

## SUPREME COURT.

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No. 39 of 1971.

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### AN ACT to amend the Supreme Court Act, 1935-1964.

[Assented to 10th December, 1971.]

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

1. (1) This Act may be cited as the *Supreme Court Act Amendment Act, 1971*.

Short title  
and citation.

(2) In this Act the Supreme Court Act, 1935-1964, is referred to as the principal Act.

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Acts, ap-  
proved for  
reprint 30th  
Sept., 1958,  
as amended  
by Acts  
Nos. 5 of  
1960, 12 of  
1963, 39 of  
1964 and  
32 of 1969.

(3) The principal Act as amended by this Act may be cited as the Supreme Court Act, 1935-1971.

Amendment  
to s. 11.

(Qualified  
person  
may be  
appointed  
temporarily  
in place of  
Judge.)

2. Subsection (1) of section 11 of the principal Act is amended by substituting for the words "and for no longer" in the last line thereof the words "but the appointment of the acting Judge authorises him to complete the hearing and determination of any proceedings that may be pending before him at the time when his appointment under this section would normally have determined".

Repeal of  
s. 17.

(Admiralty  
jurisdic-  
tion.)

3. Section 17 of the principal Act is hereby repealed.

Amendment  
to s. 38.

(Time and  
place of  
sittings  
of the  
Court.)

4. Section 38 of the principal Act is amended by substituting for the passage "Subject to the Rules of Court, the" in line one the word "The".

Repeal  
and re-  
enactment  
of s. 40.

(Criminal  
sittings in  
Perth.)

5. Section 40 of the principal Act is repealed and re-enacted as follows—

40. Criminal sittings of the Court shall be held in Perth in each month except the month of January in which month the Court may sit in Perth at such times for the transaction of such part of the business of the Court in its Criminal Jurisdiction as the Chief Justice may, from time to time, direct.

Amendment  
to s. 45.

(Sittings in  
vacation.)

6. Section 45 of the principal Act is amended by deleting the words "immediately and promptly" in the last line thereof.

Amendment  
to s. 46.

(Circuit  
districts  
and sittings  
of the  
Supreme  
Court  
therein.)

7. Section 46 of the principal Act is amended—

(a) by substituting for the word "Sittings" in line one of subsection (2) the passage "Subject to subsection (2a) of this section, sittings"; and

(b) by adding after subsection (2) a subsection as follows—

(2a) Any such rule as is referred to in subsection (2) of this section may provide that with respect to any circuit district

specified in the rule, the sittings of the Supreme Court therein shall be held in each year on such days and at such place as the Chief Justice may, by notice published in the *Government Gazette* from time to time appoint. .

8. Section 49 of the principal Act is amended—

Amendment  
to s. 49.  
(Jurisdiction  
of  
Commis-  
sioner.)

- (a) by adding after the word “to” in line two of subsection (1) the words “a Judge of the District Court of Western Australia or to”;
- (b) by deleting the words “or resident” in line four of subsection (1); and
- (c) by adding after the word “Act” being the last word in subsection (2) the passage “, and any person to whom it is given is thereby authorised to complete the hearing and determination of any proceedings that may be duly pending before him at the time when the commission would normally have determined”. .

9. Section 51 of the principal Act is amended—

Amendment  
to s. 51.  
(Reference  
for trial.)

- (a) by adding after the section number “51.” the subsection designation “(1)”;
- (b) by adding a subsection as follows—
  - (2) The Court or a Judge may at any time order that any assessment of damages be tried before the Master on such conditions and under such circumstances, if any, as may be specified in the order. .

10. Section 57 of the principal Act is amended—

Amendment  
to s. 57.  
(Quorum of  
Full Court.)

- (a) by adding after the section number “57.” the subsection designation “(1)”;

(b) by adding a subsection as follows—

(2) The Full Court may sit in two divisions at the same time. .

Amendment  
to s. 117.  
(Enforce-  
ment of  
judgments  
for  
recovery or  
payment  
of money.)

11. Subsection (2) of section 117 of the principal Act is amended by deleting the passage “and to section one hundred and nine A of this Act,” in lines two and three.

Amendment  
to s. 118.  
(Writ of  
*perri factas.*)

12. The proviso to section 118 of the principal Act is repealed and re-enacted as follows—

Provided that the following goods shall be protected from seizure—

Wearing apparel of such defendant or other person to the value of one hundred and fifty dollars and of his wife to the value of one hundred and fifty dollars and of his family to the value of seventy-five dollars for each member thereof dependent on him; furniture and effects (including beds and bedding) used for domestic purposes to a value not exceeding in the aggregate seven hundred and fifty dollars; implements of trade to the value of one hundred and fifty dollars; family photographs and portraits. .

Repeal and  
re-enact-  
ment of  
s. 142.  
(Interest on  
judgment.)

13. Section 142 of the principal Act is repealed and re-enacted as follows—

142. (1) Every judgment debt shall carry interest at such rate for every hundred dollars by the year as the Treasurer from time to time by notice published in the *Government Gazette* determines from the time of entering up the judgment until the judgment is satisfied, and the interest may be levied under a writ or warrant of execution on the judgment.

(2) This section applies to a judgment in a Local Court, except where the amount of the debt, claim or demand allowed by the judgment does not exceed seven hundred and fifty dollars.

14. Section 145 of the principal Act is amended—

(a) by substituting for the figures “14” in line three of subsection (1) the figures “18”;

(b) by repealing subsection (2) and re-enacting it as follows—

(2) Divisions (2) and (3) of this Part of this Act are subject to sections one hundred and eighteen to one hundred and twenty-eight, both inclusive, of the Bankruptcy Act 1966, as amended and in force from time to time, of the Parliament of the Commonwealth. ; and

(c) by repealing subsection (3) and re-enacting it as follows—

(3) This Part of this Act is subject to section two hundred and twenty-eight of the Companies Act, 1961. .

Amendment to s. 145. (Application of s. 14, the Bankruptcy Act (Com.), and 58 Vict. No. 8.)

15. Section 159 of the principal Act is repealed and re-enacted as follows—

159. (1) Where any goods in the possession of an execution debtor at the time of seizure by the sheriff or other officer charged with the enforcement of a writ, warrant, or other process of execution are sold by the sheriff or the other officer without any claim having been made to the goods—

(a) the purchaser of the goods so sold acquires a good title to them; and

(b) no person is entitled to recover against the sheriff, the other officer or any person lawfully acting under the authority of the sheriff by reason of the sale of those goods unless it is proved that the sheriff, the other officer or person so acting, had notice or might by making reasonable inquiry have ascertained that the goods were not the property of the execution debtor.

Repeal and re-enactment of s. 159. (Protection of sheriff selling goods under execution without notice of claim of third party.)

*Vide Singh v. Kenyan Insurance Ltd.* 1954 A.C. 287.

(2) Nothing contained in subsection (1) of this section affects the right of any claimant to any remedy to which he is entitled against any person other than the sheriff, such other officer or such person so acting or the purchaser of the goods if the claimant proves that at the time of such sale he had a title to the goods so seized and sold.

Repeal of  
s. 161.  
(Limitation  
of actions  
against  
sheriff.)

16. Section 161 of the principal Act is hereby repealed.

Amendment  
to s. 167.  
(Rules of  
Court.)

17. Subsection (1) of section 167 of the principal Act is amended—

- (a) by adding after the word “applications” in line fourteen of paragraph (a) the words “or appeals”;
- (b) by repealing paragraph (c) and re-enacting it as follows—
  - (c) For conferring on the Master or other officer of the Court either generally or in particular cases and under such circumstances and on such conditions as are prescribed, power to do such things, to transact such business and to exercise such authority and jurisdiction as a Judge sitting in chambers may by virtue of a statute, custom or rule or practice of the Court, do, transact or exercise: ;
- (c) by substituting for the words “Official Trustee” in line two of paragraph (k) the words “Public Trustee”; and
- (d) by adding after the word “disposal” in line one of paragraph (m) the words “of all or any exhibits in the custody of the Court which are not claimed by the owner thereof within the period prescribed and”.

18. Section 176 of the principal Act is repealed and re-enacted as follows—

Repeal and re-enactment of s. 176.

176. Any affidavit required for use in any cause or matter depending in or before the Court or before any Judge or officer of the Court, and any bond or recognisance required to be filed in the Court, may be sworn or executed within the State before a commissioner, appointed under section one hundred and seventy-five of this Act, a justice of the peace for the State or for any part or district thereof, or such other person as may be prescribed by Rules of Court. .

(Affidavits may be taken by a justice of the peace in absence of a commissioner.)

19. Section 177 of the principal Act is amended—

Amendment to s. 177.

(a) by repealing and re-enacting subsection (1) as follows—

(Affidavits taken out of Western Australia.)

(1) Affidavits for use in the Court or in any other court, or for any purpose or in any way authorised by law, may be sworn and taken in any place out of the State in accordance with Rules of Court. ; and

(b) by repealing subsections (2), (3) and (4). .

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