



# Small Debts Act 1845

## 1845 CHAPTER 127

### **Creditor obtaining Judgment or Order in respect of a Debt not exceeding 20l. may summon the Debtor before a Commissioner of Bankrupts or Court of Requests, &c.**

That if any Person is or shall be indebted to any other in a Sum not exceeding Twenty Pounds besides Costs of Suit, by force of any Judgment obtained, or of any Order for the Payment thereof or of any Costs in any Court, which Judgment or Order shall have been obtained from any Court of competent Jurisdiction in *England*, it shall be lawful for the Creditor so having obtained a Judgment or Order to obtain a Summons from any Commissioner of the Court of Bankruptcy for the District in which such Debtor shall reside or be, or from any Court of Requests or Conscience, or Inferior Court of Record for the Recovery of Debts, or other Court for the Recovery of Small Debts, within the Jurisdiction of which such Debtor shall reside or be, having a Judge who shall be either a Barrister at Law, Special Pleader, or an Attorney who shall have practised as an Attorney for not less than Ten Years in one of Her Majesty's Superior Courts of Common Law at *Westminster*, which Summons such Commissioner of the Court of Bankruptcy or such Court shall be authorized and required to grant, according to the Form in Schedule (A.) hereunto annexed, upon the Application of such Creditor by any Petition or Note in Writing, according to the Form in Schedule (B.) hereunto annexed ;

### **On Debtor appearing he may be examined by the Commissioner or Court.**

and the Debtor, appearing before such Commissioner or Court at the Time to be appointed in such Summons, shall be examined by the said Commissioner or Court, and shall, if the Creditor think fit, be interrogated before such Commissioner or Court by the Creditor summoning him, touching the Manner and Time of his contracting his Debt, the Means or Prospect of Payment he then had, the Property or Means of Payment he still hath or may have, the Disposal he may have made of any Property since contracting such Debt ;

### **Creditor may also be examined.**

and such Creditor shall also, if such Commissioner or Court shall think fit, be examined by the said Commissioner or Court touching his Claim against the said Debtor, and shall, if the Debtor think fit, be interrogated before such Commissioner or Court by the said Debtor touching the said Claim against him; and it shall be lawful for such Commissioner or Court to make an Order on the said Debtor for the Payment of his Debt by Instalments or otherwise ;

**If Debtor fail to attend, or to make satisfactory Answer, or shall appear to have been guilty of Fraud, &c., he may be committed.**

and in case such Debtor shall not attend as required by the said Summons, and shall not allege a sufficient Excuse for not attending, or shall if attending refuse to disclose his Property, or his Transactions respecting the same, or respecting the contracting of the Debt, or shall not make Answer thereof to the Satisfaction of the Commissioner or Court, or shall appear to such Commissioner or Court to have been guilty of Fraud in contracting the Debt, or of having wilfully contracted it without reasonable Prospect of being able to pay it, or of having concealed or made away with his Property in order to defeat his Creditors, or if he appears to have the Means of paying the same by Instalments or otherwise, and shall not pay the same at such Times as the Commissioner or Court shall order, or as the Court shall have ordered in which the original Judgment shall have been obtained or Order made, then in any of the said Cases it shall be lawful for such Commissioner or the Judge of such Court to order such Debtor to be committed, for any Time not exceeding Forty Days, to the Common Gaol wherein the Debtors under Judgment and in Execution of the Superior Courts of Justice may be confined within the County, City, Borough, or Place in which such Debtor shall be resident, or to any other Gaol or Debtors Prison within the same County, City, Borough, or Place which shall by any Declaration of One of Her Majesty's Principal Secretaries of State be allowed as a Place of Imprisonment under this Act, so long as such Declaration shall remain in force and unrevoked.

**II How Order shall be executed.**

And be it enacted, That every Bailiff and Messenger to whom any such Order shall be issued, or who shall be acting as an Officer of the High Bailiff of *Westminster* or *Southwark* in the Execution of any such Order issued to such High Bailiff, shall be thereby empowered to take the Body of the Person against whom such Order shall be made, and all Constables and other Peace Officers within their several Jurisdictions shall aid in the Execution of every such Order; and no Protection, or Interim or other Order issuing out of any Court of Bankruptcy or for the Relief of Insolvent Debtors, nor any Certificate obtained after such Order for Imprisonment under this Act, shall be available to any Debtor imprisoned under such Order as aforesaid.

**III Imprisonment not to extinguish the Debt; but on Payment thereof, or of the Instalment payable, and the Costs, &c, the Debtor to be discharged.**

And be it declared and enacted, That no Imprisonment under this Act shall in anywise operate as Satisfaction or Extinguishment of any Debt or Demand; but 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, and all subsequent Costs, shall, upon Entry of such Payment endorsed on the Order of Imprisonment, signed by the Plaintiff or his Attorney, be discharged out of Custody by Leave of a Commissioner or Judge of the Court in which the Order of Imprisonment was made.

**IV Certain Courts to have the like Powers in original Suits.**

And be it enacted, That the Judge of every Court of Requests or Conscience, and of every Inferior Court of Record for the Recovery of Debts, and of every other Court for the Recovery of Small Debts, of which the Judge is a Barrister at Law or Special Pleader, or an Attorney of Ten Years standing of one of Her Majesty's Superior Courts

of Common Law at *Westminster*, in which Court Proceedings shall be had for the Recovery of any Debt or Demand within the Jurisdiction of the said Court, shall have the like Powers, in the Suit instituted for Recovery of such Debt or Demand, of examining the Parties to the Suit, and, upon Occasion of pronouncing Judgment therein, if Judgment be given for the Plaintiff, shall have the like Powers of further examining the Parties, and, in the several Cases herein-before specified, of committing the Defendant to Prison, which he might exercise under the Provision herein-before contained, if Judgment for such Debt or Demand had been obtained in his Court, and the Judgment Creditor had obtained a Summons for such Defendant from the same Court under this Act 5 and all the Provisions of this Act shall be deemed to apply to such Case as if such Summons had been obtained.

**V Where several Courts exist in the same Town, &c, Business not to be transferred from one to the other.**

Provided always, and be it enacted, That in any City, Town, or District wherein there are several Courts for the Recovery of Small Debts, neither of the said Courts shall have any Power under this Act in respect of any Debt which shall have been sued for in the other of the said Courts in the same City, Town, or District, unless such other of the said Courts shall not have a Judge qualified as herein-before specified.

**VI Application to Commissioners, &c. need not be made by Counsel or Attorney.**

And be it declared and enacted, That in making Application to any Commissioner or Court as aforesaid, or taking any Proceedings under this Act, or under the Act of the last Session of Parliament, intituled *An Act to amend the Law of Insolvency, Bankruptcy, and Execution*, or under an Act made in the Sixth Year of the Reign of Her Majesty, intituled *An Act for the Relief of Insolvent Debtors*, it shall not be requisite for any Party, whether Creditor or Debtor, to employ either Counsel or Attorney or Solicitor.

**VII Affidavits in Bankruptcy and Insolvency may be sworn before Keepers of Prisons.**

And be it enacted, That any Affidavit of any Prisoner in any of Her Majesty's Prisons or Gaols in *England* to be used in Matters of Bankruptcy or Insolvency, or tender or by virtue of any Statute relating to Bankrupts or Insolvent Debtors, or of this Act, may be sworn before the Visiting or other Justice, or if within Twelve Hours none such shall attend, then by the principal Keeper or Gaoler of such Prisons or Gaols respectively, and they and he shall be respectively authorized and required to administer the Oath upon any such Affidavit or Affidavits.

**VIII Actual Necessaries of Judgment Debtors not to be seized.**

And whereas it is expedient to protect the actual Necessaries of or belonging to Judgment Debtors from being seized in Execution; be it enacted, That from and after the passing of this Act the Wearing Apparel and Bedding of any Judgment Debtor or his Family, and the Tools and Implements of his Trade, the Value of such Apparel, Bedding, Tools, and Implements not exceeding in the whole the Value of Five Pounds, shall not be liable to Seizure tender any Execution or Order of any Court against his Goods and Chattels.

**IX Jurisdiction of Courts may be altered.**

And be It enacted, That it shall be lawful for Her Majesty, with the Advice of Her Privy Council, to enlarge the Jurisdiction of any such Court of Requests or Conscience, or Inferior Court of Record for the Recovery of Debts, or other Court for the Recovery of Small Debts, to all Debts and Demands, whether on Balance of Account or otherwise, or Damage arising out of any express or implied Agreement, not exceeding Twenty Pounds, and in such Cases as Her Majesty, with the Advice aforesaid, may think fit, to enlarge the District of any such Court, or, where any Part of the District of such Court is comprised within the Jurisdiction of any other like Court, to contract the same, and also to make any Alteration or Regulation for the holding or sitting of any such Court, both as to Time and Place, any thing in any Act constituting any such Court to the contrary notwithstanding; and all Powers and Authorities now vested in any such Court, the Jurisdiction or District whereof shall be so enlarged, or the District whereof shall be so contracted, shall apply and extend to the Jurisdiction or District given or limited under the Powers of this Act, and that as fully as if such Jurisdiction or District had been given by the Act or Acts establishing or regulating such Court and its Proceedings; provided always, that no such Order shall take effect in respect of any Court which shall not have a Judge who is either a Barrister at Law or Special Pleader, or an Attorney of one of Her Majesty's Superior Courts of Common Law at *Westminster* who shall have practised as a" Attorney for at least Ten Years; and in any Court in which there shall be no Judge qualified as aforesaid the Person or Persons to whom the Appointment of Judge, or, if there be no Judge, to whom the Appointment of any Clerk of the Court, belongs, or the Majority of such Persons, who shall be present at a Meeting called for the Purpose, shall within Three Calendar Months next after the making of any such Order, and also within Three Calendar Months next after any Vacancy of the said Office of Judge, appoint a Judge, qualified as aforesaid, subject to the Approval of Her Majesty, to be signified under the Royal Sign Manual; and in default of any such Appointment as aforesaid it shall be lawful for Her Majesty to appoint a Judge, qualified as herein-before provided, for the Court in which such Default shall have been made; provided always, that no Judge, Clerk, or Officer of any Court whose Emoluments shall be increased under this Act, nor any Person or Persons whose Franchise or Right of Appointment to any Office in any Court shall become more valuable under this Act, shall be entitled to any Compensation for any such Increase of Emoluments, or increased Value of any such Franchise or Right of Appointment, if the same, or the Value of the same, shall be diminished or taken away by any Alteration in the Constitution of the said Court, or otherwise, by Act of Parliament: Provided also, that Notice of the Intention of Her Majesty, with the Advice of Her Privy Council, to take into consideration the Expediency of making any such Order, and of the Time when the same will be considered, shall be given in the London Gazette One Calendar Month at least before the same shall be so considered.

**X Removal of Judges of Inferior Courts for Misbehaviour or Incapacity.**

And be it enacted, That every Judge of any such Court of Requests or Conscience, or Inferior Court of Record for the Recovery of Debts, or other Court for the Recovery of Small Debts, shall be removable by the Lord Chancellor for Misbehaviour or Incapacity.

**XI Who shall be competent to hold the Court.**

And be it enacted, That in all Cases of Debts and Demands which were not within the Jurisdiction of the Court before the passing of this Act, and also whenever the Number

of Commissioners present at any Court shall not be sufficient for the Trial of Causes according to the Constitution of the Court before the passing of this Act, the Judge shall act alone, with all the Powers of the Court, and shall determine all Questions, as well of Fact as of Law, in the Causes which shall be brought before him.

## **XII Appointing of a Deputy to act during the Absence of the Judge.**

And be it enacted, That in all Cases of Illness or unavoidable Absence, the Cause whereof shall be entered in the Minutes of the Court, it shall be lawful for the Judge, or, in case of the Inability of the Judge, for the Commissioners, or the Person or Persons to whom the Appointment of the Judge belongs, to appoint a Deputy, qualified as is herein-before provided in the Case of the Judge, to act for him during such Illness or unavoidable Absence; and it shall also be lawful for the Judge, with the Approval of the Person or Persons to whom the Appointment of Judge belongs, and of One of Her Majesty's Principal Secretaries of State, to appoint a Deputy, qualified as aforesaid, to act for him for any Time or Times not exceeding in the whole One Calendar Month in any consecutive Period of Twelve Calendar Months ; and any Deputy so appointed, while acting under such Appointment, shall -have all the Powers and perform all the Duties of such Judge : Provided always, that, independently of the Power herein contained, every Judge shall have the same Power of appointing a Deputy or Deputies to hold his Court for all Cases of Debts and Demands within the Jurisdiction of the Court as it was constituted before the passing of this Act which he has under the Act or Acts according to which the Court is now constituted, and that such Deputy or Deputies, if qualified as is herein-before provided in the Case of the Judge or in the Case of any Deputy appointed before the passing of this Act, if approved by One of Her Majesty's Principal Secretaries of State, shall have in all Cases within the extended Jurisdiction of the Court the Powers and Privileges, and be subject to the same Liabilities, and perform all the Duties of such Judge while acting under such Appointment.

## **XIII Execution of Process in Westminster and Southwark.**

And be it enacted, That, until Parliament shall otherwise direct, the Execution of all Process issuing out of any of the last-mentioned Courts, the Jurisdiction of which shall include the City and Liberty of *Westminster* or any Part thereof, shall belong to the High Bailiff of *Westminster*, and out of any Court the Jurisdiction of which shall include the Borough of *Southwark*, or any Part thereof, shall belong to the High Bailiff of *Southwark*.

## **XIV Power for Judge to frame a Table of Fees.**

And be it enacted, That the Judge of any such Court, the Jurisdiction or District whereof shall be extended under the Powers of this Act, shall, subject to the Approval of One of Her Majesty's Principal Secretaries of State, frame a Table of Fees to be payable by the Suitors of such Court or Courts in respect of every Proceeding therein; and a Table of such Fees shall be put in some conspicuous Place in the Court House and in the Clerk's Office; and the Fees on every Proceeding shall be paid, in the first instance, by the Plaintiff or Party on whose Behalf such Proceeding is to be had, on or before such Proceeding; and all such Fees shall be received by the Clerk or Clerks of such Court, who shall account to the other Officers of such Court for the Amount or Proportion thereof which shall be payable to them respectively, and shall also in the Month of *March* in every Year render to One of Her Majesty's Principal Secretaries of

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State an Account of all such Fees which shall have been received in the Year ending on the last Day of *December* then next preceding : Provided always, that it shall be lawful for the Secretary of State to lessen the Amount of the Fees to be taken in any one or more of the Courts the Jurisdiction or District whereof shall be extended as aforesaid, in such Manner as to him shall seem fit, and again to increase such Fees, so that the Scale of Fees given in the Schedule to this Act marked (C.) be not in any Case surpassed: Provided also, that in all Cases where any Judge, Clerk, or other Officer of any such Court shall have been paid by Salary instead of Fees, such Judge, Clerk, or other Officer shall continue to receive such Salary in respect of the Business now within the Jurisdiction of such Court, and, in respect of the Business under the Powers of this Act, such Fees applicable thereto as are set out in the said Schedule (C), or such additional Salary instead of such Fees as the Secretary of State shall direct; and all Sums payable in the Name of Fees to any such Judge, Clerk, or other Officer, over and above the Amount of such Salary, shall be applicable for such Purposes and in the Manner prescribed by the Act or Acts of Parliament under which such Court is constituted; and that in awarding Compensation to any Judge, Clerk, or Officer of any such Court under the Provisions of the said Act of the last Session of Parliament, Account shall be taken of the Fees and Emoluments to which he shall become entitled under this Act, and any Increase of his fees and Emoluments under this Act shall go in diminution of the Amount to be awarded to him for such Compensation.

**XV Fees in Courts of Bankruptcy.**

And be it enacted, That the Registrars of the Court of Bankruptcy shall be entitled to take the Fees on every Proceeding had under this Act before or under the Authority of any Commissioner of the Court of Bankruptcy in his District which are specified in the Schedule marked (D.) hereunto annexed, and the Messengers and Ushers of the Court of Bankruptcy shall be severally entitled to have the same Fees which are provided as the Bailiffs and Serjeants Fees in the Schedule (C.) hereunto annexed, subject to such Alterations as may be made in the said several Fees by the Court of Bankruptcy, so as not to exceed the Scales of Fees herein provided.

**XVI Fees, &c. payable under any existing Acts not to be affected.**

Provided always, and be it enacted, That nothing hereinbefore contained shall extend to or affect any Fees or Salary payable by virtue of any existing Act or Acts for Business or Proceedings in any Court for the Recovery of Small Debts, except such Business or Proceedings as shall be had under or by virtue of this Act; but it shall be lawful for the Judge of any Court, with the Approval of One of Her Majesty's Principal Secretaries of State, to alter the Fees receivable under the Act or Acts under which his Court is now constituted, but not so as to exceed the Scale of Fees given by such Act or Acts respectively.

**XVII Poundage to be demanded from Suitors upon Sums claimed.**

And be it enacted, That for raising a Fund for providing a Court House and Offices for any Court of Requests, or other Court for the Recovery of Small Debts, and for other Purposes herein-after mentioned, the Clerk or Clerks of any such Court in which and while it shall be necessary to raise such Fund shall demand and receive from the Plaintiff in every Suit brought in that Court, before he shall issue any Summons in that Suit, the Sum of Sixpence when the Debt or Damage claimed shall not exceed Twenty Shillings, and for every Claim exceeding Twenty Shillings One Fortieth Part

thereof (neglecting any Sum less than Three-pence in estimating such Fortieth Part), or other such Sum, in either Case not exceeding the Rates herein-before mentioned, as the Secretary of State from Time to Time shall order, which Sum shall be paid in all Cases in the first instance by the Plaintiff upon Suit brought in such Court, and shall be considered as Costs in the Cause ; and the Clerk or Clerks of the Court shall keep an Account of all Monies so paid to him or them, and shall account for the same to the Judge of such Court for the Time being, and the Amount thereof shall accumulate, to form a General Fund for such Court, and shall be applied in providing a Court House and Offices, or in defraying the Rent and Taxes, Stationery, and other necessary Expences of holding and carrying on the Business of such Court, in such Manner as the Court for the Time being, with the Approval of the Secretary of State, shall direct.

### **XVIII Summonses to Witnesses.**

And be it enacted, That either of the Parties to the Suit or any other Proceeding before any such Commissioner or in any such Court may obtain Summonses to Witnesses, to be served by a Messenger or Bailiff, with or without a Clause requiring the Production of Books and Writings in their Possession or Control, and in any such Summons any Number of Names may be inserted; and every Person on whom any such Summons shall be personally served within the Jurisdiction of the Court, and to whom at the same Time Payment or Tender of his Expences shall have been made, on such Scale of Allowance as shall be from Time to Time settled by the Court of Bankruptcy or Judge of any such Court as aforesaid, as the Case may be; with the Approval of One of Her Majesty's Principal Secretaries of State, and who shall refuse or neglect, without sufficient Cause, to appear, or to produce any Books or Writings required by such Summons to be produced, and also every Person present in Court who shall be required to give Evidence, and who shall refuse to be sworn and give Evidence, shall forfeit and pay such Fine not exceeding Five Pounds as the Commissioner or Judge shall set on him, and Payment of such Fine shall be enforced in like Manner as Payment of any Debt recovered by Judgment of any Court of competent Jurisdiction; and the whole or any Part of such Fine, in the Discretion of the Judge, after deducting the Costs, shall be applicable toward indemnifying the Party injured by such Refusal or Neglect, and the Remainder thereof shall be applicable to the Expences of the Court in which the Fine was imposed.

### **XIX Lists of unclaimed Suitors Money to be made out and put up in the Court.**

And be it enacted, That the Clerk or Clerks of every such Court shall in the Month of *March* in each Year make out a correct List of all Sums of Money belonging to Suitors in the Court which shall have been paid into Court, and which shall have remained unclaimed for the Space of Twelve Calendar Months before the First Day of the Month of *January*, specifying the Names of the Parties for whom or on whose Account the same were so paid into Court; and a Copy of such List shall be put up and remain during Court Hours in some conspicuous Part of the Court House, and at all Times in the Clerk's Office.

### **XX All Suitors Money paid into Court and unclaimed for Six Years, to go into the Court Fund.**

And be it enacted, That all Sums of Money which shall have been paid into any such Court to the Use of any Suitor or Suitors thereof, and which shall have remained unclaimed for the Period of Six Years before the passing of this Act, and which are

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now in the Hands of any Commissioner, Trustee, Judge, or Officer of such Court, or otherwise held in trust for such Suitors, and all further Sums of Money which shall hereafter be paid into any such Court to the Use of any Suitor or Suitors thereof, shall, if unclaimed for the Period of Six Years after the same shall have been so paid into Court, vest in and belong to the Judge or Judge and Commissioners of such Court for the Time being, in trust for the general Purposes of such Court, and shall form a General Fund, for the Payment of all Debts due on behalf of the Court, and the necessary Expences of holding or carrying on the Business of such Court.

**XXI Power to remove Suits exceeding 10l. into Superior Courts.**

And be it enacted, That any Suit to be instituted in any such Court, v herein the Claim or Demand shall exceed the Sum of Ten Pounds, shall be removable by Certiorari or otherwise into any of Her Majesty's Superior Courts of Common Law at *Westminster*, or into the Court of Common Pleas at *Lancaster*, by Leave of a Judge of any one of the said Courts, and upon such Terms as he shall order.

**XXII Power to execute Warrants and levy Executions out of Jurisdiction.**

And be it enacted, That in all Cases where final Judgment shall have been obtained in any such Court, and a Warrant or Execution shall have issued against the Goods and Chattels of the Defendant, or an Order for his Commitment shall have been made, under this Act, and the Defendant, or his Goods and Chattels, shall be out of the Jurisdiction of such Court, it shall be lawful for the Officer charged with such Warrant, Execution, or Order of Commitment to apply to any Justice of the Peace acting for any County, Division, or Place in which the Defendant, or his Goods and Chattels, shall then be, upon Proof being made upon Oath (which Oath such Justice shall be empowered to administer) that the Person or Goods and Chattels of such Defendant is or are believed to be within the County, Division, or Place where such Justice of the Peace shall act, such Justice of the Peace shall sign or endorse his Name upon the said Warrant, Execution, or Order of Commitment, and thereupon the said Officer charged therewith shall take and seize the Person or the Goods and Chattels of the Defendant, wheresoever the same shall be found within the County, Division, or Place for which such Justice of the Peace shall act, and all Constables and other Peace Officers shall be aiding and assisting within their respective Districts in the Execution of the said Warrants, Executions, or Orders.

**XXIII Powers of 7 & 8 Vict. c.96 applicable to this Act.**

And be it declared and enacted, That all the Enactments of the said Act of the last Session of Parliament, and of the several Acts under which the said several Courts are now held or constituted, shall within their several Districts be deemed to apply to every Proceeding under this Act, so far as the same are applicable, and not repugnant to the Provisions of this Act.

**XXIV Interpretation of Terms in the Act.**

And be it enacted, That in the Construction of this Act the Word " Judge " shall be construed to include every Person, being either a Barrister at Law or a Special Pleader, or an Attorney of one of Her Majesty's Superior Courts of Common Law at *Westminster* who shall have practised as an Attorney for at least Ten Years in one of Her Majesty's Superior Courts of Common Law at *Westminster*, who, according



to the Constitution of the Court, presides in any such Court as aforesaid, or acts as Judge or Assessor therein, whether by the Title of Judge, or Barrister, or County Clerk, Assessor, or Steward or Deputy Steward, or by any other Style or Title whatsoever; and the Word " Person " shall include a Body Corporate ; and every Word importing the Singular Number or Masculine Gender shall include also several Persons or Things, and Females as well as Males, unless the Context shall require another Construction.

**XXV Act to apply only to England.**

And be it enacted, That this Act shall apply only to *England*.