

SMALL CLAIM ACT

CHAPTER 387

Interpretation

1. In this Act

“court” means the Provincial Court hearing matters under this Act;

“judge” means a judge of the court.

1975-71-1

Jurisdiction

2. (1) The court, among other powers, has jurisdiction in

- (a) actions in which a justice has by law civil jurisdiction;
- (b) actions for redemption or for enforcing a mortgage, charge or lien over chattels where the amount secured does not exceed the sum of \$2,000;
- (c) actions for specific performance of or for the reforming, or delivering up, or cancelling of any agreement relating to chattels or services, or both, including proceedings for relief under the *Consumer Protection Act*, where the value of the chattels and services, or either of them, does not exceed \$2,000;
- (d) actions for relief against fraud or mistake in respect of any transaction relating to chattels or services, or both, in which the damage sustained, or the estate or fund in respect of which the relief is sought, does not exceed in amount or value the sum of \$2,000;
- (e) all other personal actions where the debt or damages claimed does not exceed \$2,000;
- (f) action under the *Recovery of Goods Act*, where the value of the property does not exceed \$2,000.

(2) A person wishing to commence proceedings under this section may reduce his claim by crediting payment or by abandonment to bring his demand within the jurisdiction of the court.

1968-12-14, 1969-28-36, 1970-18-4, 1970-44-19, 1973-80-2, 1975-71-2, 1979-2-58

No jurisdiction

3. The court has no jurisdiction

- (a) where the title to land comes into question;
- (b) for malicious prosecution, for libel or slander;
- (c) for seduction or breach of promise of marriage; or
- (d) against a judge for anything done by him in the execution of his office.

RS1960-359-5, 1969-28-36

Procedure

4. (1) Prescribed forms are not necessary in court but in a summons for recovery of a debt or of damages, the particulars of the claim shall be expressed in writing, and be stated in or annexed to a summons, in a form the court sees fit, issued from the court and served on the opposite party or as directed.

(2) When a precedent is required the forms provided by the *County Court Act* and the rules for proceedings in that court shall serve for a guide. When anything necessary for carrying out this Act is omitted in this Act, the remedies, practice and procedure in the County Court may be applied.

(3) Process, particulars, or an order, judgment or other document of the court need not state in technical terms the jurisdiction of the court or the subject matter of the action.

RS1960-359-6, 1968-12-15, 1969-28-36, 1973-80-3, 1975-71-3

Removal into County Court

5. (1) Where the debt or damages claimed in an action brought in the court amounts to \$300 or more, and it appears to the County Court of the county where the defendant resides or carries on business that the case should be tried in the County Court, and the court by order so directs, the action may be removed from the court into the County Court on terms as to costs previously incurred or other terms as the court making the order thinks fit, and all proceedings shall be transferred by the court to the registrar of the County Court.

(2) The court may also in a similar manner remove into the County Court an action in which the defendant claims a set-off or counterclaim for debt exceeding \$2,000, or sets up a counterclaim for damages exceeding \$2,000.

RS1960-359-7, 1967-47-3, 1969-28-36, 1973-80-4, 1975-71-4, 1979-2-58

Judge

6. Any judge of the court may preside at any step in a proceeding in the court and may, on a judge's death or inability for any reason to conclude a hearing or examination already commenced, continue or in his discretion recommence the hearing or examination.

RS1960-359-8, 1969-28-36, 1975-71-13

Place of trial

7. (1) Where the claim arose, or the defendant or one of the defendants resides or carries on business in a municipality and there are sittings in that municipality, the trial shall be held at the sittings in that municipality. Otherwise a trial shall be held at the court nearest to the place where the defendant or one of the defendants resides or carries on business, or where the cause of action arose.

(2) Where all parties to an action are present at the hearing, or represented by counsel, the court may hear the action as long as all of the parties, or their counsel, consent to its jurisdiction.

(3) Notwithstanding subsection (1), the court may at any time order that the action or trial be sent for hearing or disposition or otherwise to another judge or to another part of the Province. In this case the proceeding shall be sent together with all pleadings to the other judge or to the court at the other part of the Province and the parties shall be notified accordingly.

1975-71-5, 1979-2-59

Adjournment and decision

8. (1) The court may adjourn as necessary to finish the business before the court and may, where material and necessary witnesses are absent, or for other good reason, adjourn until a later day.

(2) Every decision of the court except in actions for debt where judgment has been signed by default, shall be given in open court on the day fixed for trial or the day to which the proceeding may be adjourned.

RS1960-359-10, 1967-47-4, 1969-28-36, 1975-71-6

Punishment for contempt

9. (1) The court may punish for contempt a person guilty of a breach of the peace or disturbance tending to obstruct the official proceedings of the court, or a witness guilty of a wilful refusal at a trial before the court to testify or produce documents.

(2) A person found guilty under this section may be removed from court and the court may impose a fine not exceeding \$100 or imprisonment not exceeding 30 days, or both. The court shall record the punishment. [*Note: see also sections 20, 43 (b) and (c).*]

RS1960-359-11, 1968-12-17, 1969-28-36

Copy of proceedings

10. Every registrar appointed under section 13 shall, at the request of a party, furnish copies of proceedings in the court, on payment of the cost of making them.

RS1960-359-12, 1967-47-5, 1969-28-36, 1975-71-7

Custody of documents

11. Subject to the *Document Disposal Act*, the court shall preserve all documents filed in a proceeding. On the closing of an office of the court, documents shall be delivered to the place directed by the Attorney General or, in the absence of a direction, to the Provincial Secretary, to be filed in his office.

1963 40-2, 1969-28-36, 1977-31-18

Judge not to collect accounts

12. A judge may not, personally or through his clerk, other employee or any one on his behalf, undertake the collection of an account or claim which may be sued for in the court.

RS1960-359-14, 1969-28-36, 1975-71-8

Registries and registrars

13. (1) The Attorney General may direct that the registrar of a Country Court shall act as registrar of the court at the place where a County Court registry has been established, and after that he shall be deemed to be registrar of the court in addition to his other appointments. The deputy registrar of a County Court has all the power and authority of the registrar of the court under this section. The registry of that County Court becomes the registry of the court.

(2) The Attorney General may, where he considers it advisable, appoint a person other than a registrar of a County Court, to be registrar of the court for an area of the Province he designates, and the person appointed shall, for the purposes of this section, be deemed to be a registrar of a County Court.

(3) The registrar of the court shall have and exercise all the powers, duties and responsibilities conferred or imposed on him with respect to the County Court of which he is registrar, and in determining the scope of this provision the *County Court Act* and rules may be applied with the necessary changes and as far as applicable.

(4) The signature of the registrar of the court to a certificate of a matter of record in the court or registry, or to a notice, or to a proceeding taken ex parte by consent or in default, may be made by an officer or clerk in the registry acting under the instructions of the registrar.

(5) Subsection (4) applies to the registrar of the court at Victoria, Vancouver and New Westminster and to the registrar of the court at any other location designated in writing by the Attorney General.

1967-47-6, 1969-28-36, 1971-55-1, 1975-71-11

Particulars of claim

14. (1) A person applying for a summons shall, before it is issued, file the particulars of demand, setting out the debt or damages claimed. The particulars shall be stated in, or a copy of them shall be annexed to, the copy of the summons served on the defendant.

(2) Every defendant having a set-off or desiring to set up a counterclaim shall promptly, after service on him of the summons, file particulars of the set-off or counterclaim, and serve a copy of it on the plaintiff.

(3) If in an action the cause of action, remedy or relief sought is for a deficiency under a conditional sale agreement, bill of sale or chattel mortgage, or is for money payable under a promissory note or bill of exchange given to secure the payment of money payable under or in connection with the agreement, bill, note or mortgage, the particulars of demand shall contain, as well as those required by subsection (1), a statement showing that the claim relates to the deficiency.

RS1960-359-17, 1965-49-3, 1969-28-36, 1975-71-12

Endorsement on summons

15. A summons in an action for debt shall contain a notice to the defendant that if

- (a) within 10 days after he receives the summons he pays, by cash, certified cheque or money order, into the office of the court, the amount of the claim and costs set out in the summons, together with the costs of any garnishing proceedings and the fee for service allowed by the court, he will avoid further costs, no formal judgment will be entered against him, and he will not be required to appear at the court as directed in the summons;
- (b) he disputes the plaintiff's claim on any ground he must, within 10 days after receipt of the summons, file with the court a notice of intention to dispute the claim at the hearing and that, in default of filing, judgment may be given against him;

- (c) he files a notice of intention to dispute, he will receive 10 days' notice of the time, date and place of the hearing;
- (d) he files a notice of intention to dispute and the case is proved against him, he may be liable for further costs, including the costs of witnesses called to prove the claim; and
- (e) he has any questions about the matters referred to in the summons, he should contact the registrar or clerk of the court immediately.

1973-80-6, 1974-87-36

Service of summons

- 16.** (1) Service of a summons, other than a judgment summons, may be made
- (a) by an adult literate person other than the plaintiff on the person to be served, either personally or by leaving a copy for him at his last or most usual place of abode with a resident there apparently of the age of 16 years or older; or
 - (b) by mailing the copy to the person to be served, by registered mail, to his last known post office address, in which case service shall be deemed effected at the time the copy is delivered by any official of the post office to the person to be served, or to any person receiving it for him.
- (2) The service of a summons may be proved by
- (a) the oral testimony of the person effecting service;
 - (b) a prescribed form of an affidavit of service or sheriff's certificate; or
 - (c) by an affidavit of service proving the mailing by registered mail and exhibiting the acknowledgment of receipt of the registered letter purporting to be signed by the person to be served or by a person receiving it for him.

(3) Where, by reason of the absence of the person to be served, or from any other sufficient cause, the service of a summons cannot be made, the court may, on affidavit showing grounds, make an order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as may be just.

(4) Service out of the Province of a summons may be allowed by the court in a case in which service out of the Province may be allowed under the rules of the Supreme Court, on application to the court in accordance with the rules of practice and procedure of the Supreme Court.

(5) Where a summons is served on a person under this section it is not necessary to show him the original summons.

RS1960-359-19, 1969-28-36, 1971-55-2, 1973-80-7, 1977-31-17

Notice of intention to dispute

17. (1) A defendant who intends to dispute a claim shall, at any time before judgment, file with the court, registrar or clerk a notice of intention to dispute the claim.

(2) Where a defendant files a notice of intention to dispute, the registrar or clerk shall, not less than 10 days before the date of the hearing, send by registered mail to both the claimant and the defendant, or to their solicitors, a notice of the time, date and place of the hearing. If there is more than one defendant, the registrar or clerk shall not, except with the leave of the court, send out the notice until every defendant has been served or the claimant withdraws his claim against every defendant who has not been served.

1973-80-8

Cause book

18. A judge or registrar shall keep a book in which he shall enter all process issued by him. A judge shall keep a book in which he shall enter all matters brought before him, the names of the parties and the judgments rendered by default or otherwise.

RS1960-359-21; 1969-28-36.

Summons to witness

19. (1) The court may issue a summons, in any part of the Province, for witnesses to give evidence or produce documents on a trial before that or another court, and the person summoned shall attend, on being tendered fees established by law, and travelling expenses, if any.

(2) The summons may be served by a person, by showing it to the witness and delivering a copy of it to him, with his fees.

RS1960-359-22,23; 1969-28-36; 1977-53-1.

Penalty for refusing to attend

20. A person summoned as a witness who neglects or refuses, without sufficient cause, to appear and testify or produce documents is guilty of contempt of court, may be brought before the court by warrant issued by the court and may be punished as provided in section 9. In addition, he is liable to the person summoning him for all damages sustained by the neglect or refusal.

1968-12-18; 1969-28-36.

Default of notice of intention to dispute

21. (1) Subject to this section, where the claim in the particulars is for debt, and a defendant fails to file notice of intention to dispute within 10 clear days of service of the summons on him, the plaintiff may enter final judgment for a sum not exceeding the sum claimed in the summons and costs.

(2) Subject to any Act, in all actions where the cause of action, remedy or relief sought is for a deficiency under a conditional sales agreement, bill of sale or chattel mortgage, or for money payable under a promissory note or bill of exchange given to secure the payment of money payable under or in connection with an agreement, bill, note or mortgage, if the defendant fails to file a notice of intention to dispute within 10 clear days of service of the summons on him, the plaintiff may enter interlocutory judgment.

(3) The matter shall then be brought without delay before the court, which shall give and make those directions, orders, judgments and decrees as may be just.

RS1960-359-25; 1965-49-4; 1969-28-36; 1973-80-9,10.

Default: several defendants

22. Where the claim in the particulars is for debt, and there are several defendants, of whom one or more do not file notice of intention to dispute, the plaintiff may enter final judgment for any sum not exceeding the sum claimed in the summons and costs against those who have failed to file notice of intention to dispute, and may issue execution on that judgment without prejudice to his right to proceed with his action against those who have filed notice of intention to dispute.

RS1960-359-26; 1973-80-10.

Trial

23. A proceeding, other than for debt in which judgment has been signed by default, shall be tried or determined at the date set for hearing, if notice has been served, or on a day to which the court or the proceeding is adjourned.

1975-71-13

Withdrawal or nonsuit

24. The plaintiff may elect to withdraw his claim, or if he fails to appear a nonsuit shall be entered.

RS1960-359-28

Judgment on default; setting aside

25. (1) If the defendant does not appear and defend, the court may adjudge the debt or ascertain and adjudge damages against him on the oath of the plaintiff or other person; but no proof or attendance by or on behalf of a plaintiff is required in a proceeding for debt against a defendant against whom judgment is entered by default.

(2) Where no appearance is made, or no notice of intention to dispute is filed, by or on behalf of a defendant and judgment is obtained against him, the court, on good cause being shown, may set aside the judgment on terms for payment of costs as it thinks fit, and may retry the action.

(3) The application shall be made within a reasonable time after the date of delivery of the judgment. Notice of the application showing the grounds shall be served on the plaintiff or his solicitor at least 2 clear days before the return date of the application.

RS1960-359-29, 1969-28-36, 1973-80-10

Partners, joint debtors and joint wrongdoers

26. Where partners do business under a firm name, and the names of all its members may not be set out, it is sufficient in process against them to insert the name and style of the firm as used by it, and serve the process on any member of the firm. In process against joint debtors or joint wrongdoers, it is sufficient if the process is served on one only. Judgment may be given against the firm or against the joint debtors or joint wrongdoers. In the former, execution shall be levied on partnership property only; in the latter, execution shall be levied on the joint property, but separate property of one not served shall not be taken in execution unless he defends.

RS1960-359-30

Judgment and enforcement

27. The court may order payment of the sum awarded, whether for debt, damages or costs, immediately, or within a time or by instalments as it sees fit, and shall, at the request of the judgment creditor, issue a warrant of execution on default of payment of any amount or instalment ordered to be paid. The execution shall be for recovery of the sum awarded with the costs and fees of the same.

RS1960-359-31, 1969-28-36

Payment into court

28. (1) A defendant who makes a tender before action is brought shall pay the money into court before or at the hearing. A defendant may pay into court at any time before trial a sum of money as compensation for the debt or damages claimed, together with the costs of the summons and service.

(2) If the plaintiff proceeds with the suit after notice of the payment in, and does not recover a greater sum than the amount paid in for debt or damages, he is liable to pay to the defendant those costs that the court directs.

RS1960-359-32, 1969-28-36, 1975-71-14

Set-off

29. (1) Debts due from the plaintiff to the defendant before the action is brought may be set off against the plaintiff's claim; but if a set-off is based on an instrument having a penalty, then only the debt secured by the condition shall be set off.

(2) If the set-off established is equal to or more than the debt due to the plaintiff and the excess does not exceed \$2,000, the defendant shall have judgment for the excess.

(3) If the set-off established is less than the debt due to the plaintiff, the plaintiff shall have judgment for the difference.

(4) Where the defendant's claim exceeds the debt due to the plaintiff by more than \$2,000, the defendant is entitled to set off an amount equal to the amount of the plaintiff's claim, and may proceed to recover the residue in any court of competent jurisdiction, unless he abandons so much as will reduce the excess to \$2,000.

(5) In a proceeding brought by a personal representative or trustee, the defendant may set off any demand due him from the testator or the intestate. Where a set-off is established, the judgment shall be against the plaintiff in his official capacity and is evidence of the debt, but no execution shall issue on it.

RS1960-359-33, 1968-12-19, 1973-80-11, 1979-2-58

Counterclaim

30. (1) A claim and counterclaim may be tried and determined at the same hearing. If the counterclaim established is equal to or more than the amount of debt or damages found due to the plaintiff, and the excess does not exceed \$2,000, the defendant shall have judgment for the excess. If the established counterclaim is less than the amount found due to the plaintiff, the plaintiff shall have judgment for the difference.

(2) Where the counterclaim established exceeds the amount found due to the plaintiff by more than \$2,000, the defendant is entitled to have set off an amount equal to the amount found due the plaintiff, and may proceed to recover the residue in any court of competent jurisdiction, unless he abandons so much of his counterclaim as will reduce the excess to \$2,000.

(3) At the hearing the court may order the costs to be paid or set off between the plaintiff and defendant as it considers just.

RS1960-359-34, 1968-12-20, 1969-28-36, 1973-80-12, 1979-2-58

Third party

31. (1) Where a defendant claims to be entitled to contribution or indemnity from, or any other relief within the jurisdiction of the court against, a person not a party

to the action, he may, by leave of the court, issue a notice, referred to as a third party notice, to that effect.

(2) The rules of practice and procedure of the Supreme Court apply to the issue of a third party notice and to all subsequent proceedings.

1971-55-3.

Particulars

32. The parties on the trial of a cause shall be confined to their particulars, unless good cause is shown, in which case the court may allow an amendment to the particulars on terms, if any, as to costs and adjournment as it sees fit.

RS1960-359-35; 1969-28-36.

Loss of negotiable instrument

33. In case of an action founded on a bill of exchange or other negotiable instrument, the court trying the action may order that the loss of the instrument shall not be set up as a defence, if an indemnity by way of bond with 2 sufficient sureties to the satisfaction of the court is given by the plaintiff to the defendant to protect the defendant against the claim of any other person on the negotiable instrument; but, where the bond is not tendered to the defendant before an action is commenced, the costs of the action shall, in the discretion of the court, be paid by the plaintiff.

RS1960-359-36; 1969-28-36.

Certificate of judgment

34. Where judgment has been obtained, the court that tried the action may under its seal, or, where the papers in the action have been filed in the office of the Provincial Secretary under section 11, the Deputy Provincial Secretary may, under his hand and seal, issue to the plaintiff or defendant a certificate of the judgment, and may issue certified copies of the certificate of judgment.

RS1960-359-37; 1969-28-36.

Garnishment

35. The court or registrar may issue a garnishing order in any case in which a garnishing order may be issued under the *Court Order Enforcement Act*, and, unless inconsistent with this Act, that Act applies, with the necessary changes and so far as are applicable, to garnishing proceedings under this Act.

1971-55-4.

Service of documents

36. Service of a garnishing order, notice or other document in a garnishing proceeding may be made and proved in a manner set out in section 16.

1978-11-11.

Appeal

37. (1) An appeal from the decision of the court lies in all cases, both on law and fact, to the nearest County Court or to the Supreme Court.

(2) The appellant, if plaintiff, shall give security in a sum not exceeding \$50 and, if defendant, in a sum equal to the amount claimed, together with a sum not exceeding \$50 for costs.

(3) The security may be given by depositing the sum, not exceeding the amounts mentioned, as the court requires, or by giving security that the court approves, and the deposit or security shall be immediately transmitted to the registrar of the appellate court by the court.

(4) An appeal does not operate as a stay of execution until the appellant makes the deposit or gives the security under this section.

RS1960-359-55,56(1),57; 1969-28-36; 1975-71-16.

Appeal to County Court or Supreme Court

38. (1) The appellant shall, within 14 days from the decision complained of, give a written notice of appeal to the respondent, and shall, within that time or within a further time the court may allow, not to exceed one month, make the deposit or give the security.

(2) Where the appellant is a defendant whose trial took place in a court other than the court nearest to where he resides or carries on business, the time for notice of appeal is 20 days after the decision and the time within which the deposit may be made or security given by him shall be 21 days from the decision.

(3) In all appeals to the County Court of Vancouver, the County Court of Vancouver Island held at Victoria and the County Court of Westminster, or to the Supreme Court in the Cities of Vancouver, Victoria and New Westminster,

(a) the appellant may, after filing an affidavit of service of a notice of appeal on each respondent, apply to the registrar to set down the appeal for hearing on a suitable date, that the registrar shall appoint by notice in writing, at least 15 clear days after the date of the application, unless that period of time is reduced by order of the court appealed to; and

(b) a copy of the appointment shall be served on each respondent or his solicitor within 5 days from the date on which the appointment is made.

(4) In all other appeals the registrar shall, after an affidavit of service of the notice of appeal on each respondent has been filed in his office, immediately send to each appellant and each respondent, or their solicitors, notice of the date on which the appeal is to be heard, at least 10 clear days before the date of the hearing, unless that period is reduced by order of the court appealed to.

(5) Notwithstanding subsections (1) and (2), the County Court or the Supreme Court may extend the time for service of a notice of appeal for a period not exceeding 30 days, and may order substitutional service of a notice of appeal in the manner and within a period it considers just.

RS1960-359-56(1); 1965-49-5; 1967-47-8; 1969-28-36; 1970-44-19; 1975-71-15.

Determination of appeal final

39. (1) On every appeal the appellate court shall determine the question in dispute, and affirm or dismiss the appeal, or make other orders as seem just, and the costs of the appeal shall be in the discretion of the appellate court. That court shall remit the case back to the court, with instructions to enter the proper judgment, and all subsequent proceedings in connection with the judgment shall be taken in the court.

(2) A decision by an appellate court under this section is final and shall not be appealed.

RS1960-359-58; 1969-28-36; 1975-71-17.

Examination of judgment debtor

40. (1) A person having an unsatisfied order for payment of money obtained under this Act may apply to and obtain a summons from the court, or the registrar appointed under section 13 acting for the court, that made the order or, if the judgment debtor or garnishee resides out of the jurisdiction of that court, from that court or any other court having jurisdiction in the matter, on filing with the court a copy of the order under the hand of the court that made the order. The summons shall be served personally on the judgment debtor or garnishee to whom the same is directed, requiring him to appear at an expressed time and place to answer the things named in it.

(2) A judgment debtor or garnishee who appears under a summons may be examined on oath about

- (a) his property or property alleged to belong to him;
- (b) the circumstances under which he contracted the debt or incurred the liability which formed the subject matter of the action;
- (c) the means and expectation he then had, and the property and means he still has, of discharging the debt or liability;
- (d) the disposal he has made of any property; and
- (e) what debts are owing to him.

(3) If the court is satisfied that an application made to it for a summons under subsection (1) can be more conveniently or fairly dealt with by another court or judge authorized to exercise jurisdiction under this Act, it may order that the application be made to that other court or judge.

(4) The cost of the summons and of all proceedings shall be in the discretion of the court from which the summons is obtained.

(5) On the examination of a judgment debtor, the court may exclude any person.

RS1960-359-59, 1967-47-9, 1968-12-22, 1969-28-36, 1975-71-18

Examination of corporate debtor

41. Where an order is for the recovery or payment of money, the party entitled to enforce it may apply to the court for a summons that an officer of a corporation that is the debtor be orally examined before the court about the debtor's property or means of satisfying the order. The court may issue a summons for the attendance and the examination of the officer or of any other person, and for the production of any books or documents.

RS1960-359-60, 1969-28-36, 1975-73-24

Examination of witnesses

42. The person obtaining the summons, and all witnesses whom the court thinks requisite, may be examined on oath about the matters mentioned in sections 40 and 41.

RS1960-359-61, 1969-28-36

Commitment

43. (1) The court may, if it thinks fit, order the party summoned to be imprisoned for a period not exceeding 20 days where the party summoned

- (a) does not attend as required by the summons or provide a sufficient reason for not attending;

- (b) attends and refuses to be sworn or to disclose any of the things mentioned in sections 40 and 41;
- (c) does not answer to the satisfaction of the court.

(2) This section also applies where it appears to the court either by the examination of the party or by other evidence, that the party, if a defendant, in incurring the debt or liability which is the subject of the action in which judgment has been obtained, has

- (a) obtained credit from the plaintiff, or incurred the debt or liability under false pretences, or by means of fraud or breach of trust;
- (b) wilfully contracted the debt or liability without having had at the time a reasonable expectation of being able to pay or discharge it; or
- (c) made, or caused to be made, a gift, delivery or transfer of any property, or has removed or concealed it with intent to defraud any of his creditors.

(3) If it appears to the court's satisfaction that the party had when summoned, or since the judgment against him has had, sufficient means and ability to pay the debt, damages or costs recovered against him, and if he has refused or neglected to make payment at the time ordered, whether before or after the return of the summons, the court may make an order authorized in subsection (1).

RS1960-359-62; 1969-28-36.

Failure of judgment creditor to appear

44. If the judgment creditor does not appear at the hearing, the court may award the judgment debtor or garnishee a sum of money by way of compensation for his trouble and attendance, to be paid promptly without any right of set-off. The court may enlarge a judgment summons as it thinks fit.

RS1960-359-63; 1969-28-36.

Order for payment

45. The court before which the summons is heard may rescind or alter an order for payment previously made against a defendant or garnishee summoned before it, and may make any other order, either for the payment of the whole of the debt or damages recovered, or costs, immediately, by instalments, or in any other manner it thinks reasonable and just.

RS1960-359-64; 1969-28-36.

Second judgment summons

46. Where a judgment debtor or garnishee has been examined under judgment summons and no order has been made for the payment by the judgment debtor or garnishee of the judgment debt or amount payable by the garnishee, no further or other judgment summons shall be issued unless it appears to the court that there are reasonable grounds to believe that the judgment debtor or garnishee is able to pay the judgment debt or amount by instalments or otherwise.

RS1960-359-65; 1969-28-36.

Committal for failure to obey order

47. Where a judgment debtor or garnishee who has been ordered on a judgment summons to make payments, either altogether or by instalments, fails or neglects to obey the order for payment, the court, after personal service on the judgment debtor or

garnishee of notice of an application to commit, may commit the judgment debtor or garnishee to any jail in the county in which the judgment debtor or garnishee is resident for a period not exceeding 20 days, unless he shows good cause for the failure or neglect. If the judgment debtor or garnishee does not reside or carry on business at the place where the court is held, he shall, at the time of service, be paid or tendered his reasonable expenses for attending and travelling to and from the court.

RS1960-359-66; 1969-28-36.

Committal order

48. A sheriff or other peace officer who is executing a committal order shall, promptly on the arrest, bring the party to be imprisoned before the court which shall examine the party and which may, if it considers that imprisonment is not appropriate in the circumstances, stay, vary or set aside the order on terms and conditions it considers advisable.

1973-80-13.

Setting aside commitment order

49. (1) The court may direct, on the ex parte application of the judgment debtor or garnishee committed by an order under section 43 or 47, that the operation of the order be stayed until the hearing of an application by the judgment debtor or garnishee to vary or set aside the order.

(2) As a term of the stay, the court may in its discretion order security to be furnished by the judgment debtor or garnishee.

(3) On the stay being directed, the court shall appoint a time and place for the hearing of the application to vary or set aside the order, and shall give directions for the service of notice of the application.

(4) On the hearing of the application the court may vary or set aside the order.

RS1960-359-67; 1969-28-36.

Examination of defendant as on judgment summons

50. If the defendant in an action in the court has been personally served with a summons to appear or personally appears, at the trial, and judgment is given against him, the court at the trial, or at an adjournment of it, may examine the defendant and the plaintiff and any other person, about the things mentioned in section 40, may commit the defendant to jail, and may make an order in the same manner it might have done in case the plaintiff had obtained a summons for that purpose after judgment.

1963-40-3; 1969-28-36; 1975-71-19.

Execution of orders and warrants

51. All peace officers within their respective jurisdictions shall aid in the execution of every order or warrant, and a jailer or keeper of a jail to whom the order or warrant has been directed shall receive and keep the defendant, until discharged by law.

RS1960-359-69.

Discharge of debtor

52. A person imprisoned under this Act who has paid or satisfied the debt or demand, or the instalments that are payable, and the costs remaining due at the time of the order of imprisonment, together with the costs of obtaining the order, and all subsequent costs, shall be discharged from custody on a certificate of payment or satisfaction signed by the court that made the order of imprisonment, and the certificate shall be signed by the court on payment or satisfaction.

RS1960-359-70, 1969-28-36

Imprisonment does not extinguish debt

53. Imprisonment under this Act does not extinguish the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being summoned again and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Act or deprive the plaintiff of the right to take out execution against the defendant.

RS1960-359-71

Fees

54. Fees shall be charged and are payable to the Minister of Finance for the items and services and at the rates fixed by order of the Lieutenant Governor in Council.

1975-71-20

Fees as witness

55. Neither the plaintiff nor defendant, when giving evidence in his own behalf, is entitled to a witness fee, unless he appears to the satisfaction of the court before which the cause is tried, to be a necessary and material witness.

RS1960-359-79, 1969-28-36

No counsel fees

56. No counsel, solicitor or lawyer fees, of any kind, shall be charged against either party.

RS1960-359-80, 1969-28-36, 1975-71-21

Proof of proceedings

57. Proceedings before the court may be proved by the production of the original or a copy, certified by the court or a registrar appointed under section 13.

RS1960-359-82, 1967-47-10, 1969-28-36

Service by sheriff

58. Where a sheriff has his office or a deputy at the place where court is held, he shall be given preference in serving or executing process issued by the court, but this section shall not be allowed to interfere with the speedy service or execution of process.

RS1960-359-84, 1969-28-36, 1975-71-24

Regulations

59. The Lieutenant Governor in Council may make regulations.

1977-31-17

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