

TRINIDAD AND TOBAGO.

No. 25—1925.

I ASSENT,

[L.S.]

H. A. BYATT,
Governor.

10th June, 1925.

AN ORDINANCE to amend the Judicature
Ordinance, No. 34.

[10th June, 1925.]

BE it enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof as follows :—

1. This Ordinance may be cited as the Judicature Short title.
(Amendment) Ordinance, 1925, and shall be read as one Construction.
with the Judicature Ordinance, No. 34, hereinafter called
the Principal Ordinance.

2. The following shall be inserted in lieu of the fourth
paragraph of section 4 of the Principal Ordinance :—

Whenever the office of any Judge of the Court is Acting Judges.
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

[Price 6d.]

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, being a Barrister-at-Law of five years standing at least, to act as Judge of the Court.

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.

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.

3. The following shall be inserted as sections 7, 8, 9, 10, and 10A, respectively, of the Principal Ordinance:—

Registrar.

7. 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.

The Registrar of the Court 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.

8. There shall be a Deputy Registrar of the Court, who shall have all the powers and may perform all the duties of the Registrar of the Court except where otherwise provided by Rules of Court. Deputy Registrar.
9. The Registrar and Deputy Registrar of the Court 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 Sub-Registrar *Deputy*
10. 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 of the Court, 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 of the Court. Such Sub-Registrar shall receive such salary as the Governor, with the sanction of the Legislative Council, shall appoint. Sub-Registrar, San Fernando.
- 10A. 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 of the Court, have such powers and perform such duties in reference to proceedings in Sub-Registrar, Tobago.

Tobago as the Registrar of the Court performs in reference to proceedings in the Court in Trinidad. Such Sub-Registrar shall receive such salary as the Governor, with the sanction of the Legislative Council, shall appoint.

4. The following shall be inserted as sections 13 and 14, respectively, of the Principal Ordinance :—

Deputy
Marshals.

13. The Deputy Registrar shall be Deputy Marshal of the Court at Port-of-Spain, and the Chief Clerk 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.

Registrar to
have powers
of Judge in
Chambers.

- 14.—(1) The Registrar of the Court 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.

5.—(1) Section 25 of the Principal Ordinance is hereby ^{Appeals.} repealed, and in lieu thereof shall be read the following :—

25.—(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.

(2) Provided that, 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 to the Full Court (and the Full Court shall have exclusive jurisdiction) in all or any of the following matters, that is to say :—

- (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 first day of January, 1918, the Court exercised a summary jurisdiction ;
- (d) Appeals under sub-section (2) of section 99 of the Bankruptcy Ordinance, 1916 ; (38-1016)
- (e) Appeals in applications for prohibition ;
- (f) 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 ;
- (g) Appeals under section 46 of the Land Acquisition Ordinance, No. 42.
- (h) Appeals under section 20 of the Married Women's Property Ordinance, No. 65 ;

(31-1913)

- (i) Appeals under section 172 of the Companies Ordinance, 1913 ;
 - (j) 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 ;
 - (k) 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 ;
 - (l) Applications to extend the time for appealing to the Full Court ;
 - (m) Applications for leave to appeal *in forma pauperis* to the Full Court or to the West Indian Court of Appeal ;
 - (n) Applications for new trials ;
 - (o) 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 ;
 - (p) Questions of law reserved in criminal cases under section 65 of the Criminal Procedure Ordinance, 1925 ;
 - (q) Cases stated under section 38 of the Building Societies Ordinance, No. 111 ;
 - (r) 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.
- (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 under the Summary Conviction Offences (Procedure) Ordinance, 1918 ; (9-1918)
 - (b) To hear and determine questions of law arising on cases stated by Magistrates under section 154 of the Summary Conviction Offences (Procedure) Ordinance, 1918 ;
 - (c) To hear and determine appeals under section 36 of the Petty Civil Courts ⁽⁹⁻¹⁹¹¹⁾ Ordinance, 1911 ;
 - (d) To revise proceedings of inferior Courts under section 32 of this Ordinance ;
 - (e) To hear and determine appeals under section 44 of the Agricultural Contracts Ordinance, No. 67.
- (3) 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.
- (4) No appeal to the West Indian Court of Appeal shall lie from any judgment given or order made or refused by the Full Court.
- (5) Nothing in this section contained shall prejudice or affect the right of any person to appeal to His Majesty in Council.

6. The following shall be inserted as sub-section (2) ^{Appeals from Magistrates.} of section 26 of the Principal Ordinance :—

- (2) Appeals under the Summary Conviction Offences (Procedure) Ordinance, 1918, arising in Tobago ⁽⁹⁻¹⁹¹⁸⁾

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.

Approval of
Rules of
West Indian
Court of
Appeal.

7. The following shall be inserted as section 47A of the Principal Ordinance :—

47A. 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.

Repeal.

8. The enactments mentioned in the Schedule hereunder appearing are hereby repealed to the extent specified in the said Schedule.

SCHEDULE.

No. or No. and year of Ordinance.	Short title.	Extent of repeal.
34	The Judicature Ordinance	Section 9, sub-section (4) of section 46 and sections 49 to 54 inclusive.
24 of 1916	The Judicature (Amendment) Ordinance, 1916	Sections 4, 5, and 6.
18 of 1920	The West Indian Court of Appeal (local jurisdiction) Ordinance, 1920	The whole.
47 of 1920	The West Indian Court of Appeal (Amendment) Ordinance, 1920	The whole.
20 of 1921	The Judicature (Amendment) Ordinance, 1921	The whole.

9. The following shall be inserted as the Schedule to the Principal Ordinance :—

West Indian
Court of
Appeal Act.

SCHEDULE.

WEST INDIAN COURT OF APPEAL ACT, 1919.

9 & 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 :—

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." Constitution of
West Indian
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.

Precedence of
Judge.

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.

(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.

Jurisdiction
of Court
of Appeal.

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.

(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.

Registrars
and assessors.

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.

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.

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. Expenses.

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. Saving for jurisdiction of Privy Council.

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. Repeal, short title, and commencement.

(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.

Passed in Council this twenty-ninth day of May, in the year of Our Lord one thousand nine hundred and twenty-five.

JOHN DE NOBRIGA,
Clerk of the Council.

OBJECTS AND REASONS.

It is proposed by this Bill to consolidate and amend certain provisions of the Judicature Ordinances, and also for convenience to include in the Judicature Ordinance the provisions which now appear in the West Indian Court of Appeal (local jurisdiction) Ordinances.

The provisions of the Bill can best be explained by reference to its various clauses.

Clause 2 re-enacts the fourth paragraph of section 4 of the Principal Ordinance (No. 34) but extends its provisions by enabling the Governor to appoint an acting Judge whenever in his opinion the due administration of justice so requires. The second and third paragraphs of this clause are new but they merely give effect to the present accepted practice.

Clause 3 reproduces the provisions of section 4 of Ordinance 24 of 1916, section 2 of Ordinance 20 of 1921, section 9 of Ordinance 34, and sections 5 and 6 of Ordinance 24 of 1916. Certain verbal amendments are made but the substance of the existing enactments is not altered.

Clause 4 replaces section 4 of Ordinance 20 of 1921 and paragraph (4) of section 46 of Ordinance 34. It is proposed by the latter of the new sections to enlarge the powers of the Registrar of the Court so as to enable him to relieve the Judges of such Chamber work as may be prescribed by Rules of Court.

Clause 5 is intended to take the place of section 25 of Ordinance 34 and also the West Indian Court of Appeal Ordinances, 1920. The clause, in the first place, gives a general right of appeal in all matters other than criminal proceedings, and, in the second place, specifies the matters in which the appeal is reserved to the Full Court of the Colony. This arrangement removes the apparent conflict which at present exists between section 25 of Ordinance No. 34 and the West Indian Court of Appeal Ordinances.

Clause 6 confers on a single Judge the powers of the Full Court for the purpose of hearing appeals in Tobago under the Summary Conviction Offences (Procedure) Ordinance, 1918.

Clause 7 repeals and replaces section 47 of Ordinance No. 34. The existing section requires all Rules of Court to be approved by the Legislative Council before coming into operation. This requirement has frequently caused inconvenience owing to the fact that the Legislative Council does not sit all the year round and it is often necessary to make Rules of Court when the Council is not in session. Accordingly it is proposed to eliminate the approval of Legislative Council to Rules of Court but such Rules will, as at present, be subject to disallowance by His Majesty.

Clause 8 replaces section 3 of the West Indian Court of Appeal Ordinance No. 47 of 1920.

For convenient reference, the West Indian Court of Appeal Act is added in a Schedule.