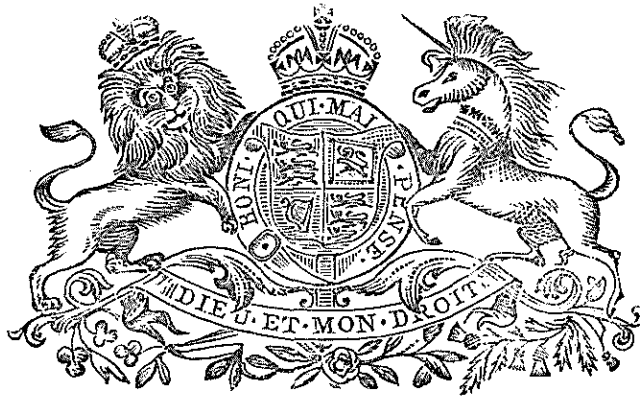


WESTERN AUSTRALIA.



ANNO SECUNDO

GEORGII QUINTI REGIS,

XIII.

\*\*\*\*\*

No. 5 of 1912.

AN ACT to amend the Local Courts Act, 1904.

[Assented to 9th January, 1912.]

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

1. This Act may be cited as the *Local Courts Act Amendment Act, 1911*, and shall be read and construed as one with the Local Courts Act, 1904 (hereinafter called the principal Act), and shall come into operation on a day to be fixed by the Governor by proclamation: Provided that rules of Court may be made for the purposes of this Act at any time after the passing thereof, and provided also that this Act shall not apply to actions, matters, proceedings and judgments instituted, pending, entered, given or made before the commencement thereof; but the same shall be proceeded with and have effect, and be enforced as if this Act were not in operation.

Short title and commencement.

Proviso.

2. All copies of the principal Act printed by the Government Printer after the commencement of this Act shall be printed as amended by this Act and the Local Courts Act Amendment Act, 1909, under the supervision of the Clerk of the Parliaments, and all necessary references to the amending Acts made in the margin.

Principal Act to be printed as amended.

Amendment of  
Section 3 of the  
principal Act.

3. Section three of the principal Act is hereby amended by the insertion in the definition of "Return Day," between the words "day" and "appointed," of the words "fixed by a notice of trial or."

Amendment of  
Section 36.

4. Section thirty-six of the principal Act is hereby amended by the deletion of the words "by leave of the magistrate or clerk," in paragraph (b) thereof, and of the words "with the like leave," in paragraph (c) thereof.

Insertion of new  
section after Sec-  
tion 36.

5. The following new section is hereby inserted in the principal Act, immediately after section thirty-six:—

Plaintiff to be  
permitted to  
choose court.

36A. (1.) Notwithstanding anything in the proviso to section thirty-six, 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.

Choice of court by  
plaintiff.

(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.

Objection by  
defendant.

(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."

Notice of objec-  
tion and transfer  
of action.  
Second Schedule.  
Form 1.

(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.

Answering affi-  
davit and disallow-  
ance of objection.

(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.

Contents of affidavit and by whom to be made.

(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.

Procedure where more defendants than one.

(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.

Powers of magistrate.

(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.

Decision of clerk or magistrate final.

6. The following new section is hereby inserted in the principal Act, immediately after section thirty-eight:—

Insertion of new section after section 38.

38A. (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.

Power of Judge to remove action or matter from one Court to another.

(2.) The decision of the Judge making or refusing to make an order hereunder shall be final.

Judge's decision final.

Repeal of sections 40-47, and substitution of new provisions.

7. Sections forty to forty-seven (both inclusive) of the principal Act are hereby repealed, and the following sections shall stand in lieu thereof:—

Action commenced by plaint.

40. (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.

Summons to issue. Second Schedule. Form 2.

41. (1.) The clerk shall then issue in duplicate a summons according to the Form 2 in the said 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.

Claim to be indorsed or annexed.

(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.

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

Service.

42. (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.

43. 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.

Substituted  
service.

44. (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.

Proof of service.

(2.) Any false statement in any such certificate shall render the person making the same liable on summary conviction to imprisonment with or without hard labour for any period not exceeding six months.

(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.

45. 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.

Notice of defence.

46. (1.) If a defendant gives notice of defence, the clerk shall give the plaintiff and such defendant the prescribed notice of trial. In case there are more defendants than one such notice shall not be given till the notices of defence have been received from all the defendants, or the time for the giving of every such notice has expired, unless the magistrate otherwise orders.

Procedure where  
notice of defence  
given.

Notice of trial.

(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 :

Procedure where  
notice of defence  
not given.

Judgment by  
default.

(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.

(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 (including vacation) 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.
- (e) The magistrate may, after the entry of any judgment hereunder for a sum not exceeding twenty pounds exclusive of costs, order the sum and costs (if any) to be paid into Court at specified times by instalments; but, subject to any such express order, the magistrate shall be deemed to have ordered that any judgment for any amount of money entered hereunder shall be payable into Court forthwith or at such time or times and by such instalments (if any) as the plaintiff shall in writing have agreed to accept.
- (f) Where 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.

Setting aside judgment by default.

47. 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.

Amendment of Section 49.

8. Section forty-nine of the principal Act is amended by adding at the end of the first paragraph of subsection (1) the words "in so far as such costs are sanctioned by the scale applicable to the sum paid in."

Insertion of new sections after Section 91.

9. The following new sections are inserted in the principal Act immediately after section ninety-one:—

Assessment of value of goods.

91A. (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.

91B. Any judgment recovered or proceeding taken in a Local Court against one or more of two or more persons jointly liable shall be without prejudice to the right to proceed against the other or others of them. Judgment against one joint debtor.

10. Section one hundred and seven of the principal Act is hereby amended by the substitution of the word "fifteen" for the word "thirty" therein. Amendment of Section 107.

11. Section one hundred and twenty-one of the principal Act is hereby amended by the insertion of the words "entered or" immediately before the word "given," in the third line thereof. Amendment of Section 121. See No. 19 of 1909, Sec. 4.

12. Section one hundred and forty-five of the principal Act is hereby amended by the insertion of the words "or the clerk" after the words "the magistrate" in the sixth line thereof. Amendment of Section 145.

13. Paragraphs (a) and (b) of Section one hundred and fifty-four of the principal Act are hereby repealed. Amendment of Section 154.

14. The following new section is hereby added to the principal Act, and shall stand immediately after section one hundred and sixty-two thereof, that is to say— Addition of new section at end of Act.

163. 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. Effect of non-compliance.

15. The following forms shall be inserted at the end of the principal Act, and shall stand as the Second Schedule thereof:— Second schedule inserted. Forms.

SECOND SCHEDULE.

Form 1.

No.

In the Local Court at

Between

A.B. . . . . Plaintiff,

and

C.D. . . . . Defendant.

TAKE NOTICE that the defendant objects to the jurisdiction of this Court, and says that he resides at (*naming place*), and that he requires the action to be transferred to the Court nearest to that place: And further take notice that unless you shall within (*the prescribed time*) file in this Court an affidavit to my satisfaction according to the prescribed Form, justifying your choice of Court, or discontinue this action, I shall transfer the action to the Local Court at

Dated the . . . . . day of . . . . . , 191 .

Clerk of Local Court at

To the Plaintiff.

*Form 2.*

*Summons.*

In the Local Court at

A.B., of

C.D., of

Between

and

Plaintiff,

Defendant.

To the Defendant,—

You are hereby summoned to answer the plaintiff's claim indorsed hereon (or annexed hereto), and take notice that unless within five days [*or such longer time as shall be prescribed*] after service of this summons upon you you give notice to the Clerk of this Court that you intend to defend this action the plaintiff may proceed therein and judgment may be given in your absence.

Dated the                      day of                      , 191 .

Clerk of Court.

*Note.—Subscriptions and endorsements shall be made on the summons as prescribed.*

*N.B.—These forms may be altered to meet the circumstances of any particular case.*