

not be competent for the defendant in the original cause to discharge such suit in any way without the consent of the plaintiff or of the Judge: Provided always, that the party who desires to sue for any such amount, shall in the first place pay or secure all costs that may attend the proceeding, and the moneys realized, or a sufficient part thereof, shall be paid over by the officer receiving the same to apply on the plaintiff's demand, and the overplus, if any, shall be forthwith paid to the defendant in the original suit, under the direction of the Judge.

Proviso: security to be given for costs, &c.

XCI. And be it enacted, That it shall be lawful for any party who has obtained any unsatisfied judgment or order in any Division Court, for the payment of any debt or damages or costs, to obtain a summons from any Division Court within the limits of which the defendant in any such suit shall then dwell or carry on his business, such summons to be in such form as the Judge of such Court shall from time to time direct, and to be served personally upon the person to whom it is directed, requiring him to appear at such time and place as shall be directed in such summons, to answer such things as are named in such summons, and if he shall appear in pursuance of such summons, he may be examined upon oath, touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him, and as to the means and expectation he then had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property, and the person obtaining such summons as aforesaid and all other witnesses whom the Judge shall think requisite, may be examined upon oath, touching the enquiries authorized to be made as aforesaid; and the costs of such summonses and of all proceedings thereon, shall be deemed costs in the cause, unless the Judge shall otherwise order and direct.

A defendant against whom there shall be an unsatisfied judgment, may be summoned and examined as to his means of satisfying the same.

XCII. And be it enacted, That if the party so summoned shall not attend as required by such summons, and shall not allege a sufficient reason for not attending, or shall, if attending, refuse to be sworn or to declare any of the things aforesaid, or if he shall not make answer touching the same to the satisfaction of such Judge, or if it shall appear to such Judge either by the examination of the party or by any other evidence, that such party in incurring the debt or liability which is the subject of the action in which judgment has been obtained, has obtained credit from the plaintiff under false pretences or by means of fraud or breach of trust, or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same, or shall have made or caused to be made any gift, delivery or transfer of any property, or shall have removed or concealed the same with intent to defraud his creditors or any of them, or if it shall appear to the satisfaction of the Judge that the said party so summoned has then or has had since the judgment obtained against him, sufficient means and ability to pay the debt or damages, or costs so recovered against him, either altogether or by any instalment or instalments which the Court in which the judgment was obtained shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall be ordered pursuant to the power hereinafter provided, it shall be lawful for such Judge, if he shall think fit, to order that any such party may be committed to the Common Gaol of the County in which the party summoned is resident, for any period not exceeding forty days.

Proceedings if a defendant shall refuse to attend or to be examined, or shall have contracted the debt without reasonable expectation of being able to satisfy it, or be guilty of any fraud, &c.

XCIII. And be it enacted, That it shall be lawful for the Judge of any Division Court before whom such summons shall be heard, if he shall think fit, whether or not he shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him for the payment, by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or by any instalments, or in any other manner, as such Judge may think reasonable and just.

Order allowing payments by instalments may be rescinded.

XCIV. And be it enacted, That in every case where the defendant in any suit brought in any Division Court shall have been personally served with the summons to

Defendant personally appearing in any case may be examined.