

33/1954.

R. R. 12/1962

## CHAPTER 3. No. 1.

## JUDICATURE.

Ordinances  
Ch. 3. No. 1-  
1940.  
No. 38-1944.  
„ 32-1945.  
„ 51-1946.

AN ORDINANCE RELATING TO THE SUPREME COURT  
AND TO THE ADMINISTRATION OF JUSTICE.

Commence-  
ment

[20th March, 1880.]

Short title.

1. This Ordinance may be cited as the Judicature Ordinance.

Interpre-  
tation.

2. In this Ordinance—

“ action ” means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of court, and does not include a criminal proceeding by the Crown;

“ cause ” includes any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown;

“ Court ” means the Supreme Court constituted by this Ordinance;

“ defendant ” includes every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceeding;

“ judgment ” includes decree;

“ matter ” includes every proceeding in the Court not in a cause;

“ order ” includes rule;

“ party ” includes every person served with notice of or attending any proceeding, although not named on the record;

"petitioner" includes every person making any application to the Court, either by petition, motion or summons, otherwise than as against any defendant;

"plaintiff" includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons or otherwise;

"pleading" includes any petition or summons, and also includes the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant;

"Registrar" means the Registrar of the Court;

"rules of court" includes forms;

"statutory provision" includes any provision contained in this Ordinance or in any rules of court made pursuant to this Ordinance and approved by the Governor and Legislative Council and not disallowed by His Majesty;

"suit" and "action" are synonymous.

#### *Constitution and Judges of the Court.*

3. There shall be one Supreme Court in the Colony, which shall be a Superior Court of Record, and such Court shall be called the Supreme Court of Trinidad and Tobago. Supreme Court.

4. (1) The Supreme Court shall consist of a Chief Justice, a Senior Puisne Judge and such other Puisne Judges as the Governor shall from time to time appoint in manner hereinafter appearing. The Chief Justice shall be the President of the Supreme Court and shall be designated the Chief Justice of Trinidad and Tobago; the Senior Puisne Judge shall rank next to the Chief Justice and shall be designated the Senior Puisne Judge of the Supreme Court of Trinidad and Tobago; and the other Puisne Judges shall rank after the Senior Puisne Judge according to the dates of their respective appointments and shall be designated Puisne Judges of the Supreme Court of Trinidad and Tobago. Judges of the Court.  
Ord. 38-1944,  
s. 2.

(2) The Court shall be deemed to be duly constituted notwithstanding any vacancy in the office of any Judge.

Appointment  
of Judges.

5. (1) Every Judge of the Court shall be appointed by Letters Patent under the Public Seal of the Colony by the Governor in accordance with such instructions as he may receive through one of His Majesty's Principal Secretaries of State, and shall hold his office during His Majesty's pleasure, subject to any conditions contained in any regulations made by or under the authority of His Majesty for His Majesty's Colonial Service, and shall receive such salary as the Governor, with the sanction of the Legislative Council, may appoint. No Judge shall accept or perform any other office or place of profit or emolument not authorised by law without the consent of the Governor: Provided that this restriction shall not apply to a Judge temporarily appointed to act as such under section 7.

(2) No person shall be appointed to be a Judge of the Court unless—

(a) he is qualified to practise as an advocate in a Court in England, Scotland, Northern Ireland or some other Commonwealth country having unlimited jurisdiction either in civil or criminal matters; and

(b) he has been qualified for not less than five years to practise as an advocate or solicitor in such a court.

Absence of  
Chief Justice.

Ord. 38-1944,  
s. 3.

6. Any act required or authorised to be done by, before, or in the name of the Chief Justice may be done by, before, or in the name of the Senior Puisne Judge or any other Puisne Judge of the Court in case of the absence on leave or otherwise, indisposition, or inability to attend of the Chief Justice.

Acting  
Judges.

7. (1) Whenever the office of any Judge of the Court is vacant, or whenever any Judge is absent from the Colony, or is, by reason of illness, interest in any cause or matter, or for any other reason, incapable of acting, or whenever in the opinion of the Governor the due administration of justice so requires, the Governor may, in the name of His Majesty, by Letters Patent under the Public Seal of

the Colony, appoint some person possessing the qualification required by subsection (2) of section 5.

(2) Every such appointment shall be for such time, or for the trial or hearing of such causes or matters, or otherwise, as may be specified in the instrument of appointment.

(3) Every person so appointed and acting under such appointment shall, so far as may be necessary for the purposes of his appointment, have all the powers of a Judge of the Court, and all acts done within the scope of his appointment by any person so appointed and acting as aforesaid shall be as valid as if done by a Judge, whether in Court or Chambers or otherwise.

(4) Persons appointed under the authority of this Ord. 38-1944, s. 4. section to act as Puisne Judges shall rank after the Puisne Judges according to the dates of their respective acting appointments.

8. (1) Any two Judges of the Court shall be sufficient Full Court. to constitute a Full Court.

(2) Where the Full Court sits to hear appeals from a single Judge, whether final or interlocutory, the Judge whose judgment or order is appealed from or who presided at such trial shall not sit in such Full Court.

(3) Where the two Judges hearing an appeal as aforesaid differ in opinion, the judgment in the Court below shall stand.

(4) Where the Full Court sits otherwise than for the hearing of appeals as aforesaid and the two Judges constituting it differ in opinion, they shall not give judgment if there is a third Judge of the Court in the Colony, and the cause or matter shall be reheard and determined by the three Judges of the Court. If, however, there is no third Judge of the Court in the Colony, the opinion of the senior Judge sitting shall prevail.

#### *Seals of the Court.*

9. The Court shall have and use as occasion requires a Seals. seal. Such seal shall bear an impression of the Royal

Arms within an exergue or label surrounding the same, with the inscription, " Supreme Court of Trinidad and Tobago."

The Court shall also have and use as occasion requires two or more duplicates of the seal.

*Officers of the Court.*

Registrar.

**10.** (1) There shall be a Registrar of the Court, who shall have the custody of the seal of the Court, and all records, documents, and papers thereof, and shall perform such duties as may be prescribed by rules of court under this Ordinance.

(2) The Registrar shall also have powers and discharge duties corresponding to the powers and duties of the King's Coroner and Attorney and Master of the Crown Office attached to the King's Bench Division of the High Court of Justice in England so far as such powers or duties relate to any judicial proceedings.

(3) The Registrar shall be a barrister or a solicitor, in either case of five years standing at least.

Registrar to have powers of Judge in Chambers.

**11.** (1) The Registrar shall have power and jurisdiction to do such of the things and transact such of the business as, by virtue of any enactment, or by custom, or by the rules and practice of the Court, are now done and transacted by a Judge of the Court sitting in Chambers as may from time to time be prescribed by rules of court: Provided that the Registrar shall have no jurisdiction in respect of matters relating to the liberty of the subject.

Appeal from Registrar.

(2) Any person affected by any order or decision of the Registrar sitting in Chambers may appeal to the Full Court or a Judge as may be provided by rules of court, and the rules of court relating to appeals from a Judge in Chambers shall apply to an appeal from the Registrar.

Deputy Registrar.

**12.** There shall be a Deputy Registrar of the Court, who shall have all the powers and may perform all the duties of the Registrar except where otherwise provided by rules of court.

13. The Registrar and Deputy Registrar shall be appointed by the Governor in the name of His Majesty, by Letters Patent under the Public Seal of the Colony, and shall hold office during His Majesty's pleasure and subject to any conditions contained in any regulations made by or under the authority of His Majesty for His Majesty's Colonial Service, and shall receive such salaries as the Governor, with the sanction of the Legislative Council, shall appoint.

Appointment  
and salaries  
of Registrar  
and Deputy  
Registrar.

14. There shall be a Sub-Registrar of the Court at San Fernando, to be appointed by the Governor, who shall have the custody of a duplicate seal of the Court for use at San Fernando, and shall, in the absence of the Registrar, perform such duties in reference to proceedings at San Fernando as may be prescribed by rules of court, and, subject to such rules, such duties shall be analogous to the duties performed by the Registrar. Such Sub-Registrar shall receive such salary as the Governor, with the sanction of the Legislative Council, shall appoint.

Sub-  
Registrar,  
San  
Fernando.

15. There shall be a Sub-Registrar of the Court in Tobago, to be appointed by the Governor, who shall have the custody of a duplicate seal of the Court for use in Tobago, and shall, subject to rules of court, in the absence of the Registrar, have such powers and perform such duties in reference to proceedings in Tobago as the Registrar of the Court has and performs in reference to proceedings in the Court of Trinidad. Such Sub-Registrar shall receive such salary as the Governor, with the sanction of the Legislative Council, shall appoint.

Sub-  
Registrar,  
Tobago.

16. Any act done or document signed by the Registrar or any Sub-Registrar of the Court shall not be liable to objection on the ground that it ought to be done or signed by another of them.

Common  
powers of  
Registrars.

17. The Registrar shall be Marshal of the Colony and shall perform all the duties, have all the rights and powers, and be subject to all the liabilities and obligations appertaining to the office at the commencement of this Ordinance.

Registrar to  
be Marshal.

Deputy  
Marshals.

18. The Deputy Registrar shall be Deputy Marshal of the Court at Port-of-Spain, and the Principal Officer in the Registry of the Court shall be the Second Deputy Marshal of the Court at Port-of-Spain; and the Sub-Registrars of San Fernando and Tobago shall be Deputy Marshals of the Court at San Fernando and Tobago respectively. Such Deputy Marshals and Second Deputy Marshal shall, subject to rules of court, have all the powers and may perform all the duties of the Marshal.



*Jurisdiction and Law.*

Declaratory  
enactment  
as to Com-  
mon Law,  
Doctrines of  
Equity, and  
Statute law.

19. It is hereby declared that the Common Law, Doctrines of Equity, and Statutes of general application of the Imperial Parliament which were in force in England on the 1st of March, 1848, shall, subject to the terms of any Ordinance of the Colonial Legislature in operation at that date, be deemed to have been introduced into, and enacted in, the Colony on the 1st of March aforesaid, and, subject to the terms of such last mentioned Ordinances, and of any Ordinances passed subsequently thereto, to have been in force in the Colony as from that date.

General  
jurisdiction  
of the Court.

15 & 16  
Geo. 5, c. 49.

20. (1) There shall be vested in the Court all such jurisdiction as is vested in or exercisable by the High Court of Justice in England, including the jurisdiction in matrimonial causes and matters and in respect of suits to establish legitimacy and validity of marriages and the right to be deemed natural-born British subjects, as is by the Supreme Court of Judicature (Consolidation) Act, 1925, vested in the High Court of Justice in England: Provided that a decree declaring a person to be a natural-born British subject shall have effect only within the Colony.

(2) The jurisdiction hereby vested in the Court shall be exercised as nearly as possible in accordance with the practice and procedure for the time being in force in the High Court of Justice in England so far as such practice and procedure is not displaced by rules of court made in pursuance of this Ordinance, and whether the cause of action arose before or after the commencement of this Ordinance.

(3) Nothing herein shall authorise the Court to make any decree of dissolution of marriage where the parties to the marriage have been married pursuant to the provisions of the Immigration (Indian) Ordinance or the Muslim Marriage and Divorce Registration Ordinance.

Limitation of jurisdiction in divorce.

21. All such jurisdiction in relation to the custody of the persons and estates of persons of unsound mind as is in England vested in the Lord Chancellor or other person or persons entrusted by His Majesty with the care and commitment of such persons and estates, shall be vested in the Court.

Jurisdiction in lunacy.

22. All jurisdiction which by or by virtue of any order in council, Ordinance, or other enactment is vested in any court hitherto having jurisdiction in the Colony shall be transferred to and vested in the Court, and the jurisdiction so transferred shall include the jurisdiction which was vested in or capable of being exercised by all or any one or more of the Judges of any such former court sitting in Court or Chambers or elsewhere when acting as Judges or a Judge in pursuance of any order in council, Ordinance, or other enactment, and shall include all powers given to any such former court or to any such Judges or Judge by any order in council, Ordinance, or other enactment, and also all ministerial powers, duties, and authorities incident to any and every part of the jurisdiction so transferred.

Statutory jurisdiction of Court.

23. The jurisdiction by this Ordinance vested in the Court shall be exercised so far as regards procedure and practice in the manner provided by this Ordinance or other statutory provision.

Mode of exercise of jurisdiction.

24. No action shall be open to objection on the ground that a merely declaratory decree or order is sought.

Declaratory order.

25. Except in respect of the causes and matters which are by statutory provision directed to be heard and determined by a Full Court, any single Judge sitting in Court may exercise all or any part of the jurisdiction by this Ordinance vested in the Court, and when sitting for the purpose of such exercise shall be deemed to constitute

Powers of single Judge.



a Court; and any single Judge sitting in Chambers may exercise all or any part of the jurisdiction aforesaid in all such causes and matters and in all such proceedings in any causes or matters as hitherto have been heard in Chambers by a single Judge.

Original  
hearing.

**26.** Subject to any statutory provision, every action and proceeding and all business arising out of the same shall, so far as is practicable and convenient, be heard, determined, and disposed of before a single Judge; and all proceedings in an action subsequent to the hearing or trial and down to and including the final judgment or order, except any proceedings on appeal, shall, so far as is practicable and convenient, be had and taken before the Judge before whom the trial or hearing took place.

Law and  
equity to be  
concurrently  
administered.

**27.** In every civil cause or matter commenced in the Court, law and equity shall be administered according to the rules following:—

(1) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a court of equity, the Court and every Judge thereof shall give to such plaintiff or petitioner such and the same relief as ought to be given by the High Court of Justice in England in an action or proceeding for the same or the like purpose.

(2) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the Court and every Judge thereof shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the High Court of Justice in England ought to give if the same or the like

matters were relied on by way of defence in any action or proceeding instituted in that Court for the same or the like purpose.

(3) The Court and every Judge thereof shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant properly claims by his pleading, and as the Court or any Judge thereof might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who has been duly served with notice in writing of such claim pursuant to any rule of court or any order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.

(4) The Court and every Judge thereof shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the High Court of Justice in England would recognise and take notice of the same in any action or proceeding duly instituted therein.

(5) No cause or proceeding at any time pending in the Court shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Ordinance contained shall disable the Court from directing a stay of proceedings in any cause or matter pending before it if it thinks fit; and any person, whether a party or not to any such cause

or matter, who would have been entitled to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the Court, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such order as may be just.

(6) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Ordinance, the Court and every Judge thereof shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law or by Spanish Law, or by any custom, or created by any order in council, Ordinance, or other Statute, in the same manner as the same have hitherto been recognised and given effect to.

(7) The Court, in the exercise of the jurisdiction vested in it by this Ordinance, in every cause or matter pending before it, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to such Court seems just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

Equitable  
waste.

28. (1) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right expressly appears by the instrument creating such estate.

Merger.

(2) There shall not be any merger by operation of law only of any estate, the beneficial interest in which

would not be deemed to be merged or extinguished in equity.

(3) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof has been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relating thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Suits for possession of land by mortgagors.

(4) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or thing in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Ordinance had not passed) to pass and transfer the legal right to such debt or thing in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided that if the debtor, trustee, or other person liable in respect of such debt or thing in action has had notice that such assignment is disputed by the assignor or anyone claiming under him, or of any other opposing or conflicting claims to such debt or thing in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same.

Assignment of debts and things in action.

(5) Stipulations in contracts, as to time or otherwise, which are not deemed to be or to have become of the essence of such contracts in a court of equity, shall receive in all Courts the same construction and effect as they would have received in equity.

Stipulations not of the essence of contracts.

(6) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such

Injunctions and receivers.

order may be made either unconditionally or upon such terms and conditions as the Court thinks just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court thinks fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

Cases of  
conflict not  
enumerated.

(7) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the Common Law with reference to the same matter, the rules of equity shall prevail.

#### *Sittings of the Court.*

Power to sit  
at any time.

29. Subject to any statutory provision, the Court and each of the Judges thereof shall have power at any time and at any place in the Colony to sit and act for the transaction of any part of the business of such Court or Judges, or for the discharge of any duty which by any order in council, Ordinance, or otherwise is required to be discharged.

Sittings of  
the Court for  
criminal  
cases,

30. (1) Sittings of the Court for the trial of criminal cases shall be held at Port-of-Spain, San Fernando, and Scarborough, at such times as shall be appointed by the Chief Justice with the concurrence of a Puisne Judge.

and for  
Tobago civil  
cases and  
appeals from  
Magistrates.

(2) Sittings of the Court for the trial of civil cases and for hearing appeals from the decisions of Magistrates shall be held at Scarborough at such times as shall be appointed by the Chief Justice with the concurrence of a Puisne Judge.

(3) Notice of any appointments made under this section shall be published in the *Royal Gazette*.

Special  
criminal  
sittings.

31. The Governor may at any time, by warrant under his hand and the Public Seal of the Colony, require the Judges of the Court to appoint special sittings, to be held at such

time or times as may be directed by the warrant, for the trial of any particular criminal case or cases or class of criminal cases, and such Judges shall appoint and hold sittings accordingly, and, so far as is necessary in order to comply with the exigency of the warrant, shall lay all other business aside.

### *Appeals.*

32. (1) Subject to the provisions of this Ordinance, in any cause or matter, not being a criminal proceeding, an appeal shall lie from any judgment given or order made or refused by a single Judge. General right of appeal.

(2) Subject to the provisions of this Ordinance, and notwithstanding the provisions of the West Indian Court of Appeal Act, 1919 (which said Act is set out in the Schedule to this Ordinance), an appeal shall lie and application may be made to the Full Court in respect of the several matters hereinafter specified, and the Full Court shall have exclusive jurisdiction to hear and determine all such appeals and applications, namely:— Jurisdiction of the Full Court.

- (a) appeals from a Judge or Registrar in Chambers;
- (b) appeals from interlocutory orders;
- (c) appeals in all actions and matters in which, prior to the 1st of January, 1918, the Court exercised a summary jurisdiction;
- (d) appeals in applications for prohibition;
- (e) appeals in proceedings analogous to proceedings either on the Crown side, or on the Revenue side, of the King's Bench Division of the High Court of Justice in England;
- (f) appeals under subsection (2) of section 99 of the Bankruptcy Ordinance;
- (g) appeals under section 20 of the Married Women's Property Ordinance;
- (h) appeals under section 212 of the Companies Ordinance;
- (i) applications for the giving of security for costs to be occasioned by any appeal to the Full Court or to the West Indian Court of Appeal;
- (j) applications for a stay of execution on any

judgment, order, or decision appealed from pending the determination of such appeal by the Full Court or by the West Indian Court of Appeal;

(k) applications to extend the time for appealing to the Full Court;

(l) applications for leave to appeal in *formâ pauperis* to the Full Court or to the West Indian Court of Appeal;

(m) applications for new trials;

(n) cases of Habeas Corpus in which a Judge directs that a rule *nisi* for the writ, or the writ, be made returnable before the Full Court;

(o) cases stated under section 38 of the Building Societies Ordinance;

(p) all and any other matters in which by any Ordinance, whether passed before or after the commencement of this Ordinance, a right of appeal to the Full Court is or shall be expressly given.

See Schedule. (3) Subject to the provisions of this Ordinance, and notwithstanding the provisions of the West Indian Court of Appeal Act, 1919, the Full Court shall also have exclusive jurisdiction—

(a) to hear and determine appeals from Magistrates or Justices under the Summary Courts Ordinance;

(b) to hear and determine questions of law arising on cases stated by Magistrates or Justices under section 155 of the Summary Courts Ordinance;

(c) to hear and determine appeals under section 35 of the Petty Civil Courts Ordinance;

(d) to revise proceedings of inferior courts under section 34 of this Ordinance;

(e) to hear and determine appeals under section 46 of the Agricultural Contracts Ordinance.

(4) Provided that no order made by the consent of parties or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal except by leave of the Judge making the order.

(5) No appeal to the West Indian Court of Appeal shall lie from any judgment given or order made or refused by the Full Court.

(6) Nothing in this section contained shall prejudice or affect the right of any person to appeal to His Majesty in Council.

**33.** (1) Appeals under the Summary Courts Ordinance arising in Trinidad shall be heard and determined by a Full Court if there are in the Colony two or more Judges not incapacitated from acting by illness or interest, but if there is only one Judge in the Colony not incapacitated as aforesaid, such appeal shall be heard and determined by such Judge alone, and his decision shall be final and without appeal: Appeals from Magistrates.

Provided that where an appeal is heard by a Full Court of two Judges and such Judges differ in opinion, the appeal shall be reheard by a Full Court consisting of three Judges.

(2) Subject to the proviso hereinafter contained, appeals under the Summary Courts Ordinance arising in Tobago shall be heard and determined by a single Judge, who shall, for the purposes of such appeals, have and exercise all the powers and authorities of the Full Court, and his decision shall be final and without appeal:

Provided that such appeals shall be heard and determined in Trinidad in the same manner as the like appeals arising in Trinidad if the appellant, either at the time of giving notice of appeal, or within three days thereafter, gives notice in writing to the Clerk, as defined by the Summary Courts Ordinance, that he desires the appeal to be heard and determined by a Full Court.

**34.** (1) Upon application by or on behalf of the Attorney General, the Court may, if it thinks fit, order any Judge, Magistrate, or Justice presiding in any inferior court, to send to the Registrar the record of proceedings in any case, and may also, if it thinks fit, require in addition to such record a statement showing in detail the proceedings taken in reference to the whole case or any particular matter, and if it appears to the Court that there has been any material error in the proceedings of such inferior court, the Court may set aside or vary any judgment, order, or proceedings of such inferior court, and pass such judgment or order and remit the case or matter to the inferior court with such directions as justice requires. Power to revise proceedings of inferior courts.



(2) It shall be in the discretion of the Court to exercise the powers given to it by this section either without hearing any person or after hearing such persons as it thinks fit, and the Court may, if it thinks fit, direct that an order *nisi* be served upon such persons as the Court thinks fit, and upon making absolute any such order *nisi* may order the costs to be paid by all or any of the parties served as the Court thinks just.

(3) "Inferior court" in this section means the court of any Magistrate or Justice or Justices, and any court presided over by any person acting as a Judge under any Ordinance relating to Petty Civil Courts.

Power to  
issue writ *ad*  
*melius*  
*inquirendum*.

35. The Court may, upon application by or on behalf of the Attorney General, if it appears to the Court that an inquest is, either by reason of the defective report of District Medical Officer or for any other cause, inadequate notwithstanding anything in the Coroners Ordinance or any other Ordinance, issue a writ *ad melius inquirendum* directed either to the Coroner whose inquest is inadequate or to such Coroner together with any other person or persons or to any person or persons other than such Coroner, who the Court thinks fit.

#### *King's Proctor.*

Attorney  
General to  
act as King's  
Proctor.

36. In the case of any petition for divorce or for nullity of marriage—

(a) the Court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Attorney General who may instruct counsel to argue before the Court any question in relation to the matter which the Court deems to be necessary or expedient to have fully argued, and the Attorney General shall be entitled to be paid from the general revenue a reasonable costs and expenses incurred in the matter.

(b) any person may at any time during the progress of the proceedings or before the decree *nisi* is made absolute give information to the Attorney General of any matter material to the due decision of the case, who may thereupon take such steps as he may deem necessary or expedient, and if from any such information or otherwise the Attorney General shall

suspect that any parties to the petition are or have been acting in collusion for the purpose of obtaining a decree, contrary to the justice of the case, he may by leave of the Court intervene in the petition, alleging such case of collusion, and retain counsel and subpoena witnesses to prove it; and it shall be lawful for the Court to order the costs of such counsel and witnesses and otherwise arising from such intervention to be paid by the parties, or such of them as it shall see fit, including a wife if she has separate property; it shall also be lawful for the Court to order any costs arising from such intervention to be paid by the Attorney General to the parties or such of them as it shall see fit; and the Attorney General shall be entitled to be paid from the general revenue all reasonable costs which he may have incurred arising from any such intervention after deducting any costs which may have been paid to him by either of the parties to the petition: Any rules and regulations for the time being of the High Court of Justice in England with respect to the King's Proctor shall, subject to the rules of court, apply to the Attorney General.

*Vexatious actions.*

37. (1) If, on an application made by the Attorney General under this section to the Court, the Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the Supreme Court or in any inferior court, and whether against the same person or against different persons, the Court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall without the leave of the Supreme Court or a Judge thereof be instituted by him in any court, and such leave shall not be given unless the Court or Judge is satisfied that the proceedings are not an abuse of the process of the Court and that there is *prima facie* ground for the proceedings.

Restriction  
on institution  
of vexatious  
actions.

(2) If the person against whom an order is sought under this section is unable on account of poverty to retain counsel, the Court shall assign counsel to him.

(3) A copy of any order made under this section shall be published in the *Royal Gazette*.

Power to  
dismiss  
actions for  
assault.

38. (1) An action brought in the Court for damages for assault which, in the opinion of the Court, could have been adequately dealt with by a Magistrate or by a Petty Civil Court may, if the Court thinks it just, be dismissed with or without costs, but so that such dismissal shall not prejudice any right of the plaintiff to proceed before a Magistrate or a Petty Civil Court if he shall be entitled to do so.

(2) The jurisdiction conferred by this section may be exercised by any Judge of the Court at the hearing of the action or at any time before the hearing on application being made to him in Chambers.

*Awarding of interest.*

Power of  
courts of  
record to  
award  
interest on  
debts and  
damages.

39. In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this section—

(a) shall authorise the giving of interest upon interest;

or

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

(c) shall affect the damages recoverable for the dishonour of a bill of exchange.

*Proceedings against, and contribution between, tort-feasors.*

Proceedings  
against, and  
contribution  
between,  
joint and  
several  
tort-feasors.

40. (1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—

(a) judgment recovered against any tort-feasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tort-feasor in respect of the same damage;

(b) if more than one action is brought in respect

of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child, of that person, against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;

(c) any tort-feasor liable in respect of that damage may recover contribution from any other tort-feasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tort-feasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

(2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(3) For the purposes of this section—

(a) the expressions "parent" and "child" have the same meanings as they have for the purposes of the Compensation for Injuries Ordinance; and

(b) the reference in this section to "the judgment first given" shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed, and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

(4) Nothing in this section shall—

(a) apply with respect to any tort committed before the 24th of December, 1936; or

(b) affect any criminal proceedings against any person in respect of any wrongful act; or

(c) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed.

*Effect of death in relation to causes of action.*

Effect of  
death on  
certain  
causes of  
action.

41. (1) Subject to the provisions of this section, on the death of any person after the 24th of December, 1936, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate: Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims by a husband for damages from any person on the ground of adultery with his wife.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

(a) shall not include any exemplary damages;

(b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry;

(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless either—

(a) proceedings against him in respect of that cause of action were pending at the date of his death; or

(b) the cause of action arose not earlier than six months before his death and proceedings are taken in

respect thereof not later than six months after his personal representative took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this section, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this section for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Compensation for Injuries Ordinance, and so much of this section as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Ordinance as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1) of this section.

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

42. (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:

Apportionment of liability in case of contributory negligence.  
Ord. 51-1946.

Provided that—

(a) this subsection shall not operate to defeat any defence arising under a contract;

(b) where any contract or enactment providing for

the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of the foregoing subsection subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) Section 40 of this Ordinance shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) of this section in respect of the damage suffered by any person.

(4) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under section 41 of this Ordinance the damages recoverable would be reduced under subsection (1) of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under the Compensation for Injuries Ordinance shall be reduced to a proportionate extent.

(5) Where, in any case to which subsection (1) of this section applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading the Limitation of Personal Actions Ordinance or any other enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

(6) Where any case to which subsection (1) of this section applies is tried with a jury, the jury shall determine the total damage which would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

(7) Article 21 of the Convention contained in the First Schedule to the Carriage by Air Act, 1932 as applied to the Colony (which empowers a court to exonerate wholly or partly a carrier who proves that the damage was caused by or contributed to by the negligence of the

injured person), shall have effect subject to the provisions of this section.

43. (1) Where, within the time limited for the taking of proceedings under the Workmen's Compensation Ordinance an action is brought to recover damages independently of the said Ordinance in respect of an injury or disease giving rise to a claim for compensation under the said Ordinance, and it is determined in that action that—

Provisions as  
to workmen  
and  
employers.  
Ord. 51-1946.

(a) damages are recoverable independently of the said Ordinance subject to such reduction as is mentioned in subsection (1) of the foregoing section of this Ordinance; and

(b) the employer would have been liable to pay compensation under the Workmen's Compensation Ordinance;

subsection (4) of section 4 of the Workmen's Compensation Ordinance (which enables the court, on the dismissal of an action to recover damages independently of the said Ordinance, to assess and award compensation under the said Ordinance) shall apply in all respects as if the action had been dismissed, and, if the claimant chooses to have compensation assessed and awarded in accordance with the said subsection (4), no damages shall be recoverable in the said action.

(2) Where a workman or his personal representative or dependant has recovered compensation under the Workmen's Compensation Ordinance in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of section 42 of this Ordinance from some person other than the employer (hereinafter referred to as "the third party"), any right conferred by section 15 of the Workmen's Compensation Ordinance, on the person by whom the compensation was paid or on any person called on to pay an indemnity under section 14 of that Ordinance, to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the sum paid or payable by the said person as bears to the total sum so paid or payable the same proportion as the said reduced damages bear to the total damages which would have been recoverable if the workman had not been at fault.



Saving for  
Maritime  
Conventions  
Act, 1911  
and past  
cases.  
1 & 2 Geo. 5,  
c. 57.

Ord. 51-1946.

44. (1) Sections 42 and 43 shall not apply to any claim to which section one of the Maritime Conventions Act, 1911, applies and that Act shall have effect as if those sections were not in force.

(2) Sections 42 and 43 shall not apply to any case where the acts or omissions giving rise to the claim occurred before the coming into force of those sections.

Interpre-  
tation.

Ord. 51-1946.

45. In sections 42 and 43—

“court” means, in relation to any claim, the court or arbitrator by or before whom the claim falls to be determined;

“damage” includes loss of life and personal injury;

“dependant” means any person for whose benefit an action could be brought under the Compensation for Injuries Ordinance;

“employer” and “workman” have the same meaning as in the Workmen’s Compensation Ordinance;

“fault” means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Ordinance, give rise to the defence of contributory negligence.

#### *Rules.*

Power to  
make rules  
of court.

Ord. 32-1945,  
s. 2.

46. Rules of court may be made by the Chief Justice together with any four of the following persons, namely, a Puisne Judge of the Supreme Court from time to time nominated by the Chief Justice, the Attorney General or any other officer referred to in Part I of the Schedule to the Law Officers Ordinance as from time to time amended to be nominated by the Attorney General, the Registrar of the Supreme Court, and one practising barrister nominated by the Bar Council and one practising solicitor nominated by the Trinidad Incorporated Law Society both of whom shall hold office for three years from the dates of their respective nominations, for carrying this Ordinance into effect, and in particular for all or any of the following matters, that is to say:—

(a) for regulating the sittings of the Court and the Judges thereof sitting in Chambers, and the period to be observed as a vacation;

(b) for regulating the pleading, practice, and procedure in the Court;

(c) generally, for regulating any matters relating to the practice and procedure of the Court, or to the duties of the officers thereof, or to the costs of or fees upon proceedings therein.

47. Rules of court made under the preceding section shall be laid as soon as conveniently may be before the Legislative Council; and if a resolution is passed within forty days of their being so laid that any such rule shall be annulled, such rule shall thenceforth be void, but without prejudice to anything done thereunder: Provided that any period during which the Legislative Council is in recess or between the end of a legislative session and the commencement of the next legislative session shall be ignored in the computation of such period of forty days.

Rules of court to be laid before Legislative Council.

48. The approval required by section 5 of the West Indian Court of Appeal Act, 1919, to the draft rules to be made under the said Act shall be signified by resolution of the Legislative Council.

Approval of West Indian Court of Appeal Rules.  
See Schedule.

*Court vacations and urgent matters.*

49. (1) In every year the periods from the 26th of June to the 3rd of October (both days inclusive), and from the 20th of December to the 2nd of January next following (both days inclusive) or such other periods as may be appointed by rules of court under this Ordinance, shall be observed as vacations by the Court, but such vacations shall not extend to the trial of criminal cases, to the trial of civil cases in Tobago, to appeals under the Criminal Appeal Ordinance, or to appeals under the Summary Courts Ordinance. During such vacations at least one Judge shall remain in the Colony.

Vacations.

(2) Provision shall be made by rules of court for the hearing, whether during vacation or not, of all such applications as require to be immediately or promptly heard.

[SCHEDULE.]

(Section 32.)

## SCHEDULE.

## West Indian Court of Appeal Act, 1919.

(9 &amp; 10 GEO. 5, c. 47.)

An Act to provide for the establishment of a Court of Appeal for certain of His Majesty's Colonies in the West Indies. (15th August, 1919.)

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Constitution  
of West  
Indian Court  
of Appeal.

1. (1) There shall be a Court of Appeal for the West Indian Colonies to which this Act applies, which shall be called the West Indian Court of Appeal, and is in this Act referred to as "the Court of Appeal."

(2) The colonies to which this Act applies shall be the colonies of Trinidad and Tobago, British Guiana, Barbados, the Leeward Islands Grenada, St. Lucia, and St. Vincent:

Provided that His Majesty may, by Order in Council from time to time, add any other colony to the number of colonies to which this Act applies, or direct that this Act shall no longer apply to any colony specified in the Order if, in any such case, His Majesty is satisfied that due provision in that behalf has been made by the Legislature of the colony in question.

(3) The Judges of the Court of Appeal shall be the Chief Justices of the colonies to which this Act, for the time being, applies:

Provided that—

(a) If the Chief Justice of the Colony in which the Court of Appeal is at any time sitting is unable from any cause to sit, the Governor of the colony may appoint a person appearing to him to be duly qualified instead of such Chief Justice to sit and hear either a particular appeal or all appeals to be heard during the whole of any particular sittings of the court in that colony; and

(b) His Majesty may by letters patent appoint an additional judge of the Court of Appeal who shall be a barrister of not less than eight years standing.

The expression "Chief Justice" in this Act, in the case of the colonies of Grenada, St. Lucia, and St. Vincent, means the senior substantive Chief Justice in those colonies, and, in the case of other colonies to which this Act applies, includes any person for the time being acting in the capacity of Chief Justice.

(4) His Majesty may, by Order in Council, direct that the Court of Appeal shall sit in two or more divisions, and may assign any colony to any division, with the consent of such colony, expressed by resolution of the Legislature thereof, but every judge of the court may sit in any division.

(5) The Court of Appeal shall have, and use as occasion may require, a seal, having a device or impression of the Royal Arms, with the inscription "The West Indian Court of Appeal."

(6) The Court of Appeal shall be duly constituted if it consists of not less than three judges and of an uneven number of judges.

(7) The determination of any question before the Court of Appeal shall be according to the opinion of the majority of the members of the court hearing the case.

(8) A judge of the Court of Appeal shall not sit as a judge on the hearing of an appeal from any judgment or order made by himself or made by any court, if he was present and acting as a member of the court at the time when the decision appealed from was made, or at the argument of the case decided.

2. (1) The Chief Justice of Trinidad, if present, and, in his absence, the senior substantive Chief Justice, shall be president of the Court of Appeal. Precedence of Judges.

(2) The Chief Justices shall rank as between themselves according to the respective dates of their appointments as Chief Justices.

(3) An acting Chief Justice shall not preside, and shall rank after the last appointed substantive Chief Justice, and acting Chief Justices shall rank as between themselves according to the respective dates of their appointments as acting Chief Justices:

Provided that, if an additional judge of the Court of Appeal is appointed by His Majesty under this Act, that judge shall rank after the last-appointed substantive Chief Justice and before the senior acting Chief Justice.

(4) A person appointed under this Act to sit in the Court of Appeal instead of a Chief Justice shall rank after the last-appointed acting Chief Justice.

3. (1) The Court of Appeal shall have jurisdiction and power to hear and determine appeals (including reserved questions of law) from any of the courts of the colonies to which this Act for the time being applies, subject, however, to the provisions of this Act, and to any provision which may be made by the Legislature of any of those colonies as to appeals from that colony, and to rules of court made under this Act. Jurisdiction of Court of Appeal.

(2) The process of the Court of Appeal shall run throughout the colonies to which this Act applies, and any judgment, decree, or order of the Court of Appeal shall have full force and effect in every such colony, and shall be executed and enforced in like manner as if it were an original judgment, decree, or order of the court from which the appeal is brought, and, for all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, the Court of Appeal shall have all the power, authority, and jurisdiction vested in the court from which the appeal is brought.

(3) In the hearing of an appeal from any colony, the law to be applied shall be the law in operation in that colony.

4. (1) His Majesty may, by Order in Council, provide for the appointment of a registrar or registrars and all other necessary officers of the court, and make such provision with respect to such registrars and officers as appears necessary or expedient. Registrars and assessors.

Pending the making of any such Order in Council, the registrars of

the supreme courts of the colonies to which this Act for the time being applies shall be ex-officio registrars of the Court of Appeal.

(2) The Court may, in any case in which it appears to it to be expedient, call in the aid of one or more assessors specially qualified and hear such cases wholly or partially with the assistance of such assessors.

The remuneration (if any) to be paid to such assessors shall be determined by the court.

Rules of  
court.

5. (1) Subject to the provisions of this Act, the judges of the Court of Appeal, or a majority of them, of whom the president shall be one, may make rules of court for regulating—

(a) the time and place of the sittings of the Court of Appeal, and the selection of judges for any such sittings; and

(b) the delivery of judgments in the Court of Appeal; and

(c) generally, the practice and procedure of the Court of Appeal or any matters relating thereto (including the right of audience in the Court of Appeal), or to the duties of the officers thereof, or to the costs of or fees upon proceedings therein.

(2) Before any such rules of court are made, a draft thereof shall be submitted to the Governments of the colonies to which this Act for the time being applies, and no such rules of court affecting appeals from any colony in particular shall be made unless the draft has been approved in such manner as the Legislature of that colony may determine.

(3) Any such rules shall, subject to disallowance by His Majesty, come into operation on a day specified in the rules for the purpose, and any disallowance by His Majesty shall take effect as from the date to be directed by the Secretary of State and published in the *Gazette* in which official notices are published in each of the colonies to which this Act for the time being applies, but without prejudice to any proceedings taken before such publication.

(4) Any fees paid in pursuance of any such rules shall be applied and dealt with in such manner as may be directed by His Majesty in Council.

Expenses.

6. The expenses of the Court of Appeal shall be borne by the colonies to which this Act for the time being applies in such proportion as may from time to time be fixed by His Majesty in Council.

Saving for  
jurisdiction  
of Privy  
Council.

7. Subject to any provision which may be made by the Legislature of any colony to which this Act for the time being applies, whereby appeals from any court in that colony are to be made in the first instance to the Court of Appeal, nothing in this Act shall prejudice or affect the right of any person to appeal to His Majesty in Council.

Repeal, short  
title, and  
commence-  
ment.

8. (1) The Windward Islands Appeal Court Act, 1889, is hereby repealed, and any appeals pending in the court established under that Act shall, subject to rules of court made under this Act, be transferred to the Court of Appeal.

(2) This Act may be cited as the West Indian Court of Appeal Act, 1919.

(3) This Act shall come into operation on the first day of July, nineteen hundred and twenty, or on such earlier date as may be fixed by His Majesty by Order in Council.