



Western Australia

Local Courts Act 1904

This Act was repealed by the *Courts Legislation Amendment and Repeal Act 2004* s. 4 (No. 59 of 2004) as at 1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128).

Local Courts Act 1904

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Western Australia

Local Courts Act 1904

An Act to consolidate and amend the law relating to Local Courts.

Part I — Preliminary

1. Short title

This Act may be cited as the *Local Courts Act 1904* ¹.

2. Commencement

This Act shall come into operation on 1 January 1905.

3. Interpretation

In this Act, unless the context otherwise indicates —

“**Action**” includes suit, and means a civil proceeding commenced as prescribed by plaint;

“**Bailiff**” includes deputy bailiff, and persons appointed in the prescribed manner to assist bailiffs;

“**Clerk**” means clerk of a Local Court, and includes assistant clerk acting in the absence of the clerk or when the clerk is for any reason not available;

“**Court**” means a Local Court established under this Act;

“**District Court**” means The District Court of Western Australia established under the *District Court of Western Australia Act 1969*;

“**Goods**” includes money or bank-notes of any banking company established in Western Australia or elsewhere, and cheques, bills of exchange, promissory-notes, specialities, or other securities for money, and stock and shares, and other personal property of every kind;

“**Judge**” means a judge of the Supreme Court, and includes any Commissioner appointed under the *Supreme Court Act 1935*;

“**Judgment**” includes a judgment, order, or other decision or determination of a magistrate;

“**Land**” includes land of any tenure, and any estate therein, and the houses, buildings, and structures thereon;

“Landlord” means the person entitled to the immediate reversion of land, or, if it is held in joint tenancy, coparcenary, or tenancy in common, all or any one of the persons entitled to the reversion;

“Magistrate” means a magistrate of a Local Court, and includes any stipendiary magistrate or justices of the peace sitting in the place of the magistrate;

“Matter” means a proceeding in the court which is commenced as prescribed otherwise than by plaint;

“Minister” means the responsible Minister of the State for the time being charged with the administration of this Act;

“Party” includes a person served with notice of or attending a proceeding, although not named on the record;

“Prescribed” means prescribed by this Act, or the rules of court;

“Proclamation” means a proclamation by the Governor published in the *Government Gazette*;

“Return Day” means the day fixed by a notice of trial or appointed in a summons or proceeding for the trial or hearing of an action or matter;

“Rules of court” means rules of court made as by this Act prescribed.

[Section 3 amended by No. 5 of 1912 s.3; No. 35 of 1930 s.2; No. 26 of 1954 s.3; No. 69 of 1976 s.9; No. 65 of 2003 s. 129.]

4. Repeal

[Omitted under the Reprints Act 1984 s.7(4)(f).]

4A. Saving

[Omitted under the Reprints Act 1984 s.7(4)(g).]

Part II — Courts, magistrates, and officers

Courts

5. Appointment of Local Courts

The Governor may, by proclamation, order that courts to be called Local Courts shall be held at such places as he thinks fit; and may, in like manner, alter the place for the holding of a court, or order that the holding of any court be discontinued.

When the holding of a court is discontinued, all proceedings pending in the court shall be transferred to and continue in such other court as the Governor may direct by the proclamation, and all records of the court, the holding of which is discontinued, shall be transferred to such other court.

6. Courts to be courts of record

Every Local Court shall be a court of record, and shall have the jurisdiction provided by this Act.

7. Seal of the court

For every court there shall be a seal; and complaints, summonses, warrants, and other process shall be sealed or stamped with the seal.

Magistrates

8. Appointment of magistrates

The Governor may appoint magistrates of Local Courts, and may assign to a magistrate such courts as he thinks fit; but the jurisdiction of a magistrate shall not be deemed thereby to be limited to the courts assigned to him.

Every magistrate shall, by virtue of his office, be a justice of the peace for the State.

9. Magistrates may act throughout State

Every magistrate shall be appointed for the whole State, and shall be empowered to act in any Local Court in the State.

10. Place and times of sittings

The magistrate to whom a court is assigned shall attend to hold the court, at the place appointed by the Governor, at such times as are appointed by the Minister, but so that the court is held in the place once at least in such period of time as the Governor directs by proclamation.

Notice of the days on which the court is appointed to be held shall be published in the *Government Gazette*, and posted in a conspicuous place at the court-house and also in the office of the clerk.

When by reason of the absence of a magistrate the court cannot be held at the time appointed, the clerk, or, in his absence, the bailiff, shall adjourn the court, and enter in the minute-book the cause of the adjournment.

10A. Magistrate may sit in a place appointed under section 38B

- (1) Notwithstanding section 10, a magistrate may sit in a place appointed under section 38B and may exercise in that place any of the functions of a magistrate under this Act as if that place were a Local Court assigned to that magistrate.
- (2) The jurisdiction of the court exercised by a magistrate at a place appointed under section 38B shall not be questioned by any person or by the Supreme Court or any other court on the ground that the jurisdiction was exercised at a place other than a court.

[Section 10A inserted by No. 11 of 1987 s.4.]

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11. Jurisdiction in chambers

A magistrate may sit in chambers at any time and at any place; and, subject to the rules of court, may exercise in chambers any jurisdiction of the court, except the trial of actions and the hearing of applications for new trials.

12. Deputy magistrate

In the case of the illness or absence of a magistrate, or if a magistrate is interested in an action or matter pending in a court assigned to him, another magistrate, or any stipendiary magistrate, or any 2 justices of the peace may, at the request of the first-mentioned magistrate, or of the Minister, sit for the first-mentioned magistrate, and may exercise all the powers and perform all the duties which that magistrate might have exercised or performed.

Whenever such request shall be made by a magistrate, he shall immediately report the matter to the Minister, and shall state the reason of the request, the name of the magistrate or the names of the justices sitting for him, and such other particulars as may be prescribed.

Clerks

13. Appointment of clerk and assistant clerks

- (1) For every court the Governor may subject to the provisions of subsection (2) appoint a clerk and assistant clerks, who shall be paid by salary.
- (2) Where the person who is to be appointed a clerk or assistant clerk is not subject to the provisions of Part 3 of the *Public Sector Management Act 1994*, he shall be appointed clerk or assistant clerk by the Minister.

- (3) The Minister may during the absence or temporary incapacity of a clerk or an assistant clerk appoint a substitute to discharge the duties of the clerk or assistant clerk.

[Section 13 amended by No. 10 of 1953 s.2; No. 32 of 1994 s.19.]

14. Duties of clerk

The clerk shall sign and issue summonses and warrants, and register the records and judgments, and keep minutes of the proceedings of the court, and shall take charge of and keep an account of the court fees and fines payable or paid into court, and of the moneys paid into and out of court, and shall enter an account of the fees, fines, and moneys in a book to be kept by him for that purpose, and shall, when required, submit his accounts to be audited by the Auditor General or his officers.

15. Minutes of proceedings to be kept

The clerk shall cause a note of the complaints and summonses, and of the judgments and executions, and returns thereto, and of the fines, and of all other proceedings of the court, to be fairly entered from time to time in books belonging to the court, which shall be kept at the office of the court.

In any action or other proceeding, the books and any entries therein, or copies of the books or entries under the seal of the court, and purporting to be signed and certified by the clerk, shall, upon production, be prima facie evidence of the contents of the books, or of the entries, and of the proceedings referred to in them, and of the regularity of the proceedings.

Bailiffs

16. Appointment of bailiffs

For every court there shall be one or more bailiffs, who shall be appointed by the Minister.

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The bailiff may, by writing under his hand, with the approval of the magistrate, appoint a sufficient number of fit persons to assist him, and may dismiss all or any of them and appoint others in their place.

An officer so appointed may also be suspended by the magistrate, or suspended or dismissed by the Minister.

The bailiff shall be responsible for the acts and defaults of the officers appointed to assist him.

[Section 16 amended by No. 9 of 1964 s.2.]

17. Bailiff's assistants may act after the death or removal of bailiff

The death or removal of a bailiff shall not invalidate the acts of the officers so appointed, but they shall continue to act until they are dismissed by the successor to the bailiff or by the Minister.

They shall receive for their services, while they so act after the death or removal of the bailiff, the same remuneration as they were receiving at the date of the death or removal, and such remuneration shall be paid out of the salary, fees, or allowances attached to the office of bailiff.

18. Duties of bailiffs

The bailiffs, or one of them, shall, if required by the magistrate, attend every sitting of the court, and shall, by themselves or their officers, serve all summonses, and execute all warrants issued out of the court; and the bailiffs and officers shall, in the execution of their duties, conform to the rules of court, and subject thereto to the order and direction of the magistrate of the court for which they are appointed.

Provided that a summons or other process issued out of any court —

- (a) may be transmitted by the clerk of the court to, and may be served by the bailiff of any other court, or his officer; or
- (b) may be served by the plaintiff or his solicitor, or by any person employed by the plaintiff or his solicitor, or by a police officer, or any other person authorised by the magistrate.

19. Bailiff not required to take out auctioneer's licence

A bailiff or other officer duly authorised to execute a warrant of execution issued under the authority of this Act may sell land or goods without taking out an auctioneer's licence.

20. Remuneration of bailiffs

A bailiff may be paid a salary on account of his general duties, and shall be entitled to receive and retain for his own use the prescribed bailiff's fees, unless the Minister in any case otherwise orders. The bailiff shall, out of such fees, provide for the performance of the duties for which the fees are allowed, and for the payment of the officers appointed to assist him.

Provided that, if in any court the fees allowed to be taken by a bailiff appear to be more than sufficient to afford him a reasonable remuneration, the Minister may order that a certain specified part only of such fees shall be retained by him, and in that case, and so long as the order is in force, the amount of the residue of the fees shall be accounted for, paid, and applied, in the same manner as fees payable to the clerk are accounted for, paid, or applied.

21. Bailiff answerable for escape and neglect to levy execution

If a bailiff who is directed to levy execution loses by neglect, connivance, or omission, the opportunity of levying the execution, the magistrate may upon complaint of the party

aggrieved, inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of the necessary parties in the same manner in which the attendance of witnesses in an action may be enforced, and may order the bailiff to pay such damages as it appears that the plaintiff has sustained; and the bailiff shall be liable to pay the same.

Upon demand made, and on his refusal to pay and satisfy the damages, payment may be enforced in the manner provided by this Act for enforcing a judgment

22. Bailiff to give security

Every bailiff shall give security for such sum and in such manner as the Minister orders for the due performance of his office, and for the due accounting for and payment of the moneys received by him under this Act, or which he is liable to pay for misbehaviour in his office.

General provisions relating to officers

23. Officer not to be agent of a party

An officer of the court shall not be, directly or indirectly, concerned as agent for a party to any proceeding in the court.

Any officer committing an offence against this section shall be liable to pay the sum of \$200 and full costs of action to any person who sues for the same.

[Section 23 amended by No. 113 of 1965 s.8.]

24. Remedies against and penalties on bailiffs and other officers for misconduct

If a clerk, bailiff, or other officer, acting under or under colour or pretence of the process of the court, is charged with extortion or misconduct, or with not duly paying or accounting for money levied by him under the authority of this Act, the magistrate may inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of the

necessary parties in the manner provided by this Act for enforcing the attendance of witnesses, and may make such order for the repayment of the money extorted, or for the due payment of the money so levied, and for the payment of such damages and costs as he thinks just.

The magistrate may also impose a fine upon the clerk, bailiff, or other officer not exceeding \$20 for each offence, and, in default of payment of the money so ordered to be paid, payment may be enforced in the manner provided by this Act for enforcing a judgment.

The Minister may, in his discretion, direct that the clerk, bailiff, or other officer shall be dealt with under the provisions of any Act for the regulation of the public service in force for the time being, and in such case the provisions of this section shall not apply.

[Section 24 amended by No. 113 of 1965 s.8.]

25. No officer to be deemed a trespasser by reason of irregularity

No officer of a court in executing any warrant, and no person at whose instance any such warrant shall be executed, shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it; but the party aggrieved may bring an action for any special damage he may have sustained by reason of such irregularity or informality or mode of execution, and in such action he shall recover no costs unless the damages awarded shall exceed \$4.

[Section 25 amended by No. 113 of 1965 s.8.]

26. Indemnity to persons acting under this Act

If an action is brought against a person for anything done under a warrant issued in pursuance of this Act, the production of the

warrant under the seal of the court shall be deemed sufficient proof of the authority of the court previous to the issuing of the warrant, and if the plaintiff in the action has a verdict given against him, is nonsuited, or discontinues the action, the defendant shall be allowed full costs as between solicitor and client.

[27. *Repealed by No. 73 of 1954 s.8.*]

Legal Practitioners

28. Privilege

No privilege shall be allowed to a solicitor or other person to exempt him from the provisions of this Act.

29. Appearance may be in person or by a legal practitioner

A party to an action or other proceeding under this Act, or a legal practitioner retained by or on behalf of the party on either side, or any person allowed by special leave of the magistrate in any case to appear instead of the party, may address the court and examine and cross-examine the witnesses, but subject to the rules of court and the orders of the magistrate for the orderly transaction of the business of the court.

Provided that on the hearing of an application under this Act or the *Debtors Act 1871*, by a judgment creditor for the committal of a judgment debtor, the judgment creditor shall be entitled to be represented by any clerk or servant in the employ or subject to the control or direction of the judgment creditor or his solicitor.

[Section 29 amended by No. 21 of 1921 s.2.]

Part III — Jurisdiction

As to subject-matter

30. In personal actions

- (1) Subject to subsection (2) all personal actions in which the amount claimed is not more than \$25 000 whether on a balance of account or after an admitted set-off or otherwise, may be commenced in a Local Court; and in an action for recovery of a balance of account, the court shall have jurisdiction, if the original claim is reduced to \$25 000 or less, by payment or otherwise, or by deducting any sum for which the plaintiff gives the defendant credit upon the plaint being entered.
- (2) Except as provided in subsection (3) a Local Court shall not have jurisdiction to hear and determine any action —
 - (a) in ejectment;
 - (b) in which the title to land is in question;
 - (c) in which a devise, bequest or limitation under a will or settlement is in question;
 - (d) for libel or slander;
 - (e) for personal injury caused by or arising out of the use of a motor vehicle;
 - (f) for seduction.
- (3) If the title to land incidentally comes in question in an action, the court shall have power to decide the claim which it is the immediate object of the action to enforce, but the judgment of the court shall not be evidence of title between the parties or their privies in another action in that court, or in any proceedings in any other court.

[Section 30 amended by No. 35 of 1930 s.3; No. 26 of 1954 s.4; No. 113 of 1965 s.8; No. 69 of 1976 s.11; No. 118 of 1981 s.13; No. 11 of 1987 s.5; No. 11 of 1991 s.3; No. 53 of 1992 s.35.]

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31. In case of partnership, intestacy and legacy

The jurisdiction of a Local Court shall extend to the recovery of any demand not exceeding \$25 000, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of the distributive share under an intestacy or of a legacy under a will.

[Section 31 amended by No. 35 of 1930 s.4; No. 26 of 1954 s.5; No. 113 of 1965 s.8; No. 69 of 1976 s.12; No. 118 of 1981 s.14; No. 11 of 1987 s.6; No. 53 of 1992 s.35.]

32. Equitable claims

In any case in which a person has an equitable claim or demand against another person in respect of which the only relief sought is the recovery of a sum of money or of damages, whether liquidated or unliquidated, and the amount claimed is not more than \$25 000, the person seeking to enforce the claim or demand may sue for and recover it in a Local Court.

[Section 32 amended by No. 35 of 1930 s.4; No. 26 of 1954 s.6; No. 113 of 1965 s.8; No. 69 of 1976 s.13; No. 118 of 1981 s.15; No. 11 of 1987 s.7; No. 53 of 1992 s.35.]

33. Powers of court

A Local Court shall, as regards all causes of action within its jurisdiction, have power to grant, in any proceeding before such court, such relief, redress, or remedy, and in every such proceeding to give such and the like effect to every ground of defence or counterclaim, equitable or legal (subject to the provision next hereinafter contained) in as full and ample a manner as might be done in the like case by the Supreme Court.

34. Counterclaims

- (1) Where any defence or counterclaim of the defendant involves matter beyond the jurisdiction of the court, such defence or counterclaim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as

relates to the demand of the plaintiff and the defence thereto, but, except as provided in subsection (2), no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counterclaim.

Provided always, that in such case it shall be lawful for the Supreme Court or a Judge thereof, if it is thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred to the Supreme Court; and in such case the record in such proceeding shall be transmitted by the clerk to the Supreme Court; and the same shall thenceforth be continued and prosecuted in the Supreme Court as if it had been originally commenced therein.

- (2) The jurisdiction of a Local Court, in cases of counterclaim, shall not be excluded by reason —
- (a) that, where the counterclaim involves more than one cause of action, as to each of which the defendant might have maintained a separate action, each such cause of action being within the jurisdiction of the court, the aggregate amount of the counterclaim exceeds the jurisdiction of the court; or
 - (b) that the counterclaim is for an amount of money exceeding the jurisdiction of the court, provided that the plaintiff does not object in writing, within the prescribed time, to the court giving relief exceeding that which the court would otherwise have jurisdiction to administer.
- (3) In any case where the counterclaim involves matter beyond the jurisdiction of the court, notwithstanding the provisions of this section, the court may, on such terms (if any) as the court thinks just, either adjourn the hearing of the case, or stay execution on the judgment, for such time as may be necessary to enable any party to apply to remove the proceedings into the Supreme Court or to enable the defendant to prosecute in that court an action for the purpose of establishing his counterclaim; and in default of any such application being made, or action brought, the court shall, after the expiration of the time limited, have

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jurisdiction to hear and determine the whole matter in controversy, to the same extent as if all parties had consented thereto.

35. Rules of law to apply in all Local Courts

The several rules of law enacted and declared by the *Supreme Court Act 1935*, shall be in force and receive effect in Local Courts, so far as the matters to which such rules relate shall be respectively cognisable by such courts.

[Section 35 amended by No. 26 of 1954 s. 7.]

As to locality

36. Where action may be commenced

Every Local Court shall have jurisdiction throughout the State.

But, except as hereinafter provided, every action shall be commenced —

- (a) in the court held nearest to the place where the defendant, or one of the defendants, resides or carries on business; or
- (b) in the court held nearest to the place where the defendant, or one of the defendants, resided or carried on business at any time within 6 months next before the entry of the plaint; or
- (c) in the court held nearest to the place where the cause of action or claim wholly or in part arose.

[Section 36 amended by No. 5 of 1912 s. 4.]

36A. Plaintiff may choose court

- (1) Notwithstanding anything in the proviso to section 36, a person desirous of bringing an action, of a kind to which the proviso applies, in a Local Court, shall be permitted to commence the action in any court, and in the absence of any objection to the jurisdiction he shall be deemed to have selected a proper court.

- (2) The jurisdiction of the court chosen by the plaintiff for the commencement of such an action, provided the action is as regards subject-matter within the jurisdiction of the Local Courts of the State, shall not be questioned by any person or by the Supreme Court or any other court save as is in this section provided.
- (3) A defendant who has been sued in a court which is not the nearest to his place of residence may, if he contends that the action has not been commenced in a proper court, object to the jurisdiction by adding to his notice of defence words to the effect following: "I object to the jurisdiction of this court, and say that I reside at (naming the place), and I require this action to be transferred to the court nearest to that place."
- (4) On receipt of a notice of defence containing such an objection the clerk shall give the plaintiff a notice according to Form 1 in the Second Schedule, and unless the plaintiff, before the expiry of the prescribed time, shall file in the court an affidavit according to the prescribed form justifying his choice of court, or discontinue the action, the clerk shall transfer the action in the prescribed manner in accordance with the requisition of the defendant, and the clerk of the court to which the action is transferred shall forthwith give the parties the prescribed notice of trial.
- (5) If the plaintiff shall in due time file such an affidavit, the clerk shall duly consider the facts disclosed thereby, and shall decide whether the action has been commenced in a proper court, and so ought to continue in his court or not, and if he shall decide that it ought to continue he shall give notice of trial as if the notice of defence contained no objection; but if he shall decide that it ought not to so continue, then the action shall be transferred and shall proceed as if no such affidavit had been filed.
- (6) Such affidavit may be made by the plaintiff or any other person, but shall not be deemed sufficient unless it appears that the matters deposed to therein are within the personal knowledge of

the deponent, and that the facts disclosed thereby show that the plaintiff has commenced the action in a proper court.

- (7) If there are more defendants than one, no notice of any objection shall be sent to the plaintiff till every defendant has either given notice of defence or made default in so doing, and in such case, if more than one objection has been made, and each objection does not require a transfer to the same court, then in the event of a transfer being necessary, the action shall be transferred to such one of the courts to which a transfer has been required as the plaintiff shall, within one week after the receipt by him of the notice, select or, in default of such selection as the clerk shall determine.
- (8) The magistrate may exercise any power or discretion of the clerk under this section, and may in specific cases give directions to the clerk as to the exercise of any such power or discretion, and the clerk shall observe every such direction.
- (9) The decision of a clerk or magistrate as to the due filing or default in filing of such affidavit as aforesaid or as to whether an action ought to continue in his court or not shall be final.

[Section 36A inserted by No. 5 of 1912 s.5.]

37. Court where magistrate can sue and be sued

A magistrate proposing to sue any person, and any person proposing to sue a magistrate, by an action which should be commenced in a court assigned to such magistrate, may bring his action in the nearest court which is not assigned to such magistrate.

38. Action against officer

Any person proposing to sue an officer of the court in which the action should be commenced may, if he so desires, bring his action in the nearest court of which the defendant is not an officer.

38A. Power of Judge to remove action or matter from one court to another

- (1) If it shall be made to appear to a Judge of the Supreme Court that it is just or expedient that any action or matter in a Local Court should be tried or determined or should proceed in another Local Court, he may order the whole action or matter to be transferred to such other court, upon such terms (if any) as to payment of costs, giving security for costs, or otherwise as he thinks fit; and in such case all proceedings in such action or matter, or certified copies thereof, shall be transmitted to such other court, and the action or matter shall thereafter be continued and proceed therein in the same way, so far as may be, as if it had been commenced therein.
- (2) The decision of the Judge making or refusing to make an order hereunder shall be final.

[Section 38A inserted by No. 5 of 1912 s.6.]

38B. Changing venue to a place other than a court

- (1) Where a clerk of a Local Court is of the opinion that an action or matter commenced in or transferred to that Local Court could more conveniently or fairly be tried or heard in a place other than a court, then the clerk shall, in the prescribed manner, appoint a place other than a court for that trial or hearing.
- (2) The magistrate may exercise the discretion of the clerk under subsection (1) and may give directions to the clerk as to the exercise of the clerk's discretion, and the clerk shall observe those directions.
- (3) Where a magistrate is satisfied by any party to an action or matter that the action or matter can more conveniently or fairly be tried or heard in a place other than a place appointed by a clerk under subsection (1), the magistrate may order that the action or matter be sent for trial or hearing —
 - (a) to a Local Court; or

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- (b) to a place appointed by the magistrate where, in the opinion of the magistrate, the action or matter can more conveniently be tried or heard.
- (4) The decision of a magistrate under subsection (3) shall be final.
[Section 38B inserted by No. 11 of 1987 s.8.]

Consent jurisdiction

39. Consent jurisdiction

If both parties agree, by a memorandum signed by them or by their solicitors, that any specified Local Court shall have jurisdiction to try any action which might be brought in the Supreme Court, that Local Court shall have jurisdiction to try the action.

The memorandum shall state that the parties signing it know that the action is not within the jurisdiction of the court without such consent, and shall be filed with the clerk at the time when the plaint is entered.

Part IV — Procedure

Plaint and summons

40. Action commenced by plaintiff

- (1) Any person intending to bring a personal action in a Local Court shall inform the clerk of the names and places of abode or business of the proposed parties to the action and of the amount claimed and of the general nature of the cause of action.
- (2) The clerk shall thereupon enter in a book to be kept for that purpose a plaint in the prescribed form, setting forth the information aforesaid.
- (3) A misnomer or inaccurate description of a person or place in a plaint, summons, or other document shall not vitiate the same if the person or place is named or described as commonly known.
- (4) In the case of a claim for property other than money, the value of the property shall be deemed to be the amount claimed.

[Section 40 inserted by No. 5 of 1912 s.7.]

41. Summons to issue

- (1) The clerk shall then issue in duplicate a summons according to the Form 2 in the Second Schedule, and bearing the number of the plaint in the margin thereof, and where there are more defendants than one he shall issue as many additional duplicates as there are additional defendants.
- (2) The plaintiff shall indorse on or annex to such summons and every duplicate thereof a statement (which shall be called the claim), setting out concisely the cause of action alleged and the amount or value of the money or property claimed, and the nature of any other relief claimed.

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- (3) The clerk shall retain one such summons and claim, and shall hand over the duplicates for service.

[Section 41 inserted by No. 5 of 1912 s.7.]

42. Service

- (1) Every such summons shall be served personally, except in those cases wherein a different method of service is prescribed, or shall as hereinafter provided be ordered or allowed by the magistrate or clerk.
- (2) Where the magistrate or clerk is satisfied that to effect personal service of a summons would involve undue expense, he may allow service by post.
- (3) Service by post may be effected by the clerk despatching the summons through the post as a prepaid registered letter addressed to the party to be served at his place of abode or business.

[Section 42 inserted by No. 5 of 1912 s.7.]

43. Substituted service

Where personal service of a summons or other process or service in the prescribed manner of any summons or process has not been effected, and the magistrate is satisfied that reasonable efforts have been made to effect such service, he may order that the plaintiff be at liberty to proceed as if personal service or service in the prescribed manner had been effected, subject to such conditions (if any) as he may think fit.

[Section 43 inserted by No. 5 of 1912 s.7.]

44. Proof of service

- (1) Proof of service may be given in the prescribed manner by the certificate of a bailiff or police officer, or the affidavit of any other person who has served any summons or process.

- (2) Any false statement in any such certificate shall render the person making the same liable on summary conviction to a fine of \$6 000.
- (3) Provision may be made by rules of court for special methods of proving service in special cases.
- (4) The provisions herein or made by any such rules relating to service of summonses or to proof of such service may be extended by rules of court to any other process.

[Section 44 inserted by No. 5 of 1912 s. 7; amended by No. 51 of 1992 s. 16(1); No. 50 of 2003 s. 76(2).]

45. Notice of defence

A defendant shall be allowed to give notice that he intends to defend an action (which notice is herein called “**notice of defence**”) within the time limited for that purpose in the summons or at any time before a proceeding in default has been taken.

[Section 45 inserted by No. 5 of 1912 s. 7.]

45A. Listing of action for trial

- (1) If a defendant gives notice of defence, the clerk shall give to all parties to the action the prescribed notice of intention to defend and any party may apply to the clerk to list the action for trial.
- (2) The clerk shall, after —
 - (a) receiving an application to list an action for trial; and
 - (b) the expiration of the time within which a magistrate may direct that a pre-trial conference be held under section 45B in relation to the action,

list the action for trial and give each party the prescribed notice of trial, unless —

- (c) subject to subsection (3), a certificate of readiness has not been filed in the prescribed manner; or
- (d) a direction to hold a pre-trial conference has been given.

s. 45B

- (3) The magistrate may dispense with the requirement under subsection (2) to file a certificate of readiness.
- (4) Where there are more defendants than one, notice of trial shall not be given under subsection (2) until —
 - (a) notices of defence have been received from all the defendants; or
 - (b) the time for the giving of every such notice has expired,unless the magistrate otherwise orders.

[Section 45A inserted by No. 11 of 1987 s.9.]

45B. Pre-trial conference

- (1) A party to an action, not later than 14 days after being given the prescribed notice of intention to defend, may request a pre-trial conference in relation to the action.
- (2) The magistrate shall, within 7 days of the last day on which a party may request a pre-trial conference, direct that a pre-trial conference be held, or that a pre-trial conference shall not be held, as he thinks appropriate in the circumstances of the case.
- (3) Where the magistrate directs that a pre-trial conference shall be held, the clerk shall give all parties the prescribed notice of pre-trial conference.
- (4) Unless the magistrate otherwise directs, all parties given a notice of pre-trial conference shall attend the pre-trial conference at the time and the place specified in the notice.
- (5) At a pre-trial conference, the clerk may —
 - (a) enquire into the likelihood of settlement, the delineation of issues in dispute, the state of preparation of the cases of the respective parties and such procedural matters as the clerk thinks fit;
 - (b) give directions for the further conduct of the proceedings and make such interlocutory and interim orders as the clerk thinks fit; and

- (c) where appropriate, list the action for trial or, if a settlement acceptable to all parties is attained, order each party to file a memorandum of consent.
- (6) A magistrate shall have and exercise the same power and authority for compelling obedience to, and punishing disobedience of, an order made by a clerk under subsection (5) as a magistrate may exercise for compelling obedience to, or punishing disobedience of, an order to the same effect made in an action or matter.
- (7) Where an action is not listed for trial, or settled, at a pre-trial conference the clerk shall, upon receiving the prescribed notice that all orders made at the pre-trial conference in relation to that action have been complied with, list the action for trial and give each party the prescribed notice of trial.
- (8) Subject to subsection (9), evidence of anything said or done or any admission made at a pre-trial conference is not admissible in any court.
- (9) Nothing in subsection (8) prevents a court from admitting evidence of anything said or done or any admission made at a pre-trial conference —
 - (a) for the purposes of exercising its powers and authority under subsection (6); or
 - (b) upon the trial of a person for an offence committed at a pre-trial conference.

[Section 45B inserted by No. 11 of 1987 s.9.]

45C. Delegation

The magistrate may by delegation in writing delegate to the clerk authority to exercise generally, or in any particular case, or in any case of a class, the powers conferred upon a magistrate by sections 45A(3) and 45B(2) and (4).

[Section 45C inserted by No. 11 of 1987 s.9.]

46. Procedure where notice of defence not given — judgment by default

[(1) repealed]

- (2) If a defendant has not given notice of defence, and the time limited for that purpose in the summons has expired, the following rules shall, according to the nature of the case, have effect:
- (a) The plaintiff may, in so far as the claim is for a debt or liquidated demand in money or for delivery of goods, apply for and obtain final judgment against such defendant for the amount claimed or for the delivery of the goods and for costs and, in so far as the claim is for pecuniary damages, he may set the case down for the assessment of such damages by the Court, and shall be entitled to final judgment for the amount assessed with costs, or may, in so far as the claim is for pecuniary damages not exceeding \$500 in the case of a claim in respect of damage to a motor vehicle or \$300 in the case of other claims, apply for and obtain final judgment against the defendant for the amount not exceeding \$500 or \$300, as the case may be, claimed for pecuniary damages without the necessity of the case being set down for assessment of the damages by the court.
 - (b) Notice of every assessment of damages shall be given to the parties, and the defendant shall be at liberty to attend thereon.
 - (c) All notices and other documents intended for any defendant who has not given notice of defence may, in lieu of being served on or given to him be screened or exhibited for the prescribed time in the office of the court.
 - (d) Any judgment hereunder shall not be entered after one year from the service of the summons, unless by leave of the magistrate, but, subject to this provision, may be entered at any time by the magistrate or the clerk, and the clerk shall have such power to determine any

question necessary to be determined for that purpose as the magistrate would have.

[Section 46 inserted by No. 5 of 1912 s.7; amended by No. 26 of 1954 s.8; No. 10 of 1957 s.3; No. 113 of 1965 s.8; No. 118 of 1981 s.16; No. 127 of 1982 s.4; No. 11 of 1987 s.10.]

47. Setting aside judgment by default

Any judgment by default may be set aside by the magistrate upon such terms as to costs or mode or time of trial or otherwise as the magistrate may think fit.

[Section 47 inserted by No. 5 of 1912 s.7.]

Summary relief

47A. Summary judgment or leave to defend where claim for debt or liquidated demand in money

- (1) When the claim in any action is for a debt or liquidated demand in money only, and the defendant has given notice of defence, the plaintiff may, on affidavit, made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed and stating that in the deponent's belief there is no defence to the action, apply to the magistrate for judgment for the amount claimed and costs, and the magistrate may thereupon, unless the defendant by affidavit or otherwise shall satisfy him that he has a good defence to the action on the merits or ought for any reason to be allowed to defend, give judgment for the plaintiff accordingly.
- (2) The application for judgment hereunder shall be made by interlocutory summons returnable in the chambers of the magistrate. Such summons may be according to the form in the Third Schedule and shall be served on the defendant, with a copy of the verifying affidavit and any exhibits referred to therein, not less than 2 clear days before the day on which it is returnable.

s. 47B

- (3) If it appears that the defence set up by the defendant applies to a part only of the plaintiff's claim or that any part of the claim is admitted, the plaintiff shall have judgment forthwith for such part of the claim as the defence does not apply to or as is admitted, subject to such terms (if any) as the magistrate may see fit to impose, and the defendant may be allowed to defend as to the residue of the plaintiff's claim.
- (4) If it appears to the magistrate that any defendant has a good defence to or ought to be allowed to defend the action, and that any other defendant has not such defence and ought not to be allowed to defend, the former may be allowed to defend, and judgment may be given for the plaintiff against the latter, and subject to any stay imposed by the magistrate he may issue execution thereon without prejudice to his right to proceed with his action against the former.
- (5) A defendant may be allowed to defend unconditionally or subject to such terms as the magistrate may see fit to impose.
- (6) There shall be no appeal against an order giving unconditional leave to defend or on the part of the plaintiff against any order giving leave to defend on terms.
- (7) The magistrate may, with the consent of all parties, dispose of the action finally and without appeal in a summary manner.

[Section 47A inserted by No. 21 of 1921 s.3; amended by No. 26 of 1954 s.9.]

47B. Particulars of defence

- (1) Where a defendant has given notice of intention to defend an action the plaintiff may by written note served on the defendant require particulars in writing of the defence and if the particulars are not furnished by the defendant within 7 days of the service of the notice he may, by summons returnable to the chambers of the magistrate, apply for an order that the defendant furnish the particulars of his grounds for defence within the time named in such order.

- (2) Should the defendant, without reasonable cause, neglect to supply particulars of his grounds of defence, he shall be liable to pay the plaintiff's costs of the proceedings in any event.
- (2a) Where, within the time specified in an order under subsection (1), a defendant neglects to furnish the particulars of his grounds for defence, the defendant shall be liable to have his notice of defence struck out and, subject to section 47, to be dealt with under section 46 as if he had not given notice of defence and the time limited for that purpose in the summons had expired.
- (3) The defendant may at any time before judgment amend his grounds of defence upon such terms as to costs or otherwise as the magistrate may order.

[Section 47B inserted by No. 21 of 1921 s.3; amended by No. 26 of 1954 s.10; No. 10 of 1957 s.4; No. 8 of 1970 s.3; No. 11 of 1987 s.11.]

Special defences and counterclaims

48. Notice of special defence

Subject to the power of amendment conferred by this Act, no defendant shall be allowed —

- (a) to set off or set up by way of counterclaim any debt or demand claimed or recoverable by him from the plaintiff; or
- (b) to set up by way of defence, and to claim and have the benefit of —
 - (i) infancy; or
 - [(ii) deleted]
 - (iii) the Statute of Frauds; or
 - (iv) any Statute of Limitations; or
 - (v) his discharge or release under any Statute relating to bankruptcy or insolvency,

without the consent of the plaintiff, unless the prescribed notice thereof is given to the clerk of the court.

The clerk of the court shall forthwith communicate any notice under this section to the plaintiff or his solicitor, by post or otherwise; but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the clerk.

[Section 48 amended by No. 28 of 2003 s. 121(2).]

Payment into court

49. Payment into court

- (1) A defendant may, within the prescribed time, pay into court, with or without a denial of liability, a sum of money as full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of payment in so far as such costs are sanctioned by the scale applicable to the sum paid in.

Notice of the payment into court shall be given by the defendant to the plaintiff or his solicitor, at least 3 clear days before the return day, and if the plaintiff accepts such sum of money in satisfaction, it shall be paid to the plaintiff; but if the plaintiff elects to proceed, such sum of money shall remain in court, and shall not be paid out of court except in pursuance of an order of the magistrate, and if the plaintiff does not recover a further sum in the action than is paid into court, the plaintiff shall pay to the defendant the costs incurred by him in the action after the payment, and an order shall be made by the court for the payment of such costs by the plaintiff.

- (2) A plaintiff may, in answer to a counterclaim, pay money into court in satisfaction thereof, subject to the like conditions as upon payment into court by a defendant.

[Section 49 amended by No. 5 of 1912 s.8.]

Confession of debt

50. Confession of or agreement as to debt

- (1) Upon a plaint being entered in a Local Court, whether the defendant is summoned upon such plaint or not —
 - (a) the defendant may sign a statement confessing the amount of the debt or demand for which such plaint has been entered or any part thereof; or
 - (b) the plaintiff and defendant may sign a statement of any agreement upon the amount of such debt or demand, and of the terms and conditions upon which the same is to be paid or satisfied.

Any such statement shall be signed in the presence of the clerk of a court, a solicitor, a Commissioner for Declarations, a member of the Commonwealth or the State Parliament, the chief executive officer of a local government, a member of the Police Force, an Electoral Registrar, a Postmaster, a classified officer in the Commonwealth or State Public Service, a classified State School teacher, or a justice of the peace.

- (2) Where the time required by a summons for giving notice of defence has expired and a notice of defence has not been given, if the magistrate of the Local Court in which the summons was issued is satisfied that any document in writing addressed to the Court, magistrate or clerk of the court, containing an admission of the claim set out in the summons or part of it, was in fact signed by the defendant or signed for and on his behalf by his authority, the magistrate or clerk may notwithstanding that the document has not been signed in the presence of any one of the persons referred to in subsection (1) or is unwitnessed, accept the document as an admission of the claim or the part and thereupon the provisions of section 51 apply.

[Section 50 amended by No. 26 of 1954 s.11; No. 14 of 1996 s.4.]

51. Judgment on such confession or agreement

- (1) The clerk shall receive such statement of confession or agreement, and as soon as convenient thereafter send notice of any such confession to the plaintiff, and thereupon it shall not be necessary for the plaintiff otherwise to prove the debt or demand, or part thereof so confessed, or the debt or demand agreed upon.
- (2) The clerk, in case of any such statement of confession or agreement, shall enter up judgment for the plaintiff for the debt or demand so confessed, or for the part thereof so confessed if the plaintiff is willing to accept such part in satisfaction of his claim, or for the amount and upon the terms and conditions agreed upon, as the case may be, and such judgment shall to all intents and purposes be the same as if it had been a judgment of the court.

Parties

[52. *Repealed by No. 26 of 1954 s.12.*]

53. Bankruptcy not to cause action to abate if trustee elects to continue it

The bankruptcy of the plaintiff in an action which the trustee might maintain for the benefit of the creditors shall not cause the action to abate, if the trustee elects to continue the action and to give security for the costs thereof within such reasonable time as the magistrate orders, but the hearing of the action may be adjourned until the election is made.

If the trustee does not elect to continue the action and to give the security within the time limited by the order, the defendant may avail himself of the bankruptcy as a defence to the action.

54. One of several persons jointly liable may be sued

When a plaintiff has a demand recoverable under this Act against 2 or more persons jointly answerable, it shall be sufficient if any one or more of the persons is or are served with process, and judgment

may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable are not served or sued, or are not within the jurisdiction of the court.

Every such person against whom judgment is so obtained, and who has satisfied the whole or a part of the judgment, shall be entitled to demand and recover contribution from any other person jointly liable with him.

55. Partners

Any 2 or more persons claiming or being liable as partners may sue or be sued in the name of the respective firms, if any, of which such persons were partners at the time of the accruing of the cause of action; and in any such case any party to the action may apply for the names of the partners in any such firm, and the magistrate may order an affidavit to be filed stating the names and addresses of such partners.

Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm.

56. Executors

An executor or administrator may sue and be sued in the same manner in which a person may sue or be sued in his own right, and in any such case judgment may be given and execution issued against the same persons against whom, and in the same manner in which, judgment would be given or execution issued in the Supreme Court.

57. Infants

A person under the age of 18 years may sue by his next friend, and defend by a guardian *ad litem*.

Provided that any minor may sue in his own name for wages or piecework, or for work or services as a clerk, servant, mechanic, or labourer, in the same manner as if he were of full age.

[Section 57 amended by No. 46 of 1972 s.6.]

Joinder and severance of causes of action

58. Joinder of causes of action

Two or more causes of action, if by and against the same parties, may be joined in the same action; but if the magistrate is of opinion that the trial of different causes of action together would be inexpedient or inconvenient, he may order separate trials to be had.

59. Cause of action cannot be divided

A plaintiff shall not divide a cause of action for the purpose of bringing 2 or more actions; but a plaintiff having a cause of action for more than the amount for which a plaint might be entered may abandon the excess (which abandonment shall be stated when the plaint is entered), and thereupon the plaintiff may, on proving his case, recover to an amount not exceeding \$25 000, and the judgment of the court shall be in full discharge of all demands in respect of the cause of action, and entry of the judgment of the court shall be made accordingly.

[Section 59 amended by No. 35 of 1930 s.4; No. 26 of 1954 s.13; No. 113 of 1965 s.8; No. 69 of 1976 s.14; No. 118 of 1981 s.17; No. 11 of 1987 s.12; No. 53 of 1992 s.35.]

60. Splitting debt by giving bills etc.

If a defendant has given 2 or more bills of exchange, promissory notes, bonds, or other securities, for a debt or sum, the plaintiff may sue separately upon each of the securities not exceeding \$25 000 as forming a distinct cause of action.

[Section 60 amended by No. 35 of 1930 s.4; No. 26 of 1954 s.14; No. 113 of 1965 s.8; No. 69 of 1976 s.15; No. 118 of 1981 s.18; No. 127 of 1982 s.5; No. 11 of 1987 s.13; No. 53 of 1992 s.35.]

Changing venue

61. Magistrate may change venue

- (1) If the magistrate is satisfied by either party to an action or matter pending in a court assigned to him that such action or matter can be more conveniently or fairly tried or heard in another court, he may order that the same be sent for trial to such other court.
- (2) If a magistrate is interested in an action or matter pending in a court assigned to him, he shall either order the action or matter to be sent for trial or hearing to the nearest court which is not assigned to him, or shall adjourn the trial and order the same to be heard before another magistrate.
- (3) The clerk of the court in which the action or matter was commenced shall forthwith transmit, to the clerk of the court to which it is sent, a certified copy of all the proceedings therein, and the magistrate of the last-mentioned court shall appoint a day for the trial or hearing, notice whereof shall be sent, by post or otherwise, by the clerk, to both parties.

Means of obtaining evidence

62. Summons to witnesses

A party to an action or matter may obtain, at the office of the clerk, summonses to witnesses, requiring them to attend at the trial, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control.

63. Penalty on witnesses neglecting summons

Any person summoned as a witness, either personally or in the prescribed manner, to whom at the same time payment or a tender of payment of his reasonable expenses is made, and who refuses or neglects, without sufficient cause, to appear or to produce any books, deeds, papers, or writings, required by the summons to be produced, and also every person present in court

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who is required to give evidence and who refuses to be sworn and give evidence, shall forfeit and pay such fine, not exceeding \$100, as the magistrate shall direct.

The whole or a part of the fine, as the magistrate thinks fit, after deducting the costs of levying it, shall be applicable toward indemnifying the party injured by the refusal or neglect, and the remainder shall be disposed of in the same manner in which other moneys recovered by the clerk of the court by which the fine was imposed are disposed of, but the fine shall not exempt the person from an action for disobeying the summons.

[Section 63 amended by No. 113 of 1965 s.8; No. 127 of 1982 s.6.]

64. Magistrate may cause arrest of witness not attending on summons

- (1) Instead of fining the person so refusing or neglecting to appear, the magistrate before whom the person should have appeared may, if good cause is not shown for his non-appearance, issue his warrant to bring and have the person at a time and place to be therein mentioned before the magistrate to testify what he knows concerning the matters in dispute in the action or matter in which he is summoned as a witness, and may adjourn the trial to that time and place.
- (2) The provisions of section 135 to the extent to which they apply in respect of warrants of commitment, apply in respect of warrants issued under subsection (1), as if those provisions were repeated mutatis mutandis in this subsection.

[Section 64 amended by No. 10 of 1957 s.5; No. 56 of 1958 s.2.]

65. Notice to admit

- (1) Any party to an action or matter may call on any other party thereto, by notice in the prescribed form, to admit any fact or document, saving all just exceptions; and in case of refusal or neglect to admit, the cost of proving the fact or document shall

be paid by the party so neglecting or refusing, whatever the result of the action or matter may be, unless on the trial or hearing the magistrate shall certify that the refusal to admit was reasonable.

- (2) An affidavit of a party or of the solicitor in any action or matter or his clerk of the signature of any admission made in pursuance of such notice and annexed to the affidavit shall be sufficient evidence of such admission.

66. Discovery of documents

- (1) Upon the written request of any party to an action or matter addressed to and served upon another party to the action or matter —
- (a) the party on whom the request is served; or
 - (b) if the party is a body corporate some officer of the body corporate having knowledge of the facts,

shall answer, on affidavit, stating which documents he or it has in his or its possession or power relating to the matters in dispute or what he knows as to the custody the documents or any of them are in, and whether he or it objects to the production of the documents as are in his or its possession or power and if so, on what grounds.

- (2) (a) If the party requested to give discovery or to produce any documents for inspection neglects or refuses to do so within 7 days of the request being served on him or within such extended time as the parties may agree, the magistrate may upon application being made to him by the party making the request order compliance with the request but discovery shall not be ordered when and so far as the magistrate is of opinion that it is not necessary either for disposing of the action or matter or for saving costs.
- (b) The magistrate may order the party in default to bear the costs of and incidental to the order.

- (3) A party who produces any documents is not required to part with possession of them to the party requesting their production, but is required to make them available for the inspection of or copying by the party requesting their production, if that party so desires.

[Section 66 inserted by No. 26 of 1954 s.15.]

67. Inspection of documents

Any party to an action or matter may, at any time, give notice in writing to any other party in whose particulars of claim, set off, counterclaim, or affidavits reference is made to any document, to produce such document for inspection of the party giving such notice, or his solicitor, and to permit copies thereof to be taken.

A party not complying with such notice shall not afterwards be at liberty to put such document in evidence in such action or matter, unless he satisfies the magistrate that he had a cause or excuse, which the magistrate deems sufficient, for not complying with such notice, in which case the magistrate may allow the same to be put in evidence on such terms, if any, as he may think fit.

68. Mode of enforcing discovery

A magistrate shall, in the exercise of the powers conferred by the 2 last preceding sections, have and exercise the same power and authority for compelling obedience to, and for punishing disobedience of orders made thereunder, as the Supreme Court, or a Judge thereof, may exercise for compelling obedience to, or punishing disobedience of, any such order.

69. Examination de bene esse

- (1) A magistrate may, at any time after complaint filed, on the application of either party, supported by affidavit showing —
- (a) that the evidence of any specified witness, including either of the parties, is material in the action; and

- (b) that such witness is absent from the State, or above 160 kilometres from the place of trial, or unable from sickness or infirmity to attend at the hearing or is about to quit the State or to go some place beyond the said distance,

take in court or in chambers, or authorise the clerk of any Local Court, or any justice of the peace, or legal practitioner, whether of Western Australia or elsewhere, to take, at some convenient place, the examination of such witness de bene esse.

- (2) All evidence so taken shall be admissible at the hearing, subject to all just exceptions, unless it is proved that such witness is, at the time of the hearing, within a convenient distance of the court and able to attend.
- (3) In every case the opposite party shall have sufficient notice of the time and place appointed for taking such examination, and may cross-examine such witness in the usual manner.
- (4) The magistrate may either direct the costs of taking such evidence to be paid by the party applying, or make the same costs in the cause.

[Section 69 amended by No. 94 of 1972 s.4 (as amended by No. 42 of 1975 s.3).]

Trial

70. Trial

- (1) Save as in this Act is otherwise provided, all actions cognizable under this Act by a Local Court shall be heard and determined in open court by and before a magistrate.
- (2) All proceedings other than actions cognizable in a Local Court shall be heard and determined by the magistrate.
- (3) The magistrate may sit and take evidence at any convenient place if it appears desirable to do so and may adjourn any trial

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from place to place for that purpose on such terms and conditions as he thinks just.

[(4)-(6) repealed]

- (7) Two or more sittings of any Local Court for the trial of actions may be held at the same time.
- (8) The magistrate shall, in all actions and proceedings before him, determine all questions of law or fact.

[Section 70 inserted by No. 35 of 1930 s.5 (as amended by No. 31 of 1931 s.2); amended by No. 26 of 1954 s.16.]

71. Proceedings at the trial when both parties appear

On the return day the plaintiff shall appear, and thereupon the defendant shall be required to answer the plaint; and on answer being made in court the magistrate shall proceed to try the action and give judgment without further pleading or formal joinder of issue.

72. Proceedings when plaintiff does not appear

If on the return day or upon any adjournment of the court or of the action the plaintiff does not appear, and the defendant appears, the plaintiff shall be nonsuited.

But if the plaintiff does not appear when called upon, and the defendant appears and admits the cause of action to the full amount claimed, and pays the fees payable in the first instance by the plaintiff, the magistrate may proceed to give judgment as if the plaintiff had appeared.

If in any such case neither party appears, the action may be struck out of the list of actions for trial.

73. Proceedings when defendant does not appear

If on the return day, or upon an adjournment of the court or of the action, the defendant does not appear, the following provisions shall apply —

- (a) if the claim is for a debt or liquidated money demand, on proof of service of the summons, judgment may be entered for the plaintiff for the amount of the claim and costs; and
- (b) in any other case the magistrate may, on proof of service of the summons, proceed to the trial of the action on the part of the plaintiff only and the judgment thereupon shall be as valid as if both parties had attended.

But the magistrate may, at the same or a subsequent court, set aside a judgment so entered or given in the absence of the defendant, and the execution upon it, and may grant a new trial of the action upon such terms, if any, as to payment of costs, giving security for the debt or costs, or otherwise as he thinks fit.

Judgment under paragraph (a) may be entered by the magistrate or the clerk; and the clerk shall have the same power to hear and determine any question necessary to be heard and determined, and to make any order as to payment, and to enter upon the judgment as the judgment of the court, as the magistrate would have.

[Section 73 amended by No. 19 of 1909 s.3.]

74. Proceedings where defendant's set-off or counterclaim exceeds plaintiff's claim

Where the defendant has a right of set-off or counterclaim in respect of any debt or demand against the plaintiff, the defendant shall be entitled to recover the amount, if any, by which the debt or demand so set off or counterclaimed is found to exceed the debt or demand claimed and proved by the plaintiff, and to have judgment and execution for the same accordingly.

75. Magistrate may grant time or adjourn

The magistrate may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or

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defence of the action, and may also from time to time adjourn the court or the trial, or further trial, of an action in such manner and upon such terms as to the magistrate may seem fit.

76. Where defendant appears and admits claim

Where a defendant appearing at the hearing, either in person or by a solicitor or by some other person duly authorised on his behalf, admits the claim, the clerk may, by leave of the magistrate or in case of the magistrate's absence, settle the terms and conditions upon which it is to be paid, and enter up judgment accordingly as the judgment of the court.

Subject to the rules of court, the clerk may, on the application of the parties, and by leave of the magistrate, hear and determine any disputed claim where the sum claimed or the amount involved does not exceed \$10.

[Section 76 amended by No. 113 of 1965 s.8.]

77. Reference to clerk

The magistrate may, after deciding or reserving any question of liability, refer to the clerk any mere matter of account which is in dispute between the parties, and, after deciding the question of liability, may give judgment on the clerk's report.

Evidence

78. Rules of evidence

The rules of evidence observed in the Supreme Court shall be applicable to and observed upon the trial of questions of fact in a Local Court.

79. Proof to be limited to matter in the summons

Subject to the power of amendment conferred by this Act, evidence shall not be given by the plaintiff of any demand or cause of action except such as is stated in the summons issued in the action.

80. Affidavits before whom sworn

Any affidavit to be used in a Local Court may be sworn before a magistrate or clerk of a Local Court, or a justice of the peace, or a commissioner for taking affidavits in the Supreme Court; and all clerks of Local Courts, justices of the peace, and commissioners are hereby authorised and empowered to take affidavits to be used in a Local Court without any commission being issued for that purpose.

Costs

81. Costs

Except as hereinafter provided, and subject to the rules of court, the costs of any action or matter shall be paid by or apportioned between the parties in such manner as the magistrate directs, and in default of a special direction shall abide the event; and the costs may be recovered in like manner as a debt adjudged by the court to be paid can be recovered.

82. Costs to be taxed

Except as hereinafter provided, and subject to the rules of court, all costs and charges as between the parties shall be taxed by the clerk of the court in which they are incurred, but the taxation of the clerk may be reviewed by the magistrate on the application of either party: And no costs or charges shall be allowed which are not sanctioned by the scale of costs in force for the time being.

83. Fees to legal practitioners and allowances to witnesses

The fees to be allowed to legal practitioners for appearing or acting on behalf of a party to an action or other proceeding, and the expenses to be paid to witnesses, shall be fixed by legal costs determination (as defined in the *Legal Practice Act 2003*.

[Section 83 amended by No. 65 of 1987 s.28; No. 65 of 2003 s. 49(2).]

84. Costs where court has no jurisdiction

Whenever an action or matter is commenced over which the court has no jurisdiction, the magistrate shall, unless the parties consent to the court having jurisdiction, order it to be struck out, and shall have power to award costs, to the same extent, and recoverable in the same manner, as if the court had jurisdiction therein and the plaintiff had not appeared, or had appeared and failed to prove his demand.

85. Costs between solicitor and client

Costs and charges of proceedings as between solicitor and client may be taxed by the magistrate of the court in which they were incurred, or by the taxing officer of the Supreme Court.

**Costs in Supreme Court of actions that might be
brought in a Local Court**

**86. Supreme Court costs not recoverable except on certificate
of Judge**

If an action is brought in the Supreme Court which could have been commenced in a Local Court without the consent of the defendant, the plaintiff shall recover no greater sum by way of costs than he could have recovered had the action been brought in a Local Court other than as an action for a small debt, unless the Judge certifies, in the case of an action founded on tort, that it was proper to bring the action in the Supreme Court instead of a Local Court, and in any other case, that by reason of some important principle of law being involved, or of the complexity of the issues, or of the facts, the action was properly brought in the Supreme Court.

*[Section 86 inserted by No. 26 of 1954 s.17; amended by
No. 127 of 1982 s.7.]*

87. Removal of action to Local Court

When an action is brought in the Supreme Court which might have been brought in a Local Court without the defendant's consent or in which the claim, though it originally exceeded \$25 000, is reduced by payment into Court, an admitted set-off, or otherwise, to a sum not exceeding \$25 000, the defendant may at any time apply to a Judge in chambers for an order remitting the action to a Local Court, and the Judge may, in his discretion, make an order accordingly.

Thereupon the master of the Supreme Court shall transmit to the clerk of the Local Court to which the action is remitted a copy of the order, together with a copy of the writ and of the pleadings (if any).

And the magistrate of the Local Court shall appoint a day for the trial of the action, and notice of it shall be sent by the clerk, by post or otherwise, to both parties or their solicitors, and after the trial the clerk of the Local Court shall certify the result to the Master of the Supreme Court, and judgment in accordance with the certificate may be signed in the Supreme Court.

The costs of the parties in respect of the proceedings subsequent to the order and up to judgment shall be allowed in accordance with any legal costs determination (as defined in the *Legal Practice Act 2003*) in respect of Local Courts. The costs of any other proceedings shall be in the discretion of the Supreme Court or a Judge thereof.

[Section 87 amended by No. 35 of 1930 s.4; No. 26 of 1954 s.18; No. 113 of 1965 s.8; No. 69 of 1976 s.16; No. 118 of 1981 s.19; No. 11 of 1987 s.14; No. 65 of 1987 s.29; No. 53 of 1992 s.35; No. 65 of 2003 s. 49(3).]

88. Actions of tort may be removed from Supreme Court in certain cases

A person against whom an action founded on tort is brought in the Supreme Court, whatever the amount claimed may be, may,

upon an affidavit that the plaintiff has no visible means of paying the costs of the defendant if a verdict is not found for the plaintiff, call upon the plaintiff to show cause before a Judge in chambers why he should not give security for the defendant's costs of the action, and why in default of such security the action should not be remitted to a Local Court, or the proceedings in the action be stayed.

Upon the hearing of the application, the Judge, unless he is satisfied that the plaintiff has a cause of action which ought to be prosecuted in the Supreme Court, may order that the plaintiff shall, within a time mentioned in the order, give security for the defendant's costs to the satisfaction of the Judge, and that, in the event of the plaintiff failing to give the security, the action shall be remitted to a Local Court to be named in the order, or that in the event of such failure all proceedings in the action be stayed.

When such an order is made, if the plaintiff fails to give the security within the time limited by the order, the plaintiff shall, unless the proceedings are directed to be stayed, lodge the original writ and the order with the clerk of the last-mentioned court, and the magistrate of that court shall appoint a day for the trial of the action, and notice of it shall be sent by post or otherwise by the clerk to both parties or their solicitors.

The action and all subsequent proceedings therein shall be tried and taken in such court as if the action had originally been commenced therein, and that court shall have jurisdiction to entertain and decide the same; and the costs of the parties in respect of the proceedings subsequent to the order of the Judge of the Supreme Court shall be allowed according to the scale of costs prescribed in Local Courts, and the costs of the order and all proceedings previous to the order shall be allowed according to the costs for the time being allowed in Supreme Court actions.

Amendment

89. Amendment of defects and errors of proceedings etc.

A magistrate may at any time amend any defect or error in a proceeding, whether there is anything in writing to amend by or not, and whether the defect or error is that of the party applying to amend or not; and an amendment may be made upon or without payment of costs and upon such terms as the magistrate thinks fit, and all such amendments as are necessary for the purpose of determining in the existing action or matter the real question in controversy between the parties shall be so made.

Judgment and new trial

90. Judgment to be final unless new trial granted

Every judgment and order of the court, except as in this Act provided, shall be final and conclusive between the parties; but the magistrate may nonsuit the plaintiff in any case in which proof is not given entitling him to judgment, and may also in any case order or permit a new trial, to be had upon such terms as he thinks reasonable, and in the meantime may stay the proceedings.

91. When judgment does not exceed \$100 magistrate may order payment by instalments

When judgment is obtained for a sum not exceeding \$100, exclusive of costs, the magistrate may order the sum and costs to be paid at specified times, by instalments, and all such moneys shall be paid to the plaintiff or the plaintiff's solicitor; but in all other cases he shall order the full amount for which judgment is obtained to be paid either forthwith or within 14 clear days from the date of the judgment, unless the plaintiff or his solicitor consents to its being paid by instalments, in which case the magistrate shall order it to be paid at the times and by the instalments consented to; and all such moneys, whether payable in one sum or by instalments, shall be paid to the plaintiff or the plaintiff's solicitor.

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[Section 91 amended by No. 56 of 1958 s.3; No. 113 of 1965 s.8; No. 27 of 2000 s.16.]

91A. Assessment of value of goods

- (1) The assessment of the value of any goods for the delivery whereof judgment has been given or entered may be obtained in the prescribed manner.
- (2) Before such assessment the plaintiff may enforce such delivery, and after the assessment he shall be entitled, subject to any order of the magistrate, to enforce delivery of any such goods still undelivered or payment of their value at his sole option.

[Section 91A inserted by No. 5 of 1912 s.9.]

91B. Judgment against one joint debtor

- (1) Any judgment recovered or proceeding taken in a Local Court against one or more of 2 or more persons jointly liable shall be without prejudice to the right to proceed against the other or others of them.
- (2) Where a defendant has not given notice of defence within the time required by the summons, if the defendant in default is not the sole defendant, any judgment entered shall be without prejudice to the plaintiff's right to proceed with the action against any other defendant and any assessment of damages shall, unless the magistrate otherwise orders, be made on the trial of the action against the other defendant.

[Section 91B inserted by No. 5 of 1912 s.9; amended by No. 26 of 1954 s.20.]

Arbitration

92. Power to refer to arbitration

The magistrate may, with the consent of both parties to an action other than an action for a small debt, order the same with or without other matters within the jurisdiction of the court in dispute between the parties, to be referred to arbitration, to such

person or persons and in such manner and on such terms as he thinks reasonable and just.

The reference shall not be revocable by either party except by consent of the magistrate, and the arbitrator or arbitrators or umpire shall hear and determine the case, and the award given by him or them shall be entered as the judgment in the action, and shall be as binding and effectual to all intents as if it were the judgment of the court.

But the magistrate may, on application to him at the first sittings of the court held after the expiration of one week after the entry of the award, set aside the award, or refer the award back to the arbitrator, arbitrators, or umpire, or, with the consent of the parties, revoke the reference or order another reference to be made in the manner before prescribed.

[Section 92 amended by No. 127 of 1982 s.8.]

93. Power to compel attendance of witnesses or production of documents before arbitrators

When a reference to arbitration is made by a magistrate, he may, by an order to be made for that purpose, direct the issue of summonses requiring the attendance and examination of any person to be named, or the production of any documents to be mentioned, in the order.

Any such summons may be served in the same manner, and disobedience to the summons shall entail the same consequences, as in the case of a summons to a witness to attend at a trial of an action.

But a person shall not be compelled to produce under the summons any writing or other document which he would not be compelled to produce at a trial.

Every application made to the magistrate for such an order must set forth the place where the witness whose attendance is required is residing at the time.

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Every person whose attendance is so required shall be entitled to the like conduct money and payment of expenses as for and upon attendance at a trial.

Part V — Replevin

94. Actions of replevin

All actions of replevin brought in a Local Court shall be commenced by plaint, and in every such action the plaint shall be entered in the court held nearest to the place where the goods were seized.

95. Clerk to grant replevins

The sheriff shall have no powers and responsibilities with respect to replevin bonds and replevins; but the clerk of the court held nearest to the place where any goods subject to replevin are seized shall be empowered, subject to the provisions hereinafter contained, to approve of replevin bonds, and to grant replevins, and to issue all necessary process in relation thereto, and such process shall be executed by the bailiff.

The clerk of the court shall, at the instance of the party whose goods are seized, cause the same to be replevied to such party, on his giving one or other of such securities as are mentioned in the 2 next following sections.

96. Conditions of security to be given when replevin brought in Supreme Court

Where a replevisor desires to commence proceedings in the Supreme Court he shall, at the time of replevying, give security, to be approved of by the clerk in the last preceding section mentioned, for such an amount as such clerk shall deem sufficient to cover the alleged rent or damage, or if the goods replevied have been seized otherwise than under colour of distress, the value of the goods, and in either case the probable costs of the action in the Supreme Court, conditioned to commence an action of replevin against the seizer in the Supreme Court, within one week from the date thereof, and to prosecute such action with effect and without delay, and unless

judgment thereon is obtained by default, to prove before the Supreme Court that he had good ground for believing either that the title to land, the rent or value whereof exceeded \$40 by the year, was in question, or that such rent or damage, or the value of the goods seized, exceeded \$40, and to make return of the goods if a return thereof is adjudged.

[Section 96 amended by No. 113 of 1965 s.8.]

97. Conditions of security to be given when replevin brought in Local Court

If a replevisor desires to commence proceedings in a Local Court, he shall at the time of replevying give security, to be approved of by the clerk, for such an amount as the clerk shall deem sufficient to cover the alleged rent or damage in respect of which the distress was made, or if the goods replevied were seized otherwise than under colour of distress, the value of the goods, and in either case the probable costs of the action, conditioned to commence an action of replevin against the seizer in the court held nearest to the place where the goods were seized, within one month from the date of the security, and to prosecute such action with effect and without delay, and to make a return of the goods if a return thereof is adjudged.

98. Replevin shall at instance of defendant be removed into Supreme Court by certiorari in certain cases

Any action of replevin brought in a Local Court shall be removed into the Supreme Court by a writ of certiorari, if the defendant applies to the Supreme Court or to a judge thereof for such writ, and gives security, to be approved of by the Master of the Supreme Court, for such amount, not exceeding \$300, as the Master thinks fit, conditioned to defend such action with effect, and unless the replevisor discontinues or does not prosecute such action, or becomes nonsuit therein, to prove before the Supreme Court that the defendant had good ground for believing, either that the title to land the rent or value whereof exceeded \$40 by the year was in question, or that the rent or

damage in respect of which the distress was taken, or the value of the goods seized, exceeded \$40.

[Section 98 amended by No. 113 of 1965 s.8.]

Part VI — Recovery of possession of land

98A. Limitation

This Part has effect subject to the *Residential Tenancies Act 1987*.

[Section 98A inserted by No. 128 of 1987 s.89.]

99. Possession of land may be recovered by landlord when term expired or determined

When the term or interest of the tenant of any land, where the rent payable in respect thereof did not exceed \$25 000 by the year, and upon which no fine or premium was paid, has expired, or is determined by notice to quit or by demand of possession, and the tenant or a person claiming under him neglects or refuses to give up possession, the landlord may bring an action to recover possession, either against the tenant or against the person so neglecting or refusing, in the court held nearest to the land.

A summons shall thereupon be issued in the prescribed form, addressed to the tenant or the person so neglecting or refusing; and if on the return day the defendant does not show good cause to the contrary, then, on proof of the tenancy, and of the defendant still neglecting or refusing to deliver up possession, and of the yearly rent, and of the expiration or other determination of the tenancy with the time and manner of the determination, and of the title of the plaintiff, if the title has accrued since the letting of the land, and of the service of the summons if the defendant does not appear, the magistrate may order that possession of the land be given to the plaintiff, either forthwith, or on or before such day as the magistrate appoints.

If the order is not obeyed the clerk, whether the order is proved to have been served or not, shall, on the application of the plaintiff, issue a warrant authorising and requiring the bailiff of the court to give possession of the land to the plaintiff.

[Section 99 amended by No. 10 of 1953 s.3; No. 9 of 1964 s.3; No. 113 of 1965 s.8; No. 69 of 1976 s.17; No. 118 of 1981 s.20; No. 11 of 1987 s.15; No. 53 of 1992 s.35.]

100. Possession may be recovered for non-payment of rent

When the rent of any land, of which the rent payable does not exceed \$25 000 by the year, is in arrear for 10 days in the case of a weekly tenancy, or for 21 days in the case of monthly tenancy, or for 42 days in the case of a tenancy for any longer period, and the landlord has right by law to re-enter for the non-payment thereof, he may, without formal demand or re-entry, bring an action to recover possession in the court held nearest to the land.

A summons in the prescribed form shall thereupon be issued to the tenant, and the service of it shall stand instead of a demand and re-entry; and if the tenant, 5 clear days before the return day, pays into court all the rent in arrear and the costs, the action shall be stayed.

But if he does not make such payment and does not, on the return day, show good cause why the land should not be recovered, then on proof of the rent of the land, and of the fact that such rent was in arrear before the plaint was entered, and of the landlord's power to re-enter, and of the rent being still in arrear, and of the title of the plaintiff, if the title has accrued since the letting of the land, and of the service of the summons if the defendant does not appear, the magistrate may order that possession of the land be given to the plaintiff on or before such day, not being less than 14 days from the day of hearing, as the magistrate appoints, unless within that time all the rent in arrear and the costs are paid into court.

If the order is not obeyed, and the rent and costs are not so paid, the clerk, whether the order is proved to have been served or not, shall, at the instance of the plaintiff, issue a warrant, authorising and requiring the bailiff of the court to give possession of the land to the plaintiff, and the plaintiff shall, from the time of the execution of the warrant, hold the land discharged of the tenancy, and the defendant and all persons claiming under him shall, so long as the order of the court remains unreversed, be barred from all relief.

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[Section 100 amended by No. 10 of 1953 s.4; No. 9 of 1964 s.4; No. 113 of 1965 s.8; No. 69 of 1976 s.18; No. 118 of 1981 s.21; No. 11 of 1987 s.16; No. 53 of 1992 s.35.]

101. Plaintiff may claim for rent and mesne profits

In any such action against a tenant or other person as in either of the 2 last preceding sections mentioned, the plaintiff may add a claim for rent or mesne profits, or both, down to the day appointed for the hearing, or to any preceding day named in the plaint, provided that the claim does not exceed \$25 000.

[Section 101 amended by No. 10 of 1953 s.5; No. 26 of 1954 s.21; No. 9 of 1964 s.5; No. 113 of 1965 s.8; No. 118 of 1981 s.22; No. 11 of 1987 s.17; No. 53 of 1992 s.35.]

102. Sub-tenant served with summons must give notice to his immediate landlord

When a summons for the recovery of possession of land is served on or comes to the knowledge of a sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of part of the land sought to be recovered, he shall forthwith give notice of it to his immediate landlord, under penalty of forfeiting to the landlord 3 years' rack rent of the land held by the sub-tenant, to be recovered by the landlord by action in the court from which the summons was issued, and the landlord, on the receipt of the notice if not originally a defendant, may be added or substituted as a defendant.

103. Action to recover land held without right, title or licence

If any person shall, without right, title, or licence, be in possession of any land the value whereof does not exceed \$25 000 by the year, the owner or person entitled to immediate possession may enter a plaint in the court held nearest to the land to recover possession thereof; and thereupon a summons in the prescribed form shall issue to the person so in illegal occupation.

If the defendant does not appear at the time named in the summons, or, if appearing, does not show reasonable cause why possession should not be given of the land, and upon proof of the facts of the case being made, the magistrate may issue a warrant to the bailiff authorising and requiring him to enter, by force if necessary, and give possession of the land to the owner.

If such owner shall have given to the person in occupation notice in writing to quit he may, in the same plaint, insert a claim to an amount not exceeding \$25 000, for damages for such occupation subsequently to the service of such notice.

[Section 103 amended by No. 10 of 1953 s.6; No. 26 of 1954 s.22; No. 9 of 1964 s.6; No. 113 of 1965 s.8; No. 69 of 1976 s.20; No. 118 of 1981 s.23; No. 11 of 1987 s.18; No. 53 of 1992 s.35.]

104. Service of summons in action to recover possession of land

A summons for the recovery of possession of land may be served like other summonses to appear to plaintiffs, but if the defendant cannot be found, and his place of residence is not known, or admission to it cannot be obtained for serving the summons, a copy of the summons shall be posted on some conspicuous part of the premises sought to be recovered, and posting shall be deemed good service on the defendant.

105. Warrant to bailiff

A warrant to a bailiff to give possession of land shall justify the bailiff named in the warrant in entering upon the land with such assistance as he thinks necessary, and in giving possession accordingly; but an entry under the authority of any such warrant shall not be made except between the hours of 9.00 a.m. and 4.00 p.m.

106. Duration of warrant

The warrant shall, on whatever day it is issued, bear date on the day next after the last day named by the magistrate in his order

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for the delivery of possession of the land in question, and shall continue in force for 3 months after such date and no longer; but an order for delivery of possession need not be drawn up or served.

Part VIA — Actions for small debts

[Heading inserted by No. 127 of 1982 s.9.]

106A. Interpretation of this Part

- (1) In this Part —
 - (a) **“general provision”** means —
 - (i) a provision of this Act other than a provision of this Part; or
 - (ii) a provision of the Rules of Court other than a provision made for the purposes of this Part;**“this Part”** includes Rules of Court made for the purposes of this Part;
 - (b) the expression **“stipendiary magistrate”** has the same meaning as it has in the *Stipendiary Magistrates Act 1957*.
- (2) A reference in this Part to the amount of a claim or counterclaim in respect of a cause of action is a reference to the amount claimed and set forth in the plaint or counterclaim, as the case may be, whether on a balance of account, or after an admitted set off or a reduction on account of any sum paid by or credited to the party from whom the amount is claimed, or otherwise.

[Section 106A inserted by No. 127 of 1982 s.9.]

106B. Election to have action heard under this Part

- (1) Subject to section 106G, where the plaintiff in an action in a Local Court is authorised by section 106C to elect to have the action heard and determined under this Part and, in accordance with section 106C, he so elects —
 - (a) a stipendiary magistrate sitting in the Small Disputes Division of a Local Court provided for by section 106P, shall hear and determine the action under this Part; and
 - (b) for the purposes of this Act, the action is an action for a small debt.

s. 106C

- (2) Subsection (1)(a) does not affect the operation of section 46(2)(a) or 73(a) in relation to an action for a small debt.

[Section 106B inserted by No. 127 of 1982 s.9; amended by No 92 of 1987 s.4.]

106C. Actions in which election may be made

- (1) The plaintiff in an action in a Local Court may, by his plaint, elect to have the action heard and determined under this Part —
- (a) where there is a single cause of action — if the cause of action is a debt or liquidated demand in money and the amount claimed in respect of the cause of action does not exceed \$3 000; or
 - (b) where 2 or more causes of action are joined — if at least one of the causes of action is a debt or liquidated demand in money and none of the respective amounts claimed in respect of the causes of action exceeds \$3 000.

- (2) A plaintiff who has a cause of action for more than \$3 000 may, for the purpose of enabling that cause of action to be tried as or joined in an action for a small debt, abandon the excess (which abandonment shall be stated when the plaint is entered), and thereupon the plaintiff may, pursuant to this Act, recover to an amount not exceeding \$3 000, and the judgment of the court shall be in full discharge of all demands in respect of the cause of action and entry of the judgment of the court shall be made accordingly.

[Section 106C inserted by No. 127 of 1982 s.9; amended by No. 13 of 1985 s.3; No. 11 of 1987 s.19.]

[106D. Repealed by No. 92 of 1987 s.5.]

106E. Counterclaims

- (1) Where the defendant in an action for a small debt counterclaims an amount exceeding \$3 000 in respect of any cause of action the court shall —

- (a) if all the parties consent to the hearing and determination of the whole action under this Part — hear and determine the whole action under this Part; or
 - (b) if any of the parties does not consent to the hearing and determination of the whole action under this Part —
 - (i) hear and determine the claim under this Part and order that the counterclaim be heard and determined separately under the general provisions; or
 - (ii) at the request of the plaintiff, order that the whole action be heard and determined under the general provisions.
- (2) This section does not affect the application of section 34 to an action in which a counterclaim involves matters beyond the jurisdiction of a Local Court.

[Section 106E inserted by No. 127 of 1982 s.9; amended by No. 13 of 1985 s.4; No. 11 of 1987 s.20.]

106F. Application of general provisions may be ordered in any case

Without affecting the operation of section 106E(1)(b)(ii), a Local Court may order that any action that has been commenced as an action for a small debt be heard and determined under the general provisions if —

- (a) all the parties so request; or
- (b) the court thinks fit having regard to the importance of a principle of law involved or to the complexity of the issues or of the facts.

[Section 106F inserted by No. 127 of 1982 s.9.]

106G. Effect of orders under sections 106E and 106F

Where an order is made under section 106E(1)(b)(ii) or 106F in relation to an action —

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- (a) the action ceases to be an action for a small debt for the purposes of this Act and the general provisions shall apply to and in relation to the action as if the plaintiff had not elected to have the action heard and determined under this Part;
- (b) if in respect of a cause of action for an amount exceeding \$3 000 the excess has been abandoned that excess shall be deemed not to have been abandoned except where the cause of action is for an amount exceeding \$25 000 in which case the excess over \$25 000 shall be deemed to have been abandoned pursuant to section 59.

[Section 106G inserted by No. 127 of 1982 s.9; amended by No. 13 of 1985 s.5; No. 11 of 1987 s.21; No. 53 of 1992 s.35.]

106H. Court may obtain particulars

Sections 47A, 47B, 65, 66, 67 and 68 shall not apply to or in relation to an action for a small debt but the clerk or the court may, in accordance with Rules of Court, require a party to furnish particulars of any claim, defence or counterclaim.

[Section 106H inserted by No. 127 of 1982 s.9.]

106I. Settlement

- (1) The primary function of the court hearing an action for a small debt is to attempt to bring the parties to the action to a settlement acceptable to all the parties and the court may, at any stage of the proceedings, do all such things and take all such steps as it considers to be appropriate for that purpose.
- (2) Where it appears to the court hearing an action for a small debt to be impossible to attain a settlement acceptable to all the parties the court shall proceed with the hearing and determination of the action.
- (3) Anything said or done by a party for the purpose of attempting to attain a settlement in an action for a small debt shall be deemed to be said or done without prejudice to any evidence or submission which he has adduced or made, or which he may

subsequently adduce or make, in or in respect of the proceedings, and the saying or doing of that thing shall not disqualify the stipendiary magistrate constituting the court from sitting to hear the action or continue to hear the action, as the case may require.

[Section 106I inserted by No. 127 of 1982 s.9.]

106J. Hearing of action

An action for a small debt shall be heard and determined in private unless the court hearing the action otherwise directs.

[Section 106J inserted by No. 127 of 1982 s.9.]

106K. Evidence

In an action for a small debt the court shall not be bound by rules or practice as to evidence but may inform itself on any matter in such manner as it thinks fit.

[Section 106K inserted by No. 127 of 1982 s.9.]

106L. Representation

- (1) At the hearing of an action for a small debt, or during any attempt to settle such an action under section 106I, a party shall not be entitled to be represented by an agent unless the court considers that an agent should be permitted to that party as a matter of necessity and approves accordingly.
- (2) Subsection (1) does not authorize a court to give approval for a party to an action for a small debt to be represented by an agent who has a legal qualification under the laws of this State or of any other place, or who is in the nature of a professional advocate unless —
 - (a) all parties to the action agree; and
 - (b) the court is satisfied that the parties, other than the party who has applied for the approval, or any of them shall not be thereby unfairly disadvantaged.

[Section 106L inserted by No. 127 of 1982 s.9.]

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106M. Costs

Costs other than —

- (a) the court fees and service fees paid by the successful party; and
- (b) costs of execution,

shall not be allowed to or against any party to an action for a small debt unless the court is of the opinion that because of the existence of exceptional circumstances an injustice would be done to a party if other costs of the action were not allowed to him.

[Section 106M inserted by No. 127 of 1982 s.9.]

106N. Proceedings not subject to appeal or judicial supervision

- (1) Where in an action for a small debt a settlement is brought about pursuant to section 106I or an order or judgment is made or given by the court, the settlement, order or judgment shall be final and binding on all parties to the action, and no appeal shall lie in respect thereof.
- (2) Subject to subsection (3), no —
 - (a) writ of certiorari, or prohibition, or other prerogative writ;
 - (b) summons, rule or order under section 115; or
 - (c) declaratory judgment,

shall issue or be served, made or given in respect of an action for a small debt or in respect of an order or judgment made or given therein.

- (3) Subsection (2) does not prevent the service, making or giving of a writ, summons, rule, order or judgment mentioned in paragraph (a), (b) or (c) of that subsection if the court before which it is sought is satisfied —
 - (a) that an action, or an order or judgment made or given in an action, involves matter beyond the jurisdiction of a

stipendiary magistrate sitting in the Small Disputes
Division of a Local Court; or

- (b) that there has occurred in an action a denial of natural justice to a party therein.
- (4) For the purposes of subsection (3)(a) where a matter is heard and determined under this Part pursuant to consent given by the parties under section 106E(1)(a), that matter shall be regarded as being within the jurisdiction of a stipendiary magistrate sitting in the Small Disputes Division of a Local Court.
- (5) Nothing in this section prevents —
- (a) the setting aside under section 47 of a judgment by default in an action for a small debt; or
 - (b) the setting aside under section 73 of a judgment entered or given under paragraph (a) or (b) of that section in an action for a small debt or of the execution upon such a judgment.

[Section 106N inserted by No. 127 of 1982 s.9; amended by No. 92 of 1987 s.6.]

106O. Application of this Act to actions for small debts

- (1) In relation to an action for a small debt, a provision of this Part that is inconsistent with a general provision shall prevail to the extent of the inconsistency unless this Part provides otherwise.
- (2) Subject to subsection (1) the general provisions shall apply to an action for a small debt in the same manner as they apply to any other action in a Local Court.

[Section 106O inserted by No. 127 of 1982 s.9.]

Part VIB — Small Disputes Division

[Heading inserted by No. 92 of 1987 s.7]

106P. Division established

Every Local Court has, by force of this section, a division to be known as the Small Disputes Division.

[Section 106P inserted by No. 92 of 1987 s.7.]

106Q. Jurisdiction

- (1) The jurisdiction to be exercised in the Small Disputes Division is that conferred on a magistrate sitting in that Division by —
 - (a) Part VIA; and
 - (b) the *Residential Tenancies Act 1987*.
- (2) The jurisdiction referred to in subsection (1) is exercisable only by a stipendiary magistrate appointed under the *Stipendiary Magistrates Act 1957* and is so exercisable —
 - (a) in the case of an action for a small debt under Part VIA, in accordance with that Part; and
 - (b) in the case of an application referred to in section 12(1) of the *Residential Tenancies Act 1987*, in accordance with that Act,and in each case in accordance with the relevant Rules of Court referred to in subsection (6).
- (3) Parts I, II, VIII and X and sections 156, 160, and 162 apply to and in relation to the jurisdiction referred to in subsection (1) but otherwise, except as provided in Part VIA, this Act and Rules of Court made therefor do not apply to or in relation to the exercise of that jurisdiction.
- (4) Nothing in subsection (2) affects the exercise or performance by the clerk of such powers or duties as may be conferred or imposed on him by or under a written law referred to in that subsection.

- (5) Nothing in subsection (3) limits or affects section 16(2) of the *Residential Tenancies Act 1987*.
- (6) The Governor may under section 158 make rules of court —
 - (a) regulating the practice and procedure of a magistrate sitting in the Small Disputes Division of a Local Court;
 - (b) prescribing the fees to be paid in that Division;
 - (c) regulating the transfer of proceedings from that Division to a court, including a Local Court in its jurisdiction under Part III,

and may make different provision for or in relation to each of the matters referred in subsection (2)(a) and (b).

[Section 106Q inserted by No. 92 of 1987 s.7 (as amended by No. 50 of 1988 s.19).]

Part VII — Appeals and judicial review

[Heading amended by No. 127 of 1982 s.10.]

Appeals

107. Appeals

- (1) Subject to subsection (2), a party to an action or matter who is dissatisfied with —
 - (a) a final judgment may appeal from that judgment to the District Court;
 - (b) a judgment that is not a final judgment, may by leave of the District Court appeal to that Court,

notwithstanding that the action or matter to which the final judgment or judgment relates may have been brought in the Local Court by consent as provided in this Act.

- (2) An appeal to the District Court shall be made in the time and manner prescribed, and with such security for costs of the appeal as prescribed, by the Rules of the District Court², and, subject to subsection (5), the District Court has the jurisdiction to hear and determine the appeal accordingly.
- (3) A party to an appeal to the District Court who is dissatisfied with a judgment of the District Court on the appeal may by leave of the Supreme Court or a Judge thereof appeal from that judgment to the Court of Appeal constituted under the *Supreme Court Act 1935*.
- (4) An appeal to the Court of Appeal shall be made in the time and manner prescribed, and with such security for costs of the appeal as prescribed, by the Rules of the Supreme Court, and that Court of Appeal has jurisdiction to hear and determine the appeal accordingly.
- (5) Where an appeal to the District Court is pending, the Supreme Court or a Judge thereof may, at the instance of a party to the appeal and for good cause shown by him, remove the appeal to the Court of Appeal.

- (6) The removal of an appeal to the Court of Appeal shall be done in the time and manner prescribed, and with such security for costs of the appeal as prescribed, by the Rules of the Supreme Court, and those Rules shall apply in respect of the appeal, and that Court of Appeal has jurisdiction to hear and determine the appeal accordingly.
- (7) Notice of an appeal, a pending appeal, or proceedings on an appeal shall not operate as a stay of execution upon the judgment the subject of the appeal, unless the magistrate, or a Judge of the Court in which the appeal is pending or proceeding, otherwise orders.

[Section 107 inserted by No. 69 of 1976 s. 21; amended by No. 45 of 2004 s. 37.]

108. When magistrate to take a note of questions of law

At the trial or hearing of an action or matter, the magistrate, at the request either before or after judgment given of either party, shall make a note of any question of law raised at the trial or hearing, and of the facts in evidence in relation to that question, and of his decision on it, and of his decision of the action or matter.

109. When copy of magistrate's note to be given

In any action or matter in which the magistrate has at the request of either party made a note as in the last preceding section mentioned, he shall, at the expense of any party or parties to the action or matter, furnish a copy of the note so taken at the trial or hearing, or allow a copy of it to be taken by such party or parties, and he shall sign the copy, whether a notice of appeal has been given or not, and the copy so signed shall be used and received at the hearing of the appeal.

110. Hearing of appeal

An appeal shall be heard and determined by the Supreme Court or the District Court, as the case may be, on a copy of the

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proceedings and of the notes of the evidence taken by the magistrate, certified by the magistrate or the clerk of the Local Court, and such other materials as to the Supreme Court or the District Court, as the case may be, shall seem fit, with full discretionary power to receive further evidence on questions of fact, such evidence to be either by oral examination in court or by affidavit.

But such further evidence shall be admitted on special grounds only, and not without special leave of the court.

[Section 110 amended by No. 69 of 1976 s.22.]

111. Jurisdiction of Supreme Court and District Court

On the hearing of an appeal, the Supreme Court or the District Court, as the case may be, shall have power to affirm, reverse or modify the judgment, order or other decision or determination appealed from, and to give or make such judgment, order, decision or determination as ought to have been given or made in the first instance, and to review any finding of fact, and to draw inferences of fact, and may order a new trial on such terms as the court shall think just, or may order judgment to be entered for any party, or may make any other order, on such terms as the Supreme Court or the District Court, as the case may be, may think proper to insure the determination on the merits of the real questions in controversy between the parties, and may make such order with respect to the costs of the appeal as it shall think just, and every such order shall be final.

[Section 111 amended by No. 35 of 1930 s.9; No. 69 of 1976 s.23.]

112. Parties may agree not to appeal

An appeal shall not lie from the decision of a magistrate if, before the decision is pronounced, both parties agree, in writing signed by themselves or their solicitors, that the decision of the magistrate shall be final.

113. Removal of action only in manner provided by this Act

A judgment given by a magistrate, or an action or matter brought before him or depending in his court, shall not be removed by appeal, motion, writ of error, or certiorari, or otherwise into another court, save and except in the manner and according to the provisions of this Act.

Certiorari

114. When action may be removed

If the Supreme Court or a Judge thinks it desirable that any action, matter, or proceeding pending in a Local Court should be tried in the Supreme Court, the Court or Judge may direct a writ of certiorari to be issued for the removing such action, matter, or proceeding into the Supreme Court, upon such terms as to payment of costs, giving security for costs, or otherwise as such Court or Judge thinks fit.

An action or matter shall not be so removed when the amount claimed does not exceed \$40, unless the defendant gives security to the satisfaction of such Court or Judge for the amount claimed and the costs in the Supreme Court.

[Section 114 amended by No. 113 of 1965 s.8.]

Order in lieu of mandamus

115. Rule or order in lieu of writ of mandamus

A writ of mandamus shall not be issued to a magistrate or an officer of a Local Court requiring him to do any act relating to the duties of his office, but a party requiring the act to be done may, by counsel or in person, apply to the Supreme Court or a Judge, upon an affidavit of the facts, for a rule or summons calling upon the magistrate or officer of the Local Court, and also the party to be affected by the act, to show cause why the act should not be done, and if after the service of the rule or summons good cause is not shown, the Supreme Court or a Judge thereof may, by rule or order, direct the act to be done, and the magistrate or officer of the Local Court shall, upon

being served with the rule or order, obey it under pain of attachment, and in any event the Court or Judge may make such order with respect to costs as to the Court or Judge seems fit.

Prohibition

116. Magistrate not to be served with notice of application for prohibition

When an application is made to the Supreme Court or a Judge thereof for a writ of prohibition addressed to a Local Court, the magistrate of the Local Court shall not be served with notice, and shall not, except by the order of a Judge of the Supreme Court, be required to appear or be heard on the application, and shall not be liable to any order for the payment of the costs thereof; but the application shall be proceeded with and heard in the same manner in all respects as a case of an appeal duly brought from a judgment of a magistrate.

Notice of the application shall be given to or served upon the same parties as in the case of an appeal against a judgment or an order made or refused by a magistrate in a matter within his jurisdiction.

Practice in such cases

117. Rule or summons to show cause why a writ of certiorari or prohibition should not be issued to be a stay of proceedings

The granting by the Supreme Court, or by a Judge thereof, of a rule or summons to show cause why a writ of certiorari or of prohibition should not be issued to a Local Court, shall, if the Supreme Court or a Judge thereof so directs, operate as a stay of proceedings in the action to which the same relates until the determination of the rule or summons, or until such Court or Judge otherwise orders; and the magistrate of the Local Court shall, from time to time, adjourn the hearing of the action to such day as he thinks fit, until the determination or until such order is made.

If a copy of the rule or summons is not served by the party who obtained it on the opposite party, and on the clerk of the Local

Court, at least 2 clear days before the day fixed for the hearing of the action, the magistrate of the Local Court may order the party who obtained the rule or summons to pay the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made a different order respecting such costs.

118. Notice of writ of certiorari or prohibition obtained ex parte to be given to clerk and parties

When a writ of *certiorari* or of prohibition addressed to a Local Court is granted by the Supreme Court or a Judge thereof on an *ex parte* application, and the party who obtained it does not lodge it with the clerk, and give notice to the opposite party that it has been issued, at least 2 clear days before the day fixed for hearing the action to which it relates, the magistrate of the Local Court may order the party who obtained the writ to pay all the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made a different order respecting such costs.

119. Costs

When an order is granted for the removal of an action or matter from a Local Court, or for the issuing of a writ of *certiorari* for such removal, and provision is not made in such order with respect to the costs of the proceedings in the Local Court, the costs of the proceedings shall be costs in the action or matter.

Part VIII — Enforcement of judgments

Action on judgment

120. Action on judgment

An action may be brought in the Supreme Court upon a judgment in a Local Court, but the plaintiff shall not recover any costs in such an action up to judgment unless the defendant appears and unsuccessfully defends the action.

121. Clerk to issue warrants of execution

In any case in which a judgment is entered up or given for the payment of money, the clerk, on the application of the party in whose favour the judgment was entered or given, may issue a warrant of execution, which shall be directed to the bailiff of the court.

[Section 121 amended by No. 19 of 1909 s.4; No. 5 of 1912 s.11.]

Execution against land

122. Bailiff may take land

A bailiff may, under a warrant of execution by which he is directed to levy a sum of money, seize and take, and cause to be sold, any land which the person named in the warrant is or may be possessed of or entitled to, or which he has the power to transfer or dispose of for his own benefit.

123. Notice of sale

Instead of making an actual seizure of land under a warrant of execution in order to authorise a sale thereof, the bailiff may cause notice of the warrant and of the intended day and place of sale, and the particulars of the property to be published in such manner as may be prescribed, or as the magistrate may direct.

The publication of the notice shall be equivalent to an actual levy by the bailiff on the land indicated in the notice.

124. Magistrate to execute conveyance or transfer

When the right, title, and interests of a person of, to, or in any land is sold under a warrant of execution, the magistrate shall execute a proper conveyance, assignment, or transfer to the purchaser, which shall operate and be effectual as a conveyance of the estate, right, title, and interest of such person.

125. Application of section 133 of *Transfer of Land Act 1893*

Subsections (1) and (2) of section 133 of the *Transfer of Land Act 1893*, shall apply to a sale under a warrant of execution issued under this Act, and those subsections and the schedules therein referred to shall, in relation to any such sale, be read as if the words “warrant of execution issued out of a Local Court” were inserted in place of “writ of fieri facias issued out of the Supreme Court”, and as if the words “bailiff of the Local Court” were inserted in place of the word “sheriff”.

[Section 125 amended by No. 81 of 1996 s.153(1).]

Execution against goods

126. Bailiff may seize goods

A bailiff, under a warrant of execution by which he is directed to levy a sum of money, may seize and take, and cause to be sold any goods which the person named in the warrant is or may be possessed of or entitled to, or which he has power to assign or dispose of.

Provided that the following goods shall be protected from seizure:

Wearing apparel of such person to the value of \$100 and of his spouse or de facto partner to the value of \$100 and of his family to the value of \$50 for each member thereof dependent on him; household furniture and effects to a value not exceeding in the aggregate \$300; implements of trade to the value of \$100; all beds and bedding; family photographs and portraits.

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[Section 126 amended by No. 13 of 1938 s.2; No. 56 of 1958 s.4; No. 113 of 1965 s.8; No. 28 of 2003 s. 108.]

127. Securities seized to be held by bailiff

The bailiff shall hold any cheques, bills of exchange, promissory notes, specialties or other securities for money, which are seized or taken under a warrant of execution, as a security for the amount directed to be levied under the warrant, or so much thereof as has not been otherwise levied or raised for the benefit of the execution creditor, and may receive any moneys payable by virtue of any such instrument from the person liable under it.

The execution creditor may sue in the name of the execution debtor, or in the name of any person in whose name the execution debtor might sue, for the recovery of the sums secured or made payable by any such instrument, when the time of payment thereof arrives.

Any money paid to the bailiff or recovered in an action brought by the execution creditor in respect of any such instrument shall be paid into court by the officer or person who receives the same. The payment of any such moneys to the bailiff or in the course of or under a judgment in any such action shall effectually discharge the person by whom they are paid to the extent of the payment.

128. When goods taken in execution may be sold

A sale of goods which are taken in execution shall not be made until after the expiration of the 5 days at least next following the day on which the goods were taken, unless the goods are of a perishable nature, except upon the request in writing of the person whose goods are taken.

Until the sale, the goods must be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the bailiff to be put in possession by the bailiff.

129. When goods seized landlord may claim certain rent in arrear

The landlord of any premises in which goods are taken may, at any time within 5 clear days from the date of the taking, or at any time before the removal of the goods, claim any rent in arrear by delivering to the officer making the levy a writing signed by himself or his agent, stating the amount of rent in arrear claimed and the period in respect of which the rent is due.

If such a claim is made, the officer making the levy shall, in addition to levying for the amount for which the warrant was issued, keep possession of the goods by way of distress for the rent so claimed and the cost of the possession, and shall not, within 5 clear days next after the notice, sell any part of the goods taken, unless they are of a perishable nature, except upon the request in writing of the person whose goods are taken.

The bailiff shall afterwards sell so much of the goods taken under the execution as is sufficient to satisfy —

- (a) the costs of and incident to the levy and sale;
- (b) the claim of the landlord not exceeding the rent for 4 weeks when the premises are let by the week, the rent for 2 months when the premises are let by the month, or the rent for 3 months in any other case; and
- (c) the amount for which the warrant was issued.

If a replevin is made of any goods so taken, the bailiff shall, notwithstanding the replevin, sell such portion of the goods as will satisfy the costs of and incident to the levy and sale under the execution, and the amount for which the warrant was issued, and the surplus, if any, arising from the sale, and the residue of the goods shall be returned to the defendant.

The poundage of the bailiff and broker for appraisalment and sale under the possession by way of distress shall be the same as would have been payable if no claim had been made for rent; and no other fees shall be demanded or taken in respect thereof.

Execution against the person

130. Power to commit

- (1) Subject to the provisions hereinafter contained, and to the rules of court, any magistrate may commit to prison, for a term not exceeding 6 weeks or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any judgment or order of a Local Court.

Provided that such jurisdiction shall only be exercised where it is proved to the satisfaction of the magistrate that the person making default either 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 has refused or neglected, or refuses or neglects, to pay the same.

- (2) Proof of the means of the person making default may be given in such manner as the magistrate thinks fit; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath according to the rules of court.

- (2a) Where —

- (a) a summons obtained under this section is duly served on a judgment debtor and at the same time payment or a tender of payment of his reasonable expenses is made; and

- (b) the debtor refuses or neglects to obey the summons,

the magistrate before whom the debtor should have appeared may, if good cause is not shown for the non-appearance of the debtor, issue his warrant to bring and have the debtor before a magistrate to be examined pursuant to this section.

- (2b) Where a warrant is issued under subsection (2a) the judgment debtor shall be brought before a magistrate for examination on the day on which he is apprehended pursuant to the warrant or, if that is not practicable, as soon as is practicable thereafter.

- (3) For the purposes of this section, the magistrate may direct any debt due from any person, in pursuance of any judgment or order, to be paid by instalments, and may from time to time vary or rescind such order.
- (4) No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands or goods of the person imprisoned, in the same manner as if such imprisonment had not taken place.
- [(5) repealed]*
- (6) The Minister or the magistrate may by delegation in writing signed by the Minister, or as the case may be, the magistrate, delegate to the clerk authority to exercise generally, or in any particular case, or in any case of a class, the jurisdiction conferred upon the magistrate by the preceding subsections; and the clerk who is the delegate —
 - (a) may, subject to the provisions of subsection (7), exercise that jurisdiction as if references in those subsections to the magistrate were references to the clerk; and
 - (b) may exercise any power conferred by this Act or the rules of court on the magistrate, as incidental or ancillary to the exercise of the jurisdiction referred to in paragraph (a), including any power of fining, or compelling the attendance of, any person who neglects or refuses to appear to be examined; or who, having appeared, refuses without lawful justification to answer to the best of his knowledge any question put to him in examination; or to produce anything he is required to produce for the purposes of examination.
- (7) The effectiveness of an order made, or decision given, or direction issued, in exercise of jurisdiction mentioned in subsection (6)(a) by a clerk acting under power of delegation is, and shall be expressed to be, suspended until the order, decision,

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or direction, is reviewed by the magistrate, who shall review it as soon as is practicable after it has been made, given, or issued, but this subsection does not apply in respect of the exercise by the clerk of any power mentioned in subsection (6)(b).

- (8) The magistrate on reviewing under subsection (7), an order, or a decision or a direction —
- (a) may confirm it, and direct it to take effect from a day to be appointed by the magistrate;
 - (b) may vary it and direct it to take effect as so varied from a day to be so appointed; or
 - (c) may set it aside,

and the decision of the magistrate has, and shall be given, effect according to its tenor.

[Section 130 amended by No. 10 of 1957 s.6; No. 127 of 1982 s.11; No. 28 of 2003 s. 121(3).]

131. Execution of warrant

The bailiff and the keeper of the prison to whom the warrant for the commitment of a debtor, or any warrant issued in pursuance of it, is directed, shall respectively execute and obey the same, and the police officers within their several jurisdictions shall aid and assist in its execution.

[Section 131 amended by No. 49 of 1997 s.5.]

132. Discharge on payment of debt and costs

A person arrested or imprisoned under warrant of commitment shall be entitled to his discharge on payment of the amount named in the warrant as due on the judgment or order, and the costs of obtaining and executing the warrant, or upon a receiving order under the *Bankruptcy Act 1892*, being made against him, or his executing a deed of assignment under the *Bankruptcy Act Amendment Act 1898*, or otherwise upon the order of the magistrate.

The bailiff making the arrest, and the keeper of the prison to whom the warrant is directed, are hereby empowered and required to receive the amount so paid, and to transmit it to the clerk of the court in which the judgment was recovered.

133. Detention of persons arrested

When a warrant of commitment is issued and the debtor is arrested, he shall, unless entitled to his discharge under the provisions of this or some other Act, be forthwith conveyed in the custody of the bailiff or other officer apprehending him to a prison in pursuance of the said warrant.

[Section 133 amended by No. 19 of 1909 s.5.]

134. Suspension of section 3 of the *Debtors Act 1871*

The provisions of section 3 of the *Debtors Act 1871*, shall not apply to any judgment or order of a Local Court.

Execution at a distance

135. How execution may be levied at a distance

When a warrant of execution or a warrant of commitment has been issued under this Act, the clerk of the court may send the warrant to the clerk of the Local Court held nearest to the place where the person against whom it is issued, or any of his property, then is or is believed to be, with a warrant annexed to it, under the hand of the clerk, and under the seal of the court from which the original warrant was issued, requiring execution thereof.

The clerk of the court to which the warrant is sent shall seal or stamp it with the seal of the court, and shall issue it to the bailiff of his court.

The last-mentioned bailiff shall thereupon be authorised and required to act in all respects as if the original warrant of execution of commitment had been directed to him by the court of which he is the bailiff, and he shall, within the prescribed

time, make a return to the clerk of the court from which the warrant was originally issued with respect to what he has done in the execution of the process; and, if a levy is made, he shall, within the prescribed time, pay over the moneys received in pursuance of the warrant to the clerk of the court to which the warrant was sent, who shall transmit such moneys to the clerk of the court from which the warrant was originally issued, retaining the fees for execution of the process.

General provisions relating to execution

136. Time of applications for warrants to be entered

The precise time when an application is made to the clerk to issue a warrant of execution shall be entered by him in the execution book and on the warrant, and when more warrants than one are delivered to a bailiff to be executed against the same person he shall execute them in the order of the times so entered.

137. Priority of execution issuing out of Supreme Court and Local Court

When a writ of execution against the lands or goods of a party to an action or other proceeding has been issued out of the Supreme Court, and a warrant of execution has been issued out of a Local Court, the right to the property seized shall be determined by the priority of the time of the delivery of the writ so issued out of the Supreme Court to the sheriff to be executed, or the time of the application to the clerk for the issue from the Local Court of the warrant of execution, whichever is the earlier.

The sheriff shall, on demand, inform the clerk of the precise time of the delivery of the writ so issued out of the Supreme Court, and the clerk shall, on demand, inform the sheriff, or a sheriff's officer, of the precise time of the application to the clerk for the issue from the Local Court of the warrant of execution.

138. Execution after default in instalment may be issued for whole sum

If the magistrate makes an order for payment of a sum of money by instalments, execution upon the order shall not be issued against the party until after default in some instalment.

Upon such default being made, execution or successive executions may be issued for the whole of the sum of money and costs then remaining unpaid, or for such portions thereof as the magistrate may have ordered, or may order, either at the time of making the original order, or at a subsequent time.

139. Magistrate may suspend execution or order discharge in certain cases

If at any time it appears to a magistrate that the defendant in an action or matter is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof, the magistrate may suspend or stay any judgment given or execution issued in the action or matter for such time and upon such terms as he thinks fit, and so from time to time until it appears that the cause of inability has ceased.

A magistrate may also discharge a debtor confined in prison, who by reason of sickness or other sufficient cause ought, in the opinion of the magistrate, to be discharged.

140. Execution to be superseded on payment of debt and costs

In or upon every warrant of execution the clerk of the court shall cause to be inserted or indorsed the sum of money and costs adjudged and the amount of the fees for the execution of the warrant.

If the party against whom the warrant is issued, before actual sale, pays or tenders to the clerk of the court from which it was issued, or to the bailiff holding the warrant, the sum of money and costs, or such part thereof as the person entitled thereto

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agrees to accept as full payment of the debt or damages and costs, the execution shall be superseded, and the property of the party against whom the execution was issued shall be discharged.

141. Cross-judgments to be set off

If there are cross-judgments between the same parties in a Local Court, execution shall be issued at the instance of that party only who has obtained judgment for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction shall be entered on the judgment for the smaller sum, and if both sums are equal, satisfaction shall be entered on both judgments.

142. Judgment may be removed to Supreme Court

If a Judge of the Supreme Court is satisfied that a party against whom judgment for an amount exceeding \$40 exclusive of costs has been obtained in a Local Court has no goods which can be conveniently taken to satisfy such judgment, he may, if he thinks fit, and on such terms as to costs as he may direct, by order remove the judgment of the Local Court to the Supreme Court, and when removed it shall have the same force and effect, and the same proceedings may be had thereon, as in the case of a judgment of the Supreme Court.

[Section 142 amended by No. 113 of 1965 s.8.]

Interpleader

143. Interpleader

If a claim is made to or in respect of goods taken in execution under the process of a Local Court, or in respect of the proceeds or value of the goods, by a person not being the party against whom the process has been issued, the clerk of the court under the process of which the levy is made, or the clerk of the court of the district in which the levy is made, upon application of the officer charged with the execution of the process, whether an

action has been brought against the officer or not, may enter an interpleader claim, and may issue a summons thereon calling before the court both the party issuing the process and the party making the claim, and thereupon any action which has been brought in the Supreme Court or in a Local Court in respect of the claim shall be stayed.

Upon the return of the summons the magistrate shall have and may exercise such and the same powers as a Judge of the Supreme Court has and may exercise upon the application of the sheriff, in the case of goods taken in execution under process issued from the Supreme Court.

The court in which the action has been brought, or any Judge or magistrate of such court, on proof of the issue of the summons and that the goods were so taken in execution, may order the party bringing the action to pay the costs of all proceedings had upon the action after the issue of the summons out of the Local Court.

Attachment of debts

144. Examination of judgment debtor as to debts due to him

- (1) When a judgment is for the recovery by or payment to a person of a sum of money, the party entitled to enforce it may apply to the clerk for a summons to the judgment debtor to attend to be orally examined as to whether any and what debts are owing to him; and to produce any books, deeds, papers or writings.
- (1a) If on application being made to him for a summons under subsection (1), the clerk refuses the application, the magistrate on application being made to him may direct the clerk to grant the application for the summons and the clerk shall give effect to the direction.
- (2) Where —
 - (a) a summons obtained under this section is duly served on a judgment debtor and at the same time payment or a

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tender of payment of his reasonable expenses is made;
and

(b) the debtor refuses or neglects to obey the summons,

the magistrate before whom the debtor should have appeared may, if good cause is not shown for the non-appearance of the debtor issue his warrant to bring and have the debtor before a magistrate to be examined pursuant to this section.

- (3) Where a warrant is issued under subsection (2) the judgment debtor shall be brought before a magistrate for examination on the day on which he is apprehended pursuant to the warrant or, if that is not practicable, as soon as is practicable thereafter.
- (4) Where a judgment debtor refuses or neglects to produce books, deeds, papers, or writings as directed by a summons obtained under this section and duly served on him the magistrate may make an order for their production by him.

[Section 144 amended by No. 10 of 1957 s.7; No. 127 of 1982 s.12.]

145. Power to make garnishee order

Upon the ex parte application of the judgment creditor, either before or after the oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment debtor and is within the State, the magistrate or the clerk may order that all debts owing or accruing from the third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment; and, by the same or a subsequent order, may order that a summons be issued requiring the garnishee to appear before the magistrate, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much of it as is sufficient to satisfy the judgment. Provided, however, that no order shall be made for the attachment of the wages of any servant, labourer, or workman.

[Section 145 amended by No. 5 of 1912 s.12.]

146. Service of garnishee order

Service of an order that debts due or accruing to a judgment debtor shall be attached, or notice of it to the garnishee in such manner as the magistrate directs, shall bind the debts in his hands.

147. Execution against garnishee

If the garnishee does not dispute the debt due or claimed to be due from him to the judgment debtor, or does not appear in obedience to the summons, and if in either case he does not forthwith pay into court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, the magistrate may order a warrant of execution to be issued, and it may be issued accordingly without a previous writ or process, to levy the amount due from the garnishee, or so much of it as is sufficient to satisfy the judgment.

Provided that the magistrate may direct such payment to be made at such times and by such instalments as he thinks fit, and if default is made in the payment of any one such instalment execution may issue for so much of the amount then due by the garnishee as will satisfy the judgment debt remaining unpaid at the time of such default.

148. Trial of liability of garnishee

If the garnishee disputes his liability, the magistrate, instead of making an order that a warrant of execution shall be issued, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which an issue or question in an action is tried or determined, and thereupon the same proceedings may be had in all respects as if an action were pending between the parties, and any order or judgment made in such proceedings may be enforced in the same manner as a judgment in an action in the court.

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149. Lien of third person on debt

When in proceedings to obtain an attachment of debts it is suggested by the garnishee, or it otherwise appears, that the debt sought to be attached belongs to a third person, or that a third person has a lien or charge upon it, the magistrate may order a summons to be issued requiring the third person to appear and state the nature and particulars of his claim upon the debt.

150. Trial of claim of third person

After hearing the allegations of the third person, and of any other person whom, by the same or a subsequent order, the magistrate directs to be summoned, or if the third person does not appear in obedience to the summons, the magistrate may order that a warrant of execution be issued to levy the amount due from the garnishee, or that an issue or question be tried or determined as hereinbefore provided, and the magistrate may bar the claim of the third person, or may make such other order as he thinks fit, upon such terms, with respect to the lien or charge (if any) of the third person, and to costs, as he thinks just.

151. Discharge of garnishee

Payment made by or execution levied upon a garnishee under any such proceeding shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although the proceeding may be set aside or the judgment reversed.

152. Attachment book

The clerk shall keep a debt attachment book, in which entries shall be made of all attachments made and of the proceedings taken in respect of them, with names, dates, and statements of the amount recovered, and such other particulars as may be prescribed; and copies of entries made in the book may be taken by any person upon application to the clerk and payment of the prescribed fee.

153. Costs

The costs of an application for an attachment of debt, and of the proceedings arising from or incidental to the application, shall be in the discretion of the magistrate.

But where the garnishee pays into court all debts due, owing, or accruing from him to the judgment debtor, or so much thereof as is sufficient to satisfy the judgment debt, 5 clear days before the return day of the summons, he shall not be liable for any costs incurred by the judgment creditor.

Part IX — Supplementary provisions

154. Nearest court, how determined

If objection is taken to the jurisdiction of the court on the grounds that it is not the court held nearest to the place —

[(a) and (b) deleted]

- (c) where the goods were seized, if the action is of replevin;
or
- (d) where the land is situated, if the action is for the recovery of land,

the determination of the magistrate on such question shall be final and conclusive.

The distance shall be calculated by the nearest public thoroughfare; and no such objection shall be allowed unless it is shown to the satisfaction of the magistrate that another court is held nearer to such place by a distance of 8 kilometres at the least.

[Section 154 amended by No. 5 of 1912 s.13; No. 94 of 1972 s.4 (as amended by No. 19 of 1973 s.3).]

155. Penalty for disobeying injunction or other order of the court

When a lawful order is made by a magistrate, not for the payment of money, but for the doing of some other act, or for ceasing either for a time or permanently to do some act, any person acting in disobedience to such order shall be liable, at the discretion of the magistrate, to a penalty not exceeding \$5 000 for each offence, and to be imprisoned in default of payment, or to be imprisoned in the first instance, and the magistrate may issue a warrant of commitment accordingly.

The person so offending shall be taken to some convenient prison, to be named in such warrant, and delivered to the keeper thereof, and he shall be there detained until he shall give security to the satisfaction of the magistrate that he will do the

act required, or cease to do the act prohibited, or until the magistrate shall make an order for his release.

No person shall be imprisoned under this section for any term exceeding 12 months; but such imprisonment shall not release the person imprisoned from the obligation to conform with the terms of any such order as aforesaid.

[Section 155 amended by No. 113 of 1965 s.8; No. 71 of 1986 s.6.]

156. Power of committal for contempt

If any person wilfully insults, interferes with, or obstructs a magistrate, or a clerk, bailiff, or other officer of a Local Court, or any party to a cause or matter, or any witness lawfully summoned to attend a Local Court, during his sitting or attendance in court, or in going to or returning from the court, or wilfully interrupts the proceedings of the court, or otherwise misbehaves himself in court, a bailiff or other officer may, with or without the assistance of any other person, by order of the magistrate, take the offender into custody and detain him till the rising of the court; and the magistrate may, by a warrant under his hand, and sealed with the seal of the court, commit the offender to imprisonment for a term not exceeding 12 months, or may impose on the offender a fine not exceeding \$5 000, or may so commit the offender and impose such a fine, or may in default of immediate payment of the fine imposed commit the offender to imprisonment —

- (a) until the fine is paid; or
- (b) for a term not exceeding 12 months,

whichever may be the shorter period.

[Section 156 amended by No. 113 of 1965 s.8; No. 71 of 1986 s.7.]

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157. Payment of penalties, how enforced

The payment of any fine or penalty imposed by a magistrate may be enforced in like manner as payment of any penalty may be enforced in summary proceedings before justices of the peace under the *Justices Act 1902*.

158. Power to make rules

- (1) The Governor may, from time to time, make, alter, and repeal rules of court prescribing —
 - (a) the practice of the courts and the forms of proceedings therein;
 - [(b) deleted]*
 - (c) the expenses to be paid to witnesses;
 - (d) the mode of keeping all books, entries, and accounts to be kept by the clerks;
 - (e) matters relating to expert evidence, including the disclosure, by the furnishing of reports or otherwise, of the nature and substance of the expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for the disclosure of the nature and substance of expert evidence, and in relation thereto —
 - (i) differing requirements depending on different classes of cases, different classes of matters, or other different circumstances; and
 - (ii) a discretionary authority.
- (2) All rules of court shall be published in the *Government Gazette*, and shall not take effect until one month after the publication thereof.
- (3) The rules and forms in force at the commencement of this Act, except so far as they are inconsistent with this Act, shall

continue in force until altered or revoked by rules made under this Act.

[Section 158 amended by No. 111 of 1976 s.17; No. 65 of 1987 s.30.]

159. Fees

- (1) Subject to rules of court made under subsection (3), there shall be payable, in respect of every proceeding in a Local Court, such court fees and bailiff's fees as the Governor may from time to time prescribe.
- (2) The fees shall be paid in the first instance by the party on whose behalf the proceeding is to be taken, and shall be paid before the proceeding is taken, and the fees payable for executing warrants of execution shall be paid into court before or at the time of the issue of the process of execution.
- (3) Rules of court may provide for the waiver, reduction, refund or deferral of payment of the prescribed fees.
- (4) Where provision for the reduction, waiver, refund or deferral of a prescribed fee is made in the rules of court, such reduction, waiver, refund or deferral of payment may be expressed to apply or be applicable either generally or specifically —
 - (a) when an event happens or ceases to happen;
 - (b) in respect of certain persons or classes of person; or
 - (c) in respect of a combination of such events and persons,and may be expressed to apply or to be applicable subject to such conditions as may be specified in the rules or in the discretion of any person specified in the rules.

[Section 159 amended by No. 10 of 1957 s.8; No. 69 of 1984 s.8.]

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160. Fees and fines to be paid to the Consolidated Fund

All fees payable in respect of any proceedings to the clerk, except such part of them as the bailiff is entitled to receive and retain for his own use under the provisions of this Act, and all fines imposed under this Act and received by the clerk, shall be credited to the Consolidated Fund.

[Section 160 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

[161. Repealed by No. 127 of 1982 s.13.]

162. Public holidays

In the event of any sitting of a Local Court falling upon a public holiday, the court shall not sit upon such day, but upon the day next following.

163. Effect of non-compliance

Non-compliance with any statutory or other rule of procedure shall not render any proceeding in a Local Court void, unless the magistrate so directs, but such proceeding may, subject to any rules of court, be set aside either wholly or in part as irregular or may be amended or otherwise dealt with in such manner and upon such terms as the magistrate may think fit.

[Section 163 inserted by No. 5 of 1912 s.14.]

[Part X repealed by No. 53 of 2000 s.20.]

[First Schedule omitted under the Reprints Act 1984 s.7(4)(f).]

Third Schedule

Interlocutory Summons for Judgment

In the Local Court at

Between J. D., Plaintiff,

and

R. M., Defendant.

Let the Defendant attend the Magistrate in chambers at the Local Court at
on day, the day of 20....., at the hour of
..... o'clock in the noon, on the hearing of an application on the
part of the plaintiff for judgment in this action for the amount claimed with
costs.

Dated the day of, 20.....

[Seal of the Court.]

F.H.,

Clerk of the Court.

Note. — The affidavit of the plaintiff [or of H.S.], a copy whereof [together
with copies (or a copy) of the exhibit(s) referred to therein] is served on you
herewith, will be used on the hearing of this application.

This summons was taken out by the plaintiff [or by X.Y., the plaintiff's
solicitor.]

To Mr. R. M.,
the Defendant.

[Third Schedule inserted by No. 21 of 1921 s.4.]

Notes

¹ This is a compilation of the *Local Courts Act 1904* and includes the amendments made by the other written laws referred to in the following table ⁵. Marginal notes in the *Local Courts Act 1904* referring to the legislation from which provisions were derived have been omitted from this compilation.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Local Courts Act 1904</i>	51 of 1904	24 Dec 1904	1 January 1905 (see section 2)
<i>Local Courts Act Amendment Act 1909</i>	19 of 1909	6 Feb 1909	1 January 1905 (see section 6)
<i>Local Courts Act Amendment Act 1911</i>	5 of 1912	9 Jan 1912	Proclaimed 20 May 1912 (see section 1 and <i>Gazette</i> 14 Apr 1912 p.1512)
<i>Local Courts Act Amendment Act 1921</i>	21 of 1921	6 Dec 1921	6 Dec 1921
<i>Local Courts Act Amendment Act 1930</i>	35 of 1930 (as amended by No.31 of 1931 s.2)	22 Dec 1930	Proclaimed 25 Dec 1931 (see section 1 and <i>Gazette</i> 18 Dec 1931 p.2582)
<i>Limitation Act 1935</i>	35 of 1935 (as amended by No. 73 of 1954 s.5)	7 Jan 1936	Second Schedule proclaimed 1 Mar 1955 (see section 2 and <i>Gazette</i> 18 Feb 1955 p.343)
<i>Local Courts Act Amendment Act 1938</i>	13 of 1938	30 Nov 1938	30 Nov 1938
<i>Local Courts Act Amendment Act 1953</i>	10 of 1953	10 Nov 1953	10 Nov 1953
<i>Local Courts Act Amendment Act 1954</i>	26 of 1954	28 Oct 1954	Proclaimed 1 January 1955 (see section 2 and <i>Gazette</i> 10 Dec 1954 p.2013)
<i>Local Courts Act Amendment Act 1957</i>	10 of 1957	29 Aug 1957	Proclaimed 7 Jul 1958 (see section 2 and <i>Gazette</i> 20 Jun 1958 p.1295)
<i>Local Courts Act Amendment Act 1958</i>	56 of 1958	23 Dec 1958	23 Dec 1958
<i>Local Courts Act Amendment Act 1964</i>	9 of 1964	2 Oct 1964	2 Oct 1964

Short title	Number and year	Assent	Commencement
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Sections 4 to 9: 14 Feb 1966 (see section 2(2)); balance on assent
<i>Local Courts Act Amendment Act 1970</i>	8 of 1970	29 Apr 1970	Proclaimed 14 Feb 1972 (see section 2 and <i>Gazette</i> 10 Dec 1971 p.5169)
<i>Age of Majority Act 1972, section 6</i>	46 of 1972	18 Sep 1972	Proclaimed 1 Nov 1972 (see section 2 and <i>Gazette</i> 13 Oct 1972 p.4069)
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 19 of 1973 s.4; as amended by No.42 of 1975 s.3)	4 Dec 1972	2 nd Schedule: 1 Jan 1974 (see section 4(2) and <i>Gazette</i> 2 Nov 1973 p.4109); 4 th Schedule: 5 Dec 1975 (see section 4(2) and <i>Gazette</i> 5 Dec 1975 p.4367)
<i>Acts Amendment (Jurisdiction of Courts) Act 1976, Part II</i>	69 of 1976	6 Oct 1976	Sections 9, 21-23 proclaimed 17 Jun 1977 (see section 2 and <i>Gazette</i> 17 Jun 1977 p.1811); sections 8, 10-20: 1 Jan 1977 (see section 2 and <i>Gazette</i> 24 Dec 1976 p.5028)
<i>Acts Amendment (Expert Evidence) Act 1976, Part VIII</i>	111 of 1976	25 Nov 1976	25 Nov 1976
<i>Local Courts Amendment Act 1981</i>	93 of 1981	4 Dec 1981	1 Jan 1982 (see section 2)
<i>Acts Amendment (Jurisdiction of Courts) Act 1981, Part III</i>	118 of 1981	14 Dec 1981	Proclaimed 1 Feb 1982 (see section 2 and <i>Gazette</i> 22 Jan 1982 p.175)
<i>Local Courts Amendment Act 1982</i>	127 of 1982	10 Dec 1982	Sections 11 and 12 proclaimed 28 February 1983 (see section 2(1) and <i>Gazette</i> 25 February 1983 p.638); sections 7, 8 and 9 proclaimed 1 March 1984 (see section 2(1) and <i>Gazette</i> 20 January 1984 p.120); balance on assent

Local Courts Act 1904

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Court Fees) Act 1984, Part II</i>	69 of 1984	26 Nov 1984	Proclaimed 28 June 1985 (see section 2 and <i>Gazette</i> 28 June 1985 p.2291)
<i>Local Courts Amendment Act 1985</i>	13 of 1985	28 Mar 1985	Proclaimed 18 June 1985 (see section 2 and <i>Gazette</i> 17 May 1985 p.1671)
<i>Acts Amendment (Penalties for Contempt of Court) Act 1986, Part III</i>	71 of 1986	4 Dec 1986	4 December 1986 (see section 2)
<i>Local Courts Amendment Act 1987</i>	11 of 1987	11 Jun 1987	Section 9 proclaimed 1 January 1989 (see section 2 and <i>Gazette</i> 30 December 1988 p.5083); balance proclaimed 1 January 1988 (see section 2 and <i>Gazette</i> 11 December 1987 p.4363);
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987, Part V</i>	65 of 1987	1 Dec 1987	Proclaimed 12 February 1988 (see section 2(1) and <i>Gazette</i> 12 February 1988 p.397)
<i>Local Courts Amendment Act (No. 2) 1987</i>	92 of 1987 (as amended by No. 50 of 1988 s.19)	16 Dec 1987	Proclaimed 1 October 1989 (see section 2 and <i>Gazette</i> 18 August 1989 p.2747)
<i>Residential Tenancies Act 1987, section 89</i>	128 of 1987	21 Jan 1988	Proclaimed 1 October 1989 (see section 2 and <i>Gazette</i> 18 August 1989 p.2748)
<i>Local Courts Amendment Act 1991</i>	11 of 1991	21 Jun 1991	Proclaimed 1 September 1992 (see section 2 and <i>Gazette</i> 21 August 1992 p.4121)

Short title	Number and year	Assent	Commencement
<i>Criminal Law Amendment Act (No. 2) 1992, section 16(1)</i>	51 of 1992	9 Dec 1992	6 January 1993 (ie. 28 days after assent)
<i>Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992, Part 5</i>	53 of 1992	9 Dec 1992	Proclaimed 1 March 1993 (see section 2(1) and <i>Gazette</i> 26 January 1993 p.823)
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 Aug 1993	Deemed operative 1 July 1993 (see section 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994, section 19</i>	32 of 1994	29 Jun 1994	Proclaimed 1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 Jun 1996	1 July 1996 (see section 2)
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 Oct 1996	25 October 1996 (see section 2(1))
<i>Transfer of Land Amendment Act 1996, section 153(1)</i>	81 of 1996	14 Nov 1996	14 November 1996 (see section 2(1))
<i>Sunday Observance Laws Amendment and Repeal Act 1997, section 5</i>	49 of 1997	10 Dec 1997	10 December 1997 (see section 2)
<i>Courts Legislation Amendment Act 2000, Part 4 (ss.15-16)</i>	27 of 2000	6 Jul 2000	6 July 2000 (see section 2(1))
<i>State Records (Consequential Provisions) Act 2000, Part 7</i>	53 of 2000	28 Nov 2000	1 December 2001 (see section 2 and <i>Gazette</i> 30 November 2001 p.6067)
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 37 and s. 121</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)

Short title	Number and year	Assent	Commencement
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 76	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 49, 129	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)

This Act was repealed by the *Courts Legislation Amendment and Repeal Act 2004* s. 4 (No. 59 of 2004) as at 1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)

NB. The *Local Courts Act 1904* was affected by the *Supreme Court Act 1935* (No. 36 of 1935) s.142 and by the *Suitors' Fund Act 1964* (No. 43 of 1964) s.5.

² See *District Court Rules 1996*.

³ Footnote no longer applicable.

⁴ Footnote no longer applicable.

⁵ The *Courts Legislation Amendment and Repeal Act 2004* Pt. 2 Div. 2 reads as follows:

“

Part 2 — *Local Courts Act 1904* repealed

Division 2 — Transitional provisions

5. Interpretation

In this Division —

“**commencement**” means the commencement of this Division.

6. Clerks of Local Courts

- (1) If immediately before commencement a person holds office under the *Local Courts Act 1904* section 13 as a clerk, then on commencement the person is to be taken to have been appointed —

- (a) in the case of a person who immediately before commencement is an employee of the department principally assisting the Minister with the administration of the *Local Courts Act 1904* — under the *Magistrates Court Act 2004* section 26(2) as a Registrar of the Magistrates Court;

- (b) in any other case — under the *Magistrates Court Act 2004* section 26(2) and (6) as a Registrar of the Magistrates Court.
 - (2) If immediately before commencement a person holds office under the *Local Courts Act 1904* section 13 as an assistant clerk, then on commencement the person is to be taken to have been appointed under the *Magistrates Court Act 2004* section 26(2) as a Deputy Registrar of the Magistrates Court.
7. **Cases pending**
- If immediately before commencement an action or matter (as defined in the *Local Courts Act 1904*) is pending before a Local Court, then on commencement the action or matter —
- (a) is to be taken to be a case pending before the Magistrates Court; and
 - (b) shall be heard and determined under the *Magistrates Court (Civil Proceedings) Act 2004* as if it is within the civil jurisdiction of the Magistrates Court.
8. **Existing summonses and warrants**
- (1) If immediately before commencement a summons, warrant or other process issued under the *Local Courts Act 1904*, other than an enforcement process within the meaning of section 143, is in force, then on commencement the summons, warrant or process is to be taken to be a summons, warrant or process issued under the *Magistrates Court (Civil Proceedings) Act 2004*.
 - (2) If immediately before commencement a summons or warrant is in force and requires a person to attend or to be brought before a Local Court, then on commencement the summons or warrant is to be taken to require the person to attend or to be brought before the Magistrates Court at the place specified in the summons or warrant.
9. **References to *Local Courts Act 1904* to be read as references to *Magistrates Court (Civil Proceedings) Act 2004***
- A reference in a written law or book, document or writing to the *Local Courts Act 1904* is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the *Magistrates Court (Civil Proceedings) Act 2004*.
10. **References to ‘Local Court’ to be read as references to the ‘Magistrates Court’**
- A reference in a written law or book, document or writing to a Local Court is, unless the contrary intention appears, to be

construed as if it had been amended to be a reference to the Magistrates Court.

11. Local Court Rules 1961 repealed and transitional provision

- (1) The *Local Court Rules 1961* are repealed.
- (2) Until subsection (1) comes into operation, the *Local Court Rules 1961*, as in force immediately before the commencement of this subsection, continue in operation with any necessary changes as if they were rules of court made under the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004* and accordingly may be amended by rules of court made under those Acts.
- (3) If subsection (1) comes into operation before subsection (2), subsection (2) is repealed.

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Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
Action	3
Bailiff.....	3
Clerk	3
Court	3
District Court	3
general provision.....	106A(1)
Goods.....	3
Judge.....	3
Judgment.....	3
Land	3
Landlord.....	3
Magistrate	3
Matter.....	3
Minister	3
notice of defence	45
Party	3
Prescribed	3
Proclamation	3
Return Day.....	3
Rules of court.....	3
stipendiary magistrate	106A(1)
this Part	106A(1)

