

No. 38

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5th Session, 14th Legislature, Alberta  
11 Elizabeth II

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## **BILL 38**

A Bill to amend The Small Debts Act

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HON. MR. MANNING

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## **Explanatory Note**

**2.**Section 3 is amended to increase the jurisdiction in claims from \$200.00 to \$300.00, and to delete all reference to sub-judicial districts and to correct an error. There are no longer sub-judicial districts in the Province. Section 3, subsections (2) to (5) presently read:

"(2) A magistrate residing within a judicial district or a sub-judicial district, other than a district court judge, has jurisdiction only within the limits of

(a) the judicial district in which he resides excluding the sub-judicial district, if any, or

(b) the sub-judicial district in which he resides, as the case may be.

(3) No magistrate shall try or adjudicate upon any claim under this Act unless the defendant or some one of the defendants resides or carries on business in the judicial district or sub-judicial district, as the case may be, in which the magistrate, if he is other than a district court judge resides.

(4) Any magistrate within the meaning of subclause (i) of clause (b) of section 2 upon being requested to do so by the Attorney General, may try and may adjudicate upon any claim under this Act at any place in the judicial district or sub-judicial district in which the defendant or some one of the defendants resides or carries on business, without regard to the place of residence of the magistrate.

(5) Where a defendant is a municipal corporation the claim may be tried in any judicial or sub-judicial district in which the municipality or any part thereof is situate, or in any judicial district in which any other defendant resides or carries on business."

**3.** Subsection (2) of section 4 is revised to clarify the meaning of municipality. Subsection (2) of section 4 presently reads:

"(2) No municipality, municipal district, school district or improvement district shall take proceedings under this Act for the recovery of taxes, except taxes imposed in respect of the occupancy of, or an interest in, land that is itself exempt from taxation."

**4.** Subsection (1a) of section 7 is amended to give magistrates a discretion to demand a deposit on fees. Subsection (1a) of section 7 presently reads:

"(1a) Where the defendant does not reside within twenty miles of the place at which the trial is to be held, the plaintiff shall, before the summons is issued, deposit with the magistrate an additional sum equal to ten cents per mile of the distance between the residence of the defendant and the place of trial."

# BILL

No. 38 of 1963

An Act to amend The Small Debts Act

(Assented to \_\_\_\_\_, 1963)

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

**1.** *The Small Debts Act*, being chapter 314 of the Revised Statutes, is hereby amended.

**2.** Section 3 is amended

- (a) as to subsection (1), clauses (a) and (b) by striking out the words "two hundred" and by substituting the words "three hundred",
- (b) by striking out subsection (2) and by substituting the following:

(2) A magistrate, other than a district court judge, has jurisdiction only within the limits of the judicial district within which he resides.
- (c) as to subsection (3) by striking out the words "or sub-judicial district, as the case may be,"
- (d) as to subsection (4)
  - (i) by striking out the word and figure "section (2)" and by substituting the word and figure "section 2",
  - (ii) by striking out the words "or sub-judicial district",
- (e) as to subsection (5) by striking out the words "or sub-judicial district" wherever they occur.

**3.** Section 4 is amended by striking out subsection (2) and by substituting the following:

(2) No city, town, village, county, municipal district, school district, new town, improvement district, or special area shall take proceedings under this Act for the recovery of taxes, except taxes imposed in respect of the occupancy of, or an interest in, land that is exempt from taxation.

**4.** Section 7 is amended by striking out subsection (1a) and by substituting the following:

(1a) When the defendant lives further than twenty miles from the place of trial, the magistrate in his discretion may, before the summons is issued, require the plaintiff to pay as a deposit an additional sum calculated at the rate of ten cents per mile for the number of miles between the defendant's residence and the place of trial.

**5.** Section 10 is revised to allow a magistrate to postpone a hearing for a period up to 60 days to permit service of the summons. Clause (a) of section 10 presently reads:

"10. Upon any summons being returned unserved the magistrate (a) shall postpone the hearing for a period of not more than twenty days by memorandum to that effect endorsed upon the summons and copy thereof, and may so postpone the hearing from time to time, and".

**6.** See clause 2 of this Bill.

**7.** Clause (a) of subsection (1) of section 13 is amended to allow the plaintiff to serve documents on the defendant. Proof of service of documents is provided for in section 15. Clause (b) is amended to clarify service of documents by mail. Subsection (1) of section 13 presently reads:

"13. (1) Except as to subpoenas, service of all process papers and documents may be made

(a) to any adult literate person other than the plaintiff upon the person to be served, either personally or by leaving a copy for him at his last or most usual place of abode with some inmate thereof apparently of the age of sixteen years or older, or

(b) by mailing the copy to the person to be served by registered post to his last known post office address, in which case service shall be deemed to be effected at the time the copy is delivered by any official of the post office to the person to be served or to any person receiving the same on his behalf."

**8.** See clause 2 of this Bill.

**9.** Section 26 is revised to allow magistrates greater discretion to adjourn hearings. Section 26 presently reads:

"26. A magistrate may adjourn the hearing from day to day if necessary to finish the business, and may in the absence of necessary and material witnesses, or for other good cause appearing on oath or affidavit, adjourn the hearing for any period not longer than one week, on such terms as seem to him just."

**10.** Sections 33 and 34 are revised to clarify the examination of a judgment debtor and the issuing of a warrant for failing to appear in answer to a summons.

**5.** Section 10 is amended by striking out clause (a) and by substituting the following:

- (a) shall postpone the hearing for not more than sixty days and may further postpone the hearing from time to time by endorsing a memorandum of each postponement on the summons and a copy of the summons, and

**6.** Section 11, subsection (2) is amended by striking out the words "or sub-judicial district as the case may be,".

**7.** Section 13, subsection (1) is amended

- (a) as to clause (a) by striking out the words "other than the plaintiff",
- (b) as to clause (b) by adding immediately before the words "registered post" the word "double".

**8.** Section 21 is amended

- (a) as to subsection (1), clause (b) by striking out the words "or sub-judicial district, as the case may be,"
- (b) as to subsection (3) by striking out the words "or sub-judicial district".

**9.** Section 26 is amended by striking out the words "for any period not longer than one week,".

**10.** Sections 33 and 34 are struck out and the following sections are substituted:

**33.**(1) At any time after judgment and whether the debtor has or has not been previously examined as to his estate, effects or means, the magistrate

- (a) upon the application of the creditor, and
- (b) upon being satisfied that it is proper to do so on account of any default in complying with any previous order or an alteration in the circumstances of the debtor,

may issue a summons in Form G in Schedule I requiring the debtor to appear before him for examination at a time and place set out in the summons.

(2) When the judgment debtor appears in answer to the summons he may be examined on oath on matters touching his estate and effects, and in particular

**11.** Section 36 is revised to require a certificate of judgment to be furnished in all cases, and without payment of a fee. Section 36 presently reads:

“36. A magistrate who has tried a case under this Act and given judgment thereon shall, upon request and on payment of a fee of twenty-five cents therefor, furnish a certificate of the judgment in Form H of Schedule I, and the certificate shall be admitted in evidence as proof of the judgment without any proof of the authenticity of the signature of the magistrate or any proof whatsoever.”.

**12.** See clause 2 of this Bill.

**13.** See clause 2 of this Bill.

**14.** Commencement of Act.

- (a) as to the means he has of complying with an order that may be made against him, and
  - (b) as to the disposal of any property he has made since the summons was issued.
- (3) An examination as to the judgment debtor's means shall be held in private and no person, other than the magistrate, court officers, the judgment creditor and the judgment debtor and their solicitors, shall be allowed to be present.

**34.** (1) Where a judgment debtor fails to appear in answer to a summons issued pursuant to section 33, the magistrate may issue a warrant to compel his attendance at a place and time to be set out in the warrant.

(2) A warrant

- (a) shall be under the hand and seal of a magistrate issuing the same, and
- (b) may be directed either to any constable by name, or to such constables or all other constables within the territorial jurisdiction of the magistrate issuing it, or generally to all constables within such jurisdiction.

(3) The warrant shall name or otherwise describe the judgment debtor and shall order the officer or officers, to whom it is directed, to apprehend the offender and bring him before the magistrate issuing the warrant, or before some other magistrate, to answer to the summons and to be further dealt with according to law.

**11.** Section 36 is amended by striking out the words ", upon request and on payment of a fee of twenty-five cents therefor,".

**12.** Section 38, subsection (1) is amended by striking out the words "or sub-judicial district".

**13.** Section 45, subsections (1) and (2) are amended by striking out the words "or sub-judicial district".

**14.** This Act comes into force on the day upon which it is assented to.

No. 38

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FIFTH SESSION

FOURTEENTH LEGISLATURE

11 ELIZABETH II

1963

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## **BILL**

An Act to amend The Small Debts  
Act

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Received and read the

First time .....

Second time .....

Third Time .....

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HON. MR. MANNING

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