SARAWAK, NORTH BORNEO AND BRUNEI

The Sarawak, North Borneo and Brunei (Appeal to Privy Council) Order in Council, 1951

1951 No. 1949

Made - - - -	14*th November*, 1951
Laid before Parliament	15*th November*, 1951
Coming into Operation	1*st December*, 1951

At the Court at Buckingham Palace, the 14th day of November, 1951

Present,

The King's Most Excellent Majesty in Council

Whereas by the Sarawak, North Borneo and Brunei (Courts) Order in Council, 1951(a), provision is made for the constitution of a Supreme Court of Sarawak, North Borneo and Brunei consisting of a High Court and a Court of Appeal:

And Whereas by an Enactment of His Highness the Sultan in Council of the State of Brunei intituled The Superior Courts (Authorization) Enactment, 1951, it is provided that, subject to and in accordance with any Order of His Majesty in Council or any other law or rule for the time being in force relating to appeals to His Majesty in Council, an appeal shall lie to His Majesty in Council from any Court or Courts established by any such Order:

And Whereas it is expedient that provision should be made for regulating appeals from the Court of Appeal of Sarawak, North Borneo and Brunei to His Majesty in Council:

Now, therefore, His Majesty, by virtue of the powers in this behalf by the Judicial Committee Act, 1833(b), the British Settlements Acts, 1887 and 1945(c), the Foreign Jurisdiction Act, 1890(d), or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered as follows:

Interpretation

1.—(1) In this Order, unless the context otherwise requires:—

" appeal " means appeal to His Majesty in Council;

" Court " means either the Court of Appeal of Sarawak, North Borneo and Brunei established by the Sarawak, North Borneo and Brunei (Courts) Order in Council, 1951(a), or a single Judge of that Court according as the matter in question is one which, under the rules and practice of the said Court or under section 6 of this Order, properly appertains to the full Court or to a single Judge;

" judgment " includes decree, order, sentence, or decision;

" 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;

(a) S.I. 1951 No. 1948, p. 620 below.
(b) 3 & 4 Will. 4. c. 41.
(c) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7.
(d) 53 & 54 Vict. c. 37.

"Registrar" means the Registrar or other proper officer having custody of the records in the Court;

"territories" means the Colonies of Sarawak and North Borneo and the State of Brunei.

(2) The Interpretation Act, 1889(a) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Short title, commencement and revocation

2.—(1) This Order may be cited as the Sarawak, North Borneo and Brunei (Appeal to Privy Council) Order in Council, 1951 and shall come into operation on the first day of December, 1951.

(2) On the commencement of this Order the North Borneo (Appeals) Order in Council, 1914(b) and the Brunei (Appeals to Privy Council) Order in Council, 1908(c) shall be revoked without prejudice to anything lawfully done thereunder or to the continuation and conclusion of any appeal to His Majesty in Council pending at the commencement of this Order.

Appealable matters

3. Subject to the provisions of this Order, 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 £500 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 said value or upwards; and

(*b*) 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 importance or otherwise, ought to be submitted to His Majesty in Council for decision.

Application for leave to appeal

4. Applications to the Court for leave to appeal shall be made by motion or petition within two months from the date of the judgment to be appealed from or within such further period not exceeding six months from the date of the judgment as the Court may allow, and the applicant shall give all other parties to the appeal notice of his intended application.

Conditional leave to appeal

5. Leave to appeal under section 3 of this Order shall, in the first instance, be granted by the Court only—

(*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 £500 for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his 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 costs of the appeal (as the case may be); and

(a) 52 & 53 Vict. c. 63. (b) S.R. & O. 1914, III, p. 379.
(c) S.R. & O. 1908, p. 1047.

(*b*) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purposes 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.

Powers of single judge

6. A single Judge of the Court shall have power and jurisdiction—

(*a*) to hear and determine any application to the Court for leave to appeal under paragraph (*a*) of section 3 of this Order, and

(*b*) generally, in respect of any appeal pending before His Majesty in Council, to make such other order and to give such other directions as he shall consider the interests of justice or the circumstances of the case to require:

Provided that any order, directions or decision made or given in pursuance of the power conferred by this section may be varied, discharged or reversed by the Court.

Execution of judgment pending appeal

7. Where the judgment appealed from requires the appellant to pay money or do any act, 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.

Preparation of record

8.—(1) 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 theron as the justice of the case may require.

(2) 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 relevent 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.

(3) 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 any of the territories, 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.

(4) The reasons given by Judges of the Court for or against any judgment pronounced in the course of the proceedings out of which the appeal arises shall be communicated by them in writing to the Registrar, and shall be included in the record.

Printing of record

9.—(1) The record shall be printed in accordance with the Rules set forth in the Schedule to this Order. It may be so printed either in any of the territories or in England.

(2) Where the record is printed in any of the territories, 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.

(3) 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.

(4) Where part of the record is printed in any of the territories and part is to be printed in England, subsections (2) and (3) of this section shall, as far as possible, apply to such parts as are printed in any such territory and such as are to be printed in England respectively.

Consolidation of appeals

10. 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.

Rescinding leave to appeal

11. 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 an order, and may give such directions as to the costs of the appeal and 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.

Notice to other parties

12.—(1) On an application for final leave to appeal, the Court may enquire whether notice or sufficient notice of the application has been given by the appellant to 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.

(2) The Registrar shall, with all convenient speed, transmit to the Registrar of the Privy Council a certificate to the effect that the respondent has received notice, or is otherwise aware, of the Order of the Court granting final leave to appeal and of the transmission of the record to England.

Prosecution of appeal

13. 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.

Withdrawal of appeal

14.—(1) 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.

(2) Where an appellant, having obtained final leave to appeal, desires, prior to the dispatch 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.

Dismissal for non-prosecution

15. 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 dispatch of the record to England, any 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.

Substituting parties

16.—(1) Where at any time between the order granting final leave to appeal and the dispatch 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.

(2) Where the record subsequently to its dispatch 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

17. The case of each party to the appeal may be printed either in any of the territories or in England and shall, in either event, be printed in accordance with the Rules set forth in the Schedule to this Order, 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.

Form of case

18. 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 case, and the reasons of appeal. 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 should 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 any party, inquire into any unnecessary prolixity in the case, and shall disallow the costs occasioned thereby.

Costs in territories

19. Where the Judicial Committee directs a party to bear the costs of an appeal incurred in any of the territories, 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.

Enforcing judgment

20. Any Order which His Majesty in Council may think fit to make on an appeal from a judgment of the Court shall be enforced in like manner as any judgment of the Court should or might have been executed.

Special leave to appeal

21. Nothing in this Order 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.

F. J. Fernau.

SCHEDULE

Sections 9 (1) and 17.

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 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.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order makes provision for regulating appeals from the Court of Appeal of Sarawak, North Borneo and the State of Brunei to His Majesty in Council.

The Sarawak, North Borneo and Brunei (Courts) Order in Council, 1951

1951 No. 1948

Made - - - -	14*th November*, 1951
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Coming into Operation	1*st December*, 1951

At the Court at Buckingham Palace, the 14th day of November, 1951

Present,

The King's Most Excellent Majesty in Council

Whereas by Laws now in force there are established in the Colony of Sarawak courts styled respectively the Supreme Court and the Circuit Courts, in the Colony of North Borneo the High Court and the Sessions Courts, and in the State of Brunei the office of the Judge of Appeal and the Court of the Resident of Brunei:

And Whereas it is expedient that in place of the Courts aforesaid there should be established for the Colonies of Sarawak and North Borneo and the State of Brunei, one Supreme Court of Judicature, consisting of a High Court and a Court of Appeal:

And Whereas by virtue of the Sarawak Letters Patent, 1946(**a**), the North Borneo Letters Patent, 1946(**b**), and (as respects that part of the Colony of North Borneo which previously formed the Settlement of Labuan) the British Settlements Acts, 1887 and 1945(**c**), and the Straits Settlements (Repeal) Act, 1946(**d**), His Majesty in Council has power to make laws for the peace, order and good government of the said Colonies:

And Whereas by an Enactment of His Highness the Sultan in Council of the State of Brunei intituled the Superior Courts (Authorization) Enactment, 1951, it is provided that, as from such day as may be appointed by or in pursuance of an Order of His Majesty in Council, the office of the Judge of Appeal and the Court of the Resident of the State of Brunei shall cease to exist, and in place thereof there shall be such Court or Courts as His Majesty may by Order in Council establish, with such original and appellate jurisdiction and such powers and duties as may be determined by, or in pursuance of, any Order of His Majesty in Council or any other law for the time being in

(**a**) S.R. & O. 1946, I, p. 2358. (**b**) S.R. & O. 1946, I, p. 2349.
(**c**) 50 & 51 Vict. c. 54; 9 & 10 Geo. 6. c. 7. (**d**) 9 & 10 Geo. 6. c. 37.