

New Zealand

ORDER IN COUNCIL REGULATING APPEALS TO HIS MAJESTY IN COUNCIL FROM THE COURT OF APPEAL AND FROM THE SUPREME COURT OF NEW ZEALAND.

1910 No. 70 (L.3)

At the Court at Buckingham Palace, the 10th day of January, 1910.

PRESENT,

The King's Most Excellent Majesty.

Lord President.

Lord Chamberlain.

Lord Privy Seal.

Lord Pentland.

Sir Walter Hely-Hutchinson.

Whereas by an Act passed in a session of Parliament held in the seventh and eighth years of Her late Majesty's reign (shortly entitled "The Judicial Committee Act, 1844"), it was enacted that it should be competent to Her Majesty by any Order or Orders in Council to provide for the admission of Appeals to Her 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 should not be a Court of Error or a Court of Appeal within such Colony or Possession, and to make provision for the instituting and prosecuting of such Appeals and for carrying into effect any such decisions or sentences as Her Majesty in Council should pronounce thereon :

7 & 8 Vict.
c. 69.

And whereas by an Order in Council dated the tenth day of May, 1860, provision was made for direct Appeals from the Supreme Court of New Zealand to Her Majesty in Council :

And whereas by an Order in Council dated the sixteenth day of May, 1871,(a) provision was made for Appeals from the Court of Appeal of New Zealand to Her Majesty in Council :

And whereas it is expedient with a view to equalizing as far as may be the conditions under which His Majesty's subjects in the 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 the said Orders in Council dated the tenth day of May, 1860, and the sixteenth day of May, 1871,(a) should be revoked and new provision made for Appeals from the said Supreme Court and the said Court of Appeal to His Majesty in Council :

It is hereby ordered by the King's Most Excellent Majesty, by and with the advice of His Privy Council, that the said Orders in Council(a) be and the same are hereby revoked and that instead thereof the Rules hereunder set out shall regulate all Appeals to His Majesty in Council from the Dominion of New Zealand.

(a) S.R. & O. Rev. 1904, VI, "Judicial Committee," p. 68.

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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, whether in the exercise of the appellate or original jurisdiction of the Court, and whether in a proceeding removed into the Court from any other Court or on a case stated for the opinion of the Court or otherwise howsoever ;

“ Court ” means Court appealed from, being either the Court of Appeal of New Zealand or the Supreme Court of New Zealand as the case may be ;

“ Court of Appeal ” means the Court of Appeal of New Zealand ;

“ Supreme Court ” means the Supreme Court of New Zealand ;

“ 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 :—

(a) as of right, from any final Judgment of the Court of Appeal where the matter in dispute on the Appeal amounts to or is of the value of five 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 five hundred pounds sterling or upwards ; and

(b) at the discretion of the Court of Appeal from any other Judgment of that Court, whether final or interlocutory, if, in the opinion of that Court, the question involved in the Appeal is one which by reason of its great general or public importance, or otherwise, ought to be submitted to His Majesty in Council for decision.

(c) At the discretion of the Supreme Court from any final Judgment of that Court if in the opinion of that Court the question involved in the Appeal is one which by reason of its great general or public importance or of the magnitude of the interests affected or for any other reason, ought to be submitted to His Majesty in Council for decision.

3. Where in any action or other proceeding no final Judgment can be duly given in consequence of a difference of opinion between the Judges, the final Judgment may be entered *pro formâ* on the application of any party to such action or other proceeding according to the opinion of the Chief Justice, or in his absence, of the senior

puisne Judge of the Court, but such Judgment shall only be deemed final for purposes of an Appeal therefrom, and not for any other purpose.

4. Applications to the Court for leave to appeal shall be made by motion in Court at the time when Judgment is given or by notice of motion filed in the Court and served on the opposite party in accordance with the rules or practice of the Court within twenty-one days after the date of the Judgment appealed from.

5. Leave to appeal under Rule 2 shall only be granted 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 for leave to appeal, entering into good and sufficient security, to the satisfaction of the Court, in a sum not exceeding 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 granting him final leave to 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.

6. Where the Judgment appealed from requires the Appellant to pay money or perform a duty, the Court shall have power, when granting leave to 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.

7. 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.

8. 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

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printed shall be enumerated in a list to be placed after the index or at the end of the Record.

9. 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 New Zealand 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.

10. The Record shall be printed in accordance with the Rules set forth in the Schedule hereto. It may be so printed either in New Zealand or in England.

11. Where the Record is printed in New Zealand the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council forty 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 of the Court.

12. 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 Record shall be transmitted to the Agents in England by or on behalf of the parties to the Appeal.

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

14. The reasons given by the Judge, or any of the Judges, for or against any Judgment pronounced in the course of the proceedings out of which the Appeal arises shall by such Judge or 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.

15. Where there are two or more applications for leave to appeal 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 grant leave to appeal by a single order.

16. An Appellant who has obtained an order granting him conditional leave to appeal may at any time prior to the making of an order granting him final leave to appeal withdraw his Appeal on such terms as to costs and otherwise as the Court may direct.

17. Where an Appellant, having obtained an order granting him conditional leave to 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 granting him final leave to appeal, the Court may, on an application in that behalf made by the Respondent, rescind the order granting conditional leave to 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.

18. On an application for final leave to 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 notices given, may defer the granting of the final leave to appeal, or may give such other directions in the matter as in the opinion of the Court the justice of the case requires.

19. An Appellant who has obtained final leave to appeal 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.

20. Where an Appellant, having obtained final leave to appeal, 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.

21. Where an Appellant, having obtained final leave to appeal, 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.

22. Where at any time between the order granting final leave to 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 the order granting final leave to appeal, 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.

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23. 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.

24. The Case of each party to the Appeal may be printed either in New Zealand 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.

25. 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.

26. Where the Judicial Committee directs a party to bear the costs of an Appeal incurred in New Zealand such costs shall be taxed by the Registrar or other proper officer of the Court in accordance with the Rules or practice for the time being regulating taxation in the Court.

27. Any Order which His Majesty in Council may think fit to make on an Appeal from a Judgment of the Court of Appeal or Supreme Court shall be executed by all Courts in like manner as any original Judgment of the Court appealed from should or might have been executed.

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 (*i.e.*, 54 ems in length and 42 in width).

II. The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and 8½ 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.