

**CHAPTER 285**

**THE DEBTS (SUMMARY RECOVERY)**

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**CHAPTER 285****THE DEBTS (SUMMARY RECOVERY) ACT**

*Commencement:* 8 September, 1937

**An Act to provide for the summary recovery of civil debts and for related matters.**

**1. Civil debts recoverable summarily**

Notwithstanding the Civil Procedure Act and the Government Proceedings Act, any sum expressed by any Act, whether past or future, to be a civil debt recoverable summarily may be recovered in the court of any magistrate of competent jurisdiction in the manner prescribed by this Act.

**2. Jurisdiction of magistrates<sup>1</sup>**

Every magistrate shall have jurisdiction under this Act, except that a magistrate grade II shall not exercise jurisdiction in any case where the sum sought to be recovered exceeds five hundred thousand shillings.

**3. Commencement of proceedings**

(1) All proceedings under this Act shall be commenced by complaint which shall be in writing and shall set forth the particulars of the claim.

(2) A magistrate shall not be required to examine a complainant on oath before issuing a summons to the defendant.

**4. Magistrate to issue summons**

(1) A magistrate of competent jurisdiction receiving a complaint may issue a summons stating shortly the matter of the complaint and requiring the defendant to appear before him or her at a certain time and place to answer the complaint. The particulars of the claim shall, unless embodied in the

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<sup>1</sup> See revisers' note at the end of the Act.

summons, be annexed to and, if so annexed, shall be deemed to be part of the summons.

(2) The provisions of the Magistrates Courts Act relating to the service of a summons shall apply to the service of any summons issued under this Act.

**5. Warrant not to issue, but if defendant fails to appear magistrate may proceed *ex parte***

A warrant shall not be issued for compelling the attendance of the defendant to answer any such complaint, but if on the day and at the place appointed in and by the summons, or on any day to which the hearing may be adjourned, the defendant shall fail to appear, then and in every such case if the magistrate shall be satisfied that the summons was duly served upon the defendant a reasonable time before the time so appointed for his or her appearance as aforesaid, it shall be lawful for such magistrate to proceed *ex parte* to the hearing of the complaint, and to adjudicate it as fully and effectually, to all intents and purposes, as if such defendant had personally appeared before the magistrate in obedience to the summons.

**6. Procedure for trial**

Except as is otherwise provided in this Act, the procedure prescribed by Part XIV of the Magistrates Courts Act shall be followed in the trial of a case under this Act.

**7. Order of payment**

(1) If on the hearing of the complaint the magistrate is satisfied that the defendant is liable to pay the sum claimed or any part of it, the magistrate shall make an order that the defendant pay into court such sum as the magistrate may adjudge to be payable by the defendant.

(2) A magistrate, by whose order any sum is adjudged to be paid, may—

- (a) allow time for the payment of such sum;
- (b) direct payment to be made of the sum by instalments.

(3) Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

## **8. Order of dismissal of complaint**

If, on the hearing of the complaint, the magistrate is satisfied that the defendant is not liable to pay the sum claimed or any part of it, the magistrate shall dismiss the complaint.

## **9. Costs**

(1) In any case in which a magistrate shall make an order against the defendant, the magistrate may, at his or her discretion, award and order that the defendant shall pay to the complainant such costs as to the magistrate shall seem reasonable, and the sum so allowed for costs shall be specified in the order, and be recoverable in the same manner, and under the same warrant, as any sum of money adjudged to be paid is recoverable.

(2) Whenever a magistrate dismisses a complaint, it shall be lawful for the magistrate, at his or her discretion, by his or her order of dismissal, to award and order that the complainant shall pay to the defendant such costs as to the magistrate shall seem just and reasonable, and such costs shall be recoverable in the like manner as any other sum of money adjudged to be paid under this Act is recoverable.

(3) For the purposes of subsection (2), whenever proceedings have been instituted by a person in the service of the Government for the recovery of money alleged to be payable to the Government or to any Ministry or department of the Government, and in such proceeding an order is made against the complainant under this subsection for the payment of costs, such order shall be served upon the head of the Ministry or department in which the complainant is serving, and the costs ordered to be paid by the complainant shall be paid out of such fund as the Minister may, by general or special order, direct.

**10. Money ordered to be paid recoverable as fines**

(1) Any money payable by virtue of any order made under this Act shall be recoverable under the provisions of the Magistrates Courts Act as if it were a fine.

(2) All court costs incurred in endeavouring to enforce an order shall, unless the magistrate otherwise orders, be deemed to be due in pursuance of the order.

**11. Imprisonment in default of payment of money adjudged to be due**

(1) A magistrate may commit to prison for any term not exceeding six weeks, or until payment of the sum due if such shall be sooner paid, any person who makes default in the payment of any money due from him or her in pursuance of any order; but no such committal shall be ordered unless ~~(a)~~

a warrant for the levy of the money due has been issued, and no property or insufficient property has been found on which the sum mentioned in the warrant and the costs of levying it could be levied; and

(b) a summons to appear and be examined on oath has been served on the person making default; and

(c) it is proved to the satisfaction of the magistrate that the person making default either has, or had since the date of the order, money to pay the sum in respect of which he or she has made default, and has refused or neglected, or refuses or neglects, to pay the same.

(2) Proof of the means of the person making default may be given in such manner as the magistrate thinks just, and, for the purpose of such proof, the debtor and any witness may be summoned and their attendance enforced by the same process as in cases in which the magistrate has jurisdiction in criminal matters, and such person making default and the witnesses may be examined on oath.

(3) Every order of committal under this section shall be made, executed and obeyed in like manner as orders of commitment under the Magistrates Courts Act, except that for the purposes of the prison laws, the person committed shall be deemed to be a civil prisoner.

(4) There shall be endorsed on every warrant of commitment the sum on the payment of which the defendant may be discharged.

(5) When a warrant of commitment is issued, the defendant may at any time before he or she is delivered to the officer in charge of the prison pay to the officer holding the warrant the amount endorsed on it as that on the payment of which he or she may be discharged; and on receiving that amount the officer shall discharge the defendant, and shall forthwith pay the amount to the magistrate who has made the order.

(6) No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt, or deprive any person of any right to take out execution against the movable property of the person imprisoned in the same manner as if such imprisonment had not taken place.

## **12. Appeal**

An appeal shall lie to the High Court from any order made under section 7, and the provisions of the Magistrates Courts Act relating to appeals from the order of a magistrate's court to the High Court shall apply to such appeal.

## **13. High Court may issue rules**

The High Court may, with the approval of the Minister, issue rules of court fixing fees, prescribing forms, and generally for the purposes of, and for giving effect to, the provisions of this Act.

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**Revisers' note:** The jurisdiction in section 2 has been revised to reflect the civil jurisdiction in the Magistrates Courts Act, Cap. 16 (Revised Edition, 2000).

**History:** Cap. 67 (Revised Edition, 1964); Cap. 74 (Revised Edition, 2000)

### **Cross References**

Civil Procedure Act, Cap. 282

Government Proceedings Act, Cap. 287

Magistrates Courts Act, Cap. 19