



J.S. Champion

Resident Commissioner in the New Hebrides

### QUEEN'S REGULATION

TO AMEND the Magistrates' Courts Regulation

MADE BY Her Britannic Majesty's Resident Commissioner in the New Hebrides in pursuance of the powers contained in the New Hebrides Orders. In the name of Her Majesty Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

Citation and commencement

1. This Regulation may be cited as the Magistrates' Courts (Amendment) Regulation 1976 and shall come into operation on the date on which it is published by the Resident Commissioner causing a copy thereof to be exhibited at the public office of the Resident Commissioner.

Amendment of s.2 of principal Regulation

2. Section 2 of the Magistrates' Courts Regulation (hereinafter referred to as "the principal Regulation") is hereby amended -

- (a) by renumbering it as subsection (1);
- (b) by deleting the definition "the Judge";
- (c) by inserting in their appropriate alphabetical position the following new definitions -

"Bailiff" includes any assistant Bailiff or any other person assisting a Bailiff in the performance of his duties;

"Senior Magistrate" means the Senior Magistrate

under section 8;"

- (d) by adding thereafter the following new subsection -

"(2) The expression "Magistrate", "Magistrate's Court" or "Magistrates' Courts" shall unless otherwise specified or the context otherwise requires, include reference to the Senior Magistrate or the Senior Magistrate's Court, as the case may be."

Repeal of  
s.3 of  
principal  
Regulation

3. Section 3 of the principal Regulation is hereby repealed.

Amendment  
of s.4 of  
principal  
Regulation

4. Section 4 of the principal Regulation is hereby amended by repealing subsection (1) and by replacing it by the following new subsection -

"(1) There shall be and are hereby constituted throughout the New Hebrides courts having summary jurisdiction, to be known respectively as the Senior Magistrate's Court and Magistrates' Courts, which shall be subordinate to the High Court and shall be presided over as regards the Senior Magistrate's Court by a Senior Magistrate and as regards the Magistrates' Courts by Magistrates appointed under the provisions of this Regulation, and such courts, subject to the provisions of any other Regulation, shall exercise such jurisdiction as is by this Regulation provided."

Amendment  
of s.5 of  
principal  
Regulation

5. Section 5 of the principal Regulation is hereby amended -

- (a) by renumbering subsections (1) and (2) as subsections (2) and (3) respectively;
- (b) by inserting therein the following new subsection -

"(1) The Senior Magistrate's Court shall exercise jurisdiction throughout the New Hebrides."

Amendment  
of s.8 of  
principal  
Regulation

6. Section 8 of the principal Regulation is hereby amended -

- (a) in subsection (2), by deleting the word "subsection" and replacing it by the word "subsections";
- (b) by renumbering subsections (1) and (2) as subsections (2) and (3) respectively;

(c) by inserting therein the following new subsection -

"(1) the Resident Commissioner, with the approval of the Judge, may by warrant under his hand and seal appoint any fit and proper person to be a Senior Magistrate to hold the Senior Magistrate's Court and to exercise all of the jurisdiction of the Senior Magistrate's Court, and every such person when so appointed shall have and exercise all the powers and jurisdiction conferred upon a Senior Magistrate and the Senior Magistrate's Court by this or any other Regulation."

7. Section 23 of the principal Regulation is hereby repealed and replaced by the following section -

"Civil jurisdiction

23. (1) In civil causes and matters a Magistrate's Court, in addition to any other jurisdiction conferred upon it by any other Regulation or law, shall have jurisdiction within the limits of the district within which it is situated -

(a) in all personal suits, whether arising from contract, or from tort, or from both, where the value of the property, the debt or the damage claimed, whether as balance of account or otherwise is not more than one thousand dollars, or, in the case of the Senior Magistrate's Court, two thousand dollars;

(b) in the case of the Senior Magistrate's Court, to appoint guardians of infants and to make orders for the custody of infants including any ancillary orders for the payment of maintenance or otherwise, and in the case of Magistrate's Courts, to make orders for the payment of maintenance in respect of infants and wives;

(c) to grant in any suit instituted in the Magistrate's Court injunctions or orders to stay waste or alienation or for the detention and preservation of any property the subject of such suit, or to restrain torts or breaches of contracts;

Replacement of s.23 of principal Regulation

(d) in all claims for relief by way of interpleader in respect of property attached in execution of a decree made by any Magistrate other than land:

Provided that jurisdiction conferred by this paragraph shall not, unless the parties consent, be exercisable in respect of property exceeding one thousand dollars in value or, in the case of the Senior Magistrate's Court, two thousand dollars in value;

(e) to enforce by attachment and sale or delivery any order made by the Magistrate's Court;

(f) to commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him, in pursuance of any order or judgment of the Magistrate's Court or the High Court:

Provided that such jurisdiction shall only be exercised where it is proved to the satisfaction of the Magistrate's Court that the person making default either has, or has had since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglects to pay the same:

For the purposes of this paragraph any Magistrate's Court may direct any debt due from any person, in pursuance of any order or judgment of that Court, or of the High Court, to be paid by instalments, and may from time to time vary or rescind such order.

(2) Notwithstanding the provisions of the preceding subsection, no Magistrate's Court shall have jurisdiction -

(a) in suits wherein the title to any right, duty or office is in question; or

(b) in any suit or civil cause or matter in which the title to any land is disputed or the question of the ownership of land arises; or

(c) in any suit between landlord and tenant for possession of any lands or houses claimed under agreement or refused to be delivered up; or

(d) in suits wherein the validity of any will or other testamentary writing or of any bequest or limitation under any will or settlement is in question; or

(e) in suits wherein the legitimacy of any person is in question; or

(f) in suits wherein the validity or dissolution of any marriage is in question; or

(g) in any action for malicious prosecution, defamation, seduction or breach of promise of marriage.

(3) Where in any action the debt or demand consists of a balance not exceeding one thousand dollars, or in the case of an action in the Senior Magistrate's Court two thousand dollars, after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, a Magistrate's Court shall have jurisdiction and power to hear and determine such action within the limits of its jurisdiction and power."

8. The principal Regulation is hereby amended by inserting immediately after section 23 the following five new sections -

"Abandonment of part of claim to give court jurisdiction 23A. (1) Where a plaintiff has a cause of action for more than two thousand dollars or for more than one thousand dollars, as the case may be, in which, if it were for not more than two thousand dollars, the Senior Magistrate's Court would have jurisdiction, and, if it were not for more than one thousand dollars, a Magistrate's Court would have jurisdiction, the

New s.23A to s.23E added to principal Regulation

the plaintiff may abandon the excess, and thereupon the Senior Magistrate's Court or a Magistrate's Court respectively shall have jurisdiction to hear and determine the action, so, however, that the plaintiff shall not recover in the action an amount exceeding two thousand dollars in the Senior Magistrate's Court or one thousand dollars in a Magistrate's Court.

(2) Where a Magistrate's Court has jurisdiction to hear and determine an action by virtue of this section, the judgment of the Court in the action shall be in full discharge of all demands in respect of the cause of action, and entry of the judgment shall be deemed to be made accordingly.

Division  
of causes  
of action

23B. No cause of action shall be split or divided so as to be made the ground of two or more different actions for the purpose of bringing two or more actions in any Magistrate's Court.

Summary  
judgment

23C. (1) Where -

(a) any party appearing or being present in any Magistrate's Court, upon being required so to do by that Court for the purpose of framing issues, refuses without reasonable excuse to be orally examined by the Court or to produce any document then and there in his possession; or

(b) the defendant, in the opinion of the Court, fails, by himself or by his counsel, solicitor or other representative, to disclose any reasonable ground of defence; or

(c) any party being required by an order made by a Magistrate's Court under Rules of Court to produce to that Court any document or to attend at any sitting of that Court, fails without reasonable excuse to obey the same, the Court may pronounce such judgment against him and in such terms as it thinks fit or make such order and impose such terms as to costs, payment into court, giving of security or otherwise as it thinks fit.

(2) Whenever, in the opinion of any Magistrate's Court, the issues are sufficiently established for the immediate determination of the cause, the Court may pronounce judgment forthwith in such terms as it shall think fit.

Summary judgment for part of a claim

23D. Where a claim is for a debt or for liquidated damages only and the defendant -

(a) admits a sum less than the amount claimed; or

(b) in the opinion of the Magistrate's Court fails, by himself or by his counsel, solicitor or other representative, to disclose any reasonable ground of defence with respect to part of the claim; or

(c) has a counterclaim and it appears to the Court that the maximum amount which could be recovered thereunder, if the counterclaim were to be upheld, is less than the amount of the claim,

the Court may, if it thinks fit, enter judgment forthwith for the sum so admitted or for the sum in respect of which no reasonable ground of defence is disclosed or for a sum representing the difference between the amount of the claim and the maximum amount which appears to be recoverable on the counterclaim, as the case may be, with or without costs, and may permit execution to be levied forthwith on such judgment, without prejudice to the hearing and determination of the matters remaining in dispute between the parties.

Proceedings not to be set aside for want of form

23E. No action or other proceedings in any Magistrate's Court shall be treated or considered as invalid or subject to be set aside on account of any verbal or technical error or other defect in form, and any such error or defect may in any such case be corrected by the Court."

Replacement  
of s.26 of  
principal  
Regulation

9. Section 26 of the principal Regulation is hereby repealed and replaced by the following section -

"Criminal  
jurisdiction

26.(1) Subject to the provisions of any other law for the time being in force, the Senior Magistrate's Court shall have jurisdiction to try summarily any criminal offence -

- (a) for which the maximum punishment prescribed by law for such offence does not exceed -

(i) fourteen years' imprisonment; or

(ii) a fine; or

(iii) both such imprisonment and such fine; or

- (b) in respect of which jurisdiction is by any law expressly conferred upon the Senior Magistrate's Court or it is expressly provided that such offence may be tried summarily:

Provided that the maximum punishment which the Senior Magistrate's Court may impose shall not exceed -

(i) a term of imprisonment for five years; or

(ii) a fine of one thousand dollars; or

(iii) both such imprisonment and such fine.

(2) Subject to the provisions of any law for the time being in force, a Magistrate's Court shall have jurisdiction to try summarily any criminal offence -

- (a) for which the maximum punishment prescribed by law for such offence does not exceed -



- (i) imprisonment for a term of one year; or
- (ii) a fine of two hundred dollars; or
- (iii) both such imprisonment and such fine; or

(b) in respect of which jurisdiction is by any law expressly conferred upon a Magistrate's Court or it is expressly provided that such offence may be tried summarily.

(3) Notwithstanding the provisions of the preceding subsections, the Judge in respect of a particular case or class of offence, may by order under his hand and the seal of the High Court invest the Senior Magistrate's Court and any Magistrate's Court with jurisdiction to try an offence which would otherwise be beyond its jurisdiction:

Provided that in no case shall the sentence imposed exceed, in the case of the Senior Magistrate's Court, the maximum punishment specified in the proviso to subsection (1) or, in the case of a Magistrate's Court, the maximum punishment specified in paragraph (a) of subsection (2).

(4) In the case of consecutive sentences imposed by a Magistrate's Court in respect of two or more distinct offences arising out of the same facts it shall not be necessary for such Magistrate's Court to send the offender for trial before the High Court by reason only that the aggregate punishment for the several offences in respect of which such sentences are imposed is in excess of the punishment which it is competent to impose on conviction for a single offence:

Provided that the aggregate punishment imposed in the form of consecutive sentences shall

not exceed twice the amount of the punishment which such Magistrate's Court is competent to impose in respect of one offence in the exercise of its ordinary jurisdiction."

New 28A.  
added to  
principal  
Regulation

10. The principal Regulation is hereby amended by inserting immediately after section 28 the following new section -

"Committal  
of persons  
under 16 to  
care of fit  
person

28A. (1) Where a Magistrate's Court is of the opinion that any person is under the age of sixteen years (hereafter in this section referred to as a "young person") and is in need of care, protection or control, the Court may -

(a) make an order committing him to the care of any fit person, whether a relative or not, who is willing to undertake the care of him, and at the same time or at any subsequent time, on the application of the person to whose care the young person has been committed, make an order that the parent or guardian (if any) of the young person make a contribution towards the maintenance of the young person of such sum as the Court, having regard to the means of such parent or guardian, thinks fit; or

(b) order his parent or guardian to enter into such a recognisance with or without sureties, in such amount as the Court thinks fit, to exercise proper care and guardianship.

(2) Every order and every recognisance entered into pursuant to the provisions of subsection (1) shall, unless some earlier date of termination is ordered by the Court, remain in force until the young person attains the age of eighteen years.

(3) Any fit person to whose care, protection and control any young person has been committed pursuant to the provisions of this section may at any time apply to the Court for variation or

cancellation of the order, and the Court may vary or cancel the order or replace it by such order as may to the Court appear expedient.

(4) Any young person committed to the care of a fit person pursuant to the provisions of this section who absconds therefrom may be arrested by any police officer without warrant and either brought before a Magistrate's Court or summarily returned to the care of such fit person; and in the case of any such young person who is brought before a Magistrate's Court, such Court may order that he be returned to the custody of such fit person or if, having regard to all the circumstances, it appears to such Court advisable so to do, it may order that he be committed to the care of some other fit person.

(5) For the purpose of this section, and without prejudice to the generality of the expression, a person shall be deemed to be in need of care, protection or control, who, in the opinion of the Court, is not receiving such care, protection or control as a good parent or guardian may be expected to give or is beyond the control of his parent or guardian; and the expression "fit person" includes any local authority, religious institution, welfare association or other organisation able and willing to undertake the care, protection or control of persons under the age of eighteen years."

11. Section 44 of the principal Regulation is hereby repealed and replaced by the following, section -

"Monthly lists of criminal cases heard to be sent to the Judge

44. At the end of every month every Magistrate shall send to the Judge in such form as the Judge shall from time to time direct a complete list -

(a) of all criminal cases decided by or brought before such Magistrate during that month, setting out the names, sex and age of each defendant, the offence with which he was charged, such defendant's plea thereto and, if convicted, the date of the conviction and the sentence or order in full, and

- (b) of all civil cases, setting out the names of the parties and the substance of the claim or remedy sought and of the decision or order.

Power of  
Judges to  
revise  
decisions  
of  
Magistrates

44A. (1) Upon receipt of the list of criminal cases referred to in the preceding section, the Judge receiving the same may if he thinks fit call for a copy of the record of any cases included therein and, either without seeing such record or after seeing such record, as he may determine, and either without hearing argument or after hearing argument, as he may determine, may -

- (a) subject to any enactment specifying any penalty, impose, reduce, enhance or alter the nature of any sentence:

Provided that -

- (i) no sentence shall be imposed which the Magistrate's Court could not have imposed; and
  - (ii) no order shall be made under this paragraph to the prejudice of any person unless he has had an opportunity of being heard either personally or by counsel or solicitor in his defence; or
- (b) subject to any enactment requiring a particular order to be made, make, set aside or modify an order in such form as he thinks fit; or
  - (c) set aside the conviction, in which case the person convicted if under detention shall be forthwith set at liberty, or in the case of a fine such fine, if already paid, shall be refunded to the person fined, or if security has been required and given, he shall be freed from such security; or
  - (d) set aside the conviction and convict the accused person on the evidence of any offence of which he has not been specifically acquitted and of which he might have been convicted and sentence him accordingly; or

(e) set aside the conviction and substitute a special finding to the effect that the person convicted was guilty of the act or omission charged, but was insane so as not to be responsible for his action at the time when he did the act or made the omission, and order such person to be confined, until Her Majesty's pleasure shall be known, in a mental hospital, prison or other suitable place of custody; or

(f) set aside the conviction and order a new trial or a preliminary enquiry before the Magistrate who made the conviction in question or before any other Magistrate; or

(g) order further evidence to be taken either generally or on some particular point by the Magistrate who passed the sentence or by any other Magistrate, and order in the meantime any person who shall have been convicted and imprisoned to be liberated on bail or on his own recognizance; and

(h) make such other order as justice may require and give all necessary and consequential directions:

Provided always that when a person convicted shall have appealed against such conviction or any sentence imposed in respect thereof, or shall have applied for a case to be stated by the Magistrate under the provisions in that behalf contained in any other Regulation for the time being in force relating to criminal procedure and of any Rules of Court, the Judge shall not exercise the powers conferred by this section.

(2) Upon receipt of the list of civil cases referred to in the preceding section the Judge receiving the same may, if he thinks fit, call for a copy of the record of any case included therein, and, either without seeing such record or after seeing such record, as he may determine,

and either without hearing argument or after hearing argument, as he may determine, may alter or set aside the order of the Magistrate's Court, and may vary such order as justice may require and give all necessary and consequential directions.

(3) When action upon a list as prescribed in the preceding subsections of this section is complete, or if the Judge shall decide to take no such action, the Judge shall direct that the list be filed; but such direction shall not have the effect of preventing him or his successor from subsequently taking any action prescribed in that subsection if he shall think fit:

Provided that three months after the last day of the month to which such list relates the Judge shall become functus officio in respect of all cases upon the list in respect of which he shall not up till then have taken any action.

(4) Proceedings under this section may be taken by the Judge of his own motion or on the petition of any person interested praying for the exercise of the revisional powers of the High Court, and such powers may be exercised notwithstanding that the relevant monthly list shall not have been transmitted to or received by the Judge.

(5) Nothing in this section contained shall be deemed to authorise the conversion of a finding of acquittal into one of conviction."

Amendment  
of s.53 of  
principal  
Regulation

12. Section 53 of the principal Regulation is hereby amended by deleting the words "such person as may be authorised by the Sheriff to whom the same are directed" and replacing them by the words "the member of the Police Force to whom the same are directed or by any other member of the Police Force".

New s.54A  
added to  
principal  
Regulation

13. The principal Regulation is hereby amended by inserting immediately after section 54 the following new section -

"Duty of  
police to  
obey  
Magistrates

54A. All police officers are hereby authorised and required to obey the warrants, orders and directions of a Magistrate in the exercise of his criminal jurisdiction and, insofar as such obedience may be authorised and required by any Regulation in that behalf, of his civil jurisdiction."

PUBLISHED AND EXHIBITED at the Public Office of the Resident  
Commissioner

28 APR 1976

J. Simon  
Office Superintendent

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