

JUSTICES.

11° Elizabeth II., No. XXIV.

No. 24 of 1962.

AN ACT to amend the Justices Act, 1902-1961.

[Assented to 4th October, 1962.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Justices Act Amendment Act, 1962.* Short title and citation.

(2) In this Act the Justices Act, 1902-1961, is referred to as the principal Act. Reprinted in Vol. 13 of The Reprinted Acts. Approved for reprint 1st December, 1958.

(3) The principal Act as amended by this Act may be cited as the Justices Act, 1902-1962. Amended by Acts Nos. 7 of 1959 and 29 of 1961.

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Ss. 155A,
155B, 155C
and 155D
added.

3. The principal Act is amended by adding after section one hundred and fifty-five, the following sections:—

Enforcement
of main-
tenance
orders.
Cf. Married
Persons
(Summary
Relief) Act,
1960 (W.A.)
s. 22.

155A. (1) Notwithstanding the provisions of section one hundred and fifty-five of this Act, where an order contains a provision for maintenance, or a provision for the payment of costs made on and in respect of an application relating to maintenance, and that provision, on default of payment, is enforceable in the manner provided by this Act, any person entitled to receive payment under such provision of the order may, without prejudice to the right conferred by subsection (3) of this section, enforce payment in that manner; but for the purposes of this subsection—

- (a) the proviso to subsection (2a) of section one hundred and fifty-five of this Act does not apply; and
- (b) subsection (1) of section one hundred and sixty-seven of this Act shall be read and construed as though the words, "three months" were substituted for the words, "six months" in that subsection.

(2) Where a person is imprisoned by operation of this Act under this section—

- (a) the operation of the maintenance provision contained in the order in respect of which default in payment is made and by virtue of which he is imprisoned is, except for any period of imprisonment on remand under section one hundred and fifty-five D of this Act, suspended during the continuance of that imprisonment;
- (b) that imprisonment does not operate as a satisfaction or extinguishment of any amount of which payment is in default;

but that person shall not again be imprisoned by operation of this Act for the same default or be thereby imprisoned for any other default in respect of that maintenance provision made prior to the issue of the warrant under which he is then imprisoned;

- (c) any default of payment occurring after the termination of that imprisonment is for the purposes of this section a fresh default; and
- (d) if that imprisonment is being served under more than one warrant, those warrants shall for the purposes of the imprisonment take effect cumulatively, but not for any period exceeding three months.

(3) Without prejudice to the right conferred by subsection (1) of this section, any person entitled under a provision of an order referred to in this section to receive payment of any amount of which payment is in default may register that order and file proof of that amount, in the manner prescribed by the regulations, in any Local Court; and payment of that amount, and the amount of any fees payable on registration of the order and filing of the proof, may thereupon be enforced under Part VIII of the Local Courts Act, 1904, in the same manner as if the sum of those amounts were the amount of a judgment of the Local Court.

(4) Any process of execution or enforcement issued under the provisions of this section ceases to be of effect upon the subsequent issue of any process of execution or enforcement in respect of, or partly in respect of, or which takes into account, the same default as the former process.

(5) Without prejudice to any of the foregoing provisions of this section, where any order sought to be enforced under this section does not direct the manner of its enforcement, that order shall on default be enforceable by

imprisonment in the first instance, and the provisions of section one hundred and fifty-eight of this Act shall apply to that order as though the order directed that the person in default should be imprisoned.

(6) The provisions of this section and sections one hundred and fifty-five B, one hundred and fifty-five C and one hundred and fifty-five D of this Act shall apply as well to warrants for imprisonment that are issued prior to the date of the commencement of this section in respect of default in payment under a maintenance order and are unexecuted, as to warrants issued after that date; but nothing in this section or in the other sections referred to in this subsection shall be construed to affect or be in derogation of or substitution for any of the provisions of the Married Persons (Summary Relief) Act, 1960.

Court may recall warrant unexecuted. Ibid. s. 24.

155B. A court may, of its own motion, recall any warrant issued out of the court under section one hundred and fifty-five A of this Act that is unexecuted.

Rights of a person arrested on default. Ibid. s. 25.

155C. (1) Any person taken into custody in execution of a warrant issued under section one hundred and fifty-five A of this Act may—

- (a) if the warrant was issued out of a Children's Court, apply to a Children's Court; or
- (b) if the warrant was issued out of a court other than a Children's Court, apply to a court of summary jurisdiction other than a Children's Court,

for an order suspending the operation of that warrant.

(2) A person electing to make an application under this section—

- (a) may, except where applying under the circumstances mentioned in subsection (3) of this section, be admitted to bail as if taken into custody without warrant, under the provisions of section sixty-four of this Act; and

- (b) shall be brought before a Children's Court or, as the case may require, a court of summary jurisdiction as soon as practicable after so electing.

(3) Where after being committed to prison in execution of a warrant mentioned in subsection (1) of this section a person, not having made any such prior application in respect of that warrant, elects to make an application under this section, that person shall be brought before a Children's Court, or, as the case may require, a court of summary jurisdiction as soon as practicable after so electing.

155D. (1) The court before whom a person is brought pursuant to section one hundred and fifty-five C of this Act, in the first instance, may remand that person from time to time and from place to place, with or without bail; and may remand that person for sufficient time to permit such notice of the application made under the provisions of that section as that court sees fit to be sent to the person at whose instance the warrant was issued, and the latter person shall in that event be at liberty to be heard upon the hearing of the application.

Procedure
on applica-
tion under
s. 155C.
Ibid. s. 26.

(2) Subject to the provisions of subsection (1) of this section, a court may—

- (a) further remand the person in that subsection mentioned, from time to time and from place to place;
- (b) unless satisfied that the default of that person is not a wilful default or is not due to culpable neglect, order the warrant to be put into operation; or
- (c) suspend the operation of the warrant for such time as, and direct that any payment in respect of which the warrant is issued be made by such day or in such instalments and under such conditions as, it thinks fit,

and may in addition, in its discretion, make an order for the payment by that person of such costs as it thinks fit.

(3) Where a court making an order under the provisions of subsection (2) of this section is not the court out of which the warrant issued, the court making the order shall communicate the terms thereof to the latter court.
