



Reprint under section 7 of the Regulations Act 1936 of the Imprisonment for Debt Limitation (District Courts) Rules 1949 (S.R. 1949/188), as amended by the following enactments:

- Amendment No. 1, S.R. 1952/243
- Penal Institutions Act 1954, s. 7 (3)
- Amendment No. 2, S.R. 1956/82
- Decimal Currency Act 1964, s. 7
- District Courts Rules 1948, Amendment No. 6, S.R. 1965/210/5
- Judicature Amendment Act 1979, s. 12
- District Courts Amendment Act 1979, ss. 2 (3), 18 (2)
- District Courts Rules 1948, Amendment No. 16, S.R. 1980/55/2 (3).
- Amendment No. 3, S.R. 1980/56

NOTES: 1. Except where otherwise indicated, all references to the District Court were substituted for references to the Magistrate's Court and all references to a District Court Judge were substituted for references to a Magistrate or a Stipendiary Magistrate by s. 18 (2) of the District Courts Amendment Act 1979, and in the references to the District Courts Act 1947 the word "District" was substituted for the word "Magistrates" by s. 2 (3) of the District Courts Amendment Act 1979.

2. References to decimal currency were substituted for references to the former currency by s. 7 of the Decimal Currency Act 1964.

3. In the references to the District Courts Rules 1948 in square brackets the word "District" was substituted for the word "Magistrates" by rule 2 (3) of S.R. 1980/55.

THE IMPRISONMENT FOR DEBT LIMITATION (DISTRICT COURTS) RULES 1949 (REPRINT)

B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 21st day of December
1949

Present:

THE HON. S. G. HOLLAND PRESIDING IN COUNCIL

PURSUANT to the Imprisonment for Debt Limitation Act 1908, and [the District Courts Act 1947], His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following rules.

RULES

- 1. Arrangement of Rules**—These rules are arranged as follows:
1. Arrangement of rules.
 2. Short Title and commencement.
 3. Interpretation.
 4. Revocations and savings.
 5. Application of rules: Proceedings pending.
 6. Rules deemed part of [the District Courts Rules 1948].
 7. Forms.
 8. Judgment summons book.
 9. Application for judgment summons.
 10. Where judgment against a firm.
 11. Application where order for payment by instalments.
 12. Issue of judgment summons.
 13. Service of judgment summons.
 - [13A. Renewal of judgment summons and issue of new summons.]
 14. Conduct money.
 15. Witnesses.
 16. Evidence by affidavit.
 17. Adjournment.
 18. Order on judgment summons.
 19. Entry of particulars of decision.
 20. New order on a judgment summons.
 21. Disposal of judgment summons heard in a foreign Court.
 22. Second or subsequent judgment summons after refusal to make an order.
 23. Application for rehearing of judgment summons.
 24. Stay of proceedings on application for rehearing.
 25. Grant of rehearing.
 26. Rehearing.
 27. Warrant of committal.
 28. Expiry of warrant.
 29. Alteration of name of prison.
 30. Payment before debtor lodged in prison.
 31. Payment after debtor lodged in prison.
 32. Discharge of debtor on request of judgment creditor.
 33. Discharge on bankruptcy.
 34. Fees.
 35. Costs.
 36. Costs of executions.
- Schedules—
- First Schedule: Rules revoked.
 - Second Schedule: Forms.
 - Third Schedule: *Revoked.*
 - Fourth Schedule: *Revoked.*

Item 13A has been inserted to reflect the amendment made to these rules.

- 2. Short Title and commencement**—(1) These rules may be cited as [the Imprisonment for Debt Limitation (District Courts) Rules 1949].
(2) These rules shall come into force on the 1st day of February 1950.

In subclause (1), in the Title of these Rules, the word "District" was substituted for the word "Magistrates" by rule 2 (2) of S.R. 1980/56.

3. Interpretation—In these rules, unless the context otherwise requires,—

“The Act” means the Imprisonment for Debt Limitation Act 1908:

“[District Court Judge]” means a [District Court Judge] appointed under [the District Courts Act 1947]:

“Foreign Court” means the Court to which any judgment summons is sent by any other Court, and includes a Court of criminal jurisdiction authorised to deal with judgment summonses:

“Home Court” means the Court from which any judgment summons is issued:

“Judgment” includes a decree:

“Judgment creditor” means any person entitled to enforce a judgment or order:

“Judgment debtor” means any person liable under a judgment or order:

“Judgment summons” means a summons requiring a judgment debtor to appear and be examined in accordance with the provisions of the Act:

“The Court” means a [District Court] constituted under [the District Courts Act 1947]:

“Prison” includes a Police gaol:

“Registrar” means a Registrar of a [District Court] and includes a Deputy Registrar:

A reference to a numbered form is a reference to the form so numbered in the Second Schedule to these rules.

4. Revocations and savings—(1) The rules specified in the First Schedule to these rules are hereby revoked.

(2) Subject to the provisions of rule 5 hereof, all records, accounts, books, seals, certificates, summonses, applications, notices, documents, warrants, orders, decisions, directions, and generally all acts of authority that originated under any of the rules hereby revoked and are subsisting or in force at the commencement of these rules shall enure for the purposes of these rules as if they had originated under the corresponding provisions of these rules, and accordingly shall, where necessary, be deemed to have so originated.

5. Application of rules: Proceedings pending—(1) These rules shall apply to any proceedings under the Act taken in a [District Court] or before any [District Court Judge].

(2) All proceedings under the Act commenced in any [District Court] before and pending or in progress at the commencement of these rules may be continued, completed, and enforced under these rules, and accordingly these rules shall, so far as applicable, apply to those proceedings. In so far as any provisions of these rules are not applicable to any such proceedings, the rules hereby revoked shall, to such extent as may be necessary, continue to apply to those proceedings.

(3) If in any proceedings to which subclause (2) of this rule applies any question arises as to whether any provision of these rules or the rules hereby revoked is applicable, the Court may, either on the application of any party to the proceedings or of its own motion, determine the question and make such order thereon as it thinks fit.

6. Rules deemed part of the District Courts Rules 1948—These rules shall be read with and deemed to be part of [the District Courts Rules 1948].

7. Forms—(1) Where any form in the Second Schedule hereto is prescribed or authorised to be used, such variations may be made therein as the circumstances of any particular case may require.

(2) *Revoked by rule 3 of S.R. 1980/56.*

(3) Every document filed, issued, or served in the course of proceedings under the Act shall be properly intitled showing the Court in which the proceedings are taken, and the distinguishing numbers, and the names of the parties. The form No. 1 may be used.

8. Judgment summons book—The Registrar of every Court of civil jurisdiction shall keep a judgment summons book, which shall be in the form No. 2. There shall be entered in such book the particulars therein required, whether the judgment summons is applied for in respect of a judgment or order of that Court or any other Court.

9. Application for judgment summons—(1) Any judgment creditor who desires and is entitled to apply for the issue of a judgment summons shall file in the Court in which the judgment or order is entered an application and supporting affidavit in such one of the forms Nos. 3, 4, or 5 as is applicable.

(2) The application shall be signed by the judgment creditor or his solicitor or by an agent duly authorised in writing and the affidavit shall be made by some person conversant with the facts.

(3) An authority authorising an agent to sign an application for the issue of a judgment summons shall be filed with the application for the issue of the judgment summons. No fee shall be payable on the filing of any such authority.

(4) Where 2 or more judgment debtors are liable under the same judgment or order, separate and successive judgment summonses may from time to time be issued against any one or more of them. A separate application shall be filed in respect of each judgment debtor against whom it is desired to issue a judgment summons, and fees shall be paid and costs may be allowed in respect of each such application.

10. Where judgment against a firm—(1) Where a person entitled to enforce a judgment or order against a firm desires to issue a judgment summons against any person whom he alleges to be liable under the judgment or order, he shall file with his application in the form No. 3, 4, or 5 a supplementary affidavit in the form No. 6, together with a copy of such affidavit, which shall be served with the judgment summons upon the person alleged to be liable.

(2) If the person alleged to be liable does not appear on the day fixed for the hearing, he shall be deemed to admit his liability to pay the amount due, but if he appears and denies his liability, the [District Court Judge] may determine the question of liability on the evidence then before him or he may order the question of liability to be determined in such manner as he thinks fit.

11. Application where order for payment by instalments—

Whenever and as often as any money payable by instalments remains unpaid on any judgment or order of any Court, whether the order for payment by instalments was made at the time of giving or making the judgment or order or at any time subsequent thereto, the judgment creditor may, from time to time, apply in the form No. 5 for the issue of a judgment summons in respect of any instalment or instalments so due.

12. Issue of judgment summons—(1) On receipt of an application under rules 9 to 11 hereof, the Registrar shall issue a judgment summons in the form No. 7.

(2) Where the judgment debtor resides more than [50 kilometres] from the Court issuing the judgment summons and there is another Court of either civil jurisdiction or of criminal jurisdiction authorised to deal with judgment summonses nearer to his place of residence than the Court of issue, the judgment summons shall call upon the judgment debtor to appear and be examined in the Court having either such jurisdiction nearest to his place of residence, or, if there is more than one such Court within [50 kilometres] from his place of residence, the judgment summons shall call upon the judgment debtor to appear and be examined in any such Court within [50 kilometres] from his place of residence.

(3) Where the judgment debtor resides [50 kilometres] or less from the Court issuing the judgment summons and there is another Court of either civil jurisdiction or of criminal jurisdiction authorised to deal with judgment summonses nearer to his place of residence than the Court of issue, the judgment summons may, at the option of the judgment creditor, be issued for hearing either at the Court of issue or at the Court having either such jurisdiction nearest to the place of residence of the judgment debtor.

(4) The Registrar issuing a judgment summons for hearing at a foreign Court shall certify on such summons the amount still due under the judgment or order, and every such certificate shall be conclusive as to the amount owing on such judgment or order:

Provided that if the judgment debtor disputes the amount certified to be owing, the [District Court Judge] may, if he thinks fit, adjourn the hearing of the judgment summons for such time as will enable the judgment debtor to make the appropriate application under rule 227, 228, 229, or 230 of [the District Courts Rules 1948].

[(4A) The Registrar issuing a judgment summons for hearing at a foreign Court shall forward to the Registrar of the foreign Court, with the judgment summons, the application and supporting affidavit filed by the judgment creditor pursuant to rules 9 to 11 hereof, and shall retain a copy thereof in his office.]

(5) On receipt of a judgment summons issued for hearing at a foreign Court, the Registrar of the foreign Court shall enter on the judgment summons the time and place fixed for the hearing thereof, and shall cause the judgment summons to be served in accordance with rule 13 hereof.

In subclause (2) the expression "50 kilometres", wherever it occurs, was substituted for the expression "30 miles" by rule 4 (1) of S.R. 1980/56.

In subclause (3) the expression "50 kilometres" was substituted for the expression "30 miles" by rule 4 (2) of S.R. 1980/56.

Subclause (4A) was inserted by rule 2 of S.R. 1952/243.

13. Service of judgment summons—(1) Notwithstanding anything to the contrary in rule 85 of [the District Courts Rules 1948], a judgment summons shall be served either [by an officer of a Court or by a constable]:

Provided that any [District Court Judge] or Registrar may, if he thinks fit, authorise any other person to serve a judgment summons.

[(2) A judgment summons shall be served by delivering it to the judgment debtor, or by bringing it to his notice if he refuses to accept it:

Provided that where the judgment debtor resides in a remote locality, or in any other special circumstances, a [[District Court Judge]] may, if he thinks fit, authorise the service of a judgment summons by registered letter.

(2A) Except as provided in subclause (3) of this rule, a judgment summons shall be served not less than 10 clear days before the day appointed for the hearing.]

(3) Where a person applying for a judgment summons includes in the application a statement, or files an affidavit, that the judgment debtor is about to remove more than [80 kilometres] from his place of residence or of business, or is keeping out of the way to avoid service, then the judgment summons may be issued and served at any time before the hearing:

Provided that the [District Court Judge] may set aside any judgment summons issued under this subclause if he is not satisfied that at the time of the application the judgment debtor was about to remove more than [80 kilometres] from his place or residence or business, or was keeping out of the way to avoid service.

[(4) Where fraud is alleged there shall be served with the judgment summons a copy of the application and supporting affidavit filed by the judgment creditor pursuant to rules 9 to 11 hereof.]

In subclause (1) the words in the second set of square brackets were substituted for the words "by a bailiff or a constable" by rule 2 (2) of S.R. 1956/82.

Subclauses (2) and (2A) were substituted for the original subclause (2) by rule 2 (1) of S.R. 1956/82.

In subclause (3) the expression "80 kilometres", in both places where it occurs, was substituted for the expression "50 miles" by rule 5 of S.R. 1980/56.

Subclause (4) was added by rule 3 of S.R. 1952/243.

[13A. Renewal of judgment summons and issue of new summons]—(1) Subject to the provisions of subclauses (2) and (3) of rule 12 hereof, and of subclause (3) of this rule, where any judgment summons has not been served the judgment creditor, upon making a request in writing, may obtain the issue of a new judgment summons for appearance at any other Court. The request shall state the address of the defendant and the distance of that address from the new Court for hearing.

(2) Any new judgment summons issued pursuant to subclause (1) of this rule shall bear the same date as the day of issue of the original summons.

(3) The time within which a judgment summons or any such new summons as aforesaid may be served shall, unless extended under the provisions of subclause (4) of this rule, be limited to a period of 12 months from the issue of the original judgment summons.

(4) Subject to section 80 of [[the District Courts Act 1947]], where reasonable efforts have been made to serve any judgment summons, or any such new summons as aforesaid, within the said period and service

has not been effected, the Registrar, on the request of the judgment creditor, may extend the time for a further period not exceeding 12 months or for successive periods not exceeding 12 months in each case, and shall in each such case mark the summons with the word "Renewed" and the date of the renewal; or he may issue a new judgment summons bearing the new date of issue.

(5) A request under subclause (4) of this rule may be made either within or after the expiration of any such period of 12 months as aforesaid.]

This rule was inserted by rule 4 of S.R. 1952/243.

14. Conduct money—(1) Where the judgment debtor resides or carries on business more than [10 kilometres] from the Court at which he is required to appear, the judgment creditor shall pay to the Registrar in postal notes such sum (referred to in these rules as conduct money) as in the opinion of the Registrar will be sufficient to enable the judgment debtor to attend at and return from the hearing of such summons, and to pay his reasonable expenses during his attendance. In estimating the amount to be paid the Registrar shall have regard to [the amounts payable to witnesses for allowances and travelling expenses, but not fees, pursuant to [the Witnesses and Interpreters Fees Regulations 1974]]:

[Provided that no conduct money shall be payable unless the sum so estimated exceeds [[\$3.00]].]

(2) The Registrar shall decline to issue a judgment summons until the judgment creditor has paid the conduct money provided for in subclause (1) of this rule.

(3) The conduct money so paid shall be tendered to the judgment debtor with the judgment summons.

In subclause (1) the expression "10 kilometres" was substituted for the expression "5 miles" by rule 6 (a) of S.R. 1980/56.

In subclause (1) the words in the second set of single square brackets were substituted for the former words by rule 3 (1) of S.R. 1956/82. The Witnesses and Interpreters Fees Regulations 1974, being the corresponding enactment in force at the date of this reprint, have been substituted for the repealed Witnesses and Interpreters Fees Regulations 1954.

In subclause (1), the proviso was added by rule 3 (2) of S.R. 1956/82, and in the proviso the expression "\$3.00" was substituted for the expression "5s" by rule 6 (b) of S.R. 1980/56.

15. Witnesses—Any witness may be summoned to give evidence upon the hearing of a judgment summons in the same manner as witnesses are summoned to give evidence upon the hearing of an action, and every witness so summoned shall be entitled to fees, allowances, and expenses as if summoned to give evidence at the hearing of an action.

16. Evidence by affidavit—(1) Where the judgment creditor resides or carries on business more than [50 kilometres] from the Court in which the judgment summons is to be heard, evidence by affidavit shall be admissible on his behalf in accordance with [the District Courts Rules 1948].

(2) If the judgment creditor does not appear at the hearing of the judgment summons, and the Court has received from him an affidavit which is admissible in evidence under this rule, he shall be deemed to

have appeared at the hearing and to have tendered the evidence in the affidavit.

In subclause (1) the expression "50 kilometres" was substituted for the expression "30 miles" by rule 7 of S.R. 1980/56.

17. Adjournment—(1) Where it appears to the Court that the hearing of a judgment summons cannot fairly proceed either owing to the absence of the judgment debtor, the judgment creditor, or a witness through illness, accident, or other reasonable cause, the Court may adjourn the same, subject to the payment of such costs and further conduct money as it thinks just.

(2) In no case shall an adjournment be made *sine die*.

(3) All the costs of the adjournment and the conduct money shall, unless the Court otherwise directs, form part of the costs of the judgment summons for all purposes.

18. Order on judgment summons—(1) An order made under section 4 of the Act shall be in the form No. 8.

(2) Every such order shall bear the date of the day on which the order was made, and shall continue in force for 1 year from such date and no longer:

Provided that where a direction is made under subclause (3) of this rule that the issue of a warrant of committal be suspended, the order shall remain in force until the expiration of the period within which the judgment debtor would pay the total amount due if he paid in the manner directed by the order, and for 3 months thereafter, or for 1 year, whichever period is the longer.

(3) The [District Court Judge] may direct that the issue of any warrant of committal shall be suspended so long as the judgment debtor pays into Court such sums at such times as the [District Court Judge] orders.

(4) If under the provisions of subclause (3) of this rule the Court directs that the issue of a warrant of committal be suspended, no warrant of committal shall be issued so long as the judgment debtor makes such payments as are directed, but if the judgment debtor fails to make such payments as are ordered, or any of them, a warrant of committal may be issued for the whole of the amount remaining due under the order as if no direction for suspension had been given.

(5) On the request of the judgment creditor, the Registrar shall issue a copy of the order for service on the judgment debtor.

19. Entry of particulars of decision—On the hearing of a judgment summons at a home Court, the [District Court Judge] shall cause a note or memorandum of his decision or order to be entered in the civil record book.

20. New order on a judgment summons—If he is of opinion that an order of committal should not be made, the [District Court Judge] may refuse to make an order, or he may make a new order in the form No. 9 for payment of the amount unpaid either at a stated time or by instalments.

21. Disposal of judgment summons heard in a foreign Court—(1) Whenever the amount due on a judgment summons issued for hearing in a foreign Court is paid into that Court, the Registrar of the foreign

Court shall endorse on the judgment summons the words "Paid into Court" and the amount paid, and shall return the judgment summons to the home Court together with the amount so paid.

(2) Whenever a judgment summons set down for hearing in a foreign Court is struck out, or whenever an order is made on a judgment summons or the Court refuses to make an order, the Registrar of the foreign Court shall sign and forward to the Registrar of the home Court a certificate in the form No. 10.

(3) Where the foreign Court is a Court of civil jurisdiction, the Registrar shall enter particulars of any order in the civil record book. Where the foreign Court is a Court of criminal jurisdiction authorised to deal with judgment summonses, the Registrar shall enter in a book to be kept by him in the form No. 11 particulars of the decision of the [District Court Judge] on the hearing of the judgment summons, and any fees payable in that Court shall be affixed in stamps in the appropriate column of that book and cancelled by the Registrar.

(4) The Registrar of the home Court shall, on receipt from the Registrar of a foreign Court of a certificate in the form No. 10, enter in the civil record book of the home Court particulars of the order made on the judgment summons, and shall sign such entry.

(5) The order on a judgment summons shall be drawn up and filed in the home Court, and all subsequent proceedings, other than an application for a rehearing and a rehearing, shall be taken in the home Court.

[(6) On the filing of an application for the rehearing of a judgment summons heard in a foreign Court, the Registrar of the foreign Court shall immediately notify the Registrar of the home Court of the filing thereof, and, when the application has been heard, of the result of the application. If a rehearing is granted, the foregoing provisions of this rule shall apply.]

(7) Where a judgment summons issued for hearing in a foreign Court has not been served, the judgment creditor may request that it be returned to the home Court. The Registrar of the foreign Court shall thereupon return the summons endorsed with the words "Not served", together with the application and supporting affidavit.]

Subclauses (6) and (7) were added by rule 5 of S.R. 1952/243.

22. Second or subsequent judgment summons after refusal to make an order—(1) Subject to the provisions of subclause (2) of this rule, if the Court has refused to make an order on a judgment summons, the judgment creditor may at any time thereafter apply for a second or subsequent judgment summons.

(2) On the hearing of any such second or subsequent judgment summons, the judgment creditor shall not be entitled to examine the judgment debtor as to his means of paying the debt prior to the date of the hearing of the previous judgment summons unless the judgment creditor satisfies the Court that the judgment debtor had prior to the previous hearing sufficient money to pay the debt, and that such fact was unknown to the judgment creditor and that he had no reasonable opportunity of discovering the same prior to such previous hearing.

23. Application for rehearing of judgment summons—(1) Any person against whom an order of committal has been made may apply in

the form No. 12 to the Court in which the order was made for a rehearing of the judgment summons upon which such order was made.

(2) Every such application shall state the grounds upon which it is made, and if the grounds are or one of the grounds has reference to the means of the judgment debtor to pay the judgment debt the application shall state in detail the amount of the earnings or other means of the judgment debtor, and the amount of his average weekly or monthly expenses for the maintenance of himself and his family since the date of the judgment.

(3) Every such application shall be supported by an affidavit by the person making the same and shall be served on the judgment creditor and filed in the Court at least 3 clear days before the date appointed for the hearing thereof.

24. Stay of proceedings on application for rehearing—(1) If no warrant of committal has been issued, the filing of an application for a rehearing shall, unless the [District Court Judge] otherwise orders, operate as a stay of proceedings until the application has been finally disposed of.

(2) If a warrant of committal has been issued, the [District Court Judge] or, in his absence, the Registrar may suspend the warrant of committal.

(3) If an order is made suspending the warrant of committal, the Registrar shall give notice of such suspension in the form No. 13 to the bailiff or constable or [Superintendent] (as the case may require) as described in the warrant of committal.

(4) If upon receipt of such notice by the bailiff or constable the judgment debtor has not been arrested, no further steps shall be taken to execute the warrant, and it shall be returned immediately to the Court.

(5) If upon receipt of such notice by the bailiff or constable or [Superintendent] the judgment debtor has been arrested and is held in custody under that warrant and no other, the bailiff or constable or [Superintendent] in whose custody the judgment debtor is shall release the judgment debtor and shall return the warrant to the Court endorsed with the place, date, and time of arrest, the date and time of receipt of the notice, and the place, date, and time of release.

In subclauses (3) and (5) the reference to a Superintendent was substituted for a reference to a gaoler by s. 7 (3) of the Penal Institutions Act 1954.

25. Grant of rehearing—(1) If the Court grants a rehearing, it shall fix a date for such rehearing, subject to such terms as the Court thinks fit.

(2) If a warrant of committal has been issued but no order has theretofore been made suspending it, the grant of the rehearing shall operate as an order of suspension and the provisions of subclauses (3), (4), and (5) of the last preceding rule shall apply.

26. Rehearing—(1) If on the rehearing of a judgment summons the Court makes an order cancelling or varying the original order, such original order and any warrant of committal issued thereunder shall cease to have effect, and the new order shall be the order of the Court.

(2) If the Court refuses to cancel or vary the original order and no warrant of committal has been issued, then such order shall continue in

full effect as if no rehearing had been applied for and there had been no stay of proceedings.

(3) If the Court refuses to cancel or vary the original order and a warrant of committal has been issued but no arrest of the judgment debtor has been made thereunder, the warrant shall have the same effect as if it had not been suspended, and the Registrar shall forthwith reissue the warrant for execution.

(4) If the Court refuses to cancel or vary the original order and a warrant of committal has been issued and the judgment debtor has been arrested thereunder and released under rule 24 or rule 25, the Registrar shall forthwith reissue the warrant for execution and shall annex thereto a direction in the form No. 14.

(5) Upon the reissue of a warrant of committal under the last preceding subclause of this rule, the judgment debtor shall be rearrested and the warrant shall take effect in all respects as if it had not been suspended, save that it shall take effect only for the unexpired term of imprisonment named therein. A judgment debtor who at the time of the receipt by the bailiff or constable or [Superintendent] of the notice given under rule 24 hereof is at the same time in custody under another warrant shall be deemed for the purposes of these rules to have been released at the time of the receipt by such bailiff or constable or [Superintendent] (as the case may be) of the said notice as aforesaid.

In subclause (5) the reference to a Superintendent was substituted for a reference to a gaoler by s. 7 (3) of the Penal Institutions Act 1954.

27. Warrant of committal—(1) Where a judgment creditor desires the issue of a warrant of committal, he shall file an application in the form No. 70 set out in the Second Schedule to [the District Courts Rules 1948].

(2) With his application for the issue of a warrant of committal, the judgment creditor shall pay in postal notes to the Registrar such sum as in the opinion of the Registrar will be sufficient to pay the actual expenses of the bailiff or constable and of the judgment debtor from the place of arrest to the prison named in the warrant of committal and of the bailiff or constable from the said prison to his office.

(3) Subject to the provisions of subclause (4) of this rule, no warrant of committal shall be issued unless default has been made, and until a copy of the order on the judgment summons has been served on the judgment debtor.

(4) If a judgment debtor cannot be found, any [District Court Judge] may grant leave to issue a warrant of committal without service of the order on the judgment summons on the judgment debtor:

Provided that a copy of the order on the judgment summons shall be served on the judgment debtor at the time of the execution of the warrant.

(5) A warrant of committal may be issued by the Registrar and shall be in the form No. 15.

(6) Particulars of all warrants of committal shall be entered in the warrant book prescribed by rule 20 of [the District Courts Rules 1948].

(7) The Registrar shall attach to each warrant of committal a receipt in the form provided for in rule 242 of [the District Courts Rules 1948].

(8) The Registrar shall hand or forward the warrant of committal to the bailiff or a constable for execution.

(9) Subject to the provisions of rule 32 hereof, neither the bailiff or constable, nor the Registrar, shall accept any instruction by a judgment creditor to hold over the execution of any warrant of committal.

[(10) A **[[District Court Judge]]** may from time to time direct that the execution of any warrant of committal be held over for a specified period; and may at any time revoke any such direction, whether it was given by him or by any other **[[District Court Judge]].]**

Subclause (10) was added by rule 4 of S.R. 1956/82.

28. Expiry of warrant—A warrant of committal shall expire with the order on which it is founded:

Provided that any person arrested under a warrant of committal before the expiry of the warrant shall not be released from his liability to serve the full sentence imposed by the order by reason only that after his arrest the order and the warrant have expired by effluxion of time.

29. Alteration of name of prison—In any case where an order of committal has been made directing the imprisonment of the judgment debtor in any prison, and by reason of the distance of the judgment debtor from that prison, or for any other reason, it is desirable to alter the prison in which the judgment debtor is to be imprisoned, the Registrar may issue a warrant directing the imprisonment of the judgment debtor in a convenient prison, or any Registrar may alter the name of the prison named in any warrant, and the warrant shall take effect accordingly.

30. Payment before debtor lodged in prison—Where payment is made after the issue of a warrant of committal and before the judgment debtor is lodged in prison, the following provisions shall apply:

- (a) If the payment is made to the Registrar of the Court issuing or executing the warrant, the Registrar shall notify the bailiff or constable of such payment, who shall endorse a note of the payment on the warrant and where the money is paid to the Registrar of a Court other than the Court issuing the warrant, the money shall be transmitted to the Registrar of the Court issuing the warrant:
- (b) If the payment is made to the bailiff, he shall endorse a memorandum of the payment on the warrant, give the debtor a receipt on the form attached thereto, and pay the money into Court:
- (c) If the judgment debtor pays the amount endorsed on the warrant as that on the payment of which he may be discharged, the bailiff shall discharge the debtor.

31. Payment after debtor lodged in prison—(1) Where after the judgment debtor has been lodged in prison payment is made of the amount entered on the warrant of committal as that on payment of which the judgment debtor is to be discharged, the following provisions shall apply:

- (a) Where payment is made into the Court which made the order of committal, the Registrar shall sign a certificate in the form No. 16 and send it by post or otherwise to the **[Superintendent]** of the prison in whose custody the judgment debtor is:
- (b) Where the payment is made into a Court to which the warrant has been forwarded for execution, the Registrar of that Court shall sign a certificate in the form No. 16, and shall send such certificate by post or otherwise to the **[Superintendent]**, and

shall send a copy of such certificate, together with the amount paid, to the home Court:

- (c) Where payment is made to the [Superintendent] of the amount, or where the [Superintendent] receives a certificate in the form No. 16, he shall release the judgment debtor if he be in custody under that warrant and no other. The [Superintendent] shall pay any such amount so paid to him into the nearest Court for transmission, if necessary, to the home Court.

(2) Where after the judgment debtor has been lodged in prison payment is made to the Registrar of the Court issuing or executing the warrant of part of the amount entered on the warrant as that on payment of which he is to be discharged, the Registrar shall notify the [Superintendent] of the payment. Where the [Superintendent] receives such notice from the Registrar or where payment of part of such amount is made to him, the [Superintendent] shall deduct the amount of the payment from the amount entered on the warrant as that on payment of which the judgment debtor is to be discharged. Any money so paid other than to the Registrar of the Court issuing the warrant shall be forwarded to that Registrar.

In subclauses (1) and (2) the reference to a Superintendent was substituted for a reference to a gaoler by s. 7 (3) of the Penal Institutions Act 1954.

32. Discharge of debtor on request of judgment creditor—

(1) Upon the judgment creditor lodging with the Registrar a written request for the discharge of the judgment debtor from custody the Registrar shall send to the [Superintendent] a certificate in the form No. 17.

(2) On receipt of a certificate in the form No. 17, the [Superintendent] shall release the judgment debtor if he be in custody under the warrant in respect of which the certificate is issued and no other.

In subclauses (1) and (2) the reference to a Superintendent was substituted for a reference to a gaoler by s. 7 (3) of the Penal Institutions Act 1954.

[33. Discharge on bankruptcy—(1) The affidavit referred to in **[[section 8A of the Imprisonment for Debt Limitation Act 1908]]** may be in the form No. 18.

(2) If the affidavit referred to in subclause (1) of this rule is filed in a foreign Court, the Registrar shall immediately forward the affidavit to the home Court.

(3) The certificate of the Registrar referred to in subsection (3) of that section may be in the form No. 19.]

This rule was substituted for the original rule 33 by rule 6 of S.R. 1952/243.

In subclause (1), s. 8A of the Imprisonment for Debt Limitation Act 1908, being the corresponding enactment in force at the date of this reprint, has been substituted for s. 56 of the Bankruptcy Act 1908; see rule 5 of S.R. 1980/56 and form 19 in the Second Schedule to this Act.

[34. Fees—The fees to be taken under these rules shall be the appropriate fees set out in the Third Schedule to **[[the District Courts Rules 1948]]**, and all such fees shall be prepaid.]

This rule was substituted for the original rule 34 by rule 5 (1) of S.R. 1956/82.

35. Costs—(1) When the Court refuses to make an order on a judgment summons, or makes an order altering the terms of the original judgment or order, or orders payment by instalments, or when a judgment summons is struck out, the judgment creditor shall not be entitled to add the costs of the judgment summons to the judgment or order unless the Court hearing the judgment summons allows such costs.

(2) Subject to subclause (1) of this rule, whenever an order is made on a judgment summons the costs of obtaining the same shall be added to the judgment or order, and shall form part thereof for all purposes, unless the Court otherwise orders.

(3) The costs of a judgment summons shall include—

(a) The Court fees payable under rule 34 hereof;

(b) Any conduct money paid to the judgment debtor under the provisions of rule 14 hereof;

[(c) Fees, allowances, and travelling expenses payable to witnesses and interpreters in accordance with **[[the Witnesses and Interpreters Fees Regulations 1974]];**]

[(d) Solicitor's costs in accordance with Part D of the Fifth Schedule to the **[[District Courts Rules 1948]];**]

(e) The actual expenses of the bailiff or constable and of the judgment debtor as provided in subclause (2) of rule 27 hereof.

In subclause (3), para. (c) was substituted for the original para. (c) by rule 6 of S.R. 1956/82.

In subclause (3) (c) the **Witnesses and Interpreters Fees Regulations 1974**, being the corresponding enactment in force at the date of this reprint, have been substituted for the revoked **Witnesses and Interpreters Fees Regulations 1954**.

In subclause (3), para. (d) was substituted for the original para. (d) by rule 5 (1) of S.R. 1965/210.

36. Costs of executions—All costs incurred by the judgment creditor in endeavouring to enforce a judgment or order of any Court by execution against the goods of the judgment debtor or other process shall be deemed to be due pursuant to such judgment or order under section 4 of the Act.

SCHEDULES

FIRST SCHEDULE

Rule 4 (1)

RULES REVOKED

Short Title or Subject-matter.	Published in
The Rules for Magistrates' Courts under the Imprisonment for Debt Limitation Act 1908, made on the 22nd day of May 1916	<i>Gazette</i> , 1 June 1916, Vol. II, page 1835.
Order in Council amending table of fees in proceedings in the Magistrates' Courts under the Imprisonment for Debt Limitation Act 1908	<i>Gazette</i> , 12 August 1920, Vol. II, page 2379.
Order in Council amending table of fees in proceedings in the Magistrates' Courts under the Imprisonment for Debt Limitation Act 1908	<i>Gazette</i> , 29 March 1928, Vol. I, page 888.
The Magistrates' Courts Fee Rules 1946	Statutory Regulations 1946, Serial number 1946/198, page 563.

SECOND SCHEDULE

FORMS

R. 7 (3)]

[Debt Form 1

GENERAL FORM OF TITLE OF PROCEEDINGS

The Imprisonment for Debt Limitation Act 1908, and [the District Courts Act 1947]

In the [District Court]
held at

Plaint No.
J.S. No.

Between

A.B., of, [*Occupation*],
Judgment Creditor,

and

C.D., of, [*Occupation*],
Judgment Debtor.

SECOND SCHEDULE—*continued*

[R. 8]

[Debt Form 2

**[JUDGMENT SUMMONS BOOK
[[District Court]] at**

Date	No. of Plaint	No. of Judgment Summons	Judgment Creditor	Judgment Debtor	Date of Hearing, or Foreign Court to Which Sent

This form was substituted for the original form 2 by rule 7 of S.R. 1952/243.]

R. 9 (1)]

[Debt Form 3

APPLICATION FOR A JUDGMENT SUMMONS, AND AFFIDAVIT IN SUPPORT
(General title—Form 1)

I,, of, [*Occupation*], make oath and say:

1. That on the day of, 19... [I], the above-named judgment creditor, obtained a ⁽¹⁾ judgment in the Court at against the above-named judgment debtor for the sum of \$..... (including costs).

⁽²⁾ 1A.

2. That subsequent costs have been incurred amounting to \$.....

3. That the judgment debtor (has not paid any part of the debt) (has paid the sum of \$..... towards the debt) and there is now due and owing the sum of \$.....

4. That the judgment debtor (or..... one of the above-named judgment debtors) resides or carries on business at, a distance of miles from the [District Court] at

5, 6. *Revoked by rule 7 (a) of S.R. 1956/82.*

⁽⁴⁾7. That I am duly authorised by the judgment creditor to make this affidavit on his behalf.

..... (Deponent).

Sworn at, this day of, 19... before me—

.....
Justice of the Peace.
Registrar.
Solicitor.

SECOND SCHEDULE—*continued*

I apply for the issue of a judgment summons against the judgment debtor (or against, one of the above-named judgment debtors).

(²) I request that the judgment summons be heard at the [District Court] at

.....
(Solicitor for) Judgment Creditor.

- NOTES—(¹) If a decree or order, amend accordingly.
 (²) If judgment obtained in another Court, add that the said judgment, decree, or order was removed into this Court on
 (³) *Revoked by rule 7 (a) of S.R. 1956/82.*
 (⁴) Add where judgment creditor does not make the affidavit.
 (⁵) Delete if to be heard in home Court.

R.R. 9 and 22] [Debt Form 4
 APPLICATION FOR SECOND OR SUBSEQUENT JUDGMENT SUMMONS, AND
 AFFIDAVIT IN SUPPORT
 (General title—Form 1)

I,, of, [*Occupation*], make oath and say:

1. That on the day of 19 ..., [I,] the above-named judgment creditor, obtained a (¹) judgment in the Court at against the above-named judgment debtor for the sum of \$..... (including costs).

(²) 1A.....

2. That subsequent costs have been incurred amounting to \$.....

3. That on the day of, 19..., the Court refused to make an order of committal against the judgment debtor in these proceedings.

4. That the judgment debtor (has not paid any part of the debt) (has paid the sum of \$..... towards the debt) and there is now due and owing the sum of \$.....

5. That the judgment debtor resides or carries on business at, a distance of miles from the [District Court] at

6, 7. *Revoked by rule 7 (b) of S.R. 1956/82.*

(⁴)8. That I am duly authorised by the judgment creditor to make this affidavit on his behalf.

..... (Deponent).

Sworn at this day of, 19..., before me—

.....
Justice of the Peace.
Registrar.
Solicitor.

I apply for the issue of a judgment summons against the judgment debtor.

(²) I request that the judgment summons be heard at the [District Court] at

.....
(Solicitor for) Judgment Creditor.

- NOTES—(¹) If a decree or order, amend accordingly.
 (²) If judgment was obtained in another Court, add that the said judgment, decree, or order was removed into this Court on
 (³) *Revoked by rule 7 (b) of S.R. 1956/82.*
 (⁴) Add when judgment creditor does not make the affidavit.
 (⁵) Delete if to be heard in home Court.

SECOND SCHEDULE—*continued*

R. 9]

[Debt Form 5

APPLICATION FOR A JUDGMENT SUMMONS WHERE ORIGINAL JUDGMENT
ALTERED OR DEBT ORDERED TO BE PAID BY INSTALMENTS, AND AFFIDAVIT IN
SUPPORT

(General title—Form 1)

I,, of [*Occupation*], make oath and say:—

1. That on the day of, 19..., [I] the above-named judgment creditor, obtained a ⁽¹⁾ judgment in the [District Court] at against the above-named judgment debtor for the sum of \$..... (including costs) to be paid by instalments of

⁽²⁾ 1A.

2. That subsequent costs have been incurred amounting to \$.....

3. That on the day of, 19..., the judgment debtor was ordered to pay the amount of the ⁽¹⁾ judgment by instalments of

4. That the judgment debtor has made default in the payment of instalments due up to and including the day of, 19..., and there now is due and owing in respect of such instalments the sum of \$.....

5. That the judgment debtor resides or carries on business at, a distance of miles from the [District Court] at

6, 7. *Revoked by rule 7 (c) of S.R. 1956/82.*

⁽⁴⁾ 8. That I am duly authorised by the judgment creditor to make this affidavit on his behalf.

..... (Deponent).

Sworn at, this day of, 19..., before me—

.....
Justice of the Peace.
Registrar.
Solicitor.

I apply for the issue of a judgment summons against the judgment debtor.

⁽⁵⁾ I request that the judgment summons be heard at the [District Court] at

.....
(Solicitor for) Judgment Creditor.

NOTES—⁽¹⁾ If a decree or order, amend accordingly.

⁽²⁾ If judgment was obtained in another Court, add that the said judgment, decree, or order was removed into this Court on

⁽³⁾ *Revoked by rule 7 (c) of S.R. 1956/82.*

⁽⁴⁾ Add where judgment creditor does not make affidavit.

⁽⁵⁾ Delete if to be heard in home Court.

SECOND SCHEDULE—*continued*

R.10] [Debt Form 6
 SUPPLEMENTARY AFFIDAVIT FOR LEAVE TO ISSUE JUDGMENT SUMMONS ON
 JUDGMENT OR ORDER AGAINST A FIRM OR A PERSON CARRYING ON BUSINESS IN
 A NAME OTHER THAN HIS OWN
 (General title—Form 1)

I,, of [*Occupation*], make oath and say:—
 1. That on the day of 19..., [I], the above-named
 judgment creditor, obtained a ⁽¹⁾judgment in the Court at
 against the above-named judgment debtor⁽²⁾ for the sum of
 \$..... (including costs), and there is now owing under the
⁽¹⁾judgment (*or order*) the sum of \$.....

2. That I allege that, of, is liable as a partner in the
 said firm (*or as the person carrying on business in the said firm name*) to
 pay the sum payable under the said judgment, and I make this allegation
 on the following grounds:—

- (a) That the said has admitted before the Court in the
 proceedings in which the said ⁽¹⁾judgment was obtained that he
 was a partner in the said firm (*or the person carrying on
 business in the said firm name*) at the time when the cause of
 action arose; or
- (b) That the said has been adjudged in the proceedings in
 which the ⁽¹⁾judgment was obtained to be liable as a partner in
 the said firm (*or as the person carrying on business in the said
 firm name*); or
- (c) That the said was individually served as a partner in the
 said firm (*or as the person carrying on business in the said firm
 name*) with the summons in the proceedings in which the
⁽¹⁾judgment was obtained, and did not appear at the hearing, or

- (d) ⁽³⁾.

⁽⁴⁾3. That I am duly authorised by the judgment creditor to make this
 affidavit in his behalf.

..... (Deponent).

Sworn at, this day of, 19..., before
 me—

.....
 Justice of the Peace.
 Registrar.
 Solicitor.

NOTES—⁽¹⁾ If a decree or order, amend accordingly.
⁽²⁾ State firm name in which defendants were sued.
⁽³⁾ State any other grounds.
⁽⁴⁾ Add where judgment creditor does not make affidavit.

SECOND SCHEDULE—continued

R. 12]

[Debt Form 7

JUDGMENT SUMMONS
(General title—Form 1)

To the above-named Judgment Debtor (or to one of the above-named Judgment Debtors).

YOU are hereby summoned to attend at the [District Court] at on day, the day of, 19..., at the hour of in the noon ⁽¹⁾(or at such time as the Registrar of that [District Court] shall enter in this summons) to show cause why you should not be committed to prison for failing to pay the amount due upon the judgment (or order) obtained against you by the above-named judgment creditor ⁽¹⁾(in the [District Court] at) on the day of, 19....

Full particulars of the amount due under the judgment (or order) and of the subsequent costs thereon are shown hereunder:

	\$
Amount of judgment and costs ... ..	.....
Costs of subsequent processes ... ..	.....
	<hr/>
	\$
Paid on account ... ..	.....
⁽²⁾ Amount of instalments not yet due ... ..	.....
	<hr/>
Costs of judgment summons ... ..	.....
[Solicitor's fee for preparing application for judgment summons and affidavit in support ... ..]	.....
Conduct money ... ..	.....
	<hr/>
Total amount for which this summons is issued... ..	<hr/>

⁽¹⁾(I certify that the sum of \$..... is due and owing on this judgment.)

Dated at, this day of, 19....

.....
Registrar ⁽¹⁾(of Court of issue).

⁽¹⁾(I appoint day, the day of, 19..., at the hour of in the noon as the time, and the [District Court] at as the place, for the hearing of this summons.

.....
Registrar of Court of hearing.)

SECOND SCHEDULE—*continued*

INSTRUCTIONS TO JUDGMENT DEBTOR

1. The purpose of this summons is to bring you before the Court for examination on oath as to whether, after providing for the reasonable maintenance of yourself and your family, you have not since the date of the judgment (*or* order) had sufficient money to pay the debt ⁽²⁾(you have not since the date of the order to pay the debt by instalments had sufficient money to pay the instalment(s) due).

2. An order for your imprisonment for non-payment of the debt ⁽²⁾(the instalments due) may be made—

(a) If you do not attend as required by the summons and do not allege sufficient cause for not attending:

(b) If, after attending, you refuse to be sworn or to disclose particulars—

(i) As to your estate and effects, and as to the property and means you have of paying, satisfying, and discharging the sum of money due:

(ii) As to the disposal you may have made of any property:

(iii) As to your intention to leave New Zealand without paying such money as is still unsatisfied, or to depart elsewhere within New Zealand with intent to evade payment:

⁽³⁾(iv) As to the mode in which the liability the subject of the judgment (*or* order) was incurred:

(c) If you do not make answer touching any of the things above referred to:

(d) If on oral testimony or by affidavit, or by both, it appears to the satisfaction of the Court that you have or have had since the date of the judgment (*or* order) sufficient means and ability to pay the sum so recovered against you and so due and unsatisfied ⁽²⁾(*or* the instalments due up to the date of this summons) ⁽⁴⁾(*or* that since the date on which the Court refused to make an order on the judgment summons previously issued against you in these proceedings you have had sufficient means and ability to pay the debt):

(e) If on oral testimony or by affidavit, or by both, it appears that you are about to leave New Zealand without paying the money still unsatisfied, or that you are about to depart elsewhere in New Zealand with intent to evade payment:

⁽³⁾(f) If on oral testimony or by affidavit, or by both, it appears to the Court that you contracted the liability which was the subject of the judgment (*or* order) by fraud, or that you have made or caused to be made any gift, delivery, or transfer of any property, or charged, removed, or concealed the same, with intent to defraud the person entitled to such money as aforesaid, or with intent to defeat any execution issued upon such judgment (*or* order).

3. Further costs may be added to this debt if payment is not made before the date of hearing.

4. If you do nothing, the Court may make an order against you in your absence.

5. Cheques are not accepted for payment into Court.

SECOND SCHEDULE—*continued*

6. This summons was issued by, of, solicitor for the judgment creditor.

NOTES—⁽¹⁾ Where judgment summons to be heard in a foreign Court.

⁽²⁾ Where order was made for payment of debt by instalments.

⁽³⁾ To be added only if fraud is alleged.

⁽⁴⁾ Where a previous judgment summons was heard and order refused.

The following information is to be written in the left-hand margin of the form:

The office of the Court is open to the public from to on Mondays to Fridays only.

If you are in doubt, consult a solicitor or the Registrar immediately.

Affidavit of Service

(For Endorsement on Debt Forms 7, 8, 9)

I,, Bailiff of the [District Court] at, do swear—

(1) That I duly served the within-named with a summons [or an order] a true copy of which is within written, by delivering the same to him personally at on the day of, 19....

(2) That I there and then tendered him the sum of \$..... conduct money, which he accepted (refused).

Sworn at, this day of, 19...., before me,—

.....
Justice of the Peace.
Registrar.
Solicitor.

In form 7 the item "Solicitor's fees for preparing application for judgment summons and affidavit in support" was inserted by rule 5 (2) of S.R. 1965/210.

In form 7 the words "Service fee 0 3 0" were omitted by rule 5 (4) of S.R. 1956/82.

R. 18]

[Debt Form 8

ORDER ON A JUDGMENT SUMMONS
(General title—Form 1)

UPON reading the application for the issue of a judgment summons herein and the affidavit in support thereof, and upon hearing, solicitor for the judgment creditor ⁽¹⁾(and, solicitor for the judgment debtor) ⁽¹⁾(and the judgment debtor having failed to attend as required by such judgment summons or to allege sufficient cause for not attending) ⁽¹⁾(and the Court being satisfied ⁽¹⁾(that the judgment debtor after providing for the reasonable maintenance of himself and his family has since the date of the judgment (or order) had sufficient money to pay the debt) ⁽¹⁾or that the judgment debtor has since the date of the order to pay the debt by instalments had sufficient money to pay the instalment(s) so due) ⁽¹⁾(or that ⁽²⁾)) and the judgment debtor having shown no cause why he should not be committed to prison.

It is ordered by, Esquire, [District Court Judge], sitting at, ⁽¹⁾that unless the judgment debtor shall pay into the [District Court] at forthwith ⁽¹⁾(or on or before the day of, 19....) ⁽¹⁾ (or by instalments of \$..... on the day

SECOND SCHEDULE—*continued*

of each commencing on the day of, 19...) the sum stated below, as that upon payment of which he is to be discharged or shall file an affidavit that he has been adjudicated bankrupt and that the debt stated below is or was provable in the bankruptcy he shall be committed to the Prison at, known as the, for

(¹) (Provided that the issue of the warrant of committal hereon shall be suspended so long as the judgment debtor pays into the [District Court] at the sum of \$..... every, the first payment to be made on the day of, 19....., and subsequent payments on the day of every: And provided that if the judgment debtor neglects or fails to make the payments as aforesaid, or any of them, the said warrant may issue forthwith as if no direction of suspension had been given.)

Dated at this day of, 19.....

		..... Registrar.
		\$
Amount of judgment or order remaining due	...	.....
Costs of judgment summons	... ..	.....
		<hr/>
Total sum upon payment of which the judgment debtor will be discharged	... ..	<hr/>

NOTES—(¹) Delete whichever is inapplicable.
 (²) Here set out grounds proved and upon which the Court has made order. If fraud is proved, briefly set out particulars of finding.

R.20] [Debt Form 9
 ORDER ON A JUDGMENT SUMMONS FOR PAYMENT OF DEBT BY INSTALMENTS
 (General title—Form 1)

UPON reading the application for the issue of a judgment summons herein and the affidavit in support thereof, and upon hearing, solicitor for the judgment creditor and, solicitor for the judgment debtor.

It is ordered by, Esquire, [District Court Judge], sitting at, that the judgment debtor do pay the amount shown hereunder, and the costs of the judgment summons, to the Registrar of the [District Court] at by instalments of, to be made on the day of each, the first payment to be made on the day of, 19....., and the judgment dated the day of, 19..... in this action wherein the judgment creditor was plaintiff and the judgment debtor was defendant is hereby varied accordingly.

Dated at, this day of, 19.....

		..... Registrar.
		\$
Amount of the judgment (or order) remaining due	...	.....
Costs of judgment summons and its hearing	... ..	.....
		<hr/>
Total sum due	... ..	<hr/>

SECOND SCHEDULE—continued

R. 21] [Debt Form 10
CERTIFICATE OF ORDER ON A JUDGMENT SUMMONS HEARD IN A FOREIGN COURT
 (General title—Form 1)

I HEREBY certify—

(1) That the judgment summons herein was heard on the day of 19.....

(2) That the judgment creditor was represented by

(3) That the judgment debtor ⁽¹⁾ appeared in person (or by his solicitor,) (failed to attend in answer to the judgment summons).

⁽¹⁾ (4) The Court was satisfied that the judgment debtor after providing for the reasonable maintenance of himself and his family has since the date of the ⁽¹⁾ judgment (or order) had sufficient money to pay the debt ⁽¹⁾ (the instalments due) (or as the case may be).

(5) That the following is a minute of the order made by the [District Court Judge]:

(6) That [no] adjournment fees [amounting to] were paid by the judgment creditor in this Court.

Dated at, this day of, 19.....

.....

Registrar of Foreign Court.

NOTE—⁽¹⁾ Delete whichever is inapplicable.

R. 21 (3)] [Debt Form 11
JUDGMENT SUMMONS BOOK TO BE KEPT IN COURT OF CRIMINAL JURISDICTION AUTHORISED TO DEAL WITH JUDGMENT SUMMONSES

No.	Court of Issue	Judgment Creditor	Judgment Debtor	Amount of Judgment and Costs	Particulars of Decision and Name of [District Court Judge]	Date Certificate Sent to Home Court or Summons Returned Thereto	Fee Stamps
				\$			

[Debt Form 12

APPLICATION FOR REHEARING, INCLUDING AFFIDAVIT IN SUPPORT
 (General title—Form 1)

I,, of, [occupation], the above-named judgment debtor, do hereby apply for a rehearing of the above-entitled judgment summons heard in the [District Court] at on the day of, 19....., on the following grounds ⁽¹⁾:—

1.
2.
3.

SECOND SCHEDULE—continued

and I the above-named judgment debtor make oath and say that the facts set forth above are true and correct in every particular.

Sworn at }
this..... day of } (Judgment debtor)
....., 19..... }
before me—

Justice of the Peace.
Registrar.
Solicitor.

I appoint day, the day of, 19....., at
..... o'clock in the noon as the time and the [District
Court] at as the place for the hearing of the above application.

Registrar.

NOTE—(1) State specifically the grounds, and if grounds have reference to the means of the judgment debtor to pay debt, set out in detail his earnings and expenses since date of judgment.

[Debt Form 13

NOTICE OF SUSPENSION OF WARRANT OF COMMITTAL AND FOR RELEASE OF JUDGMENT DEBTOR

(General title—Form 1)

To a bailiff of the [District Court] at, or to a constable at
....., and to the [Superintendent] of the prison at
known as

THE above-named judgment debtor having applied for a rehearing of the judgment summons upon which the warrant of committal No....., dated the day of, 19..... was issued, and the Court having (suspended the warrant) (granted a rehearing), you are hereby required immediately upon receipt of this notice—

- (1) If the judgment debtor has not been arrested, to take no further steps to execute the warrant, and to return it into Court; or
(2) If the judgment debtor has been arrested, and if the judgment debtor is held in custody under the said warrant and no other to release the judgment debtor and to return the warrant into Court endorsed with the place, date, and time of the arrest, the date and time of receipt of this notice, and the place, date, and time of release.

Dated at, this day of, 19...

Registrar.

The reference to a Superintendent was substituted for a reference to a gaoler by s. 7 (3) of the Penal Institutions Act 1954.

[Not printed.]

SECOND SCHEDULE—*continued*

[Debt Form 14

DIRECTION FOR REARREST OF JUDGMENT DEBTOR
(General title—Form 1)

To a bailiff of the [District Court] at, or to a constable at, and to the [Superintendent] of the prison at known as

WHEREAS pursuant to the annexed warrant of committal No., dated the day of, 19..., the above-named judgment debtor was arrested on the date and time of arrest endorsed on the said warrant:

And whereas under (Rule 24)/(Rule 25) of [the Imprisonment for Debt Limitation (District Courts) Rules 1949] the said judgment debtor was released from custody on the date and time of release endorsed on the said warrant pending the rehearing of the judgment summons upon which the order recited in the said warrant was made:

And whereas on the said rehearing the Court refused to cancel or vary the said order:

Now, therefore, this is to command and direct you the said (bailiff)(constable) and others to rearrest the said judgment debtor under the said warrant and deliver him to the [Superintendent] of the prison at known as, and you the said [Superintendent] to receive the said judgment debtor and him safely keep in the said prison for days, being the unexpired term of imprisonment named in the said warrant, unless he shall sooner pay the sum stated in the said warrant as that upon the payment of which he is to be discharged or be otherwise discharged by due course of law.

Dated at, this day of, 19...

.....
Registrar.

(This direction is to be attached to the warrant.)

The reference to a Superintendent was substituted for a reference to a gaoler by s. 7 (3) of the Penal Institutions Act 1954.

[Not printed.]

R. 27 (5)]

Debt Form 15

WARRANT OF COMMITTAL

(General title—Form 1, but add No. of Warrant.....)

To a bailiff of the [District Court] at, or to a constable at, and to the [Superintendent] of the prison at known as

WHEREAS by an order bearing date the day of, 19..., and issued out of this Court, it was ordered that unless the above-named judgment debtor should pay into this Court at ⁽¹⁾..... he should be committed to the prison at known as for

And whereas such order was duly served on the said judgment debtor on the day of, 19...:

SECOND SCHEDULE—continued

And whereas the judgment debtor has not paid the sums in the said order mentioned in the manner therein directed, but therein has made default, and there is now due and owing under the said order the sum stated below:

These are therefore to require you, the said bailiff (or constable) and others to take the judgment debtor and deliver him to the [Superintendent] of the prison known as at, and you the said [Superintendent] to receive the judgment debtor and him safely keep in the said prison for from the date of his arrest under the said order, unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged or be otherwise discharged by due course of law.

Dated at this day of, 19...

.....
Registrar.

	\$
Amount of judgment summons remaining due	... ..
Cost of warrant of committal	... ..
Amount upon the payment of which the judgment debtor is to be discharged	... ..
	<hr/>

NOTE—(1) Copy exact terms of order.

The reference to a Superintendent was substituted for a reference to a gaoler by s. 7 (3) of the Penal Institutions Act 1954.

R. 31]

[Debt Form 16

CERTIFICATE AS TO PAYMENT BY A JUDGMENT DEBTOR

(General title—Form 1)

I HEREBY certify that the above-named judgment debtor, who was committed to your custody by virtue of a warrant of committal issued out of this Court (or of the [District Court] at bearing date the day of, 19..., has paid the sum of money for the non-payment whereof he was so committed, together with all costs due and payable by him in respect thereof, and that the judgment debtor may, in respect of such order, be forthwith discharged out of your custody if he be in your custody under the above-mentioned warrant and no other.

Dated at, this day of, 19...

.....
Registrar.

To the [Superintendent] of the prison at known as

The reference to a Superintendent was substituted for a reference to a gaoler by s. 7 (3) of the Penal Institutions Act 1954.

[Not printed.]

SECOND SCHEDULE—*continued*

R. 32]

[Debt Form 17

CERTIFICATE DIRECTING DISCHARGE OF JUDGMENT DEBTOR AT THE REQUEST
OF JUDGMENT CREDITOR

(General title—Form 1)

THE judgment creditor having lodged a written request for the discharge of the judgment debtor who was committed to your custody by virtue of a warrant dated the day of, 19...., I hereby direct that the said judgment debtor be discharged if he be in your custody under that warrant and no other.

Dated at, this day of, 19....

.....
Registrar.

To the **[Superintendent]** of the prison at known as

The reference to a Superintendent was substituted for a reference to a gaoler by s. 7 (3) of the Penal Institutions Act 1954.

[Not printed]

[R. 33]

[Debt Form 18

AFFIDAVIT AS TO BANKRUPTCY

(General Title—Form 1)

I,, of, make oath and say—

(1) That under the Imprisonment for Debt Limitation Act 1908 an order for my committal to prison was made by the above-named Court (*or* the **[[District Court]]** at) for making default in payment of \$..... due from me in pursuance of an order (*or* judgment) of the

(2) That on the day of 19...., I was adjudicated a bankrupt by the **[[High Court]]** of New Zealand at, and annexed hereto is a certificate to that effect signed by the Registrar of the **[[High Court]]** at

(3) That the debt in respect of which the above-mentioned order (*or* judgment) was given was provable under the said bankruptcy.

.....
Judgment Debtor.

Sworn at, this day of 19...., before me—

.....
Justice of the Peace.
Registrar.
Solicitor.

[Not printed]

This form was substituted for the original form 18 by rule 7 of S.R. 1952/243. In form 18 the references to the High Court were substituted for references to the Supreme Court by s. 12 of the Judicature Amendment Act 1979.

SECOND SCHEDULE—*continued*

[R. 33]

[Debt Form 19

CERTIFICATE FOR DISCHARGE OF JUDGMENT DEBTOR
(General Title—Form 1)

I HEREBY certify that the above-named judgment debtor, who was committed to your custody by virtue of a warrant of committal issued out of this Court on the day of 19..., has filed the affidavit referred to in **[[section 8A of the Imprisonment for Debt Limitation Act 1908]]**; and I direct that the judgment debtor be forthwith discharged out of your custody if he is in your custody under the above-mentioned warrant and no other.

Dated at, this day of 19....

.....
Registrar.

To the **[[Superintendent]]** of the prison at

The reference to the Superintendent was substituted for a reference to the gaoler by s. 7 (3) of the Penal Institutions Act 1954

[Not printed]

This form was substituted for the original form 19 by rule 7 of S.R. 1952/243.
In form 19 the words in double square brackets were substituted for the words "section 56 of the Bankruptcy Act 1908" by rule 8 of S.R. 1980/56.

 THIRD SCHEDULE

Revoked by rule 5 (2) of S.R. 1956/82.

 FOURTH SCHEDULE

Revoked by rule 5 (3) of S.R. 1965/210

T. J. SHERRARD,
Clerk of the Executive Council.

Certified for the purposes of section 7 of the Regulations Act 1936, this 31st day of July 1981.

J. K. McLAY, *Attorney-General.*

Issued under the authority of the Regulations Act 1936.
Date of notification of principal rules in *Gazette*: 22 December 1949.
The Imprisonment for Debt Limitation (District Court) Rules 1949 are administered in the Department of Justice.