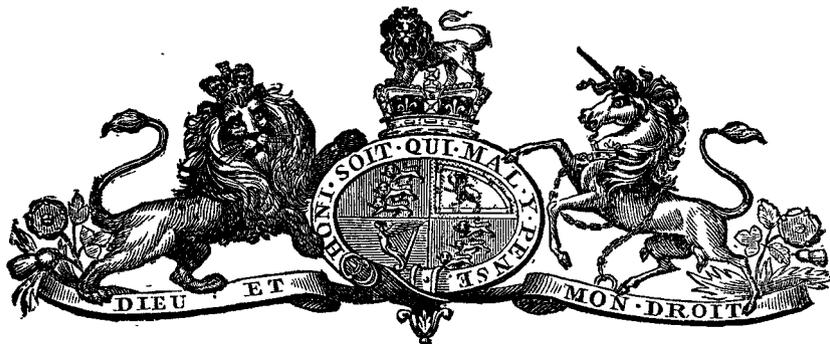


NEW ZEALAND.



ANNO TRICESIMO SECUNDO

VICTORIÆ REGINÆ.

No. XLVI.

ANALYSIS.

- | | |
|--|--|
| <p>Title.</p> <ol style="list-style-type: none"> 1. Short Title. 2. Interpretation. 3. Where more than one Resident Magistrate appointed to a district all may be ordered to exercise extended jurisdiction. 4. Certain parties may appear by agents. 5. So much of section 74 as prohibits imprisonment on judgments under £10 repealed. 6. 74th and 75th sections of the said Act not to apply to judgments under £10. 7. Judgment debtor may be summoned and examined as to his estate. 8. In case of default in appearance warrant may issue. 9. Commitment of debtor refusing to be sworn or give evidence or guilty of fraud. 10. Power to rescind or alter any order. 11. Same power to examine plaintiff and defendant at hearing after judgment as given on hearing of judgment summons. | <ol style="list-style-type: none"> 12. Keeper of gaol to keep defendant until discharged under this Act. 13. Imprisonment no satisfaction or extinguishment of debt. 14. Imprisonment under civil process to be in public gaol of Province. 15. Debtor to be discharged from custody on payment of debt and costs. 16. Eight preceding sections to apply only to judgments under £10. 17. Power to Magistrate to hold to bail. 18. Magistrate may order immediate payment and execution may issue at once. 19. If judgment against plaintiff Resident Magistrate may award compensation. 20. Resident Magistrate may grant writ of arrest. 21. Forms referred to by number are in Schedule. <p>Schedule.</p> |
|--|--|

AN ACT to amend "The Resident Magistrates Act 1867." Title.
[20th October 1868.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

1. The Short Title of this Act shall be "The Resident Magistrates Act 1868." Short Title.

2. The term "the said Act" where used in this Act shall mean "The Resident Magistrates Act 1867" and this Act shall be read and construed as part of the said Act. Interpretation.

3. It is hereby declared and enacted that when the limit of jurisdiction of any Resident Magistrate's Court of any district has been or shall be extended under the provisions contained in the said Act and more than one Resident Magistrate shall have been appointed for such district it has been and shall hereafter be lawful for the Governor to order under the provisions contained in the eighth section of the said Act that all or any or any one of the Resident Where more than one Resident Magistrate appointed to a district all may be ordered to exercise extended jurisdiction.

Resident Magistrates.

Magistrates appointed for such district shall exercise the extended jurisdiction therein.

Certain parties may appear by agents.

4. Under special circumstances the Court may permit any party to appear by an agent appointed in writing by any one of several plaintiffs or defendants where such plaintiffs or defendants are sued as copartners or where the party is out of the Colony by any agent appointed in writing by any person holding a power of attorney from such party authorizing such person to sue for and in the name of such party.

So much of section 74 as prohibits imprisonment on judgments under £10 repealed.

74th and 75th sections of the said Act not to apply to judgments under £10.

Judgment debtor may be summoned and examined as to his estate.

5. So much of the seventy-fourth section of the said Act as provides that no person shall be imprisoned on account of any judgment debt of less than ten pounds in amount is hereby repealed.

6. The seventy-fourth and seventy-fifth sections of the said Act shall apply only to judgment debts of more than ten pounds in amount.

7. It shall be lawful for any Resident Magistrate or Justice of the Peace upon the application of any party who has obtained judgment under the authority of the said Act for the payment of any debt or damages of less than ten pounds in amount and which remains wholly or partly unsatisfied to issue his summons (1.) directed to the party against whom such judgment shall have been obtained requiring him to appear at a time and place to be in such summons mentioned at the Resident Magistrate's Court in which such judgment shall have been given or at the Resident Magistrate's Court or Petty Sessions Court of the district within which he shall then be residing or carrying on business or before any Resident Magistrate or two Justices of the Peace near unto the place where he shall reside or carry on business if he shall reside or carry on business in a place not comprised within the limits of any Resident Magistrate's or Petty Sessions District to answer such things as are named in such summons and if he shall appear in pursuance of such summons it shall be lawful for the Court or the Resident Magistrate or Justices as the case may be to examine him upon oath touching his estate and effects and the manner and circumstances under which he contracted the debt or incurred the liability as to which judgment has been obtained against him and as to the means and expectations he then had and as to the property and means he still hath of discharging the said debt or damages or liability and as to the disposal he may have made of any property and the person applying for such summons as aforesaid and all other persons whom the Court Resident Magistrate or Justices as the case may be shall think requisite may be examined upon oath touching the inquiries authorized to be made as aforesaid and the costs of such summons and of all proceedings thereon shall be deemed costs in the cause.

In case of default in appearance warrant may issue.

8. If at the time and place mentioned in such summons as last aforesaid the party so summoned shall not appear when called and no sufficient excuse shall be alleged for his not appearing it shall be lawful for the Court Resident Magistrate or for any two Justices of the Peace upon proof that such summons was duly served a reasonable time before the time thereby appointed for appearance thereto either to proceed to make such inquiries as aforesaid in the absence of the party summoned or to issue a warrant under the hand of the Resident Magistrate or one of such Justices (2.) directed to the bailiff of the Court or any constable requiring him to apprehend the party so failing to appear and to bring him at a certain time and place to be in such warrant mentioned before the Court or before such Resident Magistrate or Justices of the Peace as shall then be there to answer to such things as shall be named in such warrant.

Commitment of

9. If the party attending in obedience to any such summons or

Resident Magistrates.

brought up by virtue of any such warrant shall refuse to be sworn or to disclose any of the things aforesaid or if he shall not make answer touching the same to the satisfaction of the Court Resident Magistrate or Justices of the Peace as the case may be or if it shall appear to the Court or the Resident Magistrate or Justices of the Peace either by the examination of the party or by any other evidence that such party if a defendant in incurring the debt or liability which is the subject of the action in which judgment has been obtained has obtained credit from the plaintiff under false pretences or by means of fraud or breach of trust or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same or has with intent to defraud his creditors or any of them made or caused to be made any gift delivery or transfer of any property or charged removed or concealed the same or if it shall appear to the satisfaction of the Court Resident Magistrate or Justices of the Peace that the party so summoned has then or has had since the judgment obtained against him sufficient means and ability to pay the debt or damages or costs so recovered against him either altogether or by any instalment or instalments which the Court in which the judgment shall have been obtained shall have ordered and if he shall refuse or neglect to pay the same as shall have been so ordered or as shall be ordered pursuant to the order hereinafter provided it shall be lawful for the Court Resident Magistrate or Justices of the Peace if it he or they shall think fit to order that such party be committed to any convenient gaol for any period not exceeding three calendar months And it is hereby expressly declared that when a debtor is committed under this section of this Act the creditor at whose instance such debtor shall be committed shall not be required to pay the maintenance money required to be paid by the three hundred and eleventh section of "The Bankruptcy Act 1867."

debtor refusing to be sworn or give evidence or guilty of fraud.

10. It shall be lawful for the Court Resident Magistrate or Justices of the Peace before which or whom any such summons shall be heard if it he or they shall think fit to rescind or alter any order that shall have been previously made against any defendant so summoned before it him or them for the payment by instalments or otherwise of any debt or damages recovered and to make any further or other order either for the payment of the whole of such debt or damages and costs forthwith or by any instalments or in any other manner as the Court Resident Magistrate or Justices may think reasonable and just.

Power to rescind or alter any order.

11. In every case where the defendant in any suit brought in any Resident Magistrate's Court shall personally appear at the trial of the same the Court at the hearing of the cause or at any adjournment thereof if judgment shall be given against the defendant for any sum less than ten pounds shall have the same power and authority of examining the defendant and the plaintiff and other parties touching the several things hereinbefore mentioned and of committing the defendant to prison and of making an order as the Court or a Resident Magistrate or any two Justices might have and exercise under the provisions hereinbefore contained in case the plaintiff had obtained a summons for that purpose after the judgment obtained as hereinbefore mentioned.

Same power to examine plaintiff and defendant at hearing after judgment as given on hearing of judgment summons.

12. When any order of commitment shall have been made as aforesaid the Resident Magistrate or any Justice of the Peace making or concurring in such order shall issue a warrant under his hand (3.) directed to the bailiff of any Resident Magistrate's Court or Petty Sessions Court or to some other person by name who by such warrant shall be empowered to take the body of the person against whom such order shall be made and the gaoler or keeper of any gaol mentioned in such warrant shall be

Keeper of gaol to keep defendant until discharged under this Act.

Resident Magistrates.

bound to receive and keep the defendant therein until discharged under the provisions of this Act or otherwise by due course of law and no protection order or other proceeding granted by any Court under any provisions for the relief of insolvent debtors shall be available to discharge any defendant from any commitment under such last-mentioned order.

Imprisonment no satisfaction or extinguishment of debt.

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

Imprisonment under civil process to be in public gaol of Province.

14. When any person shall under the provisions hereinbefore contained be committed to prison from any Resident Magistrate's Court or Court of Petty Sessions by any Resident Magistrate or any two Justices of the Peace he shall be committed to prison and be imprisoned in some public gaol in the Province in which such Court is situate and shall be kept in that part of such gaol in which debtors imprisoned in such gaol under civil process from the Supreme Court are usually confined and be subject to any regulations made in respect of such debtors for the time being in force.

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

15. Any person imprisoned under this Act who shall have paid or satisfied the debt or demand or the instalments thereof payable and costs remaining due at the time of the order of imprisonment being made together with the costs of obtaining such order and all subsequent costs shall be discharged out of custody upon the certificate of such payment or satisfaction signed by the Clerk of the Court by leave of the Court Resident Magistrate or Justices of the Peace by which or whom the order of the imprisonment was made.

Eight preceding sections to apply only to judgments under £10.

16. The eight preceding sections shall apply only to judgments for payment of debt or damages of less than ten pounds in amount.

Power to Magistrate to hold to bail.

17. Whenever it is made to appear to the satisfaction of any Resident Magistrate having jurisdiction to the amount of the claim by affidavit of any plaintiff or his authorized agent that he has a good cause of action against any defendant residing or being within his district for any sum within the jurisdiction of such Magistrate under the said Act and that there is probable cause the grounds of which shall be stated in such affidavit for believing that such defendant is about to leave the Colony with intent fraudulently to evade the payment of such sum it shall be lawful for such Magistrate to issue a warrant under his hand returnable immediately and thereupon to cause such defendant to be brought before him and upon investigation of the case either to discharge such defendant or to hold him to bail for any sum not exceeding the amount sworn to in such affidavit Provided that it shall be lawful for any defendant against whom such warrant has issued for any amount to deposit with the officer executing such warrant or with the Clerk of the Court in lieu of bail such amount with three pounds for costs and the sum so deposited shall be paid applied and disposed of according to the judgment of the Court in the action in which the deposit is made Provided also that it shall be lawful for any Resident Magistrate before whom any defendant is brought under authority of any warrant to be issued as aforesaid with the consent in writing of the defendant to hear and finally adjudicate upon the claim of the plaintiff in such proceeding.

Magistrate may order immediate payment

18. In any case in which any Resident Magistrate hears and finally adjudicates upon the claim of any plaintiff under the power

Resident Magistrates.

contained in the preceding section and gives judgment for the plaintiff it shall be lawful for him to make an order for the immediate payment of the amount of such judgment with costs not exceeding forty shillings and execution may be at once issued notwithstanding that the sum received for debt or damages does not amount to ten pounds and such other proceedings may be had thereon as if the same were a judgment obtained in the ordinary course of procedure.

and execution may issue at once.

19. If in any such proceeding judgment is given for the defendant it shall be lawful for any Resident Magistrate giving such judgment at his discretion to award to such defendant by way of compensation any sum not exceeding twenty pounds and such award shall be deemed to be a judgment of the Court and execution may issue thereon.

If judgment against plaintiff Resident Magistrate may award compensation.

20. Whenever neither a Judge nor Registrar nor Deputy Registrar of the Supreme Court shall reside within any district constituted under the said Act the Resident Magistrate of such district shall have the same powers in all cases as the Supreme Court to grant a writ of arrest for the purpose of holding to bail a defendant who is about to quit the Colony and also to order the person arrested to be discharged from custody or the bail-bond to be given up that it may be cancelled or the writ of arrest to be set aside Provided always that it shall not be necessary to issue a writ of summons in the Supreme Court before a writ of arrest may be granted by a Resident Magistrate Provided always that any writ of arrest and all proceedings thereon may be dealt with by a Judge of the Supreme Court as though such writ had issued from that Court Provided also that the rules for the time being in force regulating the practice and procedure in the application for issue of and generally with regard to writs of arrest to be issued by Judges of District Courts shall apply to writs of arrest to be issued by Resident Magistrates under this section of this Act and shall be observed accordingly.

Resident Magistrate may grant writ of arrest.

21. The forms referred to by number only in this Act are those in the Schedule hereto and the provisions contained in the thirty-ninth section of the said Act shall apply to the forms in the Schedule hereto.

Forms referred to by number are in Schedule.

SCHEDULE.

Schedule.

1.

SUMMONS TO PARTY AGAINST WHOM THERE IS AN UNSATISFIED JUDGMENT TO APPEAR TO BE EXAMINED.

Resident Magistrate's)
 District of)
 To wit,)
 Between A.B. plaintiff and C.D. defendant.
 To the above-named

WHEREAS judgment was given against you in the above cause at a Court holden at _____ in the Resident Magistrate's District of _____ on the _____ day of _____ and such judgment is still unsatisfied [And whereas it has been made to appear to me that you are residing in this district] This is to command you to appear at the Resident Magistrate's Court to be holden at _____ on the _____ day of _____ at the hour of _____ o'clock in the _____ noon there to be examined upon oath touching [here set forth the particulars touching which inquiry is to be made] Herein fail not at your peril.

Given under my hand at _____ in the _____ this _____ day of _____ 186
 J. S. Resident Magistrate.

Resident Magistrates.

1A.

HAMENE KI TE TANGATA KAHORE NEI ANO I RITE NOA I A IA TE WHAKATAUNGA A
TE KOOTI KIA HAEBE AKE IA KIA PATAPATAIA.

Takiwa Kaiwhawha

o
ara

I te mea i a A.B. kai-toho raua ko C.D. kai whakaoraara.

Ki te tangata e piri nei tona ingoa ara ki a

NOTEMEA i puta te kupu mo runga mo te mea e ata tohutohungia nei ona ritenga ki
runga ake nei i te Kooti i noho ki i roto i te Takiwa Kai Whakawa o
i te o nga ra o kahore ano i rite noa i a koe tau mea [a no te mea kua
toe mai mahar ki au tenei ano koe kei roto o tenei Takiwa e noho ana]. He kupu atu
tenei kia putemai koe ki te Kooti o te Kai Whakawa Tuturu ka noho ki a te
o nga ra o a te o nga haora i te Kia ahei ai te patai atu ki a
koe i runga i to oati

Kei anga koe kei turi ka he koe.

He mea tuku atu tenei i raro i toku ringa i

i tenei o nga rao

J.S. Kai Whakawa Tuturu.

186

2.

WARRANT TO APPREHEND A PARTY AGAINST WHOM AN UNSATISFIED JUDGMENT EXISTS
THAT HE MAY BE BROUGHT UP TO BE EXAMINED.

To W.T. bailiff of the Resident Magistrate's Court of [or constable].

WHEREAS at a Resident Magistrate's Court holden at in the district of
on the day of last upon the hearing of a case in which A.B. was plaintiff
and C.D. defendant judgment was given against the said and such judgment is
still unsatisfied And whereas afterwards I issued a summons to the said
commanding him to appear at the Resident Magistrate's Court to be holden at
on the day of at the hour of o'clock in the noon that
he might be examined upon oath touching [here set forth the particulars of the inquiry as
in summons] And whereas the said failed to appear in obedience to such
summons although it has now been proved to me by the oath [or affidavit] of
that such summons was duly served upon the said a reasonable time before the
time appointed for appearance thereto This is therefore to command you to take the
said and to bring and have him at o'clock in the noon at the
Resident Magistrate's Court at there to be examined touching the matters
aforesaid.

Given under my hand this day of at in the district of
J. S. Resident Magistrate.

2A.

WARATI MO TE TANGATA KAHORE NEI ANO I RITE NOA I A IA TE WHAKATAUNGA A
TE KOOTI KIA KOPUKINA KIA AHEI AI TE PAPAPATAI.

Ki a W.T. Karere o te Ko te Kai Whakawa Tuturu o

NOTEMEA i te Kooti o te Kai Whakawa Tuturu i noho ki i te Takiwa o
i te o nga ra o kua pohemo nei i te whakawakanga o tetahi mea ko
A.B. te kai-tohe ko C.D. te kai whakaoraara i kiia me utu a C.D. i taua mea heoi ano
taua whakataunga i rite noa A no te mea i muri iho o tera ka tukua atu e ahau he
Hamene ki taua he karanga atu i a ia kia haere mai ki te Kooti o te Kai Wha-
kawa Tuturu ko noho ai a te o nga ra o i te o nga
haora i te kia ahei ai te patapatai i runga i runga i tana oati mo te mea A no
te mea kahore taua i putumai i runga i taua Hamene ahahoa i runga i te oati ki
toku aroaro kua kite ano ia i tatu ano taua Hamene ki a ia kia i te mea
kahore ano i pahemo noa te wa tika mo te tuku ki a ia kia ahei ai ia te haere mai a te ra
i whakaritea mo taua mea He kupu atu tenei ki a koe kia tangohia mai e koe taua
kia arahina mai e koe kia tae mai ia ki te Kooti o te Kai Whakawa Tuturu i
a te o nga haora i te kia ahei ai te patapatai i reoia mo aua
mea kua oti te whakahua ki runga ake nei.

He mea tuku atu tenei i raro i taku ringa i tenei o nga ra o i te

Takiwa o

J. S. Kai Whakawa Tuturu.

3.

WARRANT OF COMMITMENT UNDER SECTION 12 OF THE ACT.

To W.T. bailiff of the Resident Magistrate's District of and to the Gaoler
of the Public Gaol at

WHEREAS at a Resident Magistrate's Court holden at on the day of
upon the hearing of a case in which A.B. was plaintiff and C.D. defendant judgment
was given against the said and such judgment is still unsatisfied And whereas
the said was duly summoned to appear before me this day of

Resident Magistrate.

to be examined upon oath touching [*here set forth the particulars as in the summons*]
 And whereas the said this day appeared before me [but refused to be sworn or
 refused to disclose any of the things aforesaid or did not make answer to my satisfaction
 touching the things aforesaid] or whereas the said this day [appeared before me
 or failed to appear before me although it was proved to me that such summons was duly
 served upon the said a reasonable time before the time thereby appointed for
 his appearance thereto] and I did thereupon proceed to inquire into the matters named
 in such summons and it appeared to me that [*here set forth the grounds of the committal*]
 This is therefore to command you the said bailiff [*or constable*] to take the said
 and him safely convey to the said common gaol at and there deliver him to the
 gaoler thereof together with this precept And I do command you the said gaoler to
 receive the said into the said common gaol there to imprison him for the space
 of days unless the sum of £ due upon the said judgment together
 with for costs hereof shall be sooner paid.

Given under my hand at this day of 186 .
 J. S. Resident Magistrate.

3A.

WARATI TUKU KI TE WHARE-HEREHERE I RUNGA I NGA RITENGA KUA OTI TE TOHU-
 TOHU KI TE 12 O NGA RERANGI O TE TURE.

Ki a W.T. Karere o te Takiwa Kai Whakawa o

Ki te Kaitiki hoki o te Whare-herehe i

NOTEMEA i te Kooti a te Kai Whakawa, i noho ki i te o nga ra o
 I te whakawakanga o tetahi mea ko A.B. te kai-tohe ko C.D. te kai whakaoraora i he ko
 a ko taua whakataunga kahore ano i rite noa A no te mea he mea Hamene
 marire taua kia pata mai ia ki tohu aroaro a tenei o nga aa o
 kia patapatai i runga i tana oati mo te mea a no te mea Na he kupu atu
 tenei ki a koe ki te Karere kia kawea atu e koe taua nei ki te Whare-herehere i
 ka hoatu ia e koe ki te kai-tiaki o te Whare-herehere mau hoki tenei pukapuka
 e hoatu ki a ia He kupu atu tenei naku ki a koe ki te kai-tiaki o te Whare-herehere
 kia tukua e koe taua nei ki roto ki te Whare-herehere waiho ai ia i a ki reira kia
 nga ra ki te mea ekore nga mo runga mo te whakataunga a te Kooti
 nei e me utu ki te Kooti e ea a mua mai

He mea tuku atu tenei i raro i taku ringa i tenei o nga ra o 186 .
 J. S. Kai Whakawa Tuturu.

WELLINGTON, NEW ZEALAND:

Printed under the authority of the New Zealand Government by GEORGE DIDSBUXY, Government Printer.