JUDICIAL COMMITTEE

1959 No. 1978

The Sierra Leone and the Gambia (Appeals to Privy Council) Order in Council, 1959

Made - - - - 20*th November,* 1959
Laid before Parliament 26*th November,* 1959
Coming into Operation 19*th May,* 1960

At the Court at Buckingham Palace, the 20th day of November, 1959

Present,

The Queen's Most Excellent Majesty in Council

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

Citation and commencement

1. This Order may be cited as the Sierra Leone and the Gambia (Appeals to Privy Council) Order in Council, 1959, and shall come into operation on the day appointed under subsection (2) of section 1 of the Sierra Leone and the Gambia Court of Appeal Order in Council, 1959(d) (in this Order referred to as " the appointed day ").

Interpretation

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

" appeal " means appeal to Her Majesty in Council;

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

" 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;

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

" Sierra Leone " means the Colony and Protectorate of Sierra Leone;

" the Court " means either the full Court or a single judge of the Sierra Leone and the Gambia Court of Appeal constituted under the provisions of the Sierra Leone and the Gambia Court of Appeal Order in Council, 1959, 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 a full Court or to a single judge;

(a) 3 & 4 Will. 4. c. 41. (b) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7.
(c) 53 & 54 Vict. c. 37. (d) 1959/1977 (Pt. II, p. 3289, of this vol.).

"the Gambia" means the Colony and the Protectorate of the Gambia;

"Territory" means Sierra Leone or the Gambia.

(2) Any reference in this Order to the holder of an office by the term designating his office includes any person who is for the time being authorized to perform the functions of that office.

(3) Save as is in this Order otherwise provided or required by the context the Interpretation Act, 1889(a), shall apply for the purpose of interpreting this Order as it applies for the purpose of interpreting an Act of Parliament.

Appeals

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 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 from any final judgment of the Court given in an action for the divorce of persons joined in matrimony or for a declaration of nullity of marriage;

(*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 Her 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 forty-two days from the date of the judgment to be appealed from, and the applicant shall give the opposite party notice of his intended application.

Conditions on which leave to appeal is to be granted

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, providing good and sufficient security, to the satisfaction of the Court, in a sum not exceeding five hundred pounds sterling, 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'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.

Powers of a 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;

(a) 52 & 53 Vict. c. 63.

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

Execution of judgment pending appeal

7. 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, provide good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as Her Majesty in Council shall think fit to make thereon.

Manner of providing security

8. For the purpose of sections 5 and 7 of this Order a person may provide security in any manner that the Court may approve in his case, and for the avoidance of doubts it is declared that such security may with the approval of the Court consist in whole or in part of a deposit of money.

Preparation of record

9.—(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 thereon 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 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.

(3) 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 either 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 the 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

10.—(1) The record shall be printed in accordance with the rules set forth in the Schedule to this Order. It may be so printed in either of the Territories or in England.

(2) Where the record is printed in either of the Territories, 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.

(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 the 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 either of the Territories and part is to be printed in England, subsections (2) and (3) of this section shall, as far as practicable, apply to such parts as are printed in either of the Territories and such as are to be printed in England respectively.

Consolidation of appeals

11. 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

12. Where an appellant, having obtained an order granting him conditional leave to appeal and having complied with 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 provided 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

13.—(1) 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 the 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

14. 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

15.—(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 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 may think fit to direct.

Dismissal for non-prosecution

16. 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 Her Majesty in Council, and the costs of the appeal and the security provided by the appellant shall be dealt with in such manner as the Court may think fit to direct.

Substitution of parties

17.—(1) 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 Her Majesty in Council.

(2) 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.

Printing of case

18. The case of each party to the appeal may be printed in either 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, 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.

Form of case

19. 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, 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 either of the Territories

20. Where the Judicial Committee directs a party to bear the costs of an appeal incurred in either 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

21. Any Order which Her 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 enforced.

Special leave to appeal

22. Nothing in this Order 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 shall think fit to impose.

Revocations and transitional provisions

23.—(1) The West African (Appeal to Privy Council) Order in Council, 1949(**a**), and the West African (Appeal to Privy Council) Order in Council, 1955(**b**), (in this section referred to as " the existing Orders ") are revoked.

(2) (*a*) If, under the existing Orders—

(i) leave, whether conditional or final, has been given before the appointed day to appeal to Her Majesty in Council from any judgment of the West African Court of Appeal, or

(ii) any appeal from a judgment of the West African Court of Appeal is on the appointed day pending before Her Majesty in Council, or

(**a**) S.I. 1949 I, p. 4752. (**b**) S.I. 1955/1822 (1955 I, p. 1046).

(*b*) if special leave to appeal to Her Majesty in Council has been granted from a judgment of the West African Court of Appeal given before the appointed day,

such appeal may be commenced, continued and concluded or, as the case may be, continued and concluded in accordance with the provisions of this Order as nearly as may be as if it were an appeal from a judgment of the Sierra Leone and the Gambia Court of Appeal.

(3) Any Order that Her Majesty in Council may see fit to make on such an appeal as is referred to in subsection (2) of this section, or any Order on an appeal from a judgment of the West African Court of Appeal made by Her Majesty in Council before the appointed day but not enforced before that day, shall be enforced in accordance with the provisions of this Order as if it were an Order made on an appeal from the Sierra Leone and the Gambia Court of Appeal.

W. G. Agnew.

SCHEDULE

Sections 10 and 18.

Rules for Printing Cases

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, will be 11 inches in height and 8½ 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 forty-seven 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 appeals from the Sierra Leone and the Gambia Court of Appeal to the Judicial Committee of the Privy Council.