

## Serial Number 116/1937.

**THE MAGISTRATES' COURTS (ATTACHMENT) RULES, 1937.**

Enacting authority : His Excellency the Governor-General in Council.  
Act pursuant to which the regulations were made : Section 3 of the  
Magistrates' Courts Act, 1928.

Date on which the regulations were made : 21st day of January, 1937.

Date of notification in *Gazette* : 28th day of January, 1937.

IN pursuance of section 3 of the Magistrates' Courts Act, 1928, His  
Excellency the Governor-General of the Dominion of New Zealand,  
acting by and with the advice and consent of the Executive Council,  
doth hereby make the following rules.

## R U L E S .

1. These rules may be cited as the Magistrates' Courts (Attachment) Rules, 1937.
2. These rules shall take effect on the 1st day of February, 1937.
3. The following provisions of the Magistrates' Courts Rules, 1928,\* are revoked :—
  - (a) Rule No. 38.
  - (b) So much of Rule No. 37 as commences with the words " and if the sub-debtor is present in Court " and ends with the words " in manner provided by the Act ".
  - (c) The forms numbered respectively 69, 70, and 95 in Appendix A thereof.
4. An application by a judgment creditor seeking an order that a sub-debtor shall appear before the Court as provided by subsection (2) of section 52 of the Statutes Amendment Act, 1936, shall be supported by an affidavit which may be in the Form No. 68 in Appendix A of the Magistrates' Courts Rules, 1928.
5. The order to be made on such application shall be made in the Court in which the creditor has obtained judgment and shall be in the Form No. 69 in the Schedule hereto.
6. The sub-debtor may give notice of payment into Court, or that he disputes the debt, in the Form No. 71 in the said Appendix A.
7. The Court of hearing may award costs including expenses in accordance with any scale for the time being in force for the payment of witnesses under the Magistrates' Courts Act, 1928, to any sub-debtor attending pursuant to section 52 (2) of the Statutes Amendment Act, 1936, or attending to give evidence on attachment proceedings under section 94 of the Magistrates' Courts Act, 1928.

\* *Gazette*, 18th December, 1928, Vol. III, page 3535.

8. If the proceedings are abandoned by the judgment creditor or for any other reason that the Court thinks sufficient the Court may also award costs including expenses as aforesaid to a judgment debtor attending pursuant to section 52 (2) of the Statutes Amendment Act, 1936, or attending to give evidence on attachment proceedings.

9. No fee shall be payable in respect of filing any application by a judgment debtor or sub-debtor to take evidence pursuant to section 94 of the Magistrates' Courts Act, 1928, or for the taking of any such evidence, or for any certificate of costs in respect thereof, and no fee shall be payable for any order of the Court for the payment out of Court of any moneys paid into Court under any attachment order.

10. An order made under section 52 (5) of the Statutes Amendment Act, 1936, shall be made in the Form No. 70 of the Schedule hereto.

11. Notwithstanding an order in the said Form No. 70, execution shall not issue thereon unless application in that behalf is made. Such application shall be in the Form No. 90 set out in Appendix A of the Magistrates' Courts Rules, 1928.

12. The warrant of execution against the goods of a sub-debtor shall be in the Form No. 95 in the Schedule hereto.

SCHEDULE.

Form No. 69.

[M.C.-69.

New Zealand. The Magistrates' Courts Act, 1928, Sec. 141. The Statutes Amendment Act, 1936, Sec. 52. The Magistrates' Courts (Attachment) Rules, 1937.	}	ATTACHMENT ORDER.
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Plaint No. ...  
19

In the Magistrate's Court, held at .....

Between ....., judgment creditor, and ....., judgment debtor, and ....., sub-debtor.

UPON reading the affidavit of ..... filed hercon, and upon application by the judgment creditor: It is ordered that all debts owing or accruing from the above-named sub-debtor to the judgment debtor be attached to answer the judgment debt herein; and it is further ordered that the said sub-debtor appear before the Magistrates' Court at ....., at ..... o'clock in the .....noon of the ..... day of ....., 19.., to show cause why he should not pay to the Clerk of this Court for the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt and costs, and that the judgment debtor appear at the place and the time above mentioned to show cause why the moneys sought to be attached should not be paid to the judgment creditor; and it is further ordered that the costs of the application and this order in favour of the judgment creditor against the judgment debtor be .....

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

[L.S.]

Stipendiary Magistrate,  
[or Two Justices of the Peace acting together, no Magistrate being available].

	£	s.	d.
Amount remaining due on judgment ..	:	:	
Costs of this order .. .. .	:	:	
Total .. .. .	£	:	:

This order must be served on the judgment debtor and the judgment creditor at least seven clear days before the day fixed for hearing.

(The attention of the judgment debtor and the sub-debtor is drawn to the notices endorsed on the back hereof.)

(Endorsement to Form No. 69.)

Notices.

1. The sub-debtor should pay into Court any amount owing by him to the judgment debtor, and should not pay direct to the judgment creditor. If he disputes the debt he should attend at the time and place fixed for the hearing.

2. The attention of the judgment debtor is drawn to the provisions of section 52 (6) of the Statutes Amendment Act, 1936, which provides—

“The Court may hear evidence as to the circumstances of the judgment debtor, and, if it appears that the whole or any part of the moneys sought to be attached are reasonably required by the judgment debtor for the maintenance and support of himself and his family, the Court may discharge the order made under section 141 of the Magistrates' Courts Act, 1928, or subject to section 147 of the Magistrates' Courts Act may make such order as to the disposal of the moneys sought to be attached as it thinks fit.”

3. Either the judgment debtor or the sub-debtor may if he so desires make application under section 94 of the Magistrates' Courts Act, 1928, to have his evidence or the evidence of any other person taken at any Magistrate's Court if he or such other persons respectively be resident more than twenty miles from the Courthouse where the hearing is appointed to be held or be about to go and remain beyond such distance until after the hearing. Forms of application are obtainable from the Clerk of any Magistrate's Court and no fee is payable for the taking of such evidence.

Form No. 70.

[M.C.—70.

New Zealand,  
Statutes Amendment Act,  
1936, Section 52.  
The Magistrates' Courts  
(Attachment) Rules, 1937.]

ORDER ABSOLUTE AGAINST SUB-DEBTOR.

Plaint No. ...  
19

In the Magistrates' Court, held at .....

Between ....., judgment creditor, and ....., judgment debtor, and ....., sub-debtor.

UPON reading the attachment order made herein on the ..... day of ....., 19.., and upon application by the judgment creditor, and the sub-debtor not having paid into Court the amount due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt and costs, and not having appeared and disputed the debt: It is ordered that the above-named sub-debtor pay forthwith to the Clerk of this Court for the judgment creditor the sum of £..., being the debt due from him to the said judgment debtor (or being so much of the debt due from the said sub-debtor to the said judgment debtor as is sufficient to satisfy the said judgment debt and costs) and that in default thereof execution may issue for the same. And it is further ordered that the costs of this order in favour of the judgment creditor against the judgment debtor (including the costs of the sub-debtor hereinafter mentioned) be £..., and that the costs of this order in favour of the sub-debtor against the judgment creditor be .....

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

.....  
Stipendiary Magistrate.

	£	s.	d.
Amount of judgment and costs (including costs of attachment order) .. .. .	..	..	..
Costs of this order .. .. .	..	..	..
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Total amount payable by judgment debtor to judgment creditor .. .. .	..	..	..
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Amount of attached debt(s) .. .. .	..	..	..
Less costs allowed to sub-debtor .. .. .	..	..	..
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Net amount payable by sub-debtor to Clerk of Court ..	..	..	..
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Form No. 95.

[M.C.-95.

New Zealand.  
Statutes Amendment Act,  
1936, Section 52.  
The Magistrates' Courts  
(Attachment) Rules, 1937.

DISTRESS WARRANT (AGAINST THE GOODS OF A  
SUB-DEBTOR).

Plaint No. ...

In the Magistrate's Court, held at .....

Between ....., judgment creditor, and ....., judgment  
debtor, and ....., sub-debtor.

To ....., Bailiff of the Magistrate's Court, ..... or  
to .....

WHEREAS on the ..... day of ....., 19... the judgment  
creditor obtained a judgment, or order, against the judgment debtor for  
the sum of ..... pounds ..... shillings and .....  
pence, and ..... pounds ..... shillings and ..... pence  
for costs of the action and of subsequent proceedings, making together  
the sum of ..... pounds ..... shillings and ..... pence:  
And whereas it was, on the ..... day of ....., 19... ordered  
by the Court that the sub-debtor pay forthwith to the Clerk of this Court  
for the judgment creditor the sum of £... [being the debt due  
from him to the said judgment debtor], [or, being so much of the debt  
due from the said sub-debtor to the said judgment creditor as was  
sufficient to satisfy the said judgment debt and costs], and that in  
default thereof execution might issue for the same: And whereas  
the said sub-debtor has not paid to the Clerk of this Court the said sum  
of £...:

I certify that the amount of £... remains  
due and unsatisfied on this order.  
..... Clerk of the Court.

This is therefore to command you forthwith to levy the sum of  
£... and the further expenses incurred herein, by distress and  
sale of the goods and chattels of the said sub-debtor except his personal  
and family clothing, furniture and household effects, and tools and  
implements of trade not exceeding in all fifty pounds in value: and also  
to seize and take away any money, cheques, bills of exchange, promissory  
notes, bonds, or securities for money of the said sub-debtor or such part  
or so much thereof as may be sufficient to satisfy this execution and the  
cost of making and executing the same. And you are hereby com-  
manded to pay what you shall so levy forthwith to the Clerk of this  
Court, or the Clerk of Court at ....., and to make return of what  
you shall do by virtue of this warrant immediately on the execution  
thereof.

Given under my hand and the seal of the Court, at ...., this  
..... day of ....., 19...

.....  
Stipendiary Magistrate.

	£	s.	d.
Amount adjudged to be paid .. .. .	..	:	:
Warrant .. .. .	..	:	:
Costs of previous executions .. .. .	..	:	:
Mileage .. .. .	..	:	:
<b>Total .. .. .</b>	<b>£</b>	<b>:</b>	<b>:</b>

NOTICE.—The Bailiff is entitled to demand and levy mileage according to scale from the  
Courthouse to the place where seizure is made, and the cost of keeping possession of goods seized,  
which is not to exceed twelve shillings per day, or six shillings only where possession continues  
for not more than three hours. The goods and chattels are not to be sold until after the end of  
five days next following the day on which they were taken, unless they are of a perishable nature,  
or at the request in writing of the defendant.

Application was made to the Stipendiary Magistrate for this warrant at  
..... minutes past the hour of ..... in the ..... noon of the  
..... day of ....., 19...

.....  
Clerk of the Court.

Hours of attendance at the office of the Clerk are from 9.30 a.m. to 1 p.m.,  
and from 2 p.m. till 4 p.m., except on Saturdays, when the office will be closed.

Issued under the authority of the Regulations Act, 1936.  
These regulations are administered by the Department of Justice.