

SOUTH AUSTRALIA

**LOCAL AND DISTRICT CRIMINAL COURTS ACT, 1926**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 October 1991.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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## LOCAL AND DISTRICT CRIMINAL COURTS ACT, 1926

being

Local Courts Act, 1926, No. 1782 of 1926  
[Assented to 22 December 1926]<sup>1</sup>

as amended by

Local Courts Act Amendment Act, 1935, No. 2244 of 1935 [Assented to 19 December 1935]  
Statute Law Revision Act, 1935, No. 2246 of 1935 [Assented to 19 December 1935]  
Statute Law Revision Act, 1936, No. 2293 of 1936 [Assented to 8 October 1936]  
Local Courts Act Amendment Act, 1947, No. 45 of 1947 [Assented to 11 December 1947]  
Local Courts Act Amendment Act, 1956, No. 50 of 1956 [Assented to 29 November 1956]<sup>2</sup>  
Local Courts Act Amendment Act, 1959, No. 36 of 1959 [Assented to 10 December 1959]  
Local Courts Act Amendment Act, 1962, No. 15 of 1962 [Assented to 25 October 1962]<sup>3</sup>  
Statutes Amendment (Local Courts and Workmen's Liens) Act, 1964, No. 59 of 1964 [Assented to 5 November 1964]<sup>4</sup>  
Decimal Currency Act, 1965, No. 60 of 1965 [Royal Assent proclaimed 4 February 1966]<sup>5</sup>  
Local Courts Act Amendment Act, 1969, No. 102 of 1969 [Assented to 18 December 1969]<sup>6</sup> (as amended by Statutes Amendment (Public Salaries) Act, 1970, No. 8 of 1970 [Assented to 27 August 1970]<sup>7</sup> and Local and District Criminal Courts Act Amendment Act, 1971, No. 6 of 1971)  
Local and District Criminal Courts Act Amendment Act, 1971, No. 6 of 1971 [Assented to 25 March 1971]  
Judges' Pensions Act, 1971, No. 30 of 1971 [Assented to 22 April 1971]<sup>8</sup>  
Local and District Criminal Courts Act Amendment Act (No. 2), 1971, No. 47 of 1971 [Assented to 26 August 1971]  
Statutes Amendment (Judges' Salaries) Act, 1972, No. 39 of 1972 [Assented to 13 April 1972]  
Local and District Criminal Courts Act Amendment Act, 1972, No. 54 of 1972 [Assented to 27 April 1972]<sup>9</sup> (as amended by Legal Services Commission Act, 1977, No. 25 of 1977 [Assented to 12 May 1977]<sup>10</sup>)  
Statutes Amendment (Judges' Salaries) Act, 1974, No. 8 of 1974 [Assented to 21 March 1974]  
Local and District Criminal Courts Act Amendment Act, 1974, No. 36 of 1974 [Assented to 11 April 1974]<sup>11</sup>  
Local and District Criminal Courts Act Amendment Act (No. 2), 1974, No. 82 of 1974 [Assented to 14 November 1974]<sup>12</sup>  
Statutes Amendment (Judges' Salaries) Act, 1975, No. 18 of 1975 [Assented to 27 March 1975]  
Statutes Amendment (Capital Punishment Abolition) Act, 1976, No. 115 of 1976 [Assented to 23 December 1976]  
Local and District Criminal Courts Act Amendment Act, 1980, No. 54 of 1980 [Assented to 3 July 1980]  
Statutes Amendment (Administration of Courts and Tribunals) Act, 1981, No. 34 of 1981 [Assented to 19 March 1981]<sup>13</sup>  
Statutes Amendment (Jurisdiction of Courts) Act, 1981, No. 109 of 1981 [Assented to 23 December 1981]<sup>14</sup>  
Judicial Remuneration Act, 1982, No. 92 of 1982 [Assented to 14 October 1982]<sup>15</sup>  
Statutes Amendment (Magistrates) Act, 1983, No. 108 of 1983 [Assented to 22 December 1983]<sup>16</sup>  
Statutes Amendment (Oaths and Affirmations) Act, 1984, No. 56 of 1984 [Assented to 24 May 1984]<sup>17</sup>  
Juries Act Amendment Act, 1984, No. 81 of 1984 [Assented to 15 November 1984]<sup>18</sup>  
Statutes Amendment (Bail) Act, 1985, No. 6 of 1985 [Assented to 7 March 1985]<sup>19</sup>  
Local and District Criminal Courts Act Amendment Act, 1985, No. 7 of 1985 [Assented to 7 March 1985]<sup>20</sup>  
Statutes Amendment (Remuneration) Act, 1985, No. 59 of 1985 [Assented to 30 May 1985]<sup>21</sup>  
Statutes Amendment (Courts) Act, 1985, No. 70 of 1985 [Assented to 6 June 1985]<sup>22</sup>  
Statutes Amendment (Victims of Crime) Act, 1986, No. 16 of 1986 [Assented to 20 March 1986]<sup>23</sup>  
Commercial Arbitration Act, 1986, No. 102 of 1986 [Assented to 18 December 1986]<sup>24</sup>  
Local and District Criminal Courts Act Amendment Act, 1987, No. 33 of 1987 [Assented to 23 April 1987]<sup>25</sup>  
Local and District Criminal Courts Act Amendment Act (No. 2), 1987, No. 78 of 1987 [Assented to 19 November 1987]<sup>26</sup>  
Statutes Amendment and Repeal (Sentencing) Act, 1988, No. 51 of 1988 [Assented to 5 May 1988]<sup>27</sup>  
Judicial Administration (Auxiliary Appointments and Powers) Act, 1988, No. 95 of 1988 [Assented to 15 December 1988]  
Statutes Amendment (Criminal Sitings) Act, 1989, No. 33 of 1989 [Assented to 4 May 1989]<sup>28</sup>

*Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.*

<sup>1</sup> Came into operation 7 March 1927: *Gaz.* 10 February 1927, p. 297.

<sup>2</sup> Came into operation 18 March 1957: *Gaz.* 14 March 1957, p. 519.

<sup>3</sup> Came into operation 1 March 1963: *Gaz.* 14 February 1963, p. 277.

<sup>4</sup> Came into operation 3 December 1964: *Gaz.* 3 December 1964, p. 1715.

<sup>5</sup> Came into operation 14 February 1966: s. 2(2).

<sup>6</sup> Came into operation 31 August 1970: *Gaz.* 20 August 1970, p. 699.

<sup>7</sup> Came into operation 31 August 1970: s. 2(2).

<sup>8</sup> Came into operation 1 May 1971: *Gaz.* 22 April 1971, p. 2186.

<sup>9</sup> Came into operation 9 November 1972: *Gaz.* 9 November 1972, p. 2252.

- <sup>10</sup> Came into operation (except ss. 4, 10-13, 15-23, 26, 28-31 and Sched.) 4 May 1978: *Gaz.* 4 May 1978, p. 1541; ss. 10(1)(a), (c)-(k), 11-13, 15-23, 26, 28-31 came into operation 21 December 1978; ss. 4, 10(1)(b) and Sched. came into operation 30 January 1979: *Gaz.* 21 December 1978, p. 2305.
- <sup>11</sup> Came into operation 30 May 1974: *Gaz.* 30 May 1974, p. 2095.
- <sup>12</sup> Came into operation 1 January 1975: *Gaz.* 12 December 1974, p. 3649.
- <sup>13</sup> Came into operation 1 July 1981: *Gaz.* 25 June 1981, p. 1896.
- <sup>14</sup> Came into operation 1 February 1982: *Gaz.* 28 January 1982, p. 209.
- <sup>15</sup> Came into operation 28 October 1982: *Gaz.* 28 October 1982, p. 1214.
- <sup>16</sup> Came into operation 2 April 1984: *Gaz.* 22 March 1984, p. 725.
- <sup>17</sup> Came into operation 1 July 1984: *Gaz.* 28 June 1984, p. 1897.
- <sup>18</sup> Came into operation 2 January 1985: *Gaz.* 13 December 1984, p. 1811.
- <sup>19</sup> Came into operation 7 July 1985: *Gaz.* 9 May 1985, p. 1398.
- <sup>20</sup> Came into operation 3 March 1986: *Gaz.* 7 November 1985, p. 1360.
- <sup>21</sup> Came into operation 13 June 1985: *Gaz.* 13 June 1985, p. 2132.
- <sup>22</sup> Came into operation 1 August 1985: *Gaz.* 11 July 1985, p. 92.
- <sup>23</sup> Came into operation (except s. 26) 1 October 1986: *Gaz.* 4 September 1986, p. 696.
- <sup>24</sup> Came into operation 9 July 1987: *Gaz.* 9 July 1987, p. 57.
- <sup>25</sup> Came into operation 1 July 1987: *Gaz.* 28 May 1987, p. 1384.
- <sup>26</sup> Came into operation 2 May 1988: *Gaz.* 28 April 1988, p. 1066.
- <sup>27</sup> Came into operation (except ss. 3-6, 12, 15-20, 22-27, 30-39, 41-68, 70-78) 12 May 1988: *Gaz.* 12 May 1988, p. 1181; ss. 3 and 4 came into operation 8 September 1988: *Gaz.* 8 September 1988, p. 994; remainder of Act came into operation 1 January 1989: *Gaz.* 15 December 1988, p. 2009.
- <sup>28</sup> Came into operation 1 January 1990: *Gaz.* 16 November 1989, p. 1501.

N.B. The amendments effected to this Act by the Local and District Criminal Courts Act Amendment Act, 1978, and the Director of Public Prosecutions Act 1991 had not been brought into operation at the date of, and have not been included in, this reprint.

**An Act to consolidate and amend the law relating to local courts and officers thereof, to make provision for the establishment of District Criminal Courts and matters connected therewith.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART AI

PRELIMINARY

**Short title**

1. This Act may be cited as the *Local and District Criminal Courts Act, 1926*.

**Commencement of Act**

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

**Repeal**

3. The Acts mentioned in the First Schedule are hereby repealed.

**Interpretation**

4. (1) In this Act, unless the contrary intention appears—

"Acting Judge" means a person appointed to and holding acting judicial office under this Act:

"Full Court" means Full Court as defined in section 5 of the *Supreme Court Act, 1935-1969*, as amended:

"Judge" means a person appointed to and holding judicial office under this Act; and, unless the contrary intention appears, includes an Acting Judge:

"Master" means the District Court Master and includes a Deputy District Court Master:

"Registrar" means, according to context—

(a) the District Court Registrar or a Deputy District Court Registrar;

or

(b) the Registrar of Magistrates' Courts or a Deputy Registrar of Magistrates' Courts:

"rules of court" means, as the case might require, rules of court made under the local court provisions or rules of court made under the district criminal court provisions:

"Senior Judge" means the person for the time being holding the rank and style of Senior Judge under subsection (4) of section 5b of this Act and includes the person for the time being holding the rank and style of Acting Senior Judge under subsection (1) of section 5d of this Act:

"the district criminal court provisions" means Parts XVIII to XX, inclusive, of this Act:

"the local court provisions" means Parts I to XVII, inclusive, of this Act.

(2) In this section and in the local court provisions, unless the contrary intention appears—

"bailiff" includes assistant bailiff:

"clerk" includes assistant clerk:

"court" means local court:

"formerly" means before the passing of the *Supreme Court Act, 1878*:

"law" includes equity:

"local court" means—

- (a) a court constituted of a Judge of the Supreme Court when sitting in exercise of the jurisdiction conferred upon such court by the local court provisions;
- (b) a court constituted under this Act of a Local Court Judge as such;
- (c) a court constituted of a special magistrate when sitting in exercise of the jurisdiction conferred on such court by the local court provisions;
- (d) a court constituted of two justices or a special justice when sitting as a local court of special jurisdiction in exercise of the jurisdiction conferred on such court by the local court provisions;

or

- (e) the tribunal, however constituted, that has, under the local court provisions, jurisdiction by consent to hear and determine any action,

according as those definitions are respectively applicable to the particular case being heard and determined and the jurisdiction of the court or the tribunal sitting at the relevant time:

"Local Court Judge" means a Judge when sitting as such in exercise of the jurisdiction conferred on him by the local court provisions:

"local court of special jurisdiction" means a court constituted as such of a Judge, a special magistrate, or of two justices or a special justice sitting to hear and determine unsatisfied judgment summonses in pursuance of the local court provisions:

"small claim" means a claim for a pecuniary sum not exceeding \$2 000—

- (a) upon a contract or by way of damages for breach of contract;
- (b) in respect of a quasi-contractual obligation;
- (c) by way of damages for tort;

or

- (d) upon a cause of action of a kind declared by the Attorney-General, by notice published in the *Gazette*, to be a cause of action upon which a small claim may be founded:

"the jurisdictional limit of local courts of limited jurisdiction" means \$20 000:

"the local court jurisdictional limit" means—

- (a) in relation to a cause of action in tort relating to injury, damage or loss caused by, or arising out of, the use of a motor vehicle—one hundred and fifty thousand dollars;

and

- (b) in any other case—one hundred thousand dollars:

"warrant" includes writ:

"writ" includes warrant.

(3) In this section and in the district criminal court provisions, unless the contrary intention appears—

"clerk of arraigns" means the chief clerk of arraigns or any other clerk or arraigns:

"district" means district established under section 319 of this Act:

"District Criminal Court" means a court constituted of a District Criminal Court Judge:

"District Criminal Court Judge" means a Judge acting in the exercise of the jurisdiction conferred on him by the district criminal court provisions:

"group I offence" means an indictable offence that is a felony or misdemeanour, the maximum punishment by way of imprisonment for which is imprisonment for a term exceeding fifteen years, whether or not a fine or any other penalty or order can be imposed or made in addition to or in substitution for imprisonment:

"group II offence" means an indictable offence that is a felony or misdemeanour, the maximum punishment by way of imprisonment for which is imprisonment for a term exceeding five years but not exceeding fifteen years, whether or not a fine or any other penalty or order can be imposed or made in addition to or in substitution for imprisonment:

"group III offence" means an indictable offence that is a felony or misdemeanour, the maximum punishment by way of imprisonment for which is imprisonment for a term not exceeding five years, whether or not a fine or any other penalty or order can be imposed or made in addition to or in substitution for imprisonment:

"officer" means any officer appointed by the Governor under section 324 of this Act:

\* \* \* \* \*

\* \* \* \* \*

"to sentence", in relation to a person convicted of any offence, means to make and to give all such orders and directions (whether imposing a term of imprisonment or not) consequent upon or in connection with the person's conviction and for finally disposing of the case in due course of law as may be made and given; and the noun "sentence" and its other derivatives shall be construed accordingly.

(4) In determining what is a "group II offence" or "group III offence" no regard shall be had to any increase in the punishment or maximum punishment for the offence authorized by law by reason of a previous conviction for any particular offence or offences or for any class or classes of offences.

### Arrangement of Act

5. This Act is divided into parts, as follows:—

PART AI—Preliminary.

PART BI—Appointment to judicial office.

PART C1—The Registrar.

PART I—The establishment and constitution of local courts, the appointment of officers, their functions and duties.

PART II—The ordinary jurisdiction of local courts and the concurrent jurisdiction of the Supreme Court.

PART III—Replevin.

PART IV—*Certiorari*, prohibition, and *mandamus*.

PART V—Appeals from local courts to the Supreme Court.

PART VI—The joinder of parties and of causes of action.

PART VII—The commencement of actions and proceedings to judgment.

PART VIIA—Small claims.

PART VIII—The enforcement of judgments and orders.

PART IX—Interpleader summonses.

PART X—The recovery of premises.

PART XI—The action of ejectment.

PART XII—Special equitable jurisdiction of local courts.

PART XIII—Remedies against debtors about to abscond.

PART XIV—Commissions and orders for the examination of witnesses.

PART XV—Court fees and costs.

PART XVI—Penalties.

PART XVII—Protection of officers of local courts, and general matters.

PART XVIII—District criminal courts: Establishment and Administration.

PART XIX—Jurisdiction, powers, practice and procedure of district criminal courts.

PART XX—Presentation for trial.

### **Transitional provisions**

**5a.** (1) Any reference in any Act, regulation, rule, by-law or other instrument or in any document to the *Local Courts Act, 1926*, as amended, shall, after the commencement of the *Local Courts Act Amendment Act, 1969*, and unless the context otherwise requires, be read and construed as a reference to the local court provisions.

(2) Where proceedings in respect of a claim for a pecuniary sum exceeding five hundred dollars but not exceeding one thousand dollars had been instituted in a local court before the commencement of the *Statutes Amendment (Jurisdiction of Courts) Act, 1981*, that claim does not become a small claim by virtue of the provisions of that amending Act.

(3) Subject to subsection (4), the provisions of this Act as in force immediately before the commencement of the *Local and District Criminal Courts Act Amendment Act, 1985*, shall continue to apply in respect of a summons (whether ordinary or special) issued before the commencement of that amending Act.

(4) Where an ordinary summons issued before the commencement of the *Local and District Criminal Courts Act Amendment Act, 1985*, had not been served as at the commencement of that amending Act, the plaintiff may apply to the clerk of the court out of which the summons was issued to have it served by post, and, in that event, the provisions of this Act, as in force after the commencement of the amending Act, shall apply in relation to service of, and appearance to, the summons.

### **Local courts of full jurisdiction, and district criminal courts to be known in future as "district courts"**

**5ab.** (1) After the commencement of the *Statutes Amendment (Administration of Courts and Tribunals) Act, 1981*—

(a) each local court to which full jurisdiction has been assigned shall, insofar as it is a local court of full jurisdiction, be known as a "District Court";

and

(b) each District Criminal Court shall be known as a "District Court".

(2) Instruments shall be read and construed subject to such modifications as are necessary to accommodate the change in nomenclature effected by this section.

(3) This section applies only to nomenclature and does not affect—

(a) the constitution, jurisdiction or powers of any court;

(b) any proceedings before a court;

or

(c) (except as provided in subsection (2)) the operation of any instrument.

(4) In this section—

"instrument" means this or any other Act, any proclamation, regulation, rule, by-law, judgment, order, writ, summons, warrant, or other instrument.

**Criminal Injuries Compensation Division**

**5ac.** (1) There shall be a division of each District Criminal Court entitled the "Criminal Injuries Compensation Division".

(2) The jurisdiction of a District Criminal Court to hear and determine proceedings under the *Criminal Injuries Compensation Act, 1978*, is vested in the Criminal Injuries Compensation Division of that court.

PART BI

APPOINTMENT TO JUDICIAL OFFICE

**Appointment to judicial office**

**5b.** (1) The Governor may, as he thinks necessary, appoint to judicial office under this Act, during Her Majesty's pleasure, any fit and proper person qualified for appointment to such office.

(2) A person appointed to judicial office under this section shall, so long as he holds such office, have the rank and style of "Judge" or "District Court Judge".

(3) Subject to this Act, a person shall be qualified for appointment to judicial office under this Act if—

(a) immediately before the commencement of the *Local Courts Act Amendment Act, 1969*, he was the Local Court Judge or a Temporary Local Court Judge under this Act as in force before such commencement;

(b) he is an Acting Judge;

or

(c) he is a legal practitioner as defined in the *Legal Practitioners Act, 1936*, as amended, of not less than seven years standing.

(3a) For the purpose of determining whether a legal practitioner has the standing necessary for appointment as a Judge or Master, periods of legal practice and (where relevant) judicial service within and outside the State will be taken into account.

(4) The Governor shall, as occasion requires, appoint a person appointed to and holding judicial office under this Act to be Senior Judge for the purposes of this Act.

(5) The appointment of a person as Senior Judge may be made at the time of his appointment to judicial office under this Act or at any time after his appointment to such office.

(6) Unless otherwise expressly provided in this Act or any other Act, the Senior Judge and all other persons appointed to and holding judicial office under this Act have, in all respects, equal power, authority and jurisdiction.

(7) Subject to the provisions of this or any other Act, the Senior Judge may make such administrative or other arrangements as are necessary or expedient for the hearing and determination of proceedings—

(a) in local courts and district criminal courts;

and

(b) before courts (not being courts of summary jurisdiction), boards or tribunals—

(i) that are to be constituted of a Judge or of either a Judge or a special magistrate;

or

- (ii) the presiding officer of which is to be a Judge, or either a Judge or a special magistrate.

**Acting Judge**

**5c.** (1) Subject to subsection (6), where the Governor is of the opinion that it is in the interests of justice to do so, the Governor may—

- (a) appoint a fit and proper person who is qualified under section 5b(3);

or

- (b) appoint a former Judge who has retired from office,

to acting judicial office.

(2) A person so appointed to acting judicial office shall, so long as he holds such office, have the rank and style of "Acting Judge" or "Acting District Court Judge".

(3) Unless otherwise expressly provided in this Act or any other Act, a person appointed to and holding acting judicial office under this Act has the same power, authority and jurisdiction as a person appointed to and holding judicial office under this Act.

- (4) An appointment under subsection (1) will be for a term not exceeding 12 months.

\* \* \* \* \*

(6) A Deputy President of the Industrial Court shall not be appointed as an Acting Judge under subsection (1) except on the recommendation of the Chief Justice of the Supreme Court made with the concurrence of the President of the Industrial Court.

**Acting Senior Judge**

**5d.** (1) If the Senior Judge is absent on leave or for any reason is unable to perform the duties of his office, the Governor may appoint a person appointed to and holding judicial office under this Act to be Acting Senior Judge.

(2) The appointment of a person as Acting Senior Judge shall, unless sooner terminated by the Governor, terminate when the Senior Judge returns to the execution of the duties of his office.

(3) Upon the appointment of a person as Acting Senior Judge, all the powers, authorities and duties that appertain under this Act or any other Act to the office of Senior Judge shall appertain to the Acting Senior Judge and, in the event of the omission to make an appointment under subsection (1) of this section, all such powers, authorities and duties shall devolve upon the Judge next in order of seniority.

(4) The order of seniority of Judges, except the Senior Judge, shall be determined by reference to the Commissions by which they were appointed to judicial office under this Act.

**Remuneration of Judges**

**5e.** (1) Subject to this section, the remuneration of—

(a) the Senior Judge;

or

(b) a Judge,

shall be at rates determined from time to time by the Remuneration Tribunal in relation to the respective offices.

(2) The remuneration of an Acting Senior Judge shall be at the same rate as for the Senior Judge and the remuneration of an Acting Judge shall be at the same rate as for a Judge.

(3) A rate of salary determined under this section shall not be reduced by subsequent determination.

(4) The remuneration payable under this section shall be paid out of the General Revenue of the State which is appropriated to the necessary extent.

(5) In this section—

"remuneration" means salary and allowances.

**Retirement from judicial office**

**5f.** (1) A person appointed to judicial office or acting judicial office under this Act shall, except as provided in this Act, retire from such office on attaining the age of seventy years.

(2) A Judge or Acting Judge may continue in office as such after retiring or resigning in order to continue and complete the hearing and determination of any proceedings or matter partly heard by him before his retirement or resignation, and while so continuing such hearing, shall be deemed to continue to hold judicial office or acting judicial office, as the case may be.

(3) It shall not be lawful for the Governor to remove from office any person under the age of seventy years who is holding judicial office under this Act except upon the address of both Houses of the Parliament of South Australia.

\* \* \* \* \*

**Leave of absence**

**5k.** A person appointed to and holding judicial office under this Act shall be entitled to be granted, and the Governor may grant him, leave of absence as if he were a Judge of the Supreme Court.

**Local Court Judges and District Criminal Court Judges**

**5l.** A Judge or an Acting Judge shall, when exercising jurisdiction or performing any duty or function under the local court provisions, exercise such jurisdiction or perform that duty or function as a Local Court Judge and shall, when exercising jurisdiction or performing any duty or function under the district criminal court provisions, exercise such jurisdiction or perform that duty or function as a District Criminal Court Judge.

**Judges of the Supreme Court may exercise jurisdiction, etc., conferred on Judges by this Act**

**5/a.** A Judge of the Supreme Court may exercise the jurisdiction and powers of a District Court Judge.

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## THE MASTERS AND REGISTRARS

### DIVISION I—THE MASTERS

#### **The Masters**

**5m.** (1) There will be—

(a) a District Court Master;

and

(b) such Deputy District Court Masters as are necessary for the proper administration of Justice.

(2) Subject to this section, a person is not eligible for appointment as a Master unless that person is a magistrate or is eligible for appointment as a magistrate.

(3) A Master will be appointed by the Governor.

(4) The salary and conditions of service of a Master will be the same as for a Senior Magistrate.

(5) A Master will not be dismissed or reduced in status except on the recommendation, or with the concurrence, of the Senior Judge.

#### **Administration duties of the Masters**

**5n.** (1) A Master will have such administrative functions as are assigned to the Master—

(a) by rules of court;

or

(b) by the Senior Judge.

(2) A Master is, in relation to the performance of administrative functions, subject to control and direction by the Senior Judge.

#### **Judicial functions of Masters**

**5o.** (1) A Master may exercise so much of the jurisdiction of a District Court as is conferred on the Masters by rules of court.

(2) The conferral of jurisdiction on a Master does not derogate from the jurisdiction exercisable by a Judge.

(3) Subject to the rules of court, an appeal will lie from a decision of a Master made in the exercise of a jurisdiction conferred by the rules to a District Court constituted of a Judge.

DIVISION II—THE DISTRICT COURT REGISTRARS

**District Court Registrars**

**5p.** (1) There will be—

(a) a District Court Registrar;

and

(b) such Deputy District Court Registrars as are necessary for the proper administration of District Courts.

(2) A Registrar will be a Public Service employee, but no Registrar will be appointed, dismissed or reduced in status except on the recommendation, or with the concurrence, of the Senior Judge.

(3) A Registrar may exercise—

(a) any powers or functions vested by or under this Act in a clerk (including a clerk of arraigns) or bailiff insofar as those powers or functions relate to District Courts;

(b) any administrative functions assigned to a Registrar by the rules of court or by the Senior Judge.

(4) A Registrar is, in relation to the exercise of his or her powers and functions (insofar as those powers and functions arise pursuant to subsection (3)), subject to control and direction by the Senior Judge.

DIVISION III—THE REGISTRARS OF MAGISTRATES COURTS

**Magistrates Court Registrar**

**5q.** (1) There will be—

(a) a Registrar of Magistrates' Courts;

and

(b) such Deputy Registrars of Magistrates Courts as are necessary for the proper administration of justice.

(2) A Registrar will be a Public Service employee, but no Registrar will be appointed, dismissed or reduced in status except on the recommendation, or with the concurrence, of the Chief Magistrate.

(3) A Registrar may exercise—

(a) any powers or functions vested by or under this Act in a clerk or bailiff insofar as those powers or functions are referable to local courts of limited or special jurisdiction;

(b) any powers or functions of a clerk of a court of summary jurisdiction;

15.

(c) any administrative functions assigned by the Chief Magistrate.

(4) A Registrar is, in relation to the exercise of his or her powers and functions (insofar as those powers and functions arise pursuant to subsection (3)), subject to control and direction by the Chief Magistrate.

PART I

THE ESTABLISHMENT AND CONSTITUTION OF LOCAL COURTS,  
THE APPOINTMENT OF OFFICERS, THEIR FUNCTIONS AND DUTIES

**Continuance of local courts already established**

6. (1) The several local courts which were in existence immediately prior to the commencement of this Act shall continue as if established under this Act, with the corresponding jurisdiction, whether full, limited, or both, and all proceedings already commenced therein shall be continued, heard, and determined under the provisions hereof; and every local court in existence at the commencement of the *Local Courts Act Amendment Act, 1969*, whether it is a local court of full jurisdiction or limited jurisdiction, or both, shall also be a local court of special jurisdiction.

(2) All judgments and records of such courts shall continue to be judgments and records of the respective courts.

(3) Such courts shall be held at such respective places, and the sittings thereof shall take place on such days and at such periods as have been fixed by or under any of the Acts hereby repealed, or as may hereafter be fixed by proclamation made under this Act.

**Establishment of additional courts**

7. (1) The Governor may from time to time, by proclamation, constitute and establish additional local courts, and shall assign to each court so to be established full, limited and special jurisdiction, or limited and special jurisdiction, or special jurisdiction only, and shall appoint, and by any proclamation may alter, a place or places, day or days, and period for the sittings thereof, and the place at which the office thereof shall be situated.

(2) The Governor may, by proclamation, abolish any local court, or may alter the name of any local court.

**Abolition of local court districts**

8. All local court districts in existence at the commencement of the *Local Courts Act Amendment Act, 1969*, are abolished.

**Powers of Governor with respect to local courts**

8a. The Governor may—

(a) by notice in writing published in the *Gazette*, appoint offices for local courts and the places at which such offices shall be situated;

and

(b) by proclamation extend or limit, subject to the provisions of sections 31 and 32 of this Act, the jurisdiction of, any local court or alter the place, day, or period of holding the same, or the place at which any local court or the office of any local court shall be situated.

**Transfer of records and business of abolished court**

9. (1) In case of the abolition of any local court, the Governor may, by the proclamation abolishing it, or by any subsequent proclamation, or where, before the passing of this Act, any local court has been abolished, the Governor may, by proclamation, transfer the records and pending proceedings of the court so abolished to the nearest local court, and such records shall be kept, and such pending proceedings may be continued, by the local court to which they are transferred, in the name of the local court so abolished.

(2) In the event of the defendant, or defendants if more than one, in any action having appeared before such transfer, notice of trial shall be given by the clerk of the court to which such proceedings have been transferred as if the appearance had been entered in a like action in such local court on the day of such transfer, and in the event of any defendant not having appeared and judgment not having been signed, the defendant shall be allowed the same time for appearance as if the summons had been issued out of the local court to which such transfer has been made and had been served personally on the day of such transfer.

**Limitation of local courts not to affect right of suitors prior to such limitation**

10. (1) In the case of the limitation of the jurisdiction of any local court, the Governor may, by the proclamation limiting it, or by any subsequent proclamation, direct that such limitation shall not affect the right of parties to proceed in any actions commenced, or to enforce any judgments recovered, when such local court exercised the powers of full and limited jurisdiction respectively.

(2) For the purpose only of proceeding in such actions, or enforcing such judgments, the said local court shall continue to exercise the powers of a court of full jurisdiction in the same manner as it did before the issue of the proclamation limiting its jurisdiction.

**Local courts to be courts of record**

11. Local courts shall be courts of record, and each court shall be styled by the name which it bears at the commencement of this Act or by the name by which it is styled in the proclamation establishing it, and shall have a seal wherewith are to be sealed or stamped all summonses and other process issued out of such court.

**Present special magistrates, clerks, and bailiffs continued in office**

12. The clerks of local courts, and bailiffs of local courts, now acting by virtue of an appointment under any law heretofore in force, shall continue to occupy their respective offices during His Majesty's pleasure, but subject to the provisions of the local court provisions and the *Public Service Act, 1967*, as amended, or any corresponding previous enactment.

\* \* \* \* \*

\* \* \* \* \*

**Governor may appoint gaols for imprisonment under warrant of local court; existing appointments to continue**

15. (1) The Governor may, from time to time, by proclamation, appoint what gaols shall be places of imprisonment for persons arrested under warrants issued out of local courts or committed to gaol under the authority of the local court provisions, and from time to time in like manner cancel such appointments, and, in default of such appointment, such persons shall, except in cases for which provision is made by or under the *Prisons Act, 1936*, as amended, be imprisoned in the Adelaide Gaol: Provided that all gaols heretofore so appointed shall, until their appointment is cancelled, or some other appointment in lieu of them is made hereunder, continue to be places of imprisonment in accordance with such appointment for persons so arrested or committed to gaol.

(2) In this section—"gaol" includes prison.

**Appointment of officers**

16. (1) Local courts shall have such and so many clerks, bailiffs, and other officers and servants as are necessary for the due administration of justice.

(2) All such bailiffs except the bailiff of the Local Court of Adelaide shall be appointed and may be removed from time to time by the Attorney-General.

(3) All such clerks who are members of the police force shall be appointed and may be removed from time to time by the Attorney-General.

(4) All clerks other than those referred to in subsection (3) of this section, all other officers and servants and the bailiff of the Local Court of Adelaide shall be appointed and may be suspended or removed under and in accordance with the *Public Service Act, 1967*, as amended.

**Clerks and bailiffs to give security**

17. The clerk and the bailiff of every local court shall give security for such sum, and in such manner and form, as the Governor from time to time orders, for the due performance of their several offices, and for the due accounting for and payment of all moneys received by them under this Act, or which they may become liable to pay for any misbehaviour in their office.

**Remuneration of officers**

18. Such clerks shall be remunerated by a fixed salary, and such bailiffs by fixed salary, or by the fees, or partly by fixed salary and partly by the fees, specified in the fourth schedule, as the Attorney-General may from time to time direct.

**Offices of the courts, when to be open and sittings of courts**

19. (1) The offices of each court shall, save so far as otherwise prescribed, be open for the dispatch of business daily throughout the year, except on Sundays, days between Christmas Day and New Year's Day inclusive and between Good Friday and Easter Monday inclusive, and public holidays.

(2) Each court shall sit for the dispatch of business at such places and on such days, and at such periods, as have been appointed for that purpose.

**Postponement of court by Attorney-General**

20. Where the day appointed for holding any local court falls upon a public holiday or any day on which, under the last preceding section, the offices of a court will not be open, or between the twentieth day of December in any year, and the eighteenth day of the following year, both days inclusive, it shall be lawful for the Attorney-General, by notice in the *Government Gazette*, to alter the day for holding such court to a day to be named in such notice.

**Constitution of court**

21. (1) All actions and matters cognizable under the local court provisions by a local court of full jurisdiction shall be heard and determined in open court in a summary way by and before a Judge.

(2) All actions and matters cognizable under the local court provisions by a local court of limited jurisdiction shall be heard and determined in open court in a summary way by and before a Judge or a special magistrate.

(3) All matters cognizable under the local court provisions by a local court of special jurisdiction shall be heard and determined in open court in a summary way by and before a Judge, a special magistrate, two justices, or a special justice.

(4) Several Judges, special magistrates and justices or any number of them may sit contemporaneously in different places as the same local court for the hearing and determination of actions, matters and proceedings pending in that court.

\* \* \* \* \*

**Special provisions for constitution of local court of special jurisdiction**

23. Notwithstanding the provisions of section 21 of this Act, if at any place where it is desired to hold a local court of special jurisdiction there is a special magistrate or a special justice who is competent and willing to act, that local court of special jurisdiction shall be constituted of the special magistrate or the special justice and not of two justices.

**Jurisdiction of special magistrate by consent of parties**

24. (1) Any special magistrate shall have power to hear and determine any action or claim that a Judge has power to hear and determine if the parties to the action or claim in person or by solicitor consent thereto in writing.

(2) A consent referred to in subsection (1) of this section shall become effective upon its being filed in court and, upon being so filed, shall not be revocable.

(3) If such consent is not obtained, or if there is no Judge or Acting Judge available to hear and determine the action or claim, the clerk of the court shall adjourn the case to a convenient day and enter in the minute book a memorandum of the adjournment and the cause of it.

**Powers and duties of Judge and special magistrate**

25. (1) A Judge or special magistrate, in addition to his other duties under the local court provisions, shall have the following powers and duties:—

\* \* \* \* \*

**To order discovery or inspection**

- II. On the application of any party to an action or matter, he may—
- (a) make an order for the inspection of such documents as it then appears to him the party applying is legally or equitably entitled to inspect;
  - (aa) order, subject to any conditions which he thinks fit to impose, that any documents which a party is entitled to inspect shall be forwarded for inspection to the clerk of the court nearest to the place where that party resides or carries on business or to the clerk of some other convenient court;
  - (b) order that any other party, or if such other party is a body corporate, that some specified officer of such body corporate, do make discovery on oath or otherwise of the documents which are, or have been, in the possession or power of such other party relating to any question in the action or matter. Such order may be either general or limited to such classes of documents or such particular documents as he may think fit, but in no case shall he make any such order unless the same is in his opinion necessary for disposing fairly of the action or matter or for saving costs: The party making discovery shall produce to the other party for inspection all such documents as aforesaid; and
  - (c) order that any other party, or if such other party is a body corporate, that some specified officer, of such body corporate, do answer by affidavit such interrogatories in writing relating to any question in the cause or matter as he thinks proper to administer. In no case shall he make any such order unless the order is in his opinion necessary for disposing fairly of the action or matter or for saving costs:

**To fix day of hearing**

- IIa. On the application of any party to an action or matter he may order that the action or matter be heard on a specified day (either before or after the day proclaimed for the sitting of the court) and shall order that such notice as he deems adequate of the day fixed for such hearing be given to the other party:

**On application, to deal summarily with the action or any question according to rules of court**

- IIb. On the application of any party to an action, made at any time after the issue of the summons, he may dispose summarily of the action or of any issue or question therein and make such other order on the application (being an order authorized by rules of court) as he deems just; and for the purpose of dealing with such applications he shall have all such powers and jurisdiction as are conferred by rules of court:

**To adjourn hearing**

- III. He may, before or at the hearing of any action or matter, order the adjournment of the hearing upon any terms he may think fit:

**To order re-service of summons**

- IV. He may order the re-service of a summons where he is satisfied that the summons has not come to the knowledge of the defendant, and that the defendant has not absented himself to avoid service:

**To extend time, set aside judgment by default and suspend execution**

V. He may—

(a) extend the time for taking any step in any action, on such terms as he may think fit;

(b) set aside any judgment by default of entering an appearance or attending at the hearing;

and

(c) suspend any execution:

**To permit pleadings to be amended and order better particulars of pleadings**

VI. He shall, at any stage of the proceedings, upon such terms as he may think fit, permit the amendment and may order better particulars of the claim, defence, counterclaim, or reply in any action:

**To reinstate action struck out**

VII. He may, on such terms as he may think fit, reinstate any action that has been struck out:

**To order interlocutory summons to be heard at another court**

VIII. He may, in the case of an interlocutory summons issued out of a local court, make the summons returnable to be heard by him or any Judge or special magistrate at such place and at such time, and upon such terms as to costs or otherwise, as he thinks proper:

**To review decision of clerk**

IX. He may review any act or decision of the clerk of his court:

**To authorize bailiff to sell by auction**

X. He may authorize a bailiff of the court to act as appraiser or auctioneer for the purpose of valuing or selling any goods, chattels, or effects taken in execution under process of a local court, and the person so authorized may, without other licence in that behalf, do and perform all the duties of appraiser or auctioneer, as the case may be:

**To appoint special bailiff**

XI. He may in any case, on the application of the party interested, appoint a special bailiff for the purpose of serving any process of the court, or for the purpose of executing any warrant against the goods or lands, or for the apprehension or committal, of the person named in any warrant:

**To appoint a temporary clerk or bailiff**

XII. He may temporarily appoint any fit person to act as clerk or bailiff of the court in case of the death, suspension, removal, illness, or absence of any clerk or bailiff:

**To amend defects, etc. in proceedings**

XIII. He shall, on such terms as he may think fit, amend all defects and errors in any proceeding: and

**Other powers**

XIV. He may do all other matters necessary to carry out the local court provisions.

(2) A judgment given in default of the defendant entering an appearance or attending at a hearing shall not be set aside—

(a) unless the defendant satisfies the Judge or a special magistrate that the summons in the action did not come to his attention;

or

(b) unless the defendant or some person with knowledge of the facts of the case has made and filed an affidavit stating that the defendant has a good defence to the action on the merits and setting out a ground of that defence.

(2a) Where a judgment given in default of an appearance is set aside under this section on the ground that the summons in the action did not come to the attention of the defendant, then, subject to any order of the Judge or special magistrate to the contrary—

(a) where it appears—

(i) that the plaintiff in the claim stated an address for service of the summons that was incorrect in a material particular;

or

(ii) that for any other reason the plaintiff was responsible for the summons not coming to the attention of the defendant,

the costs to the defendant in making the application to set aside the judgment, as determined in accordance with the rules, shall be payable by the plaintiff to the defendant;

(b) the summons shall be deemed to have been served on the defendant at the time that the judgment is set aside;

and

(c) the defendant shall appear to that summons within a period of seven days from that time.

(3) Every local court hearing any action shall have such of the powers and duties specified in this section as may appropriately be exercised by a court.

**Functions and duties of clerk**

**26.** (1) The clerk of each local court, in addition to the other duties imposed by this Act, shall have the custody of all books, records, processes, and other proceedings of the court, and of the seal of the court, and shall have an office at which the business of the clerk of the court shall be transacted, and at which shall be kept the record book and minute book hereinafter mentioned, and where all proceedings shall be entered of record, and all summonses and other processes shall be issued, and all moneys shall be received into and paid out of court.

(2) The clerk of each local court shall also have such of the following specific duties as are applicable to him:—

**To keep record book**

- I. He shall cause a note of all claims and summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines, and of all attachments of debts, with the names, dates, and statements of the amounts attached and also of the amount recovered, and otherwise, and of all other proceedings of the court, to be fairly entered from time to time in a book belonging to the court, to be called the "Record Book", which shall be kept at the office of the court, and such entries, or copies thereof, purporting to be stamped or sealed with the seal of the court, and purporting to be signed and certified as true copies by the clerk of the court, shall at all times be admitted in all courts and places whatsoever as evidence of such entries and of the proceedings referred to therein, and of the regularity of such proceedings, without further proof:

**To keep Minute Book**

- II. He shall keep a book to be called the "Minute Book", in which he shall cause to be entered the titles of the actions set down for trial, the amounts claimed, the sums (if any) paid into court, the judgment of the court, and the names of the solicitors and counsel (if any) who appear for the parties:

**To deliver process to bailiff**

- III. He shall, within twenty-four hours of the issuing of any summons or warrant, or receiving any summons or warrant from the clerk of any other court, deliver the same to the bailiff (if required to be served by him), or, in case the person against whom the process is issued resides nearer to some other court, shall, within the like period, forward by post the summons or warrant to the clerk of the court nearest to which the person against whom the process is issued resides:

**To enter dates of service etc. in record book**

- IV. He shall forthwith after receiving the duplicate of any summons issued by him from the bailiff or the clerk of any other court, enter in the record book the date of the service, or the report of non-service, and the cause thereof:

**To return summons, etc., to court from which they were received**

- V. He shall forthwith after receiving from the bailiff the duplicate of any summons or any warrant forwarded from any other court for service or execution, return the same to the clerk of the court from which it was received:

**To give notice of trial**

- VI. He shall, subject to rules of court, within twenty-four hours after receipt of any notice of appearance, reply, or new ground of defence, give notice thereof, and of the day of trial, to the opposite party:

**To notify parties of day fixed for assessment of damages**

- VIa. He shall forthwith after setting a claim down for assessment of damages give notice of the day and time fixed for such assessment to all parties concerned:

**To post notices**

- VII. Unless otherwise specially directed by the local court provisions, or by the rules of court, he shall forward all notices required by those provisions to be sent to any person by sending them to such person by post, to the address of such person as given to him, unless applied for earlier:

**To forward warrant to clerk of nearest court for execution**

- VIII. When a warrant of execution has been issued against the goods and chattels, or against the lands, of any person at a distance from the court, or a warrant for the commitment of any such person has been issued, the clerk shall send such warrant to the clerk of the local court nearest to the place where such person, or his lands, goods, and chattels shall then be, or be believed to be, requiring execution of the same:

**To notify receipt of warrants**

- IX. When a warrant of execution, or a warrant of commitment, is sent by the clerk of any other local court, the clerk receiving the same shall notify thereon the date of its receipt, and shall seal or stamp it with the seal of his court, and shall deliver it to the bailiff of his court:

**To note time when warrants applied for**

- X. He shall make a minute of the precise time when he was requested to issue any warrant against the goods and chattels, or against the lands of any person, and he shall notify the same on the warrant:

**To deliver warrants in rotation**

- XI. Where more than one warrant of execution against the goods and chattels, or against the lands, of any party is taken out, he shall deliver such warrants to the bailiff in the order in which they were taken out:

**To affix seal to all documents**

- XII. He shall cause all summonses, notices, warrants, and other documents proceeding from the court of which he is clerk, to be sealed or stamped with the seal of his court:

**To deliver summonses, etc., to bailiff in order of issue**

- XIII. He shall deliver all summonses, subpoenas, and notices proceeding from the court of which he is clerk, to the bailiff of such court (if required to be served by him), in the order in which they were issued:

**To keep books of account, and make returns**

- XIV. He shall keep such books of account, and make such returns of moneys received and paid, fees, and disbursements, in such form and at such periods, and shall make payment and deposit of money received by him in such manner, as is required by or under the *Audit Act, 1921*, as amended.

(3) The clerk of a local court may, by instrument in writing, delegate to any officer of the court any of his powers or functions under this Act.

(4) A delegation under subsection (3)—

(a) may be absolute or conditional;

(b) does not derogate from the powers exercisable personally by the clerk;

and

(c) is revocable at will.

**Duties of bailiff**

27. (1) The bailiff of each court shall have the service of all summonses (except any summons which is to be served by post or which the plaintiff desires to be served by himself, or by some person appointed or employed by him for the purpose as hereinafter provided), and the execution of all warrants (unless otherwise ordered by a Judge or a special magistrate in any particular case).

(2) The bailiff of each court shall also have the following specific duties, namely:—

**To examine and serve summonses, etc.**

I. He shall cause all summonses delivered to him for service to be examined, to enable the correctness thereof to be proved; and he shall cause all summonses to be served on the respective defendants as soon as practicable after their delivery to him by the clerk of the court and, in case of their non-service within a week, he shall as soon as possible thereafter report such non-service and the cause thereof to the clerk of the court:

**To endorse service**

II. He shall, forthwith after service of any summons, endorse on the duplicate summons the day of the month and year of such service, and shall, as soon as practicable after service, swear an affidavit of such service:

**To serve summonses, etc. in order in which he received them**

III. When more than one summons, subpoena, or notice directed to any person has been delivered to him to serve, he shall serve them in the order in which they were delivered to him:

**To execute warrants, and make returns of same**

IV. Subject to this section, he shall cause to be executed every warrant of execution against goods and chattels, or against lands, within five days, or sooner if required by the clerk of the court, after receiving such warrant from him, and shall endorse on every warrant the time and mode of executing the same, and the several amounts received and disbursed or retained on account thereof; and in case of non-execution, he shall report to the clerk of the court such fact and the cause thereof:

**To execute warrants of commitment and make returns of same**

IVa. He shall cause to be executed every warrant of commitment with all despatch after receiving such warrant and shall endorse on every warrant the time and mode of executing the same and any amount received and disbursed or retained on account thereof; and in case of non-execution within one calendar month after receiving such warrant from the clerk of the court he shall report to the clerk of the court such fact and the cause thereof:

**To execute warrants in rotation**

V. Where more than one warrant against the goods and chattels, or against the lands, of any person has been delivered to him, he shall execute such warrants in the order in which they were delivered to him:

**To pay over money**

- VI. He shall, immediately after the receipt of any money levied or received by virtue of his office, pay over the same to the clerk of the court:

**To be responsible for wrongful acts**

- VII. He shall be responsible for all the acts and defaults of himself and his assistant bailiffs, in like manner as the sheriff of the State is responsible for the acts and defaults of himself and his officers.

(3) Where the person against whom a warrant of execution is to be executed claims that he has not been served with a summons in the action, the bailiff executing the warrant shall serve on him a notice in the prescribed form (unless the person has on a previous occasion been served with such a notice in relation to the same warrant).

(4) A notice served under subsection (3) shall set out a summary of the procedures available under this Act—

- (a) for applying to set aside a judgment or order obtained under this Act;
- (b) for applying to suspend the execution of the warrant to which the notice relates.

(5) Where a bailiff serves a notice under subsection (3), he shall not proceed to execute the warrant to which it relates until the expiration of the period prescribed by the rules of court.

**Power to make rules of court**

**28.** (1) The Governor may, from time to time, issue a commission under the Public Seal of the State, appointing the Senior Judge or any other Judge to make rules of court for carrying into effect the local court provisions, or any other Act conferring jurisdiction upon local courts, and in particular for all or any of the following matters:—

- I. Regulating the pleading, practice, and procedure in local courts:
  - II. Prescribing the mode of keeping entries and accounts kept by clerks of local courts:
  - III. Prescribing forms for use in local courts:
  - IIIa. Defining any area as the area of the jurisdiction of a local court:
- and
- IV. Generally with respect to the duties of the officers of local courts or to the costs of proceedings or allowances to witnesses therein, or to the fees and costs to be allowed to practitioners in local courts, or to the execution of the process of local courts.

(2) Rules may be made modifying, to any extent that may be necessary or expedient, any provisions in respect of the abovementioned matters contained in this or any other Act.

(3) The power to make rules conferred by this section shall be deemed to include power to make rules in respect of any jurisdiction conferred upon a local court by any Act whenever passed.

(4) All valid rules made under subsection (1) of this section as in force immediately prior to the commencement of the *Local Courts Act Amendment Act, 1969*, shall be valid and effectual and continue to have force and effect until varied or revoked under this section, notwithstanding that they were not made under this section as amended by that Act or subsequent Acts.

**References to local court in Acts not repealed**

**29.** (1) Any reference in any Act, not hereby repealed, to a local court shall be deemed to refer to and include a local court continued or established under this Act.

**Saving of rules under unrepealed Acts**

(2) All rules and regulations made under any Act not hereby repealed regulating, or in reference to, the procedure or practice in local courts shall continue to be in force until and except so far as they may be annulled, altered, or added to pursuant to such Act or this Act, and any reference in such rules or regulations to a local court shall be deemed to refer to and include a local court continued or established under this Act.

**Forms may be altered**

**30.** It shall not be necessary that the forms in force under the local court provisions, or any rules of court made thereunder, shall be strictly adhered to; and any such forms may be altered or amended by a Judge, special magistrate, or clerk of the court, to meet the exigency of a particular case.

PART II

THE ORDINARY JURISDICTION OF LOCAL COURTS AND THE  
CONCURRENT JURISDICTION OF THE SUPREME COURT

**Jurisdiction of courts of full jurisdiction**

**31.** Every local court of full jurisdiction shall have jurisdiction to hear and determine:—

- I. All personal actions where the sum claimed does not exceed the local court jurisdictional limit, whether on a balance of account or otherwise, including all actions for the recovery of a balance of account where the original claim has been reduced to an amount that falls within the local court jurisdictional limit by payment, or by any sum for which the plaintiff in his claim gives the defendant credit, or for which the defendant in his counter-claim gives the plaintiff credit:
- II. All actions for the recovery of any sum, not exceeding the local court jurisdictional limit, which is the whole or part of the unliquidated balance of a partnership account:
- III. All actions for the recovery of any sum not exceeding the local court jurisdictional limit, which is the amount or part of the amount of a distributive share under an intestacy, or which is the amount or part of the amount, of any legacy under a will:
- IV. All unsatisfied judgment summonses issued in any local court, whatever the amount of the judgment may be.

**Jurisdiction of courts of limited jurisdiction**

**32.** Every local court of limited jurisdiction shall have jurisdiction to hear and determine:—

- I. All personal actions where the sum claimed is not more than the jurisdictional limit of local courts of limited jurisdiction, whether on a balance of account or otherwise, including all actions for the recovery of a balance of account where the original claim shall have been reduced to the jurisdictional limit of local courts of limited jurisdiction or less by payment, or by any sum for which the plaintiff in his claim gives the defendant credit, or for which the defendant in his counter-claim gives the plaintiff credit:
- II. All actions for the recovery of any sum not exceeding the jurisdictional limit of local courts of limited jurisdiction, which is the whole or part of the unliquidated balance of a partnership account:
- III. All actions for the recovery of any demand not exceeding the jurisdictional limit of local courts of limited jurisdiction which is the amount, or part of the amount, of the distributive share under an intestacy, or the amount, or part of the amount, of any legacy under a will:
- IV. All unsatisfied judgment summonses issued in any local court, whatever the amount of the judgment may be.

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**Jurisdiction of local court of special jurisdiction**

**32b.** A local court of special jurisdiction shall have jurisdiction to hear and determine any unsatisfied judgment summons, whatever the amount of the judgment might be.

**Court to have jurisdiction to any amount by consent**

**33.** Any local court of full jurisdiction or limited jurisdiction shall have jurisdiction in any action without any limitation as to the amount of the claim, if both parties file with the clerk of the court a consent in writing, signed by them or their solicitors, which shall not be revocable, that the court shall have such jurisdiction; and, thereupon, all proceedings may be taken and the judgment of the court shall be enforced in like manner and be subject to the like right of appeal as in an ordinary action.

**Jurisdiction on consent to special procedure**

**34.** (1) Any Judge or special magistrate may, upon oral or written complaint of any party, with respect to any cause of action within the jurisdiction of any local court, and with the consent of both parties, immediately on the making of such complaint, investigate the matter thereof and inquire into the case and, on his own view, or the oath of any witness, determine the same in a summary way, and thereupon exercise all and every the powers and authorities vested in local courts or special magistrates under this Act in the same manner in every respect as if the case had been heard after the filing of a claim and an appearance thereto in the ordinary way.

(2) The Judge or special magistrate shall have power to order either party to pay costs, such costs not exceeding the amount that would have been payable if a summons had issued.

**Actions of tort in Supreme Court may be remitted to a local court**

**35.** (1) Any person against whom an action of tort is brought in the Supreme Court, whatever the amount of the claim may be, may make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff.

(2) Thereupon a Judge of the Supreme Court shall have power to make an order—

(a) that unless the plaintiff, within a time to be therein mentioned, gives full security for the defendant's costs to the satisfaction of the Master of the Supreme Court, or satisfies a Judge of the Supreme Court that he has a cause of action more fit to be tried in the Supreme Court, all proceedings in the action shall be stayed; or

(b) in the event of the plaintiff being unable or unwilling to give such security or failing to satisfy a Judge as aforesaid, that the action be remitted for trial before a local court to be named in the order.

(3) Thereupon the plaintiff shall lodge the original writ and the order with the clerk of such local court, who shall appoint a day for the trial of the action, notice whereof shall be sent by the clerk by post or otherwise to both parties or their solicitors.

(4) The action and all proceedings therein shall be tried and taken in such local court as if the action had originally been commenced therein.

(5) 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 for the time being in use in local courts, and the costs of the order and all proceedings previous thereto shall be allowed according to the scale of costs for the time being in use in the Supreme Court.

**Law and equity to be administered as provided in this Act**

**35a.** In the hearing and determination of any action duly instituted in a local court, law and equity shall be administered by the court in accordance with this Act.

**Incidental equitable rights and remedies**

**35b.** (1) A local court shall recognize and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter pending before it, in the same manner in which a court having equitable jurisdiction would formerly have recognized and taken notice of the same in any suit or proceeding duly instituted therein.

(2) A local court shall have—

(a) jurisdiction to pronounce any declaratory judgment;

and

(b) jurisdiction in equity to pronounce or make any judgment, decree or order,

that is, in the opinion of the court, incidental or ancillary to, and necessary or expedient for the just determination of, proceedings before the court.

(3) This section does not confer on a local court jurisdiction to entertain any principal claim for declaratory or equitable relief that it would not otherwise have had jurisdiction to entertain, or in any event, jurisdiction to make any order or adjudication otherwise than in accordance with established principles upon which declaratory or equitable relief may be granted.

(4) The provisions of subsection (2) of this section are supplementary to, and do not derogate from, the equitable jurisdiction otherwise conferred upon a local court under this Act.

**Action in local court cannot be restrained by injunction or prohibition**

**35c.** (1) No action or proceeding at any time pending in a local court shall be restrained by prohibition or injunction, but every matter of equity on which an unconditional injunction against the prosecution of any such action or proceeding might formerly have been obtained may be relied on by way of defence.

(2) Nothing in this Act shall disable a local court, if it thinks fit, from directing a stay of proceedings in any action or proceeding pending before it.

**Common law and statutory rights and duties**

**35d.** Subject to the provisions of this Act for giving effect to equitable rights and other matters of equity, every local court shall recognize and give effect to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the common law, or by any custom, or created by or under any Act.

**Local court to do complete justice in cause so as to avoid multiplicity of suits**

**35e.** A local court in every cause or matter pending before it shall have power to grant, and shall grant, either absolutely, or on such reasonable terms and conditions as it deems just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of every claim properly brought forward by them respectively, in such cause or matter, so that, as far as possible, all matters so in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

**Application of ss. 30a and 30b of the Supreme Court Act extended to this Act**

**35f.** (1) Without limiting the application of sections 30a and 30b of the *Supreme Court Act, 1935-1969*, as amended, the provisions of those sections are extended and shall apply and have effect as if those sections were expressly enacted in this Act and as if any reference in those sections—

- (a) to a court were a reference to a local court;
  - (b) to a judge were a reference to a Local Court Judge or an Acting Judge;
- and
- (c) to any Act were a reference to that Act, as amended.

(2) A plaintiff or his solicitor must before the hearing of proceedings in which the plaintiff seeks a declaratory judgment under the provisions referred to in subsection (1) of this section, file in the court a certificate that at the date of the commencement of the action the evidence available to him was not such as to induce him to believe that the total damages awarded in the proceedings would exceed the jurisdictional limit of a local court of full jurisdiction.

(3) Where proceedings, in which a declaratory judgment is sought or has been pronounced pursuant to the provisions referred to in subsection (1) of this section, are before a local court any party to the proceedings may apply, at any time before or after the entry of the declaratory judgment, to a Judge of the Supreme Court for an order that the proceedings be removed into the Supreme Court.

(4) The Judge to whom the application is made shall—

- (a) upon production of a certificate signed by the plaintiff or his solicitor to the effect that the total award of damages or compensation required to do justice between the parties is likely to exceed the jurisdictional limit of a local court of full jurisdiction;

or

- (b) upon being satisfied by such other evidence as the Judge may require that the total award of damages or compensation required to do justice between the parties is likely to exceed the jurisdictional limit of a local court of full jurisdiction,

order that the proceedings be removed into the Supreme Court.

(5) The Judge may make any ancillary order that he considers necessary to give effect to the removal of the proceedings.

(6) Upon removal of proceedings under this section they may be continued and completed before the Supreme Court in all respects as if they had been originally commenced before that Court.

**Power to award interest**

**35g.** (1) Unless good cause is shown to the contrary, a local court shall, upon the application of a party in favour of whom a judgment for the payment of damages, compensation or any other pecuniary amount has been, or is to be, pronounced, include in the judgment an award of interest in favour of the judgment creditor in accordance with the provisions of this section.

(2) The interest—

(a) shall be calculated at such rate of interest as may be fixed by the court;

(b) shall be calculated—

(i) where the judgment is given upon an unliquidated claim—from the date of the commencement of the proceedings to the date of the judgment;

or

(ii) where the judgment is given upon a liquidated claim—from the date upon which the liability to pay the amount of the claim fell due to the date of the judgment,

or in respect of such other period as may be fixed by the court;

and

(c) shall be payable in respect of the whole or any part of the amount for which judgment is given in accordance with the determination of the court.

(3) Where a party to any proceedings before the court is entitled to an award of interest under this section, the court may, in the exercise of its discretion, and without proceeding to calculate the interest to which that party may be entitled in accordance with subsection (2) of this section, award a lump sum in lieu of that interest.

(4) This section does not—

(a) authorize the award of interest upon interest;

(ab) authorize the award of interest upon exemplary or punitive damages;

(b) apply in relation to any sum upon which interest is recoverable as of right by virtue of an agreement or otherwise;

(c) affect the damages recoverable upon the dishonour of a negotiable instrument;

(d) authorize the award of any interest otherwise than by consent upon any sum for which judgment is pronounced by consent;

or

- (e) limit the operation of any other enactment or rule of law providing for the award of interest.

**Application of sections 65 to 70 (inclusive) of the Supreme Court Act extended to this Act**

**35h.** (1) Without limiting the application of sections 65 to 70 (inclusive) of the *Supreme Court Act, 1935*, relating to inquiries and trials by referees and arbitrators, but subject to the rules, the provisions of those sections are extended and shall apply and have effect as if those sections were expressly enacted in this Act and as if any reference in those sections—

- (a) to a court were a reference to a local court of full jurisdiction or limited jurisdiction;

and

- (b) to a judge were a reference to a Local Court Judge or a special magistrate.

(2) An order or decision of a local court, Judge or a special magistrate to refer a question arising in any cause or matter for inquiry or report in pursuance of subsection (1) may be subject to appeal as an interlocutory order.

(3) The report or award of an official, special referee or arbitrator appointed in pursuance of this section shall, unless set aside by a Judge or special magistrate, be equivalent to a determination or order of the court.

**Rules of equity to prevail when in conflict with common law**

**36.** Where, in any action or proceeding in a local court, there is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter, the rules of equity shall prevail.

**Plaintiff not to divide cause of action**

**37.** It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more actions in any of the said courts; but any plaintiff having cause of action for more than the sum for which a claim might be filed under this Act may abandon the excess by entering such abandonment in or at the end of his claim, and thereupon the plaintiff shall, on proving his case, recover an amount not exceeding the sum competent to be awarded by such court; and the judgment of the court upon such claim shall be in full discharge of all claims in respect of such cause of action, and entry of judgment shall be made accordingly.

**Defendant not to divide cause of action for set-off or counter-claim**

**38.** Where the defendant relies upon a set-off or counter-claim he shall not divide any cause of action which he may have against any plaintiff for the purpose of such set-off or counter-claim, but any defendant having a set-off or counter-claim for more than the sum for which a claim may be made under this Act may abandon the excess by entering such abandonment in or at the end of his defence or counter-claim, and thereupon may, on proving his set-off or counter-claim, recover or be allowed an amount not exceeding the sum competent to be awarded by the court, and the judgment of the court upon such set-off or counter-claim shall be in full discharge of all demands in respect of the same.

**Jurisdiction in action for ejectment**

**39.** (1) \* \* \* \* \*

(2) No local court shall have cognizance of any action of ejectment save as hereinafter mentioned.

**Supreme Court may order certain actions to be tried in local courts**

**40.** (1) Where, in any action brought in the Supreme Court, the sum endorsed on the writ, or claimed by the plaintiff, in the statement of claim or particulars filed and delivered in the action, does not exceed the amount that is the local court jurisdictional limit, or where such claim, though it originally exceeded that amount, is reduced by payment into court (under such circumstances that the plaintiff is entitled to have the money so paid into court paid out to him, on his request), or by admitted set-off, or otherwise, to a sum not exceeding the amount that is the local court jurisdictional limit, and such action is of such a character that a local court would have jurisdiction to hear and determine it, a Judge of the Supreme Court, on the application of either party, after the close of the pleadings, may, in his discretion and on such terms as he thinks fit, order that the action be tried by and before any local court which he names.

(2) Thereupon the party obtaining such order shall lodge with the clerk of such court such order and a copy of the pleadings and particulars, certified under the hand of the Master of the Supreme Court; and the Judge or special magistrate presiding over such court, or the clerk thereof, shall appoint a day for the hearing of the action, notice whereof shall be sent by post or otherwise by the clerk, to both parties, or their solicitors; and after such hearing the clerk shall certify the result to the said Master, and judgment, in accordance with such certificate, may be signed in the Supreme Court.

**Amount claimed in Supreme Court reduced by payment into court and plaintiff may sue for balance of claim in local court**

**41.** (1) When in any action of contract brought in the Supreme Court the amount claimed by the plaintiff is reduced by payment into court, under such circumstances that the plaintiff is entitled to have the money so paid into court paid out to him on his request, to a sum not exceeding the amount that is the local court jurisdictional limit, it shall be lawful for the plaintiff to accept such sum in bar of the further maintenance of the action, and thereupon to file in the office of the Master of the Supreme Court a notice intituled in the action that he claims a further sum, that the amount so claimed is within the jurisdiction of a local court, and that he abandons all further proceedings in the said action.

(2) On service of a copy of such notice upon the defendant, either personally or at his address for service, the plaintiff may tax his costs of action, and if the taxed costs are not paid within forty-eight hours from the signature of the allocatur upon such taxation, may sign judgment for such costs.

(3) After the filing and service of such notice the plaintiff may sue for the residue of the amount claimed by him in such action in a local court of competent jurisdiction.

**Money paid under plea of tender**

(4) If the money paid into court, in any such action in the Supreme Court, is paid into court with a defence setting up a tender of the sum paid into court, then the plaintiff shall not tax his costs of action until the question raised by such defence is decided, and such plaintiff may join issue on such defence, and thereupon he shall lodge with the clerk of the local court wherein he has sued for the residue of such amount, a copy, certified by the Master of the Supreme Court, of all the pleadings, filed in such action, and such court shall try the issue thus raised, and shall notify the result of such trial to the Master of the Supreme Court, and judgment in accordance with such certificate may be signed in the Supreme Court.

**Costs where plaintiff sues in Supreme Court**

**42.** (1) Except where the action has been removed into the Supreme Court by the defendant, in any action in the Supreme Court for any cause of a kind that is within the jurisdiction of a local court, where—

(a) the plaintiff recovers a sum in an action founded on contract or on a quasi-contractual obligation that does not exceed the amount of the local court jurisdictional limit;

or

(b) the plaintiff recovers in an action founded on tort a sum that does not exceed one-half of the amount of the local court jurisdictional limit,

the plaintiff shall have judgment to recover that sum only and no costs, unless the Judge trying the action or, if there was no trial, a Judge of the Supreme Court in chambers otherwise orders.

(2) If such Judge is of opinion that having regard to all the circumstances of the case it is just that the plaintiff should recover the whole or any part of the costs of the action, he may order the defendant to pay such costs to the plaintiff as he deems just.

PART III

REPLEVIN

**Replevin may be brought by claim in local court nearest to place of seizure**

43. All actions of replevin in a local court shall be commenced by claims filed in the local court having jurisdiction nearest to the place where the goods were seized.

**Clerks of local courts to grant replevin**

44. The Sheriff shall have no powers or duties with regard to replevin bonds and replevin, but the clerk of the local court nearest to the place where any goods subject to replevin, were taken, shall have power, subject to rules of court, to approve of replevin bonds, and to grant replevins, and to issue all necessary process in relation thereto.

**Party distrained upon to give security**

45. Such clerk shall, at the instance of the party whose goods have been seized, cause the goods to be replevied to such party on his giving one or other of such securities as are mentioned in the next two succeeding sections.

**Action of replevin may be commenced in Supreme Court**

46. (1) An action of replevin may be commenced in the Supreme Court by the process applicable to personal actions therein, and such Court shall have power to hear and determine the same.

**Conditions of security to be given in such cases**

(2) If the replevisor wishes to commence proceedings in the Supreme Court he shall, at the time of replevying, give security to be approved of by the clerk of the local court granting the replevin for such an amount as such clerk deems sufficient to cover the alleged rent or damage in respect of which the distress has been made and the probable costs of the action in the Supreme Court, or, if the goods replevied have been seized otherwise than under colour of distress, the value of the goods and the probable costs of the action in the Supreme Court, conditioned to commence an action of replevin against the seisor in the Supreme Court within fourteen days 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 some corporeal or incorporeal hereditament exceeding in value three hundred dollars was in question, or that such rent or damage, or the value of the goods seized, exceeded sixty dollars, and to make return of the goods if a return thereof should be adjudged.

**Conditions of security when action of replevin is brought in local court**

47. If the replevisor wishes to commence proceedings in a local court he shall, at the time of replevying, give security to be approved of by the clerk of such court for such amount as such clerk deems sufficient to cover the alleged rent or damage in respect of which the distress has been made, or if the goods replevied have been seized otherwise than under colour of distress, the value of the goods and the probable costs of the action in the local court, conditioned to commence an action of replevin against the seisor in the local court nearest to the place where the seizure has been made within one month from the date of the security, and to prosecute such action with effect and without delay, and to make return of the goods, if a return thereof should be adjudged.

## PART IV

*CERTIORARI, PROHIBITION, AND MANDAMUS***Certain writs not to issue**

**48.** No writ of *certiorari*, prohibition, or *mandamus* shall issue to any local court or any officer thereof.

**Application may be made to Supreme Court for orders to have effect of such writs**

**49.** (1) Any person who, but for the preceding section, might have applied for and obtained any of such writs may apply to a Judge of the Supreme Court upon an affidavit of the facts for an order calling upon the local court or the officer thereof concerned, and on the party to be affected by such order to show cause to the Supreme Court why an order in the nature and to have the effect of such of the said writs as would have been applicable should not be made.

(2) Any such Judge may make the order applied for and may direct that such order shall operate as a stay of proceedings in the action (if any) to which the same relates, until such time and on such terms as he thinks fit.

(3) Notwithstanding anything in this section, no person may apply for any such order if the purpose of such person is to prohibit any local court from proceeding with any action on the ground that such local court is not the proper local court in which such action should have been commenced.

**Service of order**

**50.** The order to show cause shall be directed to and served upon the particular local court or officer thereof concerned and the party to be affected or his solicitor, but service on the clerk of a local court, or on the Judge or the special magistrate constituting or presiding over a local court shall be deemed service on that local court.

**Supreme Court may make order absolute**

**51.** If after service on the local court or officer concerned and the party to be affected good cause is not shown to the contrary, the Supreme Court may make such order in the nature and to have the effect of such of the said writs as would have been applicable, and such order as to costs, as it thinks proper.

**Order to be obeyed**

**52.** All persons to whom such an order is directed and on whom it is served shall obey the same under pain of attachment.

**Order to be served promptly**

**53.** Any person who has obtained an order to show cause shall serve the same as soon as possible after the order is made, and if he delays in so doing and the other party has incurred expense by reason of such delay the court in which the action to which the order relates was commenced may order the person who obtained the order to pay to the other party such expense as the other party has so incurred.

**Action commenced in local court may be removed into Supreme Court**

**54.** (1) If a Judge of the Supreme Court deems it desirable that an action commenced in a local court should be tried in the Supreme Court he may order such action to be removed into the Supreme Court to be tried as an action in the Supreme Court.

(2) Such order shall have the effect of a writ of *certiorari*.

(3) The Judge shall have power to impose such terms and conditions as to the costs of the action and as to security for costs and the admission of facts and the admission and production of documents as he thinks proper.

**Refusal of order by Supreme Court or Judge to be final**

**55.** The refusal to grant an order in the nature and to have the effect of any of such writs or of an order to show cause shall be final; but there shall be an appeal from any refusal by a Judge of the Supreme Court to grant an order to show cause to the Court itself, and notwithstanding any such refusal a second application may be made for such order to a Judge of the Supreme Court, or to the Supreme Court, on grounds different from those on which the first application was founded.

**No other jurisdiction in Supreme Court over local court matters**

**56.** Except as by this Act provided, no judgment, determination, or order given or made by a local court, nor any action or proceeding brought before it, or pending in such court, shall be removed into the Supreme Court.

## PART V

## APPEALS FROM LOCAL COURTS TO THE SUPREME COURT

**Reservation of question of law**

**57.** (1) Any local court may reserve any question of law arising in any action (not being an action based upon a small claim) for the decision of the Supreme Court, whose decision shall be certified to and binding on the local court.

(2) The costs consequent on any such reservation shall be in the discretion of the Supreme Court and, having been certified by the Master of the Supreme Court, shall be recoverable against the party by whom the same are made payable, in the same manner as costs incurred in the local court.

(3) A question of law reserved for the decision of the Supreme Court by a local court of full jurisdiction shall be decided by the Full Court and a question of law so reserved by a local court of limited or special jurisdiction shall be decided by a Judge of the Supreme Court.

**Appeal to the Supreme Court**

**58.** (1) Any party who is dissatisfied with any final judgment, determination, or order of a local court, not being an order of commitment—

- (a) in any action in which the amount of the claim or counter-claim exceeds one thousand dollars; or
- (b) in any action of replevin where the amount of the rent or damage, or, if the goods have been seized otherwise than under colour of distress, the value of the goods, exceeds one thousand dollars; or
- (c) in any action for the recovery of premises where the yearly rent of the premises exceeds one thousand dollars; or
- (d) in proceedings in interpleader where the amount claimed, or the value of the goods in question, or of the proceeds thereof, exceeds one thousand dollars; or
- (e) in any action of ejectment under Part XI; or
- (f) in any action under Part XII,

may, subject to the rules of court made under section 28 of this Act and under section 72 of the *Supreme Court Act, 1935-1969*, appeal to the Supreme Court.

(2) Any party who is dissatisfied with any interlocutory order made by any Judge or special magistrate or justices or special justices in any such action may, by leave of such Judge or special magistrate or justices or special justices or of a Judge of the Supreme Court, appeal therefrom to the Supreme Court. The practice and procedure on such appeal (including the costs payable thereon) shall be as prescribed by rules of the Supreme Court.

(3) Notwithstanding that in any action or proceedings the amount referred to in paragraph (a), (b), (c) or (d) of subsection (1) of this section does not exceed one thousand dollars, any party referred to in subsection (1) of this section (not being a party to an action based on a small claim) may, upon obtaining leave of a Judge of the Supreme Court (which may be granted in such special circumstances as the Judge thinks fit) appeal to the Supreme Court.

(4) Where the proceedings to which the appeal relates are proceedings of a local court of full jurisdiction the appeal shall be to the Full Court, and where those proceedings are proceedings of a local court of limited or special jurisdiction the appeal shall be, in the first instance, to a single Judge of the Supreme Court.

(5) This section does not derogate from the power of a Judge of the Supreme Court to refer an appeal to the Full Court for hearing and determination.

**Notice of appeal**

**59.** (1) The party intending to appeal under subsection (1) of section 58 shall, within twelve clear days of the day on which the judgment, determination, or order was given or made, serve on or post to the clerk of the local court and the opposite party or his solicitor in the action or proceeding a notice in writing of his intention to appeal.

(2) Such notice shall not operate as a stay of proceedings.

\* \* \* \* \*

**Powers of Supreme Court on hearing of appeal**

**63.** (1) Upon the hearing of any appeal the Supreme Court may—

- (a) draw all inferences of fact which might have been drawn by the local court appealed from:
- (b) order a new trial on such terms as it thinks fit, and may make such order on the ground of surprise:
- (c) order judgment to be entered for any party:
- (d) make any other order, on such terms as it thinks fit or proper to ensure the determination on the merits of the real questions in controversy between the parties:
- (e) make such order with respect to the costs of the appeal as it thinks proper:
- (f) amend the grounds of appeal or of any cross-appeal.

(2) If the Supreme Court is of opinion that, although any ruling, direction, judgment, determination or order objected to may not have been strictly according to law, yet substantial justice has been done between the parties, the Supreme Court shall discharge the order with or without costs, and if the Supreme Court is of opinion that, although there has been a substantial wrong or miscarriage of justice, such wrong or miscarriage affects part only of the matter in controversy, the Supreme Court may allow the appeal with regard to such part, and dismiss it as to the other part, with or without costs.

(3) The Supreme Court upon the hearing of any such appeal shall have all the powers and duties as to amendment or otherwise of the local court appealed from, together with full discretionary power to receive further evidence upon questions of fact. The rules of court under the *Supreme Court Act, 1935-1969*, as amended, for the time being in force regulating the receiving of further evidence upon an appeal from a single Judge of the Supreme Court shall apply as to the mode of giving such further evidence and the conditions under which it is receivable.

**Signed copy of evidence and special magistrate's notes to be used on appeal**

**64.** On the hearing of any appeal or application under this Part any signed copy of the evidence and notes made by the Judge or special magistrate or the justices or special justice on the trial of the action which has been furnished to a party pursuant to this Act shall be used and received.

**Duty of clerk of local court after receiving notice of appeal**

**65.** Forthwith after receiving notice of appeal, the clerk of the local court shall forward to the Master of the Supreme Court a copy of the claim, defence, counter-claim, and reply (if any), and of the evidence and of the notes made at the trial.

**Costs of appeal**

**66.** (1) The costs of the successful party to the appeal, if ordered to be paid by the opposite party, shall be taxed by the Master of the Supreme Court, and the clerk of the local court on receiving the allocatur of the said Master shall enter judgment for such costs or add them to any judgment already obtained in favour of such party.

(2) Every such judgment may be proceeded on in like manner as any other judgment of the local court.

**Power of parties to waive rights of appeal**

**66a.** (1) Any party to any action commenced in any local court may by notice in writing filed in the court waive the rights of appeal given pursuant to this Act in respect of the action.

(2) The notice may waive all rights of appeal under this Act or may waive any of the rights of appeal under this Act, including the reservation of any point of law for the decision of the Full Court.

(3) If all the parties to the action by notice filed as aforesaid waive all rights of appeal in the action, no appeal as provided by this Act shall be made against any final judgment, determination, or order, or any interlocutory order given or made after the said notice has been filed; and after the said notice has been filed no question of law arising out of the action shall be reserved for the decision of the Full Court.

(4) If all the parties to the action by notice filed as aforesaid waive any of the rights of appeal given by this Act no appeal shall be made or question of law reserved contrary to the notice.

## PART VI

## THE JOINDER OF PARTIES AND OF CAUSES OF ACTION

**Joinder of plaintiffs**

**67.** (1) All persons may be joined in one action, as plaintiffs, in whom any right to relief, in respect of or arising out of the same transaction or series of transactions, is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise.

(2) If upon the application of any defendant it appears that such joinder may embarrass or delay the trial of the action, a Judge or special magistrate may order separate trials or make such other order as may be expedient, and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to without any amendment.

(3) The defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found to be entitled to relief, unless the court or a Judge or special magistrate otherwise directs.

**Misjoinder and non-joinder of plaintiffs**

**68.** Where an action has been commenced in the name of a wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the court or a Judge or special magistrate may, if satisfied that it has been so commenced through a *bona fide* mistake or that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff, upon such terms as he thinks proper.

**Joinder of defendants**

**69.** All persons may be joined in one action as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, and judgment may be given against such one or more of the defendants as may be found liable according to their respective liabilities without any amendment.

**Defendant need not be interested as to all relief claimed**

**70.** It shall not be necessary that every defendant shall be interested as to all the relief claimed, or as to every cause of action included, in any proceeding against him; but the court or a Judge or special magistrate may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

**Where doubt as to party liable**

**71.** Where the plaintiff is in doubt as to the person from whom he is entitled to redress he may, in such manner as hereinafter mentioned, or as may be prescribed by rules of court, join two or more defendants to the intent that in such action the question as to which (if any) of the defendants is liable, and to what extent, may be determined as between all parties.

**Vexatious proceedings**

**71a.** Where an action is brought—

(a) vexatiously and oppressively;

or

(b) against a person who is not liable on the plaintiff's claim and without proper precaution to ensure—

(i) that that person is the person to whom the claim properly relates;

or

(ii) that the debt the subject matter of the claim had not been paid or satisfied prior to such action being brought,

the court or a Judge or special magistrate may, notwithstanding the discontinuance or termination of the action, order the plaintiff to pay to the person against whom the action was brought such sum, in addition to costs, as the court, Judge or special magistrate deems necessary adequately to compensate that person for the injury, embarrassment, inconvenience and expense, if any, that he has suffered or incurred in consequence of the action.

#### **Trustees representing estate**

**72.** (1) Trustees, executors, and administrators may sue and be sued on behalf of, or as representing the property or estate of which they are trustees, or representatives, without joining any of the parties beneficially interested in the trust, or estate, and shall be considered as representing such persons; but the court, or a Judge, or special magistrate, may, at any stage of the proceedings, order any of such persons to be made parties, either in addition to, or in lieu of, the previously existing parties.

(2) This section shall apply to trustees, executors, and administrators sued in proceedings to enforce a security by foreclosure or otherwise.

#### **Representative actions**

**73.** Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorized by a Judge or special magistrate, before, or by the court at, the trial, to defend in such action on behalf or for the benefit of all parties so interested.

#### **Misjoinder and nonjoinder not to defeat action**

**74.** (1) No action shall be defeated by reason of the misjoinder, or nonjoinder, of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

(2) The court, at the trial, or a Judge or special magistrate at any stage of the proceedings, may either upon, or without, the application of either party, and on such terms as may appear to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary, in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added.

(3) No person shall be added as a plaintiff suing without a next friend, or as the next friend of the plaintiff under any disability, without his own consent in writing thereto.

**Mode of applying to rectify misjoinder and nonjoinder**

75. Any application to add or strike out or substitute a plaintiff or defendant may be made to a Judge or special magistrate at any time before trial, by interlocutory summons, or to the court at the trial, in a summary manner.

**Service of process on added or substituted defendant**

76. (1) Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the court or a Judge or special magistrate, serve such new defendant with the amended proceeding in the same manner as original defendants are served.

(2) Such service shall, unless otherwise ordered by the court or a Judge or special magistrate, be effected in the same manner in which original defendants are served.

**One of several persons jointly liable may be sued**

77. (1) Where a plaintiff has any claim against two or more persons jointly answerable, it shall be sufficient if any one of such persons is sued and judgment may be obtained, and execution issued against the person or persons so sued, notwithstanding that others jointly liable may not have been sued, or may not be within the jurisdiction of the court: Provided that every person against whom judgment has been so obtained and who has satisfied such judgment may recover contribution from any other person jointly liable with him.

(2) Where a plaintiff avails himself of the provisions of this section and proceeds against one or more persons jointly answerable, the defendant or defendants sued may avail himself or themselves of any defence or counter-claim which he or they would have been entitled to set up if all the persons jointly answerable had been made defendants.

**Joinder of causes**

78. (1) Subject to this Act and the rules of court the plaintiff may unite in the same action several causes of action.

(2) If it appears to the court at the trial, or to a Judge or special magistrate before the trial, that any of such causes of action cannot be conveniently tried together, the court, Judge, or special magistrate may order separate trials of any such causes of action to be had, or may make such other order as may be necessary or expedient, for the separate disposal thereof.

**Defendant may plead set-off or counter-claim**

79. (1) Subject to subsection (2) hereof, a defendant may set-off or set-up by way of counter-claim, against the claims of the plaintiff, any right or claim against the plaintiff, or against the plaintiff and one or more persons jointly answerable, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a claim in a cross-action, so as to enable the court to pronounce a final judgment in the same action, both on the claim and on the counter-claim.

(2) The court, or before trial a Judge or special magistrate, on the application of the plaintiff or any person joined with the plaintiff in the set-off or counter-claim, may, if of opinion that such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof, and make such other order as it or he may think fit.

## PART VII

## THE COMMENCEMENT OF ACTIONS AND PROCEEDINGS TO JUDGMENT

**Plaintiff to furnish names of parties and particulars**

**80.** (1) Any person intending to bring an action in a local court shall furnish the clerk of the court with a memorandum in writing (in this Act called "the claim") containing the names and places of residence or business of the parties, the occupation or description of the plaintiff, and a clear and concise statement of the particulars of his claim, with as many copies thereof as there are defendants.

(1a) Where the plaintiff intends that the summons be served on the defendant by post, he may, in addition to stating in the claim the place of residence or business of the defendant, state the address (including the number) of a post office box in order that service may be effected by posting the summons to that address.

(2) Where the plaintiff is unacquainted with the defendant's Christian name, the defendant may be described by his or her surname or by his or her surname and the initial of his or her Christian name, or by the name by which he or she is generally known (prefaced in each case by Mr., Mrs., Miss or Ms, as the case may require) and all subsequent proceedings thereon may be taken in conformity with such description, or in conformity with any amended description which the court or any Judge or special magistrate may approve.

(3) At any time before service of the summons and on the written request of the plaintiff or his solicitor, the clerk of the court may—

- (a) make any alteration in any particulars, as stated in the claim or summons, of the name, place of residence or business or other address, occupation or description of any person;
- (b) add to or delete from the summons any endorsement required by the Commonwealth Act known as the *Service and Execution of Process Act 1901-1953*, as amended.

(4) A plaintiff who furnishes the clerk with a memorandum under subsection (1) knowing that the address of a place of residence or business or of a post office box contained in the memorandum is incorrect, or being recklessly indifferent as to whether such an address is correct, shall be guilty of an offence.

Penalty: Five hundred dollars.

**Allegation as to jurisdiction**

**81.** (1) If the claim filed in any local court (other than under Part XII) does not show that such local court has jurisdiction in the matter there shall be added to such claim a statement—

- (a) that such local court has jurisdiction and the ground or grounds on which it has jurisdiction; or
- (b) that the defendant has consented to such local court having jurisdiction.

(2) Such statement shall be signed by the plaintiff personally or by his solicitor.

(3) Any person signing or procuring to be signed any incorrect statement under this section shall be liable to a penalty not exceeding forty dollars, unless he proves that he has reasonable grounds for believing the statement to be correct.

**Entry of plaint**

**82.** (1) The clerk shall thereupon enter in a book to be kept for that purpose, called a plaint book, a plaint, stating the names and places of residence of the parties, and the occupation or description of the plaintiff, the names and addresses of their respective solicitors or agents, and the amount of the plaintiff's claim, and the sum paid by him for fees.

(2) A note of such plaint shall be furnished to the plaintiff, in the form, and containing the particulars and directions, prescribed by rules of court.

(3) Every plaint shall be numbered progressively in each year, according to the order in which it is entered.

**Summons to issue to defendant**

**83.** (1) When the clerk has entered the plaint in the plaint book and furnished a note of that plaint to the plaintiff, he shall forthwith issue a summons to each defendant.

(1a) A summons issued under subsection (1) shall be in the form prescribed by the rules of court that is appropriate to the cause of action.

(2) The clerk shall append to each summons a copy of the claim.

\* \* \* \* \*

**Infants—How they sue and defend**

**85.** Infants may sue as plaintiffs by their next friends and may defend any action by their guardians appointed for that purpose: Provided that any infant may sue for wages, or piecework, or, for any work or services as a clerk, servant, mechanic, or labourer in the same manner as if he were of full age.

\* \* \* \* \*

**Manner in which proceedings are to be taken on behalf of persons of unsound mind**

**87.** A person suffering from a mental illness or mental handicap, as defined in the *Mental Health Act, 1977-1979*, (whether or not he has been found to be suffering from a mental illness or mental handicap by a court or tribunal) may sue and defend in the manner prescribed by rules of court.

**Consent of persons under a disability**

**88.** In any action to which any infant or person suffering from a mental illness or mental handicap, as defined in the *Mental Health Act, 1977-1979*, (whether or not he has been found to be suffering from a mental illness or mental handicap by a court or tribunal), or a person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure shall if given with the sanction of the court or a Judge or special magistrate, by the Public Trustee, the next friend, guardian, administrator, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent.

**Poor persons**

**89.** A Judge or special magistrate may, subject to such conditions and on such terms as may be prescribed by rules of court, allow any person or persons to sue or defend *in forma pauperis* in cases where he may consider that the extreme poverty of such person would otherwise prevent the attainment of justice.

**Partners**

**90.** (1) Any two or more persons claiming or being liable as co-partners and carrying on business within the State (and any person carrying on business within the State in the name of a firm apparently consisting of more than one person) may sue or be sued in the names of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action, and any person who was at the time of the accruing of the cause of action carrying on business in the State in the name of a firm apparently consisting of more than one person may sue or be sued, in that name.

(2) Any party to an action may in any such case apply by interlocutory summons to a Judge or special magistrate for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise as the Judge or special magistrate may direct.

\* \* \* \* \*

**Summons may be served out of the State**

**93.** (1) Where an intended plaintiff is resident in the State of South Australia and an intended defendant is outside the State of South Australia, the intended plaintiff may, in any case in which a local court would have had jurisdiction had the defendant been within the State of South Australia, issue a summons out of the local court nearest to which the intended plaintiff resides or, at his option, out of the Local Court of Adelaide.

(2) Such summons may, if the defendant is within any other State or part of the Commonwealth of Australia, be issued without the leave of a Judge or special magistrate, provided—

- (a) that the subject matter of the action, so far as it concerns such defendant, is—
  - I. land or other property situated or being within the State of South Australia; or
  - II. shares, or stock, of a corporation or company having its principal place of business within the State of South Australia; or
  - III. any deed, will, document, or thing affecting any such land, shares, stock, or property; or
- (b) that any contract in respect of which relief is sought in the action against such defendant by way of enforcing, rescinding, dissolving, annulling, or otherwise affecting such contract, or by way of recovering damages or other remedy against such defendant for a breach thereof, was made or entered into within the State of South Australia; or
- (c) that the relief sought against the defendant is in respect of a breach, within the State of South Australia, of a contract wherever made; or

- (d) that the act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was done, or is to be done, or is situated, within the State of South Australia; or
- (e) that, at the time when the liability sought to be enforced against the defendant arose, he was within the State of South Australia.

In every other case leave to issue such summons shall be obtained from a Judge or special magistrate.

(3) Any summons issued pursuant to this section may be served out of the State of South Australia.

(4) Such service shall be effected in such manner as is prescribed by rules of court.

(5) The time to be limited for appearance to such summons shall be such as is fixed by the Commonwealth Act known as the *Service and Execution of Process Act 1901-1953*, as amended, or any Act substituted therefor for the time being in force, or such longer time as may be prescribed by rules of court. Such summons shall contain the endorsements required by that Act.

**Methods by which a summons may be served**

**94.** (1) A summons may be served on the defendant—

- (a) by delivering the summons personally to the defendant or to a person at the defendant's place of residence or business who is apparently above the age of fourteen years;
  - (b) by sending the summons by ordinary pre-paid post in an envelope addressed to the defendant at—
    - (i) his place of residence, as stated in the claim;
    - (ii) his place of business, as stated in the claim;or
    - (iii) any other postal address, as stated in the claim;
  - (c) by serving the summons on a solicitor who, by notice in writing, accepts service of the summons on behalf of the defendant and who undertakes to appear to the summons;
- or
- (d) in any other manner—
    - (i) prescribed by the rules;or
    - (ii) fixed, on application of the plaintiff, by the court.

(2) Service of a summons under subsection (1)(a) may be effected—

- (a) by a bailiff of the court;
- (b) by the plaintiff;
- (c) by a person employed by the plaintiff;
- (d) by a legal practitioner or the clerk of a legal practitioner;

or

- (e) by a person who is a licensed process server under the *Commercial and Private Agents Act, 1972*.

(3) Service of a summons under subsection (1)(b) shall be effected by the clerk of the court out of which the summons was issued.

**Special provisions relating to service by post**

**94a.** (1) Subject to this section, a summons that is to be served by post shall be deemed to have been served at the time of posting.

(2) Where—

- (a) a summons that is to be served by post is returned undelivered;

or

- (b) although not returned, the clerk of the court considers on the basis of information received by him (verified, if the clerk so requires, by affidavit) that there is substantial reason to doubt that the summons has come to the attention of the defendant,

service of the summons shall be deemed not to have been effected.

(3) Where an attempt to effect service of a summons by post proves ineffectual by virtue of subsection (2)—

- (a) subject to any order of a Judge or special magistrate to the contrary, any judgment given in default of an appearance by the defendant shall, without the necessity of any application by the defendant, be set aside by the clerk;
- (b) the clerk shall send to the plaintiff or a solicitor representing the plaintiff written notice of the fact that the attempt to effect service of the summons has proved ineffectual:

and

- (c) no further attempt shall be made by the clerk to serve the summons by post to the same address unless the clerk is satisfied that the plaintiff has, on the receipt of the notice referred to in paragraph (b), made reasonable inquiries to ensure that the address for service stated on the summons is the postal address of the defendant.

(4) The clerk may, in order to satisfy himself that the plaintiff has made the inquiries required by subsection (3)(c), require the plaintiff to certify in writing (verified, if the clerk so requires, by statutory declaration) the nature and extent of the inquiries made by him.

(5) Where the clerk of the court considers that by reason of delays in the delivery of mail it is expedient so to do, he may request the Registrar of Courts of Subordinate Jurisdiction to publish a notice in the *Gazette* providing that summonses sent by post on a specified day or days be deemed to have been served at times that are different to the times that the summonses were posted, and—

(a) on receipt of that request the Registrar shall publish the notice as requested;

and

(b) that notice, as published, shall have effect according to its terms.

#### **Service of interlocutory summons and notices**

**95.** Any interlocutory summons, or any notice or subpoena to either party to an action, may be served by sending it by ordinary pre-paid post in an envelope addressed to the party or his solicitor named in the claim or appearance at his place of residence or business specified in the claim or appearance.

#### **Record of service**

**95a.** (1) Where a summons is served personally by a person other than a bailiff of the court, the person serving the summons shall endorse on a duplicate of the summons the date of service and shall, as soon as practicable after service, swear an affidavit of service and file the duplicate summons and the affidavit with the clerk of the court out of which the summons was issued.

(2) Where a summons is served by post—

(a) in the case of a summons other than an interlocutory summons—the clerk of the court shall endorse or cause to be endorsed on a file copy of the summons a notation that service of the summons has been effected by posting, and the date of posting;

and

(b) in the case of an interlocutory summons—the party serving the summons shall, as soon as practicable after posting the summons, swear an affidavit of service and file the duplicate summons and the affidavit with the clerk of the court out of which the summons was issued.

#### **Proof of service**

**96.** (1) The service of any summons or notice in any action in a local court may be proved by affidavit, and such affidavit shall be received in evidence on the trial of any action in a local court.

(2) A notification endorsed on the file copy of a summons that service of the summons was effected by posting by the clerk of the court shall, subject to this Part, be proof of such service.

#### **Period allowed for appearance**

**97.** (1) Subject to this Act, the period to be allowed to a defendant to appear to a summons, when served within the State, shall be twenty-one days.

(1a) Where—

(a) a summons is to be served by post;

and

(b) the address for service of the summons is within a proclaimed area,

the period to be allowed to a defendant to appear to the summons shall be a period exceeding twenty-one days, but not exceeding thirty-five days, as may be declared in relation to that area by proclamation.

(2) A defendant may appear at any time before judgment is signed or the claim set down for assessment of damages.

(3) In this section—

"proclaimed area" means an area declared by proclamation to be a proclaimed area for the purposes of this section.

(4) The Governor may, if he thinks it appropriate to do so having regard to the infrequency of postal services in a particular area of the State, by proclamation—

(a) declare that area to be a proclaimed area;

and

(b) declare in accordance with subsection (1a) a period which is to be allowed to a defendant to appear to a summons that is served by post at an address within that area,

and may, by subsequent proclamation, vary or revoke any such declarations.

### **Mode and effect of appearance**

**98.** (1) A defendant desirous of appearing to a plaintiff's claim shall enter an appearance by filing with the clerk of the court an appearance in duplicate.

(2) Such appearance—

(a) in the case of a debt, whether by simple contract or specialty, shall operate as a denial as well of the particular contract, dealing, or transaction between the defendant and the plaintiff out of which the alleged debt or liability arises, as of the breach thereof; and

(b) in the case of a claim for damages for a breach of duty or wrongful act, shall operate as a denial as well of such breach of duty or wrongful act as of the right, property, or possession of the plaintiff, or of the circumstances out of which the alleged cause of complaint arises,

unless the defendant, by his appearance or defence, expressly limits such operation.

(3) If the defendant intends to dispute the character in which the plaintiff claims, or to rely upon any special or statutory defence, such as an equitable defence, set-off or counter-claim, tender before action, payment, release, illegality not apparent on the particulars, fraud, infancy, coverture, insolvency, whether of the plaintiff or defendant, or drawing, endorsing, accepting or making bills or notes by way of accommodation, want of notice of dishonour, want of notice of action, mutual credit, lien, unseaworthiness, misrepresentation, concealment, and other like defences, he shall state in his appearance the grounds of his defence.

(4) If the defendant relies upon a set-off or counter-claim, he shall state specifically that he does so by way of set-off or counter-claim, as the case may be, and shall also file particulars of such set-off or counter-claim.

(5) If the defendant relies upon a tender before action brought, he shall pay the amount into court at the time of entering his appearance.

(6) Where the amount claimed or sought to be recovered, whether by claim or counter-claim, exceeds two thousand five hundred dollars, this section shall have effect subject to such directions with respect to the pleadings or further pleadings as the court thinks fit and to rules of court, if any.

#### **Defendants to counter-claim to be named**

**99.** Where a defendant by his appearance or defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person or persons, he shall in such appearance or defence set forth the names of all the persons who, if such counter-claim were to be enforced by cross-action, would be defendants to such cross-action, and shall state the particulars of such set-off or counter-claim, as in cases where a set-off or counter-claim raises questions between the defendant and the plaintiff only.

#### **Defendants to counter-claim to be served**

**100.** Where any person, as in the last preceding section mentioned, is not a party to the action, he shall be summoned to appear by being served with a copy of the appearance and defence, bearing such endorsement as is prescribed by rules of court, and such service shall be governed by the same provisions as may be in force with respect to the service of an ordinary summons, and every appearance and defence so served shall be under the seal of the court.

#### **Appearance to counter-claim**

**101.** (1) Any person, whether originally a party to the action or not, against whom a counter-claim is set up shall, if he desires to dispute the counter-claim, enter an appearance to the counter-claim in the same way as an appearance is required to be entered to a plaintiff's claim, and within the time allowed by section 97 for appearance by a defendant.

(2) An appearance so entered shall have the like operation as an appearance filed pursuant to section 98, and subsections (3), (4), and (5), of section 98, shall apply in relation to such appearance.

(3) Default in entering an appearance to a counter-claim shall have the like effect as default by a defendant in entering an appearance to a claim.

**Reply to counter-claim**

102. (1) The plaintiff, and any person named in an appearance or defence as a party to a counter-claim thereby made, if he intends to rely in reply to any counter-claim upon any matter which would on the part of a defendant constitute a special defence within the meaning of section 98, shall state in his appearance the matter alleged to constitute such special defence.

\* \* \* \* \*

**Defendant’s right of set-off or counter-claim preserved in case of misjoinder**

103. A defendant may avail himself of any set-off, counter-claim, or other defence to which he would have been entitled if some persons had not been improperly joined as plaintiffs, or if all the persons answerable were made defendants, or if the persons named as defendants had been properly joined.

**Matters arising pending action**

104. (1) Any party to an action may avail himself of any ground of defence to a claim, set-off, or counter-claim which has arisen after action brought.

(2) If such ground of defence arises before the entry of appearance or filing of reply, notice of the party’s intention to avail himself of such ground of defence, together with particulars of the same, shall be filed with the appearance or reply.

If such ground of defence arises after the entry of appearance or filing of reply, the party shall not avail himself of it without leave of a Judge or special magistrate, or, at the trial, of the court.

(3) The opposite party shall, in case such ground of defence is admitted or established, be entitled to such costs as he would have been entitled to if such new ground had not arisen, unless a Judge or special magistrate or, at the trial, the court, otherwise orders.

**Equitable defence may be availed of**

105. Any party to an action in a local court may avail himself of any defence in equity to the claim of the opposite party.

\* \* \* \* \*

**Judgment by default**

107. (1) This section applies to an action where the claim is for a liquidated amount, with or without interest.

(2) If the defendant does not enter an appearance in an action to which this section applies, the clerk of the court shall, at the request of the plaintiff, on proof that the summons has been served, sign judgment for the amount claimed in the action together with interest, if the plaintiff so desires, computed in accordance with subsection (3) on so much of the claim as does not consist of interest.

(3) The amount of interest for which judgment may be signed under subsection (3) shall be assessed from the date of filing of the claim to the date of signing judgment and shall be calculated at the rate, if any, alleged by the plaintiff in his claim to have been agreed upon or, if no such rate is alleged, then at the rate prescribed by the rules of court.

**When not final, damages to be assessed**

**108.** (1) If the defendant does not enter an appearance in any other action, the clerk of the court shall, at the request of the plaintiff, set the claim down for assessment of damages, and afterwards the defendant shall not be at liberty to enter an appearance in the action except as provided by this Act.

(2) If the defendant does not enter an appearance in an action and the claim is, or includes a claim, for damages for injury to property, the plaintiff may apply to a Judge or special magistrate in chambers for leave to sign judgment for the damages for injury to property.

(3) The application shall be by interlocutory summons supported by affidavit and the interlocutory summons and all affidavits to be used at the hearing of the application shall be served on the defendant and shall be accompanied by a notice in the prescribed form.

(4) The Judge or special magistrate, if satisfied that for reasons of cost or convenience an assessment of the claim for damages for injury to property or any part thereof is unnecessary or inexpedient, may grant leave to the plaintiff to sign judgment for the damages for injury to property, or for such part thereof as he thinks proper, and shall direct that the action proceed for assessment of damages in respect of any part of the claim not included in the order for leave to sign judgment.

**When action to be tried**

**109.** (1) After the defendant has appeared, the trial of the action shall, subject to rules of court, take place at the first court to be held after the expiration of the time hereinbefore allowed for the defendant to appear, or seven clear days after the appearance of the defendant, whichever is the later date.

\* \* \* \* \*

**Defendant may confess debt or part thereof and judgment thereupon**

**110.** (1) Any defendant may, at any time before trial, file with the clerk of the court an admission of liability for the plaintiff's claim or a part thereof, together with a copy of such admission, which admission shall be attested by a clerk of a local court, commissioner for taking affidavits in the Supreme Court, notary public, or justice, or shall be under the hand of a practitioner of the Supreme Court, and the copy thereof so filed shall be sent by the clerk of the court to the plaintiff, and the clerk of the court shall, at the request of the plaintiff, enter judgment to the extent of the amount admitted.

(1a) A defendant who has filed an admission of liability under this section may at any time before judgment is entered thereon withdraw or amend such admission by a notice, attested by one of the persons mentioned in subsection (1) of this section, or under the hand of a practitioner of the Supreme Court. Such notice together with a copy thereof shall be filed with the clerk of the court.

The clerk of the court shall send the copy of the notice to the plaintiff. If the effect of the notice is that the defendant still admits liability for some amount the clerk of the court shall at the request of the plaintiff enter judgment for the amount so admitted.

(2) If the defendant admits a portion only of the claim, and the plaintiff does not sign judgment as aforesaid, the action shall proceed.

**Defendant may pay money into court**

**111.** (1) Any defendant may, at the time of entering his appearance or any time thereafter, pay into court such sum of money as he thinks sufficient to satisfy the claim of the plaintiff, together with the costs incurred by the plaintiff on that scale up to the time of such payment.

(2) Notice of such payment shall be sent by the clerk of the court to the plaintiff, and the said sum of money, if not less than the amount claimed, shall be paid to the plaintiff.

(3) If a sum less than the amount claimed has been paid into court, and the plaintiff does not send to the clerk of the court a notice of his acceptance of the amount paid into court in full satisfaction of his claim, the action shall proceed. If the plaintiff sends to the clerk of the court such notice of acceptance, the clerk of the court shall forthwith send to the defendant notice of such acceptance, and the sum paid into court shall be paid to the plaintiff.

**Plaintiff to pay costs in certain cases**

**112.** If the plaintiff recovers no further sum than has been so admitted or paid into court, the plaintiff shall pay or allow to the defendant the costs incurred by the defendant in the said action after such payment, or after the plaintiff had notice of such admission, such costs to be taxed by the clerk of the court; but if a defence of tender before action brought has been found for defendant, then the plaintiff shall pay the whole cost of the action.

**Judgment when parties agree as to amount and terms of payment**

**113.** If—

- (a) the defendant agrees with the plaintiff upon the amount of the claim and upon the terms and conditions upon which the same shall be paid or satisfied; and
- (b) a statement of the claim so agreed upon, and of the terms and conditions upon which the same shall be paid or satisfied, signed by the plaintiff and the defendant, and attested by a clerk of a local court or a practitioner of the Supreme Court, is filed with the clerk of the court,

the clerk shall enter up judgment for the plaintiff for the amount of the claim so agreed on upon the terms and conditions mentioned in such statement.

**In what courts actions to be commenced**

**114.** (1) Every action, not being an action of replevin or for the recovery of premises or of ejectment, shall be commenced in the court having jurisdiction to the amount claimed—

- (a) nearest to the place where the cause of action arose; or
- (b) nearest to the place where the defendant or one of the defendants resides or carries on business at the time of action brought; or
- (c) if the action is of contract, nearest to the place where the plaintiff, if a party to the original contract, carried on business at the time of the making of the contract, or, if he did not then carry on any business, nearest to the place where he resided at that time; or

- (d) if the action is of contract and the plaintiff is not a party to the original contract, nearest to the place where the party in whose right the plaintiff claims carried on his business at the time of the making of the contract, or, if he did not then carry on any business, nearest to the place where such party resided at that time.

(2) The local court within any area defined by rules of court made pursuant to paragraph IIIa of section 28(1) of this Act shall for the purposes of this Act be deemed to be the nearest local court to any place within that area.

**No objection to be allowed unless ground given and merits proved**

**115.** No defendant shall be allowed to object in any local court that the action has not been commenced in the proper court unless, at or before the time of entering his appearance, he files in the court—

- (a) a memorandum in writing of such objection, setting out the grounds thereof and specifying the local court in which he alleges the action should have been commenced; and
- (b) an affidavit by himself or some person cognizant of the facts of the case, stating that he has a good defence to the action on the merits irrespective of such objection and setting out some ground of such defence.

**Procedure if plaintiff admits action brought in wrong court**

**116.** If upon receipt of such objection the plaintiff forthwith gives notice in writing to the defendant and to the court in which the action was commenced of his consent to the trial of the action by the local court specified in such objection, the said action, and all proceedings in respect thereof, shall be transferred to the local court specified in such objection.

**If objection not sustained**

**117.** (1) If the plaintiff does not forthwith give such notice, the defendant may apply to a Judge or a special magistrate, on an interlocutory summons taken out in the court in which the action was commenced, for the determination of such objection.

(2) The Judge or special magistrate hearing such summons shall determine such objection and, unless such objection is sustained, the action shall proceed in the local court in which it was commenced.

**If sustained, proceedings to be transferred**

**118.** If such objection is sustained, the said action and all proceedings in respect thereof shall be transferred to the local court specified in such objection.

**To what court proceedings to be transferred**

**119.** The local court to which any action is transferred pursuant to this Part shall have jurisdiction to proceed with and to hear and determine such action in like manner as if such action had originally been commenced in such court and, where an appearance had been entered, as if such appearance had been entered therein on the day on which such proceedings were transferred.

**Costs may be awarded notwithstanding want of jurisdiction**

**120.** Any court or Judge or special magistrate may, notwithstanding that it or he has no jurisdiction to try an action, award costs in such action to either party to any action commenced therein, and the party in whose favour the costs have been awarded may enforce payment of the same as fully and effectually, and in the same manner, as if such court had had such jurisdiction.

**Security for costs**

**121.** If the plaintiff in any action is not at the time of filing his claim within any State or part of the Commonwealth of Australia, or if before judgment is obtained he leaves the Commonwealth of Australia, a Judge or a special magistrate may order such plaintiff to give security for the costs of the action to such amount and in such manner as such Judge or special magistrate may deem proper, and may stay all proceedings in the action until such security is given.

**Plaintiff may discontinue**

**122.** (1) A plaintiff in any action may any time before trial discontinue, by giving notice of discontinuance to the clerk of the court and to the defendant, by post or otherwise, and the defendant shall be entitled only to such costs as were incurred up to the receipt of such notice, unless a Judge or special magistrate otherwise orders.

(2) Such costs, and any further costs ordered by a Judge or special magistrate, may be recovered as a judgment of the court.

(3) When any action has been discontinued the plaintiff shall not begin a similar action for the same cause without leave of a Judge or special magistrate. Such leave may be obtained on an *ex parte* application.

**Counter-claim may proceed though action stayed, discontinued or dismissed**

**123.** If, in any case in which the defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with.

**Witnesses may be summoned**

**124.** Any party to an action or matter may obtain, at the office of the clerk of the court, summonses to witnesses, and any number of names may be inserted in one summons.

**Procedure when neither party, or only defendant, appears at trial**

**125.** (1) If, on the day appointed for hearing an action, neither party attends when the action is called on, the court shall order the action to be placed at the bottom of the cause list of the court for such day; and if, before the conclusion of the sitting of the court on such day, neither party attends, the court shall order the action to be struck out, and thereupon no further proceedings shall be taken in the action unless a Judge or special magistrate reinstates it.

(2) If, at the time appointed for hearing an action the defendant attends, but not the plaintiff, the court may—

(a) if the defendant admits the plaintiff's claim and pays the court fees, enter judgment for the plaintiff accordingly;

or

(b) order that the action be placed at the bottom of the cause list for the day.

(3) Where the court orders that an action be placed at the bottom of the cause list pursuant to subsection (2) of this section, and the plaintiff is not in attendance when the action is again called on, the court may—

(a) order that the action be struck out (in which case no further proceedings shall be taken in the action unless a Judge or special magistrate reinstates it);

or

(b) adjourn the hearing of the action.

#### **Non-appearance of defendant**

**126.** (1) If, on the day appointed for hearing an action, the defendant does not attend when the action is called on, personally or by his solicitor, the court may, in all cases where the claim is for a debt or liquidated demand, without requiring the plaintiff to call any evidence, cause judgment to be entered for the amount claimed, together with interest, if the plaintiff so desires, from the date of the filing of the claim to the date of entry of judgment, on so much of the claim as does not consist of interest. Such interest shall be calculated at the rate, if any, alleged by the plaintiff in his claim to have been agreed upon, or, if no such rate is alleged, then at the rate prescribed by rules of court.

(2) In other cases the court shall proceed to assess the damages; and if in any such case a set-off or counter-claim has been filed by the defendant, such set-off or counter-claim shall be struck out.

#### **Court may nonsuit when plaintiff does not appear**

**127.** If the plaintiff does not attend either by himself or his solicitor, upon the hearing of any action, or at any adjournment of the said hearing, and the defendant attends, either by himself or his solicitor, upon such hearing or adjournment, the court may nonsuit the plaintiff.

#### **Evidence in appealable actions to be taken down in writing and certain notes to be taken**

**128.** On the trial of any action in respect of which an appeal lies under Part V of this Act the court before which the trial takes place shall—

(a) cause the evidence to be taken down in writing; and

(b) cause to be made notes of any question of law raised at the trial, and of the findings of fact in relation thereto, and of the decision thereon, and of the findings of fact and the decision in the action itself; and

(c) at the expense of any party to any such action who requires the same forthwith cause to be furnished to such party a copy signed by the Judge, special magistrate, justices or justice by whom the court is constituted of such evidence and notes.

#### **In case of cross judgments, execution to issue for the balance of the larger**

**129.** If there are cross judgments between the parties, execution shall be taken out by 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 of the smaller sum, and for the remainder so far as it is paid or realized; and if both sums are equal, satisfaction shall be entered upon both judgments.

**Court to give judgment for balance where set-off or counter-claim**

**130.** When in any action a set-off or counter-claim is established as a defence against the plaintiff's claim the court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance.

**Court may order return of chattels detained**

**131.** The court may upon the application of the plaintiff in any action for the detention of any chattel—

- (a) order that execution shall issue for the return of the chattel detained, without giving the defendant the option of retaining such chattel upon paying the value assessed; and
- (b) order that the defendant pay such damages as the court may assess in respect of the detention of the chattel, such damages to be reduced to such sum as the court fixes if the plaintiff obtains possession of the chattel.

**Specific delivery of goods sold may be ordered**

**132.** (1) The court may, upon the application of any party in any claim for breach of contract to deliver specific goods for a price in money, find—

- (a) what are the goods in respect of the non-delivery of which the party is entitled to recover, and which remain undelivered;
- (b) what (if any) is the sum the party would have been liable to pay for the delivery thereof;
- (c) what damages (if any) the party would have sustained if the goods should be delivered under execution as hereinafter mentioned; and
- (d) what damages if not delivered.

(2) Thereupon the court, on the application of the party in whose favour judgment is given, may, if satisfied that the goods are still in the possession or control of the opposite party, order execution to issue for delivery of them, on payment of such sum (if any) as has been found to be payable by the party making the application for the said goods, without giving the opposite party the option of retaining the same upon paying the damages assessed.

**Second action for same cause not allowed**

**133.** If any party sues another in any local court for any cause of action for which he has already sued him and obtained judgment in that or any other court, proof of such former action having been brought and judgment having been obtained may be given, and the party so suing shall not be entitled to recover in such second action, and shall be adjudged to pay such compensation to the opposite party as the local court may award.

**Party obtaining judgment may cause execution to issue**

**134.** Any party to any action in any local court in whose favour any judgment has been given, unless the court otherwise orders, may cause execution to be issued thereon forthwith after the judgment has been pronounced and entered in the record book.

**Right of appearance**

**135.** (1) A party to an action or proceeding in a local court of full jurisdiction—

(a) may appear personally to conduct the action or proceeding;

or

(b) may be represented by a legal practitioner.

(2) Subject to this Act, a party to an action or proceeding in a local court of limited or special jurisdiction—

(a) may appear personally to conduct the action or proceeding;

(b) may be represented by a legal practitioner;

(c) may be represented—

(i) by an articulated law clerk acting on the instructions of his principal or a student enrolled for the Graduate Diploma in Legal Practice at the South Australian Institute of Technology acting on the instructions of a legal practitioner of at least five years' standing;

or

(ii) by a person admitted to practise as a legal practitioner, who does not hold a current practising certificate acting on the instructions of a legal practitioner by whom he is employed;

or

(d) where the party is a body corporate, may be represented by an officer or employee of the body corporate authorized by the body corporate to conduct the action or proceeding on its behalf.

(3) Where a person has the conduct of an action or proceeding in any local court by virtue of rights of subrogation conferred on him by contract or by operation of law, the court may permit that person to appear as a party to the action or proceeding.

**Court may nonsuit**

**136.** (1) The court may nonsuit the plaintiff, or with respect to a counter-claim the defendant, whenever satisfactory proof has not been given entitling either the plaintiff or the defendant to the judgment of the court, and, at the close of the plaintiff's or with respect to a counter-claim the defendant's case, the court may nonsuit the plaintiff or defendant whether such plaintiff or defendant consents thereto or not.

(2) The plaintiff, or with respect to a counter-claim the defendant, may, at any time before the judgment of the court is pronounced, elect to be nonsuited.

**Nonsuit same effect as judgment on the merits**

137. A nonsuit, if the court so directs, shall have the same effect as a judgment upon the merits for the defendant, or with respect to a counter-claim, for the plaintiff; but in any case of mistake, surprise, or accident any nonsuit may be set aside by a Judge or a special magistrate, on such terms as to payment of costs and otherwise as he thinks proper.

**On death of sole or one of several plaintiffs or defendants, action not to abate**

138. When a sole plaintiff or defendant, or one or more of several plaintiffs or defendants, die before judgment, the action shall not abate if the cause of action survives to or against the representatives of the deceased person or persons, or to or against the surviving parties.

**On death of one of several plaintiffs or defendants, after judgment, proceedings may be taken against survivors**

139. When one or more of several plaintiffs or defendants die after judgment, proceedings thereon may be taken by the survivor or survivors, or against the survivor or survivors, without leave of the court.

**In case of insolvency of plaintiff, action not to abate if trustees elect to proceed**

140. (1) The bankruptcy of, or the execution of a deed of assignment under the *Bankruptcy Act 1966*, as amended, of the Commonwealth or any corresponding previous enactment by, the plaintiff in any action in a local court which the trustees might maintain for the benefit of the creditors, shall not cause the action to abate if the trustees elect to continue such action and to give security for the costs thereof within such reasonable time as a Judge or special magistrate orders, and all further proceedings in the action shall be suspended, and the hearing may be adjourned, till such election is made.

(2) In case the trustees do not elect to continue the action and to give such security within the time limited by the order, the defendant may avail himself of the insolvency or assignment where it constitutes a defence to the action.

**Costs where executor or administrator is unsuccessful plaintiff**

141. In actions by executors or administrators, if the plaintiff fails, the costs shall, unless the court otherwise orders, be awarded in favour of the defendant, and shall be levied *de bonis propriis*.

**When executor or administrator does not appear**

142. Where an executor or administrator who is plaintiff or defendant in an action in a local court, does not attend on the day of hearing, the provisions of sections 125, 126, and 127 shall apply, subject to the provisions of this Act applicable to executors or administrators suing or being sued.

**Plaintiff may charge *devastavit***

143. (1) A party suing an executor or administrator may charge in his claim that the defendant has had assets and has wasted them.

(2) If any party does so allege, he shall also state in his claim the amount of assets alleged to have been left by the deceased, and the manner in which the said assets have been wasted.

**If waste found provisions as to costs**

**144.** (1) Where a defendant is charged with waste in the plaintiff's claim, if the court is of opinion that the defendant has wasted the assets, the judgment shall be that the debt or damages and costs shall be levied *de bonis testatoris, si, &c., et si non, de bonis propriis*.

(2) The non-payment of the amount claimed immediately on the court finding such claim to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable.

**If assets not denied**

**145.** Where a defendant sued as an executor or administrator does not appear at the trial, or admits his representative character and the plaintiff's claim, and does not deny assets, the judgment shall be that the demand and costs shall be levied *de bonis testatoris, si, &c., et si non*, as to the costs *de bonis propriis*.

**Where demand only denied**

**146.** Where a defendant, sued as an executor or administrator, admits his representative character, and only denies the demand, if the plaintiff proves the demand the judgment shall be that the demand and costs shall be levied *de bonis testatoris si, &c., et si non*, as to the costs *de bonis propriis*.

**Judgment of assets *quando acciderint***

**147.** Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be to levy the costs of proving the demand *de bonis testatoris, si, &c., et si non, de bonis propriis*, and as to the demand, judgment of assets *quando acciderint*, and the plaintiff shall pay the defendant's costs of proving the administration of assets unless the court otherwise orders.

**Where total or partial administration alleged and is not proved, but demand is denied and proved**

**148.** Where such defendant admits his representative character but denies the claim, and alleges a total or partial administration of assets, and the plaintiff proves his claim, but the defendant does not prove the administration alleged, the judgment shall be to levy the amount of the claim, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, &c., et si non*, as to the costs *de bonis propriis*, and as to the residue of the claim, if any, judgment of assets *quando acciderint*.

**Where total or partial administration alleged and proved and demand is admitted**

**149.** Where such defendant admits his representative character and the plaintiff's claim, but alleges a total or partial administration of assets, and proves the administration alleged, the judgment shall be of assets *quando acciderint*, and the plaintiff shall pay the defendant's costs of proving the administration of assets, unless the court otherwise orders.

**Where defendant admits demand and fails to prove administration alleged**

**150.** Where such defendant admits his representative character and the plaintiff's claim, but alleges a total or partial administration of assets, but does not prove the administration alleged, and has not established any other ground of defence, the judgment shall be to levy the amount of the claim, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, &c., et si non*, as to the costs *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets *quando acciderint*.

**Procedure on judgment *quando acciderint***

**151.** Where judgment has been given against an executor or administrator that the amount be levied upon assets of the deceased, *quando acciderint*, the plaintiff may issue a summons according to the form prescribed by rules of court, and if it appears that assets have come to the hands of the executor or administrator since the judgment, a Judge or special magistrate, may order that the debt, damages, and costs be levied *de bonis testatoris, si &c., et si non*, as to the costs *de bonis propriis*: Provided that it shall be competent for the party applying to charge in his claim that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in section 143, and the provisions of section 144 shall apply to such inquiry; and the Judge or special magistrate may, if it appears that the party charged has wasted the assets, direct a levy to be made as to the debt and costs *de bonis testatoris, si, &c., et si non, de bonis propriis*.

**Defendant admitting assets and demand to pay into court**

**152.** Where a defendant admits his representative character and the plaintiff's claim, and that he is chargeable with any sum in respect of assets, he shall pay such sum into court, subject to the provisions of this Act and the rules of court relating to payment into court in other cases.

## PART VIIA

## SMALL CLAIMS

**Small claims**

**152a.** (1) A court, in hearing and determining a small claim, shall not be bound by the rules of evidence but may inform itself upon any matter relating to the claim in such manner as it thinks fit.

(2) Where a party to proceedings based upon a small claim is not represented by a legal practitioner the court shall give that party such assistance (if any) as appears necessary to ensure that his case is properly presented and in doing so the court may call such evidence, and ask such questions of the witnesses, as it thinks fit.

(3) A court may at any stage of proceedings based upon a small claim make such amendments to the statement of claim, or other pleadings, as it thinks fit.

**Right of representation**

**152b.** (1) Subject to this Part, in any proceedings based upon a small claim a party shall not be represented by a legal practitioner or an articled law clerk—

(a) unless—

(i) all parties to the proceedings agree;

and

(ii) the court is satisfied that no other party to the proceedings who is not so represented will be unfairly disadvantaged;

or

(b) unless the proceedings have been instituted or defended by the Commissioner for Prices and Consumer Affairs in pursuance of the *Prices Act, 1948-1973*.

(2) In any proceedings based upon a small claim a party may be assisted in presentation of his case by another person (not being a legal practitioner, an articled law clerk, or a person who holds legal qualifications under the laws of this State or any other place) if the court is satisfied—

(a) that the party is unable to conduct the action or proceeding properly without assistance;

(b) that the person by whom he is assisted appears without fee or reward;

and

(c) that no other party will be disadvantaged by the fact that such assistance is allowed.

(3) This section does not prevent—

(a) a body corporate from being represented by an officer or employee of the body corporate (not being a legal practitioner, an articulated law clerk or a person who holds legal qualifications under the laws of this State or any other place) authorized to conduct the proceedings on its behalf (whether or not he is remunerated by the body corporate for representing it in the proceedings);

or

(b) an interpreter from assisting a party in the presentation of his case provided that his fee does not exceed an amount fixed by the court at the hearing.

### **Settlement of proceedings**

**152c.** (1) If before or during the hearing of proceedings based upon a small claim it appears to the court either from the nature of the case or from the attitude of the parties that there is a reasonable possibility of the matters in dispute between the parties being settled by conciliation, the person constituting the court may—

(a) interview the parties in chambers (either with or without any person who may be assisting any of them in the presentation of his case);

and

(b) endeavour to bring about a settlement of the proceedings on terms that are fair to all parties.

(2) Nothing said or done in the course of any attempt to settle proceedings under this section shall subsequently be given in evidence in any proceedings nor shall the person constituting the court be thereby disqualified from sitting to continue the hearing of the proceedings if he thinks fit to do so.

(3) Where a small claim is settled under this section the court may embody the terms of the settlement in a judgment.

### **Costs**

**152d.** In any proceedings based upon a small claim, the court shall not award costs for getting up the case for trial, or by way of counsel fees, unless—

(a) all parties to the proceedings were represented by counsel;

or

(b) the court is of the opinion that there are special circumstances justifying the award of such costs.

### **Issue estoppel does not arise from small claim proceedings**

**152e.** The determination of an issue in proceedings based upon a small claim shall not estop the parties to those proceedings from litigating the same issue in other proceedings based upon a different claim.

**Certain matters not justiciable under this Part**

**152f.** (1) Where the plaintiff in an action—

(a) makes pecuniary claims (including a small claim or consisting of, or including, a number of small claims) aggregating an amount exceeding \$2 000;

or

(b) makes a small claim but also seeks relief in addition to a judgment for a pecuniary sum,

the provisions of this Part shall not apply in respect of the action.

(2) Where the plaintiff in an action makes a small claim and the defendant makes a counterclaim that is not a small claim, the court shall—

(a) order that the claim and the counterclaim be tried separately;

or

(b) where an order under paragraph (a) of this section would result in substantial inconvenience to the plaintiff, order that the action be dealt with otherwise than under this Part (and where such an order is made, the provisions of this Part shall not apply in respect of the action).

(3) Where the defendant to an action makes a counterclaim that is a small claim, the provisions of this Part shall not apply in respect of the counterclaim unless the claims made by the plaintiff are also justiciable under this Part.

**Right of appeal**

**152g.** (1) A party to proceedings based upon a small claim who is dissatisfied with a judgment given in the proceedings may, by leave of a local court of full jurisdiction, appeal to that court against the judgment.

(2) Upon the appeal, the local court of full jurisdiction may confirm, vary or quash the judgment subject to the appeal and, where it quashes the judgment, may give any judgment that should, in the opinion of the court, have been given in the first instance.

(3) Proceedings relating to an appeal under this section shall be heard and determined without unnecessary formality, and may be heard, at the discretion of the court, either in open court or in chambers.

(4) A party to an application for leave to appeal, or to an appeal, under this section may, by leave of the court to which the application or appeal is made, be represented by counsel.

(5) In this section—

"judgment" includes a determination or order.

## PART VIII

## THE ENFORCEMENT OF JUDGMENTS AND ORDERS

**Execution against goods**

**153.** (1) Subject to subsection (2) of this section, judgments and orders of any local court, Judge, or special magistrate for the payment of money—

- (a) may be enforced in case of default or failure of payment thereof forthwith, or at the time or times thereby directed, in the manner hereinafter set out; and
- (b) shall carry interest on the amount thereof for the time being remaining unpaid at the rate prescribed by rules of court from the date thereof until payment.

(2) A judgment or order of a local court, Judge or special magistrate, in so far as it provides for the payment of costs, shall not be enforced—

- (a) unless a letter setting forth the amount of the taxed costs has been served personally on the party against whom the costs were awarded;

or

- (b) unless a letter setting forth the amount of the taxed costs has been sent by post to the party against whom the costs were awarded, and the letter would, in the ordinary course of the post, have been delivered.

(3) A letter sent by post to a party in pursuance of subsection (2)(b) must be addressed to the last address of that party of which the party in whose favour the judgment or order was made has notice.

(4) In this section—

"taxed costs" means costs taxed by the clerk of a local court, a special magistrate, or a Judge.

**Judgments and orders for sums over \$40 to be enforceable by a *feri facias* or by *capius ad satisfaciendum* after return of *nulla bona***

**154.** (1) Judgments and orders of any local court, or of any Judge or special magistrate for the payment of a sum exceeding forty dollars, exclusive of costs, may be enforced in like manner as judgments and orders for the payment of any sum of money are enforceable in the Supreme Court.

(2) Warrants in the forms prescribed by rules of court shall respectively have the like force and effect as writs of *capias ad satisfaciendum* and *feri facias* in the Supreme Court.

(3) No warrant of commitment in the nature of a writ of *capias ad satisfaciendum* shall issue until after a return by the bailiff to a warrant of execution against the goods and chattels that the party against whom the warrant was issued has no goods and chattels whereof the amount by the said execution directed to be levied can be made, or that the bailiff has caused to be made a part of such amount, and that there are no further goods and chattels whereof he can cause to be made the amount required.

**Clerk to issue warrant of execution and power of bailiff thereunder**

**155.** (1) The clerk of the court, at the request of the party prosecuting a judgment or order for the payment of any sum of money, shall issue a warrant of execution to the bailiff of the court, who, by such warrant, shall be empowered to levy, or cause to be levied, by distress and sale of the goods and chattels of the party against whom the judgment or order is sought to be enforced, such sum of money as is adjudged or ordered, and also, if sought to be recovered, the interest thereon as provided by section 153, and also the costs of execution.

(2) All constables and other peace officers shall aid in the execution of every such warrant.

(3) Every warrant of execution against the goods and chattels of a party shall, while in force, authorize the bailiff to make successive levies for the amount due under the warrant, together with any additional costs incurred by such successive levies, should no sufficient goods and chattels whereof the amount by the said warrant directed to be levied can be made, or the balance thereof, be found on the occasion of the first or previous levy or levies.

**Warrant to sell**

- 156.** (1) (a) After the return by the bailiff to a warrant of execution under section 155 that the party against whom the same was issued has no goods or chattels available for the purpose of the execution, or that the bailiff has caused to be made a part of such amount, and that there are no further goods or chattels whereof he can cause to be made the amount required; or
- (b) Where, upon the application of the party prosecuting a judgment or order for the payment of any sum of money, it appears to the satisfaction of a Judge or special magistrate, by oath or otherwise, that the party against whom such judgment or order is sought to be enforced is resident outside the State of South Australia, and that there are no goods or chattels of such lastmentioned party available for the purpose of execution within the said State,

the clerk of the court, at the request of the party prosecuting the judgment or order, shall issue a warrant in the form prescribed by rules of court, and thereupon the bailiff shall make sale, and the clerk of the court shall execute a conveyance, or if the land is subject to the provisions of the *Real Property Act, 1886-1969*, a transfer, to the purchaser, of so much of all lands, tenements, and hereditaments within the said State as the person against whom execution is issued out, or any person in trust for him, was seized or possessed at the time of or after the issuing of such lastmentioned warrant, or over which such person then or at any time thereafter has any disposing power which he might, without the consent of any person, exercise for his own benefit as may be required to produce the amount by such warrant directed to be levied.

(2) No such sale shall be made until after fourteen days' notice by advertisement in the *Government Gazette* and in two newspapers published in Adelaide, the expenses of which advertisements shall be recoverable by the said bailiff, together with the other expenses incurred by him in and about such sale.

(3) In cases where a warrant of execution is issued against land under this section, the party prosecuting such warrant shall furnish the bailiff with a statement in writing containing particulars of the land to be seized under such execution.

**Warrant of possession of land**

157. A judgment for the recovery or the delivery of possession of land may be enforced by warrant of possession in such form as may be prescribed by rules of court.

**Judgment against partners, how recovered**

158. (1) Where any judgment or order is against a firm, execution may issue—

- (a) against any property of the partnership:
- (b) against the property of any person who has appeared in his own name or who has admitted in his claim, appearance, defence, counter-claim, or reply, that he is, or who has been adjudged to be, a partner.

(2) If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply upon notice to such other person to the court, Judge, or special magistrate for leave to do so.

(3) The court, Judge, or special magistrate may give such leave, if the liability is not disputed, or if such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

**Execution by a person not a party**

159. (1) Execution on any judgment may issue on behalf of any person not a party to the action, by leave of a Judge or special magistrate, upon proof of title to the benefit of the judgment, and upon substitution of the name of the new party, together with a statement of his derivative title, for that of the original party.

(2) The clerk of the court shall give notice by post of such substitution to the opposite party.

(3) Execution shall not issue on the judgment until the expiration of six clear days after the posting of the notice.

**Execution against a person not a party**

160. Execution, or other process on a judgment, shall not issue against any person not a party to the action or proceeding, except a plaint upon the judgment be entered in the nature of a *scire facias*, the proceedings in which shall be the same as in ordinary cases.

**Execution against goods of a deserting husband**

161. (1) For the purpose of realizing the amount of a judgment or order against a married woman who has been deserted by her husband, any goods and chattels which may have been left by the husband in the possession of the wife shall be deemed her separate estate.

(2) No execution against any such goods and chattels shall issue without an order of the court or a Judge or special magistrate, on proof of such desertion.

(3) In this section "deserted" means left without adequate means of support for a period of not less than six months, and "desertion" has a corresponding meaning.

**Clerk to issue process on application of party entitled to it**

**162.** The clerk of the court, on the application of any party and on payment of the fees in respect thereof, shall issue such process of attachment or execution as such party may be entitled to, and if the right thereto is dependent on the fulfilment of a condition or the happening of a contingency, the clerk shall take notice thereof, and, upon demand, issue process accordingly.

**Bailiff to perform duties of sheriff**

**163.** Save as herein excepted the bailiff of a local court shall, in respect of the process in execution of the judgments and orders of the court, have the like powers, and perform the like duties, and enjoy and suffer the like privileges and liabilities, as the sheriff in respect of the like process issuing out of the Supreme Court.

**Gaolers, peace officers, etc., to obey process of local courts**

**164.** All gaolers, peace officers, constables, and other persons shall take the like notice of, and shall do and suffer the like acts and things in obedience to and in aid of, the orders and process of a local court as of the orders and process of the Supreme Court.

**Suspension of execution in case of sickness, etc.**

**165.** (1) If it appears to the satisfaction of the court, or of a Judge, or special magistrate, by oath or otherwise, that the judgment debtor in respect of a judgment for a sum not exceeding one thousand dollars, exclusive of costs, is unable, from sickness or other sufficient cause, to pay the amount of such judgment, or any instalment thereof, if the judgment has been ordered to be paid by instalments, such court, Judge, or special magistrate may suspend or stay any judgment, order, or execution given, made, or issued in the action in which such judgment was obtained, for such time, and on such terms, as the court, Judge, or special magistrate thinks fit, and so, from time to time, until it appears, by the like proof as aforesaid, that such temporary cause of disability has ceased.

(2) The powers conferred by this section may be exercised when the judgment debt exceeds one thousand dollars, if the judgment creditor consents.

**On default of payment of any instalment execution to issue for the whole judgment**

**166.** If the court has made any order for payment of any sum of money by instalments under section 177, 179, 181 or 182 of this Act, execution shall not issue against the party until after default in payment of some instalment according to such order, and then the clerk of the court, at the request of the judgment creditor, shall issue execution for the whole of the sum of money and costs remaining unpaid, unless the court, at the time of making the said order, otherwise directs, in which case successive executions may issue.

**When specific delivery is ordered, if defendant make default, he may be distrained upon until compliance**

**167.** (1) When the court has ordered an execution to issue for the return or delivery of any specific goods or chattels, if such goods or chattels, or any part thereof, cannot be found, the bailiff of the court shall, unless the court otherwise orders, distrain the person against whom the court ordered such execution to issue by all his goods and chattels, until he delivers such chattels or goods, or, at the option of the person prosecuting such order, cause to be made of the lands, goods, and chattels of the person against whom such order was made, the assessed value or damages, or a due proportion thereof.

(2) The person prosecuting such order shall, either by the same or a separate warrant, be entitled to have made of the lands, goods, and chattels of the person against whom such order was made, the damages and costs in such action.

#### **What goods may be taken in execution**

**168.** Every bailiff or officer executing any process of execution against the goods and chattels of any person may, by virtue thereof, break open any house, room, shop, warehouse, trunk, chest, or other receptacle of such person where any of his property is suspected to be, and seize and take away any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person and his family, and the tools and implements of his trade, the whole not exceeding in value the sum of one hundred dollars, and any sewing machine, type-writing machine or mangle, the property of or under hire to such person), and may also seize and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to such person.

#### **Judgment creditor may sue upon securities seized in execution**

**169.** (1) The clerk of the court shall hold any cheques, bills of exchange, promissory notes, specialties, or other securities for money which have been so seized or taken as aforesaid as a security for the amount directed to be levied by such execution, or so much thereof as has not been otherwise levied or raised for the benefit of the person in whose favour the judgment or order was given or made.

(2) Such person may sue in the name of the person from whom such securities were seized and taken, or in the name of the person in whose name the person from whom such securities were seized and taken might have sued, for the recovery of the sum or sums made payable thereby, when the time of payment thereof has arrived.

#### **Warrants may be executed by bailiff of another court**

**170.** Any person who is in a position to cause a warrant of execution or an order of commitment to issue may, on taking out the same, require the clerk of the court to send the warrant or order to the clerk of some other court for execution by the bailiff of such court, in the first instance.

#### **No sale to be made of goods taken in execution until the expiration of five days, except in certain cases**

**171.** (1) No sale of any goods which are taken in execution, under this Act shall take place until after the expiration of five days at least next following the day on which such goods were so taken, unless such goods are of a perishable nature, or upon the request, in writing, of the party whose goods have been taken.

(2) Until such sale, the goods shall be deposited by the bailiff in fit place, or they may remain in the custody of a fit person, to be put in possession by the bailiff.

(3) No goods taken in execution under this Act shall be sold for the purposes of satisfying the warrant of execution except by auction, or in such other manner as is prescribed by rules of court.

**Execution to be superseded on payment of the sum endorsed upon the warrant, together with fees**

172. The party against whom any execution has been issued may, before an actual sale thereunder, pay or tender to the bailiff or other officer holding the warrant of execution the sum of money and costs endorsed on the warrant, or such part thereof as the person entitled thereto agrees to accept, in full satisfaction of his judgment and costs, together with the fees by this Act directed to be paid, and any other charges necessarily incurred in connection with an intended sale, whereupon the execution shall be superseded, and the lands, goods, and chattels of the said party shall be released.

**Party arrested to be discharged on payment**

173. Any person arrested or imprisoned by virtue of the local court provisions shall be entitled to be discharged out of custody on payment to the party arresting, or, if in prison, to the gaoler or keeper of the place of imprisonment where he is imprisoned, of the amount mentioned in the warrant of commitment.

**Certificate of judgment for registration in other Local Courts**

174. (1) Any person who has obtained any judgment or order in any local court for the payment of any sum of money may, if that sum or any part thereof has not been paid, obtain from the clerk of that local court a certificate of that judgment or order containing the following particulars:—

- (a) The number and year of the action in which the judgment or order was obtained:
- (b) The name, place of residence, and the occupation or description of the person in whose favour the judgment or order was made or given, or of the person to whom payment is to be made under the judgment or order:
- (c) The name and place of residence of the person ordered to pay money:
- (d) The date of the judgment or order:
- (e) The amount ordered to be paid:
- (f) The amount due and owing under the judgment or order at the time when the certificate is issued, together with particulars of that amount.

(2) The clerk of a local court shall, on application duly made in writing, and payment of the fee prescribed by rules of court, grant such a certificate under his hand and the seal of the court.

**Registration of certificate of judgment**

174a. (1) Upon production of the certificate to the clerk of any other local court, that clerk shall forthwith register the certificate by entering the particulars contained in it in a book to be kept by him, and to be called The Register of Transferred Judgments and Orders.

(2) From the date of registration the certificate shall be a record of the court in which it is registered, and shall have the same force and effect in all respects as a judgment or order of that court, and the like proceedings may be taken upon the certificate as if the judgment or order mentioned therein were a judgment or order of that court; and interest shall be payable under the certificate from the time and at the rate from and at which it is payable under the judgment or order.

\* \* \* \* \*

**Cost of proceedings in relation to certificates**

**174b.** The costs of and incidental to obtaining and registering a certificate and of any proceedings under a certificate shall be added to the amount payable under the certificate, and payment thereof shall be enforceable accordingly.

**Execution not to issue unless affidavit of liability filed**

**174c.** (1) No execution shall be issued, or other proceedings taken, upon any such certificate unless an affidavit is first filed in the local court out of which it is intended to issue the execution or take those proceedings. The affidavits shall be made by the person in whose favour the judgment or order was given or made, or by some other person cognizant of the facts of the case, and shall state that the amount, for which execution is proposed to be issued, or in respect of which other proceedings are proposed to be taken, is actually due and unpaid.

(2) No execution shall be issued for, or other proceedings taken in respect of, a larger amount than that sworn to.

**Control of Local Court over proceedings pursuant to certificate**

**174d.** The local court in which any such certificate has been registered shall, in respect of execution upon the certificate and the enforcement of the judgment or order, have the same control and jurisdiction over the judgment or order as if it were a judgment or order of that local court.

**Stay of proceedings**

**174e.** (1) The local court in which any such certificate has been registered may, on the application of any person against whom the judgment or order has been given or made, order a stay of proceedings upon that certificate.

(2) Such order may be given on such terms as to giving security or otherwise as the court thinks fit.

**Notification of proceedings upon certificate and of satisfaction of judgment**

**174f.** (1) When—

(a) any certificate of a judgment or order is registered in any local court; or

\* \* \* \* \*

(c) the local court in which any certificate is registered, or the clerk of that court is made aware of the satisfaction in whole or part of the judgment or order mentioned in the certificate,

the clerk of that court shall forthwith notify that fact in writing under seal of the court to the clerk of the court in which the judgment or order was given or made.

(2) When any judgment or order of which a certificate has been registered in any local court has been satisfied in whole or in part, the clerk of the court in which the judgment or order was given or made shall forthwith, upon such satisfaction being made or notified, as the case may be, enter such satisfaction in writing under the seal of the court to the clerk of every other court in which a certificate of the judgment has been registered, and such satisfaction shall thereupon be entered upon every such certificate.

(3) The clerk of a local court in which a certificate has been registered shall, on request by or on behalf of either party, forward to the clerk of the court in which the judgment or order was given or made, particulars of the processes, if any, issued upon such certificate.

(4) No proceeding shall be taken in any local court (except the issue of a further certificate of judgment) for the enforcement of any judgment or order given or made therein of which a certificate has been registered in any other local court unless—

- (a) a notification under subsection (3) of this section under the seal of the court in which the certificate was registered has first been received by the clerk of the court; and
- (b) an affidavit is first filed in the local court in which the judgment or order was given or made. The affidavit shall be made by the person in whose favour the judgment or order was given or made or by some other person cognizant of the facts of the case and shall state that the amount for which execution is proposed to be issued or in respect of which other proceedings are proposed to be taken, is actually due and unpaid. No execution shall be issued for or other proceedings taken in respect of a larger amount than that sworn to.

#### **Exercise of jurisdiction relating to certificates**

**174g.** The jurisdiction conferred on a local court by the last preceding seven sections shall be exercised in Chambers by a Judge or special magistrate.

#### **Fees and costs**

**174h.** The fees payable to any local court and the costs to be allowed and paid in relation to obtaining, registering, and taking proceedings under any certificate of a judgment or order shall be as prescribed by rules of court.

#### **Summons on unsatisfied judgment**

**175.** (1) Any person who has obtained any judgment or order in a local court for the payment of any sum of money, or who has obtained any judgment, decree, or order of the Supreme Court, or any court of competent jurisdiction, for the payment of any sum of money, which said sum has not been paid, may cause an unsatisfied judgment summons to be issued directed to the other party to the action.

- (2) Such summons shall be issued—
  - (a) in the case of the judgment or order of a local court, from the court in which the judgment or order was obtained or made, or from any local court (having jurisdiction to the amount claimed) situated not more than one mile further from the place where the person to whom it is directed resides or carries on his business at the time of such issue than the local court nearest to such place or from the local court nearest to such place;
  - (b) in the case of a judgment, decree, or order of the Supreme Court or any court of competent jurisdiction, not being a local court, from any local court situated not more than one mile further from the place where the person to whom it is directed resides or carries on his business at the time of such issue than the local court nearest to such place, or from the local court nearest to such place, or, by order of a Judge or special magistrate.

Where a defendant against whom an unsatisfied judgment summons has been issued and served does not object to the jurisdiction of the court from which it was issued before any order is made in respect of the said unsatisfied judgment summons the jurisdiction of the said local court shall not thereafter be questioned in any proceedings on any ground based on this subsection.

(2a) For the purposes of subsection (2), a company shall be deemed to reside at the place where its registered office is situated.

(3) Subject to subsection (3a), the summons shall—

(a) be in the form prescribed by rules of court;

and

(b) shall require—

(i) in the case of a summons issued against a natural person—that person to attend the court for examination;

or

(ii) in the case of a summons issued against a company—a director, secretary or other officer of the company named in the summons (the "company representative") to attend the court for examination,

at a time fixed in the summons.

(3a) The form of summons prescribed by rules of court pursuant to subsection (3)(a) must include a statement that sets out a summary of the procedures available under this Act for applying to set aside a judgment, decree or order obtained under this Act.

(4) The summons shall be served by a bailiff, unless authority is obtained from a Judge or special magistrate for service by some other person.

(4a) The summons shall be served personally—

(a) where it is issued against a natural person—upon that person;

or

(b) where it is issued against a company—upon the company representative named in the summons.

(4b) A summons served under this section on a company representative shall be deemed to have been served on the relevant company.

(5) The costs of and incidental to such summons and the proceedings in relation thereto shall be costs in the action.

(6) In this section and the succeeding provisions of this Part—

"company" means any body corporate:

"company representative" means the director, secretary or other officer of a company named in a summons issued against a company under this section:

"officer" of a company means officer as defined in the *Companies Act, 1962-1981*.

### **Unsatisfied judgment summons against partners**

**176.** (1) Where a judgment, decree, or order is against a firm, or is against a person carrying on business in any name other than his own in such other name, and the person entitled to enforce the judgment, decree, or order, desires to do so by unsatisfied judgment summons against any person whom he alleges to be liable under the judgment, decree, or order as a partner in, or sole member of, the firm, or as the person carrying on business in such other name as aforesaid, he shall file an affidavit, together with a copy thereof, according to the form prescribed by rules of court, and thereupon may cause an unsatisfied judgment summons to issue according to the form prescribed by rules of court, directed to the person alleged to be liable, as aforesaid, and there shall be annexed to such unsatisfied judgment summons, and served therewith, a copy of such affidavit, sealed with the seal of the court.

(2) No such unsatisfied judgment summons shall be issued, except by leave of a Judge or special magistrate (which leave may be obtained without notice to the person against whom it is sought to issue it), out of any local court that is situated further by more than one mile from the place where the defendant at the time of such issue resides or carries on business than is the local court nearest to such place.

(3) If such person does not attend on the return day of such unsatisfied judgment summons he shall be deemed to admit his liability, as a partner in or sole member of the firm, or as the person carrying on business in such other name as aforesaid, to pay the amount due and payable under the judgment order. But if he attends and denies his liability the court may decide the question on the evidence then before it, or may order the question to be tried and determined in an action to be commenced by claim and summons in the ordinary way, and after he has been held or is deemed to be liable he shall be a party to the action in which the unsatisfied judgment summons was issued.

### **Examination in unsatisfied judgment summons proceedings**

**177.** (1) At the hearing of an unsatisfied judgment summons issued against a natural person—

(a) the party summoned may be examined upon oath touching his estate and effects, and whether any and what debts are owing or accruing due to him, and the manner and circumstances under which he contracted the debt, or incurred the damage or liability, which is the subject of the action in which judgment has been obtained against him, and as to the means and expectations he then had, and as to the property and means he still has, of discharging the said debt or damage or liability, and as to the disposal he may have made of any property, and as to the whereabouts of any chattel detained or specific goods ordered to be delivered, and upon such other matters as are prescribed by rules of court or are specified in the summons;

(b) the court may hear such evidence in relation to the said matters as it thinks fit; and

(c) the court may order the party summoned to pay the judgment debt at such time or in such instalments as it thinks fit.

(2) At the hearing of an unsatisfied judgment summons issued against a company—

(a) the company representative may be examined on oath as to—

(i) the assets and liabilities of the company;

(ii) any transactions or dealings of the company that may have affected its assets or liabilities;

and

(iii) any other matters relevant to the satisfaction of the judgment;

(b) the court may hear such evidence in relation to the matters referred to in paragraph (a) as it thinks fit;

(c) the court may order the company representative to apply moneys or property of the company (being moneys or property in the possession or control of the company representative) in or towards satisfaction of the judgment debt or to take other steps specified by the court with a view to securing satisfaction of the judgment debt;

(d) the court may order the company to pay the judgment debt at such time or in such instalments as it thinks fit.

(3) An order under subsection (2)(c) does not operate so as to make a company representative personally liable for a judgment debt of the company.

#### **Power to commit to gaol**

**178.** (1) Where, in proceedings upon an unsatisfied judgment summons issued against a natural person, the person summoned attends and—

(a) refuses to be sworn; or

(b) refuses to disclose any of the matters mentioned in section 177; or

(c) does not make answer touching the same to the satisfaction of the court; or

(d) it appears to the court that he has wilfully contracted or incurred the debt or liability which is the subject of the action in which the judgment, decree, or order has been obtained under false pretences or by means of fraud or breach of trust, or has wilfully contracted or incurred such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same; or

(e) it appears to the court that he has made, or caused to be made, any gift, delivery, or transfer of any property, or has charged, removed, or concealed the same, with intent to defraud his creditors, or any of them; or

- (f) it appears to the court that he has then, or has had since the judgment, decree, or order obtained against him, sufficient means and ability to pay the sum of money which he is liable to pay or a part thereof and has neglected to pay such sum or part; or
- (g) it appears that he has neglected to pay any of the instalments ordered by the court to be paid as herein provided; or
- (h) it appears that he has neglected to comply with an order of a local court to return any chattel detained or to deliver specific goods; or
- (i) it appears to the court that he has failed without reasonable cause to comply with any order made by the court for payment,

the court may order that he be committed to a gaol or other proper place of imprisonment, to be named in such order, for any period not exceeding forty days.

(2) Where, in proceedings upon an unsatisfied judgment summons issued against a company, the company representative attends and—

- (a) refuses to be sworn;
- (b) refuses to answer questions relevant to the examination or does not answer such questions to the satisfaction of the court;

or

- (c) it appears to the court that the company representative has failed, without reasonable cause, to comply with an order under section 177(2)(c),

the court may order that he be committed to a gaol or other proper place of imprisonment named in the order for a period not exceeding forty days.

**Procedure where party summoned or company representative does not attend**

**179.** If the party summoned or, in the case of an unsatisfied judgment summons issued against a company, the company representative does not attend as required by the summons the court—

- (a) may order that for such failure to attend he be committed to a gaol or other place of imprisonment to be named in such order for any period not exceeding forty days, if there is no other court having jurisdiction nearer by at least one mile to the place where the party summoned resides or carries on business at the time of the issue of the summons than the local court nearest to such place; and
- (b) may proceed to hear and determine the proceedings in the absence of the party or company representative.

**Warrant of commitment**

**180.** (1) No order for commitment made on the hearing of an unsatisfied judgment summons need be drawn up or served.

(2) The issue of a warrant pursuant to such order may be suspended for such time and subject to such conditions as to payment of instalments or otherwise as the court thinks proper, and the warrant shall not issue unless and until the clerk of the court is satisfied that such suspension has ceased.

(3) By leave of a Judge or special magistrate (which may be granted on an *ex parte* application) a warrant may be issued pursuant to such order for commitment notwithstanding that after the making of the order money has been paid on account of the judgment debt.

#### **Date of warrant of commitment**

(4) Every warrant of commitment issued out of a local court shall, on whatever day it may be issued, bear the date of the day on which the order for commitment was made or on which the suspension of the issue of such warrant ceased, and shall continue in force for one year from such date.

#### **Imprisonment not to satisfy or extinguish judgment**

(5) No imprisonment under the local court provisions and no order made on the hearing of an unsatisfied judgment summons shall operate as a satisfaction or extinguishment of the judgment, decree, or order in respect of which the judgment debtor was liable, or protect the judgment debtor from being again summoned and imprisoned for any new fraud or default rendering him liable to be imprisoned under the local court provisions, or deprive the judgment creditor of any right to take out execution against the goods and chattels of the judgment debtor in the same manner as if such imprisonment or order had not taken place or been made.

#### **Compensation in vexatious cases**

**181.** (1) Any local court before which any unsatisfied judgment summons is heard may, without prejudice to the exercise of any of its other powers, rescind or alter any order previously made against the judgment debtor for the payment, by instalments or otherwise, of any judgment debt, and may make any further or other order for the payment of the judgment debt either forthwith, or by any instalments, or in any other manner which may appear just.

#### **Compensation in vexatious cases**

(2) If the court before which any such summons is heard is of opinion that the judgment debtor has been brought to the place where the court is held vexatiously and oppressively, or if the judgment creditor fails to attend on the hearing of the summons, the court may order the judgment creditor to pay to the judgment debtor, by way of compensation, such sum, not exceeding one hundred dollars, as it may think fit, and payment of such sum may be enforced in like manner as a judgment given for a defendant on the hearing of an action: Provided that the judgment debtor may, notwithstanding any such order, be examined by the court as to the matters set out in section 177 and the court may thereupon make any such order against him as it is authorized by section 177 or section 178 to make.

#### **Power to examine and commit at hearing of action**

**182.** When any party to an action personally attends at the trial of the action and judgment is subsequently given against him, the court, at the hearing of the action, or at any adjournment thereof, shall have the same power and authority to examine such party, and the opposite party, and other persons touching the matters referred to in section 177, and of commitment and of making an order, as the court would have under the provisions hereinbefore contained in case the judgment creditor had obtained a summons on an unsatisfied judgment.

**Warrants of commitment to be issued to bailiff**

**183.** (1) Whenever any order of commitment has been made against a judgment debtor or company representative, the clerk of the court shall, if the party prosecuting the order so requires, issue a warrant of commitment, in the form prescribed by rules of court, under his hand and the seal of the court, directed to the bailiff of his court, and to the bailiffs of all other local courts, who by such warrant shall be empowered to take the body of the person against whom such order is made.

(2) All constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant, and the gaoler or keeper of every gaol, prison, or other place of imprisonment mentioned in any such order shall be bound to receive and keep therein the person against whom such order is made until discharged in due course of law.

**Imprisonment under warrants**

**183a.** A warrant of commitment, notwithstanding that it is addressed to the keeper of a gaol named in the warrant, shall be deemed to be lawfully executed if the person thereby ordered to be imprisoned is taken and conveyed to any other gaol and kept there for the period and subject to the conditions mentioned in the warrant; and the keeper of any gaol to which the said person is so conveyed shall have the like powers, duties, and authorities under the warrant as if that gaol were the gaol named in the warrant, and the warrant had been addressed to him.

**Attachment of debts**

**184.** Where any party (hereinafter called the judgment creditor) has obtained any judgment or order for the recovery or payment of money, a Judge or special magistrate may, at any time, upon the *ex parte* application of the judgment creditor and upon affidavit by him or his solicitor stating that the judgment has been obtained or the order made and that it is still unsatisfied, and to what amount, and that any third person is indebted to the person liable under such judgment or order (hereinafter called the judgment debtor), and is within the State—

- (a) order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment or order, together with the costs of the garnishee proceedings; and
- (b) order, either at the same time or later, that the garnishee shall appear before the court or a Judge or special magistrate to show cause why he should not pay to the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs aforesaid.

**Garnishee order may be made on a trial or on hearing of judgment summons**

**185.** (1) In any case where the judgment debtor has been orally examined by the court at the trial, or on the hearing of an unsatisfied judgment summons, the court may make any order which might have been made upon the *ex parte* application of the judgment creditor under section 184.

(2) It shall not in any such case be necessary for the judgment creditor or his solicitor to make any such affidavit as mentioned in the said section if the facts which the said section requires to be stated upon affidavit are sufficiently proved by evidence at such trial or hearing.

**Service of order binds debts**

**186.** Service of an order that debts, due or accruing to a debtor liable under a judgment or order for the recovery or payment of money, shall be attached, shall bind such debts in his hands, on notice thereof being given to the garnishee in such manner as the court, Judge, or special magistrate directs.

**If garnishee does not pay or dispute claim, execution may issue**

**187.** If the garnishee—

- (a) does not forthwith pay into court the amount due from him to the judgment debtor, or an amount equal to that of the judgment or order, and does not dispute the debt due or claimed to be due from him to the judgment debtor; or
- (b) does not appear pursuant to an order made under section 184,

then the court, Judge, or special magistrate may order execution to issue, and it may issue accordingly, without any previous summons or process, to levy the amount due from such garnishee or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

**If garnishee disputes liability, question may be tried**

**188.** If the garnishee disputes his liability, the court, Judge, or special magistrate, instead of making an order that execution shall issue, may order that any issue or question necessary for determining the garnishee's liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

**Third party, having alleged lien, may be summoned**

**189.** Whenever in proceedings to obtain an attachment of debt it is claimed by the garnishee that the debt sought to be attached is due to a third person, or that a third person has a lien or charge upon it, the court, Judge, or special magistrate may order such third person to appear and state the nature and particulars of his lien or claim (if any) upon or to such debt.

**On trial court may disallow, or allow lien, or order execution to issue**

**190.** (1) After hearing the evidence of any such third person, and of any other person whom the court, Judge, or special magistrate, at the same time or later, may order to appear, the court, Judge, or special magistrate may—

- (a) order execution to issue to levy the amount due from such garnishee, together with the costs of the garnishee proceedings, and of any issue or question of the garnishee's liability tried or determined under this Act, and bar the claim of such third person; or
- (b) make such other order as the court, Judge, or special magistrate thinks fit;

upon such terms with respect to the lien or charge (if any) of such third person, and to costs, as the court, Judge, or special magistrate thinks fit.

(2) The court, Judge, or special magistrate may also make any such order if such third party fails to appear as required by the order.

**Payment by garnishee discharged his debt *pro tanto***

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

**Debts attachment book to be kept**

**192.** (1) The clerk of the court shall keep a debts attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates and statements of the amount recovered, and otherwise.

(2) Copies of any entries made in the debts attachment book may be taken by any person upon application to the clerk of the court.

**Jurisdiction and costs determined by amount of garnishee's debt**

**193.** (1) The costs of any application for an attachment of debts, and of any proceeding arising from or incidental to any such application and the jurisdiction of the court to try the question of the garnishee's liability in case he disputes the claim, shall be regulated and determined by the amount of the debt alleged to be due by the garnishee.

(2) The court, Judge, or special magistrate hearing any such application or proceeding may make any order as to such costs as it or he may think fit.

**Provision for landlord in case of rent in arrear**

**194.** (1) Section one of the Act of the eighth year of the reign of Queen Anne, chapter fourteen, shall not apply to goods taken in execution under the warrant of a local court; but the landlord of any premises in which any such goods have been so taken may claim the rent thereof at any time within five clear days from the date of such taking, or before the removal of the goods, by delivering to the bailiff or officer making the levy a memorandum in writing, signed by himself or his agent, stating the amount of rent claimed to be in arrear, and the period in respect of which such rent is due.

(2) The bailiff shall forthwith forward by post or otherwise, a copy of such memorandum to the execution creditor; and the bailiff or officer making the levy shall, in addition thereto, distrain for the rent so claimed, and the costs of such distress; and shall not within five days next after such distress sell any part of the goods taken unless they are of a perishable nature, or upon the request in writing of the party whose goods have been taken.

(3) The bailiff shall afterwards sell sufficient of the goods under the execution and distress to satisfy—

- (a) the expenses of and incidental to the sale;
- (b) the claim of the landlord, not exceeding four weeks' rent where the premises are let by the week, the rent of two terms of payment where the premises are let for any other term less than a year, and the rent of one year in any other case; and
- (c) the amount for which the warrant issued.

(4) If any replevin is made of the goods so taken the bailiff shall, notwithstanding, sell such portion thereof as will satisfy the costs of and incident to the sale under the execution and the amount for which the warrant issued.

(5) In either event, the overplus of the sale, if any, and the remainder of the goods, shall be returned to the judgment debtor.

(6) The poundage of the bailiff for keeping possession and sale under such distress shall be the same as would have been payable if the distress had been an execution of a local court, and no other fees shall be demanded or taken in respect thereof.

(7) If the goods taken in execution and distress appear to the bailiff to be insufficient, or not more than sufficient, to satisfy the distress and the costs thereof, he shall go out of possession without making any sale, removal, or disposition thereof.

**Effect of return of "no effects"**

**195.** (1) Where a party against whom a warrant of execution has been issued has no goods and chattels available for the purpose of the execution, that fact shall be sufficiently indicated in the return to the warrant by the words "no effects".

(2) The entry in the record book kept under section 26 of the words "no effects" as the return to a warrant of execution means that the party against whom such warrant has been issued has no goods or chattels available for the purpose of the execution.

**Judgment of local courts may be removed into Supreme Court in certain cases and matters incidental to such removal**

**196.** (1) Notwithstanding anything in this Act, it shall be lawful for the Supreme Court or any Judge thereof, on the application of any person who has obtained a judgment in a local court for an amount exceeding three hundred dollars, exclusive of costs, which judgment still remains unsatisfied, to order that such judgment be removed into the Supreme Court. Such order shall have the effect of a writ of *certiorari*, and the return shall be made thereto by the clerk of the court by transmitting a true copy of so much of the record book of the local court as relates to such judgment, certified under the seal of such local court and the hand of the clerk. Such return shall be in the form prescribed by rules of court.

(2) Such order may be made *ex parte*, but shall not be made if the Supreme Court or a Judge thereof is of opinion that, owing to the smallness of the amount of the judgment or the cost of proceeding thereon when removed into the Supreme Court, the removal would be worthless or vexatious.

(3) The costs of and incidental to the said application and the removal may be ordered to be paid by the party against whom the judgment has been given, and when so ordered to be paid shall be taxed by the Master of the Supreme Court, and shall be added to the amount of the judgment.

(4) Upon the return to such order, the party desirous of suing out execution shall cause to be entered up a judgment, as of the Supreme Court, which may be in the form prescribed by rules of court, and such judgment shall be signed and have the same effect as an ordinary judgment of the Supreme Court, and all proceedings may be had thereupon accordingly.

## PART IX

## INTERPLEADER SUMMONSES

**Bailiffs may interplead where claims as to goods taken in execution are made**

**197.** (1) If any claim is made by any person to or in respect of any goods or chattels taken in execution under the process of a local court, or in respect of the proceeds or value thereof, the clerk of the court, upon the application of the bailiff, as well before as after any action brought against the bailiff, may issue a summons calling before the court as well the party issuing such process as the party making such claim.

(2) The court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to it seems fit; and shall also adjudicate between such parties, or either of them, and the bailiff, with respect to any damage or claim to damages arising or capable of arising out of the execution of such process by the bailiff, and make such order in respect thereof, and of the cost of the proceedings, as the court thinks fit; and may, if it thinks fit, order the costs of the interpleader to be paid by one party, and the costs arising out of any claim for damages to be paid by the other party.

(3) Such order shall be enforced in like manner as any order in any action brought in the court, and shall be final and conclusive as between the parties, and as between them, or either of them, and the bailiff, unless the decision of the court is in either case appealed from.

(4) Upon the issue of the summons any action which has been brought in any court in respect of such claim, or of any damage arising out of the execution of such process, shall be stayed.

**Claims to goods taken in execution may be made by telegram**

**198.** All claims mentioned in the last preceding section to or in respect of any goods or chattels taken in execution may be made by telegram, and the delivery of the telegram to the bailiff shall be held equivalent to the delivery of the signed copy thereof lodged in the telegraph office.

**Claimant must deposit the value of the goods, or pay cost of keeping possession, otherwise goods to be sold**

**199.** (1) Where any claim is made under section 197, the claimant may deposit with the bailiff either the amount of the value of the goods claimed, to be fixed by appraisalment in case of dispute, to be by such bailiff paid into court, to abide the decision of the court upon such claim, or the sum which the bailiff is allowed to charge as costs for keeping possession of such goods, until such decision can be obtained.

(2) In default of the claimant so doing, the bailiff shall sell such goods as if no such claim had been made, and shall pay into court the proceeds of such sale, to abide the decision of the court.

**Deposits to bailiffs of country local courts may be made to the clerk of a local court within the City of Adelaide**

**200.** All deposits mentioned in the last preceding section required to be made with the bailiff of any local court outside the City of Adelaide may be made with the clerk of a local court within the City of Adelaide, and the said clerk shall, if required, forthwith forward a telegram or certificate to the said bailiff stating that such deposit has been made.

**Proceedings in case of claim to goods seized in execution**

**201.** (1) Where any claim is made to or in respect of any goods and chattels taken in execution under the process of any local court, or in respect of the proceeds or value thereof, and summonses have been issued on the application of the bailiff, such summonses shall be served at such time and in such manner as an ordinary summons under this Act, and the case shall proceed as if the claimant were the plaintiff and the execution creditor the defendant.

(2) The claimant shall, five clear days before the day on which the summonses are returnable, leave with the clerk of the court a memorandum in writing containing particulars of any goods or chattels alleged to be the property of the claimant and of the grounds of his claim, or in the case of a claim for rent, of the amount thereof and for what period and in respect of what premises the rent is claimed to be due, and how and when the rent is payable, and the name, address, and description of the claimant shall be fully set forth in such particulars.

(3) Any money paid into court under the execution shall be retained by the clerk of the court until the claim has been adjudicated upon.

(4) By consent an interpleader claim may be tried notwithstanding that this section has not been complied with.

**Withdrawal by claimant and admission of title by execution creditor**

**202.** If before the return day of the interpleader summons the claimant files a notice that he withdraws his claim and at the same time gives notice of such withdrawal to the execution creditor, or if the execution creditor files an admission of the title of the claimant and at the same time gives notice of such admission to the claimant, the goods and chattels taken in execution, or the proceeds of sale thereof, or the money paid into court (as the case may be), shall be dealt with and disposed of as if such claim had not been made, or as if such execution had been withdrawn (as the case may be), but a Judge or special magistrate may, in and for the purposes of the interpleader proceedings, make all such orders as to costs, charges, and expenses as may be just.

**On admission of title by execution creditor order protecting bailiff may be made**

**203.** (1) Where any execution creditor gives notice, pursuant to the preceding section, or to the bailiff, that he admits the title of the claimant to the goods and chattels, or requests the bailiff to withdraw from possession, the bailiff may thereupon withdraw from possession and may apply to a Judge or special magistrate for an order protecting him from any action in respect of the seizure and possession of the said goods and chattels, and the Judge or special magistrate may make any such order as may be just and reasonable in respect of the same.

(2) Any such application shall be in writing and intitled in the matter of the execution, and three clear days' notice in writing thereof shall be given by the bailiff to the claimant, who may, if he so desires, attend the hearing of the application, and the Judge or special magistrate may, if he attends, make all such orders as to costs as may be just.

**Claimant to give particulars of his claim for damages**

**204.** Where the claimant to goods taken in execution claims damages from the execution creditor or from the bailiff for or in respect to the seizure of goods, he shall, in the particulars of his claim to the goods, state the amount he claims for damages, and the grounds upon which he claims damages.

**Execution creditor to give notice of claim for damages**

**205.** Where an execution creditor claims damages against the bailiff arising out of the execution of any process, he shall deliver to the bailiff a notice of such claim, stating the grounds for and the amount of such claim.

**Execution creditor or bailiff may pay money into court**

**206.** (1) Where a claim for damages under section 197 is made against any bailiff and execution creditor, or either of them, they or either of them may pay into court money in full satisfaction of such claim.

(2) Such payment into court shall be made in the same manner and have the same effect as if, and the parties respectively shall have the same rights and remedies as they would respectively have had if, the proceeding had been an action under this Act in which the claimant was plaintiff and the bailiff and judgment creditor defendants.

**From what court interpleader summonses to issue**

**207.** Interpleader summonses shall be issued from, and the execution creditor and claimant be summoned to, the local court nearest to which the execution was levied.

**Interpleader in action by assignee or in action for debt, etc., where conflicting claims exist**

**208.** Where the defendant in an action brought by the assignee of a debt or chose in action has had notice that the assignment is disputed as to the whole or part of such chose in action by the assignor, or anyone claiming under him, or where the defendant in any such action for any debt, chose in action, money, goods, or chattels, has had notice of any other opposing or conflicting claim to the whole or any part of such debt, chose in action, money, goods, or chattels, such defendant may, within five days of the service of the summons upon him, apply to a Judge or special magistrate for a summons against the assignor or the person making such opposing or conflicting claim (hereinafter called the claimant).

**Judge or S.M. to be satisfied that defendant claims no interest and does not collude**

**209.** (1) The defendant shall satisfy the Judge or special magistrate by affidavit that he claims no interest in the subject matter in dispute other than for charges or costs, and does not collude with either the plaintiff or the claimant, and is willing to pay or transfer the subject matter into court, or dispose of it as the court may direct.

(2) On filing such affidavit the defendant shall lodge with the clerk of the court copies thereof for the plaintiff and the claimant.

**Absence of common origin of title not to disentitle defendant to relief**

**210.** The defendant shall not be disentitled to relief by reason only that the titles of the plaintiff and the claimant have not a common origin, but are adverse to and independent of each other.

**Interpleader summons to issue**

**211.** (1) The Judge or special magistrate on being satisfied as aforesaid shall—

- (a) direct an interpleader summons to issue for service on the claimant, returnable as soon as conveniently may be; and
- (b) adjourn the trial of the action to the day on which the interpleader summons is made returnable.

(2) The clerk of the court shall thereupon give notice to the plaintiff and to the defendant of the adjournment of the trial of the action and of the issue of the interpleader summons.

(3) The interpleader summons may be served in the same manner as an ordinary summons under this Act, but there shall be annexed thereto a copy of the summons and of the claim in the action.

**Claimant to furnish particulars**

**212.** (1) The claimant shall, five clear days before the return day of the interpleader summons, leave at the office of the clerk of the court three copies of a notice that he relinquishes his claim, or three copies of a memorandum in writing stating the grounds on which he disputes the assignment or founds his claim to the subject matter of the action.

(2) The clerk of the court shall forthwith send by post one of such copies to the plaintiff, and one other of such copies to the defendant.

(3) By consent of all parties, or without such consent if the court so directs, the interpleader may be tried notwithstanding that this section has not been complied with.

**Payment into court by defendant**

**213.** On filing his affidavit, or at any time after the issue of the interpleader summons, the defendant may pay the debt or money or bring the chose in action, goods, or chattels into court to abide the decision of the court.

**Interpleader, how disposed of**

**214.** Upon the return day of the interpleader summons, or any adjournment thereof—

- (a) if the plaintiff does not appear the interpleader summons shall be struck out and the action dealt with in the ordinary way, and the court may make such order as to costs as may be just:
- (b) if the claimant does not appear, the court shall hear and determine the action as between the plaintiff and the defendant, and may make an order declaring the claimant and all persons claiming under him for ever barred against the defendant and all persons claiming under him, and may make such order as to costs against the claimant as may be just, but the order shall not affect the rights of the plaintiff and the claimant between themselves; or if the claimant has filed a notice that he relinquishes his claim, the court may make an order declaring him and all persons claiming under him for ever barred against both the plaintiff and the defendant, and all persons claiming under them, and may make such order against the claimant as to costs incurred by the other parties before the receipt of notice of relinquishment as may be just:
- (c) if both the plaintiff and the claimant appear, the court shall, whether the defendant does or does not appear, hear the cases of the plaintiff and the claimant (and the case of the defendant, if he appears), and shall give such judgment thereon as will finally determine the rights and claims of all parties; but the court shall not make any order in favour of the claimant against the defendant unless the claimant requests it to do so.

**Costs and other incidental matters**

**215.** (1) The court, Judge, or special magistrate, as the case may be, may in and for the purpose of any proceedings under this Part make all such orders as to costs and all other matters (including the repayment to the defendant of any costs paid by him into court, and the disposal of any money, chose in action, goods, or chattels paid or brought by the defendant into court) as may be just and reasonable.

(2) Any such order may be enforced in the same manner as any order in any action brought in such court.

## PART X

## THE RECOVERY OF PREMISES

**Proceedings for recovery of premises and rent**

**216.** (1) The landlord of any premises the rent of which is not at a greater rate than six thousand dollars a year may file a claim for the recovery of the premises and for rent and mesne profits in respect of the same in the local court of full jurisdiction nearest to which the premises are situated, against the tenant or any person holding or claiming by, through, or under him, if the term or interest of such tenant has expired or been determined by legal notice to quit and the tenant or such person refuses or neglects to deliver up possession.

(2) The claim shall state, in accordance with the circumstances—

- (a) the name of the landlord and, if his title has accrued since the letting of the premises, particulars of such title:
- (b) the situation and rent of the premises:
- (c) the name of the tenant and the nature of the tenancy:
- (d) whether the person sued is the tenant, or the person holding or claiming by, through, or under the tenant:
- (e) the date on and the manner in which the tenancy expired or was determined, or on which the notice to quit was given, and whether such notice was oral or in writing:
- (f) that the person sued refuses or neglects to deliver up possession:
- (g) the amount of rent and mesne profits claimed, and the date up to which they are claimed:
- (h) whether the landlord claims possession forthwith, or on some future day.

**Clerk of court to enter in plaint book particulars and to issue summons**

**217.** The clerk of the court shall—

- (a) enter such claim with the relevant particulars in the plaint book in the same way as if it were a claim in a personal action; and
- (b) issue a summons requiring the defendant to enter an appearance within twelve days after the service of the summons.

**How summons to be served**

**218.** (1) A summons for the recovery of premises may be served in the same way as an ordinary summons is served under this Act.

(2) If the defendant's whereabouts is not known, a copy of the summons may be posted on some conspicuous part of the premises sought to be recovered and the posting of the copy shall be deemed to be good service on the defendant.

**Sub-tenant served with summons to give notice to his immediate landlord, who may come in and defend**

**219.** (1) Where any summons for the recovery of premises is served on, or comes to the knowledge of, any sub-tenant of the plaintiff's immediate tenant, and such sub-tenant is an occupier of the whole or a part of the premises sought to be recovered, such sub-tenant shall forthwith give notice thereof to his immediate landlord, under penalty of forfeiting to such landlord three years' rack rent of the premises held by such sub-tenant, to be recovered by such landlord by action in the court from which such summons was issued.

(2) Such landlord, on receipt of such notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question.

**Procedure applicable to actions under this Part**

**220.** (1) The provisions of Part VII relating to appearance, defence, signing judgment and confession of judgment and such other provisions of this Act as relate to the rights, powers, duties and liabilities of parties to a personal action and of the court and officers thereof and to procedure, so far as they are applicable, shall apply, *mutatis mutandis*, to all actions under this Part.

(2) If the defendant limits his appearance to part only of the claim, the plaintiff shall have an order or judgment for such part of his claim as is not disputed.

**Court may fix day for recovery of possession, and may enter judgment for mesne profits, rents and costs**

**221.** (1) On the hearing of the summons the court may—

- (a) order that the defendant shall give possession of the premises, either forthwith or on or before such day as the court fixes; and
- (b) enter judgment for the amount of mesne profits and rent claimed; and
- (c) make such other order, either as to costs or otherwise, as it thinks fit.

(2) If the defendant does not attend upon the hearing the court may make an order or enter judgment as aforesaid without any proof of the allegations in the claim, notwithstanding that an appearance may have been filed.

**Judgment for plaintiff by default**

**222.** If the plaintiff has an order or judgment in default of appearance or in the event of limited appearance as aforesaid, such order or judgment shall have the same effect as if made by the court after a hearing.

**Order need not be drawn up, but warrant may issue if order not obeyed**

**223.** (1) No order or judgment under this Part need be drawn up or served on the opposite party.

(2) If any order or judgment under this Part is not obeyed, the clerk of the court shall, at the request of the plaintiff, issue a warrant authorizing and requiring the bailiff of the court to give possession of the premises to the plaintiff.

(2a) At the election of the plaintiff, either one or several warrants of execution may be issued under this section for recovery of possession of premises, and for the amount awarded in respect of claims properly joined, and costs.

(3) The plaintiff shall, from the time of the execution of any such warrant, hold the premises discharged of the tenancy, and the defendant and all persons claiming by, through, or under him shall be barred from all relief.

**Warrant a justification to bailiff for entering premises**

**224.** Any warrant to a bailiff to give possession of premises shall justify the bailiff named therein in entering upon the premises named therein, with such assistants as he deems necessary, and in giving possession accordingly; but no entry upon any such warrant shall be made except between the hours of nine o'clock in the morning and four o'clock in the afternoon.

**Warrants to be in force for three months**

**225.** Every such warrant shall, on whatever day it may be issued, bear the date of the day next after the last day for the delivery of the possession of the premises in question, and shall continue in force for three months from such date.

**Judges, magistrates, clerks, bailiffs, and other officers not liable to action on account of proceedings taken**

**226.** No proceeding, whether civil or criminal, shall be brought against a Judge, special magistrate, or justice, or against the clerk of the court by whom such warrant as aforesaid was issued, or against any bailiff or other person by whom such warrant may be executed, for issuing such warrant or executing the same respectively, by reason of the fact that the person on whose application the warrant was issued had not lawful right to the possession of the premises.

**When landlord has lawful title, he shall not be deemed a trespasser by reason of irregularity**

**227.** (1) Where the landlord, at the time of applying for such warrant as aforesaid, had lawful right to the possession of the premises, neither the said landlord nor any other person acting in his behalf shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding under this Act for the recovery of the premises.

(2) The party aggrieved may, if he thinks fit, bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially claimed, and may recover full satisfaction for such special damage, with costs.

(3) If the special damage so claimed is not proved, the defendant shall be entitled to a verdict, and if proved, but assessed at any sum not exceeding fifty cents, the plaintiff shall recover no more costs than damages, unless the court by which the action was heard certifies that full costs ought to be allowed.

**Proceedings for recovery of premises where rent is one-half year in arrears**

**228.** (1) The landlord of any premises the rent of which is not at a greater rate than six thousand dollars a year and who has the right to re-enter the premises for the non-payment of one half-year's rent—

- (a) may, without any formal demand or re-entry, file a claim against the tenant for the recovery of the premises in the local court of full jurisdiction nearest to which they are situated; and

(b) shall therein allege such of the matters mentioned in subsection (6) hereof as are applicable.

(2) The clerk of the court shall—

(a) enter such claim with the relevant particulars in the plaint book in the same way as if it were a claim in a personal action; and

(b) issue a summons to the defendant calling upon him to show cause, on a day to be fixed in the summons, why an order should not be made in terms of the claim.

(3) Such summons shall be served at least ten days before the day on which the defendant is to show cause.

(4) The service of such summons shall stand in lieu of a demand and re-entry.

(5) If the tenant, five clear days before the day on which the defendant is to show cause, pays all the rent in arrear and costs, the action shall abate.

(6) On the hearing the plaintiff shall prove—

(a) the rent of the premises;

(b) that at the time when the claim was filed he had the right to re-enter the premises for the non-payment of one half-year's rent, and that such rent is in arrear at the date of the hearing;

(c) that no sufficient distress was found on the premises to countervail the rent in arrear;

(d) the landlord's power to re-enter;

(e) the title of the plaintiff, if such title has accrued since the letting of the premises; and

(f) the service of the summons, if the defendant does not attend.

(7) On the hearing the court may order that possession of the premises mentioned in the claim be given to the plaintiff on or before such day, not being less than four weeks from the day of hearing, as the court fixes, unless within that period all the rent in arrear and costs are paid.

(8) If such order is not obeyed and such rent and costs are not so paid, the clerk of the court shall, on request, issue a warrant authorizing and requiring the bailiff of the court to give possession of the premises to the plaintiff, and the plaintiff shall, from the time of the execution of such warrant, hold the premises discharged of the tenancy, and the defendant and all persons claiming by, through, or under him shall be barred from all relief.

**This Part to apply to tenants-at-will**

**229.** This Part shall apply, *mutatis mutandis*, to cases in which the tenancy is at will or for any term without payment of rent.

## PART XI

## THE ACTION OF EJECTMENT

**Proceedings in ejectment where land is under Real Property Act**

**230.** (1) Any person claiming possession of land under the *Real Property Act, 1886-1969*, of the value of not more than forty thousand dollars, may file a claim to recover possession of the same in the local court of full jurisdiction nearest to which the land concerned is situated.

(2) Such claim shall state, in accordance with the circumstances—

- (a) the names and places of residence of all the persons in whom the title is alleged to be, as plaintiffs;
- (b) the name of the immediate tenant, or of any one tenant in possession, as defendant;
- (c) a description of the land, sufficient to identify it with reasonable certainty; and
- (d) the value of the land.

(3) The plaintiff may join to any such claim a further claim or claims for mesne profits or arrears of rent or double value in respect of the land claimed or any part thereof, damages for any breach of any contract under which such land or any part thereof is held, or damages for any wrong or injury to such land. In every such case the plaintiff shall file, together with his claim, a memorandum containing a clear and concise statement of the particulars of his claim, and as many copies thereof as there are defendants: Provided that the total amount claimed, together with the value of the land, shall not exceed forty thousand dollars.

**Clerk of court to enter particulars in plaint book**

**231.** The clerk of the court shall enter in the plaint book a plaint stating the same particulars as in a personal action, and also a short description of the land sought to be recovered, and shall furnish a note thereof to the plaintiff.

**Summons to issue**

**232.** (1) The clerk shall forthwith issue a summons in the form prescribed by rules of court, requiring the defendant and all persons concerned to appear within twelve days after the service thereof, to defend the possession of the land sought to be recovered, or such part thereof as they may think fit.

(2) The clerk shall annex to such summons a copy of the memorandum furnished by the plaintiff under subsection (3) of section 230.

**Mode of serving summons**

**233.** (1) The summons shall be served in the same way as an ordinary summons is served under this Act, or in such manner as a Judge or special magistrate may order.

(2) In case of vacant possession, the summons shall be served by posting the duplicate summons, together with the annexed copy of the memorandum (if any), upon the door of any dwelling-house on the land, or otherwise conspicuously exhibiting it on the land.

**Form of defence**

234. Every defence other than a disclaimer to an action of ejectment may be in the form prescribed by rules of court:

Provided that—

- I. if the defendant desires to disclaim he shall do so expressly:
- II. if the action of ejectment is for non-payment of rent, the defence shall set forth the substantial grounds of the defence, as for example that the title of the plaintiff as landlord, or the fact of the rent being due, is disputed, and such defence shall contain particulars of any payment on which the defendant relies:
- III. if the plaintiff has joined in the action of ejectment any claim pursuant to section 230(3), a defence in the form prescribed by rules of court shall have the same operation with regard to any claim so joined as an appearance entered under section 98, but if the defendant intends to dispute the character in which the plaintiff makes such claim, or to rely upon any matter as a defence thereto which would constitute a special defence within the meaning of section 98, he shall include in such defence a clear and concise statement of the grounds of such defence.

**Person making defence to ejectment may limit defence to part only of property**

235. Any person making defence to an action of ejectment may limit his defence to a part only of the land mentioned in the plaintiff's claim, describing that part with reasonable certainty; otherwise the defence shall be deemed to apply to the whole.

**Persons not named in summons may defend action**

236. (1) Any person not named in or served with a summons under this Part shall, by leave of the court or a Judge or special magistrate, be allowed to defend on filing an affidavit showing that he is in possession of the land, either by himself or his tenant.

(2) The court or a Judge or special magistrate may strike out or limit any defence set up by a person not in possession by himself or his tenant.

**Plaintiff entitled to judgment if no defence**

237. (1) If no appearance is entered within the time appointed, or a defence filed is limited to a part only of the land sought to be recovered, the plaintiff shall be entitled to judgment for recovery of possession of the land, or of the part thereof to which the defence does not apply.

(2) Such judgment shall be entered in the record book, if for the whole, then generally, and if for a part, then with the addition of the words "for part".

(3) The plaintiff may at any time thereafter draw up a judgment order to be filed in court.

(4) Such judgment order shall state whether it is for all, and, if for part only, for what part, and may be in the form prescribed by rules of court, without any award of costs, but without prejudice to the plaintiff's right to have his costs taxed, and to proceed with any claim which has been properly joined and for the recovery of costs.

**What to be question in action of ejectment**

**238.** (1) The question at the hearing of every action of ejectment, except in the case hereinafter mentioned, shall be whether the statement of the title of the plaintiff in his claim is true or false, and if true, then which of the plaintiffs, if more than one, is entitled, and whether to the whole or part, and if to part, then to which part of the land sought to be recovered.

(2) The court shall also hear and determine any claim which may have been properly joined, and give judgment thereon.

**Proof of title**

**239.** The proof of title in any one or more of the plaintiffs in ejectment shall be sufficient to entitle such plaintiff or plaintiffs to a verdict.

**Proceedings if plaintiff or defendant does not appear**

**240.** (1) If the defendant appears and the plaintiff does not appear at the hearing, the action shall be struck out, and thereupon shall be discontinued.

(2) If the plaintiff appears and the defendant does not appear at the hearing, the action shall be proceeded with and adjudicated upon, and the court may, without requiring the plaintiff to prove any fact other than the service of the summons—

- (a) order judgment to be entered for the plaintiff for the recovery of possession of the land;
- (b) so far as any claim properly joined is for a debt or liquidated demand, order judgment to be entered for the amount claimed; and
- (c) so far as any such claim is for damages, assess such damages and give judgment for the amount so assessed.

(3) If neither the plaintiff nor the defendant appears, the action shall be struck out and no further proceeding shall be taken therein unless it is reinstated under the power conferred by this Act.

**On finding for plaintiff judgment may be entered and execution issue**

**241.** Upon a finding or judgment for the plaintiff, judgment may be entered, and the plaintiff may draw up a judgment order, and execution may issue for the recovery of possession of the land, or such part thereof as the court finds the plaintiff entitled to; and, in case any claim has been properly joined, for such sum as may have been awarded in respect thereof and costs.

**Proceedings on finding for defendant**

**242.** Upon a finding for the defendants, or any of them, or when there is a nonsuit or discontinuance, judgment may be entered and execution issued for costs against the plaintiffs named in the summons, and the defendant shall be at liberty to draw up a judgment order at any time.

**Several warrants of execution may issue on judgment in execution**

**243.** Upon any judgment for the plaintiff in ejectment there may be, at the election of the plaintiff, either one or several warrants of execution for recovery of possession of the land claimed, and for the amount awarded in respect of claims properly joined, and costs.

**Any joint tenant, etc., may defend as such, and admit right of plaintiff to an undivided share of property, and denial and trial of ouster**

**244.** (1) Where an action of ejectment is brought by some or one of several persons entitled as joint tenants, tenants in common, or coparceners, any joint tenant, tenant in common, or coparcener in possession may set forth in his defence that he is such joint tenant, tenant in common, or coparcener, and defends as such, and admits the right of the plaintiff to an undivided share of the land sought to be recovered, stating what share, but denies any actual ouster of him from the land; and upon trial the additional question of whether an actual ouster has taken place shall be tried.

(2) If it is found, at the trial, that the defendant is joint tenant, tenant in common, or coparcener with the plaintiff, then the question whether an actual ouster has taken place shall be tried, and unless such actual ouster is proved, the defendant shall be entitled to judgment and costs; but if it is found either that the defendant is not such joint tenant, tenant in common, or coparcener, or that an actual ouster has taken place, the plaintiff shall be entitled to judgment for the recovery of possession and costs.

**If plaintiff or defendant die, action not to abate**

**245.** The death of a plaintiff or defendant in an action of ejectment shall not cause the action to abate.

**If right of deceased plaintiff survives to another plaintiff**

**246.** (1) If the right of a deceased plaintiff survives to another plaintiff the clerk of the court shall, at the request of the surviving plaintiff, make an entry of the death, and add to the name of the surviving plaintiff the word "survivor" (which entry may be set aside if untrue), and the action shall thereupon proceed at the suit of the surviving plaintiff.

(2) If such entry is made before the trial, then the plaintiff shall recover judgment as aforesaid, upon its appearing that he was entitled to bring the action either separately or jointly with the deceased plaintiff.

**If right of deceased plaintiff does not survive to another plaintiff**

**247.** In case of the death before trial of one of several plaintiffs whose right does not survive to another or others of them, where the legal personal representative of the deceased plaintiff does not become a party to the action in the manner hereinafter mentioned, the clerk of the court shall, at the instance of the surviving plaintiff, make an entry of the death (which entry may be set aside if untrue), and the action shall thereupon proceed at the suit of the surviving plaintiff for such share of the property as he is entitled to and costs.

**On death of sole plaintiff, or before trial of one of several plaintiffs whose right does not survive**

**248.** (1) In case of the death before the trial of a sole plaintiff, or of one of several plaintiffs whose right does not survive to another or others of them, the clerk of the court, at the request of the legal personal representative of the deceased plaintiff and by order of a Judge or special magistrate—

- (a) shall make an entry of the death; and
- (b) shall substitute such legal personal representative, describing him as such, for the deceased plaintiff, and the action shall thereupon proceed.

(2) Where such entry is made before the trial, the truth of the entry shall be tried thereat, together with the title of the deceased plaintiff, and such judgment shall follow in favour of or against the person causing such entry to be made as is hereinbefore provided in the case of a judgment for or against the plaintiff.

(3) Where such entry, in the case of a sole plaintiff, is made after trial and before execution executed by delivery of possession thereupon, and the truth of such entry is denied by the defendant within eight days after notice thereof, or such further time as the court or a Judge or a special magistrate may allow, then the truth of such entry shall be tried.

(4) Where upon such trial the truth of such entry is proved, the person causing such entry to be made shall be entitled to judgment as aforesaid, for the recovery of possession and for the costs of and occasioned by such entry; and in case of a verdict for the defendant, such defendant shall be entitled to judgment as aforesaid for costs.

(5) If the truth of the said entry is not denied within the time aforesaid the said legal personal representative shall, on producing an affidavit of the service of the notice, be entitled to proceed to judgment and execution in his own name.

**In case of death of one or several defendants in ejectment who defend jointly**

**249.** In case of the death, before or after judgment, of one of several defendants in ejectment who defended jointly, the clerk of the court shall, at the request of the plaintiff, cause an entry to be made of the death (which entry may be set aside if untrue), and the action may proceed against the surviving defendant or defendants to judgment and execution.

**In case of death of sole defendant or of all defendants in ejectment**

**250.** (1) In case of the death before trial of a sole defendant, or of any of the defendants in an action of ejectment, before trial, the clerk of the court shall, at the request of the plaintiff, cause an entry to be made of the death, which entry may be set aside if untrue.

(2) The plaintiff shall be entitled to entry of judgment for recovery of possession of the property, unless some other person makes defence within a time to be appointed for that purpose by the order of a court or a Judge or special magistrate, to be made upon the application of the plaintiff.

(3) The court or a Judge or special magistrate, upon such entry and application being made as aforesaid, may order judgment to be entered for the plaintiff within such time as it or he may appoint unless the person then in possession, by himself or his tenant, or the legal personal representative of the deceased defendant, defends the action within that time.

(4) Such order may be served in the same manner as the summons in the action.

(5) If any such persons as mentioned in subsection (3) hereof makes defence, the same proceedings may be taken against such new defendant as if he had originally appeared and defended the action.

(6) If no defence is made, then the plaintiff shall be entitled to entry of judgment pursuant to the order.

**In case of death before trial of one of several defendants in ejectment who defends for a portion for which the others do not defend**

**251.** In case of the death before trial of one of several defendants in an action of ejectment who defends separately for a portion of the land for which the other defendant or defendants do not defend, the same proceedings may be taken as to such portion as in the case of the death of a sole defendant, or the plaintiff may proceed against the surviving defendants in respect of the portion of the land for which they defend.

**In case of death before trial of one of several defendants in ejectment who defends separately for a portion for which the others also defend**

**252.** (1) In case of the death, before trial, of one of several defendants in an action of ejectment who defends separately in respect of land for which surviving defendants also defend, the court or a Judge or special magistrate at any time before trial may allow the person at the time of the death in possession of the land, or the legal personal representative of the deceased defendant, to defend on such terms as may appear just, upon the application of such person or representative.

(2) If no such application is made or leave granted, the plaintiff causing an entry to be made of the death in manner aforesaid may proceed against the surviving defendant or defendants to judgment and execution.

**In case of death after verdict of sole defendant or all the defendants in ejectment**

**253.** In case of the death after verdict of a sole defendant or of any of the defendants in an action of ejectment, the plaintiff shall nevertheless be entitled to judgment as if no such death had taken place, and to proceed to execution for recovery of possession, and to proceed for the recovery of the costs, in like manner as upon any other judgment for money against the legal personal representative of the deceased defendant.

**Plaintiff in ejectment may discontinue action as to one or more defendants, and one of several plaintiffs may discontinue**

**254.** (1) The plaintiff in an action of ejectment may at any time before verdict or judgment against him discontinue the action as to one or more of the defendants, by giving to the defendant or his solicitor, and also to the clerk of the court, a notice signed by the plaintiff or his solicitor stating that the plaintiff discontinues such action, and thereupon the defendant to whom such notice is given may sign judgment for costs.

(2) Any one of several plaintiffs desirous to discontinue may apply to the court or a Judge or special magistrate to have his name struck out of the proceedings, and an order may be made thereupon upon such terms as may appear just, and the action shall thereupon proceed on the suit of the other plaintiffs.

**Defendants in ejectment may confess**

**255.** (1) A sole defendant or all the defendants in an action of ejectment may confess the action, as to the whole or part of the land, by giving to the plaintiff a consent for judgment, signed by the defendant or defendants and attested by his or their solicitor, or by the clerk of the court, and thereupon judgment may be forthwith entered, and execution may issue, for the recovery of possession and costs.

**If one of several defendants confess**

(2) Any one of several defendants in an action of ejectment who defends separately for a portion of the land, for which portion the other defendant or defendants do not defend, may confess the plaintiff's title to such portion by giving to the plaintiff a like consent for judgment, and thereupon judgment may be forthwith entered, and execution issued, for the recovery of possession of such portion of the land, and for the costs occasioned by the defence relating to the same, and the action may proceed as to the residue.

**If one of several defendants who defend separately desires to confess**

(3) One of several defendants in an action of ejectment who defends separately in respect of land for which other defendants also defend may confess the plaintiff's title by giving a like consent for judgment, and thereupon judgment may be entered against such defendant for the costs occasioned by his defence, and the plaintiff may proceed in the action against the other defendants to judgment and execution.

**Effect of judgment in ejectment under this Act same as judgment in the Supreme Court**

**256.** The effect of a judgment in ejectment under this Act shall be the same as that of a judgment in an action for the recovery of land in the Supreme Court.

**All provisions in this Act to extend to ejectment**

**257.** The provisions of the other Parts of this Act comprising the local court provisions shall, so far as the same are applicable and not inconsistent with the provisions of this Part, apply to actions of ejectment under this Part.

**Form of warrant of possession**

**258.** Warrants of possession shall be in the form prescribed by rules of court.

## PART XII

## SPECIAL EQUITABLE JURISDICTION OF LOCAL COURTS

**Special equitable jurisdiction of the local court**

**259.** (1) A local court of full jurisdiction, when constituted of a Local Court Judge or a Judge of the Supreme Court, shall have the jurisdiction and exercise the powers and authority of the Supreme Court of South Australia and the Judges thereof in the actions hereinafter mentioned (that is to say):—

- I. By creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), or next of kin, in which the personal estate or real estate or personal estate and real estate against which, or for an account or administration of which the demand is made, does not exceed in amount or value the sum of forty thousand dollars:
- II. For the execution of trusts in which the trust estate, or fund, does not exceed in amount or value the sum of forty thousand dollars:
- III. For foreclosure or redemption, or for enforcing any charge or lien, where the mortgage, charge or lien does not exceed in amount the sum of forty thousand dollars:
- IV. For the dissolution or winding up of any partnership in which the whole property, stock, and credits of such partnership does not exceed in amount or value the sum of forty thousand dollars:
- V. For specific performance of, or for delivering up, or cancelling of, any agreement for the sale, purchase, or lease of any property where, in the case of a sale or purchase, the purchase money, or in the case of a lease, the value of the property, does not exceed the sum of forty thousand dollars:
- VI. For relief against fraud or mistake in which neither the damage sustained, nor the estate or fund in respect of which relief is sought, exceeds in amount or value the sum of forty thousand dollars:
- VII. For the partition of land where the value thereof does not exceed forty thousand dollars:
- VIII. For orders in the nature of injunctions, where the same are requisite for granting relief in any matter in which jurisdiction is given by this Act to any local court of full jurisdiction; or for stay of proceedings at law to recover any debt provable under a judgment for the administration of an estate made by any local court:
- IX. For the determination of any question of construction arising under a deed will or other written instrument and for a declaration of the rights of the persons interested, where the property in respect of which the declaration is sought does not exceed in value the sum of forty thousand dollars:
- X. For the determination of any question that has arisen in respect of any requisition, objection, claim for compensation or other matter arising out of or connected with a contract for the sale of any freehold land the value of which does not exceed forty thousand dollars or any leasehold estate where the rent payable under the lease is at a rate not greater than six thousand dollars a year:

- XI. For relief against the forfeiture of a lease or tenancy for non-payment of rent in any case where the rent payable under the lease or tenancy is at a rate not greater than six thousand dollars a year:
- XII. For the rectification of any written contract where the value of the subject matter of the contract does not exceed forty thousand dollars:
- XIII. For contribution, where the amount of the claim does not exceed forty thousand dollars.

(2) Nothing in paragraph VIII of subsection (1) of this section shall derogate from any jurisdiction, power or authority conferred on a local court by any other provision of the local court provisions.

**Powers of Judge and special magistrate**

**260.** (1) In all actions under this Part a Judge shall, in addition to the powers or authorities in respect of actions or proceedings in local courts conferred by the local court provisions, have all the powers and authorities for the purposes of those provisions of the Judges of the Supreme Court.

(2) The clerk, bailiff, and officers of the local court shall in all such actions discharge any duties which an officer of the Supreme Court can discharge, either under the order of a Judge of the Supreme Court or the practice thereof.

(3) All officers of the local court shall, in discharging such duties, conform to any rules or orders made in that behalf under the local court provisions and to any special directions given by a Judge.

**Cause of action under this Part may be joined with causes under other Parts of this Act**

**261.** In any action under this Part there may be joined with any cause of action under this Part any causes of action under any other Part, and the Judge having jurisdiction under this Part shall have jurisdiction to hear and determine all such causes of action; but if it appears to a Judge, before or at the hearing, that any of such causes cannot be conveniently tried or disposed of together, the Judge may order separate trials of any such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

**Power of a Judge of Supreme Court to order transfer of actions under this Part to Supreme Court**

**262.** Any one of the Judges of the Supreme Court, on the application at chambers of any party to any action pending under this Part shall have power then and there, or if he thinks fit after the hearing of a summons served upon the other party, to transfer the same to the Supreme Court, upon such terms (if any) as to security for costs or otherwise as he may think fit.

**Actions may be transferred from Supreme Court to Local Court**

**263.** (1) When any action or proceeding is pending in the Supreme Court, which action or proceeding might have been commenced under this Part, any of the parties thereto may apply at chambers to any Judge of the Supreme Court to have the same transferred to a local court referred to in section 114 of this Act, being an appropriate local court, and such Judge shall have power upon such application, or without such application if he thinks fit, to make an order for such transfer.

(2) Thereupon such action or proceeding shall be carried on in the said local court, and the parties thereto shall have the same right of appeal that they would have had if the action or proceeding had been commenced in a local court.

#### **Power to enforce judgments in equity jurisdiction**

**264.** For the due execution of any judgment, decree, or order made under the authority of this Part, the local court or a Judge shall have power to order, and the clerk of the court upon such order shall have authority to do, all such acts as he is thereby directed, and to seal and issue, and the bailiff to execute, any writ or warrant of possession, writ or warrant of execution or attachment, or other process of execution for carrying into effect any judgment, decree, or order of the court.

#### **When amount of subject matter of suit exceeds limit of the jurisdiction of local court action may be remitted to the Supreme Court**

**265.** (1) If during the progress of any action under this Part it is made to appear to the court hearing the action that the subject matter exceeds the limit in point of amount to which the jurisdiction of the said local court is hereby limited, it shall not affect the validity of any order or decree already made, but the said local court shall direct the action to be transferred to the Supreme Court, and thereupon the action shall proceed in the Supreme Court as a Judge of the Supreme Court by order directs; and such Judge shall have power to regulate the whole of the procedure in the action when so transferred.

(2) Notwithstanding subsection (1) hereof, any party may apply to a Judge of the Supreme Court at chambers for an order authorizing and directing the action to be carried on and prosecuted in the court hearing the action, notwithstanding such excess in the amount of the limit to which jurisdiction in the matter is hereby given to the said local court; and the Judge, if he deems it proper to summon the other parties or any of them to appear before him for that purpose, after hearing such parties or on default of the appearance of all or any of them, shall have full power to make such order.

#### **Application of Supreme Court Act, 1935, as amended**

**266.** The several rules of law enacted by the *Supreme Court Act, 1935*, as amended, shall be in force and shall be given effect in the local court exercising jurisdiction under this Part; but nothing in this section shall derogate from any other provision of the local court provisions.

#### **Discovery**

**267.** In every action under this Part a Judge shall have the same powers with regard to discovery, both of documents and by way of interrogatories, as the Supreme Court or a Judge thereof has, and the practice and procedure with regard to the same shall, subject to the local court provisions and any rules of court made thereunder, be the same as nearly as may be as the practice and procedure for the time being of the Supreme Court with regard thereto.

#### **Procedure**

**268.** (1) Every action under this Part shall be commenced in the manner prescribed for the commencement of an action by Part VII, and the procedure and practice prescribed by the local court provisions with regard to an action in which an ordinary summons has been issued under Part VII shall, subject to this Part and the rules of court, apply, *mutatis mutandis*, to all actions under this Part.

(2) In any case not provided for by the local court provisions or by the said rules, the general principles of practice and the rules observed in the Supreme Court may be adopted and applied.

**Judge may give special directions as to procedure**

**269.** A Judge may, by special order, where he considers it necessary for the speedy administration of justice or for saving expense, modify the practice and procedure prescribed by the local court provisions or any rules of court with regard to actions under this Part, and may, in any such case or where in any action under this Part he considers such practice and procedure inadequate, direct some other practice or procedure to be adopted.

**Power to hear actions in any part of the State**

**270.** The Judge having jurisdiction under this Part may hear any action instituted under this Part at any place in the State which he deems convenient for the purpose, or may adjourn the hearing of any such action to any such place.

## PART XIII

## REMEDIES AGAINST DEBTORS ABOUT TO ABSCOND

**Creditor may obtain warrant for arrest****271.** If—

- (a) there is owed to any person (hereinafter called "the creditor"), either alone or jointly with another, a debt of thirty dollars or more, whether on an unsatisfied judgment of a local court or otherwise, or any person (hereinafter called "the claimant") has through breach of contract sustained damage to the extent of one hundred and fifty dollars or more; and
- (b) the creditor or the claimant believes on reasonable grounds that the debtor or the person against whom the claimant is entitled to maintain an action in respect of such breach of contract (as the case may be) is about to quit the State with intent to avoid or delay him, or with intent to remain out of the State so long that he may be delayed in the recovery of the debt or damages for such breach of contract,

he may apply on the affidavit or affidavits of himself or other persons deposing to such debt or damage and belief and some reasonable ground therefor, to any Justice for a warrant for the arrest of the debtor or person, and requiring him to be dealt with in accordance with this Act and the Justice may in his discretion issue the warrant.

**Duty to file claim and pay fees****272.** The creditor or claimant at the time of the issue the warrant—

- (a) if no action is pending and no judgment has been obtained respecting his claim, shall duly file a claim in a local court having jurisdiction, and obtain the issue of a summons for the recovery of the said debt or damages; and
- (b) in any event, shall, in addition to all other fees payable by him, pay to the clerk of the court such further fees as the clerk estimates to be necessary to meet the expense of bringing the person arrested before a Local Court Judge or a special magistrate in manner hereinafter provided,

otherwise the warrant shall be wholly void and of no effect whatsoever as a protection to the creditor or claimant.

**Form and currency of warrants****273.** (1) Such warrant shall be addressed to the bailiff of the court in which the judgment has been recovered, or the claim for the said debt or damage has been filed.

(2) Such warrant shall be in the form and bear such endorsement as is prescribed by rules of court, and may be executed within one month from its date, but not afterwards, in any part of the State.

(3) The person arrested shall be served at the time of the arrest with—

- (a) a copy of the warrant; and

- (b) the summons with claim appended, if not already served.

**Bailiff arresting to endorse certificate of time and place of arrest**

**274.** The bailiff or person executing the warrant shall, immediately on the same being executed, endorse a certificate thereupon of the time when and place where the person arrested under it was arrested, and the production of such warrant and certificate to the keeper of the gaol, or other proper place of imprisonment, shall be sufficient authority to him to detain such person until he is discharged in due course of law, and the keeper of such gaol or other proper place of imprisonment shall receive such person into custody at any hour of the day or night.

**Duty of person executing warrant**

**275.** (1) The bailiff or other person executing the warrant shall arrest the person named therein, and, subject as hereinafter provided, shall forthwith lodge him in gaol unless he either—

- (a) pays the sum endorsed on the warrant for debt, damages, and costs; or  
 (b) deposits that sum with the bailiff to abide the result of the action.

(2) If the person arrested is lodged in gaol he shall be discharged from custody if he either—

- (i) pays the sum endorsed on the warrant for debt, damages and costs; or  
 (ii) deposits that sum with the keeper of the gaol to abide the result of the action.

**Debtor lodged in gaol on unsatisfied judgment**

**276.** If the debt is claimed on an unsatisfied judgment then subject to the provisions of this Act, the debtor when lodged in gaol shall remain there until the debt and costs are satisfied, or the judgment is set aside, or until he is otherwise discharged in accordance with law: Provided that a Local Court Judge or a special magistrate—

- I. may, at any time, order the release of the debtor on his giving security to the satisfaction of the Local Court Judge or a special magistrate to cause the judgment to be set aside or satisfaction entered thereon wholly or in part and, so far as not so set aside or satisfied, to pay the same, together with the costs endorsed on the warrant and any other costs incurred and the costs of the application, or such part of such costs respectively as the court or Local Court Judge or special magistrate may order; and  
 II. may, at any time, on the application or with the consent of the creditor or the claimant, make such order without security being given by the debtor.

**Procedure where debtor claims to be brought before court**

**277.** (1) At any time after his arrest, whether before or after he has been lodged in gaol, the person arrested may apply to be brought before a Local Court Judge or a special magistrate.

(2) Such application shall be in writing signed by the person arrested, and witnessed, and handed to the person who then has him in custody.

(3) On receipt of such application the person who then has the person arrested in custody shall immediately endorse upon the application the time and place of its receipt, and shall bring the person arrested as early as practicable before a Local Court Judge, or the nearest special magistrate and, until he is able so to do, retain him in custody or lodge him in gaol pending the provision for his transport.

(4) The Local Court Judge or special magistrate before whom the person arrested is brought and upon his application may thereupon either—

- (a) upon sufficient notice as directed by the Judge or special magistrate being given to the creditor or claimant, and on proof to the satisfaction of the Judge or special magistrate that the creditor or the claimant had not good cause for making or causing to be made the affidavit or affidavits on which the warrant was issued, release the person so arrested, and order the creditor or the claimant to pay to him a sum not exceeding ninety dollars by way of compensation, which order may be enforced in like manner as a judgment given for a defendant upon the hearing of an ordinary action in a local court; or
- (b) where a judgment has been recovered, take the security mentioned in the preceding section and release the person arrested, or release him without taking security in the circumstances mentioned in the preceding section; or
- (c) where no judgment has been recovered take security by deposit or otherwise; or partly by deposit and partly otherwise for defending the action and paying any sum adjudged to be due therein, and the costs thereof and of the warrant and arrest, and any other costs incurred, or in default thereof for rendering the person arrested to the bailiff of the court to be dealt with as ordered by the court, and, when the security is given, release the person arrested; or
- (d) take payment of part of the amount claimed, and take security, as mentioned in paragraph (c), as to the balance of the amount claimed, and release the person arrested; or
- (e) release the person arrested on being satisfied that three weeks at least before the issue of the warrant he had given public notice by advertisement in two newspapers published in Adelaide of his intended departure and the time and manner thereof; or
- (f) hear the action in accordance with the following provisions.

And if the Judge or special magistrate does not release the person arrested, the person bringing the person arrested before the Judge or special magistrate shall lodge him in gaol.

The Judge or special magistrate may from time to time adjourn the application upon such terms as he thinks fit and in the meantime may order the defendant to be detained in custody or to enter into a bond with or without sureties or to give other security for his due appearance at the adjourned hearing.

**Adjudication of claim**

**278.** (1) Where no judgment has been obtained and the defendant enters an appearance to the claim the Local Court Judge or special magistrate, upon a defendant being brought before him pursuant to an application made as hereinbefore mentioned and upon written request by either party, and upon sufficient notice, as directed by the Judge or special magistrate, being given to the plaintiff, may hear and determine the action, and the decision of the Judge or special magistrate shall be entered as the judgment of the local court in which the claim was filed.

(2) Until such hearing and determination the Judge or special magistrate may order the defendant to be detained in custody unless and until he enters into a bond with or without sureties or gives other security to the satisfaction of the Judge or special magistrate for his due appearance at the hearing.

(3) In case the plaintiff does not attend, and the Judge or special magistrate is satisfied that sufficient notice of the hearing as directed has been given to the plaintiff the defendant shall be released and judgment shall be entered for the defendant in the action.

**Powers of courts in actions**

**279.** (1) If on the hearing of the action (whether under the preceding sections or in the ordinary course)—

- (a) judgment is given for the plaintiff; and
- (b) the court or the Judge or special magistrate is satisfied that the defendant was intending to quit the State with the intent hereinbefore mentioned,

the court, Judge or special magistrate shall order the defendant to be committed to gaol for a period not exceeding forty days unless the judgment and costs are sooner satisfied.

(2) If on the hearing of the action (whether under the preceding sections or in the ordinary course)—

- (a) judgment is given for the plaintiff; and
- (b) the court or the Judge or special magistrate is of opinion that the defendant was not intending to quit the State with the intent hereinbefore mentioned;

the court or the Judge or special magistrate shall release the defendant.

(3) If on the hearing of the action (whether under the preceding sections or in the ordinary course)—

- (a) judgment is given for the defendant; or
- (b) the court or Judge or special magistrate is of opinion that the plaintiff had not good cause for making or causing to be made the affidavit upon which the warrant was founded,

the court, Judge or special magistrate—

- (i) shall release the defendant; and

- (ii) may order the plaintiff to pay the defendant a sum not exceeding two hundred dollars by way of compensation.

Any such order may be enforced in like manner as a judgment given for a defendant upon the hearing of an ordinary action in a local court.

**Discharge of person arrested**

**280.** Any person arrested under this Part shall be discharged from custody on the expiration of forty days from the day of his arrest or on such earlier day as the Judge or special magistrate at the hearing may order.

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**Other remedies preserved**

**282.** Nothing in this Part shall be held to deprive a creditor of any other remedy to which he may be entitled for the satisfaction of a judgment.

## PART XIV

## COMMISSIONS AND ORDERS FOR THE EXAMINATION OF WITNESSES

**Judge or special magistrate may order prisoner to be brought up for the purpose of giving evidence and gaoler's expenses to be paid**

**283.** (1) A Judge or special magistrate, in any case where he sees fit, upon application by affidavit by any party to an action in a local court, may issue an order under his hand and the seal of the local court for bringing up before such court, or for examination under any order or commission to be made or issued as hereinafter provided, any prisoner or person confined in any gaol, prison, or place, under any sentence, or under commitment for trial, or under process in any civil action, suit, or proceeding, to be examined as a witness in any action or proceeding in or before such court.

(2) The person specified in any such order shall be brought under the same care and custody, and be dealt with in like manner in all respects, as a prisoner required by any writ of *habeas corpus* awarded by the Supreme Court to be brought before such court, to be examined as a witness in any action or matter depending before such court, is now by law required to be dealt with.

(3) The person having the custody of such prisoner or person shall not be bound to obey such order unless a tender is made to him of a reasonable sum for the conveyance and maintenance of a proper officer, and of the prisoner in person, in going to, remaining at, and returning from, the local court or other place named in the order.

**Order for examination of witnesses who are unable to attend at hearing**

**284.** In every action in any local court, where the debt or damages claimed exceed two hundred dollars, a Judge or special magistrate, upon the application of any of the parties to such action, and upon being satisfied that any material witness is about to quit the said State, or is unable to attend on the trial of such action from illness or other sufficient cause—

- (a) may, by writing under his hand and the seal of the court, order the examination of such witness upon oath, by interrogatories or otherwise, before such Judge or special magistrate or before the clerk of such court or any other person to be named in such order; and
- (b) may, by the same or any subsequent order, give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear proper.

**Commission for examination of witnesses out of State, etc.**

**285.** If, in any action in any local court, where the debt or damages claimed exceed two hundred dollars, it is made to appear to the satisfaction of a Judge or special magistrate, upon the application of any of the parties to such action, that any material witness is resident out of the State, or more than one hundred miles from the place where the court for the trial of such action is situated, such Judge or special magistrate—

- (a) may order a commission to issue under the seal of the said court for the examination of such witness on oath, by interrogatories or otherwise; and

- (b) may, by the same or any subsequent order, give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear proper.

**Order or commission may be issued at any time before or after appearance**

**286.** The order or commission mentioned in the last two preceding sections may be made or issued at any time, either before or after appearance has been entered in the action.

**Compelling attendance of witnesses or production of documents**

**287.** (1) When any order is made for the examination of witnesses within the State, the Judge or special magistrate may, by the first order made in the matter or any subsequent order, command the attendance of any person to be named in such order for the purpose of being examined, or of producing any writings or other documents mentioned in such order, and may direct the attendance of such person to be at his own place of residence or elsewhere, if necessary or convenient so to do.

(2) Such order shall be served personally upon the person so required to attend, together with particulars in writing of the time and place of attendance, signed by the person or persons appointed to take the examination, or by one or more of such persons.

(3) If the person named in such order, after being so served as aforesaid, neglects or fails to attend at the time and place mentioned, or to produce the writings or other documents therein mentioned, and does not give a good and sufficient excuse for his non-attendance, or the non-production of such writings or other documents, to the satisfaction of the person or persons so appointed to take the examination as aforesaid, he shall forfeit a sum not exceeding two hundred dollars, to be recovered by the party aggrieved by action in any court of competent jurisdiction.

(4) Every person whose attendance is so required shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at the trial of an action in a local court.

(5) No person shall be compelled to produce, under any such order, any writing or other document that he could not be compelled to produce at a trial of the action.

**Examination of witnesses to be taken upon oath**

**288.** (1) Every person authorized to take the examination of witnesses by any order or commission made or issued in pursuance of this Part shall take all such examinations upon the oath, affirmation, or declaration of the witnesses, to be administered by the person so authorized.

(2) If, upon such oath, affirmation, or declaration, any person making the same wilfully and corruptly gives any false evidence, he shall be guilty of perjury.

**Persons appointed for taking examinations may report to the court upon the conduct or absence of witnesses**

**289.** (1) The Judge or special magistrate, if he takes the examination himself, or the clerk of the court, or any other person to be named in any such order or commission as aforesaid for taking any examination in pursuance thereof, may, and, if required so to do by any party to the action, shall, make a special report to the court touching such examination, and the conduct or absence of any witnesses or other person thereon or relating thereto.

(2) The court may thereupon institute such proceedings and make such order upon such report as justice may require, and as may be instituted in any case of contempt of court.

**Examinations to be received in evidence without proof of signature of Commissioner, etc.**

**290.** In all cases in which any such order or commission as aforesaid is made or issued, the examinations or depositions certified under the hand of the Judge, special magistrate, clerk of the court, or other person taking the same shall, without proof of the signature of such certificate, be received and read in evidence, saving all just exceptions.

**Costs**

**291.** (1) The costs of every order for the examination of witnesses under any commission or otherwise under this Part and of the proceedings thereon shall, for all business transacted within the State, be allowed as between party and party, according to the scale of costs in the second schedule; and as to business transacted out of the State fair and reasonable costs shall be allowed, according to the amounts actually and *bona fide* paid and expended in and about transacting such business.

(2) All such costs shall be costs in the action, unless otherwise directed on the trial of the action by the court.

**Practice to be same as in Supreme Court**

**292.** Where by the local court provisions a Judge or special magistrate has power to make an order for the examination of witnesses or for a commission, the practice as to applying for an order for the examination of witnesses, or for a commission, and the proceedings to be thereupon had, shall, in cases not otherwise provided for by the local court provisions, be the same as the practice of the Supreme Court in similar cases.

PART XV

COURT FEES AND COSTS

**Costs to abide event**

**293.** The costs in every action or proceeding in a local court not herein otherwise provided for shall be paid by or apportioned between the parties in such manner as the court thinks just and in default of any special direction shall abide the event.

**Court fees**

**294.** (1) The Governor may, by regulation, fix fees to be paid in respect of matters specified in the regulations.

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(3) Every fee shall be paid in the first instance and in advance by the party for whose benefit the act or service in respect of which the fee is to be paid is to be done.

(3a) Payment of a fee prescribed under this section shall, in relation to matters declared by the regulations to be matters to which this subsection applies, be denoted by an adhesive stamp, issued by or on the authority of the Attorney-General, affixed in accordance with the regulations to process of, or a document filed in, the relevant court.

(4) In default of the payment of any fee, payment thereof may be ordered by a Judge or special magistrate, which order shall be enforced in like manner as an order of a local court.

(5) A table of all fees shall be posted in some conspicuous place in every courthouse and in the office of the clerk of every local court.

**Practitioners entitled to costs on certain scale**

**295.** (1) As between party and party, costs and charges payable in respect of the services of practitioners of the Supreme Court shall be as prescribed by rules of court and such costs and charges shall, where the amount of the claim does not exceed seven thousand five hundred dollars, be taxed by the clerk of the court in which such costs and charges were incurred, but where the amount of the claim exceeds seven thousand five hundred dollars, by a special magistrate but the taxation may be reviewed, on the application of either party where the clerk taxes the costs and charges, by a Judge or special magistrate, and, where a special magistrate taxes the costs and charges, by a Judge.

(2) Notwithstanding anything in subsection (1) hereof any Judge or special magistrate hearing any action or proceeding may certify for costs on a higher scale to be paid in respect of such action or proceeding or part if he considers that by reason of unusual difficulty or intricacy involved in the action justice to the successful party makes it necessary.

**Costs as between solicitor and client**

**296.** (1) All costs and charges as between solicitor and client may, where the amount of the claim does not exceed seven thousand five hundred dollars, be taxed by the clerk of the court in which such costs and charges were incurred, but where the amount of the claim exceeds seven thousand five hundred dollars, by a special magistrate but the taxation may be reviewed, on the application of the solicitor or client where the clerk taxes the costs and charges, by a Judge or special magistrate, and, where a special magistrate taxes the costs and charges, by a Judge.

(2) The costs or charges to be allowed on such taxation shall be such as are authorized by rules of court.

(3) Subsection (2) of this section does not apply where there is an agreement in writing signed by or on behalf of the client to pay costs and charges in excess of those authorized by the rules, nor where, pursuant to a certificate given under subsection (2) of section 295 of this Act, the client is entitled as between party and party to costs in excess of those so authorized.

PART XVI

PENALTIES

**Punishment for forging signature of magistrate, etc., or counterfeiting seal, or serving forged process, or tendering same in evidence**

**297.** Every person shall be guilty of felony who—

- (a) forges the signature of any Judge or special magistrate acting under the local court provisions, or of the clerk, bailiff, or other officer of a local court; or
- (b) forges or counterfeits the seal of any local court, or any process of a local court; or
- (c) knowingly concurs in using any such forged or counterfeit signature or seal for the purpose of authenticating any such process; or
- (d) serves or enforces any such forged process knowing the same to be forged; or
- (e) delivers or causes to be delivered to any person any paper falsely purporting to be a copy of a summons or other process of a local court, knowing the same to be false; or
- (f) tenders in evidence any such process having subscribed or attached thereto a false or counterfeit signature of any such Judge or special magistrate, or of the clerk, bailiff, or other officer of a local court, or a false or counterfeit seal of a local court knowing such signature or seal to be false or counterfeit; or
- (g) acts or professes to act under any false colour or pretence of the process of a local court; or
- (h) falsely pretends that a judgment or order of a local court has been made in favour of himself or of any person for whom he acts as solicitor or agent, with intent thereby to procure some advantage for himself or for such person.

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**Local court may fine or imprison for contempt of court**

**300.** If any person—

- (a) wilfully insults any local court, or any Judge, special magistrate or justice presiding over or sitting in a local court, or any clerk or officer of a local court in the exercise of his duties in court, or whilst such Judge, special magistrate, justice, clerk, or officer is going to or returning from the court; or
- (b) wilfully interrupts the proceedings of the court, or otherwise misbehaves in court; or
- (c) in court refuses to obey any lawful order of the court; or

(d) in court is guilty of any other contempt of court,

the court may detain him and may, by a warrant, commit him to prison for any term not exceeding fourteen days, or may impose upon him a fine not exceeding twenty dollars, and, in default of payment thereof, commit him to prison for any time not exceeding fourteen days unless the fine is sooner paid.

**Penalty for assaulting officers, or for rescuing goods taken in execution**

- 301. (1) (a) If any officer or bailiff of a local court is assaulted while in the execution of his duty; or
- (b) if any rescue is made of any goods levied under process of any local court,

the person so offending shall be liable to a penalty not exceeding one hundred dollars, or to be imprisoned for a period not exceeding three months.

(2) Such officer or bailiff, or any constable, may in such case take the offender into custody (with or without a warrant), and bring him before a court of summary jurisdiction.

**Remedy against officers guilty of misconduct**

302. If any clerk, or bailiff, or officer of any local court, acting under colour or pretence of the process of any local court, is charged with extortion or, having received or levied any money under the authority of this Act, is charged with not duly paying or accounting for the same, or is charged with any misconduct in his office, a Judge or special magistrate—

- (a) may inquire into such matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses may be enforced in any action in a local court; and
- (b) may make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied or received as aforesaid, and for the payment of such damages and costs, as he thinks just;

\* \* \* \* \*

**Penalty on taking fees except those allowed**

303. Every clerk, bailiff, or other officer employed in putting the local court provisions, or any of the powers thereof, in execution, who wilfully and corruptly exacts, takes, or accepts any fee or reward whatsoever, except such fees as are authorized by or under this Act, for or on account of anything done or to be done by virtue of those provisions, or on any account whatsoever relative to putting those provisions into execution, shall, upon proof thereof before a Judge or special magistrate and on allowance of the finding of such Judge or special magistrate by the Governor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages, as provided in this Part.

**Bailiff of local court not to act as private agent for suitors**

304. (1) It shall not be lawful for the bailiff of any local court to act as agent, otherwise than in the performance of his duties under this Act, for parties in the recovery of their debts, nor to issue, on behalf of such parties, any summons or other process, nor to enter any appearance for a defendant.

(2) Every bailiff who directly or indirectly acts in contravention to this section shall, on proof thereof before a Judge or special magistrate and on allowance by the Governor of the finding of the Judge or special magistrate, be deprived of his office, and be for ever incapable of serving in any office of profit or emolument under this Act.

**Penalty on witness duly summoned not appearing**

- 305.** (1) (a) Every witness duly summoned and to whom payment, or a tender of payment, of his expenses has been made, who refuses or neglects without sufficient cause, to appear, and to produce any books, papers, writings, or other things required by such summons to be produced; and
- (b) every person present in court who is required to give evidence and refuses after payment, or tender of payment, of his expenses, to be sworn and give evidence,

shall pay such fine, not exceeding twenty dollars, as the court imposes.

(2) The whole or any part of any such fine shall, at the discretion of the court, be applicable towards indemnifying the party injured by such refusal or neglect.

**Subpoena to produce public document not to issue without leave**

**306.** (1) No person shall apply for any summons to issue, nor shall any summons issue, out of any local court to compel the production of any public document, except by leave of a Judge or special magistrate.

(2) Application for such leave may be made *ex parte*, and the order giving such leave may be made upon the unsworn statement of the person making such application; but a Judge or special magistrate may require any statement to be verified by affidavit. Any affidavit used upon such application, when filed, shall be sealed up by the clerk of the court and shall not be opened for or produced to any person other than the party filing the same, or his solicitor, until after the action or proceeding has been disposed of, unless a Judge or special magistrate otherwise orders.

**Proceedings for penalties in certain cases to be heard under Justices Act, 1921**

**307.** (1) Every proceeding under the local court provisions against persons for omissions, defaults, or offences to which fines or penalties attach shall, except where otherwise provided, be heard and determined in a summary way by any special magistrate or two justices under the provisions of the *Justices Act, 1921*, as amended.

(2) In every case where a fine is imposed by any local court, Judge, special magistrate, or justices under the authority of the local court provisions, such local court, Judge, special magistrate, or justices may order the offender to pay such costs as appear just, and the payment of such fine and costs, except where otherwise provided for, may be enforced by the committal of the offender to gaol for any period not exceeding three months, unless the amount thereof is sooner paid.

**Warrant of commitment to be under hand of clerk and seal of court**

**308.** Every warrant of commitment which issues from a local court for any offence against the local court provisions where the punishment is by imprisonment, and every warrant of commitment issued to enforce the payment of any penalty imposed by a local court under those provisions or of the amount of any judgment or order of a local court, shall be under the hand of the clerk of the court and the seal of the court.

PART XVII

PROTECTION OF OFFICERS OF LOCAL COURTS, AND  
GENERAL MATTERS

**Certain certified copies may be evidence**

**309.** The contents of any document in the custody of the clerk of any local court may be proved in any court by a certified copy of the same purporting to be under the hand of the clerk and the seal of the local court.

**Distress not unlawful for want of form**

**310.** (1) Where any distress is made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful nor the party making the same a trespasser on account of any defect or want of form in any proceeding relating thereto.

(2) The party distraining shall not be deemed a trespasser from the beginning on account of any irregularity which is afterwards committed by the party distraining.

(3) The person aggrieved by any such irregularity may recover full satisfaction for the special damage in an action upon the case.

**No action to be brought against bailiff, etc., acting under order of the court, without notice, and making clerk of court a defendant**

**311.** (1) No action shall be brought against any bailiff, or against any person acting by the order and in aid of any bailiff, for anything done in obedience to any warrant under the hand of any clerk of a local court and the seal of such court, until demand has been made, or left at the office of such bailiff in writing signed by the intended party, for the perusal and copy of such warrant, and the same has been refused or neglected for the space of six days after such demand.

(2) If, after such demand and compliance therewith by showing the said warrant to and permitting a copy to be taken by the party demanding the same, any action is brought against such bailiff, or any other person acting in his aid, for any such cause as aforesaid, without making the clerk of the said court who signed or sealed the said warrant the defendant in the action, then, on the production or proof of such warrant at the trial of such action, the court shall give its judgment for the defendant, notwithstanding any defect of jurisdiction or other irregularity in the said warrant.

(3) If such action is brought jointly against such clerk and such bailiff or person acting in his aid, then, on proof of such warrant, the court shall find for such bailiff, and for such person so acting, notwithstanding any such defect or irregularity.

(4) If the judgment is given against the said clerk, then the plaintiff shall recover his costs against him, to be taxed in such manner as to include such costs as the plaintiff is liable to pay to such defendant for whom the court has found as aforesaid.

(5) If any action is brought, the defendant may plead the general issue, and give the special matter in evidence at any trial had thereupon.

**Protection to officers**

**312.** (1) All proceedings, whether civil or criminal, commenced against any person for anything done in pursuance of the local court provisions shall be commenced within three months after the Act was done, and not otherwise.

(2) Notice in writing of any such proceedings, and the cause thereof, shall be given to the defendant one month at least before the commencement of the proceedings.

(3) The defendant in any such action may plead the general issue, and give this Act and the special matter in evidence at any trial.

(4) The plaintiff shall not recover in such action if tender of sufficient amends is made before action brought, or if, after action brought, the defendant pays into court sufficient amends.

(5) If the defendant pays into court sufficient amends, the plaintiff shall recover his costs of action up to the time of payment into court, and if judgment is given for the defendant, or the plaintiff is nonsuited, or discontinues, the defendant shall recover full costs, as between solicitor and client, and have his remedy for the same in the usual way.

**Oaths and affirmations, before whom to be taken and made**

**313.** Every oath, affirmation, or declaration required by this Act, or intended to be used in any action or proceeding in a local court, may be taken or made before a Judge, special magistrate, or justice, or before the clerk of any local court or a commissioner for taking affidavits in the Supreme Court.

**Suitors' money unclaimed for six years to go to general revenue, saving disability**

**314.** (1) All sums of money which have already been or are hereafter paid into a local court to the use of any party to an action therein, shall, after remaining unclaimed for six years, be paid to the Treasurer of the State for the purposes of the General Revenue.

(2) No time during which the person entitled to claim any such sum of money was an infant or of unsound mind or beyond the seas shall be taken into account in estimating the said period of six years.

(3) Upon receiving a certificate under the hand of the Judge or the special magistrate, certifying to the claimant's right to the money, and the fact and duration of his disability as abovementioned, the Treasurer shall pay the money to the claimant or his solicitor at any time within six years after the termination of such disability.

**Appropriation of penalties**

**315.** All fines or penalties imposed by any local court, Judge, special magistrate, or justice under the authority of the local court provisions shall, except where otherwise specially appropriated, be paid to the Treasurer for the purposes of the General Revenue of the State.

**Appropriation of moneys**

**316.** All moneys received as fees or penalties under the local court provisions, unless otherwise expressly appropriated, shall be paid to the Treasurer for the purposes of the General Revenue of the State.

PART XVIII

DISTRICT CRIMINAL COURTS: ESTABLISHMENT AND ADMINISTRATION

DIVISION 1—ESTABLISHMENT OF DISTRICT CRIMINAL COURTS

**District Criminal Courts**

**317.** (1) There shall be, in and for the State, courts to be known as District Criminal Courts.

(2) The District Criminal Courts shall be constituted and shall have and may exercise jurisdiction as provided by the district criminal court provisions.

**Constitution of District Criminal Courts**

**318.** (1) Every District Criminal Court—

(a) shall be a court of record;

and

(b) shall be constituted of a District Criminal Court Judge.

(2) The jurisdiction of a District Criminal Court is exercisable by a Judge sitting in open court, with or without a jury, or in chambers, as the case may require.

**Division of State into districts**

**319.** (1) For the purpose of the district criminal court provisions, the State shall be divided into districts in accordance with this section.

(2) The Governor may, on the recommendation of the Senior Judge, by proclamation—

(a) divide the State into districts;

(b) specify the boundaries of the several districts;

(c) name each district;

and

(d) appoint a place or places within each district where a Judge or Judges will preside over the District Criminal Court or District Criminal Courts to be held therein.

(3) The Governor may, on the recommendation of the Senior Judge, from time to time by proclamation revoke or vary a proclamation made under subsection (2) of this section.

(4) A proclamation made under subsection (2) or subsection (3) of this section shall have effect according to the tenor thereof.

(5) On and after the division of the State into districts pursuant to subsection (2) of this section, every duly constituted District Criminal Court shall have as part of its name the name of the district within, or in connection with, which it is exercising its jurisdiction.

(6) More than one District Criminal Court may sit and exercise jurisdiction at the same time within, or in connection with, the same district.

(7) Subject to the rules of court made under the district criminal court provisions, a Judge may exercise the jurisdiction of a District Criminal Court while sitting in chambers at any time and at any place.

#### **Judges to be assigned to districts**

**320.** The Senior Judge shall, from time to time, as occasion requires, either personally or by the giving of proper directions—

- (a) assign Judges to the several districts respectively as may be necessary for the hearing and determination of cases and the dispatch of the other business of the District Criminal Courts;
- (b) give, or cause to be given, such notice as the Senior Judge considers proper of the times and places at which District Criminal Courts will sit for the hearing and determination of cases and the dispatch of other business;
- (c) appoint times and places at which District Criminal Courts will sit for the hearing and determination of cases and the dispatch of the other business of the District Criminal Courts;
- (d) arrange for the due attendance, at the appointed times and places, of Judges for the hearing and determination of cases and the dispatch of the other business of the District Criminal Courts;

and

- (e) do all such other acts and things as appear to him necessary or convenient for the speedy disposal of the business of the District Criminal Courts.

#### **Rules of court**

**321.** (1) The Senior Judge and two other Judges may make rules of court for carrying into effect the purposes of the district criminal court provisions and, without affecting the generality of the foregoing provisions, in particular for any of the following purposes:—

- (a) For regulating the sittings of the District Criminal Courts and of District Criminal Court Judges sitting in chambers, and the vacations to be observed by District Criminal Courts and the offices of District Criminal Courts;
- (b) For regulating the pleading, practice and procedure in and of District Criminal Courts and matters incidental thereto or consequential thereon;
- (c) For conferring on the clerks of arraigns power to do such things as are prescribed by the rules;
- (d) For regulating the duties of officers of District Criminal Courts or any such officers of a prescribed class and the conduct of any business coming within the cognizance of District Criminal Courts for which provision is not expressly made by the district criminal court provisions;

- (e) For regulating and prescribing the fees to be charged in connection with any matter relating to the business of District Criminal Courts.

(2) Power given by subsection (1) of this section to make rules shall be deemed to include power from time to time by subsequent rule—

- (a) to revoke the same absolutely in whole or in part;
- (b) to revoke the same in whole or in part and substitute other rules for those which have been so revoked;

and

- (c) to amend or vary the same or any of them.

(3) All rules of court made in pursuance of this section—

- (a) shall be published in the *Gazette*;
- (b) shall be laid before both Houses of Parliament within fourteen days after such publication if Parliament is then in session, and if not, within fourteen days after the commencement of the next session of Parliament;

and

- (c) shall, subject to subsection (4) of this section, as from the day of publication in the *Gazette*, or from a later day mentioned in the rules as the day on which they shall take effect, have the force of law, be judicially noticed and be conclusively deemed to be valid.

(4) If either House of Parliament within one month after rules of court are laid before it as provided in this section, passes a resolution disallowing all or any of those rules, the rules disallowed shall thereupon cease to have effect, but without affecting the validity or curing the invalidity of anything done or omitted in the meantime.

#### **Members of police force to execute process**

**322.** Members of the police force of the State who are lawfully required to attend at a sitting of a District Criminal Court and are stationed at a place provided for such members of the police force at or in the vicinity of that court shall obey and execute every lawful writ, precept, summons, subpoena, warrant, process, order and command of a Judge presiding at that court.

#### **Seal of District Criminal Court**

**323.** (1) Every District Criminal Court shall have and, as occasion requires, shall use a seal signifying the district within, or in connection with, which the court is exercising its jurisdiction.

(2) All certificates and all writs, precepts, summonses, subpoenas, warrants, notices and other processes shall be sealed or stamped with the seal of the court out of which or in connection with which the same were issued.

DIVISION 2—THE CLERKS OF ARRAIGNS AND OTHER OFFICERS:  
THEIR DUTIES AND FUNCTIONS

**Appointment of Principal Registrar, assistant registrars and other officers**

**324.** (1) The Governor may appoint a chief clerk of arraigns and such other clerks of arraigns and other officers as may be required for the administration of justice in connection with, and the conduct of the business of, District Criminal Courts throughout the State and for the due execution of the writs, precepts, judgments, orders and processes of District Criminal Courts.

(2) All officers so appointed shall, except in so far as their duties are prescribed by or under the laws relating to the administration of justice in connection with, or the conduct of the business of, District Criminal Courts throughout the State, be subject to the *Public Service Act, 1967*, as amended.

(3) A person may be appointed and hold office as an officer under this section notwithstanding that he also holds an office under the local court provisions.

(4) The business of the District Criminal Courts, other than the functions of Judges, and the administrative duties and functions connected with or resulting from that business shall be distributed among the officers appointed under this section in such manner as is provided by the district criminal court provisions or the rules of court made thereunder or, where no provision is made by those provisions or rules, as the Registrar may direct, and such business, duties and functions shall be transacted, discharged and performed accordingly.

**Offices of clerks of arraigns**

**325.** The chief clerk of arraigns shall have his office in Adelaide and the various other clerks of arraigns shall have their respective offices at such places as are appointed from time to time by the Registrar.

**Duties of the Registrar of a District Criminal Court**

**326.** (1) A clerk of arraigns shall, with respect to any District Criminal Court of which he is an officer, and subject to the directions of the Registrar or a Judge—

- (a) sign and issue certificates and writs, precepts, summonses, subpoenas, warrants, notices and other processes of the court;
- (b) register records, verdicts, sentences and judgments of the court;
- (c) make lists of all causes and matters for trial, hearing, further hearing or re-hearing by the court and prepare those lists for publication;
- (d) keep a record of the proceedings of the court;
- (e) take charge, and keep an account, of all court fees, fines and estreated recognizances payable or paid into court and of all other moneys paid into court and keep an account of all moneys paid out of court;
- (f) enter an account of all moneys referred to in paragraph (e) of this subsection in a ledger or in ledgers kept for that purpose and, when required, submit each account to be audited by the Auditor-General under the *Audit Act, 1921-1966*, as amended;

and

(g) do and perform all acts and duties properly appertaining to his office as such.

(2) An entry in the register or a book of a District Criminal Court or a copy of such an entry bearing the seal of that court and signed and certified as a true copy by a clerk of arraigns shall be admitted in all courts and by persons acting judicially or quasi-judicially as evidence of that entry and of the proceedings referred to in that entry, and of the regularity of those proceedings, without further inquiry, and no formal record of any writ, precept, summons, subpoena, verdict, judgment, order, determination or sentence other than such entry shall be necessary.

### DIVISION 3—REPRESENTATION IN COURT

#### **Representation of parties in court**

**327.** (1) The Crown shall be represented in a District Criminal Court by the Attorney-General or by counsel appearing on his behalf.

(2) Any other party to a proceeding in a District Criminal Court may conduct his own case or engage counsel to appear on his behalf.

(3) A person who is not a practitioner of the Supreme Court entitled to practise shall not appear in a District Criminal Court for the prosecution or on behalf of any party.

(4) This section does not dispense with the personal attendance in court of a person charged with an indictable offence or authorize a Judge to try or to sentence a person, charged with an indictable offence, in his absence.

(5) Nothing in subsection (4) of this section shall prevent a Judge from ordering the removal of a person from a District Criminal Court room for such period as he thinks fit where, in his opinion, it is necessary to do so in order that proceedings may be conducted in an orderly and regular manner.

PART XIX

JURISDICTION, POWERS, PRACTICE AND PROCEDURE OF DISTRICT CRIMINAL COURTS

**Jurisdiction and powers of District Criminal Court**

**328.** (1) Subject to the district criminal court provisions, a District Criminal Court shall have all the jurisdiction and powers that the Supreme Court had, under any Act or the common law, immediately before the commencement of the *Local Courts Act Amendment Act, 1969*, respectively to try and sentence persons charged with and guilty of indictable offences and to do all such acts and things (including the making of orders, the granting or refusing of bail and the taking and enforcing of recognizances and securities) as are incidental to the exercise of that jurisdiction and those powers.

(2) A District Criminal Court has no jurisdiction to try or sentence a person for a group I offence except in a case referred by the Supreme Court to a District Criminal Court for trial.

(3) Nothing in the district criminal court provisions shall derogate from or affect—

- (a) the power of a court of summary jurisdiction with respect to the summary trial of children, or to hear and determine minor indictable offences pursuant to the *Justices Act, 1921-1965*, as amended;
- (b) the power of a jury in the Supreme Court conferred on it by any enactment or by the general law whereby a verdict for a less serious or other offence than that with which a person is charged may be returned;

or

- (c) the jurisdiction and powers of the Supreme Court.

\* \* \* \* \*

**Pleading, practice and procedure of District Criminal Courts**

**330.** (1) The pleading, practice and procedure of a District Criminal Court shall, except as otherwise provided by the district criminal court provisions or some other Act, be the same as the pleading, practice and procedure of the Supreme Court when in exercise of its criminal jurisdiction.

(2) Without affecting the application of the district criminal court provisions or the application of the other provisions of the *Criminal Law Consolidation Act, 1935-1966*, as amended, the provisions of Part VIII and sections 273 to 300h, inclusive, of that Act and the schedules referred to therein shall extend and apply to and in relation to every District Criminal Court and every trial and other proceeding of a District Criminal Court in the exercise of its criminal jurisdiction and for the purpose of so extending and applying those provisions—

- (a) a reference to a court, generally, or the Supreme Court, in particular, shall be read as including a District Criminal Court;
- (b) a reference to a Judge of the Supreme Court shall be read as including a District Criminal Court Judge;

(c) a reference to Criminal Sessions or sittings of the Supreme Court shall be read as including sittings of a District Criminal Court;

and

(d) a reference to a trial or other proceeding in the Supreme Court shall be read as including a trial or other proceeding in a District Criminal Court:

But any references in sections 300 to 300h, inclusive, of that Act to the Master or Deputy Master of the Supreme Court, the Sheriff or Deputy Sheriff or the Chief Clerk of the Supreme Court shall not be varied, by modification, adaptation or otherwise, in and for the purpose of so extending and applying those provisions pursuant to this section.

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**Registrar of District Criminal Court to act as clerk of arraigns**

**332.**

\* \* \* \* \*

(2) A person who disobeys a subpoena issued by a District Criminal Court is liable to the same consequences as if he had disobeyed a subpoena issued out of the Supreme Court in its criminal jurisdiction and every Judge shall have the powers and authorities of a Judge of the Supreme Court with respect to subpoenas so issued, and to disobedience of those subpoenas.

**Contempt of court**

**333.** (1) A District Criminal Court shall have the power and authority of the Supreme Court, or a Judge of the Supreme Court, to take cognizance of and to try in a summary manner any offence of contempt committed in the face or hearing of that court against or in disrespect of its authority and may, on conviction, by oral order, commit the offender to prison until he shall have purged his contempt or for such period as the court thinks fit and, in addition to or substitution for committing the offender to prison, may order the offender to pay a fine not exceeding five hundred dollars.

(2) The Full Court shall have the same power and authority to hear and determine applications to punish, and to punish, contempt of a District Criminal Court or of a District Criminal Court Judge, committed otherwise than in its or his face or hearing, as it has to hear and determine an application to punish, and to punish, contempt of the Supreme Court or of a Judge thereof, and the practice and procedure applicable for the time being to and in relation to applications to punish contempt of the Supreme Court or of a Judge thereof shall, with such modifications and adaptations as may be necessary, apply to and in relation to applications to punish contempt of a District Criminal Court or of a District Criminal Court Judge, as the case may be.

(3) On an application to the Full Court pursuant to subsection (2) of this section, the Full Court shall have the same powers to punish contempt of a District Criminal Court or a District Criminal Court Judge as it has to punish a contempt of the Supreme Court or a Judge thereof.

(4) The provisions of the *Law Courts (Maintenance of Order) Act, 1928*, shall apply to and in relation to every District Criminal Court, and an order for the payment of a fine or costs made by a District Criminal Court Judge shall be enforced in the same way as that in which a fine for an indictable offence imposed by the District Criminal Court Judge may be enforced under the district criminal court provisions.

(5) Without affecting the generality of or derogating from any other provisions of this section, the provisions of subsection (6) of this section shall apply to and in relation to every District Criminal Court and the proceedings of and in every such court.

(6) If a person—

- (a) wilfully insults a District Criminal Court Judge, juror or an officer of a District Criminal Court who is in attendance at, or is going to or returning from, a District Criminal Court;
- (b) wilfully interrupts the proceedings of a District Criminal Court;
- (c) having been duly summoned on a *subpoena ad testificandum* or a *subpoena duces tecum* and having been paid or tendered a reasonable sum for travelling expenses and subsistence, refuses or neglects, without reasonable cause, to appear at a District Criminal Court or to produce any books, deeds, papers, writings or things required by the subpoena to be produced;
- (d) being summoned or examined as a witness at a hearing of a District Criminal Court, or being present in such court and required to give evidence, refuses to be sworn or to answer a lawful question;
- (e) in the opinion of the District Criminal Court Judge before whom the person is appearing as a witness, wilfully prevaricates;

or

- (f) misbehaves in a District Criminal Court,

the District Criminal Court Judge concerned may, by order cause the person to be apprehended and, if he thinks fit, may by oral order commit the person to the prison nearest to the place where the court is sitting for a term not exceeding three months or may impose on the person a fine not exceeding five hundred dollars and in default of immediate payment may commit the person to such prison for a term not exceeding three months unless the fine is sooner paid.

(7) The imposition or payment of a fine or a committal made under subsection (6) of this section does not exempt the person fined or committed from obeying any summons to appear at or to produce any thing to the court.

**Powers and authorities of Supreme Court for compelling obedience to or punishing disobedience of orders extended to District Criminal Courts**

**334.** Every District Criminal Court and every District Criminal Court Judge shall have and may exercise the same powers and authorities for compelling obedience to, and punishing disobedience of, any judgment, order, precept or process of the court or of the District Criminal Court Judge as the Supreme Court or a Judge thereof has and may exercise for compelling obedience to, and punishing disobedience of, any judgment, order, precept or process of the Supreme Court in its criminal jurisdiction, and all the rules of law in force, whether by statute or the common law, conferring and applicable to and in relation to such powers and authorities of the Supreme Court shall, subject to such modifications and adaptations as are necessary, extend and apply to and in relation to District Criminal Courts and District Criminal Court Judges so that the same powers and authorities are exercisable by them for the same purposes.

PART XX

PRESENTATION FOR TRIAL

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**Change of venue of trial to different district**

**337.** (1) A Judge may, upon application to him by summons returnable within two days after the issue thereof (a copy of which shall be served on the Attorney-General or, in his absence, on the Solicitor-General, where the application is made by or on behalf of the person against whom the charge in question is laid, and on such person where the application is made by or on behalf of the Attorney-General) in any case where he thinks it is in the interests of the administration of justice to do so, by order direct that the person shall be tried or sentenced in a District Criminal Court constituted in a district other than the district in which he was previously directed to be tried or sentenced, and that person shall be tried or sentenced accordingly.

(2) Where an order is made under subsection (1) of this section, any recognizance for the appearance of a witness shall on such witness being served with a copy of the order, be effectual to compel him to attend at the place and time mentioned in the order as the place and time he is required to attend.

\* \* \* \* \*

(4) Where a person ordered to be tried or sentenced in a District Criminal Court constituted in a district other than the district in which he was previously directed to be tried or sentenced is in prison, the Sheriff, on being served with a duplicate of the order, shall cause him to be conveyed to the place and at the time mentioned in the order.

**District criminal court provisions and other Acts to be read and construed *in pari materia***

**338.** (1) Without affecting the operation of section 22 of the *Acts Interpretation Act, 1915-1957*, as amended, the Acts mentioned in subsection (2) of this section shall be read and construed as *in pari materia* with the district criminal court provisions and, for the purpose of their operation with respect to the administration of criminal justice in District Criminal Courts, as *in pari materia* with one another; and those Acts and the district criminal court provisions shall accordingly receive such large and liberal construction as will best ensure the attainment of the objects of the district criminal court provisions and the fair and expeditious administration of criminal justice in all its aspects in those courts.

(2) The Acts referred to in subsection (1) are—

- (a) the *Justices Act, 1921-1965*, as amended;
- (b) the *Juries Act, 1927-1965*, as amended;
- (c) the *Criminal Law Consolidation Act, 1935-1966*, as amended;
- (d) the *Prisons Act, 1936-1968*, as amended;
- (e) the *Juvenile Courts Act, 1965-1966*, as amended;

and

(f) the *Offenders Probation Act, 1913-1963*, as amended.

**Attorney-General may before judgment enter *nolle prosequi* in District Criminal Court**

**339.** Without derogating from any other power conferred by law, the Attorney-General or counsel appearing on his behalf, may at any time before judgment enter a *nolle prosequi* in respect of any count in an information upon which a person has been presented for trial before a District Criminal Court.

**Administrative responsibilities of Attorney-General**

**340.** (1) Notwithstanding anything contained in this Act or in any rule of court, the Attorney-General shall be solely responsible for preparing and forwarding to the Senior Judge and the Sheriff lists of persons who are, from time to time to appear for trial or sentence or otherwise in due course of law, at the several sittings of the District Criminal Courts throughout the State.

(2) At any sitting of a District Criminal Court, the Attorney-General may determine the order in which persons are initially presented for trial or called on for sentence or otherwise required to appear in due course of law.

(3) In the exercise of his executive and administrative responsibilities under the district criminal court provisions generally, and this section in particular, the Attorney-General shall endeavour to ensure that the cases of persons not on bail are brought on before those on bail and that, generally, all lists are disposed of with as little delay as is reasonably practicable.

**Power of Crown Prosecutor and others appointed by Attorney-General as to informations, etc.**

**340a.** (1) It shall be lawful for the Attorney-General by writing under his hand to appoint the Crown Prosecutor, or any person named therein, to represent him on all matters before District Criminal Courts or on all or any particular matters before any District Criminal Court and in the name and on behalf of the Attorney-General to—

(a) present any information which the Attorney-General might have presented;

and

(b) amend any information which has been signed by or on behalf of the Attorney-General, before it is presented to the Court.

(2) The Crown Prosecutor or other person so appointed may, so long as the appointment has not expired or been revoked, represent the Attorney-General on all or any matters before District Criminal Courts, or on that particular matter or those particular matters before that Court, as the case may be, and any information so presented or amended shall be deemed for all purposes to have been presented or amended, as the case may be, by the Attorney-General.

(3) An appointment under subsection (1) of this section of some other person to represent the Attorney-General on any particular matter before any District Criminal Court does not revoke a general appointment under that subsection of the Crown Prosecutor to represent the Attorney-General on all matters before District Criminal Courts.

(4) An appointment under this section is revocable at will and does not prevent the Attorney-General himself from appearing and being heard on any matter before a District Criminal Court or from presenting or amending any information and any such appearance by the Attorney-General or presentation or amendment of an information by him does not of itself have the effect of revoking an appointment under subsection (1) of this section.

**Appropriation of fines and penalties**

**341.** All fines and penalties imposed by any District Criminal Court under the authority of the district criminal court provisions or the rules of court thereunder shall, except where otherwise especially appropriated, be paid to the Treasurer for the purposes of the General Revenue of the State.

**Remission of fees**

**341a.** A District Criminal Court, or a Judge, may remit, in whole or in part, a fee payable under the district criminal court provisions, or the rules of court under the district criminal court provisions, if it appears to the Court or Judge that the remission should, on account of the poverty of the party liable to pay the fee, or for any other reason, be granted.

**Appropriation of moneys**

**342.** All moneys received as fees or penalties under the district criminal court provisions or the rules of court thereunder shall, unless otherwise expressly appropriated, be paid to the Treasurer for the purposes of the General Revenue of the State.

131.

SCHEDULES

THE FIRST SCHEDULE

ACTS REPEALED

Title of Act	Number and Year of Act
<i>Local Courts Act, 1886</i>	No. 386 of 1886
<i>Local Court Appeals Amendment Act, 1887</i>	No. 411 of 1887
<i>The Local Courts Amendment Act, 1888</i>	No. 431 of 1888
<i>The Local Courts Act Amendment Act, 1889</i>	No. 464 of 1889
<i>The Local Courts Act Further Amendment Act, 1913</i>	No. 1112 of 1913

THE SECOND SCHEDULE

FEEES ON COMMISSIONS FOR THE EXAMINATION OF WITNESSES

	Under \$60 \$	\$60 and Upwards \$
Instructions for order or commission .....	0.65	0.65
Drawing and engrossing affidavit .....	0.65	1.30
Application for order or commission .....	1.00	2.00
Obtaining appointment from Commissioner for examination .....	0.65	0.65
Copies of order or commission .....	5c per folio	
Drawing notice to serve on witnesses .....	10c per folio	
Copying .....	5c per folio	
Service of a copy order or commission with notice .....	( the same as for service of ( a subpoena	
Attending examination, per day .....	2.10	4.20
Fee to clerk of court or other commissioner, per day .....	2.10	4.20
Journeys of clerk of court or other commissioner to place of examination, each way .....	5c per mile	
Attending for office copy of depositions .....	0.30	0.30

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THE FIFTH SCHEDULE

*Practitioners' Fees*

\* \* \* \* \*

**APPENDIX**

## Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 6 of The Public General Acts of South Australia 1837-1975 at page 70.

Section 4(1):	definition of "Master" inserted by 33, 1987, s. 3 definition of "Registrar" inserted by 34, 1981, s. 29(a); substituted by 33, 1987, s. 3
Section 4(2):	definition of "small claim" amended by 109, 1981, s. 5(a); 78, 1987, s. 3(a) definition of "the jurisdictional limit of local courts of limited jurisdiction" inserted by 109, 1981, s. 5(b); amended by 78, 1987, s. 3(b) definition of "the local court jurisdictional limit" substituted by 109, 1981, s. 5(b); amended by 70, 1985, s. 5
Section 4(3):	definition of "clerk of arraigns" inserted by 34, 1981, s. 29(b) definition of "group I offence" amended by 115, 1976, s. 22; 109, 1981, s. 5(c) definition of "group II offence" amended by 109, 1981, s. 5(d) definition of "group III offence" amended by 109, 1981, s. 5(e) definition of "officer" amended by 34, 1981, s. 29(c) definition of "Registrar" repealed by 34, 1981, s. 29(d) amended by 34, 1981, s. 30
Section 5:	repealed by 34, 1981, s. 31; inserted by 109, 1981, s. 6
Section 5a(2):	repealed by 34, 1981, s. 31; inserted by 7, 1985, s. 3
Section 5a(3):	inserted by 7, 1985, s. 3
Section 5a(4):	inserted by 34, 1981, s. 32
Section 5ab:	inserted by 16, 1986, s. 28
Section 5ac:	amended by 34, 1981, s. 33(a)
Section 5b(2):	amended by 109, 1981, s. 7(a), (b)
Section 5b(3):	inserted by 109, 1981, s. 7(c); substituted by 95, 1988, Sched. 2
Section 5b(3a):	substituted by 34, 1981, s. 33(b)
Section 5b(7):	amended by 70, 1985, s. 6(a); substituted by 95, 1988, Sched. 2
Section 5c(1):	amended by 34, 1981, s. 34
Section 5c(2):	substituted by 95, 1988, Sched. 2
Section 5c(4):	repealed by 95, 1988, Sched. 2
Section 5c(5):	inserted by 70, 1985, s. 6(b)
Section 5c(6):	substituted by 92, 1982, s. 5
Section 5e:	amended by 59, 1985, s. 10
Section 5e(1):	amended by 70, 1985, s. 7
Section 5f(2):	amended by 70, 1985, s. 7
Section 5la:	inserted by 70, 1985, s. 8
	Part CI comprising s. 5m and heading inserted by 34, 1981, s. 35; repealed and ss. 5m - 5q and headings inserted in its place by 33, 1987, s. 4
Section 7(1):	amended by 70, 1985, s. 9
Section 8a:	amended by 70, 1985, s. 10
Section 12:	amended by 108, 1983, s. 5(a)
Section 14:	repealed by 108, 1983, s. 5(b)
Section 19(1):	amended by 70, 1985, s. 11
Section 25(2) and (2a):	inserted by 7, 1985, s. 4
Section 26(2):	amended by 7, 1985, s. 5(a)
Section 26(3) and (4):	inserted by 7, 1985, s. 5(b)
Section 27(1):	amended by 7, 1985, s. 6(a)
Section 27(2):	amended by 7, 1985, s. 6(b)
Section 27(3) - (5):	inserted by 7, 1985, s. 6(c)
Section 31:	amended by 109, 1981, s. 8
Section 32:	amended by 109, 1981, s. 9
Section 35h:	inserted by 102, 1986, Sched.

Section 57(1):	amended by 109, 1981, s. 10
Section 58(1):	amended by 109, 1981, s. 11(a)
Section 58(3):	amended by 109, 1981, s. 11(b), (c)
Section 80(1a):	inserted by 7, 1985, s.7(a)
Section 80(2):	amended by 70, 1985, s. 12
Section 80(3):	amended by 7, 1985, s.7(b)
Section 80(4):	inserted by 7, 1985, s. 7(c)
Section 83(1):	substituted by 7, 1985, s. 8
Section 83(1a):	inserted by 7, 1985, s. 8
Section 87:	substituted by 54, 1980, s. 2
Section 88:	amended by 54, 1980, s. 3
Sections 91 and 92:	repealed by 7, 1985, s. 9
Section 94:	substituted by 7, 1985, s. 10
Section 94a:	inserted by 7, 1985, s. 10
Section 95:	amended by 7, 1985, s. 11
Section 95a:	inserted by 7, 1985, s. 12
Section 96(1):	redesignated as s. 96(1) by 7, 1985, s. 13
Section 96(2):	inserted by 7, 1985, s. 13
Section 97(1):	substituted by 7, 1985, s. 14(a)
Section 97(1a):	inserted by 7, 1985, s. 14(a)
Section 97(3) and (4):	inserted by 7, 1985, s. 14(b)
Section 106:	repealed by 7, 1985, s. 15
Section 107:	substituted by 7, 1985, s. 16
Section 107(2):	amended by 109, 1981, s. 12
Section 109(1):	amended by 7, 1985, s. 17(a)
Section 109(2):	repealed by 7, 1985, s. 17(b)
Section 126(1):	amended by 109, 1981, s. 13
Section 135(2):	amended by 54, 1980, s. 4
Section 152b(1):	amended by 109, 1981, s. 14
Section 152f(1):	amended by 109, 1981, s. 15; 78, 1987, s. 4
Section 152g:	inserted by 109, 1981, s. 16
Section 153(1):	amended by 109, 1981, s. 17
Section 153(2):	amended by 70, 1985, s. 13(a), (b)
Section 153(3) and (4):	inserted by 70, 1985, s. 13(c)
Section 165(1) and (2):	amended by 109, 1981, s. 18
Section 168:	amended by 109, 1981, s. 19
Section 175(2a):	inserted by 109, 1981, s. 20(a)
Section 175(3):	amended by 109, 1981, s. 20(b); 7, 1985, s. 18(a)
Section 175(3a):	inserted by 7, 1985, s. 18(b)
Section 175(4):	substituted by 109, 1981, s. 20(c)
Section 175(4a) and (4b):	inserted by 109, 1981, s. 20 (c)
Section 175(6):	inserted by 109, 1981, s. 20(d)
Section 177:	amended and redesignated as s. 177(1) by 109, 1981, s. 21
Section 177(2) and (3):	inserted by 109, 1981, s. 21(b)
Section 178:	amended and redesignated as s. 178(1) by 109, 1981, s. 22
Section 178(2):	inserted by 109, 1981, s. 22(b)
Section 179:	amended by 109, 1981, s. 23
Section 180(3):	amended by 109, 1981, s. 24
Section 181(2):	amended by 109, 1981, s. 25
Section 183(1):	amended by 109, 1981, s. 26
Section 216(1):	amended by 109, 1981, s. 27
Section 218(2):	substituted by 7, 1985, s. 19
Section 228(1):	amended by 109, 1981, s. 28
Section 230(1) and (3):	amended by 109, 1981, s. 29
Section 259(1):	amended by 54, 1980, s. 5; 109, 1981, s. 30
Section 279(3):	amended by 109, 1981, s. 31
Section 284:	amended by 109, 1981, s. 32
Section 285:	amended by 109, 1981, s. 33
Section 294(1):	substituted by 109, 1981, s. 34(a)
Section 294(2):	repealed by 109, 1981, s. 34(a)
Section 294(3a):	inserted by 109, 1981, s. 34(b)
Section 295(1):	amended by 109, 1981, s. 35

Section 296(1):	amended by 109, 1981, s. 36
Section 299:	repealed by 56, 1984, s. 6
Section 302:	amended by 109, 1981, s. 37
Section 302(c):	repealed by 109, 1981, s. 37
Section 320:	amended by 70, 1985, s. 14; 33, 1989, s. 10
Section 321(1):	amended by 34, 1981, s. 36(a)
Heading preceding section 324:	amended by 34, 1981, s. 36(b)
Section 324(1):	amended by 34, 1981, s. 36(c)
Section 324(4):	amended by 34, 1981, s. 36(d)
Section 325:	substituted by 34, 1981, s. 36(e)
Section 326(1):	amended by 34, 1981, s. 36(f)
Section 326(2):	amended by 34, 1981, s. 36(g)
Section 328(2):	substituted by 109, 1981, s. 38
Section 329:	repealed by 51, 1988, s. 69
Section 331:	repealed by 81, 1984, s. 38
Section 332(1):	repealed by 34, 1981, s. 36(h)
Section 333(6):	amended by 34, 1981, s. 36(i)
Sections 335 and 336:	repealed by 109, 1981, s. 39
Section 337(3):	repealed by 6, 1985, s. 5
Section 341a:	inserted by 109, 1981, s. 40
3rd and 4th Schedules:	repealed by 109, 1981, s. 41