(a) to administer the oath to a witness;

(b) when so directed by any Court, to ascertain and establish the issues of fact or of law involved in a cause, as well as the issues of fact or of law on which the parties agree, to give such directions to the parties as may be necessary for this purpose and relative to the production of documents or other evidence and of notes of reference to authority in support of their case, to endeavour to induce the parties to reach an agreement on the issues involved in the cause, and to make a report on such evidence and references and such issues or agreement, as the case may be, to the Court;

(c) to take the testimony of any person;

(d) to take any affidavit on any matter connected with any proceedings taken or intended to be taken before any Court;

(e) to receive documents produced with any testimony, affidavit or declaration referred to in this Act; and

(f) to perform any other function which may lawfully be assigned to them by any Court.

(2) In the performance of their functions the Judicial Assistants shall act under the direction and control of the Court taking cognizance of the case, and shall have such powers as may lawfully be assigned to them by such Court and in particular shall have power to order the attendance of any person for the purpose of the giving of evidence or the making of an affidavit or a declaration on any such matter, at such place and time as may be specified in the order.

Appointment of Judicial Assistants.

4. (1) The Judicial Assistants shall be appointed by the Minister responsible for justice from among persons who hold the warrant to practise as advocate in Malta.

(2) A Judicial Assistant shall be appointed for a term of not less than two years and during this appointment he may not exercise the private practice of his profession.

Remuneration to Judicial Assistants.

(3) The Judicial Assistants shall receive such remuneration as the Minister responsible for justice may from time to time prescribe.

(4) The provisions of the Code of Organization and Civil Procedure regarding the abstention and challenge of Judges shall apply to the abstention and challenge of Judicial Assistants:

Provided that any matter regarding such abstention or challenge shall be decided by the Court.

(5) Upon his appointment a Judicial Assistant shall take an oath to perform all his functions under this Act faithfully, honestly and impartially. The oath shall be taken before the Court of Appeal.

Court may direct evidence to be taken by Judicial Assistant.

5. (1) Notwithstanding anything contained in the Code of Organization and Civil Procedure or in any other law, and without prejudice to any power granted to a court by section 173 of the said Code, the Court may direct that the evidence of any person intended to be produced as witness be taken before a Judicial Assistant at such place and time and under such conditions as the Court may establish.

(2) Such direction may be given during any stage of the proceedings and may be so given by the Court of its own motion or on the application of any party to the proceedings.

Affidavits to be admitted as evidence.

6. Notwithstanding anything contained in the Code of Organization and Civil Procedure or in any other law it shall be in the power of any Court taking cognizance of the case to give consideration to the facts contained:

(a) in an affidavit duly taken in accordance with the provisions of this Act, and filed in the record of the proceedings; and

(b) in a declaration made by the plaintiff in accordance with subsection (3) of section 155 or the defendant in accordance with subsection (4) of section 158 of the Code of Organization and Civil Procedure, provided that it shall contain a declaration by the declarant that the facts therein contained have come to his knowledge directly and not obtained from the relation or information of third persons;

without the necessity of examining the person making such affidavit *viva voce* in open Court:

Provided that nothing in this section shall preclude the Court from directing that the testimony of any person be given *viva voce* in open Court or taken by a Judicial Assistant.

Affidavits before Judicial Assistant to be filed in Court.

Cap. 120

7. (1) Any party intending to produce a witness in proceedings before a Court may file in the Registry of such Court the affidavit of the witnesses on which the party intends to rely in support of his case.

(2) The affidavit shall be taken before a Judicial Assistant or a Commissioner for Oaths appointed in terms of the provisions of the Commissioners for Oaths Ordinance, and shall be filed together with any written pleading prescribed by law in which a party is required to indicate the names of the witnesses which he intends to produce:

Provided that where such written pleading is not so prescribed, the affidavit shall be filed by the party together with the written pleading introducing the cause or the written pleading in answer thereto, as the case may be, or, where a written pleading in answer is not required of such party, not later than the day fixed for the hearing:

Provided further that a copy of the affidavit shall be served on the other party.

(3) Nothing in subsection (2) of this section shall preclude any party from filing the affidavit of any witness duly taken in accordance with the provisions of this Act after the time therein indicated, if at the time of the filing of such affidavit such person was not precluded from producing the person making that affidavit as a witness to give testimony *viva voce* before the Court.

Procedure where affidavits are not produced with written pleading indicating names of witnesses.

8. (1) Without prejudice to the powers granted to any Court under section 173 of the Code of Organization and Civil Procedure, the Court may, on an application by a party, order any person to appear before a Judicial Assistant at such place, on such day and on such time as may be specified in such order for the purpose of confirming by affidavit any fact which the applicant intends to prove in support of his case by the evidence of that person and which fact is specified in a note which shall be filed together with that application.

(2) The Judicial Assistant shall ask the person ordered to appear before him as is provided in subsection (1) of this section whether he confirms or denies each fact specified in the note, and shall record on the note the answer given by such person, together with any

other statement (if any) qualifying such answer, and such answer and statement (if any) shall be confirmed in the affidavit.

(3) The Judicial Assistants shall annex the note and the affidavit referred to in subsection (2) of this section in the record of the cause to which the note refers without the necessity of any formality and shall cause a copy of such note and affidavit to be served on the parties.

(4) Notwithstanding anything contained in sections 128, 136, 138, 156 and 158 of the Code of Organization and Civil Procedure or in any other law, where an application as is referred to in subsection (1) of this section is filed, together with any written pleading to which subsection (2) of section 7 of this Act refers, the Court may direct that the service of such written pleading shall be suspended until such time as may be determined by the Court.

Witnesses residing abroad.

9. (1) (a) Where the evidence of a witness residing outside Malta is required the Court may if all the parties to the action so agree, or if it deems it proper so to do, direct a witness to appear before such authority or person referred to in paragraph (c) of this subsection and after having answered the questions contained in the order, confirm his answer by an affidavit.

(b) The Court shall direct that a copy of the order referred to in paragraph (a) of this subsection be served on such witness through the Registrar as provided in the following paragraphs of this subsection.

(c) The Registrar shall transmit such order to a consular officer or to such other authority or person as according to the law of the country where the witness resides is empowered to administer oaths, so that such officer, authority or person shall notify the witness or cause the witness to be notified with such order and so that the affidavit shall be taken before such an officer, authority or person.

(d) When such order, answers and affidavit are returned, the Registrar shall cause such documents to be filed in the records of the case and shall cause a copy thereof to be served on the parties; the Registrar shall also file in those records a note showing the expenses incurred.

(e) Notwithstanding anything contained in any other law, Consular Officers for Malta abroad shall have the power to administer oaths for all effects and purposes of this subsection.

Affidavits taken outside Malta.

(2) Without prejudice to the provisions of subsection (1) of this section an affidavit validly taken outside Malta in accordance with the laws of the country where it is taken, shall for all effects and purposes of this Act be deemed as if it were validly taken in Malta in accordance with the laws of Malta, and the provisions of this Act shall apply thereto as if it were an affidavit taken in Malta.

Cross-examination of person making affidavit.

10. (1) The party desiring to cross-examine a person making an affidavit in accordance with this Act shall, within six working days from the service of the copy of the affidavit containing the testimony of such person, file a declaration to this effect.

(2) Such cross-examination shall be conducted in the manner as the Court may deem appropriate to the case.

(3) In the absence of such declaration the Court may disallow the cross-examination.

Re-examination.

(4) The provisions of this Act shall apply to the re-examination of any person whose testimony has been produced either *viva voce* before the court or in any other manner provided for by this Act, and for the purposes of such re-examination the provisions of this Act relating to the examination or cross-examination of any person shall *mutatis mutandis* apply.

(5) A copy of subsection (1) of this section shall be served on every person on whom the copy of an affidavit is served, together with the copy of the affidavit.

Abridgement of terms.

11. The Court may, in cases of urgency, abridge any term prescribed by this Act.

Appeals.

12. An appeal from any order or directive given by any Court pursuant to any of the provisions of this Act may be entered only after the definitive judgment and together with an appeal from such judgment, and such orders or directives may not be challenged before the definitive judgment is delivered.

Attendance by Judicial Assistants.

13. The Minister responsible for justice may by notice published in the Gazette establish the days and the time during which Judicial Assistants shall be in attendance for the performance of their functions under this Act and may designate the place or places where such functions are to be performed:

Provided that the Court may, on its own motion or on an application by any interested party, direct that the Judicial Assistant shall perform his functions under this Act at such place and time as may be established in such direction.

Power to make regulations.

14. The Minister responsible for justice may make regulations for the better carrying out of any of the provisions of this Act and may in particular prescribe —

(a) the forms that may be adopted in any proceedings under this Act;

(b) the fees payable —

(i) as registry fees for the taking of any affidavit, or of evidence on oath;

(ii) for the preparation of any affidavit;

(iii) for the attendance before a Judicial Assistant, and

(iv) for the transmission of records abroad.

Electro-magnetic recording of testimony. Act XVI of 1980.

15. The provisions of the Electro-magnetic Recording of Proceedings Act, 1980, shall apply *mutatis mutandis* to the recording of testimony taken by Judicial Assistants.

Registry.

16. The records of the Judicial Assistants shall be deposited in the Registry of the Court taking cognizance of the case.

Provisions of other laws applicable to the Act.

17. (1) Save as otherwise provided in this Act, the provisions of the Code of Organization and Civil Procedure shall, *mutatis mutandis*, apply to proceedings under this Act.

(2) The powers granted to the Court by this Act shall not be in derogation of any power granted to such courts under the Code of Organization and Civil Procedure, or any other law, but shall be in addition to any such powers.

Passed by the House of Representatives at Sitting No. 191 of the 8th October, 1984.

DANIEL MICALLEF
Speaker

C. MIFSUD
Clerk to the House of Representatives