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CHAPTER 8.

NATIVE COURTS.

40 of 1932,
32 of 1933
(Fifth Sched),
9 of 1937,
1 of 1940,
8 of 1949.

An Ordinance to Consolidate and Amend the Law relating to the Constitution of the Native Courts of the Protectorate of Sierra Leone and the Administration of Justice therein.

[1ST JANUARY, 1933.]

Short title
and con-
struction.
Cap. 60.

1. This Ordinance may be cited as the Native Courts Ordinance, and shall be read and construed as one with the Protectorate Ordinance, (hereinafter called the principal Ordinance) or any Ordinance substituted therefor.

Interpreta-
tion.

2. In this Ordinance, unless the context otherwise requires—
“ cause ” includes any action, suit or other original proceeding between plaintiff and defendant, and any criminal proceeding;

“ suit ” includes action and means a civil proceeding commenced by summons or in such other manner as may be prescribed, and does not include any criminal proceeding;

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

“ District Commissioner ” includes Assistant District Commissioner.

Courts.

3. (1) In each district of the Protectorate the following shall be Native Courts of law, established and recognized for the administration of justice, namely—

The Courts of the Native Chiefs (hereinafter referred to as Native Courts);

The Native Appeal Courts.

(2) In each chieftom of the Protectorate a court of law may be established and recognized for the administration of justice, as in section 4 provided, which shall be known as “ The Combined Court.”

Establish-
ment of
Combined
Courts.

4. Any Paramount Chief, in whose chieftom a considerable number of non-natives have settled or are residing, may apply to the District Commissioner to appoint one of such persons to sit as a joint judge with him or some other chief assistant to and nominated by him in civil disputes which may arise between

natives and non-natives. Upon receipt of such application the District Commissioner may, if satisfied that the person mentioned in the application is, by his position and education, likely to command the support of the other non-natives settled or residing in the said chiefdom, and subject to confirmation by the Governor, appoint such person to sit as joint judge as aforesaid for the period of one year from the date of his appointment. Every such appointment may be cancelled at any time by the Governor, and every such appointment and cancellation shall be notified in the *Gazette*.

5. The Native Courts and the Combined Courts shall administer justice in accordance with native law and custom so far as the same is not repugnant to natural justice, equity and good conscience or incompatible, either directly or indirectly, with any Ordinance applying to the Protectorate, but subject always to the provisions of this Ordinance.

Customary law to be administered in Native Courts.

6. No barrister and solicitor or other person shall be heard or allowed to appear on behalf of the plaintiff, prosecutor or defendant in any cause or matter before a Native Court or a Combined Court.

No legal or other representation before Native or Combined Courts.

7. The Native Courts shall consist of the Native Courts as now existing according to native law and custom and such other Native Courts as may be established under this Ordinance; and such Courts shall have jurisdiction according to native law and custom—

Constitution and jurisdiction of Native Courts.

(1) to administer the estates of deceased persons, so far as they are situated within the jurisdiction of the Native Courts, where such deceased persons are natives; and

(2) to hear and determine—

(a) all civil cases triable by native law arising exclusively between natives, other than a case between two or more Paramount Chiefs or Tribal Authorities involving a question of title to land, or a case in which a debt owing to him in connection with his trade is claimed by the holder of any trading licence;

(b) all criminal cases in which the accused and the person who is, or was, primarily affected by the alleged offence are both natives other than—

(i) cases of murder, manslaughter, rape, pretended witchcraft, person raiding, dealing in persons, cannibalism, robbery with violence, inflicting grievous bodily harm; and

(ii) matters or offences relating to unlawful societies, such as the Human Leopard and Alligator Societies; and

(iii) cases arising out of faction or tribal fights; and

(iv) matters made offences under the provisions of the principal Ordinance or any Ordinance substituted for the same; and

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(v) Offences under the Personation and Uniforms Ordinance;

(c) any cause or matter arising out of the provisions of any Ordinance which the Native Courts may be authorised to enforce by an Order in Council under section 11:

Provided that such Courts shall in no case inflict punishment involving death or mutilation or grievous bodily harm or imprisonment, with or without hard labour, for any period exceeding six months or a fine exceeding ten pounds in amount or value:

Provided also that the infliction of any unlawful punishment by any such Court shall, in addition to any legal consequences, render the Chief or the president and members constituting the same liable, if the Governor so order, to deprivation of the criminal jurisdiction hereby conferred upon them.

Provincial
Com-
mis-
sioner may
appoint
President.

8. A Provincial Commissioner may from time to time appoint a President and Vice President of a Native Court.

Provincial
Com-
mis-
sioner may
suspend or
dismiss a
court
member.

9. A Provincial Commissioner may dismiss or suspend any member of a Native Court who shall appear to have abused his power or to be unworthy or incapable of exercising the same justly, or for other sufficient reason. On such dismissal or for the period of his suspension the member shall be disqualified from exercising any powers of jurisdiction, unless and until he be expressly reinstated by the Provincial Commissioner.

Sessions of
Native
Courts.

10. A Native Court shall hold sessions at such times and places as the Tribal Authority of the Chiefdom or Chiefdoms consider necessary for the convenient and speedy despatch of the business of the Court:

Provided that the Provincial Commissioner may direct sessions to be held at such times and places as he shall think fit.

11. The Governor in Council may by order confer upon all or any Native Courts jurisdiction to enforce within the local limits of their jurisdiction all or any of the provisions of any Ordinance specified in such order and to impose penalties on persons subject to the jurisdiction of such Courts who offend against such provisions, subject to such restrictions, if any, as may be specified in the order.

Governor in Council may empower a Native Court to enforce penalties under any Ordinance.

12. Where in any chiefdom there is existing and exercising jurisdiction according to native law and custom a Native Court over which a section chief or other member of the Tribal Authority (not being the Paramount Chief) habitually presides, such Native Court shall be subordinate in its jurisdiction to the Chiefdom Court; and any native aggrieved by any order or decision of such subordinate Court who wishes to appeal may appeal to the Chiefdom Court.

Appeals from subordinate native courts within a chiefdom.

13. The Governor may by order direct that any subordinate Court or Courts in a Chiefdom shall cease to exercise jurisdiction and such subordinate Court or Courts shall thereupon cease to exercise jurisdiction.

Power to suppress minor Courts.

14. The Governor may, at the request of the Tribal Authorities of two or more Chiefdoms who desire to be served by a joint Native Court of Appeal, establish by Order a Group Native Appeal Court for these Chiefdoms; whereupon any native of these Chiefdoms aggrieved by any order or decision of his Paramount Chief's Court may, if he wishes to appeal, appeal to the Group Native Appeal Court so established.

Establishment of Group Native Appeal Courts.

15. A Group Native Appeal Court shall consist of the Paramount Chief, or a person deputed by him, and one or more representatives of each Chiefdom of the Group:

Constitution of Group Native Appeal Courts.

Provided that the Paramount Chief and representative of the Chiefdom from which an appeal lies shall not adjudicate upon that particular appeal.

16. At each session of a Group Native Appeal Court the Paramount Chief, of those constituting the Court, who has held office as Paramount Chief for the longest period of time, or such one of their number as the members of the Court shall select, shall preside.

President of Group Native Appeal Court.

17. A Group Native Appeal Court shall have the same jurisdiction and powers as are exercised according to native law

Jurisdiction and powers.

and custom and under this Ordinance by Native Courts generally; and shall be subject to the same control by Provincial Commissioners and District Commissioners; but they may, in hearing appeals—

(a) after re-hearing the whole case or not, make any such order or pass any such sentence as the Chiefdom Court of first instance could have made or passed in such cause or matter;

(b) order any such cause or matter to be re-heard before the Chiefdom Court of first instance or any other Chiefdom Court; or

(c) refer the cause or matter to the District Commissioner.

Sessions of
Group Native
Appeal
Court.

18. A Group Native Appeal Court shall hold sessions at such times and places as the tribal authorities of the Group consider necessary for the speedy despatch of the business of the Court;

Provided that the Provincial Commissioner may direct sessions to be held at such times and places as he shall think fit.

Compen-
sation to
aggrieved
persons.

19. A Native Court may direct any fine, or such part thereof as it shall deem fit, to be paid to the person injured or aggrieved by the act or omission in respect of which such fine has been imposed, on condition that such person, if he shall accept the same, shall not have or maintain any suit for the recovery of damages for the loss or injury sustained by him by reason of such act or omission.

Contempt of
Court.

20. Any person subject to the jurisdiction of a Native Court who shall omit to produce or deliver up a document on the lawful order of such court, or who shall refuse to answer any question lawfully asked by the Court, or to sign any statement lawfully required by the Court, or who intentionally insults the Court or any member thereof, or who intentionally interrupts the proceedings thereof at any stage, shall be guilty of a contempt of court and shall be liable to a fine not exceeding ten pounds, and in default of payment to imprisonment for a period not exceeding one month.

Service of
sentences.

21. Every sentence of imprisonment exceeding fourteen days inflicted by any Native Court shall be served in a district prison.

Procedure in
regard to
sentences to
be served in
district
prison.

22. (1) Whenever a native is sentenced by any such Court to a period of imprisonment exceeding fourteen days, the Paramount Chief or president of the Chiefdom Court shall cause such native to be conveyed without delay to the District Commis-

sioner, and shall transmit to the District Commissioner a statement setting forth the offence of which such native was convicted, the date of his conviction, the sentence inflicted and the reasons for the measure of such sentence.

(2) Such statement shall be deemed to operate as an appeal to the District Commissioner, and it shall be lawful for him to diminish the period of imprisonment, or substitute a fine therefor, or quash the conviction.

Automatic appeal to District Commissioner.

(3) If such sentence is, under the last preceding sub-section, wholly or in part confirmed, the District Commissioner shall thereupon by warrant under his hand commit such native to prison for such period as he shall determine, with or without hard labour as the case may be:

Committal on confirmation of sentence.

Provided that such period of imprisonment shall not exceed six months from the date of the sentence by the Native Court.

(4) Any subordinate chief or president of a subordinate court exercising jurisdiction and failing to notify the Paramount Chief or the President of the Chiefdom Court of the infliction of a sentence of imprisonment exceeding fourteen days, and any Paramount Chief or President of a Chiefdom Court failing to cause a prisoner so sentenced to be conveyed without delay to the District Commissioner, shall be guilty of an offence and liable on conviction thereof in the Magistrate's Court to a fine not exceeding ten pounds.

Offences and penalties.

(5) The Governor may from time to time by order—

Power to regulate by Governor's order.

(a) provide for the regulation of all matters dealt with in the last three preceding sub-sections; and

(b) prescribe what payment, if any, shall be made by a Paramount Chief or Tribal Authority towards meeting the expenses of keeping such native prisoners in a district prison.

23. The Combined Courts, constituted as provided in section 4, shall have jurisdiction to hear and determine—

Jurisdiction of Combined Courts.

(i) all civil cases between natives and non-natives where the subject matter actually in dispute does not exceed five pounds in value, other than cases involving a question of title to land, or rent or settlers' fees:

Provided that a Combined Court shall not have jurisdiction to give judgment for the recovery of a debt against a native, unless it is proved that the debt was properly incurred with the knowledge and approval of the family of the debtor, or of the chief or sub-chief of the town or place in which the debt was incurred;

(ii) all cases between natives and non-natives arising out of common assault, or the use of abusive language, or any riotous, indecent, disorderly or insulting behaviour, which can be adequately dealt with by compensation not exceeding five pounds.

Effect of unanimous judgment of Combined Courts.

24. (1) The judgment of a Combined Court shall, if unanimous, be binding on all parties subject to the provisions of section 25 (2) and section 27 (2).

Where judgment not unanimous.

(2) If such judgment is not unanimous, the Paramount Chief and the joint judge shall repay to the parties the amount of fees paid (except service fees and any fees payable to the Chief for providing the court room and maintaining order therein) and the trial shall have no effect, the parties being left to obtain redress in the Magistrate's Court or in any other Court having jurisdiction to entertain the dispute.

Enforcement of summonses, judgments and orders of Combined Courts.

25. (1) Any person who, being summoned as defendant or witness, fails to appear before a Combined Court, or any party who neglects or refuses to comply with any order or judgment of the Court, shall, on complaint made to the Magistrate, be called upon by such Magistrate to show cause why he should not be fined, and if the Magistrate is satisfied that such person had no reasonable excuse for his neglect or refusal as aforesaid, he may fine such person a sum not exceeding ten pounds which shall be recoverable in the manner provided by sections 153 to 161 of the Criminal Procedure Ordinance.

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(2) When a person is called upon to show cause as aforesaid with respect to an order or judgment of a Combined Court the Magistrate may, on the application of such person, re-hear the case and uphold, vary or set aside such judgment:

Provided that such person shall first pay into the Magistrate's Court such sum as the Court shall determine. Any sum so paid in shall be returned to the depositor wholly or in part, according as the decision of the Court is wholly or partly in his favour; but if the Court decides to fine such person, such sum, or a sufficient part thereof, shall be retained to satisfy the fine inflicted.

(3) The Court may award the whole or any part of any fine inflicted as aforesaid to the Combined Court, or to the party at whose instance the defaulter was summoned before him or, to both; and such award shall, *pro tanto*, satisfy the claim of such party for debt or damages or of the Combined Court for unpaid fees.

(4) In discharging any duty under this section the Magistrate may summon witnesses, and shall examine them or cause them to be examined in open court.

26. The Governor may by order direct that any Native Court or Combined Court shall keep a minute book in which shall be entered the date and place of sitting, the names of the Chief or President and members of the Court present, the nature of the suit or charge, the amount of fees or costs, the judgment given or sentence imposed by the Court in each case with the amount of such judgment and costs or of any fine and costs; and the Chief or President of the Court, by whom the said judgment shall have been given or fine imposed, shall sign or make his mark at the foot of the sheet, in which such judgment shall have been entered, and the clerk, by whom the case shall have been recorded, shall sign his name as clerk next underneath the signature or mark of the Chief or President of the Court. In such book shall also be entered any notes of evidence or other matter or thing which the Court may think fit and necessary to be entered therein.

Minute book.

27. (1) Any judgment given by a Native Court, or a Combined Court, in any cause or matter in excess of their respective jurisdictions under the provisions of this Ordinance, shall be void and of no effect.

Judgments in excess of jurisdiction void.

(2) The District Commissioner shall at all times have access to the Native Courts and Combined Courts of his District, and on the application of any party concerned or of his own motion may—

Powers of District Commissioner to revise decisions of Native and Combined Courts.

(a) suspend, reduce or otherwise modify any sentence or decision of any such Court;

(b) transfer any cause or matter, either before trial or at any stage of the proceedings, from such Court to the Magistrate's Court;

(c) set aside the conviction and sentence, or judgment or other order of such Court and order any case to be retried before the Magistrate's Court.

(3) The District Commissioner may also, at any time, direct that the records of any Native Court or Combined Court within his District shall be transmitted to him, and such records shall be transmitted accordingly, and the District Commissioner may thereupon exercise any of the powers specified in sub-section (2).

Power of District Commissioner to call for records.

Ordinary process in Native Courts and Combined Courts.

28. (1) The ordinary process in all cases in the Native Courts and Combined Courts shall be an oral summons conveyed to the defendant or witness required to attend by a recognised messenger of the Chief presiding over the Court:

Provided that the Governor in Council may prescribe written process in all or any such Courts and in all or any cases before them under the powers conferred upon him by section 32.

Refusal to obey.

(2) In any case before the Native Courts where a defendant or witness being a native refuses to obey a summons to attend he may be arrested and brought before any Native Court having jurisdiction over him, and such Court may impose upon him a fine not exceeding two pounds or in default imprisonment not exceeding fourteen days.

Non-native witness.

(3) If the witness be a non-native the summons or warrant to compel his attendance shall issue out of the Magistrate's Court and the Magistrate is hereby empowered, if he considers the case to be a proper one for such action, to issue such summons accordingly.

Defendant out of jurisdiction.

29. (1) A defendant who has left the jurisdiction shall not be summoned or compelled to attend before a Native Court, or summoned to attend before a Combined Court, unless the alleged offence was committed or the alleged cause of action arose before he left the jurisdiction.

(2) In any such case the summons or warrant to require or compel his attendance shall issue out of the Magistrate's Court, and the Magistrate is hereby empowered, if he considers the case to be a proper one for such action, to issue such summons or warrant accordingly, and the same shall be as valid and effectual for all purposes as if it related to a case before the Magistrate:

Provided that a summons or warrant issued as last aforesaid shall require the attendance of the defendant before the Native Court, or the Combined Court, as the case may be, instead of before the Magistrate's Court, unless, in the case of a warrant, the Magistrate thinks fit to direct that the defendant shall be brought before him in the first instance and then taken before the Native Court:

Provided also that no warrant shall issue to compel the attendance of a defendant before a Combined Court.

Witness out of jurisdiction.

30. In like manner the Magistrate's Court may come to the assistance of a Native Court or Combined Court and issue a summons or, in a criminal case before a Native Court, a warrant

to require or compel the attendance of a witness without the jurisdiction of the Court desiring his attendance:

Provided that the Magistrate shall satisfy himself that the case is a proper one for such action on his part before he issues such summons or warrant:

Provided also that he may require the deposit of a sum of money sufficient, in his opinion, to cover the witness's travelling expenses as a condition precedent to the issue of any summons or warrant under this section.

31. For the purposes of service and execution all such summonses and warrants as last aforesaid shall be deemed to issue out of the Magistrate's Court.

Service and execution of process in aid of Native Courts and Combined Courts.

32. (1) The Governor in Council may make rules with respect to the following matters—

Power of Governor in Council to make rules.

(a) the fees to be charged in the Native Courts and Combined Courts;

(b) the disposal and application of fines and fees inflicted or received by the said Courts;

(c) the rendition to a Provincial Commissioner or District Commissioner of returns of cases tried by the said Courts;

(d) generally for regulating the practice and procedure of the said Courts and for carrying into effect the provisions of this Ordinance;

(e) prescribing the powers of the Native Courts with regard to the imposition of corporal punishment and regulating the administration of the same, and providing for the detention where necessary of natives sentenced to corporal punishment pending the confirmation of the sentence, or pending appeal.

(2) Such rules may apply generally to the whole of the Protectorate, or to certain specified Courts therein, or to Courts within defined areas thereof.

(3) Unless and until such rules are made the fees chargeable in the said Courts immediately before the commencement of this Ordinance shall continue to be charged and paid therein.

33. Any clerk or member of any Native Court or Combined Court who—

Misconduct of clerk or member of such Courts.

(a) shall knowingly render a false return of the cases tried by such Court; or

(b) shall take or be a party to the taking of any fee other than those prescribed by such rules;

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty pounds or to imprisonment, with or without hard labour, for a period not exceeding six months, or to both such fine and imprisonment.

Adjudication
without
authority.

34. Any person who shall exercise or attempt to exercise judicial powers within the area of the jurisdiction of a Native Court, except in accordance with the provisions of any Ordinance or under native law and custom, and members of any subordinate Court continuing to exercise judicial powers after suppression, shall be liable on conviction before a Magistrate's Court to imprisonment for a period not exceeding six months or to a fine not exceeding ten pounds.

Power of
District Com-
missioner to
transfer
causes to a
Magistrate's
Court.

35. Where any cause or matter within the jurisdiction of a Native Court or a Combined Court—

(a) is refused hearing or determination by such Court; or

(b) is unlikely in the opinion of the District Commissioner to receive a fair and impartial trial in such Court;

the District Commissioner may order that the cause or matter shall be transferred to the Magistrate's Court established in the district in which the Native Court or Combined Court exercises jurisdiction and such cause or matter shall thereupon be tried and determined or otherwise dealt with in such Magistrate's Court as if it had been originally within the jurisdiction thereof.