

ADMINISTRATION OF JUSTICE ACT.

New South Wales



ANNO SEPTIMO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 3, 1968.

An Act to amend the law relating to the administration of justice; to make further provision with respect to the mode of trial of certain classes of civil actions; to make further provision with respect to the payment or the provision of security for payment of moneys into court in civil actions; to enable the Court of Appeal, in special circumstances, to substitute its assessment for the verdict of a jury; to make further provision with respect to the liability of women for service on juries; to make further provision with respect to the attachment of wages; to amend certain procedures relating to minor traffic offences; to facilitate the substantiation of an information or complaint; to resolve certain doubts; to make amendments

Administration of Justice.

No. 3, 1968

amendments of a procedural or administrative nature to various Acts; for these and other purposes to amend the Law Reform (Miscellaneous Provisions) Act, 1965, and certain Acts amended by that Act, the Matrimonial Causes Act, 1899, and certain other Acts; and for purposes connected therewith. [Assented to, 19th April, 1968.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title
and citation.

1. (1) This Act may be cited as the "Administration of Justice Act, 1968".

(2) The Acts, as amended by subsequent Acts and by this Act, specified in the first and second columns of the Schedule to this Act may be cited as respectively specified in the third column of that Schedule.

Commence-
ment.

2. (1) This Part of this Act shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(2) Subject to subsection one of this section this Act shall commence upon such day or days as may be appointed and notified pursuant to subsection three of this section.

(3) The Governor may, from time to time, appoint and notify by proclamation published in the Gazette the day upon which any Part or provision of this Act specified in the proclamation shall commence and may appoint different days for different Parts or provisions (whether contained in the same Part or section or in different Parts or sections) and the Part or provision so specified shall commence accordingly.

3.

Administration of Justice.

3. This Act is divided as follows :—

No. 3, 1968

PART I.—PRELIMINARY—*ss.* 1–3.

Division
of Act.

PART II.—AMENDMENT OF LAW REFORM (MISCELLANEOUS PROVISIONS) ACT, 1965—*s.* 4.

PART III.—AMENDMENT OF COMMON LAW PROCEDURE ACT, 1899–1967—*s.* 5.

PART IV.—AMENDMENT OF SUPREME COURT AND CIRCUIT COURTS ACT, 1900–1967—*s.* 6.

PART V.—AMENDMENT OF EQUITY ACT, 1901–1965—*s.* 7.

PART VI.—AMENDMENT OF MATRIMONIAL CAUSES ACT, 1899–1965—*s.* 8.

PART VII.—AMENDMENT OF JURY ACT, 1912–1965—*ss.* 9, 10.

PART VIII.—AMENDMENT OF JUSTICES ACT, 1902–1967—*s.* 11.

PART IX.—AMENDMENT OF DISTRICT COURTS ACT, 1912–1965—*s.* 12.

PART X.—AMENDMENT OF SMALL DEBTS RECOVERY ACT, 1912–1965—*s.* 13.

PART XI.—MINOR TRAFFIC OFFENCES—*ss.* 14, 15.

SCHEDULE.

PART II.

AMENDMENT OF LAW REFORM (MISCELLANEOUS PROVISIONS) ACT, 1965.

4. The Law Reform (Miscellaneous Provisions) Act, 1965, is amended—

Amendment
of Act No.
32, 1965.

(a) (i) by omitting from subsection one of section four the words “instituted after the commencement of this Act” and by inserting in lieu thereof the words “or in a District Court”;

Sec. 4.
(Application
of Part.)

(ii) by omitting from subparagraph (i) of paragraph (a) of the same subsection the words “caused by or arising out of the use of a motor vehicle”

Administration of Justice.

No. 3, 1968

vehicle” and by inserting in lieu thereof the words “and is based upon any act, neglect or default involving the use of a motor vehicle where that death or bodily injury, or an injury leading to that death, or that act, neglect or default, occurred on a public street”;

(iii) by omitting from subsection two of the same section the figures “1942–1963” and by inserting in lieu thereof the words and figures “1942, as amended by subsequent Acts”;

Sec. 5.
(Amendment of
procedure as
to trials
by jury.)

(b) by omitting subsections one and two of section five and by inserting in lieu thereof the following subsections :—

(1) In any action to which this Part applies the court or a judge may on the application of any party made not later than such time before the trial as may be limited by rules of court, upon being satisfied that circumstances exist which render it desirable to do so and shall—

(a) where both parties so apply; or

(b) where the action is for damages in respect of the death of or bodily injury to any person and is based upon an act, neglect or default of the defendant for which, if proved, he would, as the employer of that person and not otherwise, incur liability to the plaintiff,

order that the action be tried with a jury; but, save as aforesaid, any action to which this Part applies shall, notwithstanding section twenty-nine of the Jury Act, 1912, as amended by subsequent Acts, or section ninety of the District Courts Act, 1912, as amended by subsequent Acts, be tried by a judge without a jury :

Provided that the provisions of this section shall be without prejudice to the power of the court or a judge to order, in accordance with rules of court, that different questions of fact arising in any action

be

Administration of Justice.

be tried by different modes of trial, and where any such order is made the provisions of this section shall have effect accordingly. No. 3, 1968

(2) Where an order has been made under subsection one of this section for the trial of an action with a jury any party to that action may apply under section thirty of the Jury Act, 1912, as amended by subsequent Acts, for an order that the trial be had by a jury consisting of twelve persons.

- (c) by inserting next after section five the following new New sec. 5A.
section :—

5A. (1) Where an action to which this Part Transitional provisions.
applies was instituted before the commencement of Part II of the Administration of Justice Act, 1968, in the Supreme Court or in a District Court and such action has been listed in the daily causes list at any time prior to, or within one month after, the day on which this Act receives the Royal assent, such action may be continued and completed as if Part II of the Administration of Justice Act, 1968, had not been enacted.

(2) Where an action to which this Part applies is instituted after the commencement of Part II of the Administration of Justice Act, 1968, in the Supreme Court or in a District Court, then, notwithstanding anything in any Act or in any rule of court relating to the mode of trial of actions, the provisions of section five of this Act shall apply to the hearing and determination of such action.

- (d) by omitting from section six the words “section five” wherever occurring and by inserting in lieu thereof the words “sections five and 5A”; Sec. 6.
(Third party proceedings and contribution.)
- (e) by omitting from subsection one of section ten the word, figures, letter and symbols “section 64 (a)” wherever occurring and by inserting in lieu thereof the words “paragraph (a) of subsection one of section sixty-four”. Sec. 10.
(Statute law revision.)

PART

No. 3, 1968

PART III.

AMENDMENT OF COMMON LAW PROCEDURE ACT,
1899-1967.Amendment
of Act No.
21, 1899.5. The Common Law Procedure Act, 1899, as amended
by subsequent Acts, is amended—

Sec. 36.

(a) by inserting next after subsection one of section
thirty-six the following new subsection :—Non-joinder
of
defendants.(1A) At any time before or at the trial of an
action, the Court or a Judge may order that any
person or persons not joined as defendant or
defendants shall be so joined, if it appears to the
Court or Judge that injustice will not be done by
such amendment.Sec. 82A.
(Payment
into Court
at any time
before
joinder of
issue.)(b) by omitting from subsection one of section 82A
the words "at any time before the joinder of issue"
and by inserting in lieu thereof the words "no later
than fourteen days before the date of hearing or,
with the leave of the Court or a Judge and upon
such terms as the Court or Judge thinks fit, on
some later day before the date of hearing";Sec. 160A.
(Substituted
verdict.)(c) by omitting subsection four of section 160A and
by inserting in lieu thereof the following sub-
section :—(4) The Court of Appeal shall not exercise the
powers conferred by this section unless it is
satisfied—(a) that it is fully able to assess the damages on
a perusal of the evidence contained in the
documents before it, or on admitted facts,
without seeing or hearing the plaintiff or
defendant or other witnesses; and(b) that one of the following circumstances
exists, namely :—(i) it is desirable that the power be
exercised to avoid a multiplicity of
trials; or(ii) as a result of an error of law on the
part of the trial judge or a manifest
error on the part of the jury, some
item

Administration of Justice.

item or items of damages has or have been wrongly included in or excluded from the assessment; or

(iii) the parties consent.

- (d) by omitting section two hundred and sixty-five and by inserting in lieu thereof the following section :—

265. All costs of any action not herein or otherwise provided for shall be paid by or apportioned between the parties in such manner as the Court or Judge thinks fit and in default of any special direction shall abide the event of the action or the finding or judgment on any issue, and such costs shall be recoverable accordingly.

Subst. sec. 265.
Costs in discretion of Judge.

PART IV.

AMENDMENT OF SUPREME COURT AND CIRCUIT COURTS ACT, 1900-1967.

6. The Supreme Court and Circuit Courts Act, 1900, as amended by subsequent Acts, is amended—

Amendment of Act No. 35, 1900.

- (a) by omitting from subsection three of section nine the words "be a member of the Industrial Commission of New South Wales or a barrister of not less than five years' standing" and by inserting in lieu thereof the following word and new paragraphs :—

Sec. 9. (Puisne Judges.)

be—

- (a) a member of the Industrial Commission of New South Wales;
- (b) a barrister of not less than five years' standing;
- (c) a solicitor of not less than seven years' standing; or
- (d) a barrister or a solicitor of less than five years' or seven years' standing, respectively, where at all times during a continuous

Administration of Justice.

No. 3, 1968

continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors;

Sec. 13.
(General power to appoint acting judge.)

(b) by inserting at the end of subsection one of section thirteen the following paragraph :—

For the purposes of this subsection “barrister” and “solicitor” include, respectively, a barrister or solicitor of less than seven years’ standing where during a continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

Sec. 21K.
(Court may be held in two or more divisions.)

(c) by inserting next after paragraph (a) of subsection one of section 21K the following new paragraph :—

(ai) for the granting of bail, subject to such terms and conditions, if any, as may be imposed, upon the making of a rule or order nisi in respect of any proceedings referred to in paragraphs (a) and (b) of subsection three of section 21F of this Act, where—

- (i) the applicant for the rule or order nisi is in custody; and
- (ii) the granting of bail is not authorised by any Act or rule of Court by which the making of an application for such a rule or order is regulated or empowered.

PART V.

AMENDMENT OF EQUITY ACT, 1901–1965.

Amendment of Act No. 24, 1901.

7. The Equity Act, 1901, as amended by subsequent Acts, is amended—

Sec. 71.
(The Master in Equity.)

(a) (i) by inserting in section seventy-one after the word “barrister” the words “or solicitor”;

(ii)

Administration of Justice.

No. 3, 1968

- (ii) by inserting at the end of the same section the following new paragraph :—

For the purposes of this section “barrister” and “solicitor” include, respectively, a barrister or solicitor of less than five years standing where during a continuous period of not less than five years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

- (b) (i) by inserting next after paragraph (c) of subsection (1c) of section 71A the following new paragraph :—

Sec. 71A.
(Tenure of office and pension of the Master.)

(d) For the purposes of paragraph (b) of this subsection, service as Acting Master in Equity shall be deemed to be service as the Master in Equity.

- (ii) by inserting next after paragraph (c) of subsection four of the same section the following new paragraph :—

(d) Nothing in this subsection shall be construed as abridging or otherwise affecting any powers, authorities, duties or functions conferred or imposed on a Deputy Master by or under this or any other Act.

- (c) by inserting next after subsection one of section ninety-four the following new subsections :—

Sec. 94.
(General Rules.)

(1A) The Judges of the Supreme Court or the Chief Judge in Equity and any two Judges of the Supreme Court may make rules—

- (a) for empowering the Master or the Deputy Master in Equity to do such things and transact such business and to exercise such authority and jurisdiction in the same as by virtue of any statute or custom or by the rules and practice of the Court, or any of

Administration of Justice.

No. 3, 1968

- of them respectively, are done, transacted or exercised by the Judge in chambers and as may be specified in any such rule, except in respect of matters relating to the liberty of the subject;
- (b) for regulating the attendance on the Master or the Deputy Master in Equity in chambers, the course of practice to be there pursued, and the scale of costs to be there adopted, and for fixing the scale of fees in respect of business transacted before the Master or Deputy Master in Equity;
- (c) for enabling or requiring all or any of the powers or duties that are or may be conferred or imposed on the Master by or under this or any other Act to be exercised or performed by the Deputy Master in Equity or any officer of the Court other than the Master or the Deputy Master in Equity with and subject to the same incidents including the right of appeal and right of any suitor to bring any particular point before the Judge as apply in the case of proceedings before the Master.

(1B) Every rule made under subsection (1A) of this section shall, subject to subsection three of this section, be of the same force and effect as if it had been inserted in and had formed part of this Act.

PART VI.**AMENDMENT OF MATRIMONIAL CAUSES ACT, 1899-1965.**

Amendment
of Act No.
14, 1899.
Sec. 4.
(Composition
and
jurisdiction
of Court.)

8. The Matrimonial Causes Act 1899, as amended by subsequent Acts, is amended by inserting next after subsection three of section four the following new subsection :—

- (4) The registrar, when exercising the jurisdiction and powers conferred upon or delegated to him under this Act, shall be deemed to be exercising the jurisdiction and powers of the Supreme Court.

PART

Administration of Justice.

PART VII.

No. 3, 1968

AMENDMENT OF JURY ACT, 1912-1965.

9. (1) The Jury (Amendment) Act, 1947, as amended by the Mental Health Act, 1958, is amended by omitting section three.

Amendment
of Act No.
41, 1947.

Sec. 3.

(Commence-
ment of
section.)

(2) Notwithstanding anything contained in section two of this Act, this section shall commence on the day on which section ten of this Act commences.

10. (1) The Jury Act, 1912, as amended by subsequent Acts, is amended—

Amendment
of Act No.
31, 1912.

(a) (i) by omitting from section three the word “man” and by inserting in lieu thereof the word “person”;

Sec. 3.

(Qualifica-
tions of
jurors.)

(ii) by inserting at the end of the same section the following new subsections :—

(2) The liability imposed by subsection one of this section shall not extend to a woman unless she is qualified and resident in a jurors' district declared by the Governor, by order published in the Gazette, to be a jurors' district for the purposes of this subsection.

(3) A woman who is liable to serve on juries or act as a juror may, by giving to the chief constable of the police district in which she is resident a notification in a form approved by the sheriff, elect not to serve on juries or act as a juror, whether or not—

(a) her liability so to serve arose before or after the commencement of section ten of the Administration of Justice Act, 1968; or

(b) she has, under subsection four of this section, revoked an election previously made by her under this subsection.

(4)

Administration of Justice.

No. 3, 1968

(4) A woman who, but for having made an election as provided by subsection three of this section, would be liable to serve on juries or act as a juror may, by giving to the chief constable of the police district in which she is resident a notification in a form approved by the sheriff, revoke that election and shall thereupon be subject to the provisions of this Act as if that election had not been made.

Sec. 4.
(Disqualification.)

- (b) (i) by omitting from section four the word "man" and by inserting in lieu thereof the word "person";
- (ii) by omitting from paragraph (b) of the same section the word "he" and by inserting in lieu thereof the words "such person";

Sec. 5.
(Exemptions.)

- (c) (i) by omitting from paragraph (q) of section five the word "and";
- (ii) by omitting from paragraph (r) of the same section the words "duty of jurymen" and by inserting in lieu thereof the following words and new paragraph :—
duties of a juror; and
- (s) women who have elected, under subsection three of section three of this Act, not to serve on juries or act as a juror and have not under subsection four of that section, revoked that election.

Secs. 9, 13,
27 and 57.
(Consequential.)

- (d) by omitting from sections nine, thirteen, twenty-seven and fifty-seven the word "men" wherever occurring and by inserting in lieu thereof the word "persons";

Secs. 10 and
58.
(Consequential.)

- (e) by omitting from sections ten and fifty-eight the word "man" wherever occurring and by inserting in lieu thereof the word "person";

(f)

Administration of Justice.

(f) by inserting next after subsection three of section ten the following new subsection :—

No. 3, 1968
Sec. 10.

(4) Notwithstanding anything contained in this Act, a chief constable shall not, subject to subsection two of section ten of the Administration of Justice Act, 1968, be required to include the name of a woman in a jury list for any jurors' district unless—

(Lists to be prepared by chief constable.)

(a) he has been given notice in writing by the sheriff that he is to include women in the jury list for that district; and

(b) he is satisfied that the woman concerned has been made aware of her right to make the election referred to in subsection three of section three of this Act and has not made such an election.

(g) by omitting the Seventh Schedule.

Seventh
Schedule.

(2) Where, immediately before the commencement of this section, a woman was qualified and liable to serve on juries or to act as a juror she shall, immediately after that commencement, be deemed to be liable to serve on juries or to act as a juror under the provisions of the Jury Act, 1912, as amended by subsequent Acts and by this Act, and the provisions of that Act, as so amended, subsection two of section three and paragraph (a) of subsection four of section ten excepted, shall apply to and in respect of her accordingly.

PART VIII.

AMENDMENT OF JUSTICES ACT, 1902-1967.

11. The Justices Act, 1902, as amended by subsequent Acts, is amended—

Amendment
of Act No.
27, 1902.

(a) by inserting at the end of section fifty-six the following new subsections :—

Sec. 56.

(2) Where an information or complaint has been laid or made in writing without oath, any person able so to do may by his oath substantiate the

(Time within which information or complaints may be laid or made.)

Administration of Justice.

No. 3, 1968

the matter thereof, whether or not he is the informant or complainant and whether or not that matter arose more than six months before being so substantiated.

(3) For the purposes of subsection two of this section, the matter of the information or complaint may be substantiated on oath before the Justice before whom the information or complaint was laid or made, or before some other Justice.

Sec. 60.
(Issue of
summons.)

(b) by omitting from section sixty the words “provided, such Justice may issue his summons for the appearance of such person” and by inserting in lieu thereof the following words :—

provided—

(a) where the information or complaint is not substantiated as provided by section fifty-six of this Act, the Justice before whom the information or complaint was laid or made; or

(b) where the information or complaint is so substantiated, the Justice before whom it was so substantiated,

may issue his summons for the appearance of such person;

Sec. 82.
(Abolition
in all cases
of recovery
of fine, etc.
by levy or
distress.)

(c) (i) by omitting from subsection (2A) of section eighty-two the words “For such purpose such conviction or order may be entered in the records of the Small Debts Court exercising jurisdiction at the petty sessions where such order or conviction was made in such manner as may be prescribed by rules made under the said Acts.”;

(ii)

Administration of Justice.

(ii) by inserting next after the same subsection the following new subsections : — No. 3, 1968

(2B) Where a corporate body referred to in subsection (2A) of this section—

(a) is the subject of only one conviction or order so referred to; or

(b) is the subject of more than one such conviction or order—

(i) made at the same petty sessions whether on the same day or on different days; or

(ii) made at different petty sessions on the same day or on different days,

the conviction or order or, as the case may be, the convictions or orders may, subject to subsection (2C) of this section, be entered in the records of the Small Debts Court exercising jurisdiction at the petty sessions at which that conviction or order or, as the case may be, any of those convictions or orders was made.

(2C) Where more than one conviction or order is entered under subsection (2B) of this section, all those convictions or orders shall operate as one order for the payment of the total of all the amounts adjudged to be paid by the convictions or orders so entered, less the amount, if any, paid by the corporate body in reduction thereof.

PART

No. 3, 1968

PART IX.

AMENDMENT OF DISTRICT COURTS ACT, 1912-1965.

Amendment
of Act No.
23, 1912.**12.** The District Courts Act, 1912, as amended by subsequent Acts, is amended—Sec. 8A.
(Jurisdiction where
defendant
outside
the State.)

(a) by omitting subsection five of section 8A;

New sec. 8B.

(b) by inserting next after section 8A the following new section :—

Jurisdiction
in
certain
circum-
stances.

8B. Notwithstanding anything contained in subsection one of section seven, or in section 8A of this Act, where a defendant fails to make an election as provided by section 64A of this Act, the District Court in which the action was instituted shall have jurisdiction in the action.

Sec. 11.
(Powers of
judge.)

(c) by inserting at the end of section eleven the following new subsections :—

(2) Subject to subsection three of this section, it shall be lawful for a judge of a District Court to hear and determine actions and matters pending in that District Court, at a town or place other than that at which the holding of that District Court has been proclaimed pursuant to subsection one of section four of this Act, during any period in which it is inexpedient or impracticable to hold sittings of the Court at that proclaimed town or place.

(3) The jurisdiction conferred by subsection two of this section shall not be exercised unless the town or place first referred to in that subsection—

(a) if within the appointed district of the judge, has been specified by order of the judge as the town or place at which the hearing shall be held; or

(b)

Administration of Justice.

(b) if beyond the appointed district of the judge has, by order published in the Gazette, been declared by the Governor to be the town or place at which the hearing of all such actions or matters shall be held for the period specified in the order, No. 3, 1968

and, in the case referred to in paragraph (b) of this subsection, the jurisdiction is exercised within the period specified in the order.

(4) A subpoena or other process requiring the appearance of any person at the hearing of any action or matter referred to in subsection two of this section may be made returnable at the town or place specified in an order made pursuant to subsection three of this section.

(d) (i) by omitting from subsection one of section fourteen the words "be a barrister of five years or an attorney of seven years standing" and by inserting in lieu thereof the following word and new paragraphs :— Sec. 14.
(Appoint-
ment and
qualification
of judges.)

be—

- (a) a barrister of five years' standing;
- (b) a solicitor of seven years' standing;
or
- (c) a barrister or a solicitor of less than five or seven years' standing, respectively, where during a continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors;

(ii) by omitting from subsection two of the same section the word "attorney" and by inserting in lieu thereof the word "solicitor";

(e) by omitting from section nineteen the word "attorney" and by inserting in lieu thereof the word "solicitor"; Sec. 19.
(Deputy
judge.)

(f)

Administration of Justice.

No. 3, 1968
Sec. 24.
 (Assistant registrars.)

- (f) by omitting from section twenty-four the words "In the case of the District Court of the Metropolitan District holden at Sydney the assistant registrar shall be appointed by the Governor. The person who at the commencement of the District Courts (Amendment) Act, 1949, held office as assistant registrar of the District Court of the Metropolitan District holden at Sydney shall be deemed to have been appointed assistant registrar of such court under the provisions of this section." and by inserting in lieu thereof the following paragraph :—

In the case of the District Court of the Metropolitan District holden at Sydney, or of any District Court approved for the purpose by the Minister, assistant registrars, being not more than three in number in respect of any one District Court, may be appointed by the Governor. Any person who, immediately before the commencement of paragraph (f) of section twelve of the Administration of Justice Act, 1968, held office as assistant registrar of the District Court of the Metropolitan District holden at Sydney shall continue in that office as if he had been appointed under the provisions of this section.

Sec. 33.
 (Amount of court fees.)

- (g) by inserting in subsection one of section thirty-three after the words "process of execution" the words "unless the registrar shall otherwise direct";

Sec. 41.
 (Ordinary jurisdiction of the courts.)

- (h) by omitting from subsection one of section forty-one the words "(except in an action in which title to land is in question, and except in an action of ejectment)";

Sec. 43.
 (Jurisdiction where title to land is in question.)

- (i) by omitting from section forty-three the words "four hundred dollars" wherever occurring and by inserting in lieu thereof the words "six thousand dollars";

(j)

Administration of Justice.

- (j) (i) by inserting next after subsection one of section forty-four the following new subsection :—

No. 3, 1968
Sec. 44.
(Ejectment
actions.)

(1A) Where land in respect of which an action of ejectment is brought or part thereof is in the occupation of a person not named in the summons as a defendant, and the plaintiff does not state in his particulars annexed to the summons that it is not intended to evict such person, a notice in the prescribed form with a copy of the summons annexed thereto shall be served on such person by leaving the same at the premises or part thereof so occupied, addressed to the person in occupation thereof.

- (ii) by omitting paragraph (a) of subsection two of the same section ;

- (k) by inserting next after section sixty-three the following new section :—

New sec.
63A.

63A. If the defendant to an action commenced by summons issued pursuant to the provisions of section sixty-two of this Act does not within the prescribed time file a defence, or notice of intention to defend, as provided by the rules of court, the plaintiff may, within three months after the expiration of the time for filing such defence or notice and after due proof of service of the summons, have judgment entered up by the court or registrar against the defendant, limited to the issue of liability.

Entering
up of
judgment
in un-
defended
cases.

For the purposes of this section, the rules of court may prescribe—

- (a) the procedures whereby the action shall go to trial as to the amount of the plaintiff's claim; and
(b) the scale of costs to be adopted in entering judgment and the scale of fees in respect of any such procedures.

(1)

Administration of Justice.

No. 3, 1968
 Sec. 64.
 (Default
 summons.)

(1) by inserting at the end of section sixty-four the following new subsection :—

(2) Subject to the provisions of section 64A of this Act, a default summons may be issued notwithstanding that the action has been brought in a District Court other than a District Court having jurisdiction in the action under subsection one of section seven of this Act or, as the case may require, subsection two of section 8A of this Act.

New sec.
 64A.

(m) by inserting next after section sixty-four the following new section :—

Procedure
 where
 default
 summons
 issued
 by Court
 for district
 where
 defendant
 not resi-
 dent, &c.

64A. (1) Where a default summons has issued in an action brought in a District Court other than a District Court having jurisdiction under subsection one of section seven of this Act, the defendant, or any one of two or more defendants may, when filing notice of grounds of defence pursuant to section sixty-six of this Act, elect as prescribed that subsection one of section seven of this Act shall apply to the action.

(2) Where a defendant has made an election under subsection one of this section, the plaintiff may apply to the registrar of the Court in which the action was brought to transfer the proceedings to the District Court referred to in subsection three of this section and, if he fails to make such an application within three months after the time the notice of grounds of defence was filed, the plaintiff shall be deemed to have discontinued the action.

(3) Where application is made under subsection two of this section, the plaintiff shall in his application nominate a District Court for the district—

(a) where the defendant, or any one of two or more defendants, as the case may be, is resident or carries on business; or

(b) where the debt sued for was contracted,
 and the registrar shall transfer the proceedings to the District Court so nominated. (4)

Administration of Justice.

(4) Where the registrar is required to transfer proceedings in accordance with this section, the provisions of subsections two, three and four of section ten of this Act shall apply as if there had been a change of venue to the District Court to which the proceedings are to be transferred. No. 3, 1968

(5) Where, in the case of a defendant who is not within New South Wales, a default summons has issued in an action in a District Court for a district other than that for which the Court would have jurisdiction under subsection two of section 8A of this Act, this section shall apply as if the references therein to subsection one of section seven were references to subsection two of section 8A and as if the District Court referred to in subsection three of this section were a District Court having jurisdiction under subsection two of section 8A of this Act.

(n) by omitting section sixty-five and by inserting in lieu thereof the following section :— Sec. 65.

65. A default summons shall be served in the same manner as is provided by or under section sixty-three of this Act for the service of an ordinary summons. Service of default summons.

- (o) (i) by omitting from section sixty-seven the word "personal" where firstly occurring; Sec. 67.
- (ii) by omitting from the same section the words "or, where service has not been personal, within the prescribed number of days after leave to proceed as aforesaid,"; (Judgment in default of defence.)
- (iii) by omitting from the same section the words "three months" and by inserting in lieu thereof the words "twelve months";
- (iv) by omitting from the same section the words "personal service, or of an order of leave to proceed" and by inserting in lieu thereof the word "service";

(p)

Administration of Justice.

No. 3, 1968

New sec.

67A.

Entering up
of judgment
where
defendant
outside
State.

(p) by inserting next after section sixty-seven the following new section :—

67A. Where, after the commencement of paragraph (p) of section twelve of the Administration of Justice Act, 1968, the defendant to an action for the recovery of a debt or liquidated demand is served, under the provisions of the Service and Execution of Process Act 1901 of the Parliament of the Commonwealth of Australia, or any Act of that Parliament amending or replacing that Act, with an ordinary summons and does not within the prescribed time thereafter, file such defence as is prescribed, the plaintiff may, within three months after the expiration of the time for filing such defence and—

- (a) after obtaining such leave to proceed as is required by that Act of the Parliament of the Commonwealth of Australia or any such replacing or amending Act; and
- (b) on filing an account of what he claims to be due to him verified by the oath of the plaintiff, his attorney or agent,

have judgment entered up by the Court or registrar against the defendant for the amount of the claim, and a sum for costs to be prescribed.

New sec.
71A.Judgment
by consent.

(q) by inserting next after section seventy-one the following new section :—

71A. Where, in an action in a District Court, the solicitor for the plaintiff and the solicitor for the defendant have signed a statement of any agreement as to the judgment to be entered by the Court against the defendant, and as to the terms and conditions, if any, upon which the judgment is to be satisfied, the plaintiff may have judgment entered up by the Court or registrar against the defendant in accordance with that agreement.

(r)

Administration of Justice.

- (r) by omitting from subsection one of section seventy-two the words "at least five clear days before the return day" and by inserting in lieu thereof the words "no later than fourteen days before the date of hearing or, with the leave of the judge and upon such terms as the judge thinks fit, on some later day before the date of hearing";

No. 3, 1968
Sec. 72.
(Payment into court of money by defendant.)

- (s) by inserting next after section seventy-five the following new section :—

New sec.
75A.

75A. The judge, on the application of any party to an action in a District Court, and on being satisfied that the whole or any part of any particulars of claim or grounds of defence in that action is frivolous, vexatious, or embarrassing, may order the frivolous, vexatious, or embarrassing matter to be struck out. In any such case the judge may order that the action proceed as though the matter so struck out had not been filed, or may grant time to any party to file amended documents, and may, where grounds of defence are so struck out, order that the plaintiff may have judgment entered up against the defendant.

Judge may strike out certain matter.

- (t) by inserting at the end of section 95A the following new subsection :—

Sec. 95A.
(Amount of verdict exceeding six thousand dollars.)

(2) Where at a trial of any cause or issue in a District Court a verdict is returned for an amount in excess of ten thousand dollars, the Court shall, notwithstanding the amount claimed, find and record a verdict for the amount of ten thousand dollars, and the plaintiff shall be entitled to recover the amount of ten thousand dollars or that amount reduced in accordance with section ten of the Law Reform (Miscellaneous Provisions) Act, 1965.

(u)

No. 3, 1968

Sec. 117.
(Attach-
ment of
debts
may be
ordered.)

(u) by omitting subsections one and two of section one hundred and seventeen and by inserting in lieu thereof the following subsections :—

(1) The judge or registrar of a District Court, upon the ex parte application of a creditor who has obtained a judgment in that District Court, either before or after oral examination in accordance with section one hundred and sixteen of this Act and upon affidavit by such judgment creditor or his attorney or agent, stating that the judgment has been recovered and is still unsatisfied, and to what amount, and that any person is indebted to the judgment debtor, may order that all debts due, owing or accruing from such third person (in this Act called the garnishee) to the judgment debtor be attached to answer the judgment debt.

(1A) An order made under subsection one of this section shall require the garnishee to pay to the registrar of the court in which the order was made, for the judgment creditor, the debt due from the garnishee to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt, in accordance with this Act and rules of court made for the purpose.

(1B) Where the garnishee resides or carries on business within the jurisdiction of the court in which an order under subsection one of this section is made, the judge or registrar may, by that order or by a subsequent order, summon the garnishee to appear before the judge to show cause why he should not make payment in accordance with the order attaching the debt due from him to the judgment debtor.

(1C) Where an order is made under subsection one of this section against a garnishee who does not reside or carry on business within the jurisdiction of the court, the judgment creditor may, upon failure of the garnishee to comply with the order, apply
for

Administration of Justice.

for a change of venue to the District Court for the district in which the garnishee resides or carries on business and, where such an order for change of venue is made, the attachment order shall be deemed to have been made in the court to which the venue is changed. No. 3, 1968

(1D) Where a change of venue is ordered under subsection (1C) of this section, the judge or registrar of the District Court to which the venue is changed may summon the garnishee to appear before the judge to show cause why he should not make payment in accordance with the order attaching the debt due from him to the judgment debtor.

(2) An order made under subsection one of this section for the attachment of the wage or salary of a servant or employee shall extend only—

- (a) where the wage or salary is payable for a period of one week, to that part of the wage or salary that is payable at a rate in excess of the prescribed rate; or
- (b) where the wage or salary is payable for a period greater than one week, to that part of the wage or salary payable for that period that is payable at a rate in excess of the prescribed rate.

In this subsection—

“prescribed rate” means—

- (a) where no part of the wage or salary is otherwise attached under this or any other Act—a rate equal to eight dollars per week less than the Sydney basic wage; or
- (b) where any part of the wage or salary is otherwise attached under this or any other Act—a rate equal to eight dollars per week less than the

Sydney

Administration of Justice.

No. 3, 1968

Sydney basic wage increased by the amount so attached, calculated on a weekly basis;

“Sydney basic wage” means the basic wage for the time being in force within the meaning of Part V of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and appropriate for the judgment debtor.

New secs.
118A, 118B
and 118C.

Continuous
operation of
attachment
order.

(v) by inserting next after section one hundred and eighteen the following new sections :—

118A. (1) This section shall apply to and in respect of an attachment order referred to in subsection two of section one hundred and seventeen of this Act if the judge or registrar making that order so orders, and shall so apply subject to that subsection and sections 118B and 118C of this Act.

(2) Notwithstanding anything contained in section one hundred and eighteen of this Act, an attachment order to which this section applies shall not take effect until it is served on the garnishee and, upon being so served, it shall, subject to this section, operate to attach any wage or salary payable by the garnishee to the judgment debtor from time to time until—

- (a) a copy of an application made under subsection three of this section is served on the garnishee;
- (b) a copy of a statement filed under subsection five of this section is served on the garnishee; or
- (c) the expiration of a period of one month after the attachment order is served on the garnishee,

whichever first occurs, but shall not at any such time so operate to an extent greater than is necessary to satisfy the judgment debt.

(3)

Administration of Justice.

(3) A judgment debtor in respect of whom an attachment order to which this section applies is in operation, or the spouse of that judgment debtor, may apply to the District Court in which the order attaching the debt was made for an order to pay the judgment debt by instalments specified in the application and, upon a copy of the application being served on the garnishee, the attachment order shall operate, to the extent necessary to secure payment of the instalments specified in the application, to attach any wage or salary payable from time to time by the garnishee to the judgment debtor until—

No. 3, 1968

- (a) a copy of a statement filed under subsection five of this section is served on the garnishee; or
- (b) an order made on the application to pay by instalments is served on the garnishee,

whichever first occurs, but shall not at any such time so operate to an extent greater than is necessary to satisfy the judgment debt.

(4) Where application is made under subsection three of this section, the judge of the District Court to which the application is made may, unless a statement relating to the judgment debt referred to in the application has been filed under subsection five of this section, order that the judgment debt so referred to be paid by such instalments as he thinks fit, or he may order that the application be dismissed, and upon the service on the garnishee of the order made by the judge—

- (a) in the case of an order for payment of the judgment debt by instalments, the attachment order relating to the judgment debtor shall operate, to the extent necessary to secure payment of the instalments so ordered to be paid, to attach any wage or

salary

No. 3, 1968

salary payable by the garnishee to the judgment debtor from time to time, but shall not at any such time so operate to an extent greater than is necessary to satisfy the judgment debt; or

- (b) in the case of an order for dismissal of the application the attachment order relating to the judgment debtor shall operate to attach any wage or salary payable by the garnishee to the judgment debtor from time to time until the expiration of a period after being so served that, together with the period that elapsed between service of the attachment order and service of the application, totals one month, but shall not so operate to an extent greater than is necessary to satisfy the judgment debt.

(5) A judgment debtor in respect of whom an attachment order to which this section applies is in operation, and the judgment creditor may, whether or not an application under subsection three or an order under subsection four of this section has been made, sign and date before a person prescribed by the rules of court for the purpose, a statement setting forth that for the purposes of this section, they have agreed upon payment of the judgment debt by instalments, and setting forth particulars of those instalments and the judgment debt, or so much thereof as remains unsatisfied, and where such a statement is filed in the court in which the attachment order was made, upon a copy thereof being served on the garnishee, operate as an order made under subsection four of this section for payment of the judgment debt by the instalments set forth therein and—

- (a) where an undetermined application has previously been made under subsection four of this section, it shall so operate as if it were an order made on that application; or

(b)

Administration of Justice.

(b) where an order has previously been made under subsection four of this section for payment of the judgment debt by instalments, it shall so operate as if it were a variation, made under subsection six of this section, of that order. No. 3, 1968

(6) The judge of the District Court in which an order attaching a wage or salary was made may, upon application made for the purpose, vary an order made under subsection four of this section, or a statement operating as such an order, and an order or statement as so varied shall, upon a copy thereof being served upon the garnishee, operate as an order under subsection three of this section to the exclusion of the order or statement so varied.

(7) No order shall be made under this Act for the attachment of a wage or salary to answer a judgment debt in respect of which an order to which this section applies has been made and, notwithstanding anything contained in section one hundred and eighteen of this Act, where a wage or salary is attached by an order to which this section applies, no other order made under this Act for the attachment of that wage or salary to answer some other judgment debt shall take effect until it is served on the garnishee.

118B. (1) This section shall apply to and in respect of payments required to be made by a garnishee under an attachment order to which section 118A of this Act applies. Payment
under
certain
attachment
orders.

(2) Subject to this section, a payment to which this section applies may, notwithstanding anything contained in this Act, be made to the judgment creditor in lieu of to the registrar if the garnishee notifies the registrar of the court in which

the

No. 3, 1968

the attachment order was made that he proposes so to do, and a payment so made in accordance with this section shall discharge the garnishee to the same extent as it would have discharged him had he made the payment to that registrar.

(3) Subject to compliance with subsection four of this section, a garnishee from whom is due to the registrar or the judgment creditor a payment to which this section applies may deduct therefrom for his own use an amount equal to ten per centum thereof.

(4) Where a garnishee makes a deduction in accordance with subsection three of this section, he shall forward to the judgment creditor when making payment to the registrar or the judgment creditor of the balance of the payment due a statement showing—

- (a) the amount deducted under the attachment order from the wage or salary of the judgment debtor;
- (b) the amount deducted by the garnishee for his own use under subsection three of this section; and
- (c) the amount of the payment to the registrar or the judgment creditor, as the case may be.

(5) Where a garnishee makes a deduction in accordance with subsection three, and forwards a statement in accordance with subsection four, of this section, payment to the registrar, or in accordance with subsection two of this section, of the amount specified in the statement in accordance with paragraph (c) of subsection four of this section shall be deemed—

- (a) to have satisfied the judgment debt; and

(b)

Administration of Justice.

(b) to be a valid discharge to the garnishee as against the person entitled to receive the payment and the judgment debtor

No. 3, 1968

to the extent of the amount specified in the statement in accordance with paragraph (a) of subsection four of this section.

(6) Where, in the case of an attachment order to which section 118A of this Act applies, the judgment creditor fails to notify the registrar of the District Court in which the order attaching the debt was made, and the garnishee, at least seven days before a payment to be made under the order should be limited to an amount, specified in the notification, required to satisfy the amount of the judgment debt, the judgment creditor shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars, recoverable summarily.

(7) Where an amount in excess of the amount required to satisfy the judgment debt is paid by a garnishee under an attachment order to which this section applies, the excess amount so paid shall be recoverable by the judgment debtor from the judgment creditor in any court of competent jurisdiction.

(8) Any sums received by the registrar from the garnishee under an attachment order to which section 118A of this Act applies may be by him paid to the judgment creditor without further order.

118c. (1) In this section "instalment order" means an attachment order, made under this Act, in respect of which an application under subsection three, an order for payment by instalments under subsection four or a statement filed under subsection five, of section 118A of this Act has been served on the garnishee and includes an attachment order, made under an Act other than this Act, that has a like operation.

Limitation
of payment
under
certain
concurrent
attachment
orders.

(2)

No. 3, 1968

(2) This section shall apply where a wage or salary is attached by more than one order, including at least one order made under this Act, whether or not the other orders were so made, and, of the orders attaching the wage or salary, at least one is, and one is not, an instalment order.

(3) Subject to subsection two of section one hundred and seventeen of this Act, and except to the extent that, in the case of an order made under an Act other than this Act, that other Act otherwise provides, where this section applies the amount payable by the garnishee under any of the orders that is not an instalment order shall not, in respect of any payment of that wage or salary, exceed—

- (a) where only one of the orders is an instalment order, the amount payable by the garnishee under that instalment order in respect of that payment of wage or salary; or
- (b) where more than one of the orders is an instalment order, the greater, or greatest, of the amounts payable by the garnishee under the instalment orders in respect of that payment of wage or salary.

Sec. 119.
(Proceedings to levy amounts due from the garnishee to the judgment debtor.)

- (w) (i) by inserting in section one hundred and nineteen after the word “creditor” the words “or, where the garnishee has notified the registrar in accordance with subsection two of section 118B of this Act, to the judgment creditor”;
- (ii) by omitting from the same section the word “dispute” and by inserting in lieu thereof the words “notify the registrar that he disputes”;

Sec. 124.
(Costs in garnishee proceedings.)

- (x) by inserting in section one hundred and twenty-four after the word “costs” the words “(other than court fees)”.

PART

Administration of Justice.

PART X.

No. 3, 1968

AMENDMENT OF SMALL DEBTS RECOVERY ACT, 1912-1965.

13. The Small Debts Recovery Act, 1912, as amended by subsequent Acts, is amended—

Amendment
of Act No.
33, 1912.

(a) by omitting subsection four of section 7A;

Sec. 7A.
(Jurisdiction where
defendant
outside the
State.)

(b) by inserting next after section thirteen the following new section :—

New sec.
13A.

13A. Notwithstanding anything contained in section 7A, or subsection one of section thirteen, of this Act, where a defendant fails to make an election as provided by section 25A of this Act, the court in which the action was instituted shall have jurisdiction in the action.

Jurisdiction
in certain
cases.

(c) by inserting at the end of section twenty-five the following new subsections :—

Sec. 25.
(Default
summons.)

(2) Subject to subsection three of this section, and section 25A of this Act, a default summons may be issued notwithstanding that the action has been brought in a court other than a court having jurisdiction in the action under subsection one of section thirteen or, as the case may require, subsection one and paragraph (a) of subsection two of section 7A of this Act.

(3) Nothing in subsection two of this section shall authorise the issue of a default summons by a court within the metropolitan police district in respect of an action that, but for that subsection, would be required to be brought in another court within that district.

(d)

No. 3, 1968

New sec.
25A.Procedure
where
default
summons
issued by
court
for district
where de-
fendant not
resident, &c.

(d) by inserting next after section twenty-five the following new section :—

25A. (1) Where a default summons has issued in an action brought in a court other than a court having jurisdiction under subsection one of section thirteen of this Act, the defendant, or any one of two or more defendants may, when filing a notice of grounds of defence pursuant to section twenty-seven of this Act, elect as prescribed that subsection one of section thirteen of this Act shall apply to the action.

(2) Where a defendant has made an election under subsection one of this section, the plaintiff may apply to the registrar of the court in which the action was brought to transfer the proceedings to the court referred to in subsection three of this section and, if he fails to make such an application within three months after the time the notice of grounds of defence was filed, the plaintiff shall be deemed to have discontinued the action.

(3) Where application is made under subsection two of this section, the plaintiff shall in his application nominate a court holden in and for the district where the defendant carries on business or usually resides, or a court holden in and for the district in which the debt sued for was contracted, and the registrar shall transfer the proceedings to the court so nominated.

(4) Where the registrar is required to transfer proceedings in accordance with this section, the provisions of subsections three and four of section sixteen of this Act shall apply as if there had been a change of venue to the court to which the proceedings are to be transferred.

(5)

Administration of Justice.

(5) Where, in the case of a defendant who is not within New South Wales, a default summons has issued in an action in a court holden in and for a district other than that for which the court would have jurisdiction under subsection one and paragraph (a) of subsection two of section 7A of this Act, this section shall apply as if references therein to subsection one of section thirteen were references to subsection one and paragraph (a) of subsection two of section 7A, and as if the court referred to in subsection three of this section were a court having jurisdiction under subsection one and paragraph (a) of subsection two of section 7A of this Act.

No. 3, 1968

- (e) by omitting section twenty-six and by inserting in lieu thereof the following section :—

Subst.
sec. 26.

26. A default summons or duplicate thereof shall be served in the same manner as provided by or under section nineteen of this Act for the service of an ordinary summons.

Service
of default
summons.

- (f) (i) by omitting from section twenty-eight the word "personal" where firstly occurring;
- (ii) by omitting from the same section the words "or where service has not been personal within fourteen days after leave to proceed as aforesaid,";
- (iii) by omitting from the same section the words "three months" and by inserting in lieu thereof the words "twelve months";
- (iv) by omitting from the same section the words "personal service, or of an order of leave to proceed" and by inserting in lieu thereof the word "service".
- (g) by omitting from subsection one of section fifty-five the words "the seven next following sections" and by inserting in lieu thereof the words "sections fifty-six to sixty-two inclusive";

Sec. 28.

(Judgment
in default
of defence.)

Sec. 55.

(Police
magistrate.)

(h)

No. 3, 1968
 Sec. 56.
 (Garnishee
 orders.)

(h) (i) by inserting in subsection one of section fifty-six after the word "court" where firstly occurring the words "in which a creditor has obtained judgment";

(ii) by omitting from the same subsection the words "residing or carrying on business within the jurisdiction of such court";

(iii) by omitting from subsection three of the same section the words "a person resident or carrying on business within the jurisdiction of the court to the registrar of which the application is made" and by inserting in lieu thereof the words "any person";

(iv) by inserting next after the same subsection the following new subsection :—

(3A) An order made under subsection one of this section shall require the garnishee to pay to the registrar of the court in which the order was made, for the judgment creditor, the debt due from the garnishee to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt, in accordance with this Act and general rules made for the purpose.

(v) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection :—

(5) An order made under subsection one of this section for the attachment of the wage or salary of a servant or employee shall extend only—

(a) where the wage or salary is payable for a period of one week, to that part of the wage or salary that is payable at a rate in excess of the prescribed rate;
 or

(b)

Administration of Justice.

- (b) where the wage or salary is payable for a period greater than one week, to that part of the wage or salary payable for that period that is payable at a rate in excess of the prescribed rate. No. 3, 1968

In this subsection—

“prescribed rate” means—

- (a) where no part of the wage or salary is otherwise attached under this or any other Act— a rate equal to eight dollars per week less than the Sydney basic wage; or
- (b) where any part of the wage or salary is otherwise attached under this or any other Act— a rate equal to eight dollars per week less than the Sydney basic wage increased by the amount so attached, calculated on a weekly basis;

“Sydney basic wage” means the basic wage for the time being in force within the meaning of Part V of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and appropriate for the judgment debtor.

- (i) by omitting section fifty-seven and by inserting in lieu thereof the following section :— Subst.
sec. 57.

57. (1) Where the garnishee resides or carries on business within the jurisdiction of the court that makes an order under subsection one of section fifty-six of this Act, the registrar may, by that order or by a subsequent order, summon the garnishee to

appear

No. 3, 1968

appear before the court to show cause why he should not make payment in accordance with the order attaching the debt due from him to the judgment debtor.

(2) Where an order is made under subsection one of section fifty-six of this Act against a garnishee who does not reside or carry on business within the jurisdiction of the court, the judgment creditor may, upon failure of the garnishee to comply with the order, apply for a change of venue to the court for the district in which the garnishee resides or carries on business and, where such an order for change of venue is made, the attachment order shall be deemed to have been made in the court to which the venue is changed.

(3) Where a change of venue is ordered under subsection two of this section, the registrar of the court to which the venue is changed may summon the garnishee to appear before the court to show cause why he should not make payment in accordance with the order attaching the debt due from him to the judgment debtor.

New secs.
58A, 58B
and 58C.

Continuous
operation
of attach-
ment order.

(j) by inserting next after section fifty-eight the following new sections :—

58A. (1) This section shall apply to and in respect of an attachment order referred to in subsection five of section fifty-six of this Act if the registrar making that order so orders, and shall so apply subject to that subsection and sections 58B and 58C of this Act.

(2) Notwithstanding anything contained in section fifty-eight of this Act, an attachment order to which this section applies shall not take effect until it is served on the garnishee and, upon being so served, it shall, subject to this section, operate

to

Administration of Justice.

to attach any wage or salary payable by the garnishee to the judgment debtor from time to time until— No. 3, 1968

- (a) a copy of an application made under subsection three of this section is served on the garnishee;
- (b) a copy of a statement filed under subsection five of this section is served on the garnishee; or
- (c) the expiration of a period of one month after the attachment order is served on the garnishee,

whichever first occurs, but shall not at any such time so operate to an extent greater than is necessary to satisfy the judgment debt.

(3) A judgment debtor in respect of whom an attachment order to which this section applies is in operation, or the spouse of that judgment debtor, may apply to the court in which the order attaching the debt was made for an order to pay the judgment debt by instalments specified in the application and, upon a copy of the application being served on the garnishee, the attachment order shall operate, to the extent necessary to secure payment of the instalments specified in the application, to attach any wage or salary payable from time to time by the garnishee to the judgment debtor until—

- (a) a copy of a statement filed under subsection five of this section is served on the garnishee; or
- (b) an order made on the application to pay by instalments is served on the garnishee,

whichever first occurs, but shall not at any such time so operate to an extent greater than is necessary to satisfy the judgment debt.

(4)

No. 3, 1968

(4) Where application is made under subsection three of this section, the court to which the application is made may, unless a statement relating to the judgment debt referred to in the application has been filed under subsection five of this section, order that the judgment debt so referred to be paid by such instalments as the court thinks fit, or may order that the application be dismissed, and upon the service on the garnishee of the order so made—

- (a) in the case of an order for payment of the judgment debt by instalments, the attachment order relating to the judgment debtor shall operate, to the extent necessary to secure payment of the instalments so ordered to be paid, to attach any wage or salary payable by the garnishee to the judgment debtor from time to time, but shall not at any such time so operate to an extent greater than is necessary to satisfy the judgment debt; or
- (b) in the case of an order for dismissal of the application the attachment order relating to the judgment debtor shall operate to attach any wage or salary payable by the garnishee to the judgment debtor from time to time until the expiration of a period after being so served that, together with the period that elapsed between service of the attachment order and service of the application, totals one month, but shall not so operate to an extent greater than is necessary to satisfy the judgment debt.

(5) A judgment debtor in respect of whom an attachment order to which this section applies is in operation, and the judgment creditor may, whether or not an application under subsection three or an order under subsection four of this

section

Administration of Justice.

section has been made, sign and date before a person prescribed by general rules for the purpose, a statement setting forth that for the purposes of this section, they have agreed upon payment of the judgment debt by instalments, and setting forth particulars of those instalments and the judgment debt, or so much thereof as remains unsatisfied, and where such a statement is filed in the court that made the attachment order it shall, upon a copy thereof being served on the garnishee, operate as an order made under subsection four of this section for payment of the judgment debt by the instalments set forth therein and—

No. 3, 1968

- (a) where an undetermined application has previously been made under subsection four of this section, it shall so operate as if it were an order made on that application; or
- (b) where an order has previously been made under subsection four of this section for payment of the judgment debt by instalments, it shall so operate as if it were a variation, made under subsection six of this section, of that order.

(6) The court in which an order attaching a wage or salary was made may, upon application made for the purpose, vary an order made under subsection four of this section, or a statement operating as such an order, and an order or statement as so varied shall, upon a copy thereof being served upon the garnishee, operate as an order under subsection three of this section to the exclusion of the order or statement so varied.

(7) No order shall be made under this Act for the attachment of a wage or salary to answer a judgment debt in respect of which an order to which this section applies has been made and, notwithstanding anything contained in section

fifty-eight

No. 3, 1968

fifty-eight of this Act, where a wage or salary is attached by an order to which this section applies, no other order made under this Act for the attachment of that wage or salary to answer some other judgment debt shall take effect until it is served on the garnishee.

Payment
under
certain
attachment
orders.

58B. (1) This section shall apply to and in respect of payments required to be made by a garnishee under an attachment order to which section 58A of this Act applies.

(2) Subject to this section, a payment to which this section applies may, notwithstanding anything contained in this Act, be made to the judgment creditor in lieu of to the registrar if the garnishee notifies the registrar of the court in which the attachment order was made that he proposes so to do, and a payment so made in accordance with this section shall discharge the garnishee to the same extent as it would have discharged him had he made the payment to that registrar.

(3) Subject to compliance with subsection four of this section, a garnishee from whom is due to the registrar or the judgment creditor a payment to which this section applies may deduct therefrom for his own use an amount equal to ten per centum thereof.

(4) Where a garnishee makes a deduction in accordance with subsection three of this section, he shall forward to the judgment creditor, when making payment to the registrar or the judgment creditor of the balance of the payment due, a statement showing—

(a) the amount deducted under the attachment order from the wage or salary of the judgment debtor;

(b)

Administration of Justice.

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- (b) the amount deducted by the garnishee for his own use under subsection three of this section; and
- (c) the amount of the payment to the registrar or the judgment creditor, as the case may be.

(5) Where a garnishee makes a deduction in accordance with subsection three, and forwards a statement in accordance with subsection four, of this section, payment to the registrar, or in accordance with subsection two of this section, of the amount specified in the statement in accordance with paragraph (c) of subsection four of this section shall be deemed—

- (a) to have satisfied the judgment debt; and
- (b) to be a valid discharge to the garnishee as against the person entitled to receive the payment and the judgment debtor,

to the extent of the amount specified in the statement in accordance with paragraph (a) of subsection four of this section.

(6) Where, in the case of an attachment order to which section 58A of this Act applies, the judgment creditor fails to notify the registrar of the court in which the order attaching the debt was made, and the garnishee, at least seven days before a payment to be made under the order should be limited to an amount, specified in the notification, required to satisfy the amount of the judgment debt, the judgment creditor shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars, recoverable summarily.

(7) Where an amount in excess of the amount required to satisfy the judgment debt is paid by a garnishee under an attachment order to which this section applies, the excess amount so paid shall

be

No. 3, 1968

be recoverable by the judgment debtor from the judgment creditor in any court of competent jurisdiction.

(8) Any sums received by the registrar from the garnishee under an attachment order to which section 58A of this Act applies may be by him paid to the judgment creditor without further order.

Limitation
of payment
under certain
concurrent
attachment
orders.

58c. (1) In this section "instalment order" means an attachment order, made under this Act, in respect of which an application under subsection three, an order for payment by instalments under subsection four or a statement filed under subsection five, of section 58A of this Act has been served on the garnishee and includes an attachment order, made under an Act other than this Act, that has a like operation.

(2) This section shall apply where a wage or salary is attached by more than one order, including at least one order made under this Act, whether or not the other orders were so made, and, of the orders attaching the wage or salary, at least one is, and one is not, an instalment order.

(3) Subject to subsection five of section fifty-six of this Act, and except to the extent that, in the case of an order made under an Act other than this Act, that other Act otherwise provides, where this section applies the amount payable by the garnishee under any of the orders that is not an instalment order shall not, in respect of any payment of that wage or salary, exceed—

(a) where only one of the orders is an instalment order, the amount payable by the garnishee under that instalment order in respect of that payment of wage or salary;
or

(b)

Administration of Justice.

- (b) where more than one of the orders is an instalment order, the greater, or greatest, of the amounts payable by the garnishee under the instalment orders in respect of that payment of wage or salary. **No. 3, 1968**
- (k) (i) by inserting in section fifty-nine after the word "creditor" the words "or, where the garnishee has notified the registrar in accordance with subsection two of section 58B of this Act, to the judgment creditor"; **Sec. 59.**
(Proceedings to levy amounts due from garnishee to judgment debtor.)
- (ii) by omitting from the same section the word "dispute" and by inserting in lieu thereof the words "notify the registrar that he disputes";
- (l) by inserting in section sixty-four after the word "costs" the words "(other than court fees)". **Sec. 64.**
(Costs in garnishee proceedings.)

PART XI.

MINOR TRAFFIC OFFENCES.

14. The Motor Traffic Act, 1909, as amended by subsequent Acts, is amended by omitting paragraph (a) of subsection one of section 18C and by inserting in lieu thereof the following paragraph :—

- (a) an information for an offence referred to in subsection one of section 18B of this Act has been laid under Division 2 of Part IV of the Justices Act, 1902, as amended by subsequent Acts.

Administration of Justice.

No. 3, 1968

Certain
orders to
have effect.

15. (1) Subject to subsection two of this section and for the avoidance of doubt, where before the commencement of section fourteen of the Administration of Justice Act, 1968, an order was made under the provisions of section 18c of the Motor Traffic Act, 1909, as amended by subsequent Acts, or by any such order the defendant was adjudged to pay costs in accordance with section eighty-one of the Justices Act, 1902, as amended by subsequent Acts, the provisions of paragraph (a) of subsection one of section 18c of the Motor Traffic Act, 1909, as so amended, shall be deemed to have been complied with in respect of that order at the time it was made.

(2) Subsection one of this section shall not apply to or in respect of the proceedings against Bruce Henry Goswell instituted by Norman Chris Culnane for contravening the provisions of Regulation 92 (1) Schedule F of the Regulations made under the Motor Traffic Act, 1909, as amended by subsequent Acts, which was heard and determined at the Court of Petty Sessions, Redfern, on the eighteenth day of January, one thousand nine hundred and sixty-eight.

SCHEDULE.

Administration of Justice.

SCHEDULE.

No. 3, 1968

Sec. 1.

Reference to Act.	Short Title.	Citation.
No. 32, 1965.	Law Reform (Miscellaneous Provisions) Act, 1965.	Law Reform (Miscellaneous Provisions) Act, 1965-1968.
No. 21, 1899.	Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1968.
No. 35, 1900.	Supreme Court and Circuit Courts Act, 1900.	Supreme Court and Circuit Courts Act, 1900-1968.
No. 24, 1901.	Equity Act, 1901.	Equity Act, 1901-1968.
No. 5, 1909.	Motor Traffic Act, 1909.	Motor Traffic Act, 1909-1968.
No. 14, 1899.	Matrimonial Causes Act 1899.	Matrimonial Causes Act, 1899-1968.
No. 31, 1912.	Jury Act, 1912.	Jury Act, 1912-1968.
No. 27, 1902.	Justices Act, 1902.	Justices Act, 1902-1968.
No. 23, 1912.	District Courts Act, 1912.	District Courts Act, 1912-1968.
No. 33, 1912.	Small Debts Recovery Act, 1912.	Small Debts Recovery Act, 1912-1968.

CLOSER