

# JUDICIARY ORDINANCE 1921-1938.<sup>(1)</sup>

## An Ordinance to establish Courts of Law in the Territory of New Guinea.

**B**E it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *New Guinea Act 1920*, as follows:—

1. This Ordinance may be cited as the *Judiciary Ordinance 1921-1938*.<sup>(1)</sup>

Short title.  
Amended by  
No. 3 of 1934  
s. 50.

2. This Ordinance shall commence on a day to be fixed by the Minister by notice in the *Gazette*.<sup>(1)</sup>

Commencement.

3. In this Ordinance, unless the contrary intention appears—

Interpretation.

“Appeal” includes any proceeding to review or call in question the proceedings, decision, or jurisdiction of any Court or Judge;

“Cause” includes any suit, and also includes criminal proceedings;

“Judgment” includes any judgment, decree, order, or sentence;

(1) The *Judiciary Ordinance 1921-1938* comprises the *Judiciary Ordinance 1921*, as amended by the other Ordinances referred to in the following Table:—

TABLE.  
PART I.—ORDINANCES MADE BY THE GOVERNOR-GENERAL IN COUNCIL.

Short title, number and year.	Date on which made by Governor-General in Council.	Date on which published in <i>Commonwealth Gazette</i> .	Date on which took effect.
<i>Judiciary Ordinance</i> 1921 (No. 3 of 1921)	6.5.1921	6.5.1921	9.5.1921 ( <i>Cwlth. Gaz.</i> of 6.5.1921)
<i>Judiciary Ordinance</i> 1922 (No. 11 of 1922)	22.3.1922	24.3.1922	24.3.1922 ( <i>Cwlth. Gaz.</i> of 24.3.1922)
<i>Judiciary Ordinance</i> 1922 (No. 2) (No. 22 of 1922)	5.7.1922	7.7.1922	7.7.1922 ( <i>Cwlth. Gaz.</i> of 7.7.1922)
<i>Judiciary Ordinance</i> 1923 (No. 18 of 1923)	6.4.1923	12.4.1923	12.4.1923 ( <i>Cwlth. Gaz.</i> of 12.4.1923)
<i>District Courts Ordinance</i> 1924 (No. 4 of 1924)	22.1.1924	24.1.1924	1.6.1924 ( <i>N.G. Gaz.</i> of 15.5.1924)
<i>Judiciary Ordinance</i> 1925 (No. 41 of 1925)	19.8.1925	27.8.1925	27.8.1925 ( <i>Cwlth. Gaz.</i> of 27.8.1925)
<i>Judiciary Ordinance</i> 1926 (No. 11 of 1926)	6.5.1926	13.5.1926	13.5.1926 ( <i>Cwlth. Gaz.</i> of 13.5.1926)
<i>Judiciary Ordinance</i> 1927 (No. 8 of 1927)	2.3.1927	3.3.1927	27.8.1925 (Sec. 2, <i>Judiciary Ordinance 1927</i> )
<i>Judiciary Ordinance</i> 1928 (No. 12 of 1928)	28.5.1928	31.5.1928	31.5.1928 ( <i>Cwlth. Gaz.</i> of 31.5.1928)
<i>Judiciary Ordinance</i> (No. 2) 1928 (No. 16 of 1928)	26.7.1928	3.8.1928	3.8.1928 ( <i>Cwlth. Gaz.</i> of 3.8.1928)
<i>Judiciary Ordinance</i> (No. 3) 1928 (No. 29 of 1928)	27.11.1928	29.11.1928	29.11.1928 ( <i>Cwlth. Gaz.</i> of 29.11.1928)
<i>Judiciary Ordinance</i> 1931 (No. 5 of 1931)	25.3.1931	1.4.1931	1.4.1931 ( <i>Cwlth. Gaz.</i> of 1.4.1931)
<i>Judiciary Ordinance</i> 1932 (No. 23 of 1932)	7.12.1932	8.12.1932	8.12.1932 ( <i>Cwlth. Gaz.</i> of 8.12.1932)

[Footnote continued on next page.]

## COURTS—

“Matter” includes any proceeding in a Court, whether between parties or not, and also any incidental proceeding in a cause or matter;

“Suit” includes any action or original proceeding between parties;

“The Chief Judge” includes any Judge upon whom the powers and duties of the Chief Judge devolve for the time being.

Courts of the Territory constituted by German law and by military occupant to cease to exercise jurisdiction.

4. All Courts having jurisdiction, power and authority in and in relation to the Territory created or constituted by any act, statute, law, or ordinance of the German Empire or of any German State or by any law, ordinance, regulation, rule, order, proclamation, or other legislative measures enacted, issued or made in the name of the German Emperor or the German Government by the competent authority for the time being or by any law, ordinance, proclamation or other legislative act made, issued, or done by the authority for the time being administering the Territory during British military occupation shall, subject to this or any other Ordinance, cease at the commencement of this Ordinance to have or exercise any jurisdiction, power or authority in or in relation to the Territory; and the Courts in and by this Ordinance constituted or appointed shall be the Courts that shall have and exercise jurisdiction, power and authority, as hereafter defined, in or in relation to the Territory.

Courts to apply previously existing law for certain purposes.

5. The Courts in and by this Ordinance constituted and appointed shall have jurisdiction, power and authority to apply and give effect to the law that prior to the commencement of the *Laws Repeal and Adopting Ordinance 1921*<sup>(2)</sup> was in force in the Territory, for the purpose of deciding, settling, or dealing with any right, title, status, obligation, liability, remedy, claim, demand, action, proceeding, or matter vested, contingent, granted, given, made, accrued, incurred, pending, or arising under the said law.

(1)—continued.

### PART II.—ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Governor-General in Council.	Date on which came into operation.
<i>Judiciary Ordinance 1934</i> (No. 2 of 1934)	5.2.1934	15.8.1934	5.2.1934 ( <i>Laws of T.N.G.</i> , Vol. XIII, p. 4.)
<i>Judiciary Ordinance 1935</i> (No. 35 of 1935)	31.7.1935	15.2.1936	31.7.1935 ( <i>Laws of T.N.G.</i> , Vol. XIII, p. 336)
<i>Judiciary Ordinance 1936</i> (No. 13 of 1936)	26.2.1936	15.6.1936	26.2.1936 ( <i>Laws of T.N.G.</i> , Vol. XIII, p. 397)
<i>Judiciary Ordinance 1938</i> (No. 2 of 1938)	10.2.1938	14.2.1938	10.2.1938 ( <i>Laws of T.N.G.</i> , Vol. XIV., p. 111)

(2) Now the *Laws Repeal and Adopting Ordinance 1921-1939*.

Judiciary Ordinance 1921-1938.

6. The judicial power of the Territory shall be vested in a Supreme Court, District Courts, and such other courts as are created by or established under any law of the Territory.

Judicial power and Courts. Amended by No. 2 of 1934, ss. 2 and 3.

7.—(1.) There shall be within the Territory a Court called "The Supreme Court of the Territory of New Guinea",<sup>(3)</sup> which Court shall be a court of record and shall possess such civil and criminal jurisdiction as is conferred by this Ordinance or by any other law of the Territory.

Establishment of the Supreme Court.

Section 7 substituted by No. 2 of 1934, s. 4.

(2.) The Central Court established by the *Judiciary Ordinance* 1921 shall be deemed to have become the Supreme Court.

7A.—(1.) References in any enactment or document to the Central Court or to a Judge or an officer thereof, shall be read and construed respectively as references to the Supreme Court or to a Judge or an officer thereof; and any act done, or proceedings taken, in respect of any cause or matter whatsoever in the Central Court, shall be deemed to have been done or taken in the Supreme Court.

References to Central Court in enactments, &c.

Section 7A inserted by No. 2 of 1934, s. 4.

(2.) Every officer and every barrister and solicitor of the Central Court shall be deemed respectively to be an officer or barrister and solicitor of the Supreme Court.

(3.) Every rule of court or order made, commission issued, direction given, or act done, by the Central Court or a Judge or an officer thereof, shall be deemed to have been made, issued, given, or done by the Supreme Court or a Judge or an officer thereof; and all seals, stamps, registers, rolls, and other records of the Central Court shall be deemed to be seals, stamps, registers, rolls, or records of the Supreme Court.

8.—(1.) The Supreme Court shall consist of a Judge appointed and designated as the Chief Judge<sup>(4)</sup> of the Territory, and so many other Judges<sup>(4)</sup> as the Governor-General appoints.<sup>(4)</sup>

Constitution of the Supreme Court.

Section 8 substituted by No. 2 of 1934, s. 5.

(2.) The Supreme Court shall be constituted by a Judge of the Territory sitting as the Supreme Court.

8AA. In the event of a vacancy in the office of Chief Judge or in case of the illness, suspension or absence on leave from the Territory of the Chief Judge, the next senior Judge present in the Territory shall have and may exercise and perform all the powers and functions of the Chief Judge.

Vacancy in office or absence of Chief Judge.

Inserted by No. 29 of 1928, s. 2; amended by No. 2 of 1934, s. 6.

Section 8A inserted by No. 41 of 1925, s. 2; amended by No. 11 of 1926, s. 2, No. 8 of 1927, s. 3, No. 16 of 1928, s. 2, No. 29 of 1928, s. 3, and No. 2 of 1934, s. 2; repealed by No. 13 of 1936, s. 2.

\* \* \* \* \*

(3) (a) *Per Isaacs J. in Mainka v. The Custodian of Expropriated Property* (1924) 34 C.L.R. 297 at p. 301; 31 A.L.R. 1 at p. 2: "The Central Court is a Federal Court". This opinion of Isaacs J. was considered in *Porter v. The King*; *Ex parte Yee* (1926) 37 C.L.R. 432 at pp. 442-3 and p. 450; 32 A.L.R. 144 at pp. 148 and 150 and *Frost v. Stevenson* (1937) 58 C.L.R. 528 at pp. 589-590; 43 A.L.R. 533 at 555; 11 A.L.J. 205. (By Section 7 (2) of the *Judiciary Ordinance* 1921-1934, inserted by Section 4 of the *Judiciary Ordinance* 1934, the "Central Court" became the "Supreme Court.") (b) Held, by the High Court, that the Central Court is not a Federal Court within the meaning of Section 73 of the *Constitution*: *Edie Creek Proprietary Limited v. Symes* (1929) 43 C.L.R. 53; 3 A.L.J. 274. (This case does not refer to *Mainka v. The Custodian of Expropriated Property*, *supra*, and is itself not referred to in *Frost v. Stevenson*, *supra*).

(4) See footnote (4) printed on p. 610.

## COURTS—

Judges.  
Section 8B  
inserted by  
No. 2 of 1934,  
s. 7.

**8B.**—(1.) The Judges<sup>(4)</sup> of the Supreme Court shall be appointed by the Governor-General.

(2.) The Judges of the Central Court holding office at the commencement of the *Judiciary Ordinance* 1934 shall be deemed to have been appointed Judges of the Supreme Court in accordance with the provisions of the last preceding sub-section.

(3.) A Judge of the Supreme Court, other than a Judge referred to in the last preceding sub-section, shall hold office until he attains the age of sixty-five years, unless he is sooner removed from office by the Governor-General on the ground of proved misbehaviour or incapacity.

(4.) A person shall not be appointed a Judge of the Supreme Court unless at the time of his appointment he is a barrister or solicitor, or both, of the High Court of Australia or of the Supreme Court of a State of the Commonwealth or of the Supreme Court of the Territory, of not less than ten years' standing, and has for a period of not less than three years practised as a barrister or solicitor, or both.

(5.) The remuneration of a Judge of the Supreme Court shall not be diminished during his tenure of office.

Power to  
appoint Acting  
Judge.

Section 8C  
inserted by  
No. 2 of 1934,  
s. 7.

**8C.**—(1.) In the case of the illness or absence on leave of a Judge, the Governor-General may appoint any person qualified to be a Judge, to be an Acting Judge<sup>(4)</sup> for the period during which the Judge is ill or absent on leave.

(2.) An Acting Judge shall have the jurisdiction and powers of, and may exercise all the authorities which are vested in or may be exercised by, a Judge.

Salary in lieu  
of leave.

inserted by  
No. 2 of 1938,  
s. 2.

**8D.** Where a Judge dies, retires, or is retired, while he is on leave of absence, the Governor-General may approve of the payment of salary in lieu of the leave of absence for the residue of the period for which it was granted.

Principal seat  
of the Supreme  
Court and  
Sittings.

Sub-section (1.)  
amended by  
No. 2 of 1934,  
s. 2.

**9.**—(1.) The Principal Seat of the Supreme Court shall be at Rabaul, in the Territory, and the offices of the Court shall be there situated.

(4) By two Commissions dated 18th April, 1921, and published in *N.G. Gaz.* of 9th May, 1921, the Governor-General appointed a Chief Judge and a Judge of the Central Court. By Order dated 10th September, 1924, and published in *N.G. Gaz.* of 31st October, 1924, the Governor-General prescribed that there should be only one judge of the Central Court, and terminated the appointment of the Judge thereof. By order dated 29th February, 1928, and published in *N.G. Gaz.* of 2nd April, 1928, the Governor-General prescribed that there should be two judges of the Supreme Court and appointed a Judge to assist the Chief Judge. The Chief Judge having retired, the Governor-General appointed the Judge to be Chief Judge as from 1st April, 1933, by Commission dated 22nd April, 1933 and published in *N.G. Gaz.* of 30th June, 1933. The number of judges was again increased to two on the appointment by the Governor-General of a Judge by Commission dated 28th June, 1939 and published in *N.G. Gaz.* of 22nd July, 1939. By Commission dated 28th October, 1940 and published in *N.G. Gaz.* of 16th December, 1940, the Governor-General appointed the Judge to be Acting Chief Judge as from noon on 26th October, 1940, and during the absence on leave for war service of the Chief Judge. By Commission dated 15th October, 1941 and published in *N.G. Gaz.* of 31st October, 1941, the Governor-General appointed an Acting Judge as on and from 18th October, 1941 and during the absence on leave of the Acting Chief Judge. Accordingly as at the cessation of civil administration in 1942, there were a Chief Judge and an acting Chief Judge, both of whom were on leave, and an Acting Judge of the Supreme Court.

*Judiciary Ordinance 1921-1938.*

(2.) Sittings of the Supreme Court shall be held at the Principal Seat of the Court from time to time as is required, and at places other than the Principal Seat of the Court at such times as the Administrator, by notice in the *New Guinea Gazette*, appoints:

Sub-section (2.) amended by No. 2 of 1934, s. 2; substituted by No. 35 of 1935, s. 2.

Provided that if from any cause a sitting of the Court is not held at any place on the day appointed by the Administrator for the purpose, it may be held at that place on any subsequent day.

(3.) Notwithstanding the provisions of this section, the Supreme Court may, at any stage of the trial of any cause, direct that the trial shall be continued at the place and time specified in the order, and may from time to time vary the order.

Sub-section (3) amended by No. 2 of 1934, s. 2; substituted by No. 35 of 1935, s. 2.

10. A Judge of the Supreme Court shall have the powers and authority of a Judge of the Supreme Court of Queensland in the administration of justice within the Territory.

Powers and authority of Judge of the Supreme Court.

Amended by No. 2 of 1934, s. 2.

11. The Supreme Court in the administration of the law shall have the like jurisdiction, power and authority as the Supreme Court of Queensland or any Judge thereof has in the administration of the law of Queensland. The Supreme Court shall have cognizance of all civil pleas, and shall have jurisdiction within the Territory to hear and determine all actions whatsoever, real personal and mixed, as fully and amply to all intents and purposes as the Supreme Court of Queensland lawfully has in that State.

Civil jurisdiction of Supreme Court.

Amended by No. 2 of 1934, s. 2.

12. In all cases the Supreme Court shall have power to exercise an equitable jurisdiction over the subject-matter of any cause or proceeding according to the laws now governing such matter or cause in Queensland, so far as the laws aforesaid are applicable to the circumstances of the Territory.

Equitable jurisdiction.

Amended by No. 2 of 1934, s. 2.

13. The Supreme Court shall in its criminal jurisdiction have cognizance and jurisdiction of and over all crimes and offences against the law:

Criminal jurisdiction of Supreme Court.

Amended by No. 11 of 1922, s. 2 and by No. 2 of 1934, s. 2.

Provided that in cases punishable with death the carrying out of any capital sentence shall not take place without the sanction obtained under the hand and seal of the Administrator.

13a. The Administrator shall have power, by warrant under his hand, to remit any sentence or part of any sentence imposed by a court exercising criminal jurisdiction in the Territory and to commute any sentence of death and substitute therefor such term of imprisonment with or without hard labour as to him may seem meet.

Remission of sentences.

Inserted by No. 11 of 1922, s. 3.

14. A Judge of the Supreme Court may exercise in Chambers the like jurisdiction as that which can be exercised in Chambers by a Judge of the Supreme Court of Queensland.

Jurisdiction in Chambers.

Amended by No. 2 of 1934, s. 2.

15. The Chief Judge or the senior Judge for the time being shall have the care and custody of all records of the Supreme Court.

Records of Court.

Amended by No. 2 of 1934, s. 2.

COURTS—

Seal of Court.  
Sub-section (1)  
amended by  
No. 2 of 1934,  
s. 2.

16.—(1.) The Supreme Court shall have a seal of the Court, for the sealing of all writs and other instruments or documents issued out of the Court and requiring to be sealed.

(2.) The Court shall also, for the purpose of authentication, have a seal or stamp wherewith summonses, office copies, certificates, reports, and other documents requiring authentication may be sealed or stamped.

Appointment  
of Registrar  
and other  
officers.  
Amended by  
No. 2 of 1934,  
s. 2.

17. The Governor-General may—

(a) appoint a person to be Registrar of the Supreme Court; and

(b) appoint such other officers of the Supreme Court as he thinks necessary.

Officers of  
Court may be  
appointed for  
certain  
purposes.  
Amended by  
No. 2 of 1934,  
s. 2.

18. The Chief Judge may, with the sanction of the Administrator, appoint any officer of the Supreme Court or any person to perform any necessary duty for bringing before the Court any person charged with any criminal or statutory offence, and may, with like sanction, appoint some person to enter and conduct any prosecution in the Supreme Court for any offence as aforesaid, and may, after obtaining the sanction of the Administrator, appoint any officer to carry out or give effect to any order, sentence or decision of the Court.

Chief Judge  
to make  
Rules of Court.  
Sub-section (1)  
amended by  
No. 5 of 1931,  
s. 2 and by  
No. 2 of 1934,  
s. 2.

19.—(1.) The Chief Judge may from time to time make Rules of Court<sup>(5)</sup> for the conduct of business in the Supreme Court, and for regulating all matters of practice and procedure therein, and for prescribing all matters and things which are necessary or convenient to be prescribed for carrying out this Ordinance and, in particular, for prescribing the fees—

(a) to be charged by practitioners practising in the Supreme Court for the work done by them in relation to proceedings before the Court and for the taxation of their bills of costs, either as between party and party or as between solicitor and client; and

(b) to be collected by the officers of the Supreme Court in respect of proceedings in the Court or of the execution of the process thereof.

(2.) All Rules of Court made in pursuance of this section shall be published or notified in the *New Guinea Gazette*, and copies thereof shall be forwarded to the Minister<sup>(6)</sup> after the making thereof.

Sub-section (2)  
amended by  
No. 2 of 1934,  
s. 8.

(5) Pursuant to Section 19 the Chief Judge made the following Rules of Court: *Central Court Rules (Amending) No. 1, Supreme Court Rules (Amending) No. 2, Supreme Court Rules (Amending) No. 3, Supreme Court Rules (Amending) No. 4* (all of which amend the *Rules of the Supreme Court (Queensland, adopted)* printed on p. 617, and are incorporated therein) and the *Rules of Court (Appointment of Judges' Associates) 1936*, printed on p. 1065.

(6) Section 4 of the *Ordinances Interpretation Ordinance 1934-1941* provides that, in any Ordinance, "unless the contrary intention appears—'Minister' means the Minister of State for the time being administering the *New Guinea Act 1920-1932*."

Judiciary Ordinance 1921-1938.

(3.) The Minister<sup>(6)</sup> may by notification in the *New Guinea Gazette* disallow any Rule of Court, and thereupon the Rule so disallowed shall cease to have effect.

Sub-section (3) amended by No. 2 of 1934, s. 8.

(4.) Unless and until Rules of Court are made in pursuance of this section in relation to any particular matter, the Rules of Court of the Supreme Court of Queensland<sup>(7)</sup> on that matter which were in force in Queensland on the fifth day of December, One thousand nine hundred and thirty-two shall regulate the practice and procedure of the Supreme Court but the Chief Judge may make rules repealing, amending, adding to, or in substitution for those Rules.

Sub-section (4) substituted by No. 23 of 1932, s. 2; amended by No. 2 of 1934, s. 2.

\* \* \* \* \*

Sections 20 and 21 repealed by No. 12 of 1926, s. 2.

**22.** The Chief Judge of the Supreme Court may exercise a general supervision over all inferior courts in the Territory, and shall have the right to inspect and call for the production of the records of any such courts or to authorize the District Inspector or any other officer of the Administration to inspect the records of any such courts and to report to him thereon:

Supreme Court to supervise inferior courts.

Repealed by No. 22 of 1922, s. 2; inserted by No. 41 of 1925, s. 3; amended by No. 11 of 1926, s. 3 and by No. 2 of 1934, s. 2.

Provided that the Chief Judge shall not exercise the right of supervision conferred by this section so as to affect any judgment or order given by, or any proceedings pending before, an inferior court.

**23.—(1.)** Where a native is a party in any civil action, cause or proceedings, or where a native is an accused person in any criminal cause or proceedings, the Director of District Services and Native Affairs or a District Officer or a patrol officer may, in any Court in the Territory, conduct the case on behalf of the native.

Conduct of case on behalf of native.

Section 23 repealed by No. 22 of 1922, s. 2; inserted by No. 8 of 1927, s. 4.

Sub-section (1) amended by No. 2 of 1934, s. 2 and by No. 13 of 1936, s. 3.

(6) See footnote (6) printed on p. 612.

(7) There are no Queensland Rules of Court the citation of which is the "Rules of Court of the Supreme Court of Queensland". However, various Rules of Court were in force in Queensland on 5th December, 1932, including *The Rules of the Supreme Court of 1900* (which may also be cited as *The Rules of the Supreme Court*). A number of "rules" and "rules of court" in force in Queensland on 5th December, 1932, have not been printed in this Annotated Reprint because they are considered either inapplicable to the circumstances of the Territory or inconsistent with legislation of the Territory.

The following Rules of Court have been printed:

*The Rules of the Supreme Court* (Queensland) (as amended, both by amendments made in Queensland to 5th December, 1932, and by rules made by the Chief Judge of the Territory), printed on p. 617; *Rules of Court* (Queensland) gazetted respectively on 27th June, 1922, 14th May, 1927, and 16th July, 1927 (which affect *The Rules of the Supreme Court* (Queensland)), printed on pp. 1061-1064; *The Repealing Rules of 1900* (Queensland), printed on p. 1058; *The Criminal Practice Rules of 1900* (Queensland), printed below, title CRIMINAL LAW.

The Rules of Court which have not been printed include the following, but this list does not purport to be exhaustive:—

- (a) The following rules made under *The Judicature Act* (Queensland) (before 31st March, 1922), or *The Supreme Court Act of 1921* (Queensland) (after 31st March, 1922) as the case may be: *Rules of Court Relating to the Admission of Barristers of the Supreme Court of Queensland* (made on 27th November, 1896, as amended); *Rules of Court Relating to the Admission of Solicitors of the Supreme Court of Queensland* (made on 12th October, 1898, as amended); *Rules for the Admission of Conveyancers of the Supreme Court of Queensland* (gazetted on 5th September, 1931); and *General Rules Relating to the Supreme Court Library* (made on 19th December, 1898);
- (b) *The Reciprocal Enforcement of Judgment Rules 1928* (gazetted on 1st September, 1928) made under, *inter alia*, *The Reciprocal Enforcement of Judgments Act of 1927* (Queensland);
- (c) *Rules of Court* (gazetted respectively on 19th September, 1931, and 28th November, 1931) made under, *inter alia*, *The Jury Act of 1929* (Queensland); and
- (d) *Rules of Court* (gazetted respectively on 17th May, 1932, and 30th June, 1932) made under *The Companies Act of 1931* (Queensland).

COURTS—

Sub-section (2) amended by No. 2 of 1934, s. 2 and by No. 13 of 1936, s. 3.

(2.) For the purposes of this section, the Director of District Services and Native Affairs or a District Officer or a patrol officer, as the case may be, shall have the same privileges as a native on whose behalf a case may be conducted.

Power of Director of District Services and Native Affairs to sue on behalf of natives.

**23A.**—(1.) The Director of District Services and Native Affairs may, in any court in the Territory—

(a) in his own name, sue for, recover or receive—

(i) any money or other property due or belonging to, or held in trust for, any native; or

(ii) damages for any conversion of or injury to any such money or property; and

(b) exercise, in the name of any native, any right of appeal which might have been exercised by that native, had the proceedings in the first instance taken under this section been taken by the native himself.

Section 23A inserted by No. 8 of 1927, s. 4. Sub-section (1.) amended by No. 2 of 1934, s. 2.

Sub-section (1A) inserted by No. 13 of 1936, s. 4.

(1A.) Suits on behalf of a native may be brought by the Director of District Services and Native Affairs in his own name.

Sub-section (2) amended by No. 2 of 1934, s. 2.

(2.) The Director of District Services and Native Affairs shall keep proper records and accounts of any moneys and other properties received by him on account of any action taken under the provisions of this section.

Appeal to High Court of Australia.

Section 24 substituted by No. 22 of 1922, s. 2.

Sub-section (1.) amended by No. 2 of 1934, s. 2.

**24.**—(1.) The Full Court of the High Court of Australia, consisting of at least two Judges, may grant leave to appeal<sup>(8)</sup> to the High Court of Australia from any conviction, sentence, judgment, decree or order of the Supreme Court.

(2.) When an order granting leave to appeal is made, certified copies of the proceedings and evidence in the case shall be forwarded to the proper officer of the High Court.

(3.) The High Court sitting as a Full Court (constituted by at least two Judges) may hear the appeal, and may make such order therein as it thinks just.

(4.) If the High Court sees fit to permit it, an appeal under this section may be by case-stated, with the legal argument (if any) attached thereto in writing, and in that case it shall not be necessary for the parties to appear on the hearing of the appeal either personally or by counsel.

(8) (a) Held, by the High Court, that the High Court has jurisdiction to entertain an appeal from the Central Court of the Territory of New Guinea: *Mainka v. The Custodian of Expropriated Property* (1924) 34 C.L.R. 297; 31 A.L.J. 1. (By Section 7 (2) of the *Judiciary Ordinance* 1921-1934 inserted by Section 4 of the *Judiciary Ordinance* 1934, the "Central Court" became the "Supreme Court"). (b) Held, by the High Court, that as Section 103B of the *Mining Ordinance* 1922-1926 prescribed that orders made by the Central Court of the Territory of New Guinea on appeal from decisions of a Warden's Court "shall be final and conclusive", leave to appeal therefrom to the High Court cannot be granted under Section 24 of the *Judiciary Ordinance* 1921-1927; and that no power to grant leave to appeal from a decision of the Central Court is contained in the general provisions of Section 73 of the *Constitution*: *Edie Creek Proprietary Limited v. Symes* (1929) 43 C.L.R. 53; 3 A.L.J. 274. (The *Mining Ordinance* 1922-1926 was repealed by the *Mining Ordinance* 1928, and the present Section 108 (which replaces Section 103B) omits the words which made such orders of the Supreme Court final and conclusive).

*Judiciary Ordinance 1921-1938.*

(5.) The order of the Court on appeal shall have effect in the Territory as if it were a judgment of the Supreme Court of the Territory, and may be enforced by the Supreme Court accordingly.

Sub-section (5) amended by No. 2 of 1934, s. 2.

(6.) The Justices of the High Court or a majority of them may make Rules of Court<sup>(9)</sup> for regulating the practice and procedure in regard to appeals under this section.

*	*	*	*	*	*	*	*	Sections 25-31 repealed by No. 22 of 1922, s. 2.
*	*	*	*	*	*	*	*	Section 32 repealed by No. 4 of 1924, s. 5.
*	*	*	*	*	*	*	*	Section 33 amended by No. 11 of 1922, s. 4 ; repealed by No. 4 of 1924, s. 5.
*	*	*	*	*	*	*	*	Sections 33A-33R inserted by No. 11 of 1922, s. 5 ; repealed by No. 4 of 1924, s. 5.
*	*	*	*	*	*	*	*	Sections 34-38 repealed by No. 4 of 1924 s. 5.
*	*	*	*	*	*	*	*	Section 39 inserted by No. 18 of 1923, s. 2 ; repealed by No. 4 of 1924, s. 5.
*	*	*	*	*	*	*	*	First, Second, and Third Schedules inserted by No. 11 of 1922, s. 6 ; repealed by No. 4 of 1924, s. 5.

---

(9) No rules of Court have been made under this Section.

**COURTS—**