

RULES OF THE SUPREME COURT (1965 REPRINT) -

PART II

RULES AND FORMS FOR REGULATING PROCEEDINGS UNDER THE DEBTORS' ACT 1870, AND THE FEES TO BE TAKEN THEREON

1 – (1) The rules and forms in this Part shall apply to and regulate proceedings in, and the fees prescribed by this Part shall be taken in, all courts.

(2) In the application of this Part to proceedings in any court other than the Supreme Court, unless the contrary intention appears, the expressions –

- (a) “Supreme Court” or “Court” includes a Court of Requests and a Court of General Sessions;
- (b) “judge” includes the commissioner of a Court of Requests or chairman of a Court of General Sessions;
- (c) “registrar or proper officer” means the registrar of the relevant court;
- (d) “registry”, “district registry”, or “proper office” means the office of the registrar of the relevant court;
- (e) “Sheriff” includes a bailiff of a Court of Requests or Court of General Sessions; and
- (f) “court other than the Supreme Court” (or any expression of like import) means any other court under the Local Courts Act 1896,

and the rules and the forms in Appendix N shall be construed with such adaptations and alterations of terms as may be necessary for the purposes of such application.

(3) All Rules of Court made under the Act prior to the enactment of this Part are hereby rescinded.

2 No order of commitment under the *Debtors Act* 1870 (which Act is in this Part referred to as “the Act”), shall be made unless a summons (which summons is hereinafter called a “judgment summons”) has been personally served upon the judgment debtor.

3 – (1) A judgment summons may be issued without leave out of the proper office of the Court which is nearest to the debtor’s place of residence or business, but no judgment summons shall be issued out of any office of the Court situate at any other place unless a judge grants leave so to do.

(2) Leave under sub-rule (1) of this rule may be granted in any case in which a judge in his discretion thinks fit to grant the same.

4 An application for such leave may be made *ex parte* upon an affidavit for leave setting forth the facts upon which the application is grounded.

5 The proper office of the Court for issuing a judgment summons at Hobart shall be the office of the Clerk of the Court.

6 The proper office of the Court for issuing a judgment summons at any place other than Hobart shall be the office of the district registrar, if any, at such place, or, if there is no district registry at such place, the office of the deputy or assistant registrar of the Court, if any, at such place.

7 Unless a judge otherwise directs, every judgment summons shall be heard at the place from the office of the Court at which the judgment summons was issued, provided that no judgment summons shall be placed on the list for hearing until payment of the hearing fee.

8 An application by a judgment creditor for the issue of a judgment summons shall be in writing in the form prescribed, and shall be signed by the applicant or his solicitor or other agent.

9 If the judgment summons is applied for at Hobart, the applicant shall file the application with the Clerk of the Court, and shall at the same time deliver to him two copies of the judgment summons, and the Clerk of the Court shall (subject to any direction of a judge) appoint a time for the hearing of the judgment summons, and shall sign both copies of the judgment summons, and (unless the applicant requires the summons to be served under rule 17) return one copy thereof to the applicant or his solicitor or other agent.

10 If the summons is applied for at any place other than Hobart, the applicant shall file the application with the district registrar or deputy or assistant registrar, as the case may be, and shall at the same time deliver to him two copies of the judgment summons, and the district registrar or deputy or assistant registrar, as the case may be, shall (subject to any direction of a judge) appoint a time for the hearing of the judgment summons, and shall sign both copies of the judgment summons, and (unless the applicant requires the summons to be served under rule 17) return one copy thereof to the applicant or his agent.

11– (1) In the case of a judgment or order against a firm, or against a person who is carrying on business in any name other than his own, in such other name, if the person entitled to enforce the judgment or order desires to do so by judgment summons against any person whom he alleges to be a partner in, or the sole member of, such firm, or against the person whom he alleges to be carrying on business in such other name as aforesaid, he shall file an affidavit, together with a copy thereof in one of the prescribed forms, and thereupon a judgment summons shall issue in the prescribed form to such person alleged to be such partner or sole member or to be carrying on business in such other name as aforesaid, and there shall be annexed to such judgment summons and served therewith a copy of the said affidavit sealed with the seal of the Court.

(2) If a person alleged to be a partner or sole member, or to carry on business in another name as referred to in sub-rule (1) of this rule, does not appear on the return day of such judgment summons he shall be deemed to admit that he is a partner in, or the sole member of, such firm, or that he does carry on business in such other name as aforesaid, and to admit his liability to pay the amount due and payable under such judgment or order, but if such person appears and denies that he is a partner in, or the sole member of, such firm, or that he carries on business in such other name as aforesaid, the judge may then hear and determine the fact or may direct an issue to be tried to determine the same.

12 – (1) Where a judgment creditor desires to apply for a judgment summons to an officer of the Court at some place other than a registry of the Court at which the judgment or order is recorded, he shall obtain from the proper officer of the Court at such registry a certified copy of the judgment or order, and shall file such office copy with his application.

(2) For the purposes of this rule the office of the Clerk of the Court at Hobart shall be deemed to be at the Registry of the Court at Hobart.

13 Where a judgment creditor desires to apply for a judgment summons in respect of a judgment or order of some court other than the Supreme Court, he shall obtain from the proper officer of such court an office copy of the judgment or order, and shall file the same with his application.

14 Where a party desires to enforce by commitment any judgment or order of any court other than the Supreme Court, he shall obtain from the proper officer of the court in which the judgment or order was given or made an office copy of the judgment or order he desires so to enforce, and shall file such office copy, together with an affidavit of the sum then due thereon, with his application.

15 Every judgment summons shall be in the prescribed form, and (except as provided by rule 16) shall be issued and served not less than four clear days before the day on which the judgment debtor is required to appear.

16 – (1) Where the person applying for the judgment summons states to the officer to whom the application for the judgment summons is made that the judgment debtor is about to quit Tasmania or to remove from his place of residence or 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.

(2) Notwithstanding sub-rule (1) of this rule, the judge shall not act upon a summons issued under this rule unless, at the hearing, the judge is satisfied by evidence on oath that at the time of the application for the judgment summons such party was either about to quit Tasmania or to remove from his place of residence or business, or was keeping out of the way to avoid service.

17– (1) Upon payment of the prescribed fee and compliance with the provisions of this rule, any applicant for a judgment summons may require the judgment summons to be served by the bailiff or other proper officer of any court of requests or court of general sessions.

(2) Any applicant for a judgment summons who desires to have the same served by any such bailiff or other officer as aforesaid shall make application in the prescribed form to the officer to whom the application for the judgment summons is made, and shall deliver to such officer a third copy of the judgment summons, and shall, at the same time, pay the prescribed fee.

(3) The officer to whom the application is made shall thereupon forthwith cause the original judgment summons and a true copy thereof to be delivered to the registrar of the court of requests or court of general sessions nearest to the judgment debtor's place of residence or place of business, with a request in the prescribed form that the judgment summons be served by the bailiff or other proper officer of such court, and thereupon forthwith the registrar of such court shall cause the judgment summons to be so served.

(4) The bailiff or other officer serving any judgment summons under this rule shall, after the service thereof, prepare and swear an affidavit in the prescribed form of the service of the judgment summons, and shall thereupon forthwith deliver such affidavit and the original judgment summons to the registrar of the court from whom he received it, and such registrar shall thereupon forthwith cause such affidavit and judgment summons to be delivered to the officer of the court from whom he received it.

18 An affidavit of any officer of any court of requests or court of general sessions of the service of any judgment summons under rule 17 shall be sufficient evidence of such service.

19 Where a judgment summons has not been served in due time a successive summons thereunder may be issued without fee at any time within three months after the issue of the judgment summons, but, if such successive summons is not served in due time, no further successive summons shall be issued, but a fresh judgment summons may be issued on payment of the prescribed fee.

20 The hearing of a judgment summons may be adjourned from time to time and from any place to any place.

21– (1) Proof of the means of the judgment debtor may be given either by affidavit or by *viva voce* evidence, but in any case in which such proof is given by affidavit the judge may order the deponent to attend before the judge at a time and place to be appointed by the order for the purpose of being examined orally.

(2) The judge may also order any person to attend before a judge at a time and place to be appointed by the order, and to then and there produce any document.

(3) The disobedience to any order under this rule shall be deemed a contempt of court and shall be punishable accordingly.

22 Witnesses may be summoned to prove the means of the judgment debtor by a summons in the form prescribed; and the expenses of any person examined by the judge whether summoned or not may be allowed by the judge.

23 – (1) A judgment debtor summoned by a judgment summons to attend before a judge for the purpose of being examined touching his means shall be bound to attend for that purpose at the time and place appointed in that behalf by the judgment summons, and it shall not be necessary to serve on the judgment debtor any further or other summons for that purpose.

(2) Any judgment debtor duly served with a judgment summons who fails without sufficient cause to attend before the judge pursuant to the judgment summons shall be guilty of a contempt of court, and shall be punishable accordingly.

24 Upon the issue of a judgment summons against a party upon a judgment or order of the Supreme Court or a judge, the Sheriff or other proper officer of the Supreme Court shall lodge in Court any writ of execution against the goods of such party which may have been issued in the action.

25 Where a judgment summons grounded on a judgment or order of some court other than the Supreme Court is heard in the Supreme Court, and an order of commitment or an order altering the terms of the judgment or order is made, all payments made under the new order shall be made into, and execution or other process shall be issued from, the Supreme Court.

26 Where a certified copy of a judgment or order is obtained under rule 12, the officer by whom the certified copy of the judgment has been issued shall make, on the record of the judgment or order, a memorandum of having given such certified copy, and no writ or warrant of execution against the lands and goods of the judgment debtor, or judgment summons upon such judgment or order, shall issue from the registry out of which such certified copy was issued, unless it be shown to the satisfaction of the proper officer at such registry that no order has been made against the execution debtor upon such certified copy.

27 On the hearing of a judgment summons the judge may make an order of commitment or an order for payment of the amount due by instalments, or the judge may make an order of commitment and direct that the order shall not issue for a certain time to be specified in the order or at all if the judgment debtor pays the amount due by the instalments specified in the order.

28 – (1) Where on the hearing of a judgment summons the judge makes a fresh order for payment by instalments, there shall be included in the amount payable under such order, for the purpose of any proceedings under such order otherwise than by way of judgment summons, the amount, if any, in respect of which an order of commitment has been made and in respect of which the defendant has been imprisoned, but so that the defendant shall not be liable to be imprisoned a second time for non-payment of such lastmentioned amount.

(2) On any subsequent judgment summons issued on default of payment in any instalment or instalments payable under such fresh order, the amount, if any, in respect of which the defendant has been imprisoned before the date of the order shall be deducted on the face of the summons from the amount payable under the order; but, in calculating for the purposes of any such subsequent summons the amount in payment of which the defendant has made default, the instalments payable under the order shall be considered as attributable in the first instance to the discharge of the amount payable under the order other than the amount in respect of which the defendant has been so imprisoned, and the summons may be issued for the full amount of the instalments in arrear if such amount does not exceed the balance which remains payable under the order after deducting the amount in respect of which the defendant has been so imprisoned or if the instalments in arrear exceed such balance then for the amount of such balance.

29 Costs incurred in endeavouring to enforce a judgment or order by way of execution against the lands and goods of the judgment debtor, and not recovered under such execution, shall not be included in the amount due under such judgment or order for the purpose of a judgment summons unless a judge shall be satisfied that there was reasonable cause for issuing the execution, nor shall money paid into Court otherwise than under an execution against the lands and goods of the judgment debtor be attributed to payment of such costs.

30 An order of commitment made under the Act shall be according to the form in Appendix N, and shall, on whatever day it may be issued, bear date of the day on which the order of commitment was made, and shall continue in force for one year from such date and no longer.

31 When an order of commitment for non-payment of money is issued, the defendant may, at any time before his body is delivered into the custody of the gaoler, pay to the Sheriff or his officer the amount endorsed on the order as that on the payment of which he may be discharged; and on receiving such amount the Sheriff or his officer shall discharge the defendant, and shall within twenty-four hours after receiving such amount pay over the same to the Registrar of the Court or the district registrar or deputy or assistant registrar, as the case may require.

32 – (1) The sum endorsed on the order of commitment, as that upon payment of which the prisoner may be discharged, may be paid to the Registrar of the Court, or the district registrar, or deputy or assistant registrar, as the case may require, or to the gaoler in whose custody the prisoner is.

(2) Where the sum of money referred to in sub-rule (1) of this rule is paid to the Registrar, or district registrar, or deputy or assistant registrar, he shall sign and seal a certificate of such payment, and, upon receiving such certificate by post or otherwise, the gaoler in whose custody the prisoner shall then be shall forthwith discharge such prisoner.

(3) Where the sum of money referred to in sub-rule (1) of this rule is paid to the gaoler, he shall, upon payment to him of such sum, together with the sum necessary to defray the cost of transmitting such sum to the Registrar of the Court, or the district registrar, or assistant or deputy registrar, as the case may require, by post-office order or postal notes (if the case is one in which in the opinion of the gaoler it is necessary or proper so to transmit such sum), sign a certificate of such payment and discharge the prisoner.

33 A certificate of payment by a prisoner shall be according to the form in Appendix N.

34 Orders of commitment against the same party may be issued concurrently; provided that the costs of one order only shall be allowed unless the judge shall otherwise direct.

35 – (1) The costs of a judgment summons shall not be allowed against costs of the judgment debtor, unless some order shall be made thereon

(2) Where an order is made on a judgment summons the judge may, in his discretion, allow the costs of any previous judgment summonses which have not been served by reason of the judgment debtor having evaded service.

36 An order to arrest under section five of the Act (which shall be in accordance with form No. 13 in Appendix N, with such variations as circumstances may require) shall be made upon affidavit and *ex parte*, but the defendant may, at any time after arrest, apply to the Court or a judge to rescind or vary the order, or to be discharged from custody, or for such other relief as may be just.

37 – (1) An order to arrest shall, before delivery to the Sheriff, be endorsed with the plaintiff's address for service, as required in the case of writs of summons.

(2) Concurrent orders may, if necessary, be issued for arrest in different parts of the State.

(3) The Sheriff or other officer executing the order shall be entitled to the same fees as heretofore.

38 – (1) The security to be given by the defendant may be a deposit with the Sheriff of money or stock or debentures of the Government of Tasmania or of the Commonwealth of Australia to the amount mentioned in the order, or a bond to the plaintiff by the defendant and two sufficient sureties to be approved by the plaintiff or a judge (or with the leave of the court or a judge either one surety or more than two), or security in the form

prescribed by Division 2 of Part 34 of the Supreme Court Rules 2000, or, with the plaintiff's consent, any other form of security.

(2) The plaintiff may, within four days after receiving particulars of the names and addresses of the proposed sureties, give notice that he objects thereto, stating therein the particulars of his objections, in such case the sufficiency of the security shall be determined by a judge who shall have power to award costs to either party.

(3) It shall be the duty of the plaintiff to obtain an appointment for that purpose, and unless he does so within four days after giving notice of objection the security shall be deemed sufficient.

39 The money deposited and the security, and all proceedings thereon, shall be subject to the order and control of the Court or a judge.

40 Unless otherwise ordered the costs of and incidental to an order of arrest shall be costs in the cause.

41– (1) Upon payment into Court of the amount mentioned in the order a receipt shall be given; and upon receiving the bond or other security, a certificate to that effect shall be given, signed or attested by the plaintiff's solicitor, if he have one, or by the plaintiff if he sue in person.

(2) The delivery of such receipt or a certificate to the Sheriff or other officer executing the order shall entitle the defendant to be discharged out of custody.

42 The Sheriff or other officer named in an order to arrest shall, within two days after the arrest, endorse on the order the true date of such arrest.

43 The fees payable in respect of judgment summonses and proceedings connected therewith shall be those set out in the schedule to these rules.

44 – (l) Except where a judge otherwise directs, the solicitor's costs upon and in connection with proceedings by way of judgment summons shall –

(a) in the Supreme Court, be in accordance with the scale of costs prescribed for a judgment creditor by Part 4 of Schedule 1 to the Supreme Court Rules 2000

(b) in any other court, be in accordance with the following scale of costs: –

	\$
(i) In respect of debts exceeding \$1,000	28.00
(ii) In respect of debts exceeding \$500 but not exceeding \$1 000	24.00
(iii) In respect of debts exceeding \$200 but not exceeding \$500	19.00
(iv) In respect of debts exceeding \$100 but not exceeding \$200	16.00
(v) In respect of debts exceeding \$50 but not exceeding \$100	12.00

(vi) In respect of debts exceeding \$20 but not exceed \$50	10.00
(vii) In respect of debts not exceeding \$20	7.00

(2) The costs payable to a solicitor pursuant to paragraph (a) or paragraph (b) of sub-rule (1) are inclusive of Court fees.

Schedule in separate document