

16.

**Order of His Majesty in Council dated the 7th February, 1921,
prescribing Rules for the making of Appeals from the West
Indian Court of Appeal to His Majesty in Council.**

AT THE COURT AT BUCKINGHAM PALACE,
[THE 7TH DAY OF FEBRUARY, 1921.]

PRESENT

THE KING'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.

SIR FREDERICK PONSONBY.

LORD CHAMBERLAIN.

MR. BURDETT-COUTTS.

VISCOUNT MILNER.

WHEREAS by the West Indian Court of Appeal Act, 1919, it is amongst other things enacted that there shall be a Court of Appeal, called the West Indian Court of Appeal, for the Colonies to which the said Act applies, that is to say, the Colonies of Trinidad and Tobago, British Guiana, Barbados, the Leeward Islands, Grenada, St. Lucia, and St. Vincent, and any other Colony that may from time to time be added by Order of His Majesty in Council to the number of Colonies to which the said Act applies (hereinafter called "The Colonies concerned"):

AND WHEREAS by the said Act full provision is made for the constitution of the said Court, and it is by the said Act further provided that the said Court shall have jurisdiction and power to hear and determine Appeals (including reserved questions of law) from any of the Courts of the Colonies concerned, subject however to the provisions of the said Act and to any provision which may be made by the Legislature of any of those Colonies as to appeals from that Colony and to Rules of Court made under the said Act:

AND WHEREAS the Legislatures of Trinidad and Tobago, British Guiana, Barbados, the Leeward Islands, Grenada, St. Lucia, and St. Vincent have passed enactments making provision as to appeals to the said Court from the said Colonies respectively:

AND WHEREAS by the said Act it is further provided that the process of the Court of Appeal shall run throughout the Colonies concerned, and any judgment, decree, or order of the Court of Appeal shall have full force and effect in every such Colony, and shall be executed and enforced in like manner as if it were an original judgment, decree, or order of the Court from which the

Appeal is brought, and, for all purposes of and incidental to the hearing and determination of any Appeal within its jurisdiction, the Court of Appeal shall have all the power, authority, and jurisdiction vested in the Court from which the Appeal is brought:

AND WHEREAS by the said Act it is further provided that subject to any provision which may be made by the Legislature of any Colony concerned whereby Appeals from any Court in that Colony are to be made in the first instance to the said Court of Appeal, nothing in the said Act shall prejudice or affect the right of any person to Appeal to His Majesty in Council:

AND WHEREAS by virtue of the Judicial Committee Act, 1844, it is competent to His Majesty by any Order or Orders to be from time to time for that purpose made with the advice of His Privy Council to provide for the admission of an Appeal or Appeals to His Majesty in Council from any judgments, sentences, decrees, or orders of any Court of Justice within any British Colony or Possession abroad although such Court shall not be a Court of Error or a Court of Appeal within such Colony or Possession and it is also competent to His Majesty by any such Order or Orders as aforesaid to make all such provisions as to His Majesty in Council shall seem meet for the instituting and prosecuting any such Appeals and for carrying into effect any such decisions or sentences as His Majesty in Council shall pronounce thereon:

AND WHEREAS it is expedient with a view to equalising as far as may be the conditions under which His Majesty's subjects in His British Dominions beyond the Seas shall have a right of appeal to His Majesty in Council and to promoting uniformity, in the practice and procedure in all such Appeals, that provision should be made for the instituting and prosecuting of Appeals from the West Indian Court of Appeal to His Majesty in Council and for carrying into effect such decisions or sentences as His Majesty in Council shall pronounce therein in accordance with the Rules and Regulations hereinafter contained:

HIS MAJESTY doth, by and with the advice of his Privy Council, hereby order that all Appeals to His Majesty in Council from the said West Indian Court of Appeal be made in accordance with the several rules hereunto annexed.

AND it is hereby further ordered that this Order in Council shall take effect in each of the Colonies concerned on such day* as shall be named for that purpose by any Proclamation issued by the Officer Administering the Government of the Colony.

*31st March, 1921, named by Proclamation dated the 24th March, 1921.

RULES.

1. In these Rules, unless the context otherwise requires—

“ Appeal ” means Appeal to His Majesty in Council;

“ His Majesty ” includes His Majesty’s heirs and successors;

“ Judgment ” includes decree, order, sentence, or decision;

“ Court ” means the West Indian Court of Appeal;

“ Record ” means the aggregate of papers relating to an Appeal (including the pleadings, proceedings, evidence and judgments) proper to be laid before His Majesty in Council on the hearing of the Appeal;

“ Registrar ” means the Registrar or other proper officer having the custody of the records in the Court appealed from;

“ Month ” means calendar month;

words in the singular include the plural, and words in the plural include the singular.

2. Subject to the provisions of these Rules an Appeal shall lie as of right, from any final judgment of the Court, where the matter in dispute on the Appeal amounts to or is of the value of (£300) three hundred pounds sterling or upwards, or where the Appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of (£300) three hundred pounds sterling or upwards.

3. Applications to admit an appeal shall be made by motion or petition within 21 days from the date of judgment to be appealed from, and the Applicant shall give the opposite party notice of his intended application.

4. An Appeal under Rule 2 shall only be admitted by the Court in the first instance—

(a) upon condition of the Appellant, within a period to be fixed by the Court, but not exceeding three months from the date of the hearing of the application, entering into good and sufficient security, to the satisfaction of the Court, in a sum not exceeding (£500) five hundred pounds, for the due prosecution of the Appeal, and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an Order, finally admitting the Appeal, or of the Appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Appellant to pay the Respondent’s costs of the Appeal (as the case may be); and

(b) upon such other conditions (if any) as to the time or times within which the Appellant shall take the necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England as the Court having regard to all the circumstances of the case, may think it reasonable to impose.

5. Where the judgment appealed from requires the Appellant to pay money or perform a duty, the Court shall have power, when admitting an Appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the Appeal, as to the Court shall seem just and in case the Court shall direct the said judgment to be carried into execution the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as His Majesty in Council shall think fit to make thereon.

6. The preparation of the Record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require.

7. The Registrar, as well as the parties and their legal agents, shall endeavour to exclude from the Record all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the Appeal, and generally to reduce the bulk of the Record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be placed after the index or at the end of the Record.

8. Where in the course of the preparation of a Record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the Record, as finally printed (whether in the Colony concerned or in England) shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers or otherwise the fact that, and the party by whom, the inclusion of the document was objected to.

9. The Record shall be printed in accordance with the rules set forth in the Schedule hereto. It may be so printed either in the Colony concerned or in England.

10. Where the Record is printed in the Colony concerned, the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council 40 copies of such Record, one of which copies he shall certify to be correct by signing his name on, or initialling every eighth page thereof and by affixing thereto the seal, if any, of the Court.

11. Where the Record is to be printed in England the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council one certified copy of such Record, together with an index of all the papers and exhibits in the case. No other certified copies of the Records shall be transmitted to the Agents in England by or on behalf of the parties to the Appeal.

12. Where part of the Record is printed in the Colony concerned and part is to be printed in England, Rules 10 and 11 shall, as far as practicable, apply to such parts as are printed in the Colony and such as are to be printed in England respectively.

13. The reasons given by the Judges for or against any judgment pronounced in the course of the proceedings out of which the Appeal arises shall, by such Judges, be communicated in writing to the Registrar, and shall by him be transmitted to the Registrar of the Privy Council at the same time when the Record is transmitted.

14. Where there are two or more applications to admit appeals arising out of the same matter, and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the Appeals should be consolidated, the Court may direct the Appeals to be consolidated and admit the Appeals by a single Order.

15. An Appellant who has obtained an Order conditionally admitting his Appeal may at any time prior to the making of an Order finally admitting the same withdraw his Appeal on such terms as to costs and otherwise as the Court may direct.

16. Where an Appellant having obtained an Order conditionally admitting his Appeal, and having complied with the

conditions imposed on him by such Order, fails thereafter to apply with due diligence to the Court for an Order finally admitting the same the Court may, on an application in that behalf made by the Respondent, rescind the Order conditionally admitting the Appeal, notwithstanding the Appellant's compliance with the conditions imposed by such Order, and may give such directions as to the costs of the Appeal and the security entered into by the Appellant as the Court shall think fit, or make such further or other Order in the premises as, in the opinion of the Court, the justice of the case requires.

17. On an application for final admission of an Appeal, the Court may inquire whether notice, or sufficient notice, of the application has been given by the Appellant to all parties concerned, and, if not satisfied as to the notice given, may defer granting such final admission or may give such other directions in the matter as, in the opinion of the Court, the justice of the case requires.

18. An Appellant whose appeal has been finally admitted shall prosecute his Appeal in accordance with the Rules for the time being regulating the general practice and procedure in Appeals to His Majesty in Council.

19. Where an Appellant whose Appeal has been finally admitted, desires prior to the despatch of the Record to England to withdraw his Appeal, the Court may, upon an application in that behalf made by the Appellant, grant him a certificate to the effect that the Appeal has been withdrawn, and the Appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of His Majesty in Council, and the costs of the Appeal and the security entered into by the Appellant shall be dealt with in such manner as the Court may think fit to direct.

20. Where an Appellant whose Appeal has been finally admitted, fails to show due diligence in taking all necessary steps for the purpose of procuring the despatch of the Record to England, the Respondent may, after giving the Appellant due notice of his intended application, apply to the Court for a certificate that the Appeal has not been effectually prosecuted by the Appellant and if the Court sees fit to grant such a certificate, the Appeal shall be deemed as from the date of such certificate, to stand dismissed for non-prosecution without express Order of His Majesty in Council, and the costs of the Appeal and the security entered into by the Appellant shall be dealt with in such manner as the Court may think fit to direct.

21. Where at any time between the Order finally admitting the Appeal and the despatch of the Record to England the Record becomes defective by reason of the death, or change of status, of a party to the Appeal, the Court may, notwithstanding such Order, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the Record in place of, or in addition to, the party who has died or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the Record as aforesaid without express Order of His Majesty in Council.

22. Where the Record subsequently to its despatch to England becomes defective by reason of the death or change of status of a party to the Appeal, the Court shall upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted or entered on the Record in place of, or in addition to, the party who has died or undergone a change of status.

23. The case of each party to the Appeal may be printed either in the Colony concerned or in England and shall, in either event, be printed in accordance with the rules set forth in the Schedule hereto, every tenth line thereof being numbered in the margin, and shall be signed by at least one of the Counsel who attends at the hearing of the appeal, or by the party himself if he conducts his Appeal in person.

24. The case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the Appeal arises, the contentions to be urged by the party lodging the same, and the reasons of Appeal. References by page and line to the relevant portions of the Record as printed, shall as far as practicable, be printed in the margin, and care shall be taken to avoid as far as possible, the reprinting in the case of long extracts from the Record. The taxing officer in taxing the costs of the Appeal, shall either of his own motion or at the instance of the opposite party, inquire into any unnecessary prolixity in the case, and shall disallow the costs occasioned thereby.

25. Where the Judicial Committee directs a party to bear the costs of an Appeal incurred in any Colony concerned, such costs shall be taxed by the proper officer of the Court in accordance

with the rules for the time being regulating taxation in the Court.

26. The Court shall conform with and execute any Order which His Majesty in Council may think fit to make on an Appeal from a judgment of the Court in like manner as any judgment of the Court should or might have been executed.

27. All or any of the functions or authorities by any of these Rules conferred on the Court may be exercised by the Chief Justice (or Acting Chief Justice) of the Colony in which the judgment under appeal was pronounced.

28. Nothing in these Rules contained shall be deemed to interfere with the right of His Majesty, upon the humble petition of any person aggrieved by any judgment of the Court, to admit his Appeal therefrom upon such conditions as His Majesty in Council shall think fit to impose.

ALMERIC FITZROY.

SCHEDULE.

I. Records and cases in Appeals to His Majesty in Council shall be printed in the form known as Demy Quarto.

II. The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and $8\frac{1}{2}$ inches in width.

III. The type to be used in the text shall be pica type but long primer shall be used in printing accounts, tabular matter and notes.

IV. The number of lines in each page of pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.
