
CHAPTER 53
SUPREME COURT

LIST OF AUTHORISED PAGES

1 - 2	LRO 1/2010
3 - 4	LRO 1/2008
5 - 6	LRO 1/2010
7 - 8	LRO 1/2008
9 - 38	Original
39 - 40	LRO 1/2010
41 - 45	Original

ARRANGEMENT OF SECTIONS

PART I
PRELIMINARY

SECTION

1. Short title.
2. Interpretation.

PART II
JUDGES OF THE COURT

3. Number of Justices.
4. Qualifications of judges.
5. Powers of single judge in court or in chambers.
6. Proceeding to be disposed of by single judge.

PART III
JURISDICTION OF THE COURT

7. General jurisdiction of Court.
8. Admiralty jurisdiction of the Court.
9. Mode of exercise of admiralty jurisdiction.
10. Jurisdiction *in personam* of Court in collision and other similar cases.
11. Savings.
12. Interpretation.
13. Probate jurisdiction.
14. Matrimonial jurisdiction.

PART IV
PRACTICE AND PROCEDURE

15. Rules as to exercise of jurisdiction.

-
16. Law and equity to be concurrently administered.
 17. Orders of *mandamus*, prohibition and *certiorari*.
 18. Injunction restraining persons from acting in offices.
 19. Application for judicial review.
 20. Application for *habeas corpus*.
 21. Injunctions and receivers.
 22. Orders of interim payments.
 23. Powers of Court exercisable before action commenced.
 24. Power of Court to order closure, etc., of documents before commencement of proceedings.
 25. Power or Court to order disclosure, etc. by person not a party after action commenced.
 26. Provisions supplementary to sections 23, 24 and 25.
 27. Application to Crown.
 28. Execution of instruments by order of the Court.
 29. Restriction on institution of vexatious actions.
 30. Costs.

PART V PROBATE CAUSES AND MATTERS

31. Power to grant probate administration where no estate.
32. Application for grants.
33. Records or grants.
34. Power to grant representation of real and personal estate separately or together.
35. Subpoena to bring in testamentary document.
36. Examination of person with knowledge of testamentary document.
37. Summons to executor to prove or renounce will.
38. Power to revoke administration or probate.
39. Administration bond.
40. Section 39 not to apply to Public Trustee.
41. Provision for rectifying mistakes of omission without fraud.
42. Provisions as to number or personal representative.
43. Power to grant representation to a trust corporation.
44. Discretion of court as to persons to whom administration may be granted.
45. Administration *pendente lite*.
46. Grant of special administration where personal representative is abroad.
47. Administration during minority of executor.
48. Administration with will annexed.
49. Resealing of grants.
50. Deposits to credit of deceased persons, how dealt with.
51. Grants to consular officers.
52. Interpretation for the purposes of Part V.

PART VI SITTINGS OF COURT, MODE OF TRIAL, ADJOURNMENT

53. Court House.

-
- 54 Sitings criminal matters
 - 55 Sitings civil actions
 - 56 Civil actions mode of trial
 - 57 Sitings in Chambers
 - 58 Powers as to adjournment

PART VII JUDGMENTS

- 59 Power of Provost Marshal to attach money, cheques and other securities by writs of execution
- 60 Power to hold securities and sue for recovery of amounts secured
- 61 Payment to Provost Marshal discharge for amount paid
- 62 Provost Marshal to pay money recovered in discharged debt and any surplus to be paid to judgment debtor
- 63 Equitable charges in right judgment debt
- 64 Receivers

PART VIII OFFICES AND OFFICERS OF THE COURT

- 65 Registrar
- 66 Office of Registrar
- 67 Deputy Registrars and Assistant Registrars
- 68 Master
- 69 Taxing masters
- 70 Admiralty marshal
- 71 Bailiffs
- 72 Provost Marshal

PART IX MISCELLANEOUS

- 73 Power to administer oaths
- 74 Seal of the Court
- 75 Rules Committee
- 76 Rules of Court
- 77 Record of court proceedings

SCHEDULE — Persons Empowered to Administer Oaths

CHAPTER 53

SUPREME COURT

An Act to consolidate with amendments the Supreme Court Act and other written laws relating to the Supreme Court in The Bahamas and the administration of justice therein; to repeal certain obsolete or unnecessary written laws so relating; and for connected purposes.

15 cf 1996
24 cf 1998
9 cf 2006
6 cf 2008

[Assent 2nd July, 1996]

[Commencement 1st January, 1997]

**PART I
 PRELIMINARY**

1. This Act may be cited as the Supreme Court Act. Short title.
2. In this Act — Interpretation.
 - “action” means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules, but does not include a criminal proceeding by the Crown;
 - “cause” includes any action, suit or original proceeding between a plaintiff and a defendant and any criminal proceeding by the Crown;
 - “Court” means the Supreme Court established under Article 93 of the Constitution;
 - “defendant” includes any person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings;
 - “former” and “formerly” mean, save where otherwise in this Act provided, immediately prior to the commencement of this Act;

“judge” means the Chief Justice or any justice appointed under Article 94 or 95 of the Constitution;

“judgment” includes decree;

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

“matter” includes every proceeding in court not in a cause;

“party” means every person who pursuant to or by virtue of rules of court or any other written law has been served with notice of or has intervened in any proceeding although not named in the record;

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

“plaintiff” includes every person asking any relief (otherwise than by way of counterclaim) against any other person by any form of proceeding whether the proceeding is 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 counterclaim of a defendant;

“prescribed” means prescribed by rules;

“repealed Act” means the Supreme Court Act repealed by this Act;

“rules” means rules of court made under section 76 and includes forms;

“suit” includes action.

**PART II
JUDGES OF THE COURT**

3. (1) There shall be in addition to the Chief Justice not more than eleven and not less than two Justices of the Court. Number of Justices.

(2) The title of Senior Justice may be conferred upon any number of Justices (not exceeding two in number) by the Governor-General under the Public Seal acting on the advice of the Judicial and Legal Service Commission.

(3) The Court shall be deemed to be fully constituted during and notwithstanding any vacancy in the office of any judge. *9 cf 2006*

4. A person shall be qualified to be a judge of the Court — Qualifications of judges.

(a) if such person is a counsel and attorney who is a member of the Bar of The Bahamas and has practised as such for a period of not less than ten years;

(b) if such person is a counsel who is a member of the Bar of a Commonwealth country membership of which is a qualification for admission to practice as counsel and attorney in The Bahamas and has practised as counsel for a period of not less than ten years.

5. (1) Subject to this or any other Act and to rules of court, a judge may exercise in court or in chambers all or any part of the jurisdiction vested in the Court in all such causes and matters and in all such proceedings in any causes or matters as might formerly have been heard in court or in chambers, respectively, by a single judge of the Supreme Court, or as may be directed or authorized to be so heard by rules of court or by or in pursuance of any Act passed after the commencement of the repealed Act, that is to say, the ninth day of August, 1897, and for the time being in force. Powers of single judge in court or in chambers.

(2) Subject to subsection (3), any judge sitting alone shall be qualified to exercise all the jurisdiction, authority and powers of the court.

(3) The Rules Committee may make rules under section 76 prescribing the jurisdiction, authority and powers of the court which shall be exercised by two or more judges sitting together.

Proceeding to be disposed of by single judge.

6. Subject to this or any other Act and to rules of court, every proceeding in the Court in its civil jurisdiction and all business arising therefrom shall, so far as is practicable and convenient, be heard and disposed of before a single judge, and all proceedings in an action subsequent to the hearing or trial shall so far as is practical and convenient, be taken before the judge before whom the trial or hearing took place.

PART III JURISDICTION OF THE COURT

General jurisdiction of Court.

7. (1) Subject to this or any other law, the Court shall have —

- (a) unlimited original jurisdiction in civil and criminal causes and matters; and
- (b) such appellate jurisdiction as may be conferred upon it by this or any other law.

(2) For the proper exercise of the Court's jurisdiction, the Chief Justice may, by order, establish divisions of the Court for the hearing of specific matters.

Admiralty jurisdiction of the Court.

8. (1) The admiralty jurisdiction of the Court shall be 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 a 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 its 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 or an aircraft;
 - (k) any claim in the nature of pilotage in respect of a ship or an aircraft;
 - (l) any claim in respect of goods or materials supplied to a ship for its 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 Merchant Shipping Act, is recoverable as wages in the court and in the manner in which wages may be recovered; Ch 268
 - (o) an 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 or for droits of Admiralty;

together with any other jurisdiction which was formerly vested in the Court as being a court with admiralty jurisdiction.

(2) The jurisdiction of the Court under paragraph (b) of subsection (1) includes power to settle any account outstanding or 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 paragraph (i) of subsection (1) to claims in the nature of salvage includes a reference to such claims for services rendered in saving life from a ship or an aircraft or in preserving cargo, apparel or wreck.

- (4) The provisions of subsections (1) to (3) apply —
 - (a) in relation to all ships or aircraft, whether Bahamian 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 legal or equitable, including mortgages and charges created under foreign law:

Provided that nothing in this subsection shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the Merchant Shipping Act or the Civil Aviation Act.

9. (1) Subject to section 10, an action *in personam* may be brought in the Court in all cases within the jurisdiction of the Court.

Mode of exercise
of admiralty
jurisdiction

(2) In the cases mentioned in paragraphs (a), (b), (c) and (r) of subsection (1) of section 8 an action *in rem* may be brought in the Court against the ship, aircraft or property in question.

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

(4) In the case of any such claim as is mentioned in paragraphs (d) to (q) of subsection (1) of section 8, where —

- (a) the claim arises in connection with a ship; and
- (b) 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,

an action *in rem* may (whether the claim gives rise to a maritime lien on the ship or not) be brought in the court against —

- (i) 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
- (ii) 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, an action *in rem* may be brought 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 subsections (1) to (5) 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 paragraph (n) of subsection (1) of section 8 unless the claim relates wholly or partly to wages (including any sum allotted out of wages or adjudged by the Director of Maritime Affairs to be due by way of wages).

(7) Where, in the exercise of its admiralty jurisdiction the Court orders any ship, aircraft 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 presumed that the person is ordinarily resident or has a place of business within The Bahamas.

Jurisdiction *in personam* of Court in collision and other similar cases

10. (1) This section shall apply to 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 the collision regulations.

(2) The Court shall not entertain any action *in personam* to enforce such claims unless —

- (a) the defendant is ordinarily resident or has a place of business within The Bahamas;
- (b) the cause of action arose within the territorial waters of The Bahamas; 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.

(3) For the purpose of subsection (2) the expression “territorial waters of The Bahamas” includes any port, dock or harbour of The Bahamas.

(4) The Court shall not entertain any action *in personam* to enforce such claims until any proceedings previously brought by the plaintiff in any court outside The Bahamas against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.

(5) The provisions of subsections (2) to (4) shall apply to counterclaims (not being counterclaims 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 respectively references to the plaintiff on the counterclaim and the defendant to the counterclaim.

(6) The provisions of subsections (2) to (5) shall not apply to any action or counterclaim if the defendant thereto submits or has agreed to submit to the jurisdiction of the Court.

(7) Subject to subsection (4), the Court shall have jurisdiction to entertain an action *in personam* to enforce such claims whenever any of the conditions specified in paragraphs (a), (b), and (c) of subsection (2) 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 Rules Committee to be appropriate having regard to this subsection.

(8) For the avoidance of doubt it is hereby declared that this section applies in relation to the jurisdiction of the Court not being its admiralty jurisdiction, as well as in relation to its admiralty jurisdiction, if any.

11. Nothing in this Act shall —

Savings

- (a) 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 Bahamian ship;
- (b) affect the provisions of section 237 of the Merchant Shipping Act;
- (c) affect proceedings in respect of any cause of action arising before the commencement of this Act;
- (d) authorise proceedings in rem in respect of any claim against the Crown or the arrest, detention or sale of any of Her Majesty's ships or Her Majesty's aircrafts, or of any cargo or other property belonging to the Crown.

Ch 268

12. For the purposes of sections 8 to 11 —

Interpretation
Sections 8 to 11

“collision regulations” has the same meaning as in section 2 of the Merchant Shipping Act;

Ch 268

“goods” includes baggage;

“master” has the same meaning as in section 2 of the Merchant Shipping Act and accordingly includes every person (except a pilot) having command or charge of a ship;

Ch 268

“ship” includes any description of vessel used in navigation;

“towage” and “pilotage” in relation to an aircraft mean towage and pilotage while the aircraft is water borne.

Probate
jurisdiction.

13. Subject to the provisions of Part V, the Court shall have all such jurisdiction in relation to probates and letters of administration as it formerly had and in particular all such contentious and non-contentious jurisdiction in relation to —

- (a) testamentary causes or matters;
- (b) the grant, amendment or revocation of probate and letters of administration; and
- (c) the real and personal estate of deceased persons.

Matrimonial
jurisdiction.

Ch. 125.

14. (1) The Court shall have such jurisdiction in relation to matrimonial causes and matters as is vested in it by the Matrimonial Causes Act or any other law.

(2) No person shall after the commencement of this Act be entitled to petition the Court for restitution of conjugal rights.

PART IV PRACTICE AND PROCEDURE

Rules as to
exercise of
jurisdiction.

15. The jurisdiction vested in the Court shall so far as regards procedure and practice, be exercised —

- (a) in the manner provided by this Act or by rules of court;
- (b) where no such provision has been made, in accordance with former practice as near as may be; or
- (c) where there is no former practice, in such manner as seems to the Court just and practicable in the circumstances.

16. (1) Subject to this or any other Act, in every civil cause or matter the Court shall continue to administer law and equity and wherever there is any conflict or variance between the rules of equity and the rules of law with reference to the same matter, the rules of equity shall prevail.

Law and equity to be concurrently administered

- (2) The court shall give the, same effect as hitherto —
 - (a) to all equitable estates, titles, rights, reliefs, defences and counterclaims and to all equitable duties and liabilities; and
 - (b) subject thereto, to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the law of The Bahamas whether written or unwritten;

and subject to this or any other Act, shall so exercise its jurisdiction in any cause or matter before it as to secure that as far as possible all matters in dispute between the parties are completely and finally determined, and all multiplicity of legal proceedings with respect to any of these matters is avoided.

(3) Nothing in this Act shall affect the power of the Court to stay any proceedings before it, where it thinks fit to do so, either of its own motion or on the application of any person whether or not a party to the proceedings.

17. (1) The Court shall have jurisdiction to make orders of *mandamus*, prohibition and *certiorari* in those classes of cases in which it had power to do so immediately before the commencement of this Act.

Orders of *mandamus*, prohibition and *certiorari*

(2) Every such order shall be final, subject to any right of appeal therefrom.

18. (1) In those classes of cases in which it formerly had power to do so, the Court shall have jurisdiction to grant an injunction restraining any person from acting in any office in which that person is not entitled to act.

Injunction restraining persons from acting in offices

(2) The Court may also, if the case so requires, declare the office vacant.

Application for
judicial review

19. (1) An application for one or more of the following forms of relief, namely —

- (a) an order of *mandamus*, prohibition or *certiorari*;
- (b) a declaration or injunction under subsection (2);
or
- (c) an injunction under section 18 restraining a person not entitled to do so from acting in an office to which that section applies,

shall be made in accordance with rules of court by a procedure to be known as an application for judicial review.

(2) A declaration may be made or an injunction granted under this subsection in any case where an application for judicial review seeking that relief, has been made and the Court considers that, 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,

it would be just and convenient for the declaration to be made or the injunction to be granted, as the case may be.

(3) No application for judicial review shall be made unless the leave of a judge has been obtained in accordance with rules of court; and the judge shall not grant leave to make such an application unless the applicant has a sufficient interest in the matter to which the application relates.

(4) On an application for judicial review the Court may award damages to the applicant if —

- (a) the applicant has joined with the 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 in an action begun by the applicant at the time of making the application an award of damages would have been made.

(5) 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 finding of the Court.

20. (1) Notwithstanding anything to the contrary in any law, where a criminal or civil application for *habeas corpus* has been made by or in respect of any person, no such application shall again be made by or in respect of that person on the same grounds whether to the same court or judge or to any other court or judge unless fresh evidence is adduced in support of the application.

Application for
habeas corpus.

(2) In every case where the person by or in respect of whom an application for *habeas corpus* is made is restrained as a person liable, or treated by any written law as liable, to be detained in pursuance of an order made under part VI of the Mental Health Act, the application shall be deemed for the purposes of this section to constitute a criminal cause or matter.

Ch. 230.

(3) In this section “application for *habeas corpus*” means an application for a writ of *habeas corpus ad subjiciendum* and references to a criminal application or a civil application shall be construed according as to whether the application does or does not constitute a criminal cause or matter.

21. (1) The Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.

Injunctions and
receivers.

(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks fit.

(3) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the Court thinks fit, whether the person against whom the injunction is sought is or is not in possession under 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 either of the parties are legal or equitable.

Orders of interim
payments

22. (1) As regards proceedings pending in the Court, provision may be made by rules of court enabling the Court in such circumstances as may be specified to make an order requiring a party to the proceedings to make an interim payment of such amount as may be specified in the order whether by payment into court or (if the order so provides) by payment to another party to the proceedings.

(2) Any such rules which make provision in accordance with subsection (1) may include provision for enabling a party to any proceedings who, in pursuance of such an order, has made an interim payment to recover the whole or part of the amount of the payment in such circumstances, and from such other party to the proceedings, as may be determined in accordance with the rules.

(3) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.

(4) Nothing in this section shall be construed as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs.

(5) In this section “interim payment” in relation to a party to any proceedings, means a payment on account of any damages, debt or other sum (excluding any costs) which that party may be held liable to pay to or for the benefit of another party to the proceedings if a final judgment or order of the court in the proceedings is given or made in favour of that other party and any reference to a party to any proceedings includes any person who, for the purposes of the proceedings, acts as next friend or guardian of a party to the proceedings.

Powers of Court
exercisable
before action
commenced

23. On the application of any person in accordance with rules of court, the Court shall in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters, that is to say —

- (a) the inspection, photographing, preservation, custody and detention of property which appears to the court to be property which may become the subject-matter of subsequent proceedings in the court, or as to which any question may arise in any such proceedings; and
- (b) the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.

24. On the application, in accordance with rules of court, of a person who appears to the Court to be likely to be a party to subsequent proceedings in that court in which a claim in respect of personal injuries to a person or in respect of a person's death is likely to be made, the Court shall, in such circumstances as may be specified in the rules, have power to order a person who appears to the court to be likely to be a party to the proceedings and to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise out of that claim —

Power of Court to order closure, etc., of documents before commencement of proceedings

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce to the applicant such of those documents as are in his possession, custody or power.

25. (1) On the application, in accordance with rules of court, of a party to any proceedings in which a claim in respect of personal injuries to a person or in respect of a person's death is made, the Court, shall, in such circumstances as may be specified in the rules, have power to order a person who is not a party to the proceedings and who appears to the Court to be likely to have or have had in his possession, custody, or power any documents which are relevant to an issue arising out of the claim —

Power of Court to order disclosure, etc by person not a party after action commenced

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce to the applicant such of those documents as are in his possession, custody or power.

(2) On the application, in accordance with rules of court, of a party to any such proceedings as are referred to in subsection (1), the Court shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters, that is to say —

- (a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, any party to the proceedings, but which is the subject matter of the proceedings or as to which any question arises in the proceedings; and
- (b) the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.

(3) The provisions of subsections (1) and (2) are without prejudice to the exercise by the Court of any power to make orders which is exercisable apart from those provisions.

26. (1) The power to make rules of court under section 76 shall include power to make rules as to the circumstances in which an order under section 24 or 25, can be made; and any such rules may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.

(2) Without prejudice to the generality of subsection (1), rules of court shall be made for the purpose of ensuring that the costs of and incidental to proceedings for an order under section 24 or 25 incurred by the person against whom the order is sought shall be awarded to that person unless the Court otherwise directs.

(3) In section 23, 24 and 25 —

“property” includes any land, chattel or other corporeal property of any description;

“personal injuries” includes any disease and any impairment of a person’s physical or mental condition.

Provisions supplementary to sections 23, 24 and 25

27. The Crown shall be bound —Application to
Crown.

- (a) by the provisions of section 22 so far as (but not further than) any proceedings to which that section is applicable can be brought by or against the Crown in accordance with the Crown Proceedings Act,
- (b) by the provisions of section 23 in so far as it relates to property (within the meaning of that section) as to which it appears to the Court that it may become the subject matter of subsequent proceedings involving a claim in respect of personal injuries to a person or in respect of a person's death,
- (c) by the provisions of sections 24 and 25:

Ch. 68.

Provided that the court shall not make an order under any of the aforesaid sections, if it considers that compliance with the order if made would be likely to be injurious to the public interest.

28. Where 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 the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the Court may nominate for the purpose, and a 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.

Execution of in-
struments by or-
der of the Court.

29. (1) If, on an application made by the Attorney-General under this section, the Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings whether in the 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 to be heard, order that no legal proceedings shall, without leave of the Court or a judge, be instituted by him in any court and that any legal proceedings instituted by him before the making of the order shall not

Restriction on
institution of
vexatious
actions.

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 process of the Court and that there is a *prima facie* ground for the proceedings.

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

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

Costs.

30. (1) Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.

(2) Nothing in this section shall alter the practice in any criminal cause or matter or in bankruptcy.

PART V PROBATE CAUSES AND MATTERS

Power to grant probate administration where no estate.

31. Notwithstanding anything contained in any other provision of this Act the court shall have jurisdiction to make a grant of probate or letters of administration in respect of a deceased person notwithstanding that the deceased person left no estate.

Application for grants.

32. An application for the grant or revocation of probate or administration may be made through, and a caveat against a grant of probate or administration may be entered in, the Registry of the Court.

Records or grants.

33. (1) There shall continue to be kept in the Registry records of all grants which are made by the court and for this purpose the Registry may be referred to as the Probate Registry.

(2) The records shall be in such form and shall contain such particulars as the Chief Justice shall direct.

34. (1) Subject to subsection (2), the Court may grant probate or administration in respect of any part of the estate of a deceased person limited in any way the Court thinks fit.

Power to grant representation of real and personal estate separately or together

(2) Where the estate of a deceased person is known to be insolvent, the grant of representation of it shall not be severed except as regards a trust estate in which the deceased had no beneficial interest.

(3) Provision may be made by probate rules and orders for adapting to the case of real estate, the practice and procedure on the grant of administration.

35. (1) Where it appears that any person has possession of, custody of or power over any document which is or purports to be a testamentary document the court may, whether or not any legal proceedings are pending, issue a subpoena requiring such person to bring in the document in such manner as the Court may in the subpoena direct.

Subpoena to bring in testamentary document

(2) Any person who, having been required by the court to do so under this section, fails to bring in any document shall be guilty of contempt of court.

36. (1) Where it appears that there are reasonable grounds for believing that any person has knowledge of any document which is, or purports to be a testamentary document, the Court may, whether or not any legal proceedings are pending, order such person to attend for the purpose of being examined in open Court.

Examination of person with knowledge of testamentary document

(2) The Court may —

- (a) require any person who is before it in compliance with an order under subsection (1) to answer any question relating to the document concerned; and
- (b) if appropriate, order such person to bring in the document in such manner as the court may direct.

(3) Any person who, having been required by the Court to do so under this section fails to attend for examination, answer any question or bring in any document shall be guilty of contempt of court.

Summons to executor to prove or renounce will

37. The Court may summon any person named as an executor in a will to prove or renounce probate of the will and to do such other things concerning the will as the Court had power to order such a person to do before the commencement of this Act.

Power to revoke administration or probate

38. (1) Where it appears to the Court that a grant of probate or administration either ought not to have been made or contains an error, the Court may call in the grant and if satisfied that it could be revoked at the instance of any party interested, may revoke it.

(2) A grant of probate or administration may be revoked under subsection (1) without being called in if it cannot be called in.

(3) Where it appears to the Court that a grant resealed pursuant to section 49 ought not to have been resealed, the Court may call in the relevant document and may, if satisfied that the resealing could be cancelled at the instance of a party interested, cancel the resealing.

(4) A resealing may be cancelled under subsection (3) without the relevant document being called in, if it cannot be called in.

(5) In subsections (3) and (4) “the relevant document” means the original grant or, where some other document was sealed by the Court, that document.

Administration bond

39. (1) The Court shall not make a grant of administration until the applicant for such a grant has given a bond (in this section referred to as an “administration bond”) to the judge and, subject to the provisions of this section, if the judge so requires, with one or more sureties conditioned —

- (a) for duly collecting, getting in and administering the real and personal estate of the deceased;
- (b) for returning within six months after the date of such bond to the office of the Registrar a true and correct account in such form as may be directed by probate rules and orders, showing the value of the personal estate and effects of the deceased person; and

(c) for the payment, within the said period of six months, of the full amount of the fees which shall become due and payable under and by virtue of any Act or shall be otherwise payable on the estate in respect of which such administration is required to be granted.

(2) The judge shall have power to enforce any administration bond or to assign it in accordance with the provisions of this section to some other person.

(3) An administration bond shall be in such form as may be directed by probate rules and orders.

(4) An administration bond shall be in a penalty of double the amount at which the estate and effects of the deceased are sworn unless the judge in any case thinks fit to direct the same to be reduced, and the judge may also direct that more bonds than one be given so as to limit the liability of any surety to such amount as the judge thinks reasonable.

(5) Where it appears to the satisfaction of a judge that the condition of an administration bond has been broken, the judge may, on an application in that behalf, order that the bond shall be assigned to such person as may be specified in the order, and the person to whom the bond is ordered to be assigned shall be entitled, by virtue of the order, to sue thereon in his own name as if it had originally been given to him instead of to a judge and to recover thereon as trustee for all persons interested, the full amount recoverable in respect of the breach of the condition thereof.

(6) Without prejudice to any proceedings instituted before the date of commencement of this Act, any administration bond given under the repealed Act may be enforced or assigned as if it had been given to a judge under this section.

(7) Probate rules and orders may be made by the Rules Committee under this Act for providing that sureties to administration bonds shall not be required when the grant is made to a trust corporation or to two or more individuals or in any other proper case.

Section 39 not to apply to Public Trustee.

Ch. 177.

Provision for rectifying mistakes of omission without fraud.

Provisions as to number or personal representative.

40. Section 39 shall not apply in the case of an application for a grant of probate or administration of the estate and effects of any deceased person made by or on behalf of the Public Trustee appointed under the Public Trustee Act:

Provided that such Public Trustee shall be subject to the same liabilities and duties as if he had given the bond required by such section:

Provided also that all fees of court or stamp duties imposed by any Act or rule on or in respect of any bond or other document shall nevertheless be paid by such Public Trustee as if he had given such bond.

41. If any executor or administrator shall, through mistake or misapprehension, or otherwise without fraud, have omitted out of such return any part of the personal estate or effects of the testator or intestate, it shall be lawful for such executor or administrator, at any time within three months after the discovery of such omission, to amend his return, and to pay the additional fees due on the estate of the deceased without being liable to any penalty or forfeiture under this Act.

42. (1) The Court shall not grant probate or administration to more than four persons in respect of the same part of the estate of a deceased person.

(2) Where under a will or an intestacy any beneficiary is a minor or a life interest arises any grant of probate or administration shall be made either to a trust corporation (with or without an individual) or to not less than two individuals unless it appears to the Court to be expedient in all the circumstances to appoint an individual as sole administrator.

(3) For the purpose of determining whether a minority or life interest arises, the Court may act on such *prima facie* evidence furnished by the applicant or any other person or such evidence as may be prescribed by probate rules and orders.

(4) If there is only one personal representative, not being a trust corporation, then during the minority of a beneficiary or the subsistence of a life interest and until the estate is fully administered, the Court may, on the

application of any person interested or of the guardian, committee or receiver of any such person, appoint one or more personal representatives in addition to the original personal representative in accordance with probate rules and orders.

43. (1) The Court may —

- (a) where a trust corporation is named in a will as executor, whether alone or jointly with another person, grant probate to the corporation either solely or jointly with another person, as the case may require; and
- (b) grant administration to a trust corporation either solely or jointly with another person,

Power to grant representation to a trust corporation

and the corporation may act accordingly as executor or administrator as the case may be.

(2) Probate or administration shall not be granted to a nominee on behalf of a trust corporation.

(3) Any officer authorized for the purpose by a trust corporation or the directors or governing body thereof may, on behalf of the corporation swear affidavits, give security and do any other act or thing which the Court may require with a view to the grant to the corporation of probate or administration and the acts of an officer so authorized shall be binding on the corporation.

44. In granting administration the Court shall have regard to the rights of all persons interested in the estate of the deceased person or the proceeds of sale thereof, and in particular administration with the will annexed may be granted to a devisee or legatee and any such administration may be limited in any way the Court thinks fit:

Discretion of Court as to persons to whom administration may be granted

Provided that —

- (a) where the deceased died wholly intestate as to his estate, administration shall be granted to one or more persons interested in the residuary estate of the deceased, if they make an application for the purpose; and

- (b) if by reason of the insolvency of the estate of the deceased or of any other special circumstances, it appears to the Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would by law be entitled to the grant of administration, the Court may, in its discretion, notwithstanding anything in this Act, appoint as administrator such person as it thinks expedient and any administration granted under this provision may be limited in any way the Court thinks fit.

Administration
pendente lite

45. (1) Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the Court may grant administration of the estate to an administrator pending suit, who shall, subject to subsection (2), have all the rights and powers of a general administrator.

(2) An administrator pending suit shall be subject to the control of the Court and act under its direction; and except in such circumstances as may be prescribed no distribution of the estate or any part of the estate of the deceased person shall be made by such an administrator without leave of the Court.

(3) The Court may, out of the estate of the deceased, assign to an administrator appointed under this section such reasonable remuneration as the Court thinks fit.

Grant of special
administration
where personal
representative is
abroad

46. (1) If at the expiration of twelve months from the death of a person, any personal representative of the deceased to whom a grant has been made is residing out of the jurisdiction of the Court the Court may, on the application of any person interested in the estate of the deceased, grant to such person in the prescribed form special administration of the estate of the deceased.

(2) The Court may, for the purpose of any legal proceedings to which the administrator under the special administration is a party, order the transfer into Court of any money or securities belonging to the estate of the deceased person and all persons shall obey any such order.

(3) If a personal representative capable of acting as such returns to and resides within the jurisdiction of the Court while any legal proceedings to which the special administrator is a party are pending, that personal representative shall be made a party to the legal proceedings and the costs of and incidental to the special administration and the legal proceedings shall be paid by such person and out of such fund as the Court in which the proceedings are pending may direct.

47. (1) Where an infant is sole executor of a will, administration with the will annexed shall be granted to the infant's guardian, or to such other person as the Court thinks fit, until the infant attains the age of eighteen years when probate may then be granted.

Administration
during minority
of executor

(2) Where a testator by his will appoints an infant to be an executor, the appointment shall not operate to transfer any interest in the property of the deceased to the infant or to constitute the infant a personal representative for any purpose unless and until probate is granted under this section.

48. Administration with the will annexed shall continue to be granted in every case where such a grant could have been made before the commencement of this Act, and in such case the will of the deceased shall be performed and observed in like manner as if probate thereof had been granted to an executor.

Administration
with will
annexed

49. (1) Where a Court of Probate in Great Britain or in any other part of the Commonwealth or in the United States of America has granted probate or letters of administration (by whatever name called) in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with, the Court, be sealed with the seal of the Court and thereupon shall be of like force and effect and have the same operation in The Bahamas as if granted by the Court:

Resealing of
grants

Provided that the Court before sealing a probate or letters of administration under this section —

- (a) may require such evidence, if any, as it thinks fit as to the domicile of the deceased person; and

- (b) shall be satisfied that all fees have been duly paid and all securities have been given in respect of such part of the estate in The Bahamas which the laws of The Bahamas require to be paid and given on probate or letters of administration being granted:

And provided further that the Court may, if it thinks fit, on the application of any creditor, require before sealing that adequate securities be given for the payment of all debts due from the estate to creditors in The Bahamas.

(2) For the purposes of this section, a duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the Court granting the same, shall have the same effect as the original.

Deposits to credit of deceased persons, how dealt with

50. (1) Notwithstanding the provisions of this or any other Act or law to the contrary, the manager or assistant manager of a bank may, without the production of probate or letters of administration, pay any sum standing to the credit of a deceased person to any person (in this section referred to as the claimant) who upon producing satisfactory proof of the death of such deceased person and upon producing such evidence as may be required by the manager or assistant manager, appears to such manager or assistant manager to be entitled by law to the said sum standing to the credit of such deceased person:

Provided —

- (a) before any payment is made to any person under this section, the claimant shall make and deliver to the bank a declaration in the form prescribed by section 8 of the Oaths Act (in this section referred to as a statutory declaration) to the effect that the deceased person has no real estate in The Bahamas and his total personal estate does not exceed the amount standing to his credit at the bank;
- (b) the claimant shall deliver to the bank evidence that at least three months' notice has been given by the claimant by advertisement in three issues of the *Gazette* and in three issues of a daily

Ch 60

newspaper in The Bahamas calling on all persons having any claims to the estate of the deceased person to notify the bank in writing of such claims;

- (c) that no other claims to the estate of the deceased person have been received by the bank; and
- (d) the bank shall forward the statutory declaration and the evidence of the advertisement to the Registrar General.

(2) The bank shall not be liable in respect of any claim by any person in connection with a payment made in accordance with this section but any person may nevertheless recover any sum lawfully due to him from the person receiving any payment so made.

51. (1) Where any person who is a national of a state with which the Government of The Bahamas has concluded a consular convention is named as executor in the will of a deceased person disposing of property in The Bahamas, or is otherwise a person to whom a grant of representation to the estate in The Bahamas of a deceased person may be made, then if the Court is satisfied, on the application of a consular officer of the said state, that the said national is not resident in The Bahamas, and if no application for a grant of such representation is made by a person duly authorised by power of attorney to act for him in that behalf, the Court shall make to that officer any such grant of representation to the estate of the deceased as would be made to him if he were so authorised as aforesaid.

Grants to
consular officers

(2) Where any person who is a national of such a state —

- (a) is entitled to any money or other property in The Bahamas forming a part of the estate of a deceased person, or to receive payment in The Bahamas of any money becoming due on the death of a deceased person; or
- (b) is among the persons to whom any money or other property of a deceased person may under any Act, whether passed before or after the commencement of this Act, be paid or delivered without grant of probate or other proof of title,

then if the said national is not resident in The Bahamas, a consular officer of that state shall have the like right and power to receive and give a valid discharge for any such money or property as if he were duly authorised by power of attorney to act for him in that behalf:

Provided that no person shall be authorised or required by this subsection to pay or deliver any money or property to a consular officer if it is within his knowledge that any other person in The Bahamas has been expressly authorised to receive that money or property on behalf of the said national.

(3) Notwithstanding any rule of law conferring immunity or privilege in respect of the official acts and documents of consular officers, a consular officer shall not be entitled to any immunity or privilege in respect of any act done by virtue of powers conferred on him by or under this section or in respect of any document for the time being in his possession relating thereto.

52. In this Part and in the other provisions of this Act relating to probate causes and matters, unless the context otherwise requires, the following expressions shall have the meanings hereby assigned to them respectively —

“administration” includes all letters of administration of the effects of deceased persons, whether with or without a will annexed and whether granted for general, special or limited purposes; and includes Scottish confirmations;

“estate” means real and personal estate, and the expression “real estate” includes —

- (a) chattels real and land in possession, remainder and reversion, and every interest in or over land to which the deceased person was entitled at the time of his death; and
- (b) real estate held on trust or by way of mortgage, whether by way of sale, demise or sub-demise, or of security, but not money to arise under a trust for sale of land nor money secured or charged on land;

“grants” means a grant of probate or administration;

Interpretation for
the purposes of
Part V

“non-contentious or common form probate business” means the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probate and administration through the Court where the contest has terminated, and all business of a non-contentious nature in matters of testacy and intestacy not being proceedings in any action, and also the business of lodging caveats against the grant of probate or administration;

“testamentary cause or matter” includes all causes or matters relating to the grant or revocation of probate or administration;

“trust corporation” means the Public Trustee or a corporation either appointed by the Court in any particular case to be a trustee or authorized by rules under the Public Trustee Act, to act as custodian trustee; Ch 177

“will” includes any testamentary instrument of which probate may be granted.

PART VI SITTINGS OF COURT, MODE OF TRIAL, ADJOURNMENT

53. (1) Sittings of the Court shall be held in the Court House in or at Nassau and in the Court House in or at Freeport, respectively, and in such other places, in any part of The Bahamas, as the Chief Justice may direct by notice signified under the hand of the Registrar and posted at the Court House at Nassau and at such place as it is directed that the Court shall sit. Court House

(2) Unless otherwise directed by the Chief Justice or provided by rules of court, matters filed in the office of the Registrar which is located in Freeport shall be heard by the Court sitting in Freeport and other matters filed in the office of the Registrar in Nassau shall be heard by the Court sitting in Nassau.

54. (1) Sittings of the Court shall commence on the second Wednesday in the month of January and the Court shall sit throughout the legal year — Sittings criminal matters

- (a) for the trial of criminal informations by a jury; and
- (b) for the hearing of appeals in criminal causes and matters,

at such times and in such places as the Chief Justice may direct.

(2) No criminal matter shall lapse by reason of non-completion before commencement of a new legal year.

(3) In this section and in this Act “legal year” means the period commencing the second Wednesday in January in one year and ending the day before the second Wednesday in January the following year.

Sittings civil
actions

55. (1) Subject to rules of court, such number of judges of the Court as may be requisite, having regard to the business to be disposed of shall, so far as is reasonably practicable sit —

- (a) continuously in Nassau; and
- (b) elsewhere in The Bahamas, at such times and in such places as the Chief Justice may direct, for the trial of civil actions.

(2) The Court shall sit for the purpose of hearing appeals in civil causes and matters at such times and in such places as the Chief Justice may direct.

Civil actions
mode of trial

56. Subject to this section, if on the application of any party to an action to be tried in the Court made not later than such time before the trial as may be limited by rules of court, the Court or a judge is satisfied that —

- (a) a charge of fraud against that party; or
- (b) a claim in respect of libel, slander, malicious prosecution or false imprisonment,

is in issue, the action shall be ordered to be tried with a jury unless the Court or judge is of opinion that the trial thereof requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury, but save as aforesaid, any action to be tried in the Court may in the discretion of the Court or judge be ordered to be tried either with or without a jury:

Provided that the provisions of this section shall be without prejudice to the power of the Court or a judge to order, in accordance with rules of court, that different questions of fact arising in any action be tried by different modes of trial, and where any such order is made the provisions of this section requiring trial with a jury in certain cases shall have effect only as respect questions relating to any such charge or claim as aforesaid.

57. Except in cases where it is otherwise expressly provided, a judge may sit in chambers at any time to hear and determine all matters brought before him on summons or motion and it shall be lawful for him to direct that any motion be heard in open court or adjourned into court if in his discretion he considers it expedient that any matter be heard in court.

Sittings in
Chambers.

58. It shall be lawful for a judge whether sitting in court or in chambers from time to time to adjourn the hearing of any case to such time as seems expedient.

Powers as to
adjournment.

PART VII JUDGMENTS

59. By virtue of any writ of *fiери facias* to be sued out of the Supreme Court, the Provost Marshal, or other officer having the execution thereof, shall seize and take any money and any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, belonging to the person against whose effects such writ of *fiери facias* is sued out.

Power of Provost
Marshal to attach
money, cheques
and other securities
by writs of
execution.

60. The Provost Marshal or other officer shall hold any such cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money as a security or securities for the amount by which such writ of *fiери facias* directed to be levied and raised, and may sue in the name of such Provost Marshal or other officer, for the recovery of the sum or sums secured thereby, if and when the time of payment thereof shall have arrived:

Power to hold
securities and sue
for recovery of
amounts secured.

Provided that no Provost Marshal or other officer shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, specialty or other security, unless the party suing out such execution enters into a bond, with two sufficient sureties, for indemnifying him from all costs and expenses to be incurred in the prosecution of such action, or to which he may become liable in consequence thereof, the expense of such bond to be deducted out of any money to be recovered in such action.

Payment to Provost Marshal discharge for amount paid

61. The payment to the Provost Marshal or other officer, by the party liable on any such cheque, bill of exchange, promissory note, bond, specialty, or other security, with or without suit, or the recovery and levying execution against the party so liable, shall discharge such party to the extent of such payment, or of such recovery and levy in execution, as the case may be, from his liability on any such cheque, bill of exchange, promissory note, bond, specialty or other security.

Provost Marshal to pay money recovered in discharged debt and any surplus to be paid to judgment debtor

62. The Provost Marshal or other officer shall pay over to the party suing out such writ any money recovered by him or such part thereof as is sufficient to discharge the amount by such writ directed to be levied and, if after satisfaction of the amount so to be levied, together with the Marshal's poundage and expenses, any surplus remains in the hands of the Provost Marshal or other officer, the same shall be paid to the party against whom such writ has been issued.

Equitable charges in right judgment debt

63. (1) A judgment entered up in the Supreme Court (whether before or after the commencement of this Act) against any person (in this section called a "judgment debtor") shall operate as an equitable charge upon every estate or interest (whether legal or equitable) in all land to or over which the judgment debtor at the date of entry or at any time thereafter is or becomes —

- (a) beneficially entitled; or
- (b) entitled to exercise a power of disposition for his own benefit without the assent of any other person;

and the judgment shall bind:

- (i) the judgment debtor,
- (ii) all persons deriving title under him subsequent to the entry of the judgment, and
- (iii) all persons capable of being bound by a disposition by the judgment debtor made after the entry of the judgment, including the issue of his body and all other persons (if any) whom he might, without the assent of another person, have barred from any remainder, reversion or other interest, in the land.

(2) A charge imposed under subsection (1) shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the debtor by writing under his hand.

(3) The preceding provisions of this section shall apply in relation to a judgment, order, decree or award (however called) of any court or arbitrator (including any foreign court or arbitrator) which is or has become enforceable, as if it were a judgment or order of the Supreme Court as they apply in relation to a judgment or order of the Supreme Court.

(4) A charge imposed by this section shall take priority over all other mortgages or charges affecting the land other than —

- (a) any mortgage or charge registered prior to the date of the entering up of the judgment; or
- (b) any further advance made under the security of a mortgage or charge registered prior to such date which provides for the mortgagee or chargee to make further advances.

(5) For the purposes of subsection (4), “registered” means lodged and accepted for record in the Registry in accordance with the Registration of Records Act.

Ch 187

64. (1) The power of the Court to appoint a receiver by way of equitable execution shall be extended so as to operate in relation to all legal estates and interests in land.

Receivers

(2) The said power shall be in addition to and not in derogation from any power of the Court to appoint a receiver in proceedings for enforcing such a charge.

PART VIII
OFFICES AND OFFICERS OF THE COURT

Registrar

65. (1) The Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission may appoint any person who —

- (a) is a member of the Bar of The Bahamas of at least five years standing; or
- (b) has been for at least five years in possession of such academic and professional qualifications as would qualify him for admission to practise as a counsel and attorney under the provisions of the Legal Profession Act, 1992,

Ch 64

to be the Registrar of the Supreme Court.

(2) The Registrar shall have such jurisdiction, powers and duties as are by this Act or rules of court conferred or imposed upon the Registrar.

Office of
Registrar

66. (1) The office of the Registrar shall be located in Nassau and in Freeport and shall be the Registry of the Court.

(2) The Registry shall be kept open for the transaction of business on every day of the year except Saturdays and Sundays and public holidays, from the hour of nine-thirty o'clock in the morning until the hour of three o'clock in the afternoon, unless the court shall direct that the office hours shall be otherwise than as aforesaid.

(3) Save as may otherwise be provided by rules of court, documents in respect of —

- (a) proceedings in which the majority of the parties thereto reside or have their principal place of business in the northern region;
 - (b) proceedings in which the subject matter of the cause of action is located in the northern region;
- or

(c) proceedings in which the cause of action arose in, or the subject matter has a closer connection with, the northern region, shall be filed in the office located in Freeport.

(4) Proceedings to which subsection (3) does not apply shall be filed in the office located in Nassau.

(5) Documents relating to proceedings instituted by the Crown in the criminal jurisdiction of the Court shall be filed by the Crown in Nassau regardless of the place of residence of the accused to whom the proceedings relate or the place where the offence took place but any such proceedings may be heard in the Court House in or at Freeport having regard to the convenience of the witnesses or other relevant factors.

(6) In this section, a reference to the “northern region” is a reference to the Family Islands of Grand Bahama, the Abacos and the Biminis.

67. (1) The Governor-General acting in accordance with the advice of the Judicial and Legal Service Commission may appoint such persons in possession of such qualifications as are accepted as an academic qualification for admission to practise as counsel and attorney under the provisions of the Legal Profession Act, to be respectively Deputy Registrars of the Supreme Court and Assistant Registrars of the Supreme Court.

Deputy Registrars and Assistant Registrars.

Ch. 64.

(2) The Deputy Registrars and Assistant Registrars, shall have all such powers and perform all such duties as may be prescribed by this Act or by rules of court, and carry out all such functions and transact all such business as the Registrar, with the approval of the Chief Justice, shall require.

68. The Registrar, Deputy Registrars and Assistant Registrars shall be Masters of the Court and as such shall have all such authority and jurisdiction to transact civil business of the Court as may be conferred upon a Master by rules of court.

Master.
6 cf 2008

69. For the purpose of taxation of costs, the Registrar, the Deputy Registrars and the Assistant Registrars shall be taxing masters.

Taxing masters.

Admiralty
marshal.

70. The Governor-General acting in accordance with the advice of the Public Service Commission may appoint a marshal to the Court in its admiralty jurisdiction.

Bailiffs.

71. (1) The Governor-General acting in accordance with the advice of the Public Service Commission may appoint such numbers of bailiffs, marshals and assistant marshals of the Court as may be necessary.

(2) A bailiff, marshal or assistant marshal shall have, in the exercise of his duties and functions, all the powers and privileges of a peace officer and shall perform such duties as the Chief Justice may direct.

Provost Marshal.

72. The Commissioner of Police shall be the Provost Marshal of the Court.

PART IX MISCELLANEOUS

Power to
administer oaths.
Schedule.

73. Without prejudice to the provisions of any other Act or of rules of court, the persons specified in the Schedule shall have power to administer oaths and take solemn declarations or affirmations in lieu of oaths in all matters transacted in court or in chambers or in the office of the Registrar.

Seal of the Court.

9 cf 2006, s 3

74. (1) The Court shall have and use a seal with the inscription “Supreme Court, The Commonwealth of The Bahamas” surrounding the coat-of-arms of The Bahamas.

(2) The seal shall be kept at the office of the Registrar and shall remain in his custody.

(3) All writs and other processes of the Court shall be sealed with the seal of the Court.

Rules
Committee.

75. (1) There shall be established a Rules Committee which shall consist of—

- (a) the Chief Justice, who shall be chairman;
- (b) the Attorney-General or a Counsel and Attorney in the public service designated by him;
- (c) a Justice nominated by the Chief Justice; and

-
- (d) two counsel and attorneys in active practice before the Court appointed by the Chief Justice after consultation with the President of the Bar Association by writing under his hand who shall hold office for such time as may be specified in the appointment.

(2) A quorum of the Rules Committee shall consist of the Chief Justice and any two of the other members of the Committee, one of whom shall be a counsel and attorney in active practice.

76. (1) Subject to the provisions of this section, the Rules Committee may make rules of court for the purpose of giving effect to this Act and for regulating and prescribing the practice and procedure of the Court in all matters whether civil or criminal and whether within its original or appellate jurisdiction and in particular, but without prejudice to the generality of the foregoing —

Rules of Court

- (a) for prescribing fees of Court;
- (b) for regulating any matter relating to the costs of proceedings in the Court;
- (c) prescribing the persons having power to administer any oath or solemn declaration in lieu of an oath in any matter transacted in Court or chambers;
- (d) for regulating and prescribing the procedure and practice to be followed in appeals from any Court, body or person to the Court;
- (e) for prescribing in what cases civil trials in the Court are to be with a jury and in what cases they are to be without a jury;
- (f) 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;
- (g) for regulating or making provision with respect to matters which are regulated or with respect to which provision was made by rules made under the repealed Act, or by any rules or regulations in force immediately before the date of commencement of this Act with respect to the practice and procedure in matrimonial causes and matters, and with respect to applications and proceedings relating to legitimacy declarations;

(h) for regulating the procedure and practice of the Court with respect to probate business.

(2) No rule of court which provides for an expenditure out of public funds or which imposes a new fee of court or which increases or reduces an existing fee of court shall be made without the concurrence of the Minister of Finance but the validity of a rule of court shall not in any proceedings in any court be called into question either by the court or by any party to the proceedings on the ground only that it was a rule to which the concurrence of the Minister of Finance was necessary and that the Minister of Finance did not concur or is not expressed to have concurred in the making thereof.

(3) Rules of court made in pursuance of this section shall be published in the *Gazette* and shall come into operation on publication or on such other date as may be specified in such rules which shall not be subject to the provisions of section 31 of the Interpretation and General Clauses Act.

(4) When in any Act in force before the date of commencement of this Act, a power is conferred upon the Chief Justice to make rules or rules of court, whether with or without the approval of the Governor-General, such power shall on and after that date, be read and construed as a power vested in the Rules Committee to make rules in pursuance of this section.

77. (1) There shall, whenever possible, be provided adequate equipment for recording mechanically the evidence and proceedings in every cause or matter, whether civil or criminal, heard before the Court:

Provided that in any of the following cases, that is to say —

- (a) where the presiding judge and the parties or their counsel and attorneys consider that a recording is unnecessary;
- (b) where the equipment is out of order; or
- (c) where the equipment cannot be operated due to the absence of the operating staff whether such absence is caused by illness or otherwise,

Ch 2

Record of court
proceedings

the presiding judge may order that in the case of paragraph (a), the particular cause or matter be heard or shall proceed, as the case may be, without mechanically recording the evidence therein; and, in the case of either paragraphs (b) or (c), that all causes or matters shall be heard or shall proceed, as the case may be, without mechanically recording the evidence therein until such time as the disability ceases.

(2) Every such recording shall be preserved and filed by the Court in the cause or matter to which it relates and shall constitute the record of the Court in regard to the evidence and proceedings taken and had in that particular cause or matter.

(3) In the following cases and subject to the following conditions the recording of any cause or matter shall be transcribed and such transcription shall also constitute the record of the Court in regard to the evidence and proceedings taken and had in that particular cause or matter —

- (a) in all civil causes or matters when an application therefor is made by motion by any of the parties or their counsel and attorneys prior to the commencement of the hearing of the particular cause of matter;
- (b) in all criminal causes or matters provided that application be made therefor to the presiding judge before the accused person is placed in charge of the jury;
- (c) in all causes or matters on appeal when application is made therefor by any of the parties or their counsel and attorneys either before or after the hearing of the said appeal;
- (d) at the instance and in the discretion of the presiding judge in any cause or matter whatsoever where no application for transcription has been made under paragraphs (a), (b) or (c).

(4) In all cases where the transcription is made under the provisions of this section such transcription shall (subject to the payment of any fee therefor) be continuously supplied to the parties or their counsel and attorneys during the proceedings of the Court as expeditiously as

possible, and the parties or their counsel and attorneys shall (subject to the payment of any fee therefor) have the right to be supplied with the transcription of all proceedings so far as they have gone before any submission or addresses are made at the trial of the particular cause or matter, save that the failure to be so supplied shall not be the ground for an adjournment of the proceedings unless the Court considers it necessary to do so in the interest of justice.

(5) In all cases where a transcription of the evidence is required to be supplied to the parties or their counsel and attorneys under this section (except in any criminal cause or matter where the transcription shall be supplied without charge) the prescribed fees shall be paid in respect of such transcription.

(6) Either the said recording or the said transcription thereof or both such recording and transcription, as the case may be, shall be receivable in evidence notwithstanding any law to the contrary.

(7) The provisions of this section shall be in addition to and not in derogation of the provisions of any law relating to the taking of notes by the presiding judge or the Registrar of the Court.

(8) For the purposes of this section and any other law, a reference to a “transcription” of the evidence or record of the proceedings in the Court includes a reference to a typewritten record of the evidence and proceedings mechanically recorded as in this section provided and includes any notes of evidence, prepared by a person designated by the Registrar by notice published in the *Gazette* to perform the duties of court reporter, and authenticated by that reporter.

SCHEDULE (Section 73)**PERSONS EMPOWERED TO ADMINISTER OATHS**

The Registrar

The Deputy Registrars

The Assistant Registrars

Any clerk in the office of the Registrar designated for the purpose by the Registrar or a Deputy Registrar.

Bailiffs