9. WEST AFRICAN TERRITORIES

The West African Court of Appeal Order in Council, 1948

1948 No. 1330

Made - - - -	*22nd June,* 1948
Laid before Parliament	*22nd June,* 1948
Coming into Operation	*1st July,* 1948

At the Court at Buckingham Palace, the 22nd day of June, 1948

Present,

The King's Most Excellent Majesty in Council

Whereas it is desirable that the West African Court of Appeal Orders in Council, 1928-35, Consolidated, as amended by the West African Court of Appeal (Further Amendment) Order in Council, 1938, should be revoked and replaced by a new Order:

And Whereas it is expedient that fresh provision should be made for the establishment of the Offices of President of the West African Court of Appeal and of Justices of Appeal; and (in order conveniently to secure the application of laws and other enactments relating to pensions and other conditions of service) for the appointment to the service of the Government of the Gold Coast of the said President and Justices of Appeal and, if necessary, Officers of the Court:

Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by the British Settlement Acts, 1887 and 1945, by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:— 9 & 10 Geo. 6. c. 7. 53 & 54 Vict. c. 37.

1. This Order may be cited as the West African Court of Appeal Order in Council, 1948, and shall come into operation on the first day of July, 1948. Short Title and commencement.

2.—(1) In this Order, unless the context otherwise requires— Interpretation.

" the Court " means the West African Court of Appeal and includes any division thereof;

" the Gambia " means the Colony and Protectorate of the Gambia;

" the Gold Coast " means the Gold Coast Colony, Ashanti, the Northern Territories of the Gold Coast and Togoland under United Kingdom Trusteeship;

" judgment " includes decree, order, conviction, sentence and decision;

" Justice of Appeal " means a Justice of Appeal of the West African Court of Appeal;

" Nigeria " means the Colony and Protectorate of Nigeria and the Cameroons under United Kingdom Trusteeship;

" the President " means the President of the West African Court of Appeal;

" Sierra Leone " means the Colony and Protectorate of Sierra Leone;

" Territory " means a Territory to which this Order applies.

(2) In this Order, unless the context otherwise requires, references to the President or to Justices of Appeal, Chief Justices or Judges shall be construed as including references to any persons for the time being performing the duties of the Offices in question; and references to the Judges of the Supreme Court of any Territory shall be construed as including references to the Chief Justice of that Territory.

52 & 53 Vict. c. 63.

(3) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Application of Order.

3. The Territories to which this Order applies are Nigeria, the Gold Coast, Sierra Leone and the Gambia.

West African Court of Appeal to continue.

4. The West African Court of Appeal (which was constituted under the West African Court of Appeal Orders in Council, 1928-35, Consolidated) shall continue to be a Court of Appeal for the Courts of the Territories. The Court shall be a superior Court of Record.

Seal of Court.

5. The Court shall have and use, as occasion may require, a seal having a device or impression of the Royal Arms with the inscription " The West African Court of Appeal."

Composition of the Court.

6. The Judges of the Court shall consist of a President, to be known as the President of the West African Court of Appeal, one or more Justices of Appeal, and the Judges of the Supreme Courts of the Territories.

Appointment of President and Justices of Appeal.

7.—(1) The President and Justices of Appeal shall be appointed by the Governor of the Gold Coast, by letters patent under the public seal of the Gold Coast, in accordance with such instructions as he may receive from His Majesty through the Secretary of State.

(2) Subject to any instructions which may be given to him by the Secretary of State, the Governor of the Gold Coast may, as occasion may require, by letters patent under the public seal of the Gold Coast, appoint any person, qualified for appointment as a Judge of the Supreme Court of any of the Territories, to act as President or as Justice of Appeal and may in like manner terminate any such appointment.

(3) The President and Justices of Appeal shall hold office during His Majesty's pleasure.

(4) The President and Justices of Appeal shall receive such emoluments as may be determined by the Secretary of State after consultation with the Governors of the Territories.

Officers of the Court.

8. There shall be such Registrars and other Officers of the Court, appointed in such manner and on such terms, as the Secretary of State may direct.

President and Justices of Appeal to be in service of Gold Coast Government.

9. The President and Justices of Appeal and any Officers of the Court not otherwise holding office under the Government of any of the Territories, shall be in the service of the Government of the Gold Coast, and accordingly the laws, regulations and other enactments and instruments from time to time in force in the Gold Coast relating to pensions, gratuities and other like allowances or to terms and conditions of service

shall, save as may be otherwise expressly provided therein, and subject to the provisions of section 18 of this Order, apply in relation to them as if they were Judges or Officers (as the case may be) of the Supreme Court of the Gold Coast, but with such variations and modifications as the Secretary of State may from time to time direct.

Precedence of Judges.

10. The President shall take precedence of all other Members of the Court and the seniority of the other Members shall be determined according to instructions to be given from time to time by the Secretary of State.

Appointment of Assessors.

11. The Court may, in any case in which it appears to the Court to be expedient, call in the aid of one or more assessors with such special qualification as the Court may think fit, and hear such case wholly or in part with the assistance of such assessors. The remuneration (if any) to be paid to such assessors shall be determined by the Court.

Court may sit in divisions.

12. The Court may sit in two or more divisions as may be directed by the President, and every Judge of the Court may sit in any division.

Number of Judges.

13.—(1) The Court shall be duly constituted if it consists of an uneven number, not being less than three, of the Judges of the Court.

(2) The determination of any question before the Court shall be according to the opinion of the majority of the members of the Court hearing the case.

Powers of single Judge.

14. A single Judge of the Court may exercise any power vested in the Court not involving the decision of the appeal; but—

(*a*) in criminal matters, if any Judge refuses an application for the exercise of any such powers, the person making the application shall be entitled to have his application determined by the Court; and

(*b*) in civil matters, any order, direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Court.

Judges not to sit on appeals from their own decision.

15. A Judge of the Court shall not sit as a Judge on the hearing of an appeal—

(*a*) from any judgment given by himself or any judgment given by any Court of which he was sitting as a member;

(*b*) against a conviction or sentence if he was the judge by or before whom the appellant was convicted.

Jurisdiction of Court.

16.—(1) The Court shall have jurisdiction to hear and determine such appeals from judgments of Courts of the Territories (including reserved questions of law and cases stated), and to exercise such powers and authorities, as may be prescribed by or under any law for the time being in force in any of the Territories respectively, subject to the provisions of this Order or of any such law; and, subject as aforesaid, for all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, the Court shall have all the power, authority and jurisdiction vested in the Court from which the appeal is brought.

(2) The process of the Court shall run throughout the Territories, and any judgment of the Court shall have full force and effect in every Territory, and shall be executed and enforced in like manner as if it were an original judgment of the Court from which the appeal is brought.

(3) In the hearing of an appeal from any Territory, the law to be applied shall be the law in operation in that Territory.

Rules of Court.

17.—(1) Subject to the provisions of this Order, the President, the Chief Justice of Nigeria and the Chief Justice of the Gold Coast, or such Judges of the Court as the Secretary of State may from time to time by Order direct, may make rules of Court for regulating—

(*a*) the time and place of the sittings of the Court and the selection of Judges for any such sittings;

(*b*) the delivery of judgments of the Court or Judges thereof; and

(*c*) generally, the practice and procedure in appeals to the Court, whether in the Court from which the appeal is brought or in the Court of Appeal and whether before or after the final judgment of the Court, or any matters relating to such practice or procedure (including the right of audience in the Court and the legal representation of persons concerned), or any matters relating to the duties of the Officers thereof or to the cost of, or fees upon, proceedings therein.

(2) Rules of Court shall not take effect until they are approved by the Secretary of State, and when so approved shall have effect as if contained in this Order: Provided that, if it shall be certified in any Rules that it is necessary that they should take effect before such approval can be obtained, such Rules may be made to take effect accordingly; in which case such Rules may be disallowed by the Secretary of State (without prejudice to anything lawfully done thereunder) but shall continue to have effect unless and until they shall be so disallowed and such disallowance shall be published by the Court.

(3) Except so far as they shall be amended, added to or revoked by Rules of Court made under this Order, all Rules of Court made under the West African Court of Appeal Orders in Council, 1928-35, Consolidated and in force at the commencement of this Order shall remain in force, and, for the purposes of this Order, shall be deemed to have been made under this Order.

Financial provisions.

18.—(1) There shall be established in the Gold Coast a Fund to be called the West African Court of Appeal Fund.

(2) There shall be paid into the Fund all fees payable under Rules of Court made under this Order, any other sums due to the Fund and such contributions from the Territories respectively as may from time to time be fixed by the Governments of the Territories with the approval of the Secretary of State.

(3) There shall be paid out of the Fund all expenses of the Court, including the emoluments of the President and Justices of Appeal and the emoluments (if any) paid to Officers of the Court attributable solely to their employment as such and any remuneration paid to assessors, but not including any other sums payable out of funds of the Gold Coast by reason of section 9 of this Order.

(4) Where, by reason of section 9 of this Order, any pension, gratuity or other like allowance or any other sum is payable out of funds of the Gold Coast, the other Territories shall pay to the Gold Coast in respect thereof such contributions as may from time to time be determined by the Governments of the Territories with the approval of the Secretary of State.

(5) The sums representing the contributions due under this section shall be charged upon the general revenues of the Territories respectively.

19. The West African Court of Appeal Order in Council, 1928(**a**), the West African Court of Appeal (Amendment) Order in Council, 1930(**b**), the West African Court of Appeal (Further Amendment) Order in Council, 1934(**c**), the West African Court of Appeal (Further Amendment) Order in Council, 1935(**d**), the West African Court of Appeal (Further Amendment) Order in Council (No. 2) 1935(**e**), and the West African Court of Appeal (Further Amendment) Order in Council, 1938(**f**), are hereby revoked. Revocation.

E. C. E. Leadbitter.

EXPLANATORY NOTE

(*This Note is not part of the Order, but is intended to indicate its general purport.*)

This Order revokes and re-enacts in modified form previous Orders setting up a Court of Appeal for the four West African Colonial territories —Nigeria, the Gold Coast, Sierra Leone and the Gambia. Hitherto the Court has consisted of the Judges of the Supreme Courts of these territories and the principal modification is the constitution of the Offices of President and Justice of Appeal as permanent members of the Court. Various other amendments are made in the pre-existing law, including the establishment of a fund out of which the expenses of the Court are to be paid.

FOREIGN SERVICE

The Foreign Service Order, 1948

1948 No. 493

Made - - - - 11*th March,* 1948

At the Court at Buckingham Palace, the 11th day of March, 1948

Present,

The King's Most Excellent Majesty in Council

Whereas by Section 6 (2) of the Foreign Service Act, 1943(**g**), it is provided that His Majesty, on the recommendation of the Secretary of State,

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(**a**) S.R. & O. 1928 (No. 889) p. 616.
(**b**) S.R. & O. 1930 (No. 43) p. 534.
(**c**) S.R. & O. 1934 (No. 218) I, p. 651.
(**d**) S.R. & O. 1935 (No. 439) p. 484.
(**e**) S.R. & O. 1935 (No. 1286) p. 487.
(**f**) S.R. & O. 1938 (No. 550) I, p. 1317.
(**g**) 6 & 7 Geo. 6. c. 35.