without sufficient cause, to appear, or to produce any books, papers or writings required by such summons to be produced, and also any person present at the hearing of any case who shall be required to give evidence therein, and who refuses to be sworn and give evidence, shall be liable to a fine of £5, and the whole or any part of such fine in the discretion of the court, after deducting costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof (if any) shall be paid into the Consolidated Fund. The payment of any fine imposed by the court under this section may be enforced by order of the court in like manner as the payment of a judgment debt, and in default of payment the person liable to the payment of such fine may be imprisoned for a term not exceeding fourteen days.

Court to fix time for payment of amount awarded and costs.

13. It shall be lawful for the court when judgment has been pronounced for a plaintiff, to order the defendant to pay the costs of the proceedings and to fix the time within which the amount awarded and the costs of the proceedings shall be paid by the defendant, and it shall be lawful for the court to direct payment to be made in instalments, and execution shall only issue at the expiration of the period named for the payment of any instalment, and for such amount only as shall from time to time be in arrear and unpaid.

Plaintiff may be ordered to pay costs of proceedings.

14. When upon the hearing of any case before the court judgment shall be given for the defendant, it shall be lawful for the court to order the plaintiff to pay the costs of the proceedings and in default of payment in the manner fixed by the court execution for the same shall issue in manner hereinafter mentioned.

Writs of execution.

15. Every writ of execution under the authority of these rules shall issue under the hand and seal of the court, and shall be directed to some police officer, commanding such officer to levy the amount mentioned in such writ on the goods and chattels of the person against whom such writ is issued, and it shall be the duty of such police officer upon the receipt of such writ to proceed without delay in the execution thereof by arresting the goods and chattels of the person named therein (except the wearing apparel and bedding of such person or his family, and the tools or implements of his trade to the amount of £20), and such goods and chattels having been so arrested, the police officer shall, at the expiration of five days, sell and dispose of the

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same or of so much thereof as shall liquidate the amount mentioned in the writ, and shall forthwith pay the amount of such sale over to the court, to be paid by the court to the proper party or parties.

Cross judgments.

16. If there shall be cross judgments between the parties, execution shall be taken out by that party only who shall have 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 on the judgment for the smaller sum and, if both sums shall be equal, satisfaction shall be entered on both judgments.

Writ of execution to continue in force for six months.

17. Every execution issued under the authority of these rules shall continue in force for six months from the date of issuing the same, and it shall be lawful for the court, within six months after the expiration of such term, on application of the party in whose favour the judgment in such case was given, to issue a second writ of execution to continue in force for six months from the date thereof, and so on until judgment in such case be satisfied.

Claims as to goods taken in execution to be adjudicated by court.

18. If any claim shall be made to or in respect of any goods or chattels taken in execution under these rules or in respect of the proceeds or value thereof by any person, it shall be lawful for the court, upon the application of the police officer making the seizure, as well before as after any action brought against him, to issue a summons calling before the court as well the party issuing such process as the party making such claim, and the court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings as to the court shall seem fit, and shall also adjudicate between such parties, or either of them, and the police officer making the seizure, with respect to any damage or claim of or to damages arising or capable of arising out of the execution of such process by the police officer making the seizure, as the case may be, and the court shall make such order in respect thereof and of the costs of the proceedings as to it shall seem fit, and such order shall be enforced in like manner as any order in any suit brought under these rules; and upon the issue of the summons any action which shall have been brought in the Court of First instance in respect of such claim or of any damage arising out of the execution of such process shall be stayed.

Parties having obtained an unsatisfied judgment may obtain a summons.

19. It shall be lawful for any party who has obtained an unsatisfied judgment or order under these rules for the payment of any debt or damages or costs, to obtain a summons from the court, to be served personally upon the person to whom it is directed, requiring him to appear

at such time as shall be directed by, and to answer such things as are named in, the summons; and if he shall appear in pursuance of such summons, he may be examined upon oath touching his estate and effects and as to the property and means he has or has had since the date of the judgment or order of discharging the debt or damages or costs, and the person obtaining such summons 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 the proceedings thereon shall be deemed costs in the cause.

Commitment to prison.

20. If a party so summoned shall not attend as required by such summons, and shall not allege a sufficient excuse for not attending, or shall, if attending, refuse to be sworn or to disclose any of the things aforesaid, or if he shall not make answer touching the same to the satisfaction of the court, or if it shall appear to the satisfaction of the court that the party so summoned has then, or has had since the judgment obtained against him, sufficient means or ability to pay the debt or damages or costs so recovered against him, either altogether, or by any instalment or instalments which the court shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered or as may be ordered, pursuant to the power hereinafter provided, it shall be lawful for the court, if it shall think fit, to order that any such party may be committed to prison for a term not exceeding fourteen days.

Power of court to rescind or alter orders.

21. It shall be lawful for the court before which such summons shall be heard, if it shall think fit, whether or not it shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before it, 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 the court may think reasonable and just.

Power to examine and commit at the hearing of the cause.

22. In every case where the defendant in any suit brought under these rules shall have been personally served with the summons to appear, or shall personally appear at the trial of the same, the court, at the hearing of the cause, or at any adjournment thereof, if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff and other parties touching the several things hereinbefore mentioned, and of committing the defendant to prison, and of making an order, as it might have under the provisions hereinbefore contained, in case the plaintiff had obtained a summons for that purpose after the judgment obtained, as hereinbefore mentioned.

Mode of issuing and executing warrants of commitment.

23. Whenever an order of commitment shall have been made as aforesaid, the court shall issue a warrant of commitment directed to any police officer, who by such warrant shall be empowered to take the body of the person against whom such order shall be made, and all police officers shall aid in the execution of such warrant, and the Superintendent of the Prison shall be bound to receive and keep the defendant therein until discharged under the provisions of these rules or otherwise by due course of law.

Warrants of commitment, how long to be in force.

24. Every warrant of commitment which shall be issued under these rules shall, on whatever day it may be issued, bear date on the day on which the order for commitment was made, and shall continue in force for one year from such date and no longer, but no order for commitment shall be drawn up or served.

Imprisonment not to operate as a satisfaction of the debt.

25. No imprisonment under these rules shall in anywise operate as a discharge or extinguishment of the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being summoned anew and imprisoned for any new default rendering him liable to be imprisoned under these rules, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant in the same manner as if such imprisonment had not taken place.

Debtors to be discharged from custody on payment of debt and costs.

26. Any person imprisoned under these rules who shall have paid or satisfied the debt or demand, or the instalments thereof payable, and costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order and all subsequent costs, shall be discharged from custody upon the certificate of such payment or satisfaction signed by a justice.

Penalty for assaulting officer of the court.

27. A person who assaults any officer of the court while in the execution of his duty under these rules, or makes or attempts to make any rescue of any goods levied under the authority of these rules, is guilty of an offence and is liable on summary conviction to a fine of £25.

Procedure where defendant has not sufficient goods or chattels.

28.(1) In cases where the defendant shall not have goods and chattels which may be come at and levied upon sufficient to satisfy the debt, damages and costs recovered under the provisions of these rules, it shall be the duty of the court, upon application made in that behalf,

to grant to the plaintiff or his solicitor or agent, a certificate to the effect of the form contained in the Schedule.

(2) Upon such certificate being duly filed in the office of the Registrar of the Supreme Court, it shall be lawful for the Chief Justice to order the like process of execution upon the lands, tenements and real estate of the defendant to issue as can now by law be sued out in actions originally commenced and prosecuted in the Supreme Court, and upon the delivery of any such writ to the Marshal, he shall execute the same in the same and the like manner as if it was grounded on a judgment entered up in that court :

Provided always that the Marshal shall be entitled to charge and receive for the deed of conveyance executed in respect thereof the sum of £1 only.

Interpretation.

29. In these rules, any reference to a "case" or to "proceedings" means case or proceedings in respect of which jurisdiction is conferred upon the court by section 26 of the Act and which is tried in accordance with these rules.

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SCHEDULE.

Rule 28(1).

Certificate.

Gibraltar.

We, A. B., and C. D., Justices of the Peace for Gibraltar, do hereby certify that on the
day of _____ in the year of Our Lord one thousand nine hundred and
E. F., of Gibraltar aforesaid, obtained judgment before us against G. H., of the same
place in an action of debt for £
(state amount of debt and damages) and £ _____ costs, and we do hereby
further certify that although execution issued on the _____ day of _____
following for the recovery thereof, no goods or chattels could be found whereupon to levy
the amount of the debt, damages and costs aforesaid (or goods and chattels to the amount of £
_____ only have been found levied upon and sold) in satisfaction of the said judgment.

Given under our hands and seals at Gibraltar this _____ day of _____, 20 _____.

(Signed)

A. B.,

C. D.,

Justices of the Peace.