

APPENDIX N

Amended by
Act No. 55 of
1965.

APPENDIX N

FORMS

1—APPLICATION FOR JUDGMENT SUMMONS

Debtors Act 1870

In the Supreme Court of Tasmania.

[]

Between A.B., Plaintiff,
and

C.D., Defendant [*address and description of plaintiff and defendant to be added where judgment is that of any other court*].

I apply for the issue of a judgment summons against the said defendant in respect of a judgment [*or order*] of this Court [*or of the Court holden at*], or of [*here set forth the style or other sufficient descriptions of the Court which gave the judgment or made the order*]:

And I undertake to prove, to the satisfaction of the Court at the hearing, that the judgment debtor has or has had since the date of the judgment [*or order*] the means to pay the sum in respect of which he has made default, and that he has refused or neglected, or refuses or neglects, to pay the said sum.

I am aware that if I do not prove the same accordingly, I shall have to pay the costs of this summons.

[A.B., Judgment Creditor,
or C.D., Solicitor or Agent of the Judgment Creditor.]

2—SUMMONS TO WITNESS

Debtors Act 1870

In the Supreme Court of Tasmania.

[]

In the matter of a judgment summons.

Between A.B., Plaintiff, and C.D., Defendant.

You are hereby required to attend at [the Court House *or* Chambers] at _____ on _____ the _____ day of _____ 19____, at the hour of _____ of _____ in the _____ noon, to give evidence in the above matter on behalf of the [plaintiff *or* defendant *as the case may be*] and then and there to have and produce [*state any particular documents required*] and all other books, papers, writings, and other documents relating to the said matter which may be in your custody, possession, or power. In default of your attendance you will be liable to a penalty of twenty dollars.

Dated this _____ day of _____ 19____

Registrar of the Court [*or as the case may be*].

To

3—JUDGMENT SUMMONS

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[The figures are inserted ex. gr.]

Debtors Act 1870

In the Supreme Court of Tasmania.

No. of judgment summons.

[]

Between A.B., Plaintiff [address, description],
and

C.D., Defendant [present address, description, and, if known, place of
employment].

Whereas the plaintiff obtained a judgment [or if no judgment has been
obtained, or if a fresh order has been obtained upon a judgment, an order]
against you, the abovenamed defendant, in this Court [or in the Court of
holden at] on the day of
19 , for the payment of \$1 400 [for debt [or damages] and costs] [or
being the amount [or being the balance then unsatisfied] of a judgment [or
order] recovered [or made]] against you in this Court [or the Court of
] for debt [or damages] and costs [by instalments of \$
for every days] [and subsequent costs have been incurred in
pursuance thereof and allowed by the judge, amounting to \$20]:

And whereas you have made default in payment of the sum of \$
payable in pursuance of the said judgment [or order]:

You are therefore hereby summoned to appear personally in this Court at
[place where Court holden] on the day of
19 , at the hour of in the noon, to be examined
on oath by the Court touching the means you have or have had since the date
of the judgment [or order]: to satisfy the sum payable in pursuance of the
said judgment [or order]: and also to show cause why you should not be
committed to prison for such default.

Dated this day of 19

Clerk of the Court [or other proper officer].

	\$
Amount of judgment [or order] and costs	1 400 00
<i>Deduct</i> —Amounts (if any) in respect of which an order of commitment was made and defendant was imprisoned before date of order
<i>Add</i> —Costs of execution, previous judgment summonses, hearings, and commitments (if any) since date of judgment [or order] allowed by the judge	20 00
	\$1 420 00
<i>Deduct</i> —	\$
Paid into Court, otherwise than under execution against the lands and goods of judgment debtor (after deducting costs of execution)	20 00

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	\$	\$
Amounts in respect of which an order of commitment has been made since date of judgment [<i>or order</i>] and in respect of which defendant has been or may be imprisoned	20·00	
Amounts which were not required to have been paid before the date of the summons (see note below)	20·00	
	<hr/>	60·00
Sum in payment of which defendant has made default		1 320·00
Costs of this summons and fee thereon		26·50
		<hr/>
Amount upon payment of which no further proceedings will be had [until default in payment of next instalment]		1 346·50
		<hr/>

NOTE.—Where a fresh order has been made after defendant has been committed and imprisoned, this amount will be the difference between the amount of the instalments in arrear at the date of the summons and the whole sum payable under the fresh order, exclusive of the amount in respect of which defendant was imprisoned before the order.

4—AFFIDAVIT WHERE JUDGMENT SUMMONS IS SOUGHT ON A JUDGMENT OR ORDER OF A COURT OTHER THAN THE SUPREME COURT

Debtors Act 1870

In the Supreme Court of Tasmania.

[]

In the matter of a judgment [*or order*] in the Court of [Requests] held at [*or as the case may be*]:

A B, Plaintiff [*address, description*].

and

C D., Defendant [*address, description*].

I, A B., the abovementioned plaintiff, make oath and say:—

1. That on the day of 19 , I obtained a judgment [*or order*] in [*here set forth the style of the Court in which the judgment or order was obtained*] against C.D., the abovenamed defendant, for the payment of the sum of
2. There is still due on the said judgment [*or order*] the sum of

Sworn at, &c.

A.B.

5—AFFIDAVIT OF SERVICE OF JUDGMENT SUMMONS

I, A.B., of [*state name, residence, and occupation*], the abovenamed plaintiff [*or clerk, servant, agent, or solicitor to the abovenamed plaintiff*] make oath and say:

That I did on the _____ day of _____ 19____, at [state the APPENDIX N
place of service exactly, as No. 22 King Street, Sandy Bay, Hobart, the
residence of C.D., the abovenamed defendant, or the place of business of E.F.,
the employer of the abovenamed defendant] duly serve C.D., the abovenamed
defendant, with a judgment summons, a true copy whereof is hereunto
annexed, marked A, by delivering the same personally to the said defendant
[state means of knowledge as to identity of person served].

[Endorse the copy judgment summons thus: This paper, marked A, is the
paper referred to in the annexed affidavit.]

6—AFFIDAVIT FOR LEAVE TO ISSUE A JUDGMENT SUMMONS ON A JUDGMENT
OR ORDER AGAINST A FIRM

I, A.B., of _____, the abovenamed plaintiff [or E.F. (state name,
residence, and occupation)] make oath and say as follows:—

1. On the _____ day of _____ 19____, I [or the plaintiff]
obtained judgment [or an order] in this action in this Court [or in the Court
of _____ holden at _____] against the defendants, C.D. and Co.
[or as the case may be] for the sum of \$ _____ [and costs], and there
is now due and payable under the said judgment [or order] the sum of
\$ _____

2. I am informed and believe [state the sources of information and grounds
of belief] that G.H., of [state name, residence, and occupation] was, at the
date of the judgment [or order], a partner in the said firm of C.D. and Co.
[or the sole member of the said firm of C.D. and Co. or carrying on business
on his own behalf in the name of J.K. (state name in which he was sued)].

3. I verily believe that the said G.H. is well able to pay the sum aforesaid
now due and payable under the said judgment [or order] [add, where the
plaintiff does not himself make the affidavit, and I am duly authorized by the
plaintiff to make this affidavit on his behalf].

7—JUDGMENT SUMMONS ON A JUDGMENT OR ORDER AGAINST FIRMS AND
PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

Debtors Act 1870

In the Supreme Court of Tasmania.

[_____]

No. of judgment summons.

Between A.B., Plaintiff [address and description],

and

C.D. and Co., Defendants*

To G.H., of [state the name, address, and description of one of the persons
alleged to be partners in the firm against whom the judgment or order
was obtained, or of the person alleged to be the sole member thereof,
or of the person alleged to be carrying on business in a name other than
his own].

Whereas the plaintiff obtained judgment [or an order] against the defen-
dants by and in the name of the firm C.D. and Co. [or as the case may be]
above described in this Court [or in the Court of _____ holden at
_____] on the _____ day of _____ 19____, for the sum of

APPENDIX N § : [and costs], and there is now due and payable under the said judgment [or order] from the said C.D. and Co. to the said the sum of \$

And whereas the said A.B. has filed an affidavit in this Court, a copy whereof is hereunto annexed, wherein it is deposed that you the said G.H. are one of the partners in the said firm of defendants, C.D. and Co. [or that you the said G.H. are the sole member of the said firm of C.D. and Co., or that you carry on business on your own behalf in the name of J.K.]:

You are therefore hereby summoned to appear personally in this Court at [place where Court holden] on , the day of 19 , at the hour of in the noon, to be examined on oath by the Court touching the means you have or have had since the date of the judgment [or order] to satisfy the sum payable in pursuance of the said judgment [or order]; and also to show cause why you should not be committed to prison for default in payment of the said sum.

And take notice that if you deny that you are one of the partners in the said firm of defendants, C.D. and Co. [or that you are the sole member of the said firm of C.D. and Co., or that you carry on business on your own behalf in the same name of J.K.], you must appear at this Court on the day and at the hour above mentioned, and that in default of your so appearing you will be deemed to admit that you are one of the partners in such firm [or that you are the sole member of the said firm of C.D. and Co., or that you carry on business on your own behalf in the name of J.K.] and your liability to pay the amount due and payable under such judgment [or order].

Dated this day of 19 Clerk of the Court [or as case may require].

	\$
Amount of judgment [or order] remaining due	
Costs of this summons	
Total sum due	\$

* State the name, address, and description as in the original summons with any amendment (if any) made by the Court.

(N.B.—This summons is available against one person only, and where an order for payment by instalments has been made, part only of which are due, must be modified in accordance with the facts.)

8—ORDER UPON A JUDGMENT SUMMONS ALTERING ORIGINAL JUDGMENT OR ORDER

Debtors Act 1870

In the Supreme Court of Tasmania.

[] No. of Judgment Summons.

Between A.B., Plaintiff [address, description],
and
C.D., Defendant [present address, description, and, if known, place of employment].

Whereas the plaintiff obtained a judgment [*or order*] against the defendant APPENDIX N
 in the Court of _____ holden at _____ on the _____ day of _____
 19____, for the payment of the sum of \$ _____ together
 with \$ _____ for costs, and in payment thereof [*or of* _____ part
 thereof] the defendant hath made default:

[*Or*, whereas the plaintiff obtained a judgment [*or order*] against the
 defendant in this Court (*or as the case may be*) on the _____ day of _____
 19____, for the payment of the sum of \$ _____, and there
 is now due and payable upon the said judgment [*or order*] the sum of
 \$ _____:]

And whereas a summons was, at the instance of the plaintiff, duly issued
 out of this Court, by which the defendant was required to appear personally
 at this Court on the _____ day of _____ 19____, to be examined
 on oath touching the means he had then or had had since the date of the
 judgment [*or order*] to pay the said sum, which summons was proved to
 this Court to have been personally and duly served on the defendant:

*Acknowledgment of payment
 into court*

Date	\$	Received by

It is ordered that the defendant do pay
 the amount still due on the said judgment,
 and the costs of the said summons and its
 hearing, as stated at the foot of this order,
 to the Registrar of this Court, by instal-
 ments of \$ _____ for every
 days; the first payment to be made on the
 day of _____ 19____

Dated this _____ day of _____ 19____

Amount on judgment [<i>or order</i>] remaining due	\$ _____
Costs of judgment summons and its hearing	_____
	\$ _____

9—ORDER OF COMMITMENT

Debtors Act 1870

In the Supreme Court of Tasmania.

[_____]

No. of Judgment Summons
 No. of Order

Between *A.B.*, Plaintiff, and *C.D.*, Defendant.

To the Sheriff of Tasmania and his officers and all peace officers within the
 jurisdiction of the said Court, and to the Governor of the [*prison to*
which judgment debtor is to be committed].

Whereas the plaintiff obtained a judgment [*or order*] against the defendant
 in the Court of _____ holden at _____ on the _____ day of _____
 19____, for the payment of \$ _____ for debt [*or damages*]
 and costs, and subsequent costs have been incurred in pursuance thereof
 amounting to \$ _____:

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And whereas the defendant hath made default in payment of \$ payable in pursuance of the said judgment [*or order*]:

And whereas a summons was, at the instance of the plaintiff, duly issued out of this Court, by which the defendant was required to appear personally at this Court on the _____ day of _____ 19____, to be examined on oath touching the means he had then or had had since the date of the judgment [*or order*] to satisfy the sum then due and payable in pursuance of the judgment [*or order*] and to show cause why he should not be committed to prison for such default, which summons has been proved to this Court to have been personally and duly served on the defendant:

And whereas, at the hearing of the said summons, it has now been proved to the satisfaction of the Court that the defendant now has [*or has had*], since the date of the judgment [*or order*], the means to pay the sum then due and payable in pursuance of the judgment [*or order*], and has refused [*or neglected*] [*or then refused or neglected*] to pay the same, and the defendant has shown no cause why he should not be committed to prison:

Now therefore it is ordered that, for such default as aforesaid, the defendant shall be committed to prison for _____ days, unless he shall sooner pay the sum stated below as that upon the payment of which he is to be discharged.

These are therefore to require you, the said Sheriff and others, to take the defendant and to deliver him to the Governor of the [*prison to which judgment debtor is to be committed*], and you the said Governor to receive the defendant, and him safely keep in the said prison for _____ days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Dated this [<i>insert date of order</i>] day of _____ 19____	\$ _____
Total sum payable at the time of issuing the judgment summons	\$ _____
Hearing of summons and fee upon this order	_____
	\$ _____
Deduct amount paid into court subsequent to the hearing of the judgment summons	_____
Total sum upon payment of which the prisoner will be discharged	\$ _____

10—APPLICATION FOR SERVICE OF A JUDGMENT SUMMONS BY AN OFFICER OF A COURT OF REQUESTS OR GENERAL SESSIONS

In the Supreme Court of Tasmania.

[.....]
Between *A B*, Plaintiff, and *C D*, Defendant.

I hereby apply to have the judgment summons about to be issued herein served by an officer of a Court of Requests or General Sessions.

Dated this _____ day of _____ 19____

(Signed)

11—REQUEST THAT JUDGMENT SUMMONS BE SERVED BY OFFICER OF A COURT OF REQUESTS OR GENERAL SESSIONS

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In the Supreme Court of Tasmania.

[]

Between A B, Plaintiff, and C D., Defendant.

I forward you herewith—

- 1. Original judgment summons herein;
 - 2. Copy for service on the said [C.D.];
- and I request you to have the said judgment summons duly served on the said [C.D.]

Dated this day of 19

(Signed)

[Officer to whom application for issue of judgment summons is made.]

To the Registrar of the Court of [Requests] held at

12—CERTIFICATE OF PAYMENT BY A PRISONER

In the Supreme Court of Tasmania.

[]

I hereby certify that [the defendant] who was committed to my [or your] custody by virtue of an order of commitment under the seal of this Court, bearing date the day of 19 , has paid and satisfied the sum of money for the non-payment whereof he was so committed, together with all costs due and payable by him in respect thereof; [and, where the certificate is sent by the Registrar or district registrar or deputy or assistant registrar: and that the defendant may in respect of such order be forthwith discharged out of your custody].

Governor of [or Registrar of the Supreme Court of Tasmania, or other officer of Court to whom the payment is made].

To the Governor of [or the Registrar of the Supreme Court of Tasmania, or other officer of Court to whom notice is to be given].

13—ORDER TO ARREST UNDER SECTION 5 OF THE DEBTORS ACT 1870

In the Supreme Court of Tasmania.

[]

Between A.B., Plaintiff, and C D., Defendant.

Upon reading the affidavit of, &c:

I do order that [the defendant] be arrested and imprisoned for months from the date of his arrest, including the day of such date, unless and until he shall sooner deposit with the Sheriff money or stock or debentures of the Government of Tasmania or of the Commonwealth of Australia to the amount of \$, or give to the plaintiff a bond executed by him and [two] sufficient sureties in the penalty of \$, or a security in the form prescribed by Order 70 for \$, or some other security satisfactory to the plaintiff, that he will not go out of Tasmania without the

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and PART III

leave of this Court [*or* that any sum recovered against him in this action shall be paid or that he shall be rendered to prison]. And I order that the Sheriff do, within one month from the date hereof, take the defendant for the purpose aforesaid if he shall be found in the State of Tasmania.

Dated this _____ day of _____ 19____
