



**BERMUDA  
1911 : 1**

**APPEALS ACT 1911**

ARRANGEMENT OF SECTIONS

- 1 Interpretation
- 2 When appeal lies
- 3 Application to Court of Appeal for leave
- 4 Conditions
- 5 Payment of money or performance of duty; direction
- 6 Preparation of Record
- 7 Contents of Record
- 8 Objection to inclusion of document in Record
- 9 Rules for printing of Record
- 10 Record printed in Bermuda
- 11 Record printed in England
- 12 Record printed partly in Bermuda and partly in England
- 13 Transmission to Privy Council of reasons given by Court or Judge
- 14 Consolidation of appeals
- 15 Withdrawal of appeal before final leave granted
- 16 Failure of appellant to apply promptly for final leave
- 17 Inquiry whether sufficient notice was given
- 18 Privy Council rules apply once final leave is given
- 19 Withdrawal of appeal after final leave and before despatch of Record to England
- 20 Failure to despatch Record to England
- 21 Record becoming defective through death or change of status of party
- 22 Defect after despatch of record to England
- 23 Printing of Case
- 24 Rules for preparing Case

## APPEALS ACT 1911

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- 25 Taxation of costs of appeal incurred in Bermuda
- 26 Execution of Order in Council
- 27 Saving of rights of Her Majesty

### SCHEDULE Form of record and case

[3 January 1911]

[preamble and words *cf* enactment omitted]

#### **Interpretation**

- 1 In this Act, where not inconsistent with the context—
- "appeal" means an appeal from the Court of Appeal for Bermuda to Her Majesty in Council;
  - "the Court" means the Court of Appeal for Bermuda;
  - "judgment" includes decree, order, sentence or decision;
  - "the Record" means the aggregate of papers relating to an appeal, including the pleadings, proceedings, evidence and judgments, proper to be laid before Her Majesty in Council on the hearing of the appeal.
  - "Justice of Appeal" means a justice of Appeal appointed by the Governor under section 77 of the Constitution [*title 2 item 1*];
  - "the Registrar" means the Registrar of the Court.

#### **When appeal lies**

- 2 Subject to this Act, an appeal shall lie —
- (a) 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 \$12,000 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 \$12,000 or upward; or
  - (b) as of right, from the final determination of the Court of an appeal from any final determination of any application or question by the Supreme Court under section 15 of the Constitution [*title 2 item 1*];
  - (c) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public im

portance, or otherwise, ought to be submitted to Her Majesty in Council for decision.

**Application to Court of Appeal for leave**

3 Applications to the Court for leave to appeal shall be made by motion or petition within twenty-one days after the date of the judgment to be appealed from, and the applicant shall give the opposite party notice of his intended application,

**Conditions**

4 Leave to appeal under section 2 shall only be granted by the Court in the first instance —

- (a) upon condition that 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, enters into good and sufficient security, to the satisfaction of the Court, in a sum not exceeding \$12,000, for the due prosecution of the appeal, and for the payment of all such costs as may become payable to the respondent in the event of the appellant's not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of Her 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.

**Payment of money or performance of duty; direction**

5 Where the judgment appealed from requires the appellant to pay any money or perform any 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 seems just; and in any case where the Court directs 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 Her Majesty in Council may think fit to make thereon.

## **APPEALS ACT 1911**

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### **Preparation of Record**

6 The preparation of the Record shall be subject to the supervision of the President of the Court or such other Justice of Appeal or Judge of the Supreme Court as may be appointed by him for the purpose, and the parties may submit any disputed question arising in connection therewith to his decision; and he shall give such directions thereon as the justice of the case may require.

### **Contents of Record**

7 The Registrar, as well as the parties and their legal agents, shall endeavour to exclude from the Record all documents (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.

### **Objection to inclusion of document in Record**

8 Where in the course of the preparation of the 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 Bermuda or in England), shall, with a view to the subsequent adjustment of the costs of and incidental to such documents, indicate in the index of papers, or otherwise, the fact that, and the part whom, the inclusion of the document was objected to.

### **Rules for printing of Record**

9 The Record shall be printed in accordance with the Rules in the Schedule, and may be so printed either in Bermuda or in England.

### **Record printed in Bermuda**

10 Where the Record is printed in Bermuda, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council forty copies of the 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.

### **Record printed in England**

11 (1) 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 the Record, together with an index of all the papers and exhibits in the case.

(2) 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.

**Record printed partly in Bermuda and partly in England**

12 Where part of the Record is printed in Bermuda and part is to be printed in England, then the provisions of section 10 and of section 11, shall, as far as practicable, apply respectively to such parts as are printed in Bermuda and such as are to be printed in England.

**Transmission to Privy Council of reasons given by Court or Judge**

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

**Consolidation of appeals**

14 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, then the Court may direct the appeals to be consolidated and may grant leave to appeal by a single order.

**Withdrawal of appeal before final leave granted**

15 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.

**Failure of appellant to apply promptly for final leave**

16 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 application in that behalf made by the respondent, rescind the order granting conditional leave to appeal, notwithstanding that the appellant has complied 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 may think fit, or may make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires.

**Inquiry whether sufficient notice was given**

17 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 the Court is not satisfied as to the notices given, the Court may defer the grant of the final leave to

## **APPEALS ACT 1911**

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appeal, or may give such other directions in the matter as, in the opinion of the Court, the justice of the case requires.

### **Privy Council rules apply once final leave is given**

18 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 Her Majesty in Council.

### **Withdrawal of appeal after final leave and before despatch of Record to England**

19 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 Her 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 thinks fit to direct.

### **Failure to despatch Record to England**

20 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, then 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 certificate, the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express order of Her 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 thinks fit to direct.

### **Record becoming defective through death or change of status of party**

21 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 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 Her Majesty in Council.

**Defect after despatch of record to England**

22 Where the Record, subsequent 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.

**Printing of Case**

23 The Case of each party to the appeal may be printed either in Bermuda or in England and shall, in either event, be printed in accordance with the Rules in the Schedule, 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.

**Rules for preparing Case**

24 (1) 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.

(2) Reference 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.

(3) 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.

**Taxation of costs of appeal incurred in Bermuda**

25 Where the Judicial Committee directs a party to bear the costs at an appeal incurred in Bermuda such costs shall be taxed by the Registrar in accordance with the Rules for the time being regulating taxation in the Court.

**Execution of Order in Council**

26 The Court shall conform with, and execute, any order which Her 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.

## **APPEALS ACT 1911**

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### **Saving of rights of Her Majesty**

27 Nothing in this Act contained shall be deemed to interfere with the right of Her Majesty, upon the humble Petition of any person aggrieved by any judgment of the Court, to admit his appeal therefrom upon such conditions as Her Majesty in Council may think fit to impose.

*[This Act was brought into operation on 1 May 1911]*



**SCHEDULE**

FORM ETC. OF RECORD AND CASE

1 Records and Cases in appeals to Her Majesty in Council shall be printed in the form known as Demy Quarto.

2 The size of the paper used shall be such that the sheet, when folded and trimmed, is 11 inches in height and 8 1/2 inches in width.

3 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.

4 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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[Amended by 1951 58  
1952 11  
1964 221  
1969 182  
1971 82  
1984 28]