

3. Appeals in Ecclesiastical and Maritime Causes

ORDER IN COUNCIL, DATED DECEMBER 11, 1865, ESTABLISHING RULES FOR APPEALS IN ECCLESIASTICAL AND MARITIME(a) CAUSES.

At the Court at Windsor, the 11th day of December, 1865.

PRESENT,

The Queen's Most Excellent Majesty.

Lord President.

Duke of Somerset.

Mr. Secretary Cardwell.

Whereas there was this day read at the Board a report from the Right Honourable the Lords of the Judicial Committee of the Privy Council, dated the 5th December instant, humbly setting forth, that by an Act passed in the session of Parliament held in the 6th and 7th years of Her Majesty's Reign,(b) intituled "An Act to make further Regulations for facilitating the hearing appeals and other matters by the Judicial Committee of the Privy Council," it was, amongst other things, enacted that it should be lawful for the said Judicial Committee from time to time to make such rules, orders, and regulations respecting the practice and mode of proceeding in all appeals from Ecclesiastical and Admiralty and Vice-Admiralty Courts, and the conduct and duties of the officers and practitioners therein, as to them should seem fit, and from time to time to repeal or alter such rules, orders, and regulations. Provided always, that no such rules, orders, or regulations should be of any force or effect until the same should have been approved by Her Majesty in Council: And that the Lords of the said Judicial Committee have agreed humbly to report to Her Majesty their opinion that it is expedient that the following Rules should be established respecting the practice and mode of proceeding in all such appeals as aforesaid, and therewith humbly submitting the same for the approval of Her Majesty in Council.

Her Majesty having taken the said report into consideration was pleased, by and with the advice of Her Privy Council, to approve thereof, and of the Rules set forth therein, in the words following, videlicet:—

RULES FOR APPEALS IN ECCLESIASTICAL AND MARITIME(a) CAUSES

1. In the construction of these Rules, the following terms shall (if not inconsistent with the context or subject matter) have the

(a) By section 18 of the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), and section 4 (3) of the Supreme Court of Judicature Act, 1891 (54 & 55 Vict. c. 53), the jurisdiction of the Judicial Committee upon any judgment or order of the High Court of Admiralty was, except as to Prize, transferred to the Court of Appeal. The Rules regulating the procedure in Prize Proceedings in the High Court, and in Vice-Admiralty Courts and Colonial Courts, authorised to act as Prize Courts, are printed under the title "Prize Courts."

(b) The Judicial Committee Act, 1843 (6 & 7 Vict. c. 38).

respective meanings hereinafter assigned to them ; that is to say :—

“ Appeal ” shall mean an appeal to Her Majesty in Council in any ecclesiastical or maritime^(a) cause :

“ Judicial Committee ” shall mean the Judicial Committee of Her Majesty’s Privy Council, as the same shall be constituted for hearing any such appeal :

“ Registry ” shall mean the registry of Her Majesty’s Court of Appeals in ecclesiastical and maritime causes :

“ Registrar ” shall mean the Registrar of Her Majesty in ecclesiastical and maritime causes :

“ Solicitor ” shall mean any proctor, solicitor, or attorney entitled to practise before the Judicial Committee in any appeal, or the party himself when conducting the appeal in person :

“ Instrument ” shall mean any inhibition, citation, monition, relaxation, remission, attachment, sequestration, or other document on parchment issued under the seal of Her Majesty in ecclesiastical and maritime causes :

“ Month ” shall mean calendar month.

2. Any solicitor, attorney, or proctor, who shall be entitled to practise in the High Court of Chancery in England, in the Superior Courts of Common Law at Westminster, in the High Court of Admiralty of England, or in the Arches Court of Canterbury, shall be entitled to practise in any appeal.

3. A solicitor desiring to prosecute an appeal shall leave in the registry his petition to Her Majesty in Council in duplicate, together with an office copy of the Decree or Order appealed from, if the appeal has been *apud acta*, or the instrument of appeal, if the appeal has been before a notary or witnesses. A form of the petition of appeal is given in the Appendix, and is marked No. 1.

4. When the registrar has ascertained that the petition of appeal has been referred to the Judicial Committee, he may, on the application of the solicitor, issue the usual inhibition and citation, and monition for process. Forms of the inhibition and citation and of the monition for process are given in the Appendix, and are marked Nos. 2 and 3.

5. If, within *one month* from the date of the petition of appeal being referred to the Judicial Committee, the solicitor for the appellant shall not take out the inhibition and citation and the monition for process, the appeal shall stand dismissed.

6. The inhibition and citation shall be served on the registrar of the Court appealed from, as well as on the adverse party. If proof is given to the satisfaction of the registrar that service cannot be made upon the adverse party, it may be served upon his solicitor. It may also in any case be served upon the solicitor instead of the party, if the solicitor is willing to accept such service. The monition shall be served on the registrar of the Court appealed from.

7. Within *one month* from the issue of the inhibition and citation and the monition for process, if the appeal is from a Court in the

(a) See footnote (a), p. 478 above.

JUDICIAL COMMITTEE

United Kingdom, and within *four months* if from a Court out of the United Kingdom, the solicitor for the appellant shall return the same duly served, together with the process, into the registry, and if he shall not do so, the appeal shall stand dismissed.

8. The solicitor for the respondent may enter an appearance at any time after the petition of appeal has been referred to the Judicial Committee, and whether the inhibition and citation and the monition for process have been taken out or not. A form of the appearance is given in the Appendix, and is marked No. 4.

9. If the respondent's solicitor desires to adhere to the appeal, he shall, within *one month* from the time of entering an appearance, file in the registry a declaration of adhesion, stating from what part of the Decree or Order of the Court below he desires to appeal. A form of the declaration of adhesion is given in the Appendix, and is marked No. 5.

10. Within *one month* from the process being brought in, the solicitor for the appellant shall bring into the registry printed copies of the Appendix ; and if he shall not do so, the appeal shall stand dismissed.

11. The Appendix shall be paged consecutively throughout, and shall have an index at the commencement. It shall contain a copy of all documents filed in the Court below material to the issue in the appeal, and of the judgment of the said Court given on the occasion of the Decree or Order appealed from, certified by the reporter of the Court to be correct.

12. Within *one month* from the printed copies of the Appendix being brought in, the solicitor for the appellant shall bring into the registry printed copies of his case; and if he shall not do so, the appeal shall stand dismissed.

13. Within *one month* from the printed copies of the Appendix being brought in, the solicitor for the respondent shall bring in printed copies of his case ; and if he shall not do so, the appellant may notwithstanding proceed with his appeal.

14. As soon as the time allowed for bringing in the cases has expired, the appeal shall stand for hearing before the Judicial Committee, provided that where an appearance has not been entered a period of *four months* has expired from the bringing in of the petition of appeal.

15. Where the appellant resides out of the United Kingdom, he shall, within *two months* after his solicitor has been served with a notice to that effect, give bail by two sufficient sureties to answer the costs of the appeal in the sum of *two hundred pounds* ; and if he shall not do so, the appeal shall stand dismissed. Forms of the bail bond, affidavit of justification, and commission to take bail, are given in the Appendix, and are marked Nos. 6, 7, and 8.

16. At any time before the appeal is set down for hearing before the Judicial Committee, the registrar may, on the application of either solicitor, make an Order on the adverse solicitor to file a proxy from his party within such time as the registrar shall appoint, and if the adverse solicitor shall not within such time file his proxy, motion may be made

to the Judicial Committee to enforce the Order either by dismissing the appeal, or in such other way as the Judicial Committee shall direct. A form of the proxy is given in the Appendix, and is marked No. 9.

17. It shall be competent to the appellant's solicitor at any stage of the proceedings to file in the registry a proxy from his party, stating that he abandons the appeal, and consents to be condemned in the costs thereof, and thereupon the appeal shall stand dismissed. A form of the proxy of abandonment is given in the Appendix, and is marked No. 10.

18. The registrar may, on good cause shown, extend the time allowed by these Rules for doing any act.

19. When an appeal by these Rules stands dismissed, the appellant shall, unless there is a special agreement to the contrary, stand condemned in the costs of the appeal.

20. When an appeal by these Rules stands dismissed, either solicitor may within one fortnight from that time file in the registry a notice of motion to have the appeal reinstated, and on the hearing of the motion the Judicial Committee may, if it so think fit, direct the appeal to be reinstated, subject to such Order as to the costs or otherwise as to it shall seem meet.

21. If notice of motion to have the appeal reinstated be not given within the time prescribed by the preceding Rule, the registrar may, on the application of either solicitor, issue a relaxation of the inhibition. A form of the relaxation of inhibition is given in the Appendix, and is marked No. 11.

22. If, on the final hearing, the Judicial Committee shall order the cause to be remitted, the registrar shall, on the application of either solicitor, issue a remission. A form of the remission is given in the Appendix, and is marked No. 12.

23. Neither solicitor shall be entitled to plead specially, whether in objection to the jurisdiction, or in respect of noviter perventa or of any other matter, without leave having been first obtained from the Judicial Committee.

24. In case either solicitor is allowed to plead, the Rules which are in force for the time being in the High Court of Admiralty in regard to pleadings and proofs shall, so far as they are applicable, and not inconsistent with these Rules, be the Rules in regard to pleadings and proofs in appeals.

25. In case any matter is referred to the registrar, or to the registrar assisted by merchants, to report upon, the same Rules which are in force for the time being in the High Court of Admiralty in regard to references shall, so far as they are applicable, be the Rules in regard to references in the Court of Appeal.

26. If a party shall not pay any amount which shall have been found to be due from him within a *fortnight* after he shall have received notice from the adverse solicitor demanding payment of the same, the registrar may, on the application of the solicitor, and on an affidavit being filed proving the notice, issue a monition for payment thereof.

JUDICIAL COMMITTEE

A form of the monition for payment is given in the Appendix, and is marked No. 13.

27. Upon the monition being returned duly served, and an affidavit filed that the amount has not been paid, motion may be made to the Judicial Committee for an attachment or a sequestration, as the case may be. Forms of the attachment, supersedeas of attachment, sequestration, relaxation of sequestration, sequestration of benefice, and relaxation of sequestration of benefice are given in the Appendix, and are marked Nos. 14, 15, 16, 17, 18 and 19.

28. When an appendix or case is brought in, *sixty* copies thereof shall be, left in the registry, and *forty* delivered to the adverse solicitor, if any.

29. Save in an appeal proceeding by default, no document shall be allowed to be filed without a certificate that a copy thereof has been previously served upon the adverse solicitor.

30. Any consent in writing between the solicitors may, with the approval of the registrar, be filed, and shall thereupon become an Order of Court.

31. The practice heretofore existing in regard to libels of appeal, setting down causes on motion by counsel, and all acts and proceedings before surrogates are abolished. But the same fees shall be allowed for filing any document, returning any instrument, or doing any act by a solicitor in the registry as have heretofore been allowed for doing any similar act before a surrogate in chambers.

32. The existing practice of the Court shall continue in force, save in so far as it is inconsistent with these Rules.

33. All instruments already issued or hereafter to be issued, and which are made returnable before the Judicial Committee, or before a surrogate of the Judicial Committee may be returned into the registry.

34. These Rules shall come into operation on the first day of February, 1866, and shall apply to all appeals prosecuted on or after that day, and to all proceedings which shall then remain to be had or done in appeals prosecuted before that day.

And Her Majesty is further pleased to order, and it is hereby ordered, that the foregoing Rules be punctually observed, obeyed, and carried into execution in all appeals, or petitions and complaints in the nature of appeals, brought to Her Majesty, or to Her heirs and successors, from the High Court of Admiralty of England, or from any of Her Majesty's Courts of Vice-Admiralty in any of Her Majesty's colonies or plantations abroad, or from any other Court of Admiralty Jurisdiction, and likewise from all Courts Ecclesiastical from which an appeal lies to Her Majesty in Council :

Whereof the Right Honourable the Judge of the High Court of Admiralty in England, the Right Honourable the Dean of the Arches Court of Canterbury, the Commissary of the Chancery Court of York, and all other Judges and officers of the said Courts of Admiralty or Ecclesiastical Jurisdiction, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

Arthur Helps.

Schedule annexed to the foregoing Order.

Form No. 1.

Petition of Appeal.

In Her Majesty's Court of Appeals.

From the [state Court appealed from].

[State Title of Appeal.]

To the Queen's Most Excellent Majesty.

The humble petition of [state name and address of solicitor], solicitor for the above-named [state appellant's name].

Sheweth,

That in a certain cause lately depending in the [state Court appealed from], promoted by [state name and description of plaintiff in Court below] against [state name and description of defendant and of property, if any, proceeded against in the Court below], the [state name of Judge], the Judge of the said Court did on the day 18 decree or order [state purport of Decree or Order appealed from], from which Decree or Order an appeal has been duly interposed.

Wherefore your petitioner most humbly prays that Your Majesty will be graciously pleased to reverse the said Decree or Order, or to make such Order in the premises as to Your Majesty shall seem meet.

Dated at this day of
[To be signed by the solicitor.]

Form No. 2.

Inhibition and Citation.

In Her Majesty's Court of Appeals.

From the [state Court appealed from].

[State Title of Appeal.]

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith : To all and singular Our liege subjects, being literate persons whomsoever and wheresoever in and throughout Our said United Kingdom and other Our Dominions, and especially to Our officer lawfully appointed, Greeting :

Whereas in a cause [state nature of cause] lately depending in [state from what Court the cause is appealed], promoted by [state name and description of plaintiff in Court below] against [state name and description of defendant and of property, if any, proceeded against in Court below], the [state name of Judge], the Judge of the said Court, did on the day of 18 [state purport of Decree or Order appealed from], from which said Decree or Order an appeal has been duly made to Us in Council on behalf of the said [state name of appellant], and has by Us been referred to the Judicial Committee of Our said Council.

We do therefore hereby authorise and command you jointly and severally to inhibit or cause to be inhibited the said [state name and title of Judge of Court below], from whom the said cause is appealed, his registrar or actuary, and the said [state name of respondent], and all other persons whomsoever, that neither they nor any of them pending the said appeal do or attempt anything to the prejudice of the said appellant or of his said appeal. And further that you cite or cause to be cited the said [state name of respondent] and all other persons having any interest in the said appeal, to enter an appearance in the registry of Our Court of Appeals for ecclesiastical and maritime causes, situate at within days after service hereof. And that you warn them that if they do not enter an appear-

Appeals in Ecclesiastical and Maritime Causes

Form No. 10.

Proxy of Abandonment.

In Her Majesty's Court of Appeals.
From the [*state Court appealed from*].

[*State Title of Appeal.*]

I [*insert name and description*], the appellant in the above-named appeal, do hereby declare, that I abandon the same, and proceed no further therein, and I undertake to pay all costs that may have been incurred by the respondent herein ; and I authorise and direct you [*insert name of solicitor*], my solicitor in the said appeal, to file this proxy in the registry of Her Majesty's Court of Appeals for ecclesiastical and maritime causes.

Dated the day of 18 .
[*To be signed by the appellant.*]

Witness,

Form No. 11.

Relaxation of Inhibition.

In Her Majesty's Court of Appeals.
From the [*state Court appealed from*].

[*State Title of Appeal.*]

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith : To [*state name and title of Judge of Court below*], or his surrogate, or some other competent Judge in this behalf, Greeting :

Whereas in a cause lately depending in the said Court promoted by [*state name and description of plaintiff in Court below*], against [*state name and description of defendant and property, if any, proceeded against in Court below*], an appeal from an Order or Decree of the Judge of the said Court was made to Us in Council on behalf of the said [*state name of appellant*], and was by Us referred to the Judicial Committee of Our said Council : And whereas on the day of 18 , We did command that [*you*] the said [*state name and title of Judge from whom the cause was appealed*], [*your*] registrar or actuary, and the said [*state name of respondent*], and all other persons whosoever, should be inhibited from attempting anything to the prejudice of the said appellant or of his said appeal: And whereas the said [*state name of appellant*] has abandoned his said appeal [*or failed to prosecute his said appeal within the time allowed by law*], We do therefore hereby relax the said inhibition, justice so requiring.

Given at London under the Seal which We use in this behalf, the
day of in the year of Our Lord 18 .

(L.S.)
Relaxation of Inhibition.
Taken out by

A.B.,
H.M. Registrar.

Form No. 12.

Remission.

In Her Majesty's Court of Appeals.
From the [*state Court appealed from*].

[*State Title of Appeal.*]

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith : To [*state name and title of*

JUDICIAL COMMITTEE

Judge of Court below], his surrogate, or some other competent Judge in this behalf, Greeting : Whereas in a cause lately depending in the said Court, promoted by [*state name and description of plaintiff in Court below*] against [*state name and description of defendant and of property, if any, proceeded against in Court below*], an appeal from an Order or Decree of the Judge of the said Court was made to Us in Council on behalf of the said [*state name of appellant*], and was by Us referred to the Judicial Committee of Our said Council : And whereas Our said Judicial Committee did on the day of 18 , report to Us against the said appeal, and that the Decree or Order appealed from ought to be affirmed, and the cause remitted, with all its incidents (save the costs incurred in the said appeal), to the Judge of the said Court from which the same was appealed [*or, as the case may be*] : And whereas on the day of , We were pleased, by and with the advice of Our Privy Council, to approve of the said report, and to order that the same should be duly carried into execution (justice so requiring), We do therefore hereby authorise and command you to resume into your own hands the said cause, with all its incidents (save as aforesaid), and freely to proceed therein according to the exigence of the law and the tenor of the former proceedings, and to administer justice between the parties, any inhibition heretofore issued to the contrary notwithstanding.

Given at London, under the Seal which We use in this behalf, this
day of in the year of Our Lord 18 .

(L.S.)

Remission.

Taken out by

A.B.,

H.M. Registrar.

Form No. 13.

Monition for Payment.

In Her Majesty's Court of Appeals.

From the [*state Court appealed from*].

[*State Title of Appeal.*]

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith : To [*state name and address of person to be monished*], Greeting :

Whereas in the above-named appeal, now or lately depending before the Judicial Committee of Our Privy Council, the sum of [*state sum in words*] has been found due from you the said [*state name of person to be monished*] to [*state name of person to whom the sum is due*] for [*state for what the sum is due*] : We therefore hereby command you the said [*state name of person monished*] to pay within days from the service hereof (exclusive of the day of service) and the sum of [*state sum in words*] to the said [*state name and address of person to whom the money is to be paid*] accordingly and hereof fail not.

Given at London, under the Seal which We use in this behalf, this
day of in the year of Our Lord 18 .

(L.S.)

Monition to pay £

Taken out by

A.B.,

H.M. Registrar.

Form No. 14.

Attachment.

In Her Majesty's Court of Appeals.
From the [*state Court appealed from*].
[*State Title of Appeal.*]

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith : To all and singular Our Justices of the Peace, Mayors, Sheriffs, Bailiffs, Marshals, Constables, and to all Our Officers, Ministers, and others whomsoever, Greeting :

Whereas in the above-named appeal, now or lately depending before the Judicial Committee of Our Privy Council, Our said Judicial Committee has decreed [*state name and description of person to be attached*] to be attached for manifest contumacy and contempt in not having obeyed Our monition bearing date the day of 18 , heretofore issued by Us in the said appeal, requiring him to [*state in what the contempt has consisted*], We therefore hereby command you to attach and arrest the said [*state name of person to be attached*], and to keep him under safe arrest until you shall receive further orders from Us, or until the said [*state name of person to be attached*] shall have obeyed Our said monition, and cleared himself of his said contempt.

Given at London, under the Seal which We use in this behalf, the
day of in the year of Our Lord 18 .

(L.S.)
Attachment.
Taken out by

A.B.,
H.M. Registrar.

Indorsement.

In Her Majesty's } To receive into your custody the body of
Court of Appeals. } herewith sent you, for the cause hereunder
written ; that is to say,

For his manifest contumacy and contempt in not having obeyed the within-mentioned monition (*or as the case may be*).

A.B.,
H.M. Registrar.

Form No. 15.

Supersedeas of Attachment.

In Her Majesty's Court of Appeals.
From the [*state Court appealed from*].
[*State Title of Appeal.*]

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith : To the
or keeper of Our prison called the in Our county of
his deputy or deputies, and all persons whomsoever in whose custody the body of the under-mentioned [*state name of person attached*] now is or remains, Greeting :

Whereas the Judicial Committee of Our Privy Council has ordered that the attachment heretofore issued in the above-named appeal against the said [*state name and description of person attached*], bearing date the day of 18 , be superseded [*here state the conditions, if any, on which the supersedeas is to issue*] : We therefore hereby command that [*here state the conditions as before*] you forthwith release the said [*state name of person attached*], and hereof fail not.

