

Bill No. 17 of 1958.
FEDERAL SUPREME COURT (APPEALS) BILL, 1958.
ARRANGEMENT OF SECTIONS.

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A BILL

Intituled

AN ORDINANCE TO CONFER ON THE FEDERAL SUPREME COURT OF THE WEST INDIES JURISDICTION TO HEAR AND DETERMINE APPEALS FROM THE SUPREME COURT OF BRITISH GUIANA AND FOR MATTERS CONNECTED THEREWITH.

Enacted by the Legislature of British Guiana:—

Short title and commencement.

1. This Ordinance may be cited as the Federal Supreme Court (Appeals) Ordinance, 1958, and shall come into operation on such date as the Governor may by order appoint, and different dates may be appointed for different provisions.

Interpretation.

2. In this Ordinance, unless the context otherwise requires —
- “Chief Justice” means the Chief Justice of the Federation;
- “order” in Parts II and III of this Ordinance includes decision or judgment;
- “rules of court” means rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of the Federal Supreme Court in exercise of jurisdiction conferred on it under the British Guiana (Appeals) Order in Council, 1957;
- “the Federal Legislature” means the Federal Legislature established for the Federation;
- “the Federal Supreme Court” means the Federal Supreme Court established for the Federation;
- “the Federation” means the Federation of The West Indies established by the West Indies (Federation) Order in Council, 1957;
- “the Full Court” means the Full Court of the Supreme Court;
- “the Supreme Court” means the Supreme Court of British Guiana, and includes the Full Court.

PART I

GENERAL PROVISIONS

seal.

3. The Federal Supreme Court shall have a seal having a device or impression approved by the Chief Justice with the inscription “The Federal Supreme Court of The West Indies”.

Law to be administered on hearing of appeals.

4. Subject to the provisions of section 6 of this Ordinance, the Federal Supreme Court shall, in the hearing and determination of an appeal from a decision of the Supreme Court, apply to such appeal the law which was applicable to the case in the Supreme Court.

General powers of the Federal Supreme Court.

5. Subject to the provisions of the British Guiana (Appeals) Order in Council, 1957, and of any Ordinance, the Federal Supreme Court shall in the exercise of any jurisdiction vested in it, have all the powers and authorities vested in or exercisable by the Supreme Court of Judicature in England on the first day of January, 1958.

Practice and procedure.

6. So far as concerns practice and procedure, all appellate jurisdiction vested in the Federal Supreme Court under the British Guiana (Appeals) Order in Council, 1957, shall be exercised in accordance with the provisions of any Act of the Federal Legislature and rules of court approved by the Governor under subsection (5) of section 7 of the said Order in Council.

Administration of oaths.

7. (1) The Federal Supreme Court or any judge thereof may require and administer any necessary oath.

(2) Without prejudice to any other power to require an oath to be administered, rules of court may prescribe the occasions on which an oath may be administered and may authorise any of the following persons to administer oaths for any purpose specified in the rules —

- (a) the Registrar of the Federal Supreme Court or the Registrar of the Supreme Court;
- (b) any person duly authorised by law to administer oaths for the purpose of the Supreme Court.

Restriction on institution of vexatious actions.

8. (1) If on an application made by the Attorney General under this section the Federal Supreme Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings in the Federal Supreme Court, and whether against the same person or against different persons, the Court may, after hearing that person or giving him an opportunity of being heard, order

that no legal proceedings shall without the leave of the Court or a judge thereof be instituted by him in the Federal Supreme Court and such leave shall not be given unless the Federal Supreme Court or a judge thereof is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.

(2) A copy of any order made under this section shall be published in the Gazette.

PART II
CIVIL APPEALS

9. (1) The Federal Supreme Court shall have jurisdiction to hear and determine any matter arising in any civil proceedings upon a case stated or upon a question of law reserved by the Full Court or by a judge of the Supreme Court pursuant to any power conferred in that behalf by any Ordinance.

Appeals in
civil matters.

(2) Subject as otherwise provided in this section, an appeal shall lie to the Federal Supreme Court in any cause or matter from any order of the Full Court or of a judge of the Supreme Court (whether made before or after the date on which this Ordinance comes into force) where such order is —

- (a) final and is not—
 - (i) an order of a judge of the Supreme Court made in chambers or in a summary proceeding;
 - (ii) an order made with the consent of the parties;
 - (iii) an order as to costs;
 - (iv) an order referred to in paragraph (d) of this subsection;
- (b) a decree nisi in a matrimonial cause or an order in an admiralty action determining liability;
- (c) declared by rules of court to be of the nature of a final order;
- (d) an order upon appeal from any other court, tribunal, body or person.

(3) No appeal shall lie from an order referred to in paragraph (d) of subsection (2) of this section—

- (a) except—
 - (i) upon a question of law; or
 - (ii) where such order precludes any party from the exercise of his profession or calling, from the holding of public office, from membership of a public body or from the right to vote at the election of a member for any such body;
- (b) in any other case, except with the leave of the Full Court or judge making the order or of the Federal Supreme Court.

(4) Notwithstanding subsection (3) of this section no appeal shall lie under this section from a decision of the Full Court upon appeal from a judge of the Supreme Court, in respect of an order referred to in paragraphs (a) (i), (a) (ii) or (a) (iii) of subsection (2) of this section or in respect of an order of a judge of the Supreme Court not referred to in the said subsection except with leave of the Full Court or of the Federal Supreme Court.

(5) No appeal shall lie under this section—

- (a) from any order made in any criminal cause or matter;
- (b) from an order allowing an extension of time for appealing from an order;
- (c) from an order of a judge giving unconditional leave to defend an action;
- (d) from a determination of the Full Court under subsection (8) of this section;
- (e) from an order absolute for the dissolution or nullity of marriage in favour of any party who having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree.

(6) No appeal shall lie under this section from any order of the Full Court or of a judge of the Supreme Court where it is provided by any Ordinance that the decision of such Court or judge shall be final.

(7) The jurisdiction to hear appeals vested in the Federal Supreme Court under the provisions of this Part of this Ordinance shall be to the exclusion of the jurisdiction of any other court:

Provided that a judge of the Supreme Court may hear and determine such applications incidental to the appeal and not involving the

decision thereof as may be prescribed by rules of court; but an order made on any such application may be discharged or varied by the Federal Supreme Court.

(8) Where any doubt arises regarding the category mentioned in subsection (2) of this section into which an order of the Full Court or of a judge of the Supreme Court falls, such doubt may be determined by the Full Court or by the Federal Supreme Court upon application in a summary way.

Powers of Federal Supreme Court on appeal in civil matters.

10. (1) On the hearing of an appeal from any order of the Supreme Court in any civil cause or matter, the Federal Supreme Court shall have power to —

- (a) confirm, vary, amend, or set aside the order or make any such order as the court from whose order the appeal is brought might have made, or to make any order which ought to have been made, and to make such further or other order as the case may require;
- (b) draw inferences of fact;
- (c) direct the court from whose order the appeal is brought to enquire into and certify its finding on any question which the Federal Supreme Court thinks fit to be determined before final judgment in the appeal.

(2) The powers of the Federal Supreme Court under the foregoing provisions of this section may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the court from whose order the appeal is brought or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Federal Supreme Court may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(3) The Federal Supreme Court may make such order as to the whole or any part of the costs of an appeal as may be just, and may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.

(4) The powers of the Federal Supreme Court in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

Additional powers of Federal Supreme Court on hearing appeals in civil matters.

11. On the hearing of an appeal from any order of the Supreme Court in any civil cause or matter, the Federal Supreme Court may, if it thinks fit —

- (a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case, provided that no person shall be compelled to produce under any such order any writing or other document which he could not have been compelled to produce at the hearing or trial;
- (b) order any witness who would have been a compellable witness at the trial to attend and be examined before the Federal Supreme Court, whether he was or was not called at the trial, or order the examination of any such witness to be conducted in manner provided by rules of court before any judge of the Federal Supreme Court or before any officer of the Federal Supreme Court or other person appointed by the Federal Supreme Court for the purpose, and at any place and allow the admission of any deposition so taken as evidence before the Federal Supreme Court;
- (c) receive the evidence, if tendered, of any witness (including any party) who is a competent but not compellable witness, and, if a party makes application for the purpose, of the husband or wife of that party in cases where the evidence of the husband or wife could not have been given at the trial except on such application;
- (d) where the case was not tried by the Supreme Court, remit the case to the court of trial for further hearing,

with such instructions as regards the taking of further evidence or otherwise as appear to it necessary; and in all cases, remit the case with such instructions to the Supreme Court;

- (e) where any question arising at the appeal involves prolonged examination of documents or accounts or any scientific or local investigation which cannot, in the opinion of the Federal Supreme Court, conveniently be conducted before the Federal Supreme Court, order the reference of the question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the Federal Supreme Court, and act upon the report of any such commissioner so far as they think fit to adopt it;
- (f) appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to the Federal Supreme Court that such knowledge is required for the proper determination of the case.

12. (1) Subject to the provisions of this section, on the hearing of an appeal in any civil cause or matter the Federal Supreme Court shall, if it appears to the Federal Supreme Court that a new trial should be held, have power to set aside the order appealed against and order that a new trial be held.

Power of Federal Supreme Court as to new trials.

(2) on the hearing of an appeal in any civil cause or matter, the following provisions shall apply —

- (a) A new trial shall not be ordered on the ground of the improper admission or rejection of evidence unless in the opinion of the Federal Supreme Court some substantial wrong or miscarriage has been thereby occasioned.
- (b) A new trial may be ordered on any question without interfering with the finding or decision upon any other question; and if it appears to the Federal Supreme Court that any such wrong or miscarriage as is mentioned in paragraph (a) of this subsection affects part only of the matter in controversy, or one or some only of the parties, the Court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.

13. The Federal Supreme Court shall not grant a new trial or reverse any judgment by reason of the ruling of any court that the stamp upon any document is sufficient or that the document does not require a stamp.

Wrong rulings as to sufficiency of stamps.

PART III CRIMINAL APPEALS

14. In this Part, unless the context otherwise requires —
 “appeal” means an appeal by a person convicted upon indictment and “appellant” means the person making such appeal;
 “sentence” includes any order of the court made on conviction with reference to the person convicted.

Definitions.

15. A person convicted on indictment in the Supreme Court on a date after this section comes into operation may appeal under this Part of this Ordinance to the Federal Supreme Court —

Right of appeal in criminal cases.

- (a) against his conviction, on any ground of appeal which involves a question of law alone;
- (b) if a female convicted of an offence punishable with death, from the finding of a jury on proceedings under section 167 of the Criminal Law (Procedure) Ordinance, that she is not pregnant;
- (c) with the leave of the Federal Supreme Court or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Court or judge to be a sufficient ground of appeal; and
- (d) with the leave of the Federal Supreme Court against the sentence passed on his conviction, unless the sentence is one fixed by law.

Cap. 11.

Determina-
tion of
appeals in
ordinary
cases.

16. (1) The Federal Supreme Court on any such appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

(2) Subject to the special provisions of this Part of this Ordinance the Federal Supreme Court shall, if they allow an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered, or if the interests of justice so require, order a new trial.

(3) On an appeal against sentence the Federal Supreme Court shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as they think ought to have been passed, and in any other case shall dismiss the appeal.

Powers of
Federal
Supreme
Court in
special cases.

17. (1) If it appears to the Federal Supreme Court that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the Federal Supreme Court may either confirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefor as they think proper and as may be warranted in law by the verdict on the count or part of the indictment, on which the Federal Supreme Court consider that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury could on the indictment, have found him guilty of some other offence, and on the finding of the jury it appears to the Federal Supreme Court that the jury must have been satisfied of facts which proved him guilty of that other offence, the Federal Supreme Court may, instead of allowing or dismissing the appeal, substitute for the verdict returned by the jury a judgment of guilty of that other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) Where on the conviction of the appellant the jury have found a special verdict, and the Federal Supreme Court consider that a wrong conclusion has been arrived at by the court before which the appellant has been convicted on the effect of that verdict, the Federal Supreme Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.

(4) If on any appeal it appears to the Federal Supreme Court that, although the appellant was guilty of the act or omission charged against him, he was of unsound mind at the time the act was done or the omission made so as not to be responsible for his actions according to law, the Federal Supreme Court may quash the sentence passed at the trial and order that the appellant be kept in custody as a criminal lunatic under the provisions of section 179 of the Criminal Law (Procedure) Ordinance in the same manner as if a special verdict had been found by the jury under that Ordinance.

Cap. 11.

Re-vesting
and restitu-
tion of pro-
perty on con-
viction.
Cap. 333.

18. (1) The operation of any order for the restitution of any property to any person made on a conviction on indictment, and the operation, in case of any such conviction, of the provisions of subsection (1) of section 26 of the Sale of Goods Ordinance as to re-vesting of the property in stolen goods on conviction, shall (unless the court before whom the conviction takes place direct to the contrary in any case in which, in their opinion, the title to the property is not in dispute) be suspended --

(a) in any case until the expiration of fourteen days after the date of the conviction; and

(b) in cases where notice of appeal or leave to appeal is given within fourteen days after the date of conviction, until the determination of the appeal;

and in cases where the operation of any such order, or the operation of the said provisions, is suspended until the determination of the appeal, the order or provisions, as the case may be, shall not take effect as to the

property in question if the conviction is quashed on appeal. Provision may be made by rules of court for securing the safe custody of any property, pending the suspension of the operation of any such order or of the said provisions.

(2) The Federal Supreme Court may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and, if, varied, shall take effect as so varied.

19. For the purposes of this Part of this Ordinance, the Federal Supreme Court may, if they think it necessary or expedient in the interests of justice —

Supplementary powers of Federal Supreme Court.

- (a) exercise any or all of the powers conferred by section 11 of this Ordinance on the Federal Supreme Court (other than those contained in paragraph (d) thereof) but in the application of section 11 aforesaid to an appeal in any criminal cause or matter, for the words "any party" and "that party" in paragraph (c) thereof, there shall be substituted the words "the appellant";
- (b) issue any warrant necessary for enforcing any order or sentence of the Federal Supreme Court:

Provided that —

- (i) in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial; and
- (ii) whenever the Federal Supreme Court receive further evidence they shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.

20. (1) An appellant who is not admitted to bail, shall, pending the determination of his appeal, be treated as a prisoner awaiting trial.

Admission of appellant to bail and custody when attending court.

(2) The Federal Supreme Court may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.

21. (1) When an appellant is admitted to bail under this Part of this Ordinance, the time during which he is at large after being so admitted shall be disregarded in computing the term of any sentence to which he is for the time being subject.

Computation and commencement of sentence.

(2) Subject as hereinafter provided, six weeks of the time during which any appellant when in custody is treated pending the determination of his appeal as a prisoner awaiting trial, or the whole of that time if less than six weeks, shall be disregarded in computing the term of any sentence to which he is for the time being subject:

Provided that —

- (a) the foregoing provisions of this section shall not apply where leave to appeal is granted under this Part of this Ordinance or any such certificate as is mentioned in paragraph (c) of section 15 of this Ordinance has been given for the purpose of the appeal;
- (b) in any other case the Federal Supreme Court may direct that no part of the said time or such part thereof as the Court think fit (whether shorter or longer than six weeks) shall be disregarded as aforesaid.

(3) Subject to the foregoing provisions of this section, the term of any sentence passed by the Federal Supreme Court in substitution for a sentence passed on the appellant in the proceedings from which the appeal is brought shall, unless the Court otherwise direct, begin to run from the time when it would have begun to run if passed in those proceedings; and references in this section to any sentence to which an appellant is for the time being subject shall be construed accordingly.

22. (1) Where a person convicted desires to appeal under this Part of this Ordinance to the Federal Supreme Court, or to obtain the leave of that Court to appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within fourteen days of the date of conviction.

Time for appealing.

(2) Except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Federal Supreme Court.

Stay of execution. 23. In the case of a conviction involving sentence of death or corporal punishment —

- (a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under section 22 of this Ordinance; and
- (b) if notice is so given, the appeal or application shall be heard and determined with as much expedition as practicable, and the sentence shall not be executed until after the determination of the appeal, or in cases where an application for leave to appeal is finally refused, of the application.

Judge's notes and report to be furnished on appeal. 24. The judge of any court before whom a person is convicted shall, in the case of an appeal under this Part of this Ordinance against the conviction or against the sentence, or in the case of application for leave to appeal under this Ordinance, furnish to the Registrar of the Federal Supreme Court, in accordance with rules of court, his notes of the trial; and shall also furnish to the Registrar of the Federal Supreme Court in accordance with rules of court a report giving his opinion upon the case or upon any point arising in the case.

Legal assistance to appellant. 25. The Federal Supreme Court may at any time assign to an appellant a solicitor and counsel, or counsel only, in any appeal under this Part of this Ordinance or in any proceedings preliminary or incidental to such an appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid.

Costs of appeal. 26. (1) On the hearing and determination of an appeal or any proceedings preliminary or incidental thereto under this Part of this Ordinance no costs shall be allowed on either side.

(2) The expenses of any solicitor or counsel assigned to an appellant under this Part of this Ordinance, and the expenses of any witness attending on the order of the Federal Supreme Court or examined in any proceedings incidental to the appeal, and of the appearance of an appellant on the hearing of his appeal or on any proceedings preliminary or incidental to the appeal, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the Court for the purpose, or any reference of a question to a special commissioner appointed by the Court or of any person appointed as assessor to the court shall be defrayed out of moneys provided by the Legislature for the purpose, up to an amount allowed by the Court, but subject to any rules of court as to rates and scales of payment and in the manner expressed by such rules of court.

Right of appellant to be present. 27. (1) An appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it, on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone, but in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal, shall not be entitled to be present, except where rules of court provide that he shall have the right to be present, or where the Federal Supreme Court gives him leave to be present.

(2) An appellant who does not appear at the hearing of his appeal by counsel, may present his case and argument in writing, and any case or argument so presented shall be considered by the Court.

(3) The power of the Federal Supreme Court to pass any sentence under this Ordinance may be exercised notwithstanding that the appellant is for any reason not present.

Duty of Attorney General. 28. (1) It shall be the duty of the Attorney General to appear or to instruct counsel to appear for the Crown on every appeal brought under this Part of this Ordinance.

(2) Provisions shall be made by rules of court for the transmission to the Attorney General of all such documents, exhibits, and other things connected with the proceedings as he may require for the purpose of his duties under this section.

Powers which may be exercised by a judge of the Court. 29. The powers of the Federal Supreme Court under this Part of this Ordinance —

- (a) to give leave to appeal,
- (b) to extend the time within which notice of appeal, or of an application for leave to appeal may be given,
- (c) to assign legal aid to an appellant,
- (d) to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, or

(e) to admit an appellant to bail, may be exercised by any judge of the Court in the same manner and subject to the same provisions as they may be exercised by the Court; but if the judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Court as duly constituted for the hearing and determination of appeals under this Part of this Ordinance.

30 (1) Where any person is convicted on indictment in the Supreme Court, the judge may state a case or reserve a question of law for the consideration of the Federal Supreme Court and the Federal Supreme Court shall consider and determine such case stated or question of law reserved and may either —

Case stated or question of law reserved.

- (a) confirm the judgment given upon the indictment; or
- (b) order that such judgment be set aside and quash the conviction and direct a judgment and verdict of acquittal to be entered; or
- (c) order that such judgment be set aside, and give instead thereof the judgment which ought to have been given at the trial; or
- (d) require the judge by whom such case has been stated or question has been reserved to amend such statement or question when specially entered on the record; or
- (e) make such other order as justice requires.

(2) The Federal Supreme Court, when a case is stated or a question of law reserved for their opinion, shall have power, if they think fit, to cause the case or certificate to be sent back for amendment and thereupon the same shall be amended accordingly.

31. Where a case is stated or a question of law reserved for the consideration of the Federal Supreme Court, the provisions of sections 20, 21, 23, 25, 26, 27, 28 and 29 of this Ordinance shall apply to such proceedings in like manner as to an appeal.

Provisions of this Ordinance applicable to proceedings under section 30.

32. In the case of an appeal which involves a question of law alone, the Federal Supreme Court may, if they think fit, request the judge before whom the case was tried to state the question together with all the circumstances under which the said question has arisen in such manner as may be prescribed by rules of court.

Case stated by judge at request of Federal Supreme Court.

33. (1) Where the Full Court makes an order on appeal from an inferior court in a criminal cause or matter, any party to such appeal may appeal to the Federal Supreme Court from the order of the Full Court —

Appeals from inferior courts.

- (a) upon any ground which involves a question of law alone; or
- (b) where the appeal to the Full Court is against an order which disqualifies the appellant from the exercise of his profession or calling, from the holding of public office, from membership of a public body, or from voting at an election of representatives to any such body, upon any ground of appeal which involves a question of fact alone or a question of mixed law and fact, or any other ground which appears to the Federal Supreme Court to be a sufficient ground of appeal.

(2) No appeal shall lie under paragraph (b) of subsection (1) of this section except with the leave of the Full Court or of the Federal Supreme Court.

(3) Upon the determination of an appeal under this section, the Federal Supreme Court may affirm or set aside the order of the Full Court and where any such order is set aside, the Federal Supreme Court may make any order which ought to have been made at the trial or make such other order as justice requires.

34. The provisions of sections 18, 20, 21, 22, 23 and 25 to 29 inclusive of this Ordinance shall apply to the proceedings in any appeal brought under section 33 of this Ordinance subject to the following modifications—

Provisions of this Ordinance applicable to proceedings under section 33.

- (a) as if the word "appeal" in relation to appeals under section 33 of this Ordinance referred to an appeal from an order of the Full Court upon appeal from an inferior court in any criminal cause or matter;
- (b) as if for the words "the date of conviction" in subsection (1) of section 18 of this Ordinance and in section 22 of this Ordinance, there were substituted the words "the order of the Full Court".

Jurisdiction of the Federal Supreme Court under Part III exclusive.
Prerogative of mercy.

35. The jurisdiction conferred on the Federal Supreme Court under this Part of this Ordinance to hear and determine appeals, cases stated and questions of law reserved shall be to the exclusion of the jurisdiction of any other court.

36. Nothing in this Ordinance shall affect the prerogative of mercy.

PART IV

TRANSITIONAL PROVISIONS

Provision regarding pending civil cases.

37. (1) Where in any civil cause or matter referred to in paragraphs (a), (b), (c), (d) or (e) of subsection (2) of section 9 of this Ordinance, notice of appeal from an order of the Full Court or a judge of the Supreme Court to any other court has been given before the date on which Part II of this Ordinance comes into force, but that appeal has not, before that date, been part-heard or determined before such last mentioned court, that appeal shall be heard and determined by the Federal Supreme Court and all proceedings thereon subsequent to that date shall be conducted as if that appeal were on appeal to the Federal Supreme Court under this Ordinance.

(2) Any other appeal in any civil cause or matter in respect of which notice of appeal has been given before that date shall be heard and determined, and all further proceedings shall be taken thereon, as if this Ordinance had not been enacted.

(3) The records, documents and exhibits in any appeal to which the provisions of subsection (1) of this section apply, shall be transmitted by the officer having custody thereof to the Registrar of the Federal Supreme Court or to the Registrar of the Supreme Court in accordance with instructions to be given by the Registrar of the Federal Supreme Court.

PART V

REPEALS

Amendment of the Supreme Court Ordinance. Schedule. Cap. 7.

38. The Supreme Court Ordinance shall have effect subject to the amendments set out in the schedule to this Ordinance:

Provided that where in pursuance of the provisions of Part II of the Supreme Court Ordinance notice of appeal to the Full Court has been given in any matter prior to the date on which this section comes into force that appeal shall be heard and determined, and all further proceedings shall be taken thereon, as if this Ordinance had not been enacted.

Repeal of Criminal Appeal Ordinance. Cap. 8.

39. With effect from the coming into force of Part III of this Ordinance the Criminal Appeal Ordinance shall be repealed:

Provided that where in pursuance of the said Ordinance notice of appeal or notice of an application for leave to appeal to the Court of Criminal Appeal has been given in any matter prior to the date on which Part III of the said Ordinance comes into force that appeal or that application for leave to appeal shall be heard and determined by the Court of Criminal Appeal, and all further proceedings shall be taken thereon, as if this Ordinance had not been enacted.

SCHEDULE

Section 38.

Amendments of Supreme Court Ordinance, (Chapter 7)

In section 2, the definition of the words "the Act" shall be deleted and for the definition of the words "the Court of Appeal" there shall be substituted the following definition:

' "Federal Supreme Court" means the Federal Supreme Court established for the Federation of The West Indies by the West Indies (Federation) Order in Council, 1957.'

For section 89 there shall be substituted the following section:

"Appeal from decision of single judge. 89. An appeal shall lie to the Full Court from any judgment given or order made by a single judge of the Court in exercise of its civil jurisdiction in respect of which there is no appeal to the Federal Supreme Court:

Provided that no appeal shall lie to the Full Court from any such judgment or order referred to in subsection (5) or subsection (6) of section 9 of the Federal Supreme Court (Appeals) Ordinance, 1958."

No. of 1958.

Section 91 shall be deleted.

In section 92, including the proviso thereto, for the words "Court of Appeal" there shall be substituted the words "Federal Supreme Court."

Part III, comprising sections 94 to 98 inclusive, shall be deleted.

OBJECTS AND REASONS.

'The British Guiana (Appeals) Order in Council, 1957, made under the British Caribbean Federation Act, 1956, empowers the Legislature of

British Guiana to confer on the Federal Supreme Court of The West Indies jurisdiction to hear and determine appeals from superior courts of British Guiana, and provides that any such jurisdiction shall be in substitution for the jurisdiction exercised by the West Indian Court of Appeal. Federal legislation, in the form of Governor General's Regulations, has now been enacted to confer jurisdiction on the Federal Supreme Court to hear appeals from decisions of superior courts in the Federation. The pattern of this jurisdiction was settled after consultation with the legal profession in the Federal territories and British Guiana and the principal object of this Bill is to confer a corresponding jurisdiction on the Federal Supreme Court in respect of appeals from the superior courts of British Guiana. Accordingly, most of the provisions of the Bill have been adapted from the Federal Supreme Court Regulations, 1958, made by the Governor General.

2. Part I of the Bill contains general provisions relating to the powers and procedure of the Federal Supreme Court in exercise of their appellate jurisdiction. In this Part it is provided that the powers of the Court (as distinct from their jurisdiction) shall be those of the Supreme Court of Judicature in England (section 6). Under section 7 of the British Guiana (Appeals) Order in Council, 1957, rules of court relating to practice and procedure of the Court in respect of British Guiana appeals will be made by the Federal Chief Justice and will come into force when approved by the Governor of British Guiana.

3. Part II of the Bill relates to civil appeals. Under section 9 there is conferred a right of appeal to the Federal Supreme Court from the decisions of the Supreme Court of British Guiana. Such decisions might be in the exercise of the Supreme Court's original jurisdiction, or on appeal to the Full Court from the decision of a single judge or of a Magistrate's Court or other inferior tribunal. In general, an unrestricted right of appeal is given from any order in its nature final which is given by a single judge of the Supreme Court or by the Full Court and which is not made in a summary proceeding nor made on appeal from an inferior court. Where the order is not final or is given in a summary proceeding, an appeal will lie in the first instance to the Full Court and an appeal to the Federal Supreme Court from the decision of the Full Court can only be by leave. Where the order is an order of the Full Court on appeal from a Magistrate's Court or other inferior tribunal, an appeal of the Federal Supreme Court will lie as of right on a question of law or if the order affects the person in the practice of his profession, the holding of public office or the exercise of his right as a voter or a member of a public body but will lie only with leave in any other case (section 9).

4. Part III of the Bill relates to criminal appeals and confers jurisdiction on the Federal Supreme Court to hear appeals from convictions on indictment in the Supreme Court (section 15). The provisions of the Federal Supreme Court Regulations, 1958, on which this Part of the Bill is based closely follow those of the Court of Criminal Appeal Act, 1907, in England which is also the basis of our existing Criminal Appeal Ordinance (Chapter 8). A right of appeal is also given under section 33 from a decision of the Full Court made on appeal in a criminal cause or matter from the decision of a Magistrate's Court, but this appeal is limited to a question of law or (by leave) from a conviction which disqualifies the appellant from exercising his profession or holding public office, or from his right to vote for or to be a member of a public body.

5. The appellate jurisdiction sought to be conferred on the Federal Supreme Court under this Bill will be exclusive and accordingly provision is made to amend the Supreme Court Ordinance (Chapter 7) so as to restrict appeals to the Full Court to matters in which there is no appeal in the first instance to the Federal Court (section 38). Similarly, provision is made to repeal the Criminal Appeal Ordinance when the provisions of Part III of the Bill are brought into operation.

6. No provision is made in the Bill for appeals to the Privy Council from decisions of the Federal Supreme Court. This is because it is provided by the British Guiana (Appeals) Order in Council that these rights of appeal from the Federal Supreme Court in British Guiana cases shall be conferred by federal law. It is contemplated that federal legislation will be enacted to confer these rights on the same basis as they have been conferred in respect of appeals from Courts in the Federation by Part IV of the Federal Supreme Court Regulations, 1958. The provisions of this Bill when enacted will not come into force until such date as the Governor by order appoints (and different dates may be appointed for different provisions) and it is proposed that no order will be made bringing any of the provisions into operation until federal legislation has been enacted conferring rights of appeal to the Privy Council.

7. Transitional provision is made in the Bill whereby matters in which notice of appeal has been given to the West Indian Court of Appeal prior to the coming into force of Part II of the Bill will be heard and determined by the Federal Supreme Court (section 37). Transitional provision is also made whereby appeals to the Full Court and to the Court of Criminal Appeal, filed prior to the coming into force of Parts II and III respectively, will be heard and determined by those Courts notwithstanding the provisions of the Bill.

A. M. I. AUSTIN,
Attorney General.

(M.P.C. 52/3)
(Leg. Bill 17/1958).