

## CHAPTER 16.

## SUMMARY JURISDICTION (APPEALS).

[No VI. OF 1929.]

[26th January, 1929.]

1. This Ordinance may be cited as the Summary Jurisdiction (Appeals) Ordinance. Short title.

2.—(1) In this Ordinance, unless the context otherwise requires:— Interpre-  
tation.

“magistrate” means a stipendiary magistrate, a travelling magistrate, and a warden of a mining district on whom the Governor has by Order in Council conferred the jurisdiction and powers of a magistrate by virtue of section nine of the Mining Consolidation Ordinance, and includes a puisne judge appointed under sub-section (1) of section nine of the Summary Jurisdiction (Magistrates) Ordinance;

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“the Court” means the Full Court of the Supreme Court of British Guiana and includes any court at any time empowered by Ordinance to hear and determine appeals from decisions of magistrates;

“the Registrar” means the Registrar of Deeds;

“clerk” means the clerk of the court of the judicial district from which an appeal is brought, and, if there is no clerk, includes a magistrate;

“keeper” when used in relation to a prison means the chief resident officer in the prison;

“decision” means any final adjudication of a magistrate in a cause or matter before him and includes any non-suit, dismissal, judgement, conviction, order, or other determination of the cause or matter;

“the rules” means any rules or orders of court relating to appeals from magistrates' decisions made under the authority of any Ordinance conferring the power to make rules or orders of court.

(2) References to numbered forms are to the forms given in the first schedule to this Ordinance.



## MAKING OF APPEAL.

Right of  
appeal.

3. Unless the contrary is in any case expressly provided by Ordinance, anyone dissatisfied with a decision of a magistrate may appeal therefrom to the Court in the manner and subject to the conditions hereinafter mentioned.

Notice of  
appeal :

4.—(1) An appellant may—

(a) at the time of the pronouncing of the decision and before the opposite party has left the court room either personally or by his counsel or solicitor, give verbal notice of his appeal in open court, of which notice the magistrate shall make a minute; or

(b) within fourteen days after the pronouncing of the decision, lodge with the clerk a written notice of appeal in form 1, and serve a copy thereof upon the opposite party.

form 1.

(2) Where the appellant is in prison, the keeper shall, on being requested so to do, render all reasonable assistance in the preparation of the notice and shall cause it to be lodged and a copy thereof to be served as above, if the appellant supplies him with the necessary fees and expenses.

Security :

5.—(1) The appellant shall, when he gives or lodges notice of appeal other than in a criminal cause or matter, deposit with the clerk the sum of three dollars as security for the due prosecution of the appeal in accordance with the provisions of this Ordinance and the rules, and if the appellant fails to make the deposit the notice of appeal shall be of no effect.

(2) If the appellant duly prosecutes his appeal, including appearance at the hearing thereof in person or by counsel, he shall be entitled to a refund of the sum of three dollars aforesaid whatever may be the result of the appeal; otherwise it shall be forfeited as a court fee.

(3) The appellant shall further within fourteen days after the decision appealed against is pronounced give security to the extent of twenty-five dollars for the payment of any costs awarded against him by the Court and for the due and faithful performance of the judgement or order of the Court.

form 2 :

(4) The security shall be by deposit of money with the clerk, or by a recognizance in form 2 entered into by the appellant, with or without a surety as the magistrate may direct :



Provided that an appellant who is in custody shall, if he elects to continue to undergo his sentence pending an appeal, be required to give security by deposit to the extent of ten dollars. Proviso.

(5) Nothing in sub-sections (3) and (4) of this section shall affect the jurisdiction of the Court with respect to the amount of costs which may be ordered or the right of a party as to the recovery of any amount so ordered.

6. For the purpose of enabling any person to appeal from a decision of a travelling magistrate, a warden, the magistrates of the north-west and the Demerara river judicial districts, the assistant magistrate of the west coast and Bartica judicial district, and any other magistrate in respect of whom the Governor in Council may by order direct, there shall be added to the period of time prescribed in this Ordinance for the doing of any act in relation to an appeal the period of twenty-eight days. Extension of time for certain appeals.

7. Immediately on receiving a notice of appeal or notice of the grounds of appeal, or on any security being given, the clerk shall make an entry of the fact and the time of the receipt in a record book to be kept for that purpose, and shall inform the magistrate of the fact. Records of appeals.

8.—(1) On compliance by the appellant with the requirements of sections four and five hereof the magistrate shall draw up a formal conviction or order and a statement of his reasons for the decision appealed against. Copy of proceedings and notice of grounds of appeal:

(2) The statement shall be lodged with the clerk, who shall forthwith, and at latest within twenty-one days of the receipt thereof, prepare a copy of the proceedings including the reasons for the decision, and when the copy is ready he shall notify the appellant in writing and, on payment of the proper fees, deliver the copy to him.

(3) The appellant shall, within fourteen days after receipt of the notice, draw up a notice of the grounds of appeal in form 3, and lodge it with the clerk and serve a copy thereof on the opposite party. The provisions of sub-section (2) of section four shall apply to a notice of the grounds of appeal. form 3.

9. The following grounds of appeal and no other may be taken, namely, that— Available grounds of appeal.

(a) the magistrate's court had no jurisdiction in the matter: but it shall not be competent for the Court to entertain that ground of appeal unless



- objection to the jurisdiction of the magistrate's court was formally taken at some time during the progress of the case and before the decision was pronounced; or
- (b) the magistrate's court exceeded its jurisdiction in the matter; or
  - (c) the magistrate was personally interested in the matter; or
  - (d) the magistrate acted corruptly or maliciously in the matter, or took extraneous matter into consideration; or
  - (e) the decision was obtained by fraud; or
  - (f) the cause had been already heard or tried and decided by, or forms the subject of a hearing or trial pending before, some competent tribunal; or
  - (g) evidence was wrongly rejected, or inadmissible evidence was wrongly admitted, by the magistrate, and that in the latter case there was not sufficient evidence to sustain the decision; or
  - (h) the decision was one which the magistrate viewing the evidence reasonably could not properly make; or
  - (i) the decision was erroneous in point of law; or
  - (j) the judgement or sentence passed was based on a wrong principle or was such that a magistrate viewing the circumstances reasonably could not properly have so decided; or
  - (k) some specific illegality, other than hereinbefore mentioned, substantially affecting the merits of the case was committed in the course of the proceedings therein or in the decision.

Manner of setting forth grounds of appeal.

10. The appellant shall in his notice of grounds of appeal so set forth the particular matter on which he relies or of which he complains as to inform the magistrate, the opposite party, and the Court thereof, as for example, if he relies upon the ground of appeal stated in paragraph (f) of the last preceding section, the name of the tribunal shall be stated and, if a decision is alleged, the approximate date or effect of the decision shall be stated; if he relies upon the ground of appeal stated in paragraph (i) of that section the nature of the error shall be stated; and, if he relies upon the ground of appeal stated in paragraph (k) of that section, the illegality complained of shall be clearly specified.



11.—(1) Every notice of appeal in writing and every notice of the grounds of appeal shall be signed by the appellant or by his counsel or solicitor.

Signing notices.

(2) If the appellant signs as a marksman, the appellant's signature shall be verified by at least one person, not a minor, signing as witness, who shall add to his signature the address of his usual place of abode.

12. When the provisions of sections four and five of this Ordinance have been obeyed, the execution of the decision under appeal shall be suspended until the appeal is determined by the Court or is abandoned, and if the appellant is in custody he shall be released on the order of the magistrate, unless he has elected to continue to undergo his sentence pending the appeal.

Suspension of execution.

13.—(1) Within seven days of the notice of the grounds of appeal being lodged the clerk shall transmit to the Registrar a copy of the record, duly certified under his hand, consisting of the complaint or information and plea, or the plaint and defence, as the case may be, the notes of evidence taken in the cause and the adjudication, the formal conviction or order, the notice of appeal if it is in writing, and the notice of the grounds of appeal, the recognizance, if any, all documentary exhibits and all other documents connected with the cause, including the magistrate's statement of his reasons for the decision.

Transmission of record to Registrar.

(2) On receipt of the copy of the record as above, the Registrar shall notify the appellant in writing of the fact, and the appellant shall, within ten days of the notice, prepare and lodge with the Registrar two additional copies of the record for the use of the Court at the hearing of the appeal, and thereupon the Registrar shall enter the appeal in the list for hearing.

14.—(1) If anyone entitled to appeal is unavoidably prevented from so doing in the manner or within the time hereinbefore specified, he may apply to the Court for special leave to appeal.

Leave to appeal:

(2) On the application the Court may, if satisfied that the applicant was entitled to appeal and that he was unavoidably prevented from so doing as aforesaid, grant leave to appeal on any terms and conditions it thinks just:

Provided that no such leave shall be granted unless the opposite party has had an opportunity of being heard on

Proviso.

the application and, if the Court thinks fit, of adducing evidence against the granting of the leave.

(3) Where the leave is granted the provisions of sections four and five of this Ordinance shall apply as though the date of granting leave were the date of the pronouncement of the decision by the magistrate.

Review on application of Attorney General.

15.—(1) In any case where the Attorney General is of opinion that justice requires that a decision of a magistrate which is subject to appeal should be brought by way of review before the Court, he may, on a motion *ex parte* made at any time within three months after the pronouncement of the decision, apply to the Court for an order that the decision shall be brought before the Court by way of review.

(2) Where the Court grants an order for review there shall be served on each party to the cause within fourteen days a certified copy of the order and of the grounds for review.

(3) On a review the Court shall have the same powers as on an appeal.

(4) If on a review the decision is modified or reversed no action shall be brought against anyone in respect thereof except with the express permission of the Court.

Default in prosecution of appeal ;

16.—(1) If the applicant makes default in the due prosecution of his appeal or at any stage notifies the clerk or the Registrar that he does not intend to proceed therewith, he shall be deemed to have abandoned the appeal, and the clerk or the Registrar, according as the appeal is abandoned prior to or after the transmission of the copy of the record to the Registrar, shall at once notify the magistrate of the fact in the form 4 in the schedule.

form 4.

(2) If an appellant who abandons his appeal has been released from custody under the provisions of section twelve of this Ordinance and is liable to further imprisonment, or if he is otherwise liable to imprisonment, the magistrate shall forthwith issue a warrant for his apprehension.

Forms.

17. Forms may be prescribed by the rules in place of or in addition to those contained in the schedule.

#### HEARING AND JUDGEMENT.

Time, place and order of hearing.

18.—(1) Appeals shall come on for hearing at the time and place and after the notice to the parties prescribed by the rules.



(2) Appeals shall be heard according to their order in the list of appeals, unless the Court or a judge thereof otherwise directs.

19. At the hearing of an appeal any party may appear in person or by counsel. Appearance of parties.

20.—(1) If, on the day of hearing or at any adjournment thereof, the appellant does not appear, the cause shall be struck out and the decision affirmed, unless the Court thinks fit for sufficient cause to order otherwise. Procedure where appellant fails to appear.

(2) If in that case the respondent appears, the judgment shall be with costs of the appeal against the appellant, unless the Court expressly orders otherwise; but if the respondent does not appear, the costs of the appeal shall be in the discretion of the Court.

21. If on the day of hearing and at every adjournment of the cause the appellant appears, the Court shall proceed to the hearing or further hearing and the determination of the cause: Procedure where appellant appears:

Provided that where any respondent is in default of appearance at the time fixed for the hearing of an appeal, the Court shall not proceed to hear the appeal as against him unless and until it is satisfied by affidavit or otherwise that the provisions of sections four, five and eight of this Ordinance have been observed. Proviso.

22. On the hearing, it shall not be competent for the appellant to go into, or to give evidence of, any other grounds of appeal than those set forth in his notice of grounds of appeal, unless the Court otherwise orders and on the terms it deems just. Limitation of hearing by grounds of appeal.

23. On the hearing, no objection to any defect in the form of stating any ground of appeal shall be allowed, and no objection to the reception of evidence offered in support of any ground of appeal shall prevail, unless the Court is of opinion that the ground of appeal is so imperfectly or incorrectly set forth as to be insufficient to enable the respondent to inquire into the subject of the statement and to prepare for the hearing, but the Court may, if it thinks fit, cause the ground of appeal to be forthwith amended upon the terms and conditions, if any, the Court thinks just. Objections of form to grounds of appeal.



Objection of form to information or conviction.

24. If, on the hearing, any objection is made on account of any defect in a complaint or information, or on account of any omission or mistake in the drawing up of a conviction or order, and if it is shown, to the satisfaction of the Court, that sufficient grounds were in proof before the magistrate who made the conviction or order to have authorised the drawing up thereof free from that omission or mistake, the Court shall amend the complaint or information, or the conviction or order, and proceed thereafter as if the defect, omission, or mistake had not existed. Nothing in this section shall affect the provisions of section twenty-two of this Ordinance.

Defects in proceedings under appeal :

25. On an appeal no objection shall be taken or allowed to any proceeding in a magistrate's court for any defect or error which might have been amended by that court, or to any complaint, summons, warrant, or other process to or of that Court, for any alleged defect therein in substance or in form, or for any variance between any complaint or summons and the evidence adduced in support thereof in that Court.

Proviso.

Provided that if any error, defect, or variance mentioned in this section appears to the Court at the hearing of an appeal to be such that the appellant has been thereby deceived or misled, the Court may either refer the cause back to the magistrate with directions to re-hear and determine it, or reverse the decision under appeal, or may make any other order for disposal of the cause which justice requires.

Error or defect in notice of appeal or recognizance.

26. No objection shall be taken or allowed, on an appeal to any notice of appeal which is in writing, or to any recognizance entered into under this Ordinance for the due prosecution of the appeal, for any alleged error or defect therein; but if the error or defect appears to the Court to be such that the respondent on the appeal has been thereby deceived or misled, the Court may amend it and, if it is expedient to do so, may also adjourn the further hearing of the appeal, the amendment and the adjournment (if any) being made on any terms the Court deems just.

Power of the Court with regard to fresh evidence.

27. The Court may, in any case where it considers it necessary that evidence should be adduced, either—

- (a) order that evidence to be adduced before the Court on some day to be fixed in that behalf, whereupon any witness required under the provisions of this section shall be summoned or produced



in the same manner, and remunerated at the same rate, and be subject to the same pains and penalties and liabilities for non-attendance, as are provided in respect of witnesses summoned to attend at the hearing or trial of a civil cause before the Court; or

- (b) refer the cause to the magistrate to take that evidence, and in that case either direct the magistrate to adjudicate afresh after taking the evidence subject to such directions in law, if any, as the Court thinks fit to give, or may direct him, after taking the evidence, to report specific findings of fact for the information of the Court; the cause on any such reference, so far as may be practicable and necessary, being so dealt with as if it were being heard in the first instance.

28. The Court may—

- (a) affirm, modify, amend, or reverse, either in whole or in part, the decision, sentence, or any order made by the magistrate with reference to the cause, or may enter any judgement or make any order which the magistrate ought to have made; or
- (b) refer the cause to the magistrate with directions to re-hear and determine it or otherwise to deal with it as the Court thinks just; or
- (c) make any other order for disposal of the case which justice requires.

Powers of  
the Court :

Provided that the Court may substitute for a sentence passed by a magistrate any other sentence for an offence which the magistrate might have imposed in accordance with law.

Proviso.

29.—(1) The judgement of the Court shall be reduced into writing and shall set forth the reasons therefor.

(2) The judgement shall be final and conclusive.

Judgement to  
be reduced to  
writing and  
to be final.

30.—(1) Within three days after the pronouncement of the judgement the Registrar shall transmit a certified copy thereof to the clerk.

(2) Anyone may, on paying the fee for office copy documents, obtain from the Registrar a copy of the judgement.

Transmis-  
sion and  
publication  
of judgement.

(3) The Registrar shall without delay cause the reasons for the judgement to be published in the Gazette.

Enforcing  
judgement :

31.—(1) After the pronouncement of the judgement of the Court and subject to the provisions hereafter in this section contained, the magistrate of the court from which the appeal came shall have the same jurisdiction, and power to enforce, and shall enforce, any decision which has been affirmed, modified or amended by the Court, or any judgement pronounced by the Court in the same manner in all respects as if that decision or judgement had been pronounced by himself :

Proviso.

Provided that in any case where an order for the imprisonment of a person is affirmed on appeal, whether with or without modification or amendment, the Court may, if it considers it expedient to do so, forthwith commit the person to prison in pursuance and in execution of the order.

(2) The imprisonment of the person (if it has not previously commenced) shall be reckoned to begin from the day on which he is arrested to be taken to the prison wherein he has been ordered to be imprisoned; and, if the person has been discharged from imprisonment on giving the security hereinbefore mentioned, he shall be imprisoned for such further period as, with the time during which he has been already imprisoned, is equal to the period for which he was ordered to be imprisoned as aforesaid.

(3) Where default has been made in rendering any person aforesaid to prison in execution of any order aforesaid and a warrant has been issued against him to enforce the render to prison, he shall be liable to pay the cost and charges of the render; and if the opposite party, before the expiration of the imprisonment causes the amount of the costs and charges to be ascertained by the Registrar and leaves with the person, and with the keeper of the prison, a certificate, under the hand of the Registrar, of the amount of those costs and charges, then the person shall not be discharged from imprisonment until those costs and charges have been paid; but the additional imprisonment shall not be for a longer period than that prescribed by section thirty-seven of the Summary Jurisdiction (Procedure) Ordinance.

Chapter 14.

#### Costs.

Award of  
costs.

32.—(1) Where an appeal is abandoned before the hearing, the Registrar may, on application made in that behalf, order any costs occasioned by the appeal to be paid to anyone by whom they have been reasonably incurred.



(2) In any other case the Court may make any order as to costs, both in the magistrate's court and the Court as it thinks just; if no order is made costs shall follow the event.

(3) The cost occasioned by any application to the Court shall be in the discretion of the Court

**33.**—(1) The Court may at any time of making an order as to costs fix the amount thereof, but if no amount is fixed costs shall be taxed by the Registrar. Taxation of costs;

(2) The Registrar, when transmitting a certified copy of the judgement as required by sub-section (1) of section thirty of this Ordinance, shall also send to the clerk a certificate of the amount of costs fixed or taxed in form 5 in the schedule. form 5.

**34.** On receipt of the certificate in the last preceding section mentioned, the clerk shall add to the amount therein specified the costs of any copy of proceedings obtained from him by the successful party for the purposes of the appeal and, at the request of that party, proceed to pay or enforce payment of the total costs as follows:— Payment of costs.

- (a) if money was deposited as security for the payment of costs, he shall pay the costs of the successful respondent out of the money if it is sufficient;
- (b) if money was not deposited, or if the money deposited is insufficient to pay all the costs, he shall enforce the payment of the costs, or of any balance due, by enforcing any recognizance entered into by the appellant, or otherwise in accordance with the provisions of any Ordinance for the enforcement of costs in magistrates' courts, according as the decision appealed against was given in the exercise of summary criminal or civil jurisdiction.

**35.**—(1) The table of fees and costs set forth in the second schedule hereto shall govern the fixing or taxation of costs payable for and in respect of the several matters therein mentioned. Table of fees and costs; second schedule.

(2) The table may at any time be varied or replaced by the rules.

#### MISCELLANEOUS PROVISIONS.

**36.** Wherever a magistrate refuses to entertain a complaint or information relating to a summary conviction offence, the person aggrieved by the refusal may obtain Application to the Court to compel magistrate to entertain complaint.

from the magistrate a copy of the entry in the record book relating to the refusal, and, on giving to the magistrate not less than three days' previous notice in writing thereof, may make application to the Court for an order on the magistrate to entertain, hear, and determine the complaint or information; and, if the Court sees fit to make the order the magistrate shall entertain, and thereafter hear and determine, the complaint or information in due course of law.

Application to the Court to compel magistrate or justice to do act.

**37.**—(1) Wherever a magistrate or a justice of the peace refuses to do any act relating to the duties of his office, the person requiring the act to be done may apply to the Court on motion supported by affidavit of the facts for an order calling upon the magistrate or justice, and also upon the person to be affected by the act, to show cause why the act should not be done.

(2) If, after proof of due service of the order, good cause is not shown against it, the Court may make it absolute and the magistrate or justice, upon being served with the order absolute, shall obey it and do the act required, and the costs of the proceedings shall be in the discretion of the Court.

(3) No action or proceeding whatever shall be commenced or prosecuted against the magistrate or justice for having obeyed the order and done the act thereby required.

(4) Nothing in this section shall be construed to be in derogation of the powers conferred by the last preceding section.

Service of documents.

**38.** Any notice or other document required to be served or transmitted under this Ordinance may be served or transmitted by registered post or may be served by delivering or leaving it at the last known place of abode of the party to be served.

Pending appeals.

**39.** Nothing in this Ordinance shall affect any appeals to the Court pending at the commencement of this Ordinance.

Rules.  
Chapter 10.

**40.** The power conferred by the Supreme Court of Judicature Ordinance to make rules of court shall be deemed to include the power to make rules of court for any of the purposes of this Ordinance.











## SECOND SCHEDULE.

## TABLE OF FEES AND COSTS.

*Payable in the Magistrate's Court.*

	\$	c.
1. Recognizance to abide result of appeal ... ..	0	24
2. Copy of record, per folio of 120 words ... ..	0	12

*Payable to the Registrar.*

3. Filing affidavit or other document ... ..	0	50
*4. Entering appeal for hearing ... ..	0	50
*5. Attendance at hearing ... ..	1	00
*6.—(1) Judgement or order on appeal, including reasons ... ..	2	00
(2) a copy of the same ... ..	1	00
*7. Certificate of costs ... ..	1	00

*Payable to Counsel or Solicitor.*

8. Drawing affidavit of service, where required ... ..	1	00
9. Drawing any other affidavit required by the rules or certified by the Registrar to have been necessary ... ..	2	00
10. Drawing notice of appeal ... ..	0	50
11. Drawing notice of grounds of appeal ... ..	from \$1	to \$3
12. Drawing any necessary application ... ..	from \$1	to \$3
13. Appearance at hearing—		
(1) of any application ... ..	\$5	
(2) of an appeal ... ..	from \$10	to \$25
14. First copy of any document required for the use of the Court, per folio of 120 words ... ..	12c.	
Every additional copy, including copy for counsel, per folio, 120 words ... ..	06c.	

\* These fees shall be paid by the appellant when lodging the additional copies of the record as required by section 13 (2).