



BERMUDA

SUPREME COURT ACT 1905

1905 : 4

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PRELIMINARY

Interpretation

1 (1) In this Act, and in any Rules of Court made under this Act, unless the context otherwise requires—

“absence”, in relation to any Judge, means the actual absence of the Judge from Bermuda, or his absence from Court by reason of being ill or of the extreme illness of any member of his family, or for any cause which in the opinion of the court renders it undesirable for him to sit as a member of the Court; and shall also be held to take place when a Judge is on leave or when the office is actually vacant;

“action” means a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; but 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;

“the Court” means the Supreme Court constituted under section 73 of the Constitution [*title 2 item 1*];

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

“fit and proper person certificate” means a certificate issued by the Bar Council pursuant to section 10E of the Bermuda Bar Act 1974;

“goods” include baggage;

“Judge” means the Chief Justice, a Puisne Judge or an Assistant Justice;

“judgment” includes decree;

“master” includes every person (except a pilot) having command or charge of a ship;

“matrimonial cause” means any action for divorce, nullity of marriage or judicial separation;

“matter” includes every proceeding in the Court or before any Judge thereof, not in a cause;

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“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 counterclaim as a defendant) against any other person by any form of proceeding, whether those proceedings are by way of action, suit, petition, motion, summons or otherwise;

“pleading” includes—

- (i) any petition or summons; and
- (ii) 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 counterclaim of a defendant;

“qualified Assistant Justice” means an Assistant Justice of the Supreme Court of Bermuda who possesses the qualifications specified in section 5;

“the Rhine Navigation Convention” means the Convention of the seventh of October, eighteen hundred and sixty-eight, as revised by any subsequent Convention;

“Rules of Court” include forms;

“ship” includes any description of vessel used in navigation and any reference to a ship shall be deemed to include a reference to an aircraft designed to operate on water;

“shipping master” means, with respect to the Port of Hamilton and the Port of St. George’s, the Collector of Customs;

“stenographer” means any person or persons employed under the authority of the Court or of any Judge under this Act to take down evidence, or other matter, in typewriting, or to take down evidence or other matter in shorthand and afterwards to transcribe the evidence or matter in typewriting;

“suit” includes action;

“towage” and “pilotage”, in relation to an aircraft, mean towage and pilotage while the aircraft is waterborne.

(2) Unless the context otherwise requires, but subject to subsection (3), any reference in this Act or other provision of law to a Judge or Assistant Justice shall include a reference to a Puisne Judge.

(3) Subsection (2) shall have no application to section 4.

[Section 1 subsection (1) definition “fit and proper person certificate” inserted by 2018 : 53 s. 21 effective 31 January 2019]

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CONSTITUTION OF THE SUPREME COURT

Union of existing Courts into Supreme Court

2 From and after the commencement of this Act [6 June 1905], the Court of General Assize, the Court of Chancery, the Court of Exchequer, the Court of Probate, the Court of Ordinary, and the Court of Bankruptcy, of Bermuda, shall be united and consolidated together, and shall constitute, under and subject to the provisions of the Constitution [*title 2 item 1*] and this Act, the Supreme Court of these Islands, under the title of "The Supreme Court of Bermuda".

Prescription of number of Puisne Judges

3 For the purposes of section 73(2) of the Constitution [*title 2 item 1*] the number of Puisne Judges shall be not more than five and not less than two.

[Section 3 amended by 2000:42 s.2 effective 1 June 2001]

Assistant Justices

4 (1) For the purposes of section 73(6) of the Constitution [*title 2 item 1*] the number of Assistant Justices is hereby prescribed to be five.

(2) An Assistant Justice shall be entitled to receive out of the funds appropriated by the Legislature for the purpose such fees and allowances as the Governor may, after consultation with the Chief Justice, prescribe by order published in the Gazette.

(3) The fees and allowances prescribed under this section in respect of an Assistant Justice shall not be altered to his advantage subsequent to his appointment.

[Section 4 subsection (1) amended by 2013 : 11 s. 2 effective 27 March 2013]

Appointment of Judges of Supreme Court

5 No person shall be appointed to be a Judge of the Supreme Court (within the meaning of section 73(5) of the Constitution [*title 2 item 1*]) unless—

- (a) he is qualified to practise as an advocate in a court in Bermuda or in England, Scotland, Northern Ireland or some other part of Her Majesty's dominions having unlimited jurisdiction either in civil or criminal matters; and
- (b) he has been qualified for not less than ten years to practise as an advocate or solicitor in such a court.

[Section 5 paragraph (b) amended by 2009:28 s.2 effective 7 July 2009]

Precedence of Judges

6 The Chief Justice for the time being shall be President of the court, the Puisne Judges shall rank next in precedence and amongst themselves according to the priority of their respective appointments and the Assistant Justices shall rank thereafter if more than one according to the priority of their own respective appointments.

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Powers of Judges to exercise jurisdiction

7 (1) The Chief Justice, or any Puisne Judge or Assistant Justice may, subject to this Act and to any Rules of Court, exercise all and any part of the jurisdiction, civil and criminal, which is vested by this Act in the Supreme Court, and for such purpose shall be and form a Court.

(2) A divisional court consisting of two or more Judges may duly exercise any part of the civil or criminal jurisdiction of the court as the Chief Justice may either generally or specially direct.

Powers of Acting Chief Justices

8 A person appointed to act in the office of Chief Justice pursuant to section 75(1) of the Constitution [*title 2 item 1*] shall have and enjoy the powers, privileges and jurisdiction of the Chief Justice conferred by any provision of law.

Powers etc. of Puisne Judge

9 A Puisne Judge shall have all the powers, functions and jurisdiction in relation to any matter exercisable by an Assistant Justice;

Provided that any condition in any provision of law that the powers, functions and jurisdiction of an Assistant Justice shall be exercisable only in the absence of the Chief Justice shall have no effect on the exercise of the powers, functions and jurisdiction by a Puisne Judge whose powers, functions and jurisdiction shall be unlimited notwithstanding that the Chief Justice is not absent.

Seal of Court

10 (1) The Court shall have and use, as occasion may require, a seal, having a device or impression of the Royal Arms, with the inscription, "The Supreme Court of Bermuda", the cost of which shall be defrayed out of the Consolidated Fund.

(2) The Seal of the Court shall be kept by the Registrar.

Place of sitting

11 The sittings of the Court shall usually be held in the Court Room at the Sessions House in the City of Hamilton; but in case the court shall sit in any other building or place within the limits of the jurisdiction for the transaction of legal business, the proceedings shall be as valid in every respect as if the same had been held in the said Court Room

JURISDICTION AND LAW

Jurisdiction of Supreme Court

12 (1) The Supreme Court shall be a Superior Court of Record, and, in addition to any other jurisdictions conferred by this or any other Act or Act of the Parliament of the United Kingdom, shall, subject as in this Act mentioned, possess and exercise the jurisdiction which, at the commencement of this Act [*6 June 1905*], was vested in, or capable of being exercised by, the Governor as Ordinary relative to the grant of probate of wills and letters

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of administration of the personal estate of persons deceased and by all or any of the following courts, that is to say—

- (a) the Court of General Assize;
- (b) the Court of Chancery;
- (c) the Court of Exchequer;
- (d) the Court of Probate;
- (e) the Court of Ordinary;
- (f) the Court of Bankruptcy.

(2) The jurisdiction transferred to the Supreme Court by virtue of this Act shall include the jurisdiction which, at the commencement of this Act [*6 June 1905*], was vested in, or capable of being exercised by, all or any one or more of the Judges of the aforementioned courts, respectively, sitting in court or chambers, when acting as Judges or a Judge in pursuance of any Act, law or custom, and all powers given to any such court, or to any such Judges or Judge, by any Act or Act of the Parliament of the United Kingdom, and also all ministerial powers, duties and authorities, incident to any and every part of the jurisdictions so transferred.

13 *[Repealed by 1974:4]*

Jurisdiction in respect of persons suffering from mental disorder

14 The Chief Justice, and in his absence a Puisne Judge, shall, in respect of persons suffering from mental disorder, have all the jurisdiction, powers and authorities as are conferred upon him under the provisions of Part IV of the Mental Health Act 1968 [*title 11 item 36*].

Extent of application of English law

15 Subject to the provisions of any Acts which have been passed in any way altering, amending or modifying the same, and of this Act, the common law, the doctrines of equity, and the Acts of the Parliament of England of general application which were in force in England at the date when these Islands were settled, that is to say, on the eleventh day of July one thousand six hundred and twelve, shall be, and are hereby declared to be, in force within Bermuda.

16 *[Repealed by 1974:4]*

17 *[Repealed by 1979:17]*

Concurrent administration of law and equity

18 In every civil cause or matter which is pending in the Supreme Court law and equity shall be administered concurrently; and the Court, in the exercise of the jurisdiction vested in it by virtue of this Act, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as seems just, all such remedies or relief whatsoever,

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whether interlocutory or final, as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim or defence properly brought forward by them respectively, or which appears in such cause or matter, so that as far as possible all matters 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; and in all matters in which there is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter the rules of equity shall prevail.

[Section 18 amended by 2009:28 s.3 effective 7 July 2009]

Rules of law upon certain points

19 It is hereby declared that the law and practice relating to the matters mentioned in this section shall be as follows, that is to say—

- (a) all judgments shall be dated as of the day and month of the year on which they are signed, and shall, as regards *bona fide* purchasers for valuable consideration, affect lands, tenements and hereditaments only as from the date on which they are signed;
- (b) when any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the Court may, on such terms and conditions (if any) as may be just, order that such conveyance, contract or other document, shall be executed, or that such negotiable instrument shall be endorsed, by such person as the Court may nominate for that purpose; and in any such case the conveyance, contract, document or instrument so executed or endorsed, shall operate, and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it;
- (c) 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 order may be made either unconditionally or upon such terms and conditions as the court thinks just; and if any injunction is asked for either before, 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 the right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or either of the parties are legal or equitable;
- (d) 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 chose 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 chose in action, shall be, and be deemed

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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 Act had not been passed), to pass and transfer the legal right to such debt or chose 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 chose in action has had notice that such assignment is disputed by the assignor or any person claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he thinks fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he thinks fit, pay the same into the Supreme Court under and in conformity with the Trustee Act 1975 [*title 26 item 51*].

Proceedings in chambers

20 Subject to any Rules of court, all interlocutory proceedings and all matters and proceedings which by any Act are directed or permitted to be heard or taken in chambers or before the Chief Justice or a Judge may be taken in chambers before a Judge:

Provided that the Judge may, either on the application of any party to the cause or matter or without an application if in his discretion he sees fit, refer any such interlocutory or other matter or proceeding for the decision of the Court.

Provision as to criminal procedure

21 Subject to any Rules of Court made under this Act, the practice and procedure in all criminal causes and matters whatsoever in the Court shall be the same as the practice and procedure in similar causes and matters before the commencement of this Act [*6 June 1905*].

Savings for rules of evidence and law relating to jurors, etc.

22 Nothing in this Act or in any Rules of Court made under this Act, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by juries, or the rules of evidence, or the law relating to jurors or juries.

Restriction on institution of vexatious actions

23 (1) If, on an application made by the Attorney-General under this section, the Supreme Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious civil legal proceedings, whether in the Supreme Court or in a court of summary jurisdiction, and whether against the same person or against different persons, the court may, after hearing the person or giving him an opportunity of being heard, order that no legal proceedings shall without leave of the Supreme Court or a Judge thereof be instituted by him in any court, and that any legal proceedings instituted by him in any court before the making of the order shall not be continued by him without such leave; and such leave shall not be given unless the court or judge is satisfied

that the proceedings are not an abuse of the court and that there is *prima facie* ground for the proceedings.

(2) A copy of an order made under this section shall be published in the Gazette.

ADMIRALTY JURISDICTION

Admiralty jurisdiction of the Court

24 (1) The Admiralty jurisdiction of the Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims—

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;
- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) any claim for damage done by a ship;
- (e) any claim for damage received by a ship;
- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (g) any claim for loss of or damage to goods carried in a ship;
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (i) any claim in the nature of salvage;
- (j) any claim in the nature of towage in respect of a ship;
- (k) any claim in the nature of pilotage in respect of a ship;
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- (n) any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Act of the Par-

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liament of the United Kingdom entitled the Merchant Shipping Act 1894 is recoverable as wages or in the court and in the manner in which wages may be recovered;

- (o) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (p) any claim arising out of an act which is or is claimed to be a general average act;
- (q) any claim arising out of bottomry;
- (r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure,

together with any other jurisdiction which is vested in the Court by virtue of the Act of the United Kingdom entitled the Colonial Courts of Admiralty Act 1890.

(2) The jurisdiction of the court under subsection (1)(b) includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the court thinks fit.

(3) The reference in subsection (1)(i) to claims in the nature of salvage includes a reference to such claims for services rendered in saving life from a ship or in preserving cargo, apparel or wreck.

(4) The preceding provisions of this section apply—

- (a) in relation to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be;
- (b) in relation to all claims, wheresoever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and
- (c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law.

Mode of exercise of Admiralty jurisdiction

25 (1) Subject to section 26, the Admiralty jurisdiction of the court may in all cases be invoked by an action *in personam*.

(2) The Admiralty jurisdiction of the Court may in the cases mentioned in section 24(1) paragraphs (a) to (c) and (r) be invoked by an action *in rem* against the ship or property in question.

(3) In any case in which there is a maritime lien or other charge on any ship or other property for the amount claimed, the Admiralty jurisdiction of the Court may be invoked by an action *in rem* against that ship, aircraft or property.

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(4) In the case of any such claim as is mentioned in section 24(1) paragraphs (d) to (q), being a claim arising in connection with a ship, where the person who would be liable on the claim in an action *in personam* was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action *in rem* against—

- (a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or
- (b) any other ship which, at the time when the action is brought is beneficially owned as aforesaid.

(5) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, the Admiralty jurisdiction of the court may be invoked by an action *in rem* against that aircraft if at the time when the action is brought it is beneficially owned by the person who would be liable on the claim in an action *in personam*.

(6) Notwithstanding anything in the preceding provisions of this section, the Admiralty jurisdiction of the Court shall not be invoked by an action *in rem* in the case of any such claim as is mentioned in section 24(1)(c) unless the claim relates wholly or partly to wages (including any sum allotted out of wages or adjudged by a shipping master to be due by way of wages).

(7) Where, in the exercise of its Admiralty jurisdiction, the Court orders any ship or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.

(8) In determining for the purposes of subsections (4) and (5) whether a person would be liable on a claim in an action *in personam* it shall be assumed that he is ordinarily resident or has a place of business in Bermuda.

Jurisdiction *in personam* in collision and other similar cases

26 (1) The Court shall not entertain an action *in personam* to enforce a claim to which this section applies unless—

- (a) the defendant is ordinarily resident or has a place of business in Bermuda; or
- (b) the cause of action arose within territorial waters of Bermuda; or
- (c) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

(2) The Court shall not entertain an action *in personam* to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside Bermuda against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.

(3) The preceding provisions of this section shall apply to counter-claims (not being counter-claims in proceedings arising out of the same incident or series of incidents) as they apply to actions *in personam*, but as if the references to the plaintiff and the defendant were

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respectively references to the plaintiff on the counter-claim and the defendant to the counter-claim.

(4) The preceding provisions of this section shall not apply to any action or counter-claim if the defendant thereto submits or has agreed to submit to the jurisdiction of the court.

(5) Subject to subsection (2), the Court shall have jurisdiction to entertain an action *in personam* to enforce a claim to which this section applies whenever any of the conditions specified in subsection (1) paragraphs (a) to (c) are satisfied, and the rules of court relating to the service of process outside the jurisdiction shall make such provision as may appear to the Court to be appropriate having regard to this subsection.

(6) The claims to which this section applies are claims for damage, loss of life or personal injury arising out of a collision between ships or out of the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships or out of non-compliance, on the part of one or more of two or more ships, with any provision of law or regulations made thereunder.

(7) For the avoidance of doubt it is hereby declared that this section applies in relation to the jurisdiction of the court not being Admiralty jurisdiction, as well as in relation to its Admiralty jurisdiction.

Wages

27 Nothing in this Act shall be construed as limiting the jurisdiction of the court to refuse to entertain an action for wages by the master or a member of the crew of a ship, not being a British ship.

Supreme Court not to have jurisdiction in cases falling within Rhine Convention

28 Notwithstanding anything contained in sections 24 to 27 inclusive the Court shall not have jurisdiction to determine any claim or question certified by one of Her Majesty's Principal Secretaries of State to be a claim or question which, under the Rhine Navigation Convention, falls to be determined in accordance with the provisions thereof and any proceedings to enforce such a claim which are commenced in any such court shall be set aside.

Savings

29 (1) Nothing in sections 24 to 27 inclusive shall be construed so as to authorise proceedings *in rem* in respect of any claims against the Crown, or the arrest, detention or sale of any of Her Majesty's ships or of any cargo or other property belonging to the Crown.

(2) [omitted]

[the *Mail Ships Act 1891* was repealed by the *Statute Law Revision Act 1963* [UK]]

(3) Nothing in sections 24 to 27 inclusive shall affect proceedings in respect of any cause or action arising before 30 March 1962.

DISPOSAL OF MONEY PAID INTO COURT

Disposal of money paid into court

30 (1) Any money paid into court in any cause or matter shall be credited by the Registrar to the person paying it in and such person shall be entitled to the interest, if any, payable on it unless the Court or Judge directs that it, with or without interest, should be paid to some other person.

(2) All money paid into court under subsection (1) shall be paid by the Registrar to the Accountant General who shall credit such money to a special account.

(3) When the Court directs that any money paid into court shall be paid out of court to any person the Registrar shall give such person a warrant addressed to the Accountant General authorizing the Accountant General to pay to such person the money directed to be paid together with the interest, if any, payable thereon.

(4) When a warrant issued under subsection (3) is presented to the Accountant General he shall pay the person presenting the warrant the money directed to be paid together with any interest payable thereon.

Payment into Consolidated Fund

31 Subject to the directions of the Minister of Finance the Accountant General may pay any money credited to the special account established by virtue of section 30(2) into the Consolidated Fund or may invest it or otherwise deal with it.

Money paid into court prior to 1 July 1980 and still in court on that date

32 Any money paid into court prior to the appointed day and still in court on that day shall, for the purposes of earning interest, be deemed have been paid into court on that day.

Notice of payment into court

33 (1) The Registrar shall, from time to time by notice in the Gazette and in one other newspaper advertise the sums of money that have been paid into court and have not for a period of five years or more been claimed.

(2) Such notice shall specify the date when the money was paid into court and the cause or matter in respect whereof such payment was made.

(3) No notice need be made under subsection (1) in respect of money forfeited to the Crown under section 31.

Forfeiture of money

34 After the lapse of twenty-five years from the date any sum of money has been paid into court if no claim valid in law is made thereto, such money shall be forfeited to the Crown and shall be appropriated to the general revenue:

Provided that the Chief Justice may, from time to time after such appropriation, order the payment of any claim in respect of such money which, upon equitable or moral grounds is established by any person to the satisfaction of the Chief Justice; and thereupon

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the Minister of Finance shall authorize the Accountant General to pay the claim out of the Consolidated Fund.

Rules relating to the payment of interest on money paid into court

35 (1) The Chief Justice with the concurrence of the Minister of Finance may make rules prescribing the circumstances under which interest shall be payable on money paid into court in any cause or matter and may provide in such rules the rate of interest that shall be payable and make provision for such matters as are incidental to or necessary for or consequential on the paying of such interest.

(2) Rules made under this section shall be subject to the affirmative resolution procedure.

SITTINGS AND DISTRIBUTION OF BUSINESS OF THE COURT

Sittings of the Court

36 Subject to section 37 and the Rules of Court, the days and times when the Court sits shall be determined by the Chief Justice.

Session day

37 The Court shall sit upon the first day of every month (not being a Saturday or public holiday), or upon such other day as the Chief Justice may direct, for the arraignment of persons indicted for trial before the Court, and such day shall be termed a session day:

Provided that not more than six weeks shall elapse between one session day and the session day next following.

46 *[Repealed by 1974:86]*

OFFICERS OF THE COURT

Duties of Provost Marshal General

47 (1) The Provost Marshal General shall receive writs and process of the Court addressed to him, and be charged with the service and execution thereof, and with making returns thereto.

(2) In any case where the Provost Marshal General is charged with a writ of execution, and having executed the same he has reason to believe that a person other than the person at whose instance such writ was issued lays a claim to the property seized or the proceeds of sale thereof, then—

- (i) if the Provost Marshal General is still in possession of the property so seized, he shall in writing notify the Court of this fact and of the conflicting claims of property; or
- (ii) if the Provost Marshal General has sold the property in execution of the writ, he shall pay the proceeds of the sale (after deduction of his fees, costs and expenses) into Court and shall in writing notify the court of the conflicting claims thereto,

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and a copy of any such notification as aforesaid shall be delivered to all parties interested.

(3) Any person claiming an interest in the property or in the proceeds of sale of the property may take out a summons for directions calling on all other persons claiming any interest therein to appear and to state the nature and particulars of their claims and to maintain or relinquish them.

Registrar and Assistant Registrar of the Court

48 (1) There shall be a Registrar of the Court, who shall be appointed by the Governor.

(2) The Registrar shall perform such duties in execution of the powers and authorities of the Court as may from time to time be assigned to him by Rules of court, or, subject thereto, by any special order of the Court.

Duties of Registrar

49 Subject to any Rules of Court or special orders of the Court, the Registrar shall issue all summonses, precepts, writs and process, and shall register all orders and judgments, and shall keep a record of all proceedings of the court, and shall have the custody of all fees, fines, and other moneys paid into court, and shall keep an account of all moneys paid into or out of court, and shall enter an account of all such fees, fines and moneys, as and when received, in a book belonging to the Court, to be kept by him for that purpose and shall dispose of such fees, fines and moneys as required by law, or, in the absence of any such requirement, as the Court, or a Judge thereof may direct.

Taxing Master

50 Subject to such Rules or orders as aforesaid the Registrar shall be Taxing Master for the court, and shall tax all bills of costs in accordance with the scale of fees for the time being in force, subject to the approval of a Judge.

BARRISTERS AND ATTORNEYS

Admission of barristers and attorneys

51 (1) In this section, "qualified person" means a person who—

- (a) has passed the final examinations required for a person to qualify to
 - i) practise as a barrister or solicitor in England; and
 - (ii) has completed a period of practical training of not less than 12 months; and for that purpose "practical training" means training in England or in Bermuda, or partly in England and partly in Bermuda, but so that—
 - (aa) as respects training in England, the training shall be training approved by the Chief Justice as being satisfactory training under the supervision of a barrister or solicitor of not less than 5 years standing; and
 - (bb) as respects training in Bermuda, the training shall be training consisting of training in the course of lawful pupillage; or

- (b) satisfies the court that he is entitled to practise in any court in any of Her Majesty's dominions and is in possession of a qualification comparable as to standard, law, practice and procedure with those specified in paragraph (a) and has had practical experience comparable to that specified in that paragraph.

(2) Subject to the provisions of this section, the court shall have power to admit and enrol to practise as a barrister and attorney in the courts of Bermuda any qualified person who has resided in Bermuda for a total period of not less than one year during the period of fifteen years immediately preceding his application for admission:

Provided that the residential qualification imposed by this subsection shall not apply to a person who possesses Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*].

(3) The Court shall have power to admit and enrol any qualified person to practise as a barrister and attorney in the courts of Bermuda in any particular case or series of cases which, in the opinion of the court, involve questions of law or practice of considerable difficulty or public importance.

(4) Notwithstanding the provisions of this section, the court may, for good cause, refuse to admit any person as a barrister and attorney.

(5) For the avoidance of doubt, nothing in this section shall be construed so as to abridge or derogate from the provisions of the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*].

[Section 51 amended by 1992:53 effective 17 July 1992 by BR 35/1992]

Deposit of certificate of call etc. with Court

52 Every person who desires to be admitted and enrolled under section 51 shall deposit with the Court—

- (a) in the case of a person qualified to practise as a barrister—
 - (i) a certificate of his call to the Bar; and
 - (ii) a certificate from the barrister in England or the barrister and attorney with whom he served his practical training stating the dates between which that training was served;
- (b) in the case of a person who has passed the final examinations required for a person to qualify to practise as a solicitor in England, a certificate from the solicitor or the barrister and attorney with whom he served his practical training stating the dates between which that training was served; and
- (c) in all cases—
 - (i) an affidavit in such form as may be approved by the Court of identity, good character, fitness and residence in Bermuda or Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*], as the case may be;

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- (ia) a fit and proper person certificate; and
- (ii) documentary evidence of his having passed the final examinations required for a person to qualify to practise as a barrister or solicitor in England, or of his being a person entitled to practise in a court of any of Her Majesty's dominions:

Provided that the Court may, on special grounds and upon such terms as it may think reasonable, exempt any person from complying with the formalities mentioned in subparagraphs (i) and (ii).

[Section 52 amended by 1992:53 effective 17 July 1992 by BR 35/1992; amended by 1995 : 39 effective by notice in Official Gazette; Section 52 amended by 2018 : 53 s. 21 effective 31 January 2019]

Entitlement of Law Officers, ex officio, to admission as barristers and attorneys.

53 (1) Whenever any person is hereafter appointed to the office of Attorney-General, the Director of Public Prosecutions or Solicitor-General of Bermuda or, being a qualified person (as defined in section 51) is hereafter appointed to an office in the Attorney-General's Chambers or to the office of magistrate, and who is not at the time of his appointment a barrister and attorney of the Supreme Court of Bermuda, and such appointment is officially notified to the Court, then such person shall thereupon be entitled, by virtue of his office, to be admitted as a barrister and attorney of the Supreme Court, and every person so admitted shall be entitled so long as he holds any of the said offices to practise as a barrister and attorney of the Supreme Court.

(2) Section 57 shall apply to persons admitted under subsection (1).

[Section 53 subsection (1) amended by 1999:8 s.3 & Sch 2 effective by 1 April 1999]

Enrolment of barristers and attorneys

54 (1) Every person admitted as a barrister and attorney shall cause his name to be enrolled in a book to be kept for the purpose in the office of the Registrar (to be called the Roll of the Court); and no person whose name is not enrolled as aforesaid shall be entitled to practise as a barrister or attorney in Bermuda.

(2) The Registrar shall on application grant a certificate of enrolment under the seal of the Court.

(3) Notwithstanding subsection (1), a professional company may practise as a barrister or attorney in Bermuda.

[Section 54 amended by 2009:29 s.17 effective 19 October 2009]

55 *[Repealed by 1974:105]*

Practitioners deemed Officers of Court

56 Every person whose name is enrolled as aforesaid shall be deemed to be an Officer of the Court.

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Striking off the role and suspension from practice

- 57 (1) The Court shall have power to—
- (a) suspend, for reasonable cause, any barrister or attorney from practising within Bermuda during any specified period, or to order his name to be struck off the Roll of the Court;
 - (b) order the name of a barrister or attorney to be struck off the Roll of the Court in the event that such barrister or attorney is convicted of an indictable offence.
- (2) Nothing in subsection (1) shall authorize the Court to—
- (a) strike off the Roll of the Court the name of a barrister and attorney on the grounds that such barrister and attorney is guilty of improper conduct for the purposes of the Bermuda Bar Act 1974;
 - (b) suspend a barrister and attorney on the grounds that such barrister and attorney is, or may be, guilty of improper conduct for the purposes of the Bermuda Bar Act 1974 other than pending the institution, prosecution and determination of disciplinary proceedings under that Act.

[Section 57 repealed and replaced by 2018 : 53 s. 21 effective 31 January 2019]

61 *[Repealed by 1974:86]*

RULES OF COURT

Rules of Court

- 62 (1) Rules of Court may be made by the Chief Justice under this Act for the following purposes—
- (a) for regulating and prescribing the procedure (including the method of pleading), the practice to be followed in the Court and the fees to be payable in the Court and the fees to be payable in all causes and matters whatsoever in or with respect to which the Court has for the time being jurisdiction (including the procedure and practice to be followed in the offices of the Court) and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing provision) the manner in which, and the time within which, any applications which under this or any other Act are to be made to the Court shall be made;
 - (b) for regulating and prescribing the procedure on appeals from any court or person to the Court, and the procedure in connection with the transfer of proceedings from any inferior court to the Court or from the Court to an inferior court;
 - (c) for regulating the sittings of the Court and of the judges of the Court whether sitting in court or in chambers, and whether in original or appellate jurisdiction;

- (d) for prescribing what part of the business which may be transacted and of the jurisdiction which may be exercised by judges of the Court in chambers may be transacted or exercised by the Registrar of the Court;
- (e) for regulating any matters relating to the costs of proceedings in the Court and the employment of barristers and attorneys in causes and matters and their fees;
- (f) for regulating the procedure and practice of the Court with respect to non-contentious or common form probate business;
- (g) for prescribing in what cases trials in the Court are to be with a jury and in what cases they are to be without a jury;
- (h) for regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings or on any application in connection with or at any stage of any proceedings;
- (i) for regulating or making provision with respect to any other matters which were regulated or with respect to which provision was made by Rules of Court in force on the coming into operation of this Act, or by any rules or regulations so in force with respect to practice and procedure in matrimonial causes and matters or with respect to applications and proceedings relating to legitimacy declarations;
- (j) for making provision with respect to the practice and procedure—
 - (i) of the Court in relation to the jurisdiction and powers conferred upon it by or under section 15 of the Constitution [*title 2 item 1*];
 - (ii) of the Court in relation to appeals under section 15 of the Constitution from a determination of the Court;
 - (iii) of other courts in relation to references to the court under subsection (3) of section 15 of the Constitution,and such provision may include provision with respect to the time within which any application of reference shall or may be made.

(2) [*Repealed by 1977:35*]

(3) Nothing in this section shall affect the power conferred by any Act to make general rules for carrying into effect the objects of such Act and the power to make rules of court under this section shall not extend to the matters with respect to which rules or orders may be made by virtue of any such Act.

(4) To the extent, if any, to which the pleading, practice and procedure under Rules made under the authority of this Act differ from the law and practice in England regulating the winding-up of companies, the pleading, practice and procedure under the Rules shall have effect; and if any question arises as to the application of the provisions of this subsection the decision thereon of the Court, or of any Judge having cognizance of the matter in respect of which such question has arisen, shall be final, unless in the latter case

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on an appeal to the Court by any interested party the court determines otherwise, in which case the decision of the Court shall be final.

- (5) Subject to subsection (6), the Registrar shall—
- (a) cause a copy of all Rules of Court made or deemed to be made under this Act to be available at the Registry for inspection by any interested person free of charge at any time when the Registry is open to the public;
 - (b) cause to be published in the Gazette a notice briefly describing the nature of any Rules of Court made or deemed to be made under this Act, stating the date on which such Rules are to come into operation and that such Rules may be inspected at the Registry.

(6) Subsection (5) shall not apply, or shall cease to apply, as the case may be, to Rules of Court made or deemed to be made under this Act that are published in the Gazette or under the authority of the Computerization and Revision of Laws Act 1989 .

Enactment of Rules of Court

63 (1) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to any rules made under this Act other than those rules referred to in subsection (2).

(2) The affirmative resolution procedure shall apply to every rule of court which may involve an increase of expenditure out of public funds or which is relative to fees payable in causes or matters.

JUDICIAL REVIEW

Application for judicial review

64 (1) An application for judicial review may be made to the Court, in accordance with the Rules of Court, for one or more of the following forms of relief, namely, an order of mandamus, prohibition or certiorari, a declaration or an injunction.

(2) No application for judicial review shall be made unless the Court has first granted leave in accordance with the Rules of Court to make the application, and leave may only be granted if the Court considers that the applicant has a sufficient interest in the matter to which the application relates.

[Section 64 added by 2009:28 s.4 effective 7 July 2009]

Order of mandamus, prohibition or certiorari

65 (1) The Court may make an order of mandamus, prohibition or certiorari, on an application for judicial review seeking that relief, in the classes of cases in which it could do so immediately before commencement of this section.

(2) If, on an application for judicial review seeking an order of certiorari, the Court quashes the decision to which the application relates, the Court may remit the matter to the court, tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the Court's findings.

[Section 65 added by 2009:28 s.4 effective 7 July 2009]

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Declaration or injunction

66 The Court may make a declaration or grant an injunction, on an application for judicial review seeking that relief, if the Court considers that it would be just and convenient to do so, having regard to—

- (a) the nature of the matters in respect of which relief may be granted by orders of mandamus, prohibition or certiorari;
- (b) the nature of the persons and bodies against whom relief may be granted by such orders; and
- (c) all the circumstances of the case.

[Section 66 added by 2009:28 s.4 effective 7 July 2009]

Award of damages

67 On an application for judicial review, the Court may award damages to the applicant if—

- (a) he has joined with his application a claim for damages arising from any matter to which the application relates; and
- (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of the application, he would have been awarded damages.

[Section 67 added by 2009:28 s.4 effective 7 July 2009]

Delay in making of application

68 (1) The Court may refuse to grant leave for the making of an application for judicial review, or to grant any relief sought on the application, if it considers that—

- (a) there has been undue delay in making the application; and
- (b) the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

(2) Subsection (1) is without prejudice to any enactment or Rule of Court which has the effect of limiting the time within which an application for judicial review can be made.

[Section 68 added by 2009:28 s.4 effective 7 July 2009]

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FIRST SCHEDULE

[Repealed by 1974 : 86]

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SECOND SCHEDULE

[Repealed by 1974 : 86]

[Assent Date: 15 February 1905]

[This Act was brought into operation on 6 June 1905 by Proclamation published in Gazette No. 12 of 1905 made under former section 52]

[The Act, as revised effective 31 July, 1971, incorporates the provisions of the Court Act 1901 (1901 : 15), the Court Stenographer Act 1901 (1901 : 21, as amended by 1962 : 28), the Supreme Court Act 1950 (1950 : 36 as amended by 1963 : 216), the Supreme Court (Admiralty Jurisdiction) Act 1962 (1962 : 31 as amended by 1969 : 182), the Vexatious Litigants Act 1962 (1962 : 78) and the Puisne Judge Act 1965 (1965 : 105, as amended by 1969 : 182).]

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