

**Serial Number 1949/188**

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**THE IMPRISONMENT FOR DEBT LIMITATION (MAGISTRATES' COURTS) RULES 1949**

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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 Magistrates' 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**

*Arrangement of Rules*

1. These rules are arranged as follows :—
  1. Arrangement of Rules.
  2. Short Title and Commencement.
  3. Interpretation.
  4. Revocations and Savings.
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- 25. Grant of Rehearing.
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  - 29. Alteration of Name of Prison.
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  - 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 : Table of Fees.
  - Fourth Schedule : Scale of Solicitors' Costs.

*Short Title and Commencement*

- 2. (1) These rules may be cited as the Imprisonment for Debt Limitation (Magistrates' Courts) Rules 1949.
- (2) These rules shall come into force on the 1st day of February, 1950.

*Interpretation*

- 3. In these rules, unless the context otherwise requires,—
  - “The Act” means the Imprisonment for Debt Limitation Act, 1908 :
  - “The Court” means a Magistrate's Court constituted under the Magistrates' 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 authorized 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 :
  - “Magistrate” means a Stipendiary Magistrate appointed under the Magistrates' Courts Act, 1947 :
  - “Prison” includes a Police gaol :
  - “Registrar” means a Registrar of a Magistrate's 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.

*Revocations and Savings*

4. (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.

*Application of Rules : Proceedings Pending*

5. (1) These rules shall apply to any proceedings under the Act taken in a Magistrate's Court or before any Magistrate.

(2) All proceedings under the Act commenced in any Magistrate's 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.

*Rules Deemed Part of the Magistrates' Court Rules 1948*

6. These rules shall be read with and deemed to be part of the Magistrates' Court Rules 1948.

*Forms*

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

(2) Every summons, order, warrant, notice, or other document issued out of the Court pursuant to these rules under the hand of a Magistrate or Registrar shall be sealed with the seal of the Court.

(3) Every document filed, issued, or served in the course of proceedings under the Act shall be properly intituled 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.

*Judgment Summons Book*

8. 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.

*Application for Judgment Summons*

9. (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 authorized in writing and the affidavit shall be made by some person conversant with the facts.

(3) An authority authorizing 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 two 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.

*Where Judgment Against a Firm*

10. (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 Magistrate 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.

*Application Where Order for Payment by Instalments*

11. Whenever and as often as any moneys payable by instalments remain 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.

*Issue of Judgment Summons*

12. (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 thirty miles from the Court issuing the judgment summons and there is another Court of either civil jurisdiction or of criminal jurisdiction authorized 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 thirty miles from his place of residence, the judgment summons shall call upon the judgment debtor to appear and be examined in any such Court within thirty miles from his place of residence.

(3) Where the judgment debtor resides thirty miles or less from the Court issuing the judgment summons and there is another Court of either civil jurisdiction or of criminal jurisdiction authorized 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 Magistrate 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 Magistrates' Courts Rules 1948.

(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.

#### *Service of Judgment Summons*

**13.** (1) Notwithstanding anything to the contrary in Rule 85 of the Magistrates' Courts Rules 1948, a judgment summons shall be served either by a bailiff or a constable :

Provided that any Magistrate or Registrar may, if he thinks fit, authorize any other person to serve a judgment summons.

(2) Except as provided in subclause (3) of this rule, a judgment summons shall be served by delivering the same to the judgment debtor, or by bringing it to his notice if he refuses to accept it, not less than ten 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 fifty miles 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 Magistrate 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 fifty miles from his place of residence or business, or was keeping out of the way to avoid service.

*Conduct-money*

14. (1) Where the judgment debtor resides or carries on business more than five miles 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 items 4, 5, and 6 of the Scale of Allowances to Witnesses and Interpreters set out in the Fourth Schedule to the Magistrates' Court Rules 1948.

(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.

*Witnesses*

15. 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.

*Evidence by Affidavit*

16. (1) Where the judgment creditor resides or carries on business more than thirty miles 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 Magistrates' Court 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.

*Adjournment*

17. (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.

*Order on Judgment Summons*

18. (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 one 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 three months thereafter, or for one year, whichever period is the longer.

(3) The Magistrate 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 Magistrate 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.

#### *Entry of Particulars of Decision*

19. On the hearing of a judgment summons at a home Court, the Magistrate shall cause a note or memorandum of his decision or order to be entered in the civil record-book.

#### *New Order on a Judgment Summons*

20. If he is of opinion that an order of committal should not be made, the Magistrate 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.

#### *Disposal of Judgment Summons Heard in a Foreign Court*

21. (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 authorized 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 Magistrate 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.

*Second or Subsequent Judgment Summons After Refusal to Make an Order*

22. (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.

*Application for Rehearing of Judgment Summons*

23. (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 three clear days before the date appointed for the hearing thereof.

*Stay of Proceedings on Application for Rehearing*

24. (1) If no warrant of committal has been issued, the filing of an application for a rehearing shall, unless the Magistrate 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 Magistrate 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 gaoler (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 gaoler the judgment debtor has been arrested and is held in custody under that warrant and no other, the bailiff or constable or gaoler 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.

#### *Grant of Rehearing*

25. (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.

#### *Rehearing*

26. (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 gaoler 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 gaoler (as the case may be) of the said notice as aforesaid.

*Warrant of Committal*

27. (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 Magistrates' 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 Magistrate 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 Magistrates' 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 Magistrates' 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.

*Expiry of Warrant*

28. 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.

*Alteration of Name of Prison*

29. 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.

*Payment Before Debtor Lodged in Prison*

**30.** 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.

*Payment After Debtor Lodged in Prison*

**31.** (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 gaoler 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 gaoler, and shall send a copy of such certificate, together with the amount paid, to the home Court.
- (c) Where payment is made to the gaoler of the amount, or where the gaoler 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 gaoler 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 gaoler of the payment. Where the gaoler receives such notice from the Registrar or where payment of part of such amount is made to him, the gaoler 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 moneys so paid other than to the Registrar of the Court issuing the warrant shall be forwarded to that Registrar.

*Discharge of Debtor on Request of Judgment Creditor*

32. (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 gaoler a certificate in the form No. 17.

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

*Discharge of Bankruptcy*

33. (1) No warrant of committal shall be issued where the judgment debtor, after the making of the order of committal, and before the warrant is issued, lodges in the Court in which the order was made an affidavit in the form No. 18 stating that he has been adjudicated a bankrupt and that the debt in respect of which the order of committal was made is a debt provable in the bankruptcy.

(2) Where a judgment debtor has been arrested, he may file in the Court within the district in which he is in custody an affidavit as mentioned in subclause (1) of this rule, and thereupon the Registrar shall forward a notice in the form No. 19 to the gaoler into whose custody the judgment debtor has been committed. On the receipt of such notice the gaoler shall forthwith release the judgment debtor if he is held in custody under the warrant referred to therein and no other.

(3) If the affidavit referred to in subclause (2) of this rule is filed in a foreign Court, the Registrar shall forward such affidavit and a copy of the relevant notice in the form No. 19 to the home Court.

*Fees*

34. The fees to be taken in respect of proceedings under these rules shall be those specified in the Third Schedule hereto, and all such fees shall be prepaid in stamps. The Registrar shall affix and cancel the stamps in accordance with the regulations for the time being in force under the Stamp Duties Act, 1923, as to the payment of fees in stamps and the cancellation of the stamps.

*Costs*

35. (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) Allowances to witnesses or interpreters, and translation fees in accordance with the scale for the time being in force under the Magistrates' Courts Rules 1948 ;

- (d) Solicitors' costs in accordance with the Fourth Schedule to these rules ;
- (e) The actual expenses of the bailiff or constable and of the judgment debtor as provided in subclause (2) of Rule 27 hereof.

*Costs of Executions*

36. 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

## 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> , 1st June, 1916, Vol. II, page 1835.
Order in Council amending table of fees in proceedings in the Magistrates' Court under the Imprisonment for Debt Limitation Act, 1908	<i>Gazette</i> , 12th 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> , 29th 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 Magistrates' Courts Act, 1947*

In the Magistrate's 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

JUDGMENT SUMMONS BOOK  
Magistrate's Court at .....

Date.	No. of Plaint.	No. of Judgment Summons.	Judgment Creditor.	Judgment Debtor.	Amount.	Date of Hearing.	Initials of Bailliff and Date of Receipt.
19					£ s. d.		

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 <sup>(1)</sup> judgment in the ..... Court at ..... against the above-named judgment debtor for the sum of £ ..... (including costs).

<sup>(2)</sup> 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 Magistrate's Court at .....

5. That I believe that the judgment debtor (*or* the said .....), after providing for the reasonable maintenance of himself and his family, has since the date of the <sup>(1)</sup> judgment had sufficient money to pay the debt or [*if fraud is alleged, specify it*].

6. That the grounds for my belief are <sup>(3)</sup> :—

(a) .....

<sup>(4)</sup> 7. That I am duly authorized 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 (*or* against ....., one of the above-named judgment debtors).

<sup>(5)</sup> I request that the judgment summons be heard at the Magistrate's Court at .....

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

NOTES.—<sup>(1)</sup> If a decree or order, amend accordingly.

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

<sup>(3)</sup> Here set out in concise subparagraphs the grounds for believing the matters stated in paragraph 5.

<sup>(4)</sup> Add where judgment creditor does not make the affidavit.

<sup>(5)</sup> Delete if to be heard in home Court.

SECOND SCHEDULE—*continued*

RR. 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 <sup>(1)</sup> judgment in the ..... Court at ..... against the above-named judgment debtor for the sum of £ ..... (including costs).

<sup>(2)</sup>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 Magistrate's Court at.....

6. That I believe that since the refusal to make an order the judgment debtor has, after providing for the reasonable maintenance of himself and his family, had sufficient money to pay the debt.

7. That the grounds for my belief are<sup>(3)</sup>:—

(a) .....

<sup>(4)</sup>8. That I am duly authorized 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.

<sup>(5)</sup>I request that the judgment summons be heard at the Magistrate's Court at .....

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

NOTES.—<sup>(1)</sup> If a decree or order, amend accordingly.

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

<sup>(3)</sup> Here set out in concise subparagraphs the grounds for believing the matters stated in paragraph 6.

<sup>(4)</sup> Add when judgment creditor does not make the affidavit.

<sup>(5)</sup> 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 <sup>(1)</sup>judgment in the Magistrate's Court at ..... against the above-named judgment debtor for the sum of £..... (including costs) to be paid by instalments of .....

<sup>(2)</sup>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 <sup>(1)</sup>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 Magistrate's Court at .....

6. That I believe that the judgment debtor, after providing for the reasonable maintenance of himself and his family, has since the date of the <sup>(1)</sup>judgment had sufficient money to pay the instalments due or [*If fraud is alleged, specify it*].

7. That the grounds for my belief are<sup>(3)</sup> :—

(a) .....

<sup>(4)</sup>8. That I am duly authorized 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.

<sup>(5)</sup>I request that the judgment summons be heard at the Magistrate's Court at .....

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

NOTES.—<sup>(1)</sup> If a decree or order, amend accordingly.

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

<sup>(3)</sup> Here set out in concise subparagraphs the grounds for believing the matters stated in paragraph 6.

<sup>(4)</sup> Add where judgment creditor does not make affidavit.

<sup>(5)</sup> 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 <sup>(1)</sup>judgment in the ..... Court at ..... against the above-named judgment debtor<sup>(2)</sup> for the sum of ..... (including costs), and there is now owing under the <sup>(1)</sup>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 <sup>(1)</sup>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 <sup>(1)</sup>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 <sup>(1)</sup>judgment was obtained, and did not appear at the hearing, or .....
- (d) <sup>(3)</sup>.

<sup>(4)</sup>3. That I am duly authorized 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.—<sup>(1)</sup> If a decree or order, amend accordingly.<sup>(2)</sup> State firm name in which defendants were sued.<sup>(3)</sup> State any other grounds.<sup>(4)</sup> Add where judgment creditor does not make affidavit.

[Not printed.]

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 Magistrate's Court at ..... on ..... day, the ..... day of ....., 19.., at the hour of ..... in the ..... noon <sup>(1)</sup>(*or at such time as the Registrar of that Magistrate's 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 <sup>(1)</sup>(in the Magistrate's 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:—

		£	s.	d.
Amount of judgment and costs .. .. .	..	..	..	..
Costs of subsequent processes .. .. .	..	..	..	..
<hr/>				
		£	s.	d.
Paid on account .. .. .	..	..	..	..
<sup>(2)</sup> Amount of instalments not yet due .. .. .	..	..	..	..
<hr/>				
Costs of judgment summons .. .. .	..	..	..	..
Service fee .. .. .	..	..	..	..
Conduct-money .. .. .	..	..	..	..
<hr/>				
Total amount for which this summons is issued .. .. .				
<hr/>				

<sup>(1)</sup>(I certify that the sum of £..... is due and owing on this judgment.)  
Dated at ....., this ..... day of ....., 19...

.....  
Registrar <sup>(1)</sup>(of Court of issue).

<sup>(1)</sup>(I appoint ..... day, the ..... day of ....., 19.., at the hour of ..... in the ..... noon as the time, and the Magistrate's Court at ..... as the place, for the hearing of this summons.

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

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 <sup>(2)</sup>(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 <sup>(2)</sup>(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:

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

SECOND SCHEDULE—*continued*

- (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 <sup>(2)</sup>(or the instalments due up to the date of this summons) <sup>(4)</sup>(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 :
- <sup>(3)</sup>(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.
6. This summons was issued by ....., of ....., solicitor for the judgment creditor.

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

<sup>(2)</sup> Where order was made for payment of debt by instalments.

<sup>(3)</sup> To be added only if fraud is alleged.

<sup>(4)</sup> 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 Magistrate's 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.

SECOND SCHEDULE—*continued*

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 <sup>(1)</sup>(and . . . . ., solicitor for the judgment debtor) <sup>(1)</sup>(and the judgment debtor having failed to attend as required by such judgment summons or to allege sufficient cause for not attending) <sup>(1)</sup>(and the Court being satisfied <sup>(1)</sup>(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) <sup>(1)</sup>(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) <sup>(1)</sup>(or that <sup>(2)</sup> . . . . . ) and the judgment debtor having shown no cause why he should not be committed to prison,

It is ordered by . . . . ., Esquire, <sup>or</sup> Deputy Magistrate, sitting at . . . . ., <sup>(1)</sup>that unless the judgment debtor shall pay into the Magistrate's Court at . . . . . forthwith <sup>(1)</sup>(or on or before the . . . . . day of . . . . ., 19..) <sup>(1)</sup>(or by instalments of £. . . . . on the . . . . . day 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 . . . . .

<sup>(1)</sup>(Provided that the issue of the warrant of committal hereon shall be suspended so long as the judgment debtor pays into the Magistrate's 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.

	£	s.	d.
Amount of judgment or order remaining due ..	.....		
Costs of judgment summons .. .. .	.....		
	-----		
Total sum upon payment of which the judgment debtor will be discharged .. .. .	.....		
	-----		

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

SECOND SCHEDULE—*continued*

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, Stipendiary Magistrate, sitting at . . . . ., that the judgment debtor do pay the amount shown hereunder, and the costs of the judgment summons, to the Registrar of the Magistrate's 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.

	£	s.	d.
Amount of the judgment (or order) remaining due ..	.....		
Costs of judgment summons and its hearing ..	.....		
	-----		
Total sum due .. .. .	.....		
	-----		

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 <sup>(1)</sup>appeared in person (or by his solicitor, . . . . .) (failed to attend in answer to the judgment summons).
- <sup>(1)</sup>(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 <sup>(1)</sup>judgment (or order) had sufficient money to pay the debt <sup>(1)</sup>(the instalments due) (or as the case may be).
- (5) That the following is a minute of the order made by the Magistrate : . . . . .
- (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.—<sup>(1)</sup> Delete whichever is inapplicable.

R. 21 (3) ]

[Debt Form 11

JUDGMENT SUMMONS BOOK TO BE KEPT IN COURT OF CRIMINAL JURISDICTION  
AUTHORIZED TO DEAL WITH JUDGMENT SUMMONSES

No.	Court of Issue.	Judgment Creditor.	Judgment Debtor.	Amount of Judgment and Costs.	Particulars of Decision and Name of Magistrate.	Date Certificate Sent to Home Court or Summons Returned Thereto.	Fee Stamps.
				£ s. d.			

SECOND SCHEDULE—*continued*

[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 Magistrate's Court at ..... on the ..... day of ....., 19.., on the following grounds (1) :—

1. ....
2. ....
3. ....

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 Magistrate's 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 Magistrate's Court at ....., or to a constable at ....., and to the gaoler 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.

[Not printed.]

SECOND SCHEDULE—*continued*

[Debt Form 14

## DIRECTION FOR REARREST OF JUDGMENT DEBTOR

(General title—Form 1)

To a bailiff of the Magistrate's Court at ....., or to a constable at ....., and to the gaoler 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 (Magistrates' 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 gaoler of the prison at ..... known as ....., and you the said gaoler ..... 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.)

[*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 Magistrate's Court at ....., or to a constable at ....., and to the gaoler 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.. :

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 gaoler of the prison known as ..... at ....., and you the said gaoler 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.

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

NOTE.—(1) Copy exact terms of order.

SECOND SCHEDULE—*continued*

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 Magistrate's 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 Gaoler of the prison at . . . . . known as . . . . .

[*Not printed.*]

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 Gaoler of the prison at . . . . . known as . . . . .

[*Not printed.*]

R. 33 (1)]

[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, a warrant for my committal to prison was made by the above Court (or the <sup>(1)</sup> Court of . . . . . held 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 Supreme Court of New Zealand at . . . . .
- (3) That the order of adjudication was published in the <sup>(2)</sup> on the . . . . . day of . . . . . 19. . .
- (4) That the debt in respect of which the above 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.

NOTES.—<sup>(1)</sup> Here insert Court in which order or judgment was given.  
<sup>(2)</sup> Insert name of newspaper.

[*Not printed.*]



SECOND SCHEDULE—*continued*

R. 33 (2)]

[Debt Form 19

NOTICE DIRECTING DISCHARGE OF JUDGMENT DEBTOR ON BANKRUPTCY  
(General title—Form 1)

YOU are hereby notified that the above-named judgment debtor, who was committed to your custody by virtue of a warrant of committal issued out of the Magistrate's Court at ..... bearing date the ..... day of ..... 19.., has filed an affidavit in this Court stating that he has been duly adjudged a bankrupt, and that the debt in respect of which the said warrant of committal was made was provable under the said bankruptcy. And I do direct that the judgment debtor shall forthwith be 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 gaoler of the prison at ..... known as .....

[Not printed.]

## THIRD SCHEDULE

TABLE OF FEES TO BE TAKEN IN RESPECT OF PROCEEDINGS IN THE MAGISTRATES' COURTS UNDER THE IMPRISONMENT FOR DEBT LIMITATION ACT, 1908

	On Amount Unpaid Not Exceeding					Exceed- ing £250.
	£5.	£10.	£20.	£50.	£250.	
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1. Filing affidavit and applica- tion, issue of judgment summons, hearing and order	0 5 0	0 10 0	0 15 0	1 0 0	1 10 0	2 0 0
2. Service by the Court of any summons, notice, or other process: For each person to be served	0 3 0	0 3 0	0 3 0	0 3 0	0 3 0	0 3 0
3. Summons for each witness..	0 3 0	0 3 0	0 3 0	0 3 0	0 3 0	0 3 0
4. Adjournment of hearing on application of either party	0 3 0	0 3 0	0 3 0	0 3 0	0 3 0	0 3 0
5. Filing any application or other document not otherwise provided for	0 3 0	0 3 0	0 3 0	0 3 0	0 3 0	0 3 0
6. Warrant of committal ..	0 5 0	0 10 0	0 15 0	1 0 0	1 10 0	2 0 0
7. Execution of any warrant ..	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0
8. For expenses of execution of any warrant of committal	The actual expenses incurred by the bailiff or constable, including the costs of conveying and lodging in prison of the person arrested.					

NOTE.—No fee is payable on the filing of an affidavit of service, or on an affidavit as to bankruptcy.

FOURTH SCHEDULE  
SCALE OF SOLICITORS' COSTS

	On Amount Unpaid Not Exceeding					Exceed- ing £250.
	£5.	£10.	£20.	£50.	£250.	
Solicitors' fees for appearance on behalf of judgment creditor or judgment debtor	£ s. d. 0 10 6	£ s. d. 1 1 0	£ s. d. 1 11 6	£ s. d. 2 2 0	£ s. d. 2 12 6	£ s. d. 3 3 0

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

Issued under the authority of the Regulations Act, 1936.  
Date of notification in *Gazette* : 22nd day of December, 1949.  
These regulations are administered in the Department of Justice.