



ANNO UNDECIMO

GEORGI VI REGIS.

A.D. 1947.

No. 45 of 1947.

An Act to amend the Local Courts Act, 1926-1936.

[Assented to 11th December, 1947.]

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

1. (1) This Act may be cited as the "Local Courts Act Amendment Act, 1947". Short titles.
- (2) The Local Courts Act, 1926-1936, as amended by this Act, may be cited as the "Local Courts Act, 1926-1947".
- (3) The Local Courts Act, 1926-1936, is hereinafter called "the principal Act".
2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.
3. Section 107 of the principal Act is amended by striking out the word "eight" in the third line of subsection (2) and inserting in lieu thereof the word "five". Amendment
s. 107 of
principal Act—
Judgment in
default of
appearance.
4. Section 126 of the principal Act is amended by striking out the word "eight" in the last line of subsection (1) and inserting in lieu thereof the word "five". Amendment of
s. 126 of
principal Act—
Judgment in
default of
attendance at
hearing.
5. Section 153 of the principal Act is amended—
 - (a) by inserting after the word "thereof" in the seventh line the words "for the time being remaining unpaid" : Amendment of
s. 153 of
principal Act—
Rate of
interest on
judgments.

(b) by striking out the word " eight " in the eighth line and inserting in lieu thereof the word " five ".

Enactment of
s. 183a of
principal Act—

Imprisonment
under
warrants

6. The following section is enacted and inserted in the principal Act after section 183 thereof :—

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.

Amendment of
s. 223 of
principal Act—

Warrants.

7. Section 223 of the principal Act is amended by inserting after subsection (2) the following subsection :—

(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.

Amendment of
s. 271 of
principal Act—

Warrant for
arrest of
absconding
debtor.

8. Section 271 of the principal Act is amended—

(a) by striking out in the last two lines thereof the words " brought before the local court judge or a special magistrate, or to be otherwise " ;

(b) by adding at the end thereof the words " and the Justice may in his discretion issue the warrant ".

Amendment of
s. 272 of
principal Act—

Duty to file
claim and
pay fees.

9. Section 272 of the principal Act is repealed and the following section is enacted in lieu thereof :—

272. The creditor or claimant at the time of the issue of 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 the 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.

10. Section 273 of the principal Act is amended—

Amendment of
s. 273 of
principal Act—
Consequential
amendments.

(a) by striking out the words “ or will be ” in the third line of subsection (1) ;

(b) by striking out subsection (3) and inserting in lieu thereof the following subsection :—

(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.

11. Section 274 of the principal Act is amended by inserting the word “ when ” after the word “ time ” in the third line, and by striking out the word “ Adelaide ” in the fifth line.

Amendment of
s. 274 of
principal Act—
Indorsement
on warrant.

12. Section 275 of the principal Act is repealed and the following section is enacted in lieu thereof :—

Amendment of
s. 275 of
principal Act—

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—

Duty of
person
executing
warrant.

(a) pays the sum indorsed 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 indorsed 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.

13. Section 276 of the principal Act is amended—

Amendment of
s. 276 of
principal Act—
Consequential
amendments.

(a) by adding after the word “ judgment ” in the first line the words “ then subject to the provisions of this Act ” ;

(b) by adding after the word “ warrant ” in the twelfth line the words “ and any other costs incurred ”.

Repeal of
ss. 277-281 of
principal Act
and enactment
of other
provisions—

Procedure
where debtor
claims to be
brought before
court.

14. Sections 277, 278, 279, 280, and 281, of the principal Act are repealed and the following sections are enacted in lieu thereof :—

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 the 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 indorse upon the application the time and place of its receipt, and shall bring the person arrested as early as practicable before the 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 thirty pounds 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.

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.

Adjudication
of claim.

(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.

Powers of
court in
actions.

(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.

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 thirty pounds 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.

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.

Discharge of
person
arrested.

15. The fifth schedule to the principal Act is amended by striking out the numeral " XI " in the eighteenth line of the left hand column of the table of practitioners' fees and inserting in lieu thereof the numeral " IX ".

Amendment o
fifth schedule
or principal
Act—
Practitioners'
fees.

16. (1) The amendments made by sections 3, 4 and 5 of this Act shall apply—

Application
of Act.

(a) as from the day of the commencement of this Act to all amounts which on that day remain unpaid on judgments signed before that day ;

(b) to all judgments signed after that day.

(2) The other amendments made by this Act shall apply only to proceedings commenced after the commencement of this Act.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. W. M. NORRIE, Governor.