



BERMUDA

MAGISTRATES ACT 1948

1948 : 25

TABLE OF CONTENTS

PART I
GENERAL

1	Interpretation
2	Appointment of magistrates
3	Powers and duties of magistrates
4	Composition of courts of summary jurisdiction
5	Allocation of magistrates' duties by Senior Magistrate
6	Ineligibility of magistrate to be elected to House of Assembly
7	Records and accounts
8	Appointment of Justices of the Peace
9	Power to compel attendance of witnesses
10	Special provisions where magistrate is unable to complete proceedings
10A	Scope of magistrate's immunity

PART II
SPECIAL COURTS

11	Jurisdiction of Special Courts
12	Constitution, procedure etc. of Special Courts
13	Special provisions where original court unable to complete proceedings
14	Fees etc.

PART III
CIVIL JURISDICTION

15	Civil jurisdiction of court of summary jurisdiction
16	Limitation of jurisdiction of court of summary jurisdiction
17	Restriction on court of summary jurisdiction to take cognizance of certain actions
18	Claims arising on balance of account

MAGISTRATES ACT 1948

- 19 Set off
- 20 No privilege to barristers and attorneys
- 21 Power to frame rules of procedure
- 22 Appeals
- 23 Fees and taxing

PART IV POWER TO ENFORCE JUDGMENTS ETC.

- 24 Power to enforce judgments and orders
- 25 Execution
- 26 Application for restitution of goods taken in execution
- 27 Power to attach earnings
- 28 Attachment of earnings order
- 29 Compliance with order by employer
- 30 Inter-relation with alternative remedies open to the creditor
- 31 Powers of the court to commit the debtor, vary the order etc.
- 32 Duties of clerk
- 33 Duties of debtor and employer
- 34 Enforcement of Supreme Court judgment by attachment of earnings order
- 35 Provision where debtor employed by the Crown
- 35A Enforcement of orders by seizure of debtor's real or personal property
- 35B Enforcement of orders by attachment of debtor's bank accounts
- 35C Attachment of money other than earnings payable to debtor
- 35D Access to information

PART V CONTEMPT OF COURT

- 36 Offences relating to administration of justice
- 37 Procedure against offender
- 38 Right of appeal
- 39 Procedure on appeal
- 40 Protection of officers
- 41 Frivolous complaints etc
- 42 Application of this Part

[preamble and words of enactment omitted]

[Section 19 of 2004:22 and paragraph 1(1) of the Schedule to that Act retitled the "Hospital Insurance Act 1970" as the "Health Insurance Act 1970" effective 1 January 2006. These amendments are not individually noted.]

PART I
GENERAL

Interpretation

1 In this Act—

“absence”, in relation to a magistrate, means the absence of the magistrate from Bermuda or his absence from duty by reason of his illness or any other cause, and “absent” shall be construed accordingly;

“barrister” means a person duly admitted to practise as a barrister and attorney in the Supreme Court of Bermuda;

“clerk” means the office manager of the Magistrates’ Courts;

“court” means a court of summary jurisdiction;

“earnings” means any sums payable to a person—

(a) by way of wages or salary (including any fees, bonus, commission, gratuities, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service);

(b) by way of pension (including retirement pay, annuities and dependents or survivors benefit);

“employer”, in relation to an attachment of earnings order, means the person who is required by the order to make deductions from earnings paid by him to the debtor;

“judgment debt” means any debt due from any person in pursuance of any order or judgment of a court of summary jurisdiction or, where section 34 is applicable, the Supreme Court;

“liquidated” means ascertainable by computation;

“prescribed” means prescribed by this Act, or by any rule made under this Act;

“the Senior Magistrate” means the magistrate appointed to be the Senior Magistrate under section 2;

“special court” means a court of summary jurisdiction established and constituted in accordance with Part II.

Appointment of magistrates

2 (1) The Governor after consultation with the Chief Justice shall appoint two or more persons to be magistrates in Bermuda;¹ and of the persons so appointed not fewer than two shall be barristers.

1 [See also section 89 of the Constitution]

MAGISTRATES ACT 1948

(2) The Governor after consultation with the Chief Justice shall appoint one of the magistrates who is a barrister to be the Senior Magistrate.

(3) In any case where any magistrate is absent or where an office of magistrate is temporarily vacant or where any magistrate is for any reason disqualified for sitting, then in any such case the Governor, if he thinks it expedient to do so, may appoint a person to act temporarily as a magistrate or as the Senior Magistrate (according to the circumstances) during the period of the absence or vacancy or in respect of the matter in connection with which the disqualification arises; and nothing in this subsection shall be construed to require any person appointed to be a barrister.

Powers and duties of magistrates

3 (1) A magistrate shall have the powers and shall discharge the duties conferred or imposed upon a magistrate by or under this or any other Act; and subject to section 5 may exercise such powers and discharge such duties in any place in Bermuda.

(2) A magistrate by virtue of his office shall be a Justice of the Peace.

(3) The Senior Magistrate shall have such additional powers and shall discharge such additional duties as are conferred or imposed upon the Senior Magistrate by or under this or any other Act.

Composition of courts of summary jurisdiction

4 Except as otherwise expressly provided in any Act, a court of summary jurisdiction shall be composed of a magistrate sitting alone; and, except as aforesaid, a magistrate sitting alone shall accordingly have and exercise all such powers and jurisdiction as are conferred upon a court of summary jurisdiction by or under any Act in respect of proceedings, causes or other matters, whether civil or criminal or of any other nature.

Allocation of magistrates' duties by Senior Magistrate

5 Subject to any directions given by the Chief Justice, the Senior Magistrate shall allot the duties of the several magistrates in such manner as he may think expedient; and without prejudice to the generality of the foregoing provisions of this section the Senior Magistrate, having regard to the number of the magistrates and to the nature and volume of the various matters from time to time falling to be dealt with by them—

- (a) may appoint the places and days at and upon which he and the other magistrate or magistrates shall attend and sit;
- (b) may specify as between one and the other the nature of the proceedings or other matters to be dealt with by himself and by the other magistrate or magistrates; and
- (c) may direct where it appears to him expedient in the circumstances to do so, any particular proceedings or matters to be taken before himself or before any other particular magistrate, at such place and upon such date as he thinks fit.

MAGISTRATES ACT 1948

Ineligibility of magistrate to be elected to House of Assembly

6 Notwithstanding anything in the Parliamentary Election Act 1978 [*title 2 item 11*] a magistrate shall not be qualified for election to serve in the House of Assembly:

Provided that for the purposes of this section "magistrate" shall not include a person appointed under subsection (3) of section 2 to act temporarily as a magistrate.

Records and accounts

7 (1) Courts of summary jurisdiction shall be courts of record.

(2) There shall be maintained a register of all orders and judgments of courts of summary jurisdiction and such register shall be available for inspection by the public at all reasonable hours upon payment of such fee as may be prescribed therefor under the Court Fees and Expenses Act 1971 [*title 8 item 7*].

(3) Proper account shall be kept of all fees and fines payable or paid into court, and all moneys paid into or out of court.

Appointment of Justices of the Peace

8 (1) The Governor may, acting in his discretion, by notice published in the Gazette, from time to time, appoint fit and proper persons to be justices of the peace in and for Bermuda.

(2) A person appointed to be a justice of the peace under this section shall hold office as such during the Governor's pleasure.

(3) A justice of the peace appointed under this section shall have all the privileges and immunities and all the powers and duties specified in any statutory provision enacted before, on or after the coming into force of this section, or in any other provision of law for the time being having effect in Bermuda.

Power to compel attendance of witnesses

9 Every court of summary jurisdiction is hereby empowered to compel the attendance of any person whose attendance before the court as a witness is required by any party to proceedings before the court, or whose evidence the court deems to be necessary for the determination of any cause or matter before the court, by writ of subpoena in the prescribed form, and on non-appearance of the person so summoned to estreat the penalty mentioned in such writ by distress and sale of such person's personal estate, and for want thereof to imprison such person for one month.

Special provisions where magistrate is unable to complete proceedings

10 (1) Where any proceedings have been commenced before a court of summary jurisdiction and the magistrate who composed the court is absent, any other magistrate may act in the place of the absent magistrate; and, subject to this section, all proceedings may be had and taken by the newly constituted court as if the original magistrate had continued to sit.

(2) Notwithstanding anything in subsection (1), in any case where the evidence has been given before a court of summary jurisdiction and the proceedings in respect of which

MAGISTRATES ACT 1948

the evidence was given are continued before a newly constituted court, the succeeding provisions of this subsection shall have effect with regard to such evidence in relation to the proceedings before the newly constituted Court, that is to say,—

- (a) subject to paragraph (b), a witness who gave evidence before the court as originally constituted shall be summoned to appear before the newly constituted court and shall again be sworn; and upon being sworn the court may require him again to give his evidence, or may allow the record of the evidence given before the court as originally constituted to be read over for his assent; and, where the court allows the record of evidence to be read over as aforesaid, the court may allow such further examination and cross examination of the witness as the court thinks proper;
- (b) where a witness who gave evidence before the court as originally constituted has died, or is absent from Bermuda or is otherwise, in the opinion of the newly constituted court, incapable of giving evidence, the record of the evidence of that witness given before the court as originally constituted shall for the purposes of any proceedings had and taken before the newly constituted court be deemed to be the record of evidence given before the newly constituted court.

Scope of magistrate's immunity

10A (1) Subject to this section, a magistrate shall be immune from any personal civil liability in respect of his judicial acts whether within or without jurisdiction.

(2) Nothing in subsection (1) shall in any way impair the availability of other forms of relief in respect of decisions of courts of summary jurisdiction, including appeals, applications for judicial review and applications for redress under section 15 of the Bermuda Constitution.

(3) The common law rules governing the criminal liability of superior court judges in the exercise of their judicial functions shall henceforth apply to any magistrate when acting in a judicial capacity.

(4) For the purposes of this section "magistrate" includes a justice of the peace and any person appointed to sit as a member of a Special Court or required by law to carry out any other judicial function.

[Section 10A inserted by 2009:31 s.2 effective 14 July 2009]

PART II SPECIAL COURTS

Jurisdiction of Special Courts

11 A Special Court shall exercise such jurisdiction as may be conferred upon a Special Court by or under any Act:

MAGISTRATES ACT 1948

Provided that a Special Court sitting in the exercise of the jurisdiction conferred upon it by or under any Act may be known by such particular designation, appropriate to the jurisdiction, as may be specified by that Act.

Constitution, procedure etc. of Special Courts

12 (1) Each Special Court shall consist of a Chairman and other members as hereinafter in this section provided.

(2) The Chairman of a Special Court shall be the Senior Magistrate or such other magistrate as the Senior Magistrate may from time to time appoint.

(3) The Governor shall appoint a panel of not less than six persons, including at least three women, from whom the members (other than the Chairman) of a Special Court at any sitting thereof shall be selected as hereinafter provided; and every appointment to the panel shall be for a specified period but shall be revocable at any time by the Governor at his pleasure.

(4) At any sitting of a Special Court, the court shall consist of the Chairman and of two other members, one at least of whom shall be a woman, selected by the Chairman from the panel of persons appointed by the Governor under subsection (3):

Provided that if at any time it appears to the Chairman of a Special Court that the court cannot, without adjournment, be fully constituted and that an adjournment would be inexpedient in the interests of justice, the Chairman may sit with one member (whether a man or a woman) selected by him from such panel.

(5) Every matter brought before a Special Court shall be heard and determined in a summary way.

(6) With respect to any proceedings before a Special Court the court may summon witnesses either of its own motion or on the application of any party to the proceedings, and the court shall have all the powers of a court exercising summary jurisdiction under the Criminal Jurisdiction and Procedure Act 2015 in relation to compelling the attendance of witnesses and the examination of witnesses on oath.

(7) In the determining of any question or matter before a Special Court the decision of the majority of the members of the court shall prevail:

Provided that—

- (a) any question of law that arises shall be decided by the Chairman of the court alone, and the Chairman alone shall decide whether any question is or is not a question of law; and
- (b) where the Chairman of the court is sitting with one member selected from the panel, as contemplated by paragraph (b) of the proviso to subsection (4), then, in default of agreement, the decision of the Chairman shall prevail.

(8) In the exercise of any jurisdiction conferred upon a Special Court as aforesaid, the members of the Special Court shall enjoy such immunities as are enjoyed by magistrates in the exercise of their jurisdiction.

MAGISTRATES ACT 1948

(9) A party to any proceedings before a Special Court may be represented by a barrister and attorney admitted to practise in the Supreme Court of Bermuda.

(10) Any order, judgment or process purporting to be signed by the Chairman of a Special Court shall be deemed to have been duly made, given or issued by the court, and a record of any proceedings before a Special Court purporting to be signed by the Chairman of the court shall be deemed to be a true record of the proceedings; and judicial notice shall be taken by all courts of any order, judgment, process or record purporting to be so signed.

(11) A Special Court, upon determining any cause or matter, may make such order as to the payment of costs as appears to the court to be just, and any such order may be enforced as though it were an order made by a court of summary jurisdiction under Part III.

Without prejudice to any special provision as to costs contained in any Act conferring a particular jurisdiction upon Special Courts, the costs of any cause or matter determined by a Special Court shall, for the purposes of this section, be taken to be—

- (a) the fees payable to the members of the court under section 14;
- (b) a sum in respect of the attendance of the Chairman of the court calculated at such rate as may be prescribed under the Court Fees and Expenses Act 1971 [title 8 item 7];
- (c) witness money (if any) falling to be paid under section 14; and
- (d) the fees of barristers and attorneys, taxed in the manner provided in Part III.

(12) In the exercise of the powers conferred upon him by this section the Governor shall act after consultation with the Chief Justice.

[Section 12 subsection (6) amended by 2015 : 38 s. 91 effective 6 November 2015]

Special provisions where original court unable to complete proceedings

13 (1) In any case where proceedings have been commenced before a Special Court and the magistrate who was the Chairman of the Special Court as originally constituted or any other person who was a member of the Special Court as originally constituted is absent, then in any such case as the circumstances require—

- (a) any other magistrate may act as Chairman in the place of such absent magistrate;
- (b) any other person that may be selected in accordance with section 12(4) may act in the place of such absent person,

and, subject to this section, all proceedings may be had and taken by the newly constituted Special Court as if the Chairman or member of the court as originally constituted had continued to sit.

(2) Notwithstanding anything in the foregoing subsection, where evidence has been given before a Special Court and the proceedings in respect of which that evidence was given are continued before the court newly constituted by the substitution of a new

MAGISTRATES ACT 1948

Chairman or member, the succeeding provisions of this subsection shall have effect with regard to such evidence as respects the proceedings before the newly constituted Special Court, that is to say,—

- (a) subject to paragraph (b), a witness who gave evidence before the Special Court as originally constituted shall be summoned to appear before the newly constituted court and shall again be sworn; and upon being sworn the court may require him again to give his evidence, or may allow the record of the evidence given before the court as originally constituted to be read over for his assent; and, where the court allows the record of evidence to be read over as aforesaid, the court may allow such further examination and cross-examination of the witness as the court thinks proper;
- (b) where a witness who gave evidence before the court as originally constituted has died, or is absent from Bermuda, or is otherwise, in the opinion of the newly constituted court, incapable of giving evidence, the record of the evidence of that witness given before the court as originally constituted shall for the purpose of any proceedings had and taken before the newly constituted court be deemed to be the record of evidence given before the newly constituted court.

Fees etc.

14 (1) In respect of any sitting of a Special Court such fee as may be prescribed under the Court Fees and Expenses Act 1971 [*title 8 item 7*] shall be paid out of the Consolidated Fund, on the certificate of the Chairman, to each member of the court, other than the Chairman, for each day's attendance.

(2) Without prejudice to anything in the Evidence Act 1905 [*title 8 item 10*] relating to the payment of persons giving professional evidence, a witness (other than an accused person) attending before a Special Court to give evidence shall be entitled to receive witness money at such rate as may be prescribed under the Court Fees and Expenses Act 1971 [*title 8 item 7*].

(3) The Special Court may make such order with respect to the payment of witness money as appears to the court to be just; and where the court makes no such order, or where witness money ordered to be paid by any person is not paid by, or recovered from, that person, the witness money shall be payable out of the Consolidated Fund to the witness upon the certificate of the Chairman of the court:

Provided that the Chairman of the court shall not be bound to issue a certificate as aforesaid in respect of a witness who has, in giving or failing to give his evidence, misconducted himself before the court.

PART III CIVIL JURISDICTION

Civil jurisdiction of court of summary jurisdiction

15 The civil jurisdiction of a court of summary jurisdiction shall be limited—

MAGISTRATES ACT 1948

- (a) to actions wherein the plaintiff seeks to recover a debt or demand in money, payable by the defendant with or without interest, upon a contract express or implied; or
- (b) to actions wherein the plaintiff seeks to recover damages alleged to have been suffered by reason of any act, default, neglect or omission on the part of the defendant:

Provided that if the court of summary jurisdiction for any reason at any stage of the proceedings considers any cause or matter arising before it under the powers conferred by this subsection more suitable for argument in and disposal by the Supreme Court then the court of summary jurisdiction may decline the consideration or further consideration of such cause or matter.

Limitation of jurisdiction of court of summary jurisdiction

16 A court of summary jurisdiction may hear and determine actions in accordance with section 15 when the amount claimed does not exceed \$25,000.00.

[Section 16 amended by 1993:55 effective 1 January 1994, and by 2005:9 s.2 effective 24 March 2005]

Restriction on court of summary jurisdiction to take cognizance of certain actions

17 A court of summary jurisdiction shall not take cognizance—

- (a) of any action for any libel or slander, or for seduction, or malicious prosecution or false imprisonment; or
- (b) of any action wherein the title to any corporeal or incorporeal hereditaments, or wherein the validity of any devise, bequest or limitation under any will or settlement, may be disputed.

Claims arising on balance of account

18 Any claim not exceeding \$10,000 arising upon any balance of accounts which have exceeded that amount may be sued for and recovered in an action in a court of summary jurisdiction in like manner as claims not exceeding \$10,000:

Provided that if the court of summary jurisdiction for any reason at any stage of the proceedings considers the action more suitable for argument in and disposal by the Supreme Court then the court of summary jurisdiction may decline the consideration or further consideration of the action.

[Section 18 amended by 1993 : 55 effective 1st January 1994]

Set off

19 Mutual debts and demands between plaintiffs and defendants may be set off and allowed one against the other.

No privilege to barristers and attorneys

20 Barristers and attorneys may be sued and proceeded against before a court of summary jurisdiction in like manner as other persons may be sued and proceeded against:

MAGISTRATES ACT 1948

Provided that barristers and attorneys shall be privileged and excused from attending before any court of summary jurisdiction in any civil cause or matter on all days when the Supreme Court is actually sitting.

Power to frame rules of procedure

21 (1) The magistrates are hereby empowered from time to time to make, amend and revoke rules for regulating pleading, practice and procedure before magistrates and in courts of summary jurisdiction and for settling the forms of process and other documents to be used therein.

(2) Rules made under subsection (1) shall be subject to the approval of the Chief Justice and shall not come into force until so approved.

(3) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to rules made under this section.

Appeals

22 All appeals from a court of summary jurisdiction shall be to the Supreme Court in the manner provided for civil appeals by the Civil Appeals Act 1971 [*title 8 item 85*].

Fees and taxing

23 A court of summary jurisdiction hearing and determining any action under this Act may tax and allow to either party the fees prescribed under the Court Fees and Expenses Act 1971 [*title 8 item 7*].

PART IV

POWER TO ENFORCE JUDGMENTS ETC.

Power to enforce judgments and orders

24 (1) Every court of summary jurisdiction shall have power to enforce any judgment or order of such court by process of execution or discovery in aid of execution or under the Debtors Act 1973 [*title 8 item 47*] or the Bankruptcy Acts in the manner in which such judgments and orders prior to the coming into force of this Act were enforceable by justices under the Justices' Civil Jurisdiction Acts.²

(2) If a Judge is satisfied that a party against whom judgment for an amount exceeding \$120, exclusive of costs, has been obtained in a court of summary jurisdiction, has no goods or chattels which can conveniently be taken to satisfy such judgment, he may, if he thinks fit, and on such terms as to costs as he may direct, order a writ of certiorari to issue to remove the judgment of the court of summary jurisdiction into the Supreme Court; and when removed the judgment shall have the same force and effect, and the same proceedings may be had thereon, as in the case of a judgment of the Supreme Court.

² [See note at end of this Item]

MAGISTRATES ACT 1948

Execution

25 Every writ of execution shall be in the prescribed form, and shall be directed to the Provost Marshal General charging him to levy the amount of the judgment and costs upon the defendant's goods and chattels, and, after such intervals as may be named in such writ, to offer such goods and chattels for sale by public auction, and from the resultant proceeds to pay and retain the amount of such judgment and costs and the expense of such sale, and to return the overplus (if any) to the defendant.

Application for restitution of goods taken in execution

26 (1) Any person whose goods have been levied on under this Part, at any time within five days after such levy, may apply to the court of summary jurisdiction issuing the writ of execution to order the restitution of such goods and chattels to the claimant, and thereupon the court shall order the sale thereof to be postponed until a further order is given, and the court shall cause the party at whose instance such writ of execution issued, as well as the claimant, to be summoned to appear before the court; and the court shall then determine whether such goods and chattels are or are not liable to be levied on and disposed of under such writ.

(2) If the court determines that such goods and chattels or any of them are not liable to be levied on and disposed of under such writ those goods or chattels shall be restored to the claimant; but if the court determines that those goods or chattels are so liable to be so levied on and disposed of then the goods or chattels shall be sold by the Provost Marshal General at public auction at a time and place whereof three or more days previous notice has been given by public advertisement, and the proceeds disposed of as directed by section 25.

(3) The party in whose favour the court decides shall recover his costs from the opposite party.

(4) If either party on being summoned as aforesaid refuses or neglects to attend before the court on due proof of such summons having been served on such party in the prescribed manner, the court may proceed to hear and determine the matter in his absence.

Power to attach earnings

27 (1) A court shall, unless the court is satisfied upon representation expressly made in that behalf that it is unnecessary or impracticable to do so, make an attachment of earnings order to secure—

- (a) the payment of sums payable under an order made under Part IVB of the Children Act 1998;
- (b) the payment of sums payable under an order of a court under the jurisdiction conferred by the Matrimonial Proceedings (Magistrates' Courts) Act 1974 [*title 27 item 5*];
- (c) the payment of sums payable under a contribution order made by a Family Court under the Children Act 1998 [*title 27 item 26*];
- (d) the payment of sums payable under an order made by a Special Court under Part II of the Minors Act 1950 [*title 27 item 21*].

MAGISTRATES ACT 1948

(2) Subject to subsection (1) a court shall make an attachment of earnings order at the same time when the court makes an order mentioned in paragraphs (a) to (d) of subsection (1).

(3) A court may in its discretion make an attachment of earnings order to secure the payment of a judgment debt in excess of \$100.

(4) An attachment of earnings order may be made to secure the discharge of liabilities arising before or after 1 December 1988.

[Section 27 amended by 1998:38 effective 1 January 2000; subsection (1)(a) substituted by 2002:36 Sch para 12 effective 19 January 2004]

Attachment of earnings order

28 (1) An attachment of earnings order shall be an order directed to a person who appears to the court to have the debtor in his employment and shall operate as an instruction to that person—

- (a) to make periodical deductions in such amount as the order may require from the debtor's earnings; and
- (b) at such times as the order may require, or as the court may allow, to pay the amounts deducted to the clerk.

(2) For the purposes of this Act the relationship of employer and employee shall be treated as subsisting between two persons if one of them, as a principal and not as a servant or agent, pays to the other any sums defined as earnings by section 1.

(3) The order shall specify—

- (a) the normal deduction rate, that is to say, the rate (expressed as a sum of money per week, month or other period) at which the court thinks it reasonable for the debtor's earnings to be applied to meeting his liability under the relevant order; and
- (b) the protected earnings rate, that is to say, the rate (so expressed) below which, having regard to the debtor's resources and needs, the court thinks it reasonable that the earnings actually paid to him should not be reduced.

(4) Except where it is made to secure maintenance or alimony payments, the order shall specify the whole amount payable under the relevant court order (or so much of that amount as remains unpaid) including any costs.

Compliance with order by employer

29 (1) Where an attachment of earnings order has been made, or varied, the employer shall, if he has been served with the order, or variation, comply with it; but he shall be under no liability for noncompliance before seven days have elapsed since the service.

(2) The employer shall on any day (being an occasion on which earnings are paid)—

MAGISTRATES ACT 1948

- (a) if the earnings exceed the protected earnings, deduct from the earnings the amount of the excess or the normal deduction rate, which ever is the less;
 - (b) make no deduction if the earnings are equal to, or less than, the protected earnings.
- (3) For the purpose of computing the earnings for the purposes of subsection (2) there shall be deducted—
- (a) any amount payable by the employee under the Contributory Pensions Act 1970 [*title 18 item 7*] and any deductions under section 21 of the Health Insurance Act 1970 [*title 18 item 9*] or otherwise made under the authority of any statutory provision;
 - (b) any amount payable by the employee under any retirement scheme or under a hospital or health insurance scheme where such scheme is operated, or made available to him, by his employer.
- (4) On any occasion when the employer makes, in compliance with an attachment of earnings order, a deduction from the debtor's earnings—
- (a) he shall be entitled to deduct, in addition, one dollar, or such other sum as may be prescribed, toward his clerical and administrative costs; and
 - (b) he shall give to the debtor a statement in writing of the total amount of his deductions.
- (5) Where an attachment of earnings order has been made and the person to whom it is directed ceases to have the debtor in his employment the court may again direct it to a person (whether the same as before or another) who appears to the court to have the debtor in his employment.
- (6) Subject to subsection (7) where the employer is required to comply with two or more attachment of earnings orders in respect of the same debtor, then on any pay day referred to in subsection (2) he shall for the purposes of complying with that subsection unless otherwise ordered by the court—
- (a) deal with the orders according to the respective dates on which they were made, disregarding any later order until the earlier one has been dealt with;
 - (b) deal with any later order as if the earnings to which it relates were the residue of the debtor's earnings after the making of any deduction to comply with the earlier order.
- (7) In the exercise of its discretion under subsection (6), the court shall have regard to the principle that, unless justice otherwise requires, an attachment of earnings order for the payment of moneys owing for maintenance or alimony should take precedence over other attachment of earnings orders and that where there are two or more attachment of earnings orders in respect of the same debtor for the payment of moneys owing for maintenance or alimony such orders shall have equal precedence.

MAGISTRATES ACT 1948

Inter-relation with alternative remedies open to the creditor

30 (1) Where proceedings are brought in a court for an order of committal under section 3 of the Debtors Act 1973 [*title 8 item 47*] the court may, in any circumstances in which it has power to make such an order, make instead an attachment of earnings order to secure payment of the judgment debt.

(2) A court shall not make an attachment of earnings order to secure the payment of a judgment debt if there is in force an order for the debtor's committal under section 3 of the Debtors Act 1973 [*title 8 item 47*] in respect of that debt; but in any such case the court may discharge the committal order with a view to making an attachment of earnings order instead.

(3) Where the court has made an attachment of earnings order to secure the payment of a judgment debt—

- (a) no order of committal shall be issued in consequence of any proceedings for the enforcement of the debt begun before the making of the attachment of earnings order; and
- (b) so long as the order is in force no execution for the recovery of the judgment debt shall issue against the property of the debtor without the leave of the court.

(4) An attachment of earnings order made to secure the payment of a judgment debt shall cease to have effect on the making of an order of committal for the enforcement of the debt.

Powers of the court to commit the debtor, vary the order etc.

31 (1) If the debtor fails to attend the court on the day and at the time fixed for the hearing of—

- (a) an application to the court for an attachment of earnings order or for the variation of such an order;
- (b) the adjourned hearing of such an order,

the court may, if it is satisfied that the debtor has been notified of such date and time, issue a warrant for his arrest.

(2) A debtor arrested by virtue of a warrant issued under subsection (1) shall be brought before the court without delay and the court may—

- (a) forthwith proceed to hear the application; or
- (b) adjourn the hearing of the judgment summons to a specified time on a specified day and may further, if it does so, make an order committing the debtor to prison and directing that he shall be brought before the court at the adjourned hearing.

(3) Sections 6 and 7 of the Debtors Act 1973 [*title 8 item 47*] shall apply *mutatis mutandis* to an order under subsection (1) as they do to an order of committal under that Act.

MAGISTRATES ACT 1948

(4) The court may make an order discharging or varying an attachment of earnings order and, without derogation from the generality of this power, the court may,—

- (a) on an application made by the debtor on the ground of a material change in his resources and needs since the order was made or last varied, vary the order for a period of not more than four weeks by an increase in the protected earnings rate;
- (b) on an application made by the person to whom the order is directed, make such order in the matter as it may think fit.

(5) The power to make, vary or discharge an attachment of earnings order shall be exercised in accordance with the rules under section 21 and such rules may, without derogation from the generality of the provisions of that section,—

- (a) provide for the cases in which any such power may be exercised by a court of its own motion or on the application of any prescribed person;
- (b) require the clerk on receiving payments made to him in compliance with an attachment of earnings order, instead of complying with section 32, to deal with them as directed by the court or the rules;
- (c) provide for the determination whether particular payments are earnings.

(6) The power to make an attachment of earnings order shall include power to make an attachment of earnings order to secure the payment of any number of judgment debts.

(7) The court may for the purpose of ascertaining the earnings or anticipated earnings of any person by order require any person whom it believes to be the employer of such person to furnish, within such reasonable time as the court may fix, a statement giving such particulars as the court may require of such earnings, and any document purporting to be a statement made in compliance with such order shall in the absence of proof to the contrary, be evidence of the facts stated therein.

Duties of clerk

32 It shall be the duty of the clerk—

- (a) to receive all such payments as may be directed to be made to him under an attachment of earnings order
- (b) to pay as soon as may be to the creditor, or such other person as the court may direct, upon demand and after deduction of court fees, the sums directed to be paid under the order, or such part thereof as he receives, returning the balance, if any, to the debtor;
- (c) where the whole of the amount payable under an attachment of earnings order has been paid, to give notice to the employer that further compliance with the order is not required.

Duties of debtor and employer

33 (1) Where an attachment of earnings order is in force—

MAGISTRATES ACT 1948

- (a) the debtor shall from time to time notify the court in writing of every occasion on which he leaves any employment or becomes employed or re-employed not later (in each case) than seven days from the date on which he did so;
- (b) the debtor shall, on any occasion when he becomes employed or re-employed, include in his notifications under paragraph (a) particulars of his earnings and anticipated earnings from the relevant employment;
- (c) if a person is served with an attachment of earnings order directed to him and he has not the debtor in his employment or the debtor subsequently ceases to be in his employment he shall (in either case), within ten days from the date of the service or, as the case may be, the cesser, give notice of that fact to the court;
- (d) if an employer ceases to be the debtor's employer and thereafter re-employs the debtor, he shall notify the court in writing within seven days from the date upon which the debtor was so re-employed.

(2) At the hearing of an application to the court for an attachment of earnings order (including any adjourned hearing thereof) the court may require the debtor, if in attendance, to be sworn and give evidence.

Enforcement of Supreme Court judgment by attachment of earnings order

34 Subject to the rules of the Supreme Court if a Judge is satisfied that it is expedient that an order of the Supreme Court for the payment of money should be enforced by an attachment of earnings order he may give a direction to that effect and upon the Registrar of the Supreme Court certifying the effect of such order of the Supreme Court and of the direction of the Judge, the court shall have the power to enforce such order by means of an attachment of earnings order.

Provision where debtor employed by the Crown

35 (1) An attachment of earnings order shall, in the case of a debtor employed by the Crown in its government of Bermuda, be directed to the Accountant General and, in the case of a debtor employed by any agency of the Crown as aforesaid shall be directed to the principal executive officer thereof, and the Accountant General or such officer shall, for the purposes of this Act, be deemed to be the employer of the debtor.

(2) This section as read with sections 27 to 34 inclusive shall have effect notwithstanding any statutory provision passed before this Act and preventing or avoiding the attachment or diversion of sums due to a person in respect of service under the Crown, whether by way of remuneration, pension or otherwise.

Enforcement of orders by seizure of debtor's real or personal property

35A (1) Subject to this section, the payment of any sums of money directed to be paid by an order mentioned in section 27(1) may be enforced by the seizure and sale of the debtor's real or personal property.

MAGISTRATES ACT 1948

(2) Where an order mentioned in section 27(1) has been made by a court and the court is satisfied that the debtor has without reasonable cause defaulted in a payment required to be made under the order then, after giving the debtor an opportunity to be heard, the court may treat any amount in arrears in respect of the order as if it were a judgment of the court, and any such judgment shall on being filed in the Registry of the Supreme Court by the clerk be deemed to be a judgment of the Court and may be enforced in the Court by the seizure and sale of the debtor's real or personal property in the same manner and in all respects as a judgment of the Court is enforced.

Enforcement of orders by attachment of debtor's bank accounts

35B (1) Subject to this section, the payment of any sums of money directed to be paid by an order mentioned in section 27(1) may be enforced by the attachment of any sum standing to the credit of a debtor in a current or deposit account in a bank.

(2) Where an order mentioned in section 27(1) has been made by a court and the court is satisfied that the debtor has without reasonable cause defaulted in a payment required to be made under the order then, after giving the debtor an opportunity to be heard, the court may treat any amount in arrears in respect of the order as if it were a judgment of the court, and any such judgment shall, on being filed in the Registry of the Supreme Court by the clerk, be deemed to be a judgment of the Court and thereafter, for the purposes of the jurisdiction of the Court to attach debts for the purpose of satisfying judgments or orders for the payment of money, any sum standing to the credit of the debtor—

- (a) in a current account in a bank shall, subject to the rules of the Court, be attachable;
- (b) in a deposit account in a bank shall be deemed to be a sum due or accruing to that person and, subject to the rules of the Court, shall be attachable accordingly, notwithstanding that any of the following conditions applicable to the account, that is to say:—
 - (i) any condition that notice is required before any money is withdrawn;
 - (ii) any condition that a personal application must be made before any money is withdrawn;
 - (iii) any condition that a deposit book must be produced before any money is withdrawn;
 - (iv) any condition that a receipt for money deposited in the account must be provided before any money is withdrawn; or
 - (v) any other prescribed condition;has not been satisfied.

Attachment of money other than earnings payable to debtor

35C (1) Subject to this section, the payment of any sums of money directed to be paid by an order mentioned in section 27(1) may be enforced by the attachment of any money, other than earnings, payable to the debtor by another person.

MAGISTRATES ACT 1948

(2) A court may issue a notice of attachment in accordance with the rules at the same time when the court makes an order mentioned in paragraphs (a) to (d) of section 27(1) or at any time thereafter on application made in that behalf.

(3) Service in accordance with the rules of a notice of attachment on the person required to pay under the notice binds in accordance with the rules and without further notice all money owing and payable on the date of service to the debtor by the person required to pay.

(4) A notice of attachment remains in effect without further service until—

- (a) the date shown on the notice of attachment;
- (b) the court orders otherwise,

whichever occurs first.

(5) The person required to pay under a notice of attachment shall pay the money as it becomes payable to the clerk in accordance with the notice.

(6) Payment by a person to the clerk in accordance with a notice of attachment served on that person discharges the obligation of that person to the debtor to the extent of the payment,

(7) If a person fails to pay in accordance with a notice of attachment—

- (a) the court may order payment by that person of the amount unpaid;
- (b) the order of the court under paragraph (a) may be enforced in any manner that an order of the court may be enforced;
- (c) the court shall award costs of the order and its enforcement against that person.

Access to information

35D (1) Notwithstanding the provisions of any other Act to the contrary restricting the disclosure of information a Government Department or a Government Board shall provide to the court on request and for the purpose of enforcing and securing the payment of sums payable under an order mentioned in section 27(1) the address and place of employment of a debtor or any other relevant information that is shown on a record in the possession or control of that Department or Board.

(2) Information received by the court under this Act may be used only for the purpose of enforcing and securing the payment of sums payable under an order mentioned in section 27(1) and is otherwise confidential.

PART V

CONTEMPT OF COURT

Offences relating to administration of justice

36 Without prejudice to any other Act, any person who—

MAGISTRATES ACT 1948

- (a) uses indecent, violent, insulting or threatening words or gestures in a court or to a magistrate going to or returning from a court or to any party or witness within the precincts of a court; or
- (b) unlawfully assaults any of the following persons—
 - (i) a magistrate in court, or going to or returning from a court; or
 - (ii) an officer or servant of the court while acting in the execution of his duty; or
 - (iii) any person in court;
- (c) wilfully interrupts or obstructs any proceedings of the court; or
- (d) disobeys in court any direction, ruling or order of the magistrate given in the course of a trial or hearing; or
- (e) subject to section 29(1) being the person to whom an attachment of earnings order or an order under section 31(7) is directed, fails to comply with such order or any variation thereof; or
- (f) fails to comply with section 33(1) or with the requirement of the court under section 33(2); or
- (g) resists or obstructs any officer or servant of the court while acting in the execution of his duty; or
- (h) whether in writing or otherwise, addresses to a magistrate any abusive, indecent or threatening words in relation to any proceedings pending before such magistrate, or any words calculated or intended to prejudice the mind of the magistrate in relation to any such proceedings,

commits an offence against this Act, and shall be liable to be dealt with in accordance with section 37.

Procedure against offender

37 (1) Except as provided in subsection (3), any person guilty of an offence against this Act may be arrested by a police officer on the verbal order of the magistrate if the offender is in court, or with a warrant signed by the magistrate if the offender is not present in court, and thereupon it shall be lawful for the magistrate—

- (a) to admonish or discharge the offender; or
- (b) to order the offender to be removed from the court; or
- (c) to order the offender to pay a fine not exceeding \$2,000.

(2) Where the offender has failed or neglected to pay any fine imposed upon him under this section within such time as the magistrate may have prescribed, it shall be lawful for the magistrate to commit the offender to prison by warrant under his hand for a term not exceeding fourteen days.

MAGISTRATES ACT 1948

(3) If the offender is a barrister and attorney, the magistrate may report the matter in writing to the Chief Justice for such action as he may deem appropriate.

(4) Nothing in this section shall be construed so as to abridge or derogate from any of the provisions of the Criminal Code [*title 8 item 31*] or the Summary Offences Act 1926 [*title 8 item 33*] so however that no person shall be punished twice for the same offence.

Right of appeal

38 (1) In any case where a person has been ordered to pay a fine or to be imprisoned under section 37, he may at the time of such order give notice in writing to the magistrate making the order (hereinafter called "the convicting magistrate") of his intention to appeal to the Supreme Court against such order.

(2) The giving of the notice of intention to appeal shall not operate as a stay of the order of the convicting magistrate unless the appellant shall, within two days after the giving thereof, enter before a magistrate into a recognizance with one surety in the sum of \$240, conditioned that the appellant do personally appear before the Supreme Court when called upon to do so.

(3) Upon such recognizance being entered into, the appellant, if in custody, shall be released.

Procedure on appeal

39 (1) The convicting magistrate shall, within seven days after the making of the recognizance, transmit to the Registrar of the Supreme Court a full statement of the case specifying the causes of such conviction.

(2) The Supreme Court shall take into consideration the statement of the magistrate and such grounds of appeal as may be submitted by the appellant; and the Supreme Court shall have all the powers conferred upon it by the Criminal Appeal Act 1952 [*title 8 item 87*].

(3) If the appeal against the order of the convicting magistrate is dismissed, any magistrate may, on receipt of notification of such dismissal, proceed to enforce such order as if there had been no appeal against the same.

(4) If the order of the convicting magistrate is quashed by the Supreme Court, and the person alleged to have offended has been in custody, it shall be lawful for the Supreme Court on the application of the appellant to award to the appellant such sum of money by way of compensation and satisfaction in respect of the committal by the magistrate as to the Supreme Court may seem appropriate, and such award shall be a bar to any civil proceedings arising out of such order,

(5) The convicting magistrate shall not, unless the Governor, acting in his discretion otherwise orders, be made personally liable for any sum of money awarded to the appellant under this section, but such sum shall be paid to the appellant out of the Consolidated Fund.

MAGISTRATES ACT 1948

Protection of officers

40 No action shall be brought against any officer or servant of the court, or against any police officer in respect of any act done by him in obedience to the order of a magistrate acting under section 37.

Frivolous complaints etc

41 (1) In any case where a magistrate has dismissed an information or complaint, and is of the opinion that the information or complaint was frivolous or vexatious, he may with the consent of the accused or defendant, order the informant or complainant to pay to the accused or defendant a sum not exceeding \$60 by way of compensation for the trouble and expense to which the accused or defendant may have been put in consequence of such information or complaint.

(2) The consent of the accused or defendant to any order for compensation made by the magistrate under this section shall be a bar to any subsequent civil proceedings for false imprisonment or malicious prosecution by him against the informant or complainant.

Application of this Part

42 This Part shall apply to any court of summary jurisdiction, whether the proceedings are held in open court or otherwise, and to any court established under Part II, and to any proceedings before a magistrate sitting as Coroner at an inquest held under the Coroners Act 1938 [title 8 item 81].

[This consolidates (with effect from 2 February 1976 being the date on which the Annual Supplement 1974 came into operation) the Magistrates' Civil Jurisdiction Act 1922 (Act No. 43 of 1922 as amended or repealed in part by Acts No. 55 of 1930; No. 37 of 1931; No. 35 of 1945; No. 15 of 1948; No. 58 of 1951; No. 93 of 1951; No. 11 of 1952; No. 70 of 1957; No. 187 of 1967; No. 188 of 1969 and No. 111 of 1971), the Special Courts Act 1944 (No. 23 of 1944 as amended or repealed in part by Acts No. 25 of 1948; No. 31 of 1950; No. 11 of 1952; No. 182 of 1969; No. 83 of 1971 and No. 111 of 1971), the Magistrates Act 1948 (No. 25 of 1948 as amended or repealed in part by Acts No. 39 of 1948; No. 78 of 1951; No. 11 of 1952; No. 182 of 1969; No. 48 of 1974 and No. 108 of 1974), the Magistrates Courts (Administration of Justice) Act 1961 (No. 151 of 1961 as amended by Act No. 182 of 1969) and the Justices of the Peace Act 1969 (No. 300 of 1969).]

[Assent Date: 20 April 1948]

[Amended by

1977	3
1986	1
1988	29
1993	55
1998	38
2002	36
2005	9
2009	31
2015	38]

MAGISTRATES ACT 1948

Act No 1993 : 55 provides:

4. *This Act does not apply in respect of an action commenced before this Act's commencement.*

[Note, Section 24 of this Act apparently has the effect of keeping in being certain of the provisions of the Justices Civil Jurisdiction Acts (No. 10 of 1850, No. 12 of 1852 and No. 10 of 1854) in so far as these Acts deal with the manner of enforcing judgments. The following provisions appear relevant.

The Justices Civil Jurisdiction Act 1850.

2 *[This section first sets out the jurisdiction of the Justices in certain matters, and then continues] and after judgment given in any of the said cases, and satisfaction not being made accordingly, within ten days next ensuing, the Justice or Justices may and shall grant a warrant of distress directed to the constable to levy such debt, damages and charges upon the defendant's goods and chattels, who by virtue thereof shall expose the same to public sale within eight days, returning the overplus (if any) to the defendant. [The remainder of this section was repealed by Act No. 55 of 1902.]*

The Justices Civil Jurisdiction Act 1854.

1 *Whenever any judgment shall be given by any Justice or Justices of the Peace in any suit under the said Act passed in the year 1850, or any Act in amendment or extension thereof, and it shall be proved to the satisfaction of such Justice or Justices that the party against whom such judgment shall be awarded shall be about to leave Bermuda within the said ten days, it shall be lawful for such Justice or Justices, immediately or at any time after such judgment shall be given without waiting for the expiration of the said ten days, to issue a warrant for enforcing and carrying into effect such judgment, in like manner as could heretofore be done at the expiration of the said ten days.*

2 *Provided always, that when the defendant in any such suit before any Justice or Justices of the Peace for any debt or matter, other than a penalty or forfeiture, shall be a common sailor on board of, or belonging to any vessel about to depart from Bermuda within the said ten days, it shall not be lawful for any such warrant of distress to be enforced or executed upon the body of such common sailor, or upon his clothing or other goods or chattels such as it may be usual for common sailors to carry to sea with them.]*