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**Australia, Commonwealth of**

**ORDER IN COUNCIL REGULATING APPEALS BY SPECIAL  
LEAVE FROM THE HIGH COURT OF THE COMMON-  
WEALTH OF AUSTRALIA TO HIS MAJESTY IN COUNCIL.**

At the Court at Buckingham Palace, the 28th day of November, 1910.

PRESENT,

The King's Most Excellent Majesty.

Lord President.

Earl Beauchamp.

Lord Steward.

Lord Knollys.

Whereas by the Commonwealth of Australia Constitution Act, (63 & 64 Vict. cap. 12) it is, among other things, enacted that except as therein provided the Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of Appeal from the High Court of the Commonwealth to Her Majesty in Council :

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- (a) *See* the title "Gilbert and Ellice Islands."
  - (b) *See* the title "Foreign Jurisdiction."
  - (c) *See* the title "Seychelles."
  - (d) *See* the title "Southern Rhodesia."

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And whereas it is desirable with a view to promoting uniformity in the practice and procedure in Appeals to His Majesty in Council that provision should be made for regulating the manner in which the proceedings in the case of Appeals by such special leave shall be conducted :

It is hereby ordered by the King's Most Excellent Majesty by and with the advice of the Privy Council that the rules hereinafter set out shall regulate Appeals by special leave from the High Court of the Commonwealth of Australia to His Majesty in Council.

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 either the Full Court or a single Justice of the High Court of Australia according as the matter in question is one which under the rules and practice of the High Court properly appertains to the Full Court or to a single Justice ;

“ 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. 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.

3. 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.

4. 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 Australia 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.

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

6. Where the Record is printed in Australia 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 of the Court.

7. 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.

8. Where part of the Record is printed in Australia and part is to be printed in England, Rules 6 and 7 shall, as far as practicable, apply to such parts as are printed in Australia and such as are to be printed in England respectively.

9. 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.

10. Where at any time between the order granting special 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 special 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.

11. 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.

12. The Case of each party to the Appeal may be printed either in Australia 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.

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13. 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.

14. Where the Judicial Committee directs a party to bear the costs of an Appeal incurred in Australia, 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.

15. 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 original judgment of the Court should or might have been executed.

*Almeric FitzRoy.*

### *Schedule*

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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.

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