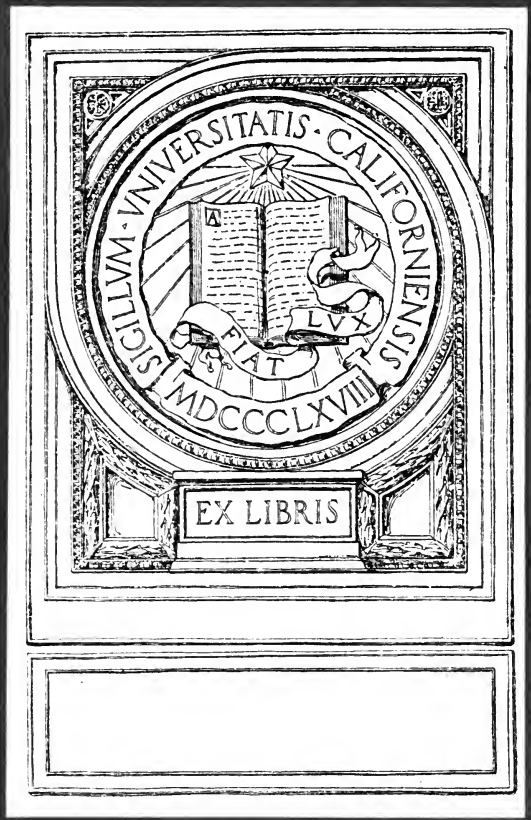
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THE PRACTICE OF THE PRIVY COUNCIL IN JUDICIAL MATTERS

IN

APPEALS FROM COURTS OF CIVIL, CRIMINAL AND ADMIRALTY JURISDICTION

AND IN

APPEALS FROM ECCLESIASTICAL AND PRIZE COURTS

WITH THE

STATUTES, RULES AND FORMS OF PROCEDURE

(FOUNDED UPON "SAFFORD AND WHEELER'S PRACTICE OF THE PRIVY COUNCIL IN JUDICIAL MATTERS.")

BY

NORMAN BENTWICH

OF LINCOLN'S INN, BARRISTER-AT-LAW

LONDON:

SWEET AND MAXWELL, LIMITED,

3, CHANCERY LANE, W.C.

Law Publishers.

1912.

BRADBURY, AGNEW, & CO. LD., PRINTERS,
LONDON AND TONBRIDGE.

To

HIS MAJESTY'S ATTORNEY-GENERAL,

THE RT. HON. SIR RUFUS DANIEL ISAACS,

K.C.V.O., K.C., M.P.,

WHO HAS PLAYED A LARGE PART IN GIVING EFFECT TO THE PROPOSALS FOR ADDING FURTHER DIGNITY TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, THIS WORK ON THE PRACTICE OF THE TRIBUNAL IS RESPECTFULLY DEDICATED.

PREFACE.

The practice of the Privy Council in judicial matters has been enormously simplified since the publication of Messrs. Safford and Wheeler's comprehensive work on that subject in 1901. In the first place, as the result, perhaps, of suggestions made by the learned authors of that book, the rules of appeal from the courts in most of the colonies, possessions and foreign jurisdictions of the Crown have been standardised, and now conform to a single model; and secondly, the rules of the Judicial Committee itself have been consolidated. Moreover, the jurisdiction of the Privy Council in relation to the extension of Letters Patent for inventions has been transferred to the Chancery Courts; and the number of courts from which appeals can be brought directly has been reduced by the federation of the South African colonies in the Union of South Africa, and the restriction of the right of appeal to cases which have already gone up to the appellate division of the Supreme Court of the Union. In view of these reforms and changes it has been found possible to reduce by more than half "the big evil of a big book," and to replace the *elephantinus liber* of Messrs. Safford and Wheeler by a more concise treatise without, it is hoped, a loss of comprehensiveness. The plan of the earlier work has been followed to a certain extent; but at the same time very large modifications have been made, and the whole book had to be rewritten.

The statutes bearing on the practice, largely reduced

in number, have been relegated to an appendix instead of forming the first part of the treatise. The historical account of the colonial courts with which Messrs. Safford and Wheeler prefaced the rules of appeal for each colony has been very greatly curtailed, but so as to preserve in each case the record of the origin of the jurisdiction of the King in Council. The rules of appeal from the colonies, etc., which form Part I. are now treated as a code, because this uniform scheme applies generally except to the Channel Islands and the Isle of Man, Quebec and Ontario, the Straits Settlements, British India and Ceylon, which still have a special practice of their own. In the case of these colonies and possessions the regulations have been dealt with separately; for the rest the special conditions which apply in each case are noted under the name of the dominion, colony or foreign jurisdiction concerned; and the general conditions which apply to all form the subject of the chapter entitled "Colonial Appeal Rules."

Part II. of the book, which treats of the practice before the Privy Council, is in large part a commentary upon the new code of procedure known as the Judicial Committee Rules, which was issued in December, 1908. I have used a considerable part of the material collected by Messrs. Safford and Wheeler, but I have discarded the references to a number of old cases, and on the other hand I have dealt with all the cases on the practice which have been reported since 1901. The simplification of the rules has rendered possible a simplification of the treatment. In the commentary I have not adhered to the order of the rules as they are set out in the code; but for convenience of reference I have added the text of the rules as issued in Appendix B.; and I have also added at the end of the book a table of steps to be taken previous to the hearing of an appeal, which gives the effect of the rules in a summary form.

Part III. of the book contains the practice in Admiralty, Prize, and Ecclesiastical appeals, which has been treated more briefly. As regards the two latter classes of appeal I understand that proposals are being considered for reforming the procedure before the Privy Council with a view to assimilating it more completely to the procedure in civil appeals. As, however, it is uncertain when these proposals will become effective, if at all, it seemed better not to delay the publication of the book; and as very few ecclesiastical and prize cases have been brought of recent years before the Privy Council, the changes, if and when they are made, will not be of great practical consequence.

The Appendices contain those material statutes upon the practice and powers of the Judicial Committee which are not already set out in the main part of the book, the Judicial Committee Rules, the Order in Council regulating the right of agents to practise before the Committee, a number of forms for use in various proceedings in the appeal, and the table of steps to be taken before hearing already mentioned.

The development of the Judicial Committee as the supreme appellate tribunal has probably not yet reached its final stage. At both the last Imperial Conferences suggestions were made by the representatives of the self-governing dominions for the formation of an Imperial Court of Appeal which should combine the functions of the House of Lords in its judicial capacity and of the Judicial Committee of the Privy Council. The Appellate Jurisdiction Bill which was introduced by the Government last year, and which is likely to be reintroduced this session, makes a striking advance in this direction; while the Home Rule Bill for Ireland, as introduced, proposes to give the Judicial Committee of the Privy Council the new Imperial function of determining whether the laws passed by the proposed Irish Parliament are within the powers of that body

or not, besides substituting it for the House of Lords as the final Court of Appeal for Irish cases (*a*).

In a federal British Empire the Sovereign in Council, whatever form that jurisdiction may ultimately take, will have functions more splendid even than those exercised to-day by the Judicial Committee of the Privy Council. Yet, as things are, that tribunal is the final Court of Appeal for more than one quarter of the population of the world; already, to repeat the words of my predecessors, "its jurisdiction is more extensive, whether measured by area, population, variety of nations, creeds, languages, laws or customs than that hitherto enjoyed by any court known to civilisation." The practice of this unique court has now been ordered in a manner worthy of its dignity, and it is hoped that this book may prove a reliable guide to it, both for those who are professionally concerned in the conduct of appeals and for those who are students of jurisprudence.

In conclusion, I am under greater obligations than I can well express to Mr. W. Reeve Wallace, the Chief Clerk of the Judicial Department of the Privy Council Office, for the help he has given me in the preparation of the book. Not only did he supply me with copies of the Orders in Council regulating the practice and with the forms contained in Appendix D., but he was at all times ready to advise me out of his special experience, and he has read the proofs and made many valuable suggestions upon them. I have also to thank Mr. J. M. Parikh, of the Middle Temple, Barrister-at-law, who has read part of the proofs and given me the benefit of his expert knowledge of the practice in Indian Appeals. As to written sources of information, in addition to my great debt to the work of Messrs. Safford and Wheeler I have

(*a*) The provisions of the Home Rule Bill dealing with the judicial functions of the Privy Council in relation to Ireland are set out in the Addenda.

derived much help from Mr. A. B. Keith's book on "Responsible Government in the Dominions" and from his articles on the "Constitution of the Australian Commonwealth," and on the "Constitution of the Union of South Africa" which appeared in the *Journal of Comparative Legislation*. Lastly, I have to acknowledge the courtesy of the Controller of His Majesty's Stationery Office in allowing me to embody in the chapter on costs certain regulations which are contained in a pamphlet on "Costs in the Privy Council," written by Mr. W. R. Wallace, which was published by the Stationery Office last year.

NORMAN BENTWICH.

LINCOLN'S INN,
April, 1912.

THE SOVEREIGN IN COUNCIL.

MEMBERS OF THE JUDICIAL COMMITTEE OF HIS MAJESTY'S MOST HONOURABLE PRIVY COUNCIL.

RIGHT HON. THE LORD CHANCELLOR (EARL LOREBURN).
RIGHT HON. THE EARL OF HALSBURY.
RIGHT HON. LORD ASHBOURNE.
RIGHT HON. LORD MACNAGHTEN, G.C.B., G.C.M.G.
RIGHT HON. LORD ATKINSON.
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RIGHT HON. LORD SHAW.
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RIGHT HON. SIR EDMUND BARTON, G.C.M.G.
RIGHT HON. SIR CHARLES FITZPATRICK.
RIGHT HON. SYED AMEER ALI, C.I.E.

The Master of the Rolls, the Lords Justices of the Court of Appeal of England, the Lord Chief Justice of Ireland, the Justices of the High Court of Judicature of Ireland, the Lord President of the Court of Session in Scotland and the other Judges of that Court, as well as the late Judges of those Courts, who are Privy Councillors, are also members of the Judicial Committee.

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ADDENDA.

THE Home Rule for Ireland Bill contains the following clauses which affect the Jurisdiction of the Judicial Committee of the Privy Council. They give the Judicial Committee an original jurisdiction to determine whether an Irish Act or Irish Bill is within the powers of the Irish Parliament as well as a final appellate jurisdiction in all Irish causes hitherto susceptible of appeal to the House of Lords:—

28.—(1) The appeal from courts in Ireland to the House of Lords shall cease; and where any person would, but for this Act, have a right to appeal from any court in Ireland to the House of Lords, that person shall have the like right to appeal to His Majesty the King in Council; and all enactments relating to appeals to His Majesty the King in Council, and to the Judicial Committee of the Privy Council, shall apply accordingly.

(2) When the Judicial Committee sit for hearing any appeal from a court in Ireland in pursuance of any provisions of this Act, there shall be present not less than four Lords of Appeal, within the meaning of the Appellate Jurisdiction Act, 1876, and at least one member who is or has been a judge of the Supreme Court in Ireland.

(3) A rota of Privy Councillors to sit for hearing appeals from courts in Ireland shall be made annually by His Majesty in Council, and the Privy Councillors, or some of them, on that rota shall sit to hear the said appeals. A casual vacancy occurring in the rota during the year may be filled by Order in Council.

(4) Nothing in this Act shall affect the jurisdiction of the House of Lords to determine the claims to Irish peerages.

29.—(1) If it appears to the Lord Lieutenant or a Secretary of State expedient in the public interest that steps shall be taken for the speedy determination of the question whether any Irish Act or any provision thereof, or any Irish Bill or any provision thereof is beyond the powers of the Irish Parliament, he may represent the same to His Majesty in Council, and thereupon the said question shall be forthwith referred to and heard and determined by the Judicial Committee of the Privy Council, constituted as if hearing an appeal from a court in Ireland.

(2) Upon the hearing of the question such persons as seem to the Judicial Committee to be interested may be allowed to appear and be heard as parties to the case, and the decision of the Judicial Committee shall be given in like manner as if it were the decision of an appeal, the nature of the report or recommendation to His Majesty being stated in open court.

(3) Nothing in this Act shall prejudice any other power of His Majesty in Council to refer any question to the Judicial Committee or the right of any person to petition His Majesty for such reference.

30.—(1) Where any decision of the Court of Appeal in Ireland involves the decision of any question as to the validity of any law made by the Irish Parliament, and the decision is not otherwise subject to an appeal to His Majesty the King in Council, an appeal shall lie to His Majesty the King in Council by virtue of this section, but only by leave of the Court of Appeal or His Majesty.

REFERENCES TO REPORTS.

The references to the English Law Reports Appeal Cases, which contain the cases heard by the Judicial Committee, are made in many cases simply to A. C. preceded by the number or year of the volume, and the letters L. R. are omitted: *e.g.*, *Cushing* v. *Dupuy*, 5 A. C. 409; *Hadijar* v. *Pitchey*, (1893) A. C. 193. As regards the Reports of Indian Cases, the references to the volumes of Indian Appeals in the Law Reports are made in many cases simply to I. A., preceded by the number of the volume, and the letters L. R. are omitted: *e.g.*, *Re Moore*, 20 I. A. 90.

The Indian Law Reports are often referred to as Bombay, Calcutta, Madras, etc., preceded by the number of the volume: *e.g.*, *Sri Gridhoriji, etc.*, 10 Calc. 817.

Moore's Privy Council Reports are referred to simply as Moo.: *e.g.*, *Macfarlane* v. *Leclaire*, 15 Moo. 181.

Moore's Indian Appeal Reports are cited as Moo. I. A.: *e.g.*, *Mohun Lal* v. *Bebee Doss*, 7 Moo. I. A.

THE PRACTICE OF THE PRIVY COUNCIL IN JUDICIAL MATTERS.

PART I.

THE JURISDICTION AND THE RULES OF APPEAL OF THE JUDICIAL COMMITTEE.

CHAPTER I.

THE CONSTITUTION AND JURISDICTION OF THE PRIVY COUNCIL.

Historical.

The King is the fountain of all justice throughout his dominions, and has always exercised jurisdiction in his Council, which acts in an advisory capacity to the Crown. After the Norman Conquest there were two Councils, the *Magnum Concilium* and the *Commune Concilium*, and subjects who had grievances against the administration of justice submitted their petitions to the King, who thus exercised in all cases supreme appellate jurisdiction. The court in which he himself often sat in person to receive appeals from the baronies and other subordinate judicatures within the kingdom became known as the *Curia Regis*, and was the root from which sprang the whole of our judicial

system. When Parliament developed out of the King's Council the bulk of the petitions were referred to it, and the High Court of Parliament became the chief appellate tribunal. But from the beginning of the fourteenth century Receivers and Triers of petitions were appointed to aid the dispensation of justice in Parliament. There were two groups of these receivers and triers: one for Great Britain and Ireland, the other for Guernsey, the lands beyond the seas, and the isles. In an Ordinance of Edward II. it was declared: "The King wills that in his Parliament for the future certain persons shall be assigned to receive petitions, and that they shall be determined (*delivrés*) by his Council (the triers), as was accustomed in the time of his father." These triers were originally composed of bishops, abbots, priors, peers, and judges.

Appeals from places out of the kingdom.

The Common Law writs did not run out of the kingdom, and as early as the year 1331 the claim of the Channel Islanders to have their cases determined in their own islands before their own Courts, from which an appeal had lain to the Duke of Normandy, came before the King's Bench at Westminster.

It was with appeals from the islands of Jersey and Guernsey that the King's Council probably commenced the exercise of its regular functions as a Court of Review. The islands were very jealous of their exclusive right to appeal to the King in Council, and the King likewise was jealous of his exclusive privilege.

Jersey O. in C. 1495.

An Order in Council of Henry VII., dated 1495, ordered that henceforth no appeal from the islands should be to any court in England, but only au Roy et Conseil.

During the Tudor era, however, the King in Council continued to exercise jurisdiction not only in cases which came in review from his dominions outside England, but also in home cases. Moreover, in 1487

a special tribunal of the King's Council, the Court of Star Chamber, was created or reconstituted to try suits of gravity against the King's subjects. This court included the Chancellor, the Treasurer, the Lord Privy Seal, a Bishop, a temporal Lord of the Council, the two Chief Justices, or, in their absence, two other Justices. Star Chamber.

But it seems that the King's Council still maintained its special jurisdiction to review petitions for the King's grace side by side with the larger activity of the Court of the Star Chamber, and the Committee of the Council which heard appeals was not at any time the same court as the Court of the Star Chamber.

Until the Tudor period appeals from the ecclesiastical courts were often carried to the Pope; but during the struggle between the King and Rome in the reign of Henry VIII., an Act was passed for the Submission of the Clergy which forbade appeals from the courts of the realm to Rome, and provided that in place thereof (*a*) Jurisdiction in ecclesiastical cases.

For lack of justice at or in any the courts of the archbishops of this realm, or in any the King's dominions, it shall be lawful to the parties aggrieved to appeal to the King's Majesty in the King's Court of Chancery, and that upon every such appeal a commission shall be directed under the Great Seal to such persons as shall be named by the King's highness, his heirs or successors like as in case of appeal from the Admirall Court, to hear and definitively determine such appeals and the causes concerning the same: Which commissioners so by the King's highness, his heirs or successors, to be named or appointed, shall have full power and authority to hear and definitively determine every such appeal, with the causes and all circumstances concerning the same; and that such judgment and sentence as the said commissioners shall make and decree in and upon any such appeal, shall be good and effectual, and also definitive; and no further appeals to be had or made from the said commissioners for the same. Appeals from Archbishop's Court to the Chancery, and to be determined by commissioners to be appointed by the King. Appeals from Admiral's Court.

(*a*) 25 Hen. VIII. c. 19.

This enactment was the origin of the Commission of Delegates, which for three centuries, from 1533—1832, received and determined appeals from ecclesiastical courts. By virtue of a statute of Elizabeth (8 Eliz. c. 5, 1565), it also determined appeals from the Admiralty Courts.

The Commissioners were appointed under the Great Seal or Half-Seal, and were known as the High Court of Delegates.

Practice of the Council in appeals.

While Parliament had provided an appeal court for ecclesiastical, admiralty, and civil causes, the appeals from places beyond the realm were still left to the Sovereign in Council. In 1580 complaints were again received from Guernsey about the restriction of their appeals; and in reply an Order in Council was issued which established the first known rules of procedure of the court.

Guernsey O. in C.

The Order fixes a time limit within which the appeal shall be brought, provides that an appealable judgment must be final and definitive, requires the appellant to prosecute and end his appeal within one year and a day, and to give sureties to prosecute the appeal and to pay costs in case he shall not make good his appeal, "as the ancient custom of the Isle seemeth to have been." The appellant is to be supplied with a transcript of the proceedings under the seal of the isle, and the bailiffs and jurats are required to record the pleadings, the depositions of the witnesses, and documents exhibited.

Earliest rules extant.

The Order in Council, together with a letter of the Council of 1605, fixing the appealable value, form the basis of the provisions which have ever since regulated the appeals brought from all the foreign possessions of the Empire to the Sovereign in Council.

Abolition of Court of Star Chamber.

In the reign of Charles I. the Court of Star Chamber, which had become an instrument of royal oppression, was abolished by statute (16 Car. I. c. 10, 1640).

Henceforth, the appeals from civil matters within the realm could be taken to the Court of Exchequer Chamber, established by 27 Eliz. c. 8, 1584, with a further appeal to the High Court of Parliament. The jurisdiction of the Court of the Star Chamber, however, had been distinct from the jurisdiction of the Sovereign in Council as the court to which appeals lay from the Channel Islands, and the statute was not intended to interfere with the jurisdiction of the Privy Council which had been exercised before the passing of the Star Chamber Act of Henry VII. Accordingly we find no objection to the Council hearing appeals from the county palatines which continued to exist within the kingdom or from the possessions, plantations, and colonies beyond the kingdom.

Colonial Appeals unaffected.

During the seventeenth century the foundation of England's colonial empire was laid in North America and the West Indies; and petitions began to be received from the colonies asking for the King's grace as a relief against the decisions of the local courts. In 1667, by an Order of the Council making provision for committees of what was now known as the Privy Council, certain members of the Council were appointed a standing committee, called a Committee for the Business of Trade, to deal with whatever concerns the plantations, and, with the assistance of the Attorney-General or His Majesty's Advocate, to hear appeals from Jersey and Guernsey. In 1683 an Order in Council declares that no appeals for the future can be admitted at this Board from the foreign plantations unless sufficient security has first been given by the appellants.

Growth of colonies.

Committee for the Business of Trade (1667).

In the same year a decision of Lord Keeper North (*Jennett* v. *Bishop*, 1 Vernon, 264) affirmed the principle that an appeal lay to the Sovereign in Council from places held under grant from the Crown. Four years later all the Lords of the Privy Council were appointed a standing committee for trade and

Committee for Trade and Plantations (1687).

plantations, and by Order in Council, December 10, 1696, three of their Lordships were to form a quorum in appeals from the plantations, and the Committee are directed to report the matters heard by them and their opinion thereon to His Majesty in Council. In the case of *Fryer* v. *Bernard* (2 P. Wms. 262) it was decided that appeals from the plantations lay only to the King in Council. The committee of the whole Privy Council, in accordance with this Order in Council, continued to be the body to which appeals were referred until the constitution of the Judicial Committee by the Act of 1833. As our colonial empire expanded during the eighteenth century, so the area over which the Privy Council had the final appellate jurisdiction was enlarged. For although no general statute dealing with its jurisdiction generally was passed before 1833, several Acts were passed by the English Parliament making provision for appeals from particular possessions to the Sovereign in Council, and, further, every governor sent out from England to any part of the dominions, whether obtained by conquest, cession, or settlement, had the right of establishing courts of justice; and as a corollary to that right the suitors in those courts had the right of appealing for a review of the judgment to His Majesty in Council. As regards the possessions of the East India Company a special statute was passed in 1773 (13 Geo. III. c. 63) providing for the better administration of justice on the grant of a new charter. And it is therein enacted that in case any person should think himself aggrieved by any judgment of the Supreme Court of Judicature to be established at Fort William, he may appeal to His Majesty in Council within such time, in such manner, and on such security as shall be prescribed in this charter (s. 18).

Extension of colonial jurisdiction.

Until 1833 a Committee of the Privy Council,

consisting in theory of at least three of its ordinary members, none of whom need have had any judicial experience, was the body which was entrusted with the function of reviewing the judgments or orders of any courts in the King's dominions outside the United Kingdom, from which an appeal might be brought, either in accordance with the statute or Order in Council or the commission of the governor affecting the possession. Moreover, in 1832 the appellate jurisdiction in ecclesiastical and maritime causes, hitherto exercised by the High Court of Delegates, was transferred by statute to the King in Council (2 & 3 Will. IV. c. 92), and the Act of Hen. VIII., so far as it related to appeals, as well as the Act of Elizabeth, were repealed. In order to prevent the continuation of the practice, which had occasionally been employed in spite of the statute, of granting commissions to review the judgments of the High Court of Delegates, it was provided that the judgments of the King in Council should be final and definitive, and that no commission should hereafter be granted or authorised to review any judgment or decree to be made by virtue of the Act.

Transfer of ecclesiastical jurisdiction.

The extended and continually increasing jurisdiction of the Privy Council and the difficult nature of the questions with which it was required to deal demanded a change in its constitution, so as to secure that the appeals should always be heard by a judicial body of repute; and in 1833 an Act was passed which created a committee of the Sovereign's Privy Council, styled "The Judicial Committee of the Privy Council." This Act is the basis of the present constitution and the present procedure of the tribunal. In the preamble the transfer of the powers of the High Court of Delegates to the Privy Council is recited, and also that Commissioners for hearing appeals in causes of prize have been from time to time hitherto appointed. The Act declares

Formation of the Judicial Committee.

The Judicial Committee Act.

that an appeal lies to His Majesty in Council from the decisions of Courts of Judicature in the East Indies, and in the plantations, colonies, and other dominions of His Majesty abroad, and the historical fact that matters of appeal or petition to His Majesty in Council have usually been heard before a committee of the whole Privy Council; and it provides for the more effectual hearing and reporting on appeals to His Majesty in Council and on other matters, and for giving powers and jurisdiction to His Majesty in Council as therein mentioned. It goes on to enact that the President of the Council, the Lord Chancellor, all the chief judges of the land, and all who have held the office of Lord Chancellor or President of the Council shall form the Judicial Committee of the Privy Council, provided that the King might by sign manual appoint two other persons, being Privy Councillors, to be members of the committee.

Reference to Judicial Committee.

By this statute (*a*), all appeals or complaints in the nature of appeals whatever which, either by virtue of the Act or of any law, statute, or custom, may be brought before His Majesty, or before His Majesty in Council from or in respect of the determination, sentence, rule, or order of any court, judge, or judicial officer, shall in future be referred by His Majesty to the Judicial Committee. Any other matters whatsoever as His Majesty shall think fit may be referred for the advice of the Judicial Committee. There appears nothing in this provision which precludes the Sovereign from referring any such matter to a committee of the Privy Council other than the Judicial Committee as theretofore. But the Judicial Committee have power to make any judicial representation to the Crown touching the exercise of its

(*a*) 3 & 4 Will. IV. c. 41, s. 3. See Appendix A.

prerogative rights. *Farnum* v. *Adm.-General of British Guiana*, 14 A. C. 651.

General reference of appeals to the Judicial Committee.

It was the practice for a general reference to be made to the Judicial Committee of all petitions of appeal lodged with the Clerk of the Council in November in each year; but by the Appellate Jurisdiction Act, 1908, it was enacted that His Majesty might from time to time by Order in Council make a general Order directing that all appeals should be referred to the Judicial Committee of the Privy Council until the Order was rescinded, in place of the old order, by which the petitions for any year were annually referred. In pursuance of this Act an Order was issued in October, 1909, prescribing that after the date of the Order all appeals in which petitions might be presented to His Majesty in Council should be referred to the Judicial Committee of the Privy Council until His Majesty shall be pleased to rescind the order, and that the Judicial Committee should proceed to hear and report upon all such appeals in like manner as if each appeal had been referred to it by a special Order.

Extension of jurisdiction.

Patents and republication of books.

By the 5 & 6 Will. IV. c. 83, the Judicial Committee were given an original jurisdiction to hear petitions for the prolongation of patents for inventions; and a like jurisdiction was vested in them by the 5 & 6 Vict. c. 45 to decide the question of republication of a book after the author's death in the event of a refusal by the proprietor of the copyright. The former jurisdiction, however, has been taken away by the Patents and Designs Consolidation Act, 1907, which transfers the duty to the judges of the Chancery courts, whose decisions are appealable up to the House of Lords in the ordinary way. The jurisdiction to grant compulsory licences for the republication of a book or the performance of a dramatic or musical work in public is, however, conferred by the Copyright Act, 1911,

which, while repealing the statute of Victoria, provides (s. 4) that if after the death of the author of a literary, dramatic, or musical work which has been published or performed in public, a complaint is made to the Judicial Committee that the owner of the copyright has refused to republish or to allow the performance, they may make an order for the owner to grant a licence.

Power to receive appeals from Colonial Courts of First Instance.

A further extension in the powers of the Judicial Committee was made by an Act passed in 1844 (7 & 8 Vict. c. 69), which empowers the Sovereign by Order in Council to provide for the admission of appeals from any court in any colony, although such a court was not a court of error or appeal. Hitherto the Privy Council had been a final appellate court, which could entertain only those suits already taken to the Court of Final Instance in the places where they were originally brought. It was thought desirable to allow an appeal to be brought in certain cases immediately to the Privy Council. At that period the tendency was to encourage appeals from the colonies; but more recently, since the self-governing Dominions have united themselves into great federal unions, the tendency has been to discourage appeals to the Privy Council except from the Supreme Appellate Court in the colony or the federal union.

Amendments of practice, and constitution of the Judicial Committee.

Several Acts were passed and several Orders in Council were issued in the middle of the nineteenth century for improving the procedure and widening the jurisdiction of the Judicial Committee, notably the Judicial Committee Act, 1843 (6 & 7 Vict. c. 38) (*a*); but the next important measure affecting its constitution was an Act of 1871 (34 & 35 Vict. c. 91), by which four persons might be appointed to act as paid members of the committee. Five years later the Appellate Jurisdiction Act was passed (39 & 40 Vict. c. 59), by which two persons who had held high judicial office as

(*a*) See Appendix A.

defined in the Act for not less than two years might be appointed to sit as Lords of Appeal in Ordinary in the House of Lords, and also, if members of the Privy Council, on the Judicial Committee, and two further Lords of Appeal in Ordinary might be appointed in place of the four paid members of the Judicial Committee provided for by the earlier statute. The effect of this enactment was to make the constitution of the final appellate court for the Dominions nearly identical with that of the appellate court for Great Britain and Ireland. In 1881 an Act was passed to enable Privy Councillors who held or had held the office of Lord Justice of Appeal in England to be members *ipso facto* of the Judicial Committee, which established another link with the English judicial bench. The Law Lords, the Lord Chancellor, and the other English judges of the highest rank were entitled to sit in either tribunal, but the distinction in the membership of the two august bodies remained, that in one the chief colonial and Indian judges are empowered to sit, in the other they cannot. And differences have also remained in the procedure and in the form of hearing appeals.

Ecclesiastical assessors in ecclesiastical appeals.

The Judicial Committee was henceforth almost entirely composed of the most eminent judges of the empire, but provision was made in the Statute of 1876 for the presence in ecclesiastical appeals of the great dignitaries of the Church to assist the judicial members. The material part of this section (14) declared :—

> Her Majesty may by Order in Council, with the advice of the Judicial Committee of Her Majesty's Privy Council or any five of them, of whom the Lord Chancellor shall be one, and of the archbishops and bishops being members of Her Majesty's Privy Council, or any two of them, make rules for the attendance, on the hearing of ecclesiastical cases as assessors of the said committee of such number of the archbishops and bishops of the Church of England as may be determined by such rules.

In accordance with this provision rules were made, in 1876, providing that the Archbishop of Canterbury, the Archbishop of York, and the Bishop of London should be *ex officio* assessors of the Judicial Committee on the hearing of ecclesiastical cases according to a rota, by which each in turn should serve for a year, and the four junior Bishops for the time being should form a rota for the like period, to be succeeded by the four next in seniority, and so on. In every ecclesiastical case the five assessors for the time being should be summoned, and no case should be heard before the Judicial Committee, unless at least three are present at the hearing.

Transfer of parts of old jurisdiction to the House of Lords.

In the large judicial and legal reforms which were carried out in the United Kingdom during the mid-Victorian period, part of the exceptional jurisdiction of the Privy Council in English causes was transferred to the newly-founded Court of Appeal and the House of Lords. Thus, by the Judicature Act, 1873 (36 & 37 Vict. c. 66, s. 18), all appeals from any judgment or order of the High Court of Admiralty, or from any order in Lunacy made by the Lord Chancellor or other person having jurisdiction in lunacy were so transferred. By the Judicature Act for Ireland, 1877 (40 & 41 Vict. c. 57, s. 86), all decisions, judgments, decrees, and orders of the Court of Appeal in Ireland were made subject to appeal to the House of Lords, and the alternative right of appeal to the Queen in Council, which had hitherto existed in certain cases, was taken away. At the same time the Judicial Committee remains the final appellate court in matters of prize, the provisions of the Naval Prize Act of 1864 being confirmed in this respect by the Judicature Act of 1891 (54 & 55 Vict. c. 53), which declared (s. 4, sub-s. 3):—

(3) Any appeal from the High Court when acting as a Prize Court shall lie only to Her Majesty in Council, in accordance with the Naval Prize Act, 1864.

Admiralty Appeals from the Colonies.

Although, too, the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), following the English Judicature Acts, which had transferred the jurisdiction of the High Court of Admiralty to the High Court, transferred and merged in the supreme courts of unlimited civil jurisdiction in the colonies the admiralty jurisdiction which had hitherto been vested in the Vice-Admiralty Courts, the appeal from a judgment in any British possession invested with the Admiralty jurisdiction (either where there was of right no local appeal or after a decision on local appeal) continued to lie to Her Majesty in Council by virtue of the Act.

The conditions of appeal were provided for by the same Act.

Extension of Imperial jurisdiction.

While the jurisdiction of the Privy Council in matters which arose in the United Kingdom was considerably narrowed down by statute, its jurisdiction over matters which arose outside the kingdom was continually enlarged by the extension of British authority over Protectorates and spheres of influence in semi-civilised countries which did not indeed form part of the British Empire, but were in a peculiar manner subjected in certain respects to British sovereignty. This system of parcelling out enormous tracts of country in Africa, Eastern Asia, and Polynesia into Protectorates of the Great Powers was one of the features of European diplomacy in the latter part of the nineteenth century, and one of the functions of the protecting state was to exercise jurisdiction and to set up courts. Moreover, in certain fully sovereign states the Great Powers had from the beginning of the nineteenth century obtained by treaty or capitulation jurisdiction over their own subjects, entirely independent of the local courts, *e.g.*, in the Ottoman Empire, in Japan, and in China; and the appeal from such courts established by the English Sovereign had always lain to the Privy

Council. In order to consolidate the various Acts and Orders in Council relating to the exercise of Her Majesty's jurisdiction out of the dominions, the Foreign Jurisdiction Act was passed in 1890 (53 & 54 Vict. c. 37), which provided as follows:—

Exercise of jurisdiction in foreign country.

1. It is and shall be lawful for Her Majesty the Queen to hold, exercise, and enjoy any jurisdiction which Her Majesty now has or may at any time hereafter have within a foreign country in the same and as ample a manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory.

Exercise of jurisdiction over British subjects in countries without regular governments.

2. Where a foreign country is not subject to any government from whom Her Majesty the Queen might obtain jurisdiction in the manner recited by this Act, Her Majesty shall by virtue of this Act have jurisdiction over Her Majesty's subjects for the time being resident in or resorting to that country, and that jurisdiction shall be jurisdiction of Her Majesty in a foreign country within the meaning of the other provisions of this Act.

Power to assign jurisdiction to British courts in cases within Foreign Jurisdiction Act.

9. It shall be lawful for Her Majesty the Queen in Council, by order, to assign to or confer on any court in any British possession, or held under the authority of Her Majesty, any jurisdiction, civil or criminal, original or appellate, which may lawfully by Order in Council be assigned to or conferred on any British court in any foreign country, and to make such provisions and regulations as to Her Majesty in Council seem meet respecting the exercise of the jurisdiction so assigned or conferred, and respecting the enforcement and execution of the judgments, decrees, orders, and sentences of any such court, and respecting appeals therefrom.

Appellate jurisdiction from British settlements.

Three years previously the British Settlements Act was passed to enable Her Majesty to provide for the complete government of places possessing no civilised government in which British subjects had settled. These settlements either had become or were destined to become regular possessions of the Crown; and power was given to Her Majesty in Council

From time to time to establish all such laws and institutions, and constitute such courts and officers, and make such provisions and regulations for the proceedings in the said courts and for the administration of justice, as may appear to Her Majesty in Council to be necessary for the peace, order, and good government of Her Majesty's subjects and others within any British settlement.

The Sovereign in Council to make laws and establish courts.

From the courts established in British settlements under this Act, as well as from the courts established under the Foreign Jurisdiction Act, appeals could be brought, under rules laid down in various Orders in Council, to the Judicial Committee of the Privy Council.

Thus, starting as an appellate tribunal for cases originating in the Channel Islands, the Privy Council has come through its Judicial Committee to acquire jurisdiction in appeals brought from British courts in every quarter of the globe and to be called upon to administer every possible system of law. It has a wider jurisdiction than any court known to history, and it is unique in the variety of its suitors, which include not only subjects of every part of the empire, but also Indian gods, African chieftains, and vassal princes.

Present extent of jurisdiction of Judicial Committee.

On the other hand, the jurisdiction which the Privy Council used to exercise over various kinds of cases brought before special courts of the United Kingdom, as in admiralty and ecclesiastical appeals, petitions for prolongation of patents and extension of copyright, matters of lunacy and of prize, has been in large part transferred to the other supreme appellate tribunal in the empire, the House of Lords. But ecclesiastical cases and matters of prize may still be brought before it on appeal; and special committees of the Council can deal with questions of mixed administration and law which come in the first place before the University and Education Commissioners.

From time to time, moreover, proposals are made for adding to the functions of the Privy Council by entrusting to a committee of their members some duty which appears at the time to be unsatisfactorily carried out. Such, for example, was the proposal of the committee that considered the Censorship of Plays to the effect that a committee of the Privy Council should hear appeals from the decision of the licenser of plays; and such again was another proposal that the Judicial Committee should determine whether a Bill before Parliament was or was not a Money Bill. It is likely, then, that the possibilities of employing the Privy Council for appellate functions (in their fullest sense) have not yet been exhausted.

Recent changes in membership of Judicial Committee.

During the last twenty years, though the Judicial Committee has received no fresh branch of jurisdiction, several important reforms of its membership and of its procedure have been carried. In the first place it has been made more representative of the empire by two Imperial Acts, the Judicial Committee Amendment Act, 1895 (58 & 59 Vict. c. 44), and the Appellate Jurisdiction Act, 1908 (8 Edw. 7, c. 51).

By the first it was enacted that—

Provisions as to persons being or having been colonial chief justices or judges.

(1) If any person being or having been chief justice or a judge of the supreme court of the Dominion of Canada, or of a superior court in any province of Canada, of any of the Australasian colonies mentioned in the schedule to this Act, or of either of the South African colonies mentioned in the said schedule, or of any other superior court in Her Majesty's dominions, named in that behalf by Her Majesty in Council, is a member of Her Majesty's Privy Council he shall be a member of the Judicial Committee of the Privy Council.

(2) The number of persons being members of the Judicial Committee by reason of this Act shall not exceed five at any one time.

The power of sitting on the Judicial Committee was extended by the second Act to any person who had been chief justice or judge of the Supreme Court of Newfoundland, or chief justice or a justice of the High Court of Australia; while the Transvaal and Orange River Colonies were added to the South African Colonies in the schedule.

And by the second Act it was further provided that—

Colonial judges as assessors.

(1) For the purpose of the hearing of any appeal to His Majesty in Council from any court in a British possession, His Majesty may, if he thinks fit, authorise any person who is or has been a judge of the court from which the appeal is made, or a judge of a court to which an appeal lies from the court from which the appeal is made and whose services are for the time being available, to attend as an assessor of the Judicial Committee on the hearing of the appeal.

This section applies to British India, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the colonies now united by the Union of South Africa, and Newfoundland.

(2) If any person, having been chief justice or judge of any High Court in British India (or of the High Court of Bengal, Madras, Bombay, or the North-Western Provinces), is a member of the Privy Council he may be appointed a member of the Judicial Committee. Not more than two persons shall be members of the committee at one time by virtue of this section.

Recent reform of practice.

The practice and procedure of the Judicial Committee were a subject of much discussion at the Imperial Conference which was held in London in 1907. The colonial representatives generally raised complaints on the one hand of the uncertainty of the rules of appeal before the committee itself, and on the other of the baffling variety of the conditions of appeal from the different colonies and possessions, which was caused by their different origin. In some cases the conditions of appeal were fixed by the charter establishing the colony or possession, in

others by an Order in Council, in others again by a local ordinance, while in others where no special provision had been made, they were fixed by general Orders in Council, which had application to all appeals not otherwise provided for. To meet these complaints, and to satisfy the desire for uniformity of procedure and conditions of appeal two large reforms have been made in the practice of the Privy Council since that Imperial Conference. In the first place the practice and procedure of the Judicial Committee have been amended and consolidated by an Order in Council of December 21, 1908, which established a fresh body of rules in place of those hitherto applied. In the second place a model set of conditions of appeal was submitted to all the colonies, with a recommendation that it should be adopted by each of them in place of their existing provisions, so as to equalise the conditions for all subjects in the dominions, and to secure uniformity in the practice and procedure. Most of the colonies have adopted the rules submitted to them; and Orders in Council have been issued revoking the old order or ordinance in every case where the new rules are accepted. Some differences, for good reason, still remain as to the length of time within which notice of appeal must be presented, and as to the minimum amount of the judgment from which an appeal will be allowed, and the maximum amount of the security required to be lodged by the appellant; but the scheme of the conditions is now the same in all cases. The rules for appeals from Indian courts still remain peculiar, but the practice in the rest of the British dominions is rendered much simpler than it was before.

Uniform practice.

Another striking change of recent years in the history of the Privy Council is the formation of the great federal unions in the self-governing dominions of Australia and South Africa. The provinces of

Limit of appeals from self-governing dominions.

Canada had federated themselves as far back as 1867, but it was not till 1900 that the Australian Commonwealth was formed of the five Australian states, while ten years later the union of South Africa was successfully accomplished. The constitution of the federation in either case provides for a Supreme Federal Court of Appeal, to which appeals from the Supreme Court in each part of the federal whole may be carried. And the colonial statesmen who have engineered the two later federations have shown a desire to restrict as much as possible appeals from the oversea dominions to the Privy Council, except in cases where the Supreme Appellate Court in the dominion grants special leave to appeal.

Limitation of prerogative in the constitution of the dominions.

Thus a powerful movement has been established towards limiting the prerogative of the Crown to grant leave to appeal by investing with that power the colonial court from which the appeal is sought. The demand that the devolution of the power to grant leave to appeal in special cases should be extended to the local courts has been in large part satisfied, so as to leave the Judicial Committee itself free for the work of determining appeals.

Unification of the Judicial Committee and the House of Lords.

The Imperial Conference of 1911 marked a great step in the process of unifying the Judicial Committee of the Privy Council with the House of Lords and combining the two supreme appellate tribunals into one Imperial Court of Appeal. The representatives of the dominions have long pressed for unification, and as the result of the deliberations of the Conference it was left to the English law officers to prepare a scheme for carrying out their desires as far as possible. Accordingly a memorandum was issued giving the details of the reforms made in the constitution of the Judicial Committees in recent years, and a summary of proposals for further reforms. In the first place it is proposed to constitute in name a

single court of appeal for the Empire sitting in two divisions, the Privy Council and the House of Lords; and to strengthen this court by the addition of two new lords of appeal to be appointed from the most distinguished judges by the home Government. There will thus be six law lords devoting their whole time to the sittings of the two divisions, and it is proposed that the court as far as possible shall sit at full strength successively at the two places. In this way the personnel of the two divisions will be almost identical, and this will tend to the identity in procedure which is desired. Another approach to similarity of treatment is contained in the proposal that dissenting judges in the Privy Council should give their reasons and express their dissent in the same manner as is done in the House of Lords, if His Majesty gives his consent to the change. The increase in the size of the court will certainly add to its dignity and authority, and will, it is hoped, make the self-governing dominions more willing to submit to it cases which have been before their highest court. The proposals have been embodied in an Appellate Jurisdiction Bill, which was introduced into Parliament in 1911, but was not carried during the session. It is likely, however, to be reintroduced and to become law.

The Privy Council has proved in the past a golden link of empire, and it has been well called "the most august court ever known." As part of the Imperial Court of Appeal it may well be that a more splendid future awaits it; and before long we may reach the ideal judicial reform — the establishment of an Imperial Court of Appeal with one code of procedure for all the subjects of the Crown.

CHAPTER II.

COLONIAL APPEAL RULES.

Division of procedure.

THE procedure in Privy Council appeals falls into two divisions: the first is concerned with the steps which must be taken to assert the appeal in the court from which it is brought; the second with the steps which must be taken to prosecute the appeal in England. Both parts of the practice have recently been rendered as far as possible uniform, by the issue of new regulations for the conditions of appeal from the various colonies and jurisdictions, which regulations are contained mainly in Orders in Council and to a less extent in local ordinances, and by the consolidation and amendment of the practice before the Judicial Committee in the new rules of 1908.

The Imperial Conference of 1907 passed the following resolutions: (i.) "That, with a view to the extension of uniform rights of appeal to all colonial subjects of His Majesty, the various Orders in Council, Instructions to Governors, Charters of Justice, Ordinances and Proclamations upon the subject of the Appellate jurisdiction of the Sovereign should be taken into consideration for the purpose of determining the desirability of equalising the conditions which gave right of appeal to His Majesty."

(ii.) "That much uncertainty, expense, and delay would be avoided if some portion of His Majesty's prerogative to grant special leave to appeal in cases where there exists no right of appeal were, under definite rules and restrictions, delegated to the discretion of the local courts."

It was pointed out in a memorandum which was before the Conference that there are certain provisions

Uniform conditions of appeal.

in every Order in Council, Charter, etc., regulating appeals to His Majesty in Council which must be common to every set of circumstances, and indeed every new Order in Council regulating appeals as a rule contains such provisions. The principal variations which existed concerned the appealable amount, the limit of time for appealing as of right, and the lodging of security for costs. A uniform Order applicable to every part of the dominions beyond the seas could only be made after consultation with each colony or dependency interested, and it was improbable that there would be unanimity as to these points of variation. At the same time it was felt to be feasible to frame a number of common provisions revised so as to meet modern requirements, leaving the particular provisions suitable to each colony or dependency to be inserted after consultation with the proper authorities.

This accordingly was done ; and the scheme having been approved of by the various colonies to which it was submitted, a number of Orders in Council have been issued bringing it into general operation. The rules are based on the assumption that the court appealed from is best qualified to deal with any questions that may arise in connection with the appeal up to the dispatch of the record to England. They seek, accordingly, to invest the court with all necessary powers for that purpose. The court is fully seised of the case up to the date of the order granting final leave to appeal, and where the making of that order is postponed till the record is ready for dispatch, no further questions arise. Where, however, as often happens, some time elapses between the final order and the dispatch of the the record, questions may arise with which the court, in the absence of express authority, may deem itself incompetent to deal. Some of the new rules are designed to meet difficulties of this kind.

It is to be noted that the rules do not apply to Indian appeals.

The rules open with a number of definitions which agree with those contained in the Judicial Committee Rules. Definitions in colonial appeal rules.

1. The definition clause provides :—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 judge of the Supreme Court, according as the matter in question is one which, under the rules and practice of the Supreme Court, properly appertains to the full court or to a single judge.

"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.

In a few colonies the court from which the proposed appeal is to be brought is not the Supreme Court, but a court of the like degree under another name ; but the rules of course apply equally. It is for the local rules to determine whether the application for leave to appeal comes before the full colonial court or a single judge. The model rules provide as follows :—

2. Subject to the provisions of these rules, an appeal shall lie— Appealable limit.

(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 £ 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 £ sterling 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.

(a) The blank space for the appealable amount is differently filled up in the Orders in Council issued for the various colonies. The appealable amount varies according to the local circumstances from 300*l.* to 2,000*l.*; but 500*l.* is the most usual amount. The exact figure for each colony will be found in the part of the book which deals with the regulations of appeal from each part of the empire specifically. For the consideration of what is a final judgment and the circumstances in which the appeal is taken to involve a claim respecting property or a civil right amounting to the appealable value, see Chapter V., pp. 195—202.

(b) This part of the rule involves a change in the procedure which had hitherto existed in most colonies, from which a right of appeal could only be granted by the local courts when the case fell within the appealable amount. In other cases special leave had to be sought from the Privy Council before the appeal could be brought. This was a cumbrous method of proceeding, and the resolution passed at the Imperial Conference suggested the change which this rule is designed to carry out. Henceforth the local court, in respect of which regulations for appeal are made, may itself grant leave to appeal from any judgment which does not fall within the provision of sub-section (a), if in its opinion the question involved is one fit and proper for appeal. The local courts will doubtless be guided in interpreting this sub-section by the decisions of the Privy Council in granting special leave to appeal. (See Chapter VI.)

At the same time rule 28 preserves the power of the Privy Council to grant special leave to appeal whenever it thinks fit. There may be cases where the local court has refused

leave to appeal, while the Privy Council may think that they should be brought before it. Or again, there may be judgments given by the inferior courts in the colony to which the regulations do not apply.

Entering judgment *pro formâ*.

3. Where in any action or other proceeding no final judgment can be duly given in consequence of a difference of opinion between the judges, the final judgment may be entered *pro formâ* on the application of any party to such action or other proceeding according to the opinion of the Chief Justice or, in his absence, of the senior puisne judge of the court, but such judgment shall only be deemed final for purposes of an appeal therefrom, and not for any other purpose.

Application for leave to appeal.

4. Applications to the court for leave to appeal shall be made by motion or petition within days from the date of the judgment to be appealed from, and the applicant shall give the opposite party notice of his intended application.

The time within which leave to appeal must be asked for varies again in the different colonies, but the usual period is twenty-one days. Even though the subject-matter of the suit is clearly above the amount specified in rule 2 (a) for an appeal as of right, leave to appeal must be obtained by an application to the court. On the application the court fixes the terms on which the appeal shall proceed. When there is no appeal as of right, the court determines whether the case falls within the provisions of rule 26.

Conditions of leave.

5. Leave to appeal under rule 2 shall only be granted by the court in the first instance—

(a) Upon condition of the appellant, within a period to be fixed by the court, but not exceeding three months from the date of 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 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 His 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 dispatch thereof to England as the court, having regard to all the circumstances of the case, may think it reasonable to impose.

There are cases in which the court will not allow so long a period as three months within which the appellant must give security for costs, and there are a few where the maximum amount is fixed at a different sum. Security is usually given by a bond with two sureties.

Suspending execution.

6. 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, enter into good and sufficient security, to the satisfaction of the court, for the due performance of such order as His Majesty in Council may think fit to make thereon.

The appellant may apply to the Privy Council for special leave to appeal from a decision of the colonial court refusing to grant a stay of execution in accordance with its discretionary powers under this rule; but, except in a very

strong case, the Judicial Committee will not interfere. (See pp. 204 and 214.)

Preparation of record.

7. 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 direction thereon as the justice of the case may require.

8. 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 the 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.

For the practice as to the preparation of the record and as to the costs allowed when a disputed document is admitted see pp. 269 ff. Rules 7—13 correspond with the Judicial Committee Rules 12—18. (See pp. 267 ff.) The Schedule of the Rules for Printing the Record is identical with the similar Schedule in the Judicial Committee Rules.

9. 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 the colony 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.

10. The record shall be printed in accordance with the rules set forth in the schedule hereto. It may be so printed either in the colony or in England.

11. Where the record is printed in the colony, 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.

12. 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.

13. Where part of the record is printed in the colony and part is to be printed in England, rules 10 and 11 shall, as far as practicable, apply to such parts as are printed in the colony and such as are to be printed in England respectively.

14. 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.

Consolidation of appeals.

15. 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.

The consolidation of the appeal before the record is sent to England saves much expense, and should therefore be applied for in a proper cause in the colony. Occasionally when a number of causes turn upon the same point, the court will allow them to be consolidated so as to bring them within the appealable amount. (See pp. 219 and 284 ff.)

Withdrawal of appeal.

16. 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.

Rescinding leave to appeal.

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

18. 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 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.

These rules contemplate that when first application for leave to appeal is made in accordance with rule 3 above, the court shall only grant conditional leave, the condition being that the appellant shall find adequate security and comply

with the requirements of the court as to the preparation of the record. (See rule 4.) When these conditions have been satisfied, the appellant should apply to the court for final leave to appeal, and the respondent may then offer any reason against the application being granted. If the appellant does not so apply within reasonable time the respondent may apply for the rescission of the order granting conditional leave.

19. 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.

The rules which at present regulate the practice are the Judicial Committee Rules of 1908, which are set out at length in Part II. of this book. The first step in England which the appellant has to take is to enter an appearance, and to see to the printing of the record in England if it does not arrive printed.

Dismissal of appeal.

20. 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.

The Colonial Court cannot directly dismiss the appeal, but the procedure provided in this rule enables the same result to be achieved indirectly. For the steps to be taken to withdraw an appeal after the record has been sent to England, see Part II., pp. 300 ff.

21. 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, 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 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.

For the steps to be taken to obtain the dismissal of an appeal for non-prosecution after the record has been dispatched to England, see Part II., pp. 295 ff.

Substituting parties.

22. 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.

23. 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.

The Privy Council must have the proper parties before it, or its decrees will not be binding. When therefore one of the parties to an appeal, either appellant or respondent, dies, or suffers a change of status, as by marriage or bankruptcy, the record has to be amended by substituting the proper person in his place. If the change occurs before the record has been dispatched to England, it can be remedied by the certificate of the Colonial Court, given in accordance with rule 22, without any formal petition to the Privy Council. But if the record has been dispatched to England there must be a petition of revivor, as it is called, to the Judicial Committee to allow the necessary amendment, and the certificate of the Colonial Court is then required by the rules of the Judicial Committee to accompany the petition. (See rule 51, pp. 309—310.) Rule 23 enables the certificate to be obtained by any person interested. The determination of the person to be substituted on the record depends on the local law.

Printing of the case.

24. The case of each party to the appeal may be printed either in the colony 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.

25. 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.

These rules correspond with rules 61 and 63 of the Judicial Committee Rules of Appeal. (See Part II., p. 287.) The case contains the presentation of the facts and contentions and reasons for and against the appeal which are advanced respectively by either party. It cannot be lodged in England till the petition of appeal has been lodged and an appearance entered. It must be bound together with the record in the manner prescribed by rule 68 of the Judicial Committee Rules.

Costs in colony.

26. Where the Judicial Committee directs a party to bear the costs of an appeal incurred in the colony, 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.

The rules as to costs in the Privy Council are given in Chapter XIII., p. 326 ff. The Registrar of the Privy Council can only deal on taxation with the costs incurred in England, and where the order of the Judicial Committee affects costs paid in the colony they must be taxed by the local officer according to the local law.

Enforcing judgment.

27. 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.

When the colonial court does not execute the decree of the Judicial Committee to the satisfaction of one of the parties to the appeal, he may make an application to the Judicial Committee to issue a supplemental order to the colonial court to enforce the decree. See Chapter XIV., p. 354.

28. Nothing in these rules contained shall be

Special leave of appeal.

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.

As was pointed out in the notes to rule 2, above, though discretion is given by these rules to the colonial court to admit an appeal in any case where it thinks fit, the prerogative of the Crown in Council to grant leave to appeal in any case not covered by these rules, or in any case in which the colonial court has refused leave to appeal, remains unaffected. Application for leave to appeal must, however, first be made to the colonial court. The colonial rules of appeal are applied almost exclusively to appellate courts in the colonies and protectorates, and there may be special cases where the Judicial Committee will think fit to grant leave to appeal from an inferior court. Again, the colonial court may have refused leave in a case below the appealable amount where the Judicial Committee may think fit to entertain the appeal. The appellant, in such a case, must present a petition for leave to appeal to the Privy Council in accordance with rules 3, 4, 5 of the Judicial Committee Rules. (See Chapter VI., pp. 205 and 213.) The prerogative of the Crown to admit appeals from a colonial court may have been expressly taken away by an Imperial or colonial statute, and in that case a petition for leave to appeal will not be entertained. But in every other case a petition may be presented to His Majesty in Council for leave to appeal. (See p. 36.)

Admiralty cases.

The Colonial Appeal Rules do not apply to appeals in Admiralty cases brought from Colonial Courts of Admiralty, where special rules have been made to govern the procedure in the colonial courts. (See below, p. 368.)

CHAPTER III.

RULES OF APPEAL FOR THE SELF-GOVERNING DOMINIONS, COLONIES, POSSESSIONS, AND FOREIGN JURISDICTIONS.

Introductory.

THE countries and places from which appeals may be brought to the Judicial Committee of the Privy Council are united with the English Crown by very different ties, and enjoy varying amounts of self-government. The relations of their courts to the supreme appellate tribunal of the empire are correspondingly varied; and although, as has been stated, great advance has been made of recent years towards uniformity in the conditions of appeal, it is still necessary to consider in detail the rules of each part of the empire relating to appeals.

In the first place come those self-governing dominions which have a fully responsible government, and which comprise the Dominion of Canada and its separate Provinces, the Commonwealth of Australia and its separate States, the Union of South Africa with its separate Provinces, the Dominion of New Zealand, and the Colony of Newfoundland. In these countries the Crown has no right of legislating, and the chief constitutional link with the mother country is the Governor, who is appointed by the Crown, while the government is administered by ministers responsible to an elected legislature.

Next come the colonies which have partly responsible government, the legislative power being in the hands of a Governor with an elected legislative assembly or nominated legislative council, and in some cases with an elected legislative assembly and an executive council responsible to the Crown. These include the West India Islands, Mauritius, Malta, Ceylon, the Bahamas, the Falkland Islands, etc.

Next in order are the colonies in which the legislative power is in the hands of the Governor alone: Gibraltar, Labuan, and St. Helena. Then there are possessions of the

Crown which are not strictly colonies, and have a special and peculiar connection with the Crown: British India, the Channel Islands, and the Isle of Man.

Lastly come the Charter Governments and Proprietary Governments, granted out by the Crown to individuals or civil corporations, usually as a prelude to a more complete annexation as colonies, such as the territories of the old Royal Niger Company, the British South Africa Company, and the British East Africa Company. For these the Crown may legislate by Order in Council.

In addition to these colonies and possessions, there are, as has been mentioned, foreign jurisdictions of the Crown, either in territories which, though not part of the Crown's dominions, are enjoying a British protectorate, or in countries which have not a European civilisation, and which by treaty or capitulation have resigned jurisdiction over British subjects to the courts established by their Sovereign.

Right of appeal.

From the courts in all these places, with a few exceptions hereinafter set out, there is a right of appeal to His Majesty in Council; for the King in virtue of his prerogative has authority to review the decisions of all colonial courts and all courts on which British jurisdiction has been conferred, whether the proceedings be of a civil or criminal character, unless His Majesty has parted with such authority (cf. *Falkland Islands Co.* v. *The Queen*, 1 Moo. N. S. 299; *In re Dillet*, 12 A. C. 466; *Cushing* v. *Dupuy*, 5 A. C. 409).

The appellate jurisdiction of the Crown in Council is not affected where there is a statutory provision in a colony enacting that particular proceedings in the colonial courts shall be final (cf. *In re Louis Marois*, 15 Moo. P. C. 189; and *In re Wi Matua* (*Deceased*), (1908) A. C. 448; and *Canadian Pacific Railway Co.* v. *Toronto Corporation, etc.*, (1911) A. C. 461). But if functions are conferred on the court by the colonial statute which would not otherwise have belonged to it as the general distributor of justice, or if its procedure is not judicial but political and administrative in its nature, the prerogative of the Crown does not arise (*Théberge* v. *Laudry*, 2 A. C. 102; *Cushing* v. *Dupuy*, 5 A. C. 404; *Moses* v. *Parker*, (1896) A. C. 245).

Parting with prerogative.

In any case where the prerogative has existed, precise

words must be shown to take away the prerogative (*a*). It is competent, however, for the Crown to part with its prerogative right to receive appeals, although of itself it cannot deprive the subject of any of his rights. This may be done when the Imperial legislature, of which the Crown is part, itself limits the prerogative or delegates to a colonial legislature the duty of framing provisions on the subject of appeal, and thus limiting the Crown's prerogative (*b*).

If the prerogative is aptly and expressly limited in either of these ways, the Privy Council can no longer grant the subject special leave to appeal.

Limit of jurisdiction.

The jurisdiction of the Sovereign in Council upon the hearing of an appeal is no wider than is the jurisdiction of the court from which the appeal comes. *King* v. *Henderson* (Canada, 1898), 79 L. T. 37. As a corollary to that observation it may be recalled that the courts of a dependency can have no jurisdiction wider than the powers vested in the legislative authority. It has been stated that "the legislature has no power over any persons except its own subjects—that is, persons, natural born subjects, or resident, or whilst they are within the limits of the kingdom. The legislature can impose no duties except on them; and when legislating for the benefit of persons, must, *primâ facie*, be considered to mean the benefit of those who owe obedience to our laws and whose interests the legislature is under a correlative obligation to protect" (*c*).

Method of bringing appeal.

An appeal can be brought to the Privy Council either in virtue of leave granted by the colonial court in accordance with its delegated power to grant it, or in virtue of special leave granted by the Council itself. Where the case does not fall within the terms of the power of the colonial court to grant leave to appeal, and where the prerogative of the King to grant such leave has not expressly been taken away, the subject desiring to appeal from the judgment or

(*a*) Cf. *Reg.* v. *Alloo Paroo* (Bomb. 1847), 5 Moo. at 303; *Woolley* v. *Att.-Gen. of Victoria* (1877), 2 A. C. 163; *Att.-Gen. of British Columbia* v. *Att.-Gen. of Canada* (1889), 14 A. C. 295.

(*b*) Cf. *Cuvillier* v. *Aylwin* (Low. Can. 1832), 2 Knapp, 72, and *Re Marois* (Low. Can. 1862), 15 Moo. at 193; *Reg.* v. *Byramjee* (Bomb. 1846), 5 Moo. 276.

(*c*) Per Baron Parke (Lord Wensleydale) in *Jefferys* v. *Boosey*, 4 H. L. at p. 926, cited and approved in *Macleod* v. *Att.-Gen. of N. S. W.*, (1891) A. C. 455.

order of any court or judicial tribunal in the colony can apply for special leave to His Majesty in Council, and must do so, and obtain leave before he can present the appeal itself.

Delegation to colonial court of granting leave to appeal.

The delegation to the colonial courts is most ample, and the prerogative of the Privy Council to grant special leave is most limited, in the case of the three self-governing federated dominions of Canada, Australia, and South Africa. In each case the federal union is constituted by an Act of the Imperial Parliament which provides for the conditions of appeal from the supreme federal court to His Majesty in Council.

A brief account of the courts in the British dominions and the special rules of appeal which have been issued for each colony or possession or foreign jurisdiction are set out in this chapter. Save where special rules are expressly mentioned, the "Colonial Rules of Appeals," which are dealt with in the former chapter, apply and regulate the procedure in the appeal till the record is despatched to England.

Conditions of Appeal in Each Colony.

I. CANADA.

The Dominion of Canada.

Laws.

Canada was formerly a French possession, but was conquered by the English in 1759, and by the Treaty of Paris was ceded to England in 1763, when the English criminal and civil law was established together with the laws of the Admiralty by Royal Proclamation. The proclamation reserved liberty to all persons who may think themselves aggrieved by the sentence of any of the courts in all civil cases to appeal, with the usual limitations and restrictions, to the Sovereign. As to the force and effect of the proclamation, cf. *Campbell* v. *Hall* (1779), 1 Cowp. 204, and *St. Catherine's Milling and Lumber Co.* (Ont. 1888), 14 A. C. 46.

Upper and Lower Canada.

In 1791 Quebec was divided, by 31 Geo. III. (Imp.) c. 31, into the provinces of Upper and Lower Canada under representative governments. In 1840, by Lord Durham's Act (3 & 4 Vict. (Imp.) c. 35), the two provinces were reunited under the name of the Province of Canada.

B. N. A. Act. 1867.

In 1867, by the Act which created the Confederation known as the Dominion, the Province of Canada was redivided, so that the part which had formely constituted the

province of Upper Canada now constitutes the province of Ontario ; and the part which had formerly constituted the province of Lower Canada now constitutes the province of Quebec. By the same Act the provinces of New Brunswick and Nova Scotia are brought within the Confederation. In 1868, Her Majesty was authorised to accept a surrender of the lands and rights of the Hudson's Bay Co. (31 & 32 Vict. (Imp.) c. 105, ss. 3, 4 and 5). In 1870, by an Order in Council, Rupert's Land and the North West Territories were admitted into the Dominion, and constituted the province of the North West Territories. The province of Manitoba was carved out of this territory and made a separate province of the Dominion by 33 Vict. (Dom.) c. 3 ; British Columbia was added by Order in Council dated May 16, 1871 ; Prince Edward Island, by Order in Council dated July 26, 1873 ; and, by Order in Council of July 31, 1880, all British territories and possessions in North America not already included in the Dominion, and all adjacent islands, with the exception of Newfoundland and its dependencies, were made part of the Dominion of Canada. Alberta and Saskatchewan were carved out of the North-Western Provinces and made separate provinces by Acts of the Canadian Parliament in 1905 (5 Edw. VII. c. 3 and c. 42). By sect. 146 of the British North America Act, His Majesty is empowered to admit Newfoundland into the Dominion on addresses from the Parliaments of Canada and of Newfoundland.

Province of Ontario.

Province of Quebec.

Province of New Brunswick.

Province of Nova Scotia.

Province of N. W. Territories.

Province of Manitoba.

Province of B. Columbia.

Province of Prince Edward Island.

Alberta.

Saskatchewan.

Each province has its separate local legislature with power to alter its constitution, except in respect of the office of Lieutenant-Governor who represents the Crown ; and also returns its representatives to the Dominion Parliament. The provincial legislatures possess the exclusive right to make laws on certain matters of local interest, but the Dominion Parliament possesses the exclusive right in certain matters of general interest. Each province has its own courts of justice, from which appeals lie direct to the Sovereign in Council. See *infra*. The British North America Act (sect. 101) authorised the creation of a general Court of Appeal for Canada and the establishment of any additional courts. By 38 Vict. (Dom. 1875) c. 11, the Supreme Court of Canada, to which appeals lie from the superior courts of all the provinces of Canada, was accord-

S. C. of Dominion.

ingly established. (See Rev. St. of Can., 6 Edw. VII., 1906, c. 139, ss. 35 and 36.) There is no appeal as of right from the Supreme Court to His Majesty in Council; but the royal prerogative, except in regard to criminal cases, is preserved. Special leave must be obtained from the Privy Council whenever an appeal has been made to the Supreme Court.

Supreme Court of Canada.

The jurisdiction of the Supreme Court of Canada is provided for by statute as follows (Rev. St. of Can., 1906, c. 139):

Sect. 35. The Supreme Court shall have, hold, and exercise an appellate, civil, and criminal jurisdiction within and throughout Canada.

It was held in *Crown Grain Co., Ltd.* v. *Day* that a statute of Manitoba, enacting that in suits relating to liens the judgment of a Manitoban Court of King's Bench should be final and that no appeal should lie therefrom, could not circumscribe the appellate jurisdiction granted by a Dominion Act (1908, A. C. 504).

Appeal.

From final judgments.

36. Except as hereinafter otherwise provided, an appeal shall lie to the Supreme Court—

(a) From any final judgment of the highest court of final resort now or hereafter established in any province of Canada, whether such court is a Court of Appeal or of original jurisdiction, in cases in which the court of original jurisdiction is a superior court;

Provided that (a) there shall be no appeal from a judgment in any case of proceedings for or upon a writ of *habeas corpus*, certiorari, or prohibition arising out of a criminal charge, or in any case of proceedings for or upon a writ of *habeas corpus* arising out of any claim for extradition made under any treaty; and (b) there shall be no appeal in a criminal case except as provided in the criminal code.

Section 37 provides for appeals from final judgments where the court of original jurisdiction is not a

superior court upon certain conditions which vary in each province.

Section 38 provides for appeals from a judgment of the highest court in any province if it is a superior court:

(a) Upon any motion to enter a verdict or non-suit upon a point reserved at the trial; — Points reserved.

(b) Upon any motion for a new trial upon the ground that the judge has not ruled according to law; — Motion for new trial.

(c) In any action, suit, cause, matter, or other judicial proceeding originally instituted in any superior court of equity in any province of Canada other than the province of Quebec, and from any judgment in any action, suit, cause, matter or judicial proceeding, in the nature of a suit or proceeding in equity, originally instituted in any superior court in any province of Canada, other than the province of Quebec;

39. Except as otherwise provided, an appeal shall lie to the Supreme Court:

(a) From the judgment upon a special case, unless the parties agree to the contrary, and the Supreme Court shall draw any inference of fact from the facts stated in the special case which the court appealed from should have drawn; — Upon a special case.

(b) From the judgment upon any motion to set aside an award, or upon any motion by way of appeal from an award made in any superior court in any of the provinces of Canada, other than the province of Quebec; — Motion to set aside award.

(c) From the judgment in any case of proceedings for or upon a writ of *habeas corpus*, certiorari or prohibition not arising out of a criminal charge; — *Habeas corpus*, mandamus, and municipal bye-laws.

(d) In any case of proceedings for or upon a writ of *mandamus;* and

(e) in any case in which a bye-law of a municipal corporation has been quashed by rule or order of court, or the rule or order to quash has been refused after argument.

40. In the province of Quebec an appeal shall lie to the Supreme Court from any judgment of the Superior Court of Review, when that court confirms the judgment of the court of first instance, and its judgment is not appealable to the Court of King's Bench, but is appealable to His Majesty in Council.

41. The appeal shall lie to the Supreme Court from the judgment of any court of last resort created under a provincial legislature to adjudicate concerning the assessment of property for provincial or municipal purposes, in cases where the person or persons presiding over such court is or are by provincial authority authorised to adjudicate, and the judgment appealed from involves the assessment of property of a value of not less than 10,000 dollars.

Appeal to be from court of last resort.

42.—(1) Except as otherwise provided in this Act or in the Act providing for the appeal, no appeal shall lie to the Supreme Court but from the highest court of last resort having jurisdiction in the province in which the action, suit, cause, matter, or other judicial proceeding was originally instituted, whether the judgment or decision in such action, suit, cause, matter or other judicial proceeding was or was not a proper subject of appeal to such highest court of last resort.

(2) Provided that an appeal shall lie directly to the Supreme Court (*d*) from the judgment of the court of original jurisdiction by assent of parties (without any intermediate appeal being had to any intermediate court of appeal in the provinces).

In what cases appeal shall lie in Quebec.

43.—(1) No appeal shall lie to the Supreme Court

(*d*) Where parties agree to refer matters in difference to the Supreme Court, and an award is made, the Judicial Committee will not grant special leave to appeal. *Att.-Gen. of Nova Scotia* v. *Gregory* (S. C. Can. 1886), 11 A. C. 229.

from any judgement rendered in the province of Quebec in any action, suit, cause, matter, or other judicial proceeding, unless the matter in controversy:

(a) Involves the question of the validity of an Act of the Parliament of Canada, or of the Legislature of any of the provinces of Canada, or of an Ordinance or Act of any of the councils or legislative bodies of any of the territories or districts of Canada; or — Validity of Act or Ordinance.

(b) Relates to any fee of office, duty, rent, revenue or any sum of money payable to His Majesty, or to any title to lands or tenements, annual rents, or such like matters or things where the rights in future might be bound. — Fees to the Crown, title to property, etc.

(c) Amounts to the sum or value of 2,000 dollars.

(2) In the province of Quebec whenever a right to appeal is dependent on the amount in dispute such amount shall be understood to be that demanded and not that recovered, if they are different.

48. No appeal shall lie to the Supreme Court from any judgment of the Court of Appeal for Ontario, unless: — Appeals from Ontario.

(a) The title to real estate or some interest therein is in question.

(b) The validity of a patent is affected.

(c) The matter in controversy in the appeal exceeds the sum or value of 1,000 dollars exclusive of costs.

(d) The matter in question relates to the collecting of an annual or other rent, customary or other duty or fee, or a like demand of a general or public nature affecting further rights; or

(e) Special leave of the Court of Appeal for Ontario or of the Supreme Court of Canada to appeal at such last-mentioned court is granted (60 & 61 Vict. c. 34).

Whenever a right to appeal is dependent upon the amount in dispute, such amount shall be understood to be that demanded and not that recovered, if they are different.

59. The judgment of the court shall in all cases be final and conclusive, and no appeal shall be brought from any judgment or order of the court to any court — Judgment to be final.

of appeal established by the Parliament of Great Britain and Ireland, by which appeals or petitions to His Majesty in Council may be ordered to be heard, saving any right which His Majesty may be graciously pleased to exercise by virtue of his royal prerogative.

It is this section which reserves the right to the Judicial Committee to grant special leave to appeal.

Jurisdiction in constitutional questions.

60.—(1) Important questions of law or fact touching (a) the interpretation of the British North America Acts, 1867—1886; or (b) the constitution or interpretation of any Dominion or provincial legislature; or (c) the appellate jurisdiction as to educational matters by the British North America Act, 1887, or by any other Act or law vested in the Governor in Council; or (d) the powers of the Parliament of Canada or of the legislatures of the provinces, or of the respective governments thereof, whether or not the particular power in question has been or is proposed to be executed; or (e) any other matter, whether or not in the opinion of the court *ejusdem generis* with the foregoing enumerations with reference to which the Governor in Council sees fit to submit any such question, may be referred by the Governor in Council to the Supreme Court for hearing or consideration; and any question touching any of the matters aforesaid so referred by the Governor in Council shall be conclusively deemed to be an important question.

(2) When any such reference is made to the court, it shall be the duty of the court to hear and consider it and to answer each question so referred, and the court shall certify to the Governor in Council for his information its opinion on each such question with the reason for each such answer, and such opinion shall be pronounced in like manner as in the case of a judgment upon an appeal to the said court.

Notice of question referred which

(3) In case any such question relates to the constitutional validity of any Act which has heretofore been or shall hereafter be passed by the legislature of any

province, or of any provision in any such Act, or in case, for any reason, the government of any province has any special interest in any such question, the Attorney-General of such province, or, in the case of the North West Territories, the Lieutenant-Governor thereof, shall be notified of the hearing, in order that he may be heard if he thinks fit. concerns provinces.

(4) The court shall have power to direct that any person interested, or, where there is a class of persons interested, any one or more persons as representatives of such class, shall be notified of the hearing upon any reference under this section, and such persons shall be entitled to be heard thereon. Notice to persons interested.

(5) The court may, in its discretion (*e*), request any counsel to argue the case as to any interest which is affected and as to which counsel does not appear, and the reasonable expenses thereby occasioned may be paid by the Minister of Finance and Receiver-General out of any moneys appropriated by Parliament for expenses of litigation. Appointment of counsel by court.

(6) The opinion of the court upon any such reference (*f*), although advisory only, shall, for all purposes of appeal to His Majesty in Council be treated as a final Judgment of the said Court between parties. Appeal.

(*e*) *Intervention by leave of the Court.*—In a case where a collusive action had been instituted in the Supreme Court of British Columbia with the view of obtaining a declaration that a certain enactment of the provincial legislature prohibiting the employment of Chinamen below ground was *ultra vires*, the Attorney-General of the province appeared by leave of the court, and protested against the validity of the enactment being raised in a friendly and collusive action, and cross-examined the witnesses. The court upheld the validity of the enactment, and on appeal to the Judicial Committee from the full court, which had affirmed that decision, the Attorney-General petitioned the Queen for leave to intervene in such appeal, and an order was made that he should be allowed to intervene, and to put in such case as he might be advised, and to appear by counsel on the hearing of the appeal. *Union Colliery Co.* v. *Bryden*, (1899) A. C. at p. 584.

(*f*) Special leave should be asked in such cases. See *Manitoba School Case* (*Brophy* v. *Att.-Gen. of Manitoba*), (1895) A. C. 202; *Att.-Gen. of Ontario* v. *Att.-Gen. of Dominion and Brewers and Distillers*, (1896) A. C. 348.

When Leave to Appeal Granted.

Conditions of appeal from the Supreme Court.

The principles upon which the Judicial Committee grants leave to appeal from the judgment of the Supreme Court of Canada (and of the highest federal court in the other self-governing dominions) were laid down in the case of *Prince* v. *Gagnon* (L. R. 8 A. C. 103), by Lord Fitzgerald. "Their lordships, he said, are not prepared to advise His Majesty to exercise his prerogative by admitting an appeal to His Majesty in Council from the Supreme Court of the Dominion, save where the case is of gravity involving matter of public interest or some important question of law, or affecting property of considerable amount, or when the case is otherwise of some public importance or of a very substantial character." This statement of principle was repeated by Lord Davey in *Clergue* v. *Murray* (L. R. 1903, A. C. p. 521), and also in *Victoria Railway Commissioners* v. *Brown* (1906, A. C., p. 381).

Special leave to appeal has been recently granted in accordance with this rule where there was an inter-governmental controversy between the Dominion and the province of Ontario. *The Dominion of Canada* v. *The Province of Ontario* (1910, A. C. 637); where there was a question involving the liability of members of the town council of Montreal to refund certain moneys alleged to have been expended without proper authority (*Lapointe* v. *Larin*, *The Times*, February 19, 1910); where railway interests of enormous value were involved (*Canadian Pacific Railway Co.* v. *The City of Toronto*, *The Times*, July 23, 1910). But leave to appeal has been refused in a case where the Supreme Court reversed the decision of the Chief Justice and Court of Appeal of Ontario in a suit brought by a widow for damages in respect of injuries to her husband who was killed in a railway accident. The petition was dismissed on the ground that the case did not raise matter of general public interest (cf. *Grand Trunk Railway Co. of Canada* v. *Fralick*, *The Times*, July 26, 1910).

Where alternative right of appeal to P. C. or Supreme Court.

There being in many cases an alternative right of appeal from the court in the colony to the Supreme Court of Canada or to the Privy Council, the Judicial Committee has recognised a distinction as to the grounds required for

giving leave to appeal between cases where the petitioner seeks to bring an appeal from the Supreme Court to which he voluntarily resorted, and cases where he desires to appeal against the judgment of that Court where either he was compelled by law to proceed there initially or he was the unsuccessful respondent before it. "In the case of *Consumer's Cordage Co., Ltd.* v. *Connolly*, 1901, it was said that where a person has elected to go to the Supreme Court, it is not the practice to allow him to come to this Board except in a very strong case. It is different where a man is taken to the Supreme Court because he cannot help it. But where a man elects to go to the Supreme Court, having his choice whether he goes there or not, this Board will not give him assistance except under special circumstances." *Per* Lord Davey in *Clergue* v. *Murray*, (1903, A. C. p. 52) ; cf. *William Ewing & Co.* v. *The Dominion Bank* (1906, A. C. 80), and *The Canadian Pacific Railway Co.* v. *Blaine* (1906, A. C. 453).

In a note to the report of the case of *Clergue* v. *Murray* it is stated that special leave to appeal from the Supreme Court of Canada was granted in two cases about the same time to petitioners who had carried an appeal to the Supreme Court. In both cases, however, the appeal lay by the Canadian statute in the first place to the Supreme Court. *Calgary and Edmonton Railway Co.* v. *Regem; Hamburg-American Steam Packet Co.* v. *Regem* (1903, A. C., p. 523).

Appeal in first place to Supreme Court.

In a recent petition for special leave to appeal to the Privy Council from a decision of the Exchequer Court of Canada, the Judicial Committee intimated that they thought that the petitioner should first appeal to the Supreme Court of Canada, to which there was an alternative right of appealing; and then, if it were necessary, to His Majesty in Council (*Burrard Power Co.* v. *Regem*, S. J. 53, p. 689). The question at issue involved very important water-rights which were contested between the Dominion and the province of British Columbia; and though the case was eminently suitable for the consideration of the Judicial Committee, the course taken had the advantage of avoiding any possible conflict of authority between it and the Supreme Court of Canada. If the Committee had granted leave to

appeal in the first instance, it would have been possible for a subsequent appeal on the same point to be taken to the Supreme Court and a contrary decision there arrived at. This awkward conflict of decision between the Privy Council and the Supreme Court of a dominion actually occurred in the case of the Australian Commonwealth (see p. 69) ; and it has been suggested that it would be a salutary rule for the Judicial Committee to decline to entertain any appeal over the head of the Supreme Federal Court, save in a very exceptional case where there is litigation between the Dominion government and a provincial government. In such cases the Privy Council might be deemed to be the best arbiter. After the case in which this ruling was given had been taken to the Supreme Court of Canada, leave to appeal from the decision of that tribunal was ultimately given by the Judicial Committee.

Terms of granting leave.

As all appeals from the Supreme Court of Canada can only be brought by special leave of the Judicial Committee, the amount of the security for the appeal and the other conditions precedent to lodging the appeal are in the discretion of the Judicial Committee, and no rules have been issued by an Order in Council dealing with the matter, save those in the common form relating to the preparation of the record and the payment of costs.

The Exchequer Court.

The Act which created the Supreme Court (1875) continued the existence of the Exchequer Court which, before the creation of the Supreme Court, was the chief appellate tribunal in Canada. The constitution of the court is now regulated by c. 140 of the Rev. Stat. Can. 1906. It has exclusive jurisdiction of any matter which might in England be the subject of a suit or action against the Crown, and in cases of patents and copyrights ; and it has concurrent jurisdiction with the Supreme Court in a number of cases. By the Admiralty Act (c. 141 of the R. S. C.), the Exchequer Court is constituted a colonial Court of Admiralty, and the decisions of the court in this capacity are subject to appeal to the Privy Council. Notwithstanding the provisions of the Canadian Supreme and Exchequer Courts Act, 1875 (s. 47) with respect to the finality of judgments of the Supreme Court, an appeal lies of right under s. 6 of the Colonial Court of Admiralty Act, 1890, from a judg-

ment of the Supreme Court, where pronounced on an appeal from the Exchequer Court in its Admiralty jurisdiction. *Richelieu and Ontario Navigation Co.* v. *Owners of SS. Cape Breton*, (1907) A. C. 12. Special leave has not to be asked in such cases. (See pp. 367—368.)

Criminal cases.

It is doubtful whether there is an appeal to the Privy Council in criminal cases from Canada. The British North America Act did not curtail the prerogative of appeal in any way, but it was enacted by the Dominion Act of Parliament (51 Vict. c. 43; R. S. C., c. 1466, s. 1025) as follows:—"Notwithstanding any royal prerogative or anything contained in the Interpretation Act, or in the Supreme Court Act, no appeal shall be brought in any criminal case from any judgment or order of any court in Canada to any court of appeal or authority by which in the United Kingdom appeals or petitions to His Majesty in Council may be heard."

It is, however, well nigh certain that this enactment was not technically effective to exclude the prerogative to grant leave to appeal from the judgment of a provincial court in a criminal case which existed before the Act in virtue of the Imperial statute 7 & 8 Vict. c. 69, which overrides local Acts. As the prerogative in such a case is not expressly barred, it is probable that it still exists, and that even in the case of a decision of the Supreme Court of Canada in a criminal case the right of appeal to the Privy Council has not been effectively taken away. The Judicial Committee has of recent years entertained applications for leave to appeal from the judgments of provincial courts in a criminal case when there were circumstances that brought the case within the conditions required for an exercise of the prerogative. Cf. *Townsend* v. *Cox*, (1907) A. C. 514, where, in refusing special leave to appeal from a decree of the Supreme Court of Nova Scotia in a criminal matter, the Judicial Committee did not raise the ground of absence of jurisdiction. Cf., too, *R.* v. *Walker* (The Times, July 27, 1909), where again, in rejecting a petition for special leave to appeal in a criminal matter brought from the Supreme Court of British Columbia, the Committee did not suggest that they had not jurisdiction, but stated that the case was not a suitable one for their

interference. The petition was brought by the Crown against an order for a new trial, and the Crown urged that, as no appeal to the Supreme Court of Canada was available in a criminal matter from the Supreme Court of British Columbia, the prerogative of the King to grant special leave should be exercised. But the Board, without dealing with all the questions involved, said that in any case they would be very slow to interfere at the instance of the prosecution with a new trial directed by the Court of Appeal in favour of an accused man.

Habeas corpus appeals.

The Judicial Committee has recently exercised the power of reviewing the grant of a writ of *habeas corpus* which had been made by the Court of King's Bench in Manitoba in respect of a foreign criminal who had been committed for extradition. *Att.-Gen. for Dominion of Canada* v. *Fedorenko*, (1911) A. C. 735. The proceedings were *ex parte*, and the question whether the appeal was in a criminal matter and therefore barred was not raised.

Appeal from Supreme Court in railway cases.

Under sect. 56 of the Railway Act, 1901, an appeal lies from the Railway Board of Canada to the Supreme Court; under sub-sect. 3 the Supreme Court is to determine by its judgment the question submitted; and under sub-sect. 5 to certify its opinion to the Board, which is to make an order in accordance therewith, and that order by sub-sect. 9 is declared to be final. It has, however, been held that the provisions of the section are not sufficient to take away the prerogative of the Crown to grant leave to appeal from the judgment of the Supreme Court. *Canadian Pacific Railway Co.* v. *Toronto Corporation and Grand Trunk Railway Co. of Canada*, (1911) A. C. 461.

The Canadian Provinces.

While the right of appeal from the Supreme Court of Canada is limited to cases where special leave is granted by the Judicial Committee, a larger right of appeal has been provided from the Supreme Court of each province of the Dominion. It has been mentioned that in many cases there is an alternative right of appealing to the Supreme Court of Canada and the Privy Council from the provincial court, and the appellant may elect to which of the two

tribunals he will go. The rules relating to the bringing of appeals to the Privy Council have been rendered uniform for the most part by the Orders in Council issued during the last two years to that end, but in the two oldest provinces of Canada a special procedure applies, and it is necessary to set out briefly the particular laws and Orders in Council affecting each province.

ALBERTA.

Rules of appeal to P. C.

The Province of Alberta was created by an Act of the Canadian Parliament (4 & 5 Edw. VII.); and in 1907, by an Act of the Provincial Legislature, a Superior Court of Civil and Criminal Jurisdiction was constituted, called the Supreme Court of Alberta. By Order in Council of January, 1910, an appeal lies of right in all civil cases from any final judgment of this court to the Privy Council, or where the matter in dispute in the appeal amounts to or is of the value of 1,000*l.* sterling or upwards, or where the appeal involves, directly or indirectly, some claim or question respecting property or some civil right amounting to or of the value of 1,000*l.* or upward; and at the discretion of the court from any other judgment of the court, whether final or interlocutory, if the court is of opinion that, by reason of its general public importance or otherwise, it should be submitted to His Majesty in Council for decision. Application for leave to appeal is to be made within twenty-one days from the date of the judgment. The Order adopts the Colonial Appeal Rules (Chapter II.)

BRITISH COLUMBIA (including Vancouver's Island).

British Columbia.

In 1866 the Crown colonies of British Columbia and Vancouver's Island were united by Imperial statute (29 & 30 Vict. c. 67, s. 3), and in 1871 became a province of the Dominion of Canada.

Supreme Court.

The Supreme Court of Civil Justice of the Colony of Vancouver's Island and the Supreme Court of Civil Justice of British Columbia have been merged, and are called the Supreme Court of British Columbia.

O. in C. 1911; appeals to P. C.

The Order in Council regulating appeals from the Supreme Court of British Columbia to the Privy Council

is dated January 23, 1911, and repeals an earlier Order in Council dated 1887.

The appeal as of right lies from any final judgment of the court where the matter in dispute amounts to or is of the value of 500*l.* Application for leave to appeal is to be made by notice or petition within twenty-one days from the date of the judgment to be appealed from. The other conditions follow the common form.

MANITOBA.

Creation of Province of Manitoba.

The Province of Manitoba was created by Imperial statute, 34 & 35 Vict. c. 28 (British North America Act, 1871), ss. 2, 5, confirming the Manitoba Act, 33 Vict. c. 3 (Dom.).

Courts.

By an Act of the Province in 1906 (6 Edw. VII. c. 18) there was established a Court of Appeal for Manitoba, which has the exclusive appellate jurisdiction in all matters, civil and criminal, that had hitherto been exercised by the Court of King's Bench.

Appeals to P. C.

The conditions of appeal from the court to the King in Council are fixed by an Order in Council dated November 28, 1910, which revokes an earlier Order in Council dealing with appeals dated November 26, 1892.

The appeal as of right lies from a final judgment of the Appeal Court where the matter in dispute is of the value of 1,000*l.* or upwards. The other conditions follow the common form.

NEW BRUNSWICK.

New Brunswick was ceded by France to England by the Treaty of Paris, 1763, and became a province of the Dominion of Canada under a British North America Act, 1867. The Order in Council regulating appeals to the Privy Council from the Supreme Court of New Brunswick is dated November 7, 1910, and revokes the Order in Council of November 27, 1852, which had hitherto regulated appeals.

The appeal lies as of right where the matter in dispute amounts to 300*l.* sterling or upwards; application for leave must be made within twenty-one days; in other respects the order follows the common form.

NOVA SCOTIA.

This colony was made a province of the Dominion by the British North America Act, 1867. The island of Cape Breton forms part of the province. *In re Cape Breton* (1846), 5 Moo. 259; 6 S. T. 283.

The Supreme Court is constituted by the Judicature Act, 1884 (Rev. Stat. 1884, c. 104). An appeal lies to the full court.

Appeal to P. C.

The conditions of appeal are now regulated by an Order in Council of July, 1911, in common form, which repeals the former Order in Council of 1863. The appealable amount is 500*l.*, and leave to appeal must be made by motion or petition within twenty-one days of the judgment to be appealed from.

ONTARIO (Upper Canada).

Courts.

Ontario forms part of the territories of Canada ceded by France by the treaty of Paris, 1763; but the entire territory was till 1791 known as Canada. By the Act of 1867, Upper Canada was finally separated from Canada and became a separate province. In 1794 the courts of King's Bench and of Appeal of Upper Canada were created; and under the Judicature Act of Ontario the High Court of Justice of Ontario and the Court of Appeal for Ontario were continued, and together they form the Supreme Court of Judicature (R. S. Ontario, 1897, c. 31). Appeals to His Majesty in Council were originally regulated by the Provincial Act (34 Geo. IV. c. 2). In 1910, however, an act of the provincial legislature (10 Edw. VII., c. 24) was passed, which re-enacts most of the old conditions of appeal, and repeals the chapter (48) in the revised statutes of the colony which had hitherto governed appeals.

Appeals Act.

The statute provides as follows:—

1. An appeal lies (*g*) when the matter in con-

(*g*) It will be observed that no leave has to be asked or obtained on appeal from Ontario. The provision is that "an appeal lies." This accords with the Proclamation of 1763, under which the right of appeal from the Canadas arose. The Proclamation had the same

troversy in any case exceeds the sum or value of $4,000 (*h*), as well as in any case where the matter in question relates to the taking of any annual or other rent, customary or other duty, or fee, or any like demand of a general and public nature affecting future rights, of what value or amount soever the same may be, and except as aforesaid no appeal shall lie to His Majesty in his Privy Council.

2. No such appeal shall be allowed until the appellant has given security in $2,000 to the satisfaction of the court appealed from, and that he will effectually prosecute the appeal, and pay such costs and damages as may be awarded in case the judgment appealed from is confirmed.

Execution to be stayed.

3. Upon the perfecting of such security (*i*) execution shall be stayed in the original cause.

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force as a statute, *per* Lord Mansfield, *Campbell* v. *Hall*, 1 Cowp. 204; and cf. *St. Catherine's Milling and Lumber Co.* v. *The Queen*, (Ont. 1888) 14 A. C. at p. 54. But the Court of Appeal must exercise its judgment whether any case is applicable or not, *Gillett & Co.* v. *Lumsden*, (1905) A. C. 601. By the rules and orders passed by the Judicial Committee, dated December 21, 1908, it is provided by rule 2, that "all appeals shall be brought either in pursuance of leave obtained from the court appealed from or, in the absence of such leave, in pursuance of special leave to appeal granted by His Majesty in Council upon a petition in that behalf presented by the intending appellant." The Registrar of the Privy Council has, however, advised the Registrar of the Court of Appeal for Ontario that the rule quoted is not intended to interfere with what has been the practice heretofore on appeals from the Court of Appeal to the Privy Council.

(*h*) Under the old Act, by which the Court of Appeal was only empowered to deal with cases which came within a definite value or a special class, it was held that it could not take any steps to admit an appeal not within those limits, though it was of a kind in which the Judicial Committee have often considered it proper to grant special leave. Where the sole question in two actions was as to the validity of an order by the Railway Committee of the Privy Council of Canada requiring the plaintiffs to build a bridge, it was held that an appeal did not lie as of right to the Privy Council. *Canadian Pacific Railway Co. and Grand Trunk Railway Co.* v. *City of Toronto* (1909), 19 O. L. R. 663, and *City of Toronto* v. *Toronto Electric Light Co.* (1906), 11 O. L. R. 310. Under the new Act by which the appeal as of right is subject to much the same conditions, these decisions have been followed in *Beardman* v. *City of Toronto* (see Canada Law Journal, 1911, p. 63, and 21 O. L. R. 505). In all such cases special leave to appeal must be obtained from the Judicial Committee.

(*i*) Under the authority of sect. 15 of the Law Courts Act, 1896,

4. Subject to rules to be made by the judges of the Supreme Court, the practice applicable to staying

Practice of Court of Appeal to apply.

the Consolidated Rules of Practice and Procedure of 1897 were revised and consolidated. See R. S. Ont. 1897, c. 51, s. 129. The rules in force prior to April 16, 1895, as to staying execution upon appeals, are contained in the New Consolidated Rules, and are set out below.

NEW CONSOLIDATED RULES—STAY OF EXECUTION.

Sect. 27. Upon the perfecting of such security, execution shall be stayed in the original cause, except in the following cases :—

(1) If the judgment appealed from directs the assignment or delivery of documents or personal property, execution shall not be stayed until the things directed to be assigned or delivered have been brought into the court appealed from, or placed in the custody of such officer or receiver as that court or a judge appoints, nor until security has been given to the satisfaction of that court, and in such sum as it may be directed, that the appellant will obey the order of the Court of Appeal. Where judgment directs assignment, etc.

(2) If the judgment appealed from directs the execution of a conveyance or any other instrument, execution shall not be stayed until the instrument has been executed and deposited with the proper officer of the court appealed from, to abide the judgment of the Court of Appeal. Where judgment directs conveyance, etc.

(3) If the judgment appealed from directs the sale or delivery of possession of real property or chattels real, execution shall not be stayed until security has been entered into to the satisfaction of the court appealed from, and in such sum as that court or a judge directs, that during the possession of the property by the appellant, he will not commit nor suffer to be committed any waste on the property, and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of the possession thereof, and also, in case the judgment is for the sale of the property and the payment of a deficiency arising from the sale, that the appellant will pay the deficiency. Where judgment directs sale, etc.

(4) If the judgment appealed from directs the payment of money, execution shall not be stayed until the appellant has given security, to the satisfaction of the court appealed from, or a judge, that if the judgment, or any part thereof, be affirmed, the appellant will pay the amount thereby directed to be paid, or the part thereof as to which the judgment may be affirmed if it be affirmed only as to part, and all damages awarded against the appellant on the appeal. Where judgment directs payment.

Sect. 28. When the security has been perfected and allowed, any judge of the court appealed from may issue his fiat to the sheriff to whom any execution on the judgment has issued to stay the execution, and the execution shall thereby be stayed whether a levy has been made under it or not ; but if the grounds of appeal appear to be frivolous, the court whose judgment is appealed from, or a judge upon motion on notice, may order execution to issue or to be proceeded with.

If at the time of the receipt by the sheriff of the fiat, or a copy thereof, the money has been had or received by him, but not paid over to the party who issued the execution, the party appeal-

Rev. Stat. c. 51.

executions upon appeals to the Court of Appeal shall apply to an appeal to His Majesty in his Privy Council.

Approval of security.

5. A judge of the Court of Appeal shall have authority to approve of (*j*) and allow the security to be given by a party who intends to appeal to His Majesty in his Privy Council, whether the application for such allowance be made during the sitting of the said court, or at any other time.

6. The preceding sections shall not apply to an appeal from a judgment of any court on a reference under the constitutional questions (*k*).

Costs.

7. Costs awarded by His Majesty in his Privy Council upon an appeal shall be recoverable by the same process as costs awarded by the Court of Appeal.

Inter-provincial questions.

Under 54 Vict. c. 2 (1891, Ont.), on questions arising as to settlement of accounts between the Dominion and the provisions of Ontario and Quebec, and between the two provinces, an appeal was given from the arbitrators proceeding "on their view of a disputed question of law" to the Privy Council, "in case their lordships are pleased to entertain the appeal" (*l*).

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ing may demand back from the sheriff the amount had or received under the execution, or so much thereof as is in his hands not paid over, and in default of payment by the sheriff upon such demand, the appellant may recover the same from him in an action for money had and received.

(*j*) Where the security has been once accepted in the court below, objection cannot be taken in the Privy Council after respondent has appeared to the order of revivor on death of appellant. *Powell* v. *Washburn* (Upp. Can. 1838), 2 Moo. 199.

(*k*) Under the Act (53 Vict. (Ont.) c. 13), the Lieutenant-Governor in Council may refer "any matter" for the opinion of the court. Such opinion is to be "deemed a judgment of the court" from which an appeal shall lie as in the case of a judgment in an action. In the case of the *Att.-Gen. for the Dominion* v. *Att.-Gen. for Ontario*, (1898) A. C. 247, the appeal to the Privy Council was allowed to be prosecuted without the usual restrictions, and no leave to appeal was asked below, and no special leave was asked in England before the petition of appeal was lodged.

(*l*) This provision ignores the constitutional rule that the appeal lies to the Sovereign and not to the Privy Council. *Att.-Gen. for the Dominion* v. *Att.-Gen. for Ontario*, (1897) A. C. at p. 208.

PRINCE EDWARD ISLAND.

This island was ceded by the French by the Treaty of Paris, 1763, and it was admitted into the Dominion in 1873. Civil and criminal jurisdiction is exercised by the Supreme Court of Judicature of Prince Edward Island. By the Common Law Procedure Act, 1873, it is enacted :—

Power of S. C. to make rules.

In all appeals to the Judicial Committee of the Privy Council, the judges of the Supreme Court shall make rules and regulations directing the mode of procedure, either *pro hac vice* or generally, as may be required, and as may not be inconsistent with the royal instructions and the rules and mode of procedure of the Judicial Committee of the Privy Council.

To accord with royal instructions.

Rules of Appeal.

No rules, however, have been made by the judges. But rules for the regulation of appeals from the Supreme Court of Prince Edward Island were laid down in an Order in Council, dated October 13, 1910, which are in the common form. The appealable amount for an appeal of right is 500*l.* or upwards. Application for leave must be made within twenty-one days. Subject to the rules laid down in the Order in Council, it is for the judges of the Supreme Court to make any rules they think necessary for the prosecution of appeals.

QUEBEC (Lower Canada).

Law in force.

Quebec was ceded to Great Britain by France by the Treaty of Paris, 1763. By a proclamation of that year the English civil and criminal law was established, and the right was reserved to all persons to appeal to the Sovereign in all civil cases, subject to the usual limitations and restrictions. Some of the old French laws have been re-established in the province (cf. *Symes* v. *Cuvillier*, 6 A. C. 138). Following the model of French jurisprudence, there is a code of Civil Procedure for the province which was last revised under 57 Vict. c. 9. This code provides in detail for the regulation of appeals from the various courts of the province to the Privy Council, and no Order in Council has been issued affecting the rules. The regulations for appeals from Quebec are therefore peculiar and must be set out in detail.

Courts.

The chief Appellate Court is the Court of King's Bench

of Quebec, which is a court of error in criminal cases and of appeal in civil cases. There is also an appeal from a judgment of a Superior Court or a Circuit Court to the Superior Court sitting in review. If in such a case the judgment below is approved, the party is deprived of his appeal to the King's Bench (Art. 1142a, and 54 Vict. c. 48, s. 2), but he may appeal direct to the Privy Council (Sec. 68a).

Appeals to the P. C.

The appeal in civil cases from final judgments of the King's Bench to the Privy Council is regulated by s. 68 (formerly Art. 1178) of the Code of Civil Procedure.

The rules regulating appeals are as follows :—

CODE *of Civil Procedure of the Province of Quebec*, 1897.

Appeals from interlocutory judgments.

Sect. 46 (formerly Art. 1116). An appeal also (*m*) lies (to the Court of King's Bench) from interlocutory judgments in the following cases :—

(1) When they in part decide the issues;

(2) When they order the doing of anything which cannot be remedied by the final judgment;

(3) When they unnecessarily delay the trial of the suit.

On Appeals to His Majesty.

Where appeal lies from K. B. to P. C.

Sect. 68 (formerly Art. 1178). An appeal lies to His Majesty in his Privy Council from final judgments (*n*)

(*m*) See *infra*, Sec. 69. In appeals under this article there must be a preliminary motion before the Appellate Court, in order that that court may decide whether the particular judgment falls properly within the terms of Art. 1116. *Goldring* v. *La Banque d'Hochelaga* (Quebec, 1880), 5 A. C. at p. 373.

Interlocutory judgments.

(*n*) *Final judgment.*—The Court of King's Bench of Quebec cannot grant leave to appeal against an interlocutory order, except under Arts. 1115 and 1116 of C. C. P. *Goldring* v. *La Banque d'Hochelaga* (Quebec, 1880), 5 A. C. 371. In matters of insolvency there is no appeal from the King's Bench of Quebec as of right hereunder. The Dominion Parliament has the power to abrogate such right (cf. British North America Act, 1867, ss. 91, 92), and has done so by 38 Vict.

Insolvency matters.

rendered in appeal or error by the Court of King's Bench:—

(1) In all cases where the matter in dispute relates to any fee of office, duty, rents, revenue, or any sum of money payable to His Majesty (*o*);

(2) In cases concerning titles to lands or tenements, annual rents and other matters by which the rights in future (*p*) of parties may be affected;

(3) In all other cases wherein the matter in dispute exceeds the sum or value (*q*) of five hundred pounds sterling.

(Dom.) c. 16, s. 128, and 40 Vict. (Dom.) c. 41, s. 28, which enacts that the judgment of the Court of King's Bench in such cases shall be "final." *Cushing* v. *Dupuy* (Quebec, 1880), 5 A. C. 409. In the above case, *Cuvillier* v. *Aylwin* and subsequent cases were reviewed as to the question whether the King's prerogative can be taken away otherwise than by express words. *Ibid.* p. 417. The right of His Majesty to grant special leave remains, since the enactment contains no words which purport to derogate from the prerogative of the King to allow an appeal as an act of grace. *Ibid.* p. 420. King's prerogative.

The motion for leave to appeal should, according to usage, be made forthwith. Cf. *Brewster* v. *Lamb*, Stephen's Quebec Law Digest, vol. 2, p. 72; *Mullin* v. *Archambault* (1867), 3 L. Can. L. J., p. 117. No appeal lies, as of right, under this section in the matter of a penalty of imprisonment. *Carter* v. *Molson* (Quebec, 1883), 8 A. C. 530. A judgment refusing to set aside a writ of *capias ad respondendum* issued under Arts. 798 and 801 of C. C. P. is not a final judgment. *Goldring* v. *La Banque d'Hochelaga* (1880), 5 A. C. 371. It is no objection to the right of a party to appeal to the P. C. that the opponent has already obtained leave to appeal to the S. C. of the Dominion. *The City of Montreal* v. *Devlin* (1878), 22 L. C. Jur. 136.

(*o*) An appeal lies from a decision on a petition of right. *R.* v. *Demers*, (1900) A. C. 108.

(*p*) "*Rights in future.*"—Cf. *Sauvageau* v. *Gauthier* (Quebec, 1874), L. R. 5 P. C. 494.

Where leave to appeal was unduly granted by the Court of King's Bench, the Judicial Committee, as the question raised was one of importance, in the course of the argument, intimated that, upon a petition for special leave being presented, they would advise Her Majesty to grant leave. In such case fresh security as to costs of appeal has to be given. *Carter* v. *Molson* (Quebec, 1883), 8 A. C. 533. But where leave has been given by the Court of Appeal in a question below the appealable value, the appeal will be dismissed, unless it is a desirable case for special leave. *Allan* v. *Pratt* (Quebec, 1888), 13 A. C. 780.

(*q*) "*Value.*"—Art. 1178, sub-s. (3). As to calculating interest in the judgment, see *Boswell* v. *Kilborn* (L. Can. 1859), 12 Moo. 467; *Quebec Fire Insurance Co.* v. *Anderson* (L. Can. 1860), 13 Moo. 477. But see *Marois* v. *Allaire* (1862), 6 L. C. J. 85, P. C. Appeal may be made to the Privy Council when the amount demanded is less than

Where judgment affirmed by Court of Review appeal lies to P. C.

Sect. 69 (formerly Art. 1178a). Causes adjudicated upon in review (*r*), which are susceptible of appeal (*s*) to His Majesty in his Privy Council, but the appeal whereof to the Court of King's Bench is taken away by sects. (*t*) 43 and 44, may nevertheless be appealed to His Majesty.

500*l*., if the amount involved is greater. *Bunting* v. *Hibbard* (1865), 1 L. C. L. J. 60. Where the judgment is below the appealable amount, there is no appeal, notwithstanding in default of payment the person desiring to appeal was subject to *contrainte par corps*. *Pacaud* v. *Roy* (1866), 16 L. C. R. 398, Q. B. To determine the appealable value the correct course is to look at the judgment as it affects the interest of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal. *Macfarlane* v. *Leclaire*, 8 Jur. N. S. 267.

(*r*) By Art. 494 of the Code of Civil Procedure of Quebec (34 Vict. (Quebec) c. 4, s. 5), a review may be had—(1) upon every final judgment from which an appeal lies (and see amendment, 54 Vict. c. 48 (2), 1890), "and from judgments of Circuit Court from 100 to 200 dollars"); (2) upon every judgment or order rendered by a judge in summary matters under the provisions contained in the third part of this Code (which deals with non-contentious business); (3) upon any judgment rendered on any petition or motion to set aside or quash an attachment before judgment or *capias ad respondendum*. The Revised Statutes of Quebec, 1888, c. 2314 (a re-enactment of 37 Vict. c. 6, s. 2), enacts, as to judgments given in a Court of Review :—

Appeal direct to P. C. from judgments in Court of Review.

> Causes susceptible of appeal to Her Majesty in Privy Council may nevertheless be taken there directly by observing the same precedent formalities and provisions, and subject to the same conditions, as in the case of appeals to Her Majesty from judgments of the Court of Queen's Bench sitting in appeal and error.

(*s*) *Susceptible of appeal.*—There is no appeal from a decision under the Quebec Controverted Elections Act, 1875 (38 Vict. c. 38), of which sect. 90 enacts that the judgment of the court sitting in review shall not be susceptible of appeal. *Théberge* v. *Laudry*, (Quebec, 1876) 2 A. C. 102; and see *Cushing* v. *Dupuy*, *supra*, where the Privy Council point out that their decision was rested rather on the peculiarity of the subject-matter which affected the rights and privileges of the legislative assembly than on the prohibitory words of the statute. In *Kennedy* v. *Purcell* (1888), 59 L. T. 279, the Judicial Committee pointed out that the intention to confine the decision locally within the colony was as clear as to have the matter speedily decided. Their lordships thought there were strong reasons why such matters should be decided within the colony, and why the prerogative of the Crown should not, even if it legally can, be extended to matters over which it had no power, and with which it had no concern, until the legislative bodies chose to hand over to judicial functionaries that which was formerly settled by themselves. Before advising such an assertion, their lordships intimated that they would require to find indications of an intention that the new proceedings should so follow the course of ordinary law as to attract the prerogative.

(*t*) The sects. 43 and 44 of the C. C. P. are as follows :—

> Sect. 43. Unless where otherwise provided by statute, an appeal lies to the Court of Queen's Bench, sitting in appeal, from any final judgment rendered by the Superior Court, except :—

Sect. 1242 (formerly Art. 1179). The execution of a judgment from which an appeal is taken to His Majesty in his Privy Council cannot be prevented or stayed, unless the party aggrieved gives good and sufficient sureties, within the delay fixed (*u*) by the court which rendered the judgment, that he will effectually prosecute the appeal, satisfy the condemnation, and pay such costs and damages as may be awarded by His Majesty in the event of the judgment being confirmed. Security, if stay.

The security (*x*) must be received before one of the Security.

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1. In matters of *certiorari*;
2. In matters concerning municipal corporations or offices, as provided in Article 1006;
3. In matters in which the sum claimed or value of the thing demanded is less than two hundred dollars and in which judgment has been rendered by the Court of Review;
4. At the instance of any party who has inscribed in review any cause other than those mentioned in the preceding paragraph, and has proceeded to judgment on such inscription, when such judgment confirms that rendered in first instance.

Sect. 44. An appeal also lies to the Court of Queen's Bench sitting in appeal, from judgments of the Circuit Court, in the following cases:—

1. Where the sum claimed or the value of the thing demanded amounts to or exceeds one hundred dollars, except in suits for the recovery of assessments for schools or school-houses, or for monthly contributions for schools, and in suits for the building or repairing of churches, parsonages and churchyards;
2. When the demand is less than one hundred dollars, but relates to fees of office duties, rents, revenues, or sums of money payable to Her Majesty;
3. When the demand, although less than one hundred dollars, relates to titles to land or tenements, annual rents, or other matters in which the rights in future of the parties may be affected;
4. In all actions in recognition of hypothecs.

Nevertheless, no appeal lies to the Court of Queen's Bench in causes of the Circuit Court susceptible of appeal in which judgment has been rendered by the Court of Review.

(*u*) The *delay fixed* is generally six weeks if the parties are resident in Quebec or Montreal, and eight weeks, or according to circumstances if elsewhere. A judge in chambers has power to extend the time. *Mayor of Montreal* v. *Hubert*, 21 L. Can. Jurist, pp. 86.

(*x*) The amount of security may be increased on good cause being shown. *Boswell* v. *Kilborn* (1860), 7 L. C. J. 150; and 12 L. C. R. 161. As to amount, see *The Quebec Fire Insurance Co.* v. *Anderson* (1860), 7 L. C. J. 150, P. C.

judges of the court which rendered the judgment. The sureties justify their solvency upon the real estate which is described in the bail bond.

One surety suffices if he is owner of real estate which he describes equal in value to the amount of the security, over and above all charges and hypothecs.

The judge who receives such security may order, either on demand or otherwise, the production of the registrar's certificate, the valuation rolls, and any other documents for the purposes of the security, and is bound to put such questions as he deems advisable to the sureties. Such questions and the answers thereto may be taken down in writing.

The appellant may, however, exempt himself from furnishing such security by depositing an amount equal to that required for the security, either in money, in bonds of the Dominion or of the province, or in municipal debentures; and such moneys, bonds, or debentures are deposited either in the office of the court which rendered the judgment, or with the sheriff, as the judge may direct.

If judgment executed.

Sect. 1250 (formerly Art. 1180). The appellant may also consent to the judgment being executed, and in such cases may give security for the costs in appeal only, under the same conditions as under Art. 1214 (*y*).

(*y*) Art. 1214 is as follows:—On the day fixed in the notice, the appellant must give good and sufficient security that he will effectually prosecute the appeal, that he will satisfy the condemnation and pay all costs and damages adjudged in case the judgment appealed from is confirmed; or else he must declare in writing in the office of the court whose judgment is appealed from, that he does not object to the judgment rendered against him being executed, or he must file a copy of any judgment ordering provisional execution of the judgment appealed from, in which cases he is only bound to give security for the payment of the costs in appeal, if he fails; and, if the judgment is reversed, the respondent who has caused the judgment to be executed is bound to refund to the appellant the net amount only of the monies levied by execution together with legal interest, or to restore the property of which he was put in possession, together with the rents, issues and profits since.

Security by

By a statutory enactment, whenever any person is obliged by law,

No execution stayed after six months. unless P. C. certificate lodged.

Sect. 1251 (formerly Art. 1181). The execution of any judgment appealed from cannot be prevented or stayed after six months (*z*) from the day on which the appeal was allowed, unless the appellant files in the office of the clerk of the court which rendered the judgment, a certificate (*a*) signed by the Clerk of His Majesty's Privy Council, or any other competent officer, stating that the appeal has been lodged within such delay, and that proceedings have been had therein.

Sect. 1252 (formerly Art. 1182). The clerk of the court which rendered the judgment must register any exemplification of a decree of His Majesty in his Privy Council as soon as it is presented to him for that purpose, without requiring any order to that effect from the court which rendered the judgment, and must send back the record in the case to the court below, together with a copy of the exemplification which has been registered as above mentioned. C. S. L. C. c. 77, s. 54.

SASKATCHEWAN.

The Province of Saskatchewan was created by an Act of the Canadian Parliament (4 & 5 Edw. VII. c. 42) 1905, and by a Provincial Act of 1907 (7 Edw. VII. c. 8), a

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guarantee company.

by a judgment, or order to make a deposit, to pay costs, or to furnish security before the courts, he may furnish security by an incorporated surety or guarantee company which has an office in the province. 63 Vict. (Quebec, 1900), c. 44.

(*z*) Cf. *St. Louis* v. *St. Louis* (L. Can. 1836), 1 Moo. 143, holding that the limitation is not imperative. Cf. *Allan* v. *Platt*, 32 L. Can. Jurist, p. 57, and 3 Montreal, L. R. Q. B. p. 322.

(*a*) Where a transcript of the record had been forwarded within the delay required, but the certificate had not been filed within such required delay, the Court of Queen's Bench refused to order provisional execution of the judgment. *Jones* v. *Guyon* (1867), 17 L. C. R. 377, Q. B.

Such delay is not absolute but directory. *Jones* v. *Guyon* (1866), 2 L. C. L. J. 161, Q. B. When this certificate has been filed, the Court of King's Bench cannot declare the appeal to be deserted. *White* v. *The Home Insurance Co.* (1875), 19 L. C. J. 196.

Appeals to P. C.

superior court of civil and criminal jurisdiction was constituted, called the Supreme Court of Saskatchewan. By an Order in Council of October 13, 1910, rules were made for the regulation of appeals from the Supreme Court to His Majesty in Council. An appeal lies by right when the amount of the subject-matter of appeal is $4,000 and upwards; application for leave to appeal must be made within fourteen days from the date of the judgment; and the amount of the security which the court may require of the appellant is not to exceed $2,500. The other rules are in common form.

NEWFOUNDLAND.

The colony of Newfoundland was established under royal charter, granted to Sir Humphrey Gilbert in 1584, and thus possesses the distinction of being the oldest colony in the empire. Newfoundland with its dependencies, is since September 1, 1880, the only remaining portion of the British territories and possessions in North America which has not been annexed to the Dominion of Canada. Power is given by 30 & 31 Vict. (Imp.) c. 3, s. 146, to admit it to the Dominion, but has not been exercised. The legislative power is vested in a governor and a representative legislature.

The Supreme Court, which was created by 32 Geo. 3, c. 56, possesses all civil and criminal jurisdiction which was conferred by the Act, 5 Geo. IV. c. 67, and by a charter issued thereunder of 1825. Provision for bringing appeals from the Supreme Court to the Privy Council was made in the charter, but these rules have now been revoked and new regulations made by an Order in Council of October 13, 1910, which are in the common form. The appealable amount for an appeal as of right is 500*l*., and the limit of time within which application for leave to appeal must be made is fourteen days from the date of judgment. The Order adopts the Colonial Appeal Rules.

Appeals to P. C.

II. THE COMMONWEALTH OF AUSTRALIA.

The second of the great federations of the self-governing dominions is the Commonwealth of Australia, which was created by the Imperial Statute, the Australia Constitution Act, 1900 (63 & 64 Vict. c. 12). It now includes the States of New South Wales, Victoria, Queensland, South Australia and West Australia on the continent of Australia, the Island Colony of Tasmania, and the British portion of the island of New Guinea.

Each state retains its own Supreme Court, with its right of appeal to the Sovereign in Council, but a new Federal High Court of Australia exercises jurisdiction throughout the Commonwealth.

Appeals from Supreme Court of the Australian colonies.

At the passing of the Commonwealth Act the appeal as of right from the Supreme Courts of the seven colonies existed by virtue of Orders in Council made in pursuance of Acts of the Imperial Parliament, which fix the limits subject to which the right can be exercised. These provisions were left in force by the Act. Any enactment repugnant to such provisions passed by a colonial legislature is void by sect. 2 of the Colonial Laws Validity Act, 1865.

The Federal High Court has original as well as appellate jurisdiction. Its judgments as a court of appeal are final and conclusive. But while the Sovereign's prerogative right is reserved in the case of Canada in all cases, sect. 74 of the Commonwealth Act forbids an appeal "upon any question however arising as to the limits *inter se* of the constitutional powers of the Commonwealth, and those of any state or states, or as to the limits *inter se* of the constitutional powers of any two or more states, unless the High Court shall certify that the question is one which ought to be determined "by the Sovereign in Council." In all other questions the discretion of allowing an appeal will rest with the Sovereign in Council.

Power to limit prerogative.

The Commonwealth Parliament may, however, propose laws limiting further the matters in which leave to appeal may be asked, but proposed laws containing any such limitations of the royal prerogative would be reserved by the Governor-General for His Majesty's pleasure.

High Court.

The sections of the Commonwealth Act which refer to the powers and constitution of the High Court are as follows:—

71. The judicial power of the Commonwealth shall be vested in a federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a chief justice, and so many other justices, not less than two, as the Parliament prescribes.

Appellate jurisdiction of High Court.

73. The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences :

(i.) Of any justice or justices exercising the original jurisdiction of the High Court ;

(ii.) Of any other federal court, or court exercising federal jurisdiction, or of the Supreme Court of any state, or of any other court of any state from which at the establishment of the Commonwealth an appeal lies to the Queen in Council;

(iii.) Of the Inter-State Commission, but as to questions of law only ;

and the judgment of the High Court in all such cases shall be final and conclusive.

But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a state in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several states shall be applicable to appeals from them to the High Court.

Appeal to P. C.

74. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any state or states, or as to the limits *inter se* of the constitutional powers of any two or more states, unless the High Court shall certify that the

question is one which ought to be determined by Her Majesty in Council.

The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

Except as provided in this section, this 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 to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure.

Original jurisdiction of High Court.

75. In all matters:

(i.) Arising under any treaty;

(ii.) Affecting consuls or other representatives of other countries;

(iii.) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;

(iv.) Between states, or between residents of different states, or between a state and a resident of another state;

(v.) In which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth;

the High Court shall have original jurisdiction.

Additional original jurisdiction.

76. The Parliament may make laws conferring original jurisdiction on the High Court in any matter:

(i.) Arising under this constitution, or involving its interpretation;

(ii.) Arising under any laws made by the Parliament;

(iii.) Of Admiralty and maritime jurisdiction;

(iv.) Relating to the same subject-matter claimed under the laws of different states:

Power to define jurisdiction.

77. With respect to any of the matters mentioned in the last two sections the Parliament may make laws:

(i.) Defining the jurisdiction of any federal court other than the High Court;

(ii.) Defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States;

(iii.) Investing any court of a state with federal jurisdiction.

Conflict of jurisdiction with P. C.

It was pointed out at the time the Commonwealth Act was passed that it opened the way to a conflict of decisions, because there was an alternative right of appeal to the High Court and to the Privy Council from the Supreme Courts of the states, and no final right of appeal to the Privy Council from the judgment of the High Court. The result was that two conflicting decrees might be given by two distinct courts of final appellate jurisdiction. The awkward possibility which was foreseen came to pass.

The Commonwealth Judiciary Act, 1903.

In 1903 the Parliament of the Commonwealth passed an Act to make provision for the exercise of the judicial power of the Commonwealth. By this Act a High Court was duly constituted, and provision was made for the exercise of the jurisdiction conferred on the court by the Constitution Act.

The jurisdiction of the High Court was made exclusive by sect. 38 in (i.) matters arising directly under any treaty; (ii.) suits between states; (iii.) suits by the Commonwealth against a state or by a state against the Commonwealth; and in (iv.) matters in which a writ of mandamus or prohibition was sought against an officer of the Commonwealth or a federal court.

By sect. 39 (2)the several courts of the states were invested with federal jurisdiction in all matters in which the High Court had original jurisdiction, or in which original jurisdiction could be conferred upon it, except as provided in sect. 38, and subject to conditions, of which the most important was that every decision of the Supreme Court of a state, or any court of a state from which at the establishment of the Commonwealth an appeal lay to the Queen in Council, should be final and conclusive except in so far as an appeal might be brought to the High Court.

This condition was apparently intended to abolish the

right of any appeal, as of right, from the Supreme Court of a state in the exercise of federal jurisdiction, but the prerogative right to grant leave to appeal from a decision of the Supreme Court direct to the Privy Council was not expressly taken away.

In the case of the *Colonial Sugar Refining Co.* v. *Irving*, (1905) A. C. 369, the Judicial Committee, without deciding whether the Act took away the right of appeal from the Supreme Court of Queensland to His Majesty in Council, held that the Act anyhow was not retrospective and could not affect a right of appeal in a suit pending when the Act was passed and decided by the Supreme Court afterwards.

Trouble, however, soon arose over constitutional cases which were started after the Act was passed. In 1904 an appeal was brought to the High Court in the case of *Deakin* v. *Webb* (I. C. L. R. 585) from a decision of the Supreme Court of Victoria, holding that the salary of a federal officer was liable to state income-tax. The High Court reversed the judgment, and declined to grant a certificate under sect. 74 of the Commonwealth Act, that the case was one which ought to be determined by His Majesty in Council. The decision of the High Court was not popular with the governments of the Australian states, and in 1906 an appeal was brought directly from the Supreme Court of Victoria before the Privy Council in the case of *Webb* v. *Outtrim*, (1907) A. C. 81, which raised precisely the same point. In that case the Supreme Court of Victoria, in deference to the decision of the High Court of Australia in *Deakin* v. *Webb*, had decided that a Commonwealth officer resident in Victoria, where he earned and received his salary as such officer, was not liable to assessment under the income-tax of Victoria. The appellant was granted leave to appeal by the Supreme Court of Victoria, notwithstanding the provisions of sects. 38 and 39 of the Judiciary Act of 1903. The Judicial Committee reversed the judgment of the Supreme Court, disagreeing from the judgment of the High Court in the case of *Deakin* v. *Webb*.

The Commonwealth presented a petition to the Judicial Committee praying for a dismissal of the appeal on the ground of its incompetence; but the Judicial Committee,

upholding the view taken when the same objection was raised in the Supreme Court of Victoria, held that there was no provision in the Commonwealth Act taking away the right of the Supreme Court of Victoria to grant leave to appeal to the Privy Council, and they endorsed the view of Mr. Justice Hodges, who said: "If the federal legislature had passed an Act which said that hereafter there shall be no right of appeal to the King in Council from a decision of the Supreme Court of Victoria in any of the following matters, and had then set out a number of matters, including that now under consideration, I should have felt no doubt that such an Act was outside the power of the federal legislature, and, in my opinion, it is outside their power to do that very thing in a roundabout way."

Further conflict.

The Commonwealth Government, however, did not acquiesce in the decision of the Privy Council, and subsequently the High Court reversed the judgment of a New South Wales court, which, following that decision, held that a federal officer was liable to pay income-tax. *Baxter* v. *Commissioners of Taxation*, 4 C. L. R. 1087. The judges of the High Court declared that they were the ultimate arbiters upon all questions as to the limits *inter se* of the constitutional powers of the Commonwealth and a state, and therefore that they were not bound to follow the decision in *Webb* v. *Outtrim*, but could follow their own decision in *Deakin* v. *Webb*. Further, they expressed disagreement with the view of the Privy Council, that despite sect. 39 (2) (a) of the Judiciary Act, 1903, an appeal still lay of right to the Privy Council from a decision of the Supreme Court of Victoria on a matter of federal jurisdiction. They argued that the action of the Parliament in ascribing to the Supreme Court federal jurisdiction, while at the same time declaring that no appeal (excluding an appeal by special leave to the Privy Council) should lie to any body save the High Court, was really the creation of a new court with a definite jurisdiction, subject only to such appeal as was provided for in the Act by which it came into being; whereas the Privy Council had held that the right to appeal to the Judicial Committee, without special leave, in certain cases was a necessary incident of all decisions of the Supreme Court whatever the jurisdiction it was exercising.

Following this decision of the High Court an application for a certificate to carry the matter again to the Privy Council was refused (*Flint* v. *Webb*, 4 C. L. R. 1178), and the Chief Justice held that the inconvenience caused by the existing contradictory pronouncements by the Privy Council and the High Court could be removed by the Parliament of the Commonwealth exercising its powers under sect. 77 of the Constitution.

Subsequent legislation.

Following upon this suggestion of the High Court, an Act was introduced and passed in the Session of 1907 to amend the Judiciary Act of 1903. The second clause of the Act provided that "in any matters (other than trials of indictable offences) involving any question however arising as to the limits *inter se* of the constitutional powers of the Commonwealth, and those of any state or states or as to the limits *inter se* of the constitutional power of any two or more states, the jurisdiction of the High Court shall be exclusive of the jurisdiction of the Supreme Courts of the states, so far as that he S upreme Court of a state shall not have jurisdiction to entertain or determine any such matter, either as a court of first instance or as a Court of Appeal from an inferior court." The fifth section provided that "when in any cause pending in the Supreme Court of a state there arises any question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any state or states or as to the limits *inter se* of the constitutional powers of any two or more states, it shall be the duty of the court to proceed no further in the cause, and the cause shall be by virtue of this Act, and without any order of the High Court, removed to the High Court."

It was impossible, in view of the decision of the Privy Council in *Webb* v. *Outtrim*, for a Commonwealth Act to provide that an appeal by special leave, or an appeal without special leave, should not lie from any decision of a Supreme Court, since by the judgment of the Privy Council that provision would be an interference with the constitution of the state and therefore repugnant to the Constitution Act, and also to the Acts (9 Geo. IV. c. 83, s. 15, and 7 & 8 Vict. c. 69) which define the jurisdiction of the Privy Council. But by the new law the Supreme Court never pronounces a decision on any question in which the rights

of the Commonwealth and of the states *inter se* are at issue; for such a case must now come before the High Court, which can make itself, by refusing a certificate, the final arbiter.

Present position.

The Commonwealth Government has, however, remained firm in the view laid down by the High Court that the Privy Council cannot grant special leave to appeal from a decision of the Supreme Court of the states in the exercise of their federal jurisdiction. It protested, though tardily, against the new rules of appeal, issued for the state courts in 1909 and 1910, applying to the courts in the exercise of federal jurisdiction, but the Colonial Office pointed out that the view was opposed to the principle laid down by the Privy Council in *Webb* v. *Outtrim*, and took no notice of the alleged distinction in jurisdiction in framing the rules for states of the Commonwealth which were issued after the protest.

It is still, indeed, open in theory to the Judicial Committee to grant special leave to appeal from the decision of any court in a state exercising federal jurisdiction inferior to the Supreme Court. But in practice the Committee do not admit appeals from colonial courts of first instance, and the risk of its being done was deliberately passed over in the Federal Act. At the same time, it is still open to the Privy Council to grant special leave to appeal from the High Court as to whether the question involved does or does not raise an issue as to the rights *inter se* of the Commonwealth and the states.

The Privy Council accepted the federal solution of the deadlock, and refused to reopen the controversy by rejecting a petition for special leave to appeal from the judgments of the High Court in the cases of *Baxter* v. *The Commissioners of Taxation* and *Flint* v. *Webb*, on the ground that, before the petition could be heard, an Act of the Commonwealth was passed expressly authorising the states to impose taxation on federal officers ((1908) A. C. 214).

Subsequently the Judicial Committee refused special leave to appeal from a judgment of the High Court holding that goods imported by the state government are liable to duties of customs under the laws of the Commonwealth. *Att.-Gen. for New South Wales* v. *Collector of Customs for New South Wales*, (1909) A. C. 345. Lord Atkinson in

delivering the judgment of the court said that leave was refused solely on the ground that the case came within sect. 74 of the Commonwealth Act, and no certificate had been granted by the High Court that the question was one which ought to be determined by the Sovereign in Council.

Appeals in other cases.

As to cases which do not involve constitutional questions, the Judicial Committee applies the same principles in dealing with special petitions for leave to appeal from the High Court of Australia as with petitions for leave to appeal from the Supreme Court of Canada. When the petitioner has elected to appeal in the first place to the High Court and has failed there, the Committee will not, except in a very special case, entertain his petition. *Victoria Railway Commissioners* v. *Brown*, (1906) A. C., p. 384. And when the petitioner has been taken as respondent to the High Court, his petition will only be entertained where the case is of gravity and involving matter of public interest, or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance, or of a very substantial character ; and even in such a suit the judgment from which leave to appeal is sought may appear to be plainly right or at least to be unattended with sufficient doubt to justify their lordships in advising His Majesty to grant special leave to appeal. *Daily Telegraph Newspaper Co.* v. *McLaughlin*, (1908) A. C., p. 778.

Special leave to appeal was refused in a case where it appeared that the law was rightly laid down by the High Court, and the question between the parties was about the application of the law to the particular case, involving simply the construction of a document. It was not sufficient that the case was of a very substantial character. *Wilfley Ore Concentrator Syndicate, Ltd.* v. *E. V. Guthridge, Ltd.*, (1906) A. C. 548.

As appeals from the High Court can only be obtained by special leave from the Judicial Committee, there are no special rules to regulate them. The Judicial Committee in every case determines the amount of security, etc., in granting leave; but an Order in Council of November 28, 1910, prescribes rules in common form for preparing the record of such appeals and enforcing the judgment.

THE STATES OF THE COMMONWEALTH.

The right of appeal from the courts of the different states of the Commonwealth of Australia to the Privy Council remains in the form in which it existed before the foundation of the Commonwealth, save in so far as it is modified by the provisions (considered above) of the Commonwealth Constitution Act and the Commonwealth legislation which has since supervened. The Constitution Act gives an alternative right of appeal in all cases to the High Court of Australia, but save in constitutional and inter-state questions does not curtail the right of appeal to the Privy Council, and Orders in Council have recently been issued to render uniform the conditions of appeal from each of the states to the Privy Council. Their effect is given below.

BRITISH NEW GUINEA, OR PAPUA.

This colony was declared to be a British Settlement by Letters Patent issued by virtue of the British Settlement Act, 1887 ; and by an Order in Council of 1888 courts of justice were established and the appeal was provided from the Supreme Court Act thereunder to Queensland and thence to the King in Council as in the ordinary jurisdiction of the Queensland Supreme Court.

Appeal to P. C.

By Letters Patent of March, 1902, which were brought into force by a colonial proclamation September 1, 1906, British New Guinea was admitted to the Commonwealth as the territory of Papua, and its government is regulated by the Commonwealth Papua Act of 1905. By that Act an appeal lies from the Central Court to the High Court of Australia, whose judgment shall be final and conclusive (s. 43). And an Order in Council of March, 1906, revokes the older Orders in Council dealing with appeals from the colonies. An appeal to His Majesty in Council can now therefore only be brought by special leave or by certificate from the High Court of Australia.

NEW SOUTH WALES.

The colony of New South Wales was settled towards the end of the eighteenth century. In 1850 an Imperial Statute (13 & 14 Vict. c. 59) was passed authorising a Constitution for the government of this colony. This statute also enabled the Governor in Council of the colonies of New South Wales and Victoria to make provision for the administration of justice and for defining the constitution of courts of law and equity. Constitution.

The Supreme Court of New South Wales was established by Letters Patent, dated October 13, 1823, in pursuance of the 4 Geo. IV. c. 96, which authorized it. Provision for bringing appeals from the decisions of the Supreme Court to the Privy Council was made by 9 Geo. IV. c. 83, which was applied by an Order in Council of 1836. Supreme Court. Cf. Letters Patent, October 13, 1823. 4 Geo. IV.

By a recent Order in Council (April 2, 1909) that order is revoked, and new rules regulating appeals from the Supreme Court are made. An appeal lies of right where the value of the subject-matter is of 500*l.* or over. Application to the court for leave to appeal must be made by motion or petition within fourteen days from the date of the judgment appealed from. The Order adopts the Colonial Appeal Rules. Rules for appeal.

The Colonial Courts of Admiralty Act, 1890, is brought into force for New South Wales by an Order in Council of May 4, 1911. Admiralty Court.

The Crown's prerogative remains to grant special leave to appeal in a criminal case, and it will be exercised in a proper case. *Reg.* v. *Bertrand*, L. R. 1 P. C. 529. Criminal appeals.

NEW ZEALAND (*a*).

The Sovereignty of New Zealand was ceded, by the treaty of Waitangi on February 5, 1840, to the British Crown, and New Zealand became a dependency of New South Wales and subject to its laws, but was separated in pursuance of powers contained in 3 & 4 Vict. c. 62 (Imp.).

The Supreme Court of New Zealand was established in 1844 by the local legislature (Ord. 7 Vict. Sess. III. No. 1), Supreme Court.

(*a*) New Zealand forms a separate dominion, and is not a part of the Australian Commonwealth; it is dealt with here for the sake of convenience.

and the Court of Appeal was constituted by an Act (No. 30) of 1882.

Native Appellate Court.

There is an appeal from the "Native Land Court," under Act No. 43 of 1894 (N. Z.), to the Native Appellate Court. The latter court may state a case for the opinion of the Supreme Court upon any point of law that may arise. The opinion of the Supreme Court is binding on the Appellate Court. The decision of the Native Appellate Court is as to every point of law and fact "final and conclusive" (s. 93). Any appeal therefrom must therefore be by special leave (*b*).

Right of appeal.

There is still a double right of appeal from the courts of New Zealand to the Privy Council, either from the Appeal Court or the Supreme Court of the colony. The appeal from the latter was regulated till recently by an Order in Council of 1860, and from the Court of Appeal by an Order in Council of 1871, but by the Order in Council of 1910 new provision is made for appeals from the colony. It is provided by these regulations that an appeal lies as of right:

(a) From any final judgment of the Court of Appeal when the matter in dispute is of the value of 500*l.*

(b) At the discretion of the Court of Appeal from any other judgment of that court, whether final or interlocutory, if, in the opinion of that 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.

(c) At the discretion of the Supreme Court from any final

(*b*) *Right of Appeal.*—The right of obtaining special leave to appeal from the decision of the Native Appellate Court was recently expressly affirmed, though in the particular case, which was in the region of probate, such leave was refused on the merits. See *In re the Will of Wi Matua*, (1908) A. C. 448. The Committee declared that the prerogative was not taken away, because the Native Appellate Court had not a special jurisdiction in the sense that the statute conferred on it functions "which would not otherwise have belonged to it in the general distribution of justice." It was otherwise with the jurisdiction of the Canadian Court dealing with part of the privilege of Parliament from which leave to appeal was refused. *Théberge* v. *Laudry* (*u. s.*). But here the legal rights of a part of the Queen's subjects in the matter of land succession and probate were subjected to the newly-created tribunal. "But for the creation of this court the Land Courts would have had to determine those rights as best they could, and an appeal would clearly have lain to His Majesty. The exclusion of the right to appeal to His Majesty would therefore be a forfeiture of existing rights on the part of Sovereign and subject."

judgment of that court if in the opinion of that court the question involved in the appeal is one which by reason of its great general or public importance, or of the magnitude of the interests affected, or for any other reason ought to be submitted to His Majesty in Council for decision.

Applications to the court for leave to appeal must be made by motion in court at the time when judgment is given, or by notice of motion filed in the court and served on the opposite party in accordance with the practice of the court, within twenty-one days after the date of the judgment appealed from. (Rule 4.)

Right of appeal from Supreme Court.

There is therefore no appeal as of full right from a judgment of the Supreme Court (*c*). An appeal can only be brought to the Privy Council from that court directly when the court itself grants leave to appeal.

QUEENSLAND.

Supreme Court.

Queensland, until 1859, formed a portion of the colony of New South Wales, when it became a separate colony and was granted a constitution by Royal Letters Patent, dated June 6, 1859 (*d*). Under an Act of the New South

(*c*) The Supreme Court has refused leave to appeal direct to the Sovereign, notwithstanding the amount involved was large, until an appeal had first been had to the Court of Appeal, and notwithstanding the practice had been to the contrary. *In re New Zealand Midland Railway Co., Ex parte Coates* (1899), 17 N. Z. L. R. 622. Cf. *Franck* v. *Stead* (1881), 1 N. Z. L. R. (S. C.) 112; *Develin* v. *Waihi-Silverton Gold Mining Co.* (1897), 16 N. Z. L. R. 192.

It is probable that the Supreme Court would follow the same practice under the new rules, and would refuse leave to appeal direct to the King in Council, except in cases where a very important point of law arose.

Under the old rules, where an appeal lay from the Court of Appeal as of right if a civil right of the amount or value of 500*l.* was in dispute, leave to appeal was refused where plaintiffs claimed an injunction for infringement of their trade mark, and the defendant had sold the goods complained of for two and a half years with average annual profits of 150*l.* *Sanitas Co.* v. *Ogle* (1896), N. Z. L. R. 603. But under the new rules the Court of Appeal has power to grant leave in any case where it thinks fit.

Bankruptcy.—On an appeal from the Court of Bankruptcy the decision of the Court of Appeal is final. The appeal must, therefore, be by special leave of the Sovereign in Council. *In re Ell, Ex parte Austin* (1886), 4 N. Z. L. R. 126.

Constitutional questions.

(*d*) By the Constitution Act of Queensland, 1867, 31 Vict. No. 38, s. 24, any question respecting any vacancy in the Legislative Council may be referred by the Governor to the Council to be heard and determined, and there is an appeal therefrom to the Privy Council. Cf. *Att.-Gen.* v. *Gibbon* (1887), 12 A. C. 442. So also any question arising

Wales Legislature in 1857, a court with Supreme Court jurisdiction was created for the district of Moreton Bay. On May 13, 1859, this district was, by Letters Patent, constituted the colony of Queensland; and by Order in Council of June 6 of the same year, the above court was continued as the Supreme Court of Queensland; by an Order in Council of June 30, 1861, provision was made for appeals from the Supreme Court to the Privy Council. By an Order of October 10, 1909, this Order has been revoked, and a new regulation made for appeals. By this regulation an appeal lies of right when the subject-matter is of the value of 500*l.* and upwards, and in other cases at the discretion of the court. Application for leave to appeal must be made to the court within twenty-one days from the date of the judgment appealed from. The Colonial Appeal Rules are adopted.

Rules of appeal.

SOUTH AUSTRALIA.

Settlement of colony.

This colony was settled and created a Province of the Empire under the Imperial Statute 4 & 5 Will. IV. c. 95. Responsible government was granted in 1856 by virtue of the 13 & 14 Vict. c. 59 (Imp.).

Supreme Court.

The local legislature, by an Act (7 Will. IV. No. 5) established the Supreme Court of the Province of South Australia, and also a Court of Appeals of the province, and permitted an appeal to Her Majesty in Council from both the Supreme Court and Court of Appeals.

The Court of Appeals.

Equity Court.

Under the Equity Act (South Australia), 1866–7, s. 9, the Primary Judge has the jurisdiction of the Supreme Court, but a judge sitting alone as the primary judge exercising equitable jurisdiction in the Supreme Court is not apparently sitting as the Supreme Court so as to enable an appeal to be had direct to the Privy Council without

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out of a divergence between the Legislative Council and the Legislative Assembly. See *Queensland Money Bills Case*, heard on special reference, April 3, 1886.

Divorce appeals.

By the Matrimonial Causes Act, 28 Vict. No. 29, s. 51, either party dissatisfied with the decision of the full court on any petition for the dissolution of a marriage or for nullity of marriage, may, within six months after the pronouncing thereof, appeal to Her Majesty in Privy Council, subject to such terms and conditions as to alimony, custody and maintenance of children, disposal of property, and costs of suit, as the court may direct pending such appeal.

appealing first to the full court. *Angas* v. *Cowen*, 17 S. A. L. R. 110 (1883); but see *Giles* v. *Wooldridge*, 13 S. A. L. R. 185 (1879).

Rules of appeal.

The Order in Council dated February 18, 1909, revoking a former order of June 9, 1860, regulates the conditions of appeal from the Supreme Court to His Majesty in Council. The conditions of appeal are the same as for the other Supreme Courts of the Australian states; but it is provided that "court" means either the full court or a single judge of the Supreme Court, according as the matter is one which under the rules of this court properly appertains to the full court or a single judge. The Colonial Appeal Rules are adopted.

Court of Appeal.

The appealable amount is 500*l.*; the application for leave to appeal must be made within twenty-one days.

A local Act (24 & 25 Vict. c. 5) constituted the creation of a Court of Appeal for South Australia, consisting of the Governor in Council; but the court has sunk into disuse, and is not likely to be revived.

TASMANIA.
(Van Diemen's Land.)

Colony.

A Legislative Council was established by Royal Warrant, July 17, 1825, in Tasmania, then called Van Diemen's Land, and the present constitution of the colony was determined by the local Acts, 18 Vict. No. 17, and 49 Vict. No. 8. The name of the colony was changed by Order in Council, 1856.

Supreme Court.

The 4 Geo. IV. c. 96 authorised the establishment of Supreme Courts in New South Wales and Van Diemen's Land. In 1831, by Royal Charter, the "Supreme Court of Van Diemen's Land," with full equitable and common law and ecclesiastical jurisdiction, was created. A statutable appeal to the Privy Council from the Supreme Court was given by sect. 15, and rules for the conduct of appeals was laid down. By an Order in Council of November 7, 1910, new regulations were made, and the provision as to appeals in the charter of justice were revoked. An appeal lies as by right from any final judgment when the matter in dispute or the appeal amounts to or is of the value of 1,000*l.* or upwards, or when the appeal involves directly or indirectly

Rules of appeal.

some claim or question to or respecting property or some civil right amounting to or of the value of 500*l.* and upwards. At the discretion of the court from any other judgment when it thinks fit.

Application for leave to appeal must be made within twenty-one days from the date of the judgment (*e*).

Where a local Act provided that in land disputes the Supreme Court decision should be final and in accordance with the best evidence procurable, even if not required or admissible in ordinary cases, and that the court was not to be bound by strict rules of law or equity or by any legal forms, it was held that there was no prerogative right reserved to grant special leave to appeal, *Moses* v. *Parker*, (1896) A. C. 245.

The decision of the Supreme Court in such circumstances could not be regarded as a judicial decision admitting of appeal. Cf. *In re the Will of Wi Matua*, (1908) A. C. 448, p. 76 (n.), *supra*.

VICTORIA.

By an Imperial Statute (13 & 14 Vict. c. 59) Victoria was created a separate colony, and the Supreme Court of the colony of Victoria was authorised to be created by Letters Patent, and the provisions of the 9 Geo. IV. c. 83 regarding appeals to His Majesty in Council were applied to such court when established.

Supreme Court established.

No Letters Patent being received in the colony in pursuance of this provision, the local legislature of Victoria in 1852 established the Supreme Court (16 Vict. Ords. Nos. 10, 12, re-enacted 54 Vict. No. 1142).

Appeals.

By an Order in Council of June 9, 1860, provision was made for appeals from the Supreme Court of the colony to the Privy Council; but this order has been revoked, and a new Order in Council of January 23, 1911, makes fresh regulations for appeals. The appealable amount is fixed at 500*l.*, and the limit of time for appealing is twenty-one days, while the other provisions are in common form.

In the new as in the old Order in Council, the appealable value is fixed at 500*l.* The local legislature in 1890

(*e*) The Order adopts the Colonial Appeal Rules.

passed an Act, 54 Vict. No. 1,142, wherein, while recapitulating to some extent the words of the Order in Council, the appealable value is stated to be 1,000*l.*, and the limit of time for appealing is fixed at thirty days; and the court has power to enlarge the time for giving security beyond three months. But application must be made before the expiry of the three months. *Pearson* v. *Russell*, 15 V. L. R. 89. This Ordinance was a re-enactment of the Victorian statute, 15 Vict. No. 10, s. 33. The appeals under the Order in Council and the Victorian statute are both available. The Supreme Court applies, in preference, the rules of the Order in Council. *Pearson* v. *Russell*. This would seem in accordance with good law, since no local Ordinance has ever been held to override an Order in Council.

Two appealable limits.

The local statute, it has been declared, is to be read cumulatively with the Order in Council. *Ex parte Rolfe*, 2 W. & W. 52. The appeal by the statute is from *a decision*, but this does not differ from a final judgment from which the appeal lies in the Order in Council. *In re Cromie*, 20 V. L. R. 132. A number of decisions dealing with the cases in which an appeal will be held to lie as of right and with the fulfilment of the conditions of appeal will be found in the chapter on Appeals by Right of Grant, pp. 202—204.

WESTERN AUSTRALIA.

This colony was settled and proclaimed a British colony in 1829. By virtue of 10 Geo. IV. (Imp.), provision was made for its government and for the constitution of courts, and by an Ordinance, 24 Vict. No. 15, the Supreme Court of Western Australia was established 1861. By sect. 29 of that Ordinance it is enacted, "That it shall be lawful for the plaintiff or plaintiffs, defendant or defendants, against whom any final judgment, decree, or order of the said Supreme Court shall be given or pronounced, which final judgment, decree, or order shall directly or indirectly involve any claim, demand or question respecting property, or any civil right amounting to or of the value of 500*l.* and upwards, if no appeal therefrom shall lie to Her Majesty's Privy Council, to appeal therefrom to the Court of Appeal established by the Ordinance, sect. 30.

A settled colony.

Appeal given by Ordinance in certain cases to Court of Appeal if no appeal lies to Privy Council.

In 1886, however, the full court was constituted the Court of Appeal; and the appeal to the Privy Council now lies from the decision of the full court, as well as from a single judge of the Supreme Court. Regulations for appeal to the Privy Council were made by Order in Council, 1861.

Appeals.

By an Order in Council of June 28, 1909, this order was revoked, and fresh regulations were made in the common form. The appealable amount is 500*l.* or upwards, and the limit of time for the application to appeal is twenty-one days. The Colonial Appeal Rules are adopted.

FIJI ISLANDS.

The Fiji Islands which were ceded to Great Britain in 1874 were created a separate colony in 1875 under Letters Patent by the grant of a charter of government.

Courts.

A court called the Central Court of Fiji was established in 1875, and by an Ordinance of the same year it was constituted as the Supreme Court.

Appeals.

By an Order in Council of February 22, 1878, a provision was made to enable parties to appeal from the decisions of the Supreme Court of Fiji to the Privy Council, and by an Order in Council of May 31, 1910, this order was revoked and fresh regulations were made.

An appeal lies of right from a final judgment of the Supreme Court when the matter in dispute is of the value of 500*l.* or upwards; application for leave to appeal must be made within twenty-one days, and the other regulations follow the common form.

III. THE UNION OF SOUTH AFRICA.

The third great confederation of British colonies is the Union of South Africa, created by the South Africa Act, 1909 (9 Edw. VII., c. 9), which was carried out by a royal proclamation in the following year.

By the Act, s. 4, the colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony are united in a Legislative Union under one Government. Provisions are made in sects. 150 and 151 whereby the

King with the advice of the Privy Council on addresses from the Houses of Parliament of the Union may admit into the Union the territories administered by the British South Africa Company, and may transfer to the Union the government of any other territories belonging to or under the protection of His Majesty and inhabited wholly or in part by natives.

Right of appeal.

The South Africa Constitution restricts the right of appeal to the King in Council far more narrowly than the constitutions of the other two Imperial confederations.

The Dominion of Canada Constitution left unimpaired the power of appeal either as of right or by special leave from every provincial court, and the Commonwealth Constitution left almost unimpaired the power of appeal by right or by special leave from the Supreme Courts and the inferior courts of the states.

The South Africa Act, however, not only abolishes the appeal as of right wherever it existed, but also purports to take away the right of the Privy Council to grant special leave to appeal from any court whatever in South Africa save the Appellate Division of the Supreme Court. Before the Act came into force, appeals could be brought direct to the Privy Council as of right or by special leave from three courts in the Cape of Good Hope—the Supreme Court, the Court of the Eastern Districts, and the High Court of Griqualand; from the Supreme Courts of the Transvaal, the Orange River Colony and Natal; and lastly from the Witwatersrand Court of the Transvaal, the High Court of Natal, and the High Court of Rhodesia.

The appeal from these courts was subject to certain conditions as to the appealable amount, and in the case of each court an Order in Council or some other enactment prescribed the rules governing the appeal.

Judicature of the Union.

The South Africa Act purports to take away this right of appeal from the courts of the various South African colonies that comprise the Union. All the supreme courts of the colonies (*i.e.* the highest tribunals in each colony) are consolidated into one Supreme Court of South Africa, which is to consist of two divisions, the Supreme Division and the Appellate Division. The sections of the Act which deal with the Supreme Court and the right of appeal therefrom are as follows:—

THE SUPREME COURT OF SOUTH AFRICA.

Constitution of Supreme Court.

95. There shall be a Supreme Court of South Africa consisting of a Chief Justice of South Africa, the ordinary judges of appeal, and the other judges of the several divisions of the Supreme Court of South Africa in the provinces.

Appellate Division of Supreme Court.

96. There shall be an Appellate Division of the Supreme Court of South Africa, consisting of the Chief Justice of South Africa, two ordinary judges of appeal, and two additional judges of appeal. Such additional judges of appeal shall be assigned by the Governor-General in Council to the Appellate Division from any of the provincial or local divisions of the Supreme Court of South Africa, but shall continue to perform their duties as judges of their respective divisions when their attendance is not required in the Appellate Division.

Filling of temporary vacancies in Appellate Division.

97. The Governor-General in Council may, during the absence, illness, or other incapacity of the Chief Justice of South Africa, or of any ordinary or additional judge of appeal, appoint any other judge of the Supreme Court of South Africa to act temporarily as such chief justice, ordinary judge of appeal, or additional judge of appeal, as the case may be.

Constitution of provincial and local divisions of Supreme Court.

98.—(1) The several Supreme Courts of the Cape of Good Hope, Natal, and the Transvaal, and the High Court of the Orange River Colony shall, on the establishment of the Union, become provincial divisions of the Supreme Court of South Africa within their respective provinces, and shall each be presided over by a judge-president.

(2) The court of the eastern districts of the Cape of Good Hope, the High Court of Griqualand, the High Court of Witwatersrand, and the several circuit courts, shall become local divisions of the Supreme Court of South Africa within the respective areas of their jurisdiction as existing at the establishment of the Union.

(3) The said provincial and local divisions, referred to in this Act as Superior Courts, shall, in addition to any original jurisdiction exercised by the corresponding courts of the colonies at the establishment of the Union have jurisdiction in all matters :

(a) in which the Government of the Union or a person suing or being sued on behalf of such Government is a party ;

(b) in which the validity of any provincial ordinance shall come into question.

(4) Unless and until Parliament shall otherwise provide, the said Superior Courts shall *mutatis mutandis* have the same jurisdiction in matters affecting the validity of elections of members of the House of Assembly and provincial councils as the corresponding courts of the colonies have at the establishment of the Union in regard to parliamentary elections in such colonies respectively.

Appeals to Appellate Division.

103. In every civil case in which, according to the law in force at the establishment of the Union, an appeal might have been made to the Supreme Court of any of the colonies from a Superior Court in any of the colonies, or from the High Court of Southern Rhodesia, the appeal shall be made only to the Appellate Division, except in cases of orders or judgments given by a single judge, upon applications by way of motion or petition or on summons for provisional sentence or judgments as to costs only, which by law are left to the discretion of the court. The appeal from any such orders or judgments, as well as any appeal in criminal cases from any such Superior Court, or the special reference by any such court of any point of law in a criminal case, shall be made to the provincial division corresponding to the court which before the establishment of the Union would have had jurisdiction in the matter. There shall be no further appeal against any judgment given on appeal by such provincial division except to the Appellate Division, and then only if the Appellate Division shall have given special leave to appeal.

Existing appeals.

104. In every case, civil or criminal, in which at the establishment of the Union an appeal might have been made from the Supreme Court of any of the colonies or from the High Court of the Orange River Colony to the King in Council, the appeal shall be made only to the Appellate Division. Provided that the right of appeal in any civil suit shall not be limited by reason only of the value of the matter in dispute or the amount claimed or awarded in such suit.

Appeals from inferior courts to provincial divisions.

105. In every case, civil or criminal, in which at the establishment of the Union an appeal might have been made from a court of resident magistrate or other inferior court to a Superior Court in any of the colonies, the appeal shall be made to the corresponding division of the Supreme Court of South Africa; but there shall be no further appeal against any judgment given on appeal by such division except to the Appellate Division, and then only if the Appellate Division shall have given special leave to appeal.

Provisions as to appeals to the King in Council.

106. There shall be no appeal from the Supreme Court of South Africa or from any division thereof to the King in Council, but nothing herein contained shall be construed to impair any right which the King in Council may be pleased to exercise to grant special leave to appeal from the Appellate Division to the King in Council. Parliament may make laws limiting the matters in respect of which such special leave may be asked, but Bills containing any such limitation shall be reserved by the Governor-General for the signification of His Majesty's pleasure: Provided that nothing in this section shall affect any right of appeal to His Majesty in Council from any judgment given by the Appellate Division of the Supreme Court under or in virtue of the Colonial Courts of Admiralty Act, 1890.

53 & 54 Vict. c. 27.

Rules of procedure in Appellate Division.

107. The Chief Justice of South Africa and the ordinary judges of appeal may, subject to the approval of the Governor-General in Council, makes rules for the conduct of the proceedings of the Appellate Division and prescribing the time and manner of making appeals thereto. Until such rules shall have been promulgated, the rules in force in the Supreme Court of the Cape of Good Hope at the establishment of the Union shall *mutatis mutandis* apply.

Pending suits.

116. All suits, civil or criminal, pending in any Superior Court of any of the colonies at the establishment of the Union shall stand removed to the corresponding division of the Supreme Court of South Africa, which shall have jurisdiction to hear and determine the same, and all judg-

ments and orders of any Superior Court of any of the colonies given or made before the establishment of the Union shall have the same force and effect as if they had been given or made by the corresponding division of the Supreme Court of South Africa. All appeals to the King in Council which shall be pending at the establishment of the Union shall be proceeded with as if this Act had not been passed.

Effect of provisions.

The intended effect of these sections is that the right to grant special leave to appeal from any court whatever in South Africa is taken away save as regards the Appellate Division of the Supreme Court, to which appeals from all the local courts may be brought. It has been pointed out, indeed, that the case of the inferior courts of South Africa which are not divisions of the Supreme Court seems to be overlooked; theoretically, applications for leave to appeal to the Judicial Committee from the judgments of these courts might be made. In practice it is not likely that they would be, as the Privy Council discourages appeals from courts of lower jurisdiction, though it has power to entertain them (7 & 8 Vict. c. 69, s. 1). And it may be taken that in general an appeal from South Africa will not be heard unless it has been through the highest court in the Union, viz., the Appellate Court. On the other hand there is at present no class of case which is not subject to appeal from that court, provided the Judicial Committee thinks fit to hear it. It is within the power of the Union Parliament to legislate for the limitation of the matters in respect of which special leave may be asked, but till such legislation is passed and approved by the Crown, all questions of constitutional or civil law may be submitted to the consideration of the Privy Council. Until rules are established by an Order in Council regulating the conditions of appeal from the Appellate Division of the Supreme Court of South Africa, it would appear that there is no limitation as to the value of the suit in respect of which leave to appeal is asked. The old rules of the Supreme Court of South Africa and the other colonies do not apply in the new circumstances, and there is nothing in the Act restricting the right of appeal upon the ground of value. The general rules of the Judicial Committee (see pp. 257 ff.) will apply in the case of appeals from South Africa until and unless special rules are

made for the Union. As regards cases which were pending in the colonial courts before the Act of Union came into operation, the right of appeal to the Judicial Committee, save by special leave, is taken away by sect. 104. An appeal, *semble*, will still lie as of right from the Appellate Division in Admiralty cases to the Privy Council. Cf. *Richelieu Navigation Co.* v. *Owners of S.S. Breton*, (1907) A. C. 127.

Rules of appeal.

As appeals may be brought from the Supreme Court of South Africa only by special leave of the King in Council, there are no rules as regards the appealable amount or security. But rules in the common form as to the preparation of the record and the enforcement of the Order of the Council have been issued by an Order in Council dated March 4, 1911.

Extension of Union.

Sections 150 and 151 of the Act, it has been noticed, provide for (a) the admission into the Union of the territories administered by the British South Africa Company; (b) the transfer to the Union of the government of any territories other than those administered by the British South Africa Company, belonging to or under the protection of His Majesty and inhabited wholly or in part by natives. The territories which are likely to be affected within the near future by these provisions are: (a) Rhodesia (see p. 119), and (b) Basutoland, the Bechuanaland Protectorate, and Swaziland. And the appeal which at present lies from the courts of these territories to the King in Council will by sect. 23 of the schedule to the Act (which regulates the conditions of the transfer) be thereafter made to the Appellate Division of the Supreme Court of South Africa. Until, however, these territories are brought under the government of the Union there will remain the right of appeal to His Majesty in Council given by the existing Order in Council.

BASUTOLAND.

Territory under His Majesty.

This territory in South Africa became in 1868 a part of Her Majesty's Dominions under the direct authority of Her Majesty exercised through the High Commissioner in South Africa. It was annexed to the Cape Colony by Her Majesty's Order in Council of November 3, 1871. In 1883, however, the territory was disannexed by another Act of the Cape Parliament; and by Order in Council of February 22, 1884,

a proclamation of the Governor announced the appointment of a Chief Magistrate or Resident Commissioner of Basutoland, and also declared that the territory had again come under the direct authority of Her Majesty. The laws of the colony are made by proclamation issued by the Governor.

Courts.

The proclamation of 1884 provides for the administration of justice, and by sect. 11 the Resident Commissioner has full power to review and correct the proceedings of all courts and officers within the territory in all cases and proceedings whatsoever. An Order in Council, dated October 13, 1910, was issued to regulate appeals from the court of the Resident Commissioner and from any combined court constituted in accordance with a proclamation of 1889. By it an appeal lies (a) as of right from any final judgment where the subject-matter is of the value of 500*l.* or upwards, and from any final judgment 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. Applications for leave to appeal are to be made within forty-two days from the date of the judgment. The other rules are in common form.

Appeals.

BRITISH BECHUANALAND PROTECTORATE.

British Bechuanaland now forms a part of Cape Colony and is therefore subject to the provisions of the Union Act relating to appeals to the Privy Council. Part, however, of the territory ceded by the native chiefs has not been annexed to Cape Colony, but remains a British Protectorate subject to the foreign jurisdiction of the Sovereign. By an Order in Council, May 9, 1891, made under the Foreign Jurisdiction Act, the Courts of British Bechuanaland are given the same jurisdiction, civil and criminal, original and appellate, over territories, the limits of which are therein described, lying to the north of British Bechuanaland, as such courts have within British Bechuanaland, and appeals therefrom are to be prosecuted as from the courts in their ordinary jurisdiction. A proclamation of 1888 gave an appeal from the Resident Magistrates to the Chief Magistrate, and thence to Her Majesty in Council. Subsequently, however, by an Act of the Cape of Good Hope, No. 41 of

Foreign jurisdiction over adjacent territories.

Courts.

1895, suits depending before the Chief Magistrate's Court were removed to the High Court of Griqualand, and by sect. 10, the High Court of Griqualand and the Supreme Court of Cape of Good Hope have concurrent jurisdiction throughout the colony, and the Chief Magistrate's Court is abolished.

Present position.

It is not quite clear what the effect of the South African Act is upon appeals coming from the Protectorate to the Supreme Court of Cape Colony, but it is probable that they, like other appeals to that court, would now be subject to appeal to the Supreme Court of South Africa and thence to the Privy Council by special leave. But in the case of *R.* v. *Sekgome*, (1910) 2 K. B. 576, where the question was as to the right of a native chieftain who was imprisoned by virtue of a proclamation of the High Commissioner to obtain a *habeas corpus* to test the legality of his detention, it was stated, *per* Vaughan Williams, L. J. (at p. 609) that he was of opinion that if Sekgome applied for and was refused a writ in the court of the Protectorate, an appeal would lie to the Privy Council. This right may be supported by the power of the Privy Council to grant special leave to appeal from the decision of any British court of first instance; which right is not affected by the South Africa Act.

SWAZILAND.

Swaziland had been under the protection and administration of the South Africa Republic, and on the conclusion of the Boer War a British Protectorate was established by Order in Council June 25, 1903. By Transvaal Ordinance of 1904 the judges of the Supreme Court of the Transvaal

Courts.

may act as judges of Circuit Courts in Swaziland. Other courts have since been established, known as the Special Court for Swaziland and the Court of the Resident Commissioner. From the Circuit Court the appeal lies to the Supreme Court of the Transvaal, and thence to the Privy Council as provided in the South Africa Act.

Rules of appeal.

By an Order in Council, dated October 13, 1910, and amended by order of March 4, 1911, an order of 1907 is revoked and fresh provision is made for the regulation of appeals from the other courts in the Protectorate. They

provide that an appeal shall lie as of right from any final judgment of the Court of the Resident Commissioner, where the amount involved is of the value of 500*l.*, and from any final judgment of the Special Court where the matter in dispute or the amount involved is of the value of 500*l.*, or from any final judgment given in an action for divorce or a declaration of nullity of marriage. There is an appeal at the discretion of the court from any other judgment. Application to the court for leave to appeal must be made within forty-two days (*dd*).

IV. Appeal from Other Parts of the British Dominions.

THE CHANNEL ISLANDS AND THE ISLE OF MAN.

The conditions of appeal to His Majesty in Council from the Channel Islands and the Isle of Man are peculiar and exceptional. The right of appeal was established at a period before the practice of the Judicial Committee had become standardised; and the conditions laid down by the Acts, Charters and Orders in Council have remained unchanged, while the circumstances of the tribunal and the value of money have altered considerably. The Judicial Committee remains the ordinary Appeal Court from the court of the Channel Islands and the Isle of Man; and cases may be brought up for review from those places of far smaller substance than from any other part of the dominions.

JERSEY.

History. The Island of Jersey is part of the dominions of the Crown in right of the Duchy of Normandy, and with the other Channel Islands passed under English sovereignty when William the Conqueror established himself on the throne.

Before the Conquest there had been a right of appeal from the courts of the islands to the Duke of Normandy and his Council, and this was the origin of the present right of appeal to the King in Council, which was asserted

(*dd*) When the Special Court is not sitting, the Court of the Resident Commissioner has jurisdiction in its place to determine any application for leave to appeal from the Special Court or any other matter in connection with the appeal (R. 28).

as early as the reign of Edward III. In addition to the right to bring judicial appeals the Channel Islands can refer questions of legislation and executive government to the Privy Council, which has a special committee to deal with their affairs. The States (the local legislature) have frequently contended that an Order in Council requires registration in the Royal Court before it becomes law.

The Royal Court.

The Royal Court is the court of judicature of the island. There is an appeal to the full court, and from this lies the appeal to His Majesty in Council. An Order in Council of 1572 relates to the appellate jurisdiction in relation to cases from Jersey. A number of intermediate Orders in Council affecting appeals from one or other or both of the islands need not be noticed, but an Order of July 5, 1835, provides that appeals from the islands of Jersey and Guernsey shall be subject to the same regulations as to setting down for hearing and being heard as shall from time to time be in force with regard to appeals to His Majesty in Council from His Majesty's colonies and plantations abroad; and it is further ordered that henceforth, in all appeals to His Majesty in Council from the said islands, the respondents thereto be summoned by the proper officers of the said islands respectively to appear and answer to the said appeals within forty days from the said respondents being so summoned.

Respondent to be summoned to appear within forty days.

Rules of appeal especially applicable to Jersey are embodied in the Jersey Code, 1771, which directed:

Appeal only from definitive judgment.

That no appeal in any cause or matter, great or small, be permitted or allowed before the same matter be fully examined and ended by definitive sentence (*e*).

Appeal within three months

That every appeal shall be presented within three months

(*e*) *Esnouf* v. *Att.-Gen. of Jersey* (Jersey, 1883), 8 A. C. 304. An order directing defendant to plead to an information and to be tried by a jury is not a definitive sentence: *per* Lord Blackburn, *ibid.* 305. An order for the custody of children in a suit for judicial separation, although purporting to be a provisional order, is a definitive sentence with respect to the custody. *Belson* v. *B.* (Jersey, 1849), 7 Moo. 30. Where the Vicomte of Jersey reports to the Royal Court that certain parties have repudiated the succession to a deceased person, and this report is confirmed by the Royal Court, the failure to assert an appeal by those parties within time will amount to an admission, and the Judicial Committee will not interfere. *Le Feuvre* v. *Le Feuvre* (Jersey, 1837), 2 Moo. 70.

next ensuing the sentence or judgment given therein (*f*), except there be in the cause a lett or impediment to be proved before their lordships, being the judges of appeals, and by their lordships allowed.

Copy record within eight days.

That no appeal be hereafter received without the copy, as well of the sentence or judgment, as also of the whole greffe of the cause, closed together under the seal of the isle. And, that there be no lett or hindrance to the appellants in the hearing thereof, it is ordered by the said lords that the bailiff and jurats of the isle, from whom the appeal shall be made, shall, upon request made to them, deliver or cause to be delivered to the said parties appellant the said copy within eight days after such request.

The copy of the record is to include all the pleadings, the evidence, and decisions of the court with reference thereto, and the judgment. Jersey Code, 1771, p. 170.

Security.

There is no provision made for security being given by the appellant from Jersey by any Order in Council. The Judicial Committee ordinarily direct security to be given by the appellant in the sum of 100*l.* in appeals from the Channel Islands instead of 300*l.*, the usual amount in appeals from the colonies. Cf. *Ex parte Baudains* (1888), 13 A. C. 832. As to the appealable amount, it was provided by an Order in Council of 1671 that no appeal for movable goods or personal estate be henceforth allowed unless it be of the value of 300 livres tournois per annum, nor for inheritances or other real estate unless of the value of 5 livres tournois per annum.

Appealable value in realty.

The value of "livres tournois" depended on the current price of grain. In 1811 the exchange was 24 livres to the 1*l.*

Appealable value in personalty.

In case of personal estate, the appealable amount was raised in 1835, by Art. 14 of an Act of the states to 80*l.*, and is now upwards of 200*l.* sterling.

The Jersey States Act, March 7, 1862, confirmed by Order in Council, April 26, 1862, provides as follows:

Appeal to full court.

1. La décision du nombre inférieur de la Cour Royale sera final et sans appel dans tous les causes mobilières, où l'objet en litige n'excédera pas vingtcinq livres sterling.

(*f*) *In re Ames* (Jersey, 1841), 3 Moo. 409; *In re Whitfield* (Jersey, 1845), 5 Moo. 157. In this latter case the petition by way of doleance was also described as a petition of appeal. Such proceedings are separate and distinct.

Appealable value 200*l*.

3. La decision du corps de cour sera final et sans appel dans les causes mobilières où l'objet en litige n'excédera pas deux cents livres sterling.

4. Il est entendu qu'aucunes des dispositions de la presente loi ne pourront être interpretées comme portant atteinte à la prérogative dé sa majesté en conseil.

Prerogative.

By an Order in Council of 1885, confirming the other Act of the states, it is provided that :

It shall not be permissible to either party, after the evidence in the case has begun, to demand that the depositions shall be reduced into writing except in a case susceptible of appeal to Her Majesty in Council.

Absence of notes of evidence.

Either party may ask to have the depositions of the witnesses written down. When this request has been made, and either no notes have been taken, or the Royal Court has refused leave to appeal, an application, in the alternative, for special leave or by way of doleance, may be made to Her Majesty in Council.

If, however, a party has omitted to ask that the evidence should be reduced to writing before the evidence is entered upon, and the Royal Court has refused leave to appeal upon this ground, the fact must be disclosed upon application for special leave to appeal, or the applicant should show that he is unable to ascertain the ground for refusal. When a judge's notes have been taken not in pursuance of any law or practice requiring them, they are private memoranda, and it would be improper to have them before the Court of Appeal. *Ex parte Baudains*, 13 A. C. (Jersey, 1888), 832.

Leave to appeal.

Leave to appeal must be asked upon judgment being given, and the court has no discretion in granting or refusing. (Report of Commissioners on Jersey Law, 1861.) Security to prosecute the appeal and to abide the award has to be given within eight days. The appellant has to find two sureties within that period, and the appeal stands recorded. The Greffier (Registrar of the Royal Court) must send by post one certified copy of the transcript record to the Registrar of the Privy Council as soon as the appellant has given his sureties. Within three months (see Code Rules, 1771) of the judgment, the appeal must be presented. In practice, this is considered complied with if the appellant lodges his citation of appeal and obtains a summons under the

Order in Council of 1835 for respondent to appear within forty days. The judges of the court appealed from should give the reasons for their judgment. *Spurrier* v. *La Cloche*, (1904) A. C. 446.

If leave to appeal is refused, the party may apply for redress to His Majesty in Council by doleance, or may petition His Majesty for special leave. If an appeal is made by way of doleance, a letter is sent from the Council Office desiring the court to state the reasons of their refusal, to which they return answers signed by the bailiff. The law of doleance (*i.e.*, a complaint or grievance) is peculiar to the Channel Islands, and is rather in the nature of a complaint against the judges or the Royal Court itself than an appeal.

Special leave.

Petition of doleance.

As to when a doleance should be presented, see *Re Tupper* (Guernsey, 1834), 2 Knapp, 201; *Le Gros* v. *Le Breton* (Jersey, 1833), *ibid.* 181. There must be a complaint against the judge. *In re Ames* (Jersey, 1841), 3 Moo. 409; *In re Whitfield* (Jersey, 1838), 2 Moo. 269. There the Royal Court pronounced judgment in a case in which counsel appeared for defendant without being duly authorised. Defendant applied by way of doleance to Her Majesty in Council, but the Judicial Committee held that there was no ground for doleance, and that the petitioner should have applied to the court, on the ground of mistake or misrepresentation, for a rehearing. The petition and doleance was ordered to stand over for a month to enable the petitioner to apply to the court below to rehear. The petitioner, however, on making such application to the court below, failed to put it on the right ground. See, too, *In re Gould* (Jersey, 1838), 2 Moo. 188; *D'Allain* v. *Le Breton* (Jersey, 1857), 11 Moo. 64; *Petition and Doleance of Nicolle* (Jersey, 1879), 5 A. C. 346.

When doleance admissible.

When it is intended to petition by way of doleance, a petition should be presented intituled "The Humble Petition and Doleance of" (the person seeking relief), and should show the orders from which relief is required, and conclude by asking that the petitioner may have special leave to appeal to His Majesty in Council against the orders complained of; or that the merits of the case may be inquired into on the hearing of the petition by way of doleance, and that the

Petition verified by affidavit.

orders, etc. may be reversed or varied, etc. The petition should be supported by affidavit. Upon such petition being heard, it is the practice of the Judicial Committee to order that the petition and doleance, together with the affidavit or affidavits, be referred to the Royal Court of the island for such observation as the judges may think right to make thereon, with leave to the petitioner to be heard in support of the allegations contained in such petition and doleance after the answer of the Royal Court has been received.

Practice in doleance.

The practice of the Judicial Committee is to hear petitions of doleance on manuscript papers, and not to require the record to be printed.

An Order in Council of May 19, 1671, provided, "doleances being of an odious nature, as intended principally against the judges whose honour is to be maintained for the sake of justice, in case the complainant shall not make good his doleance, His Majesty, by the advice of the Council, will lay such fine on the party failing as the cause shall require." This is now incorporated in the Jersey Code of 1771, p. 168.

Ecclesiastical appeals.

In Ecclesiastical appeals it is directed by Canon 56 of James I. (1623), appeals are to be heard by the Bishop of Winchester in person, or, if the See is vacant, by the Archbishop of Canterbury.

Appeals in Criminal Cases.

Whether there is a right of appeal in a criminal case from Jersey is a matter of doubt. Shortly after the passing of the Order in Council of February 12, 1667, an appeal was received in a criminal case, and referred thereunder to the Attorney-General, March 13, 1689. From this case it appears that at that time the law of Jersey drew no distinction between murder, manslaughter, and chance medley. There a man had been convicted of homicide when the facts disclosed nothing other than accident or chance medley. See Parl. Rep., Channel Islands, Crim. Law Com., 1847—48, p. xvi. The result was that an Order in Council, June 23, 1698, was issued directing that in future the execution in cases above mentioned should be stayed till His Majesty's pleasure is known.

O. in C. of General Application, 1667.

Jersey O. in C. 1698.

Suspension of execution in capital cases till pleasure known.

In the year 1790 the state of the Jersey criminal law again claimed the attention of the Privy Council. See *John Rivol's Case* (Parl. Rep., Channel Islands, Crim. Law Com., 1847—48, p. xi.), where the Royal Court, acting upon an analogous practice in a case of burglary, stayed the execution of the punishment until the pleasure of His Majesty in Council was known. These cases go to show that the Sovereign has also exercised a supreme control even in criminal cases. Some confusion, however, seems to have arisen between the appeals from Jersey and Guernsey in criminal cases. In the latter island, by an Order in Council, dated October 9, 1580, appeals were forbidden in criminal cases. The Order was cited in *Re Tupper* (Guernsey, 1834), 2 Knapp, p. 201. There is no provision of the kind in the Jersey Code of 1771, and apparently no Order in Council prohibiting appeals in criminal cases from Jersey (*g*). In the answers to questions submitted by the Commissioners in 1846 and 1847, it was generally stated there was no appeal, but that the practice is, when a person is sentenced to death, to stay execution to enable him to appeal to the Crown for mercy.

Guernsey O. in C. 1580 (9th Oct.).

GUERNSEY.

Guernsey, with its dependencies Alderney, Sark, Jethou, and Herm, very much resembles Jersey in its history and constitution. The islands have their own legislature and are not affected by the Imperial Statutes unless expressly named.

History.

The Royal Court (Chefs Plaids) is understood to have been erected by Royal Charter in the reign of King John. Besides its judicial functions, it makes *ordonnances* for the better enforcement of the law. It consists of the bailiff and twelve jurats (or unpaid judges), and has civil, criminal, and ecclesiastical jurisdiction. The jurats are elected for life. The bailiff and two jurats form a court. There is an appeal from the ordinary court to a full court of the Royal Court which is called the Cour des Jugements, and from this latter court the appeal lies to His Majesty in Council.

Guernsey O. in C. 1580.

The Courts.

Cour des Jugements.

An appeal lies from the courts in Alderney and Sark to

(*g*) Cf. *Esnouf* v. *Att.-Gen. for Jersey* (Jersey, 1883), 8 A. C., at p. 307, in which the Judicial Committee expressed grave doubts whether appeals lay in criminal cases from Jersey, but mentioned that in *Ames' Case*, 3 Moo. 409, the appeal was referred to the Privy Council as Privy Councillors to advise generally.

the Royal Courts (cf. Guernsey Orders, 1824 and 1832), and thence to the Privy Council. *Godfrey* v. *Constables of Sark*, (1902) A. C. 534.

Rules of appeal.

A number of early Orders in Council, dating from 1495, deal with appeals from Guernsey, but the conduct of appeals is now regulated by an Order in Council of May 3, 1823, and by the Order in Council of 1835, which applies likewise to appeals from Jersey, and by an Order in Council of 1853.

The first Order provides that an appeal to His Majesty in Council shall be confined to cases where the object in dispute, if real property, amounts to the value of 10*l.* sterling per annum, or if personalty of 200*l.* sterling, and that such appeal shall be presented within six months from the date of the judgment appealed from.

The Order of 1835 applies the provisions of the Orders in Council of general application relating to setting down and hearing appeals, and directs that in all appeals the respondent is to be summoned to appear and answer within forty days. An Ordinance has been passed (1853) pursuant to the Order in Council of that year which contains the rules of procedure in cases of appeal.

ORDONNANCE sur la procédure en cas d'appel.

1. Lorsqu'une partie sera admise par Acte de la Cour Royale à se porter, soit pour Appellant soit pour Doléant à S. M. et aux Seigneurs de son Très-Honorable Conseil Privé, d'une Sentence de la dite Cour, toutes les parties dans la Cause seront, par le même Acte, envoyées devant un Juré, Commis de la Cour, pour devant le dit Commis faire Inventaire et Norré de toutes les procédures de la Cour, ainsi que des Pièces qui auront été produites en Jugement.

2. Est le dit Commis autorisé à procéder au dit Inventaire et Norré à l'instance d'une des parties en cause dans l'absence des autres parties, pourvu qu'il lui soit produit une Rélation par écrit constatant que les parties absentes ont été dûment ajournées.

3. Toutes les Pièces qui seront produites dans une Cause en Jugement seront lues et paraphées comme Pièces du procès par le Greffier de la Reine qui en fera une liste.

4. Le Greffier de la Reine recevra une Honoraire de Trois

Pennis par chaque Pièce lue et paraphée au fin de l'article précédente.

5. Si la Cause en Jugement est pour fair droit sur un Rapport par écrit, la partie qui ajournera la Cause sera tenue de fair fair, par le Greffier de la Reine, un Copie du dit Rapport, pour être la dite Copie livrée a M. le Baillif trois jours pour le moins avant le jour pour lequelle la Cause est ajournée : faute de quoi la Cause ne passera pas. Et sera le dit Rapport, lors du Jugement, lu par le dit Greffier. Le montant payé au Greffier de la Reine pour la dite Copie sera chargé dans le compte des frais curiaux.

6. Si l'Appel en Jugement est dans une Cause dans laquelle des Dépositions ont été prises à future et redigées par écrit, la partie qui ajournera la Cause en Jugement sera tenue de fair fair, par le Greffier de la Reine, une Copie des dites Dépositions, pour être la dite copie livrée a M. le Baillif trois jours au moins avant le jour pour lequel la dite Cause est ajournée ; faute de quoi la cause ne passera pas. Et seront les dites Dépositions, lors du Jugement, lues par le dit Greffier. Le montant payé au Greffier de la Reine pour la dite Copie sera chargé dans le compte des frais curiaux.

7. Les Pièces du procès pourront être déposées au Greffe, à la requête d'une des parties en cause, lors du Jugement, et en ce cas la partie qui fait la Requête paiera au Greffier de la Reine un Honoraire de Six Schellings Huit Pennis Sterling.

8. Les dites Pièces seront rendues à la partie qui les aura produites, après le lapse de trois semaines, à moins que la Relation d'un Ajour, à se voir porter Appellant à S. M. en son Conseil de la Sentence de la Cour en jugement n'ait été notifié par l'Appellant au Greffier de la Reine.

9. La Partie qui aura produit une Pièce pourra la retirer du Greffier, même avant l'expiration des trois semaines, en faisant fair, à ses propres frais, par le Greffier de la Reine, une Copie de la dite Pièce.

10. Toutefois, pourra la Cour requérir qu'une Pièce déposée au Greffe y reste jùsqu'à ce qu'elle en ordonne.

Caution money by way of security in the sum of 10*l.* is required to be deposited, to be forfeited to the poor of the island, as well in appeals as also where the judgment is complained of by way of doleance. The Order in Council Security

of general application which requires security to be given to prosecute appeals from "foreign plantations" does not apply to the Channel Islands. The appellant was required by the Guernsey Order in Council of October 9, 1580, to give security to prosecute and to pay costs in the event of being unsuccessful. Now, however, unless the Judicial Committee otherwise direct, the successful appellant can recover the cost of appeal from the respondent. The rules as to doleance are the same as those which apply to Jersey (see above, p. 95).

Criminal cases.

No appeal lies in a criminal case from Guernsey by virtue of an Order in Council of 1580, which declares that "It shall not be lawful to appeal in any cause, criminal or of correction." *Re Tupper*, 1834, 2 Knapp, 201.

THE ISLE OF MAN.

A possession, not a colony.

The Isle of Man is not in the United Kingdom, nor is it a foreign dominion of the Crown (*h*), nor a colony (*i*), but is included within the term "British Islands" by the Interpretation Act, 1889.

It came into the allegiance of the English Crown in the reign of Henry IV., but until 1735, with the exception of an interval in the reign of Elizabeth, it was held in fee of the Crown by the house of Stanley on terms of doing homage.

The island is under the government of a Governor appointed by the Crown. The legislature consists of the Governor in Council and the House of Keys. The island is subject to its own common law.

Law in force.

High Court created.

I. of M. Jud. Act, 1883.

The Staff of Government Division.

His Majesty's High Court of Justice of the Isle of Man was created a Superior Court of Record by the Isle of Man Judicature Act, 1883 (*k*). There are three divisions: the Chancery Division, the Common Law Division, and the Staff of Government Division, to which the appellate jurisdiction has been transferred (*l*). Sects. 18, 28. The last-named division hears all appeals (including appeals from the Ecclesiastical Courts in probate, administration,

(*h*) *In re Brown*, 3 L. J. Q. B. 193.

(*i*) 52 & 53 Vict. c. 63, s. 18; and the Colonial Laws Validity Act (28 & 29 Vict. c. 63).

(*k*) Act of Tynwald (46 Vict.), April 6, 1883.

(*l*) Cf. *Lewin* v. *Killey* (Isle of Man, 1888), 13 A. C. 783. Cf. *Gill* v. *Westlake*, (1910) A. C. 197.

testamentary, and matrimonial causes (sect. 46)) from the High Court, and is composed of at least three judges of the High Court, the Governor being one.

Appeal.

The right of the Crown to hear appeals from the courts of the island was asserted by the Privy Council in 1716, in the case of *Christian* v. *Coren*. The correctness of this decision has never since been questioned; and the Isle of Man Judicature Act, 1883, provides:

Appeals to His Majesty in Council preserved.

"The judgments of the High Court in the Staff of Government Division may be appealed from to His Majesty in Council, and the provisions of the Act of Tynwald promulgated on June 24, 1737, respecting appeals, and all the regulations at present existing respecting appeals to Her Majesty shall apply to the said court." Sect. 34.

No regulations exist as to the appealable amount.

The Act of Tynwald referred to provides:

Appeals to be prosecuted within six months.

"That any person or persons who now have or hereafter shall have any appeal or cause of appeal from any decree, order, sentence, judgment, or proceeding of any of the courts or magistrates of this isle whatsoever, or from the said Keyes to any superior judge of appeal, shall and are hereby obliged to prefer his or their appeal or appeals for acceptance, and enter into bonds thereon in order to an effectual prosecution within six months from and after the publication of this Act, or within six months next after the decree, order, sentence, or judgment is made or given against them, or any of them, otherwise they, and all persons claiming under them, to be excluded and barred (whether plaintiff or defendant) from the benefit of any appeal for ever after, any law, custom, usage or practice to the contrary in anywise notwithstanding."

Sect. 2. Appeal.

Another Act of Tynwald (1850), the Security on Appeal Act, provides that it shall be lawful for any party appealing from "a Superior Court to Her Majesty in her Privy Council to prosecute such appeal without entering into such bond thereinbefore prescribed, or into any of the securities now by law required to be entered into for the effectual prosecuting such appeals and the paying the amount of the judgment appealed from. Provided that such appellant, in his petition of appeal, declare that he does not object to the decree, judgment, verdict, execution, or order given against him

Conditions of appeal.

Bonds to pay costs.

being carried into effect according to law, on which condition he shall only be required to enter into bonds to pay such costs as may be awarded against him, and on the condition also that the respondent shall not be obliged to render and return to the appellant more than the net proceeds of the execution, with interest thereon at the rate of 3 per cent. per annum on the sum recovered, or the restitution of the real property and of the net value of the produce and revenues of the real property whereof the respondent has been put in possession by virtue of the decree, judgment, execution, verdict, or order as aforesaid, to take place from the day he recovered the same, or possessed the real property, until perfect restitution is made, without any damages against the respondent by reason of the said decree, judgment, execution or order, in case the same is reversed, any law, custom, or usage to the contrary notwithstanding."

Criminal cases.

An appeal lies in criminal cases from the Court of General Gaol Delivery (cf. *Nelson* v. *King*, (1902) A. C. 250, where a conviction was quashed by the Privy Council). Special leave to appeal in a criminal case will only be granted upon the principles which the Judicial Committee applies to all criminal appeals. Cf. *Ex parte Aldred*, (1902) A. C., 81, where special leave was refused in a case in which the sentence was founded on the verdict of a jury and there was evidence for the jury.

GIBRALTAR.

Cession.

Gibraltar was taken in 1704, and ceded by the Treaty of Utrecht in 1713.

Colonial Court of Admiralty.

The Supreme Court, which was constituted by an Ordinance of 1888, has original unlimited civil jurisdiction, and is a Colonial Court of Admiralty (Colonial Courts of Admiralty Act, s. 2 (1)).

By an Order in Council of 1888 provision was made for appeals to the Privy Council, and by an Order in Council, 1894, it was provided that an appeal should lie from orders in bankruptcy made by the Supreme Court to the Privy Council subject to the rules and limitations of the earlier Order.

Rules of appeal.

These sections are now repealed and new regulations governing all appeals are made by an Order in Council (*m*) of August, 1909, which fixes the appealable amount at 300*l.*, and the limit of time for asking leave to appeal at twenty-one days.

(*m*) The Order embodies the Colonial Appeal Rules. See Ch. II.

The rules of appeal in Admiralty causes are contained in an Order in Council of February 6, 1892, amended by an Order of April 22, 1910, which is given in Part III. (See, *infra*, p. 369.)

MALTA.

Malta was captured in 1800, and permanently annexed by the Treaty of Paris in 1814. Malta is subject to its own Maltese law. Law in force.

The Superior Courts are His Majesty's Commercial Court, His Majesty's Civil Court, and His Majesty's Court of Appeal, which was established by local Ordinance in 1839 (No. III.). The civil court is divided into the first and second hall, and the Court of Appeal is likewise divided into the first and second hall. In the first hall of the civil court contentious matters are heard, and non-contentious in the second hall. The judgments of the first hall may be appealed to the second hall of the Court of Appeal. Appeals from the commercial court lie to the first hall of the Court of Appeal. No appeal lies from the second hall of the civil court. Courts.

The rules for appeal to the Privy Council are now laid down by an Order in Council of November 22, 1909 (*n*), which provides for an appeal as of right from the Court of Appeal when the subject-matter is of the value of 500*l.* or upwards. Application to the court for leave to appeal must be made by petition within twenty-one days. Special rules are made for the translation of such parts of the record as are in Italian as follows:

14. At the instance of either of the parties, the registrar shall, at the expense of the applicant, also transmit to the Registrar of the Privy Council an English translation of such part or parts of the record as are in Italian. Rules for translation.

Provided that the registrar shall not transmit any such translation:

(a) Unless the same has been made by a notary public or by some person appointed for that purpose by the parties or, at the instance of any of such parties, by the court; and

(b) Until the parties have been given, as hereinafter directed, an opportunity to peruse the same.

(*n*) See n. (*m*), *supra*.

15. The translator shall certify that the translation was made impartially and to the best of his ability, and he shall append his signature thereto.

16. For the perusal of any such translation, each of the parties shall be allowed as many days as correspond to one day for every fifteen pages of one hundred words each, to be reckoned from the day following the service of the notice mentioned in the next paragraph of this rule.

As soon as any portion of such translation is completed, any of the parties may deposit the same in the registry of the Superior Courts; whereupon the registrar shall, on payment by such party of the requisite fee, give notice to the other party of the deposit of such portion of the translation.

17. For the purpose of the perusal of the translation or any portion thereof, the appellants, whatever may be their number, shall be deemed to be one party and the respondents the other party, and one period shall be allowed to either for such perusal as aforesaid. Provided that any portion thereof which shall be deposited in the registry as aforesaid shall continue to be accessible to any one of the appellants or of the respondents until the period for the perusal of the last portion shall expire.

18. Any of the parties may file in the registry any statement of remarks purporting to show that the translation is not correct. Such statement shall be signed by an advocate and shall be forwarded by the registrar with the translation or as soon after as practicable.

19. The registrar shall intimate to the party applying for the transmission of a translation to the Registrar of the Privy Council, that nothing in the foregoing rules shall preclude the other party from impugning before the Judicial Committee of the Privy Council the correctness of such translation.

BRITISH GUIANA.

Law in force.

This colony was ceded by the Dutch in 1814, and the Roman-Dutch law in force in Holland prior to the French Revolution is still the civil law in force in the colony, by virtue of the capitulation of September 18, 1803. The English mercantile law was introduced by Ord. 6 of 1864, s. 3. The Supreme Court of British Guiana was constituted in

1893 by uniting the Supreme Court of Civil Justice and the Supreme Court of Criminal Justice.

Appeal. The Supreme Court is also a Colonial Court of Admiralty (Ord. 7 of 1893, s. 3). Provisions for the regulation of appeals to the Privy Council were made by an Order in Council of January 10, 1910, which revokes the rules relating to appeals in the old Order in Council of 1831. The appealable amount is fixed at 500*l.*, and the limit of time for asking leave to appeal is fourteen days. The Colonial Appeal Rules are embodied.

BRITISH HONDURAS.

Law in force. British Honduras is a settled colony which was formally annexed to the Crown by proclamation dated May 12, 1862. Cf. *Att.-Gen. for British Honduras* v. *Bristowe* (1880), 6 A. C. at p. 148. The colony was granted a constitution and the legislative powers vested in a Governor and a Legislative Council by Letters Patent dated October 2, 1884.

The Supreme Court of the colony possesses the jurisdiction conferred by the Supreme Court of Judicature Act, 1873, on the Queen's Bench, Chancery, and Probate Divisions of the English High Court, as well as full criminal jurisdiction. Consolidated Laws, 1887, part V., c. VIII., s. 29.

Appeal Court. By an Order in Council, dated November 30, 1882, the Supreme Court of Judicature of the island of Jamaica was constituted a Court of Appeal for hearing appeals from judgments of the Supreme Court, but by an Order in Council of August 8, 1911, the Order is revoked.

Appeal to P. C. Appeals to the Privy Council from the Supreme Court are now regulated by a local Ordinance (No. 5 of 1911) which prescribes an appeal of right from a final judgment where the value of the suit is $1,500 or upwards (*o*).

Application for leave to appeal must be made within twenty-one clear days. The security ordered must not exceed $2,500. The Chief Justice has power to make further rules which must be approved by the Secretary for the Colonies.

Admiralty jurisdiction. The Colonial Courts Admiralty Act was brought into force for the colony by an Order in Council of May 4, 1911.

(*o*) The appeal may be brought from a judgment of the Chief Justice in cases under Ch. 106 of the Consolidated Laws.

FALKLAND ISLANDS.

A settled colony.

The Falkland Islands are a settled colony. The charter of government was conferred by Letters Patent, dated June 23, 1843, in pursuance of the powers contained in 6 & 7 Vict. c. 13, s. 1. By Ordinance No. 2 of 1898 the

Supreme Court.

Supreme Court possesses within the colony the powers possessed by the Courts of Queen's Bench, Common Pleas, and Exchequer, the High Court of Chancery, the Lord Chancellor and Vice-Chancellor, the courts of oyer and terminer and general gaol delivery, and the Court of Probate in England ; and also has jurisdiction in insolvency and bankruptcy, and under any Ordinance respecting matrimonial and divorce cases.

Rules for appeal.

The regulations for appeal to His Majesty in Council are now contained in the local Ordinance of 1909 (No. 5), which fixes the appealable amount at 500*l*., and the time within which application must be made for leave at twenty-one days. The Ordinance repeals the earlier regulations contained in an Ordinance of 1901, and sect. 25 of Ordinance No. 4 of 1901, and adopts the Colonial Appeal Rules.

THE GOLD COAST AND ASHANTI.

A settled colony.

The Gold Coast formed part of the territories formerly the property of the company of merchants trading to Africa, which were vested in the Crown in 1821 by 1 & 2 Geo. IV., c. 28, and afterwards became known as the West African Settlements. The government of the colony is vested in a Governor, and in 1886 the colony of Lagos was detached, and since then the Gold Coast has been a separate colony.

The Supreme Court.

The Supreme Court was constituted by a local Ordinance of 1876 (No. 8) ; and under the African Order in Council, 1889, it was constituted the Appeal Court from the British

Appellate jurisdiction.

courts in the Congo Free State. By Ordinances Nos. 1 and 2 of 1902 of the Gold Coast Colony, No. 1 of 1902 of Ashanti, and No. 1 of 1902 of the Northern Territories of the Gold Coast, the Supreme Court was constituted the appellate court from the British courts in these jurisdictions.

Rules of appeal.

An Order in Council of 1877 regulated appeals from the Supreme Court to the Privy Council, but this has been revoked and fresh regulations made by an Order in Council of March 2, 1909. By this Order the appealable amount

is fixed at 500*l.*, and the limit of time for an application for leave to appeal is fixed at twenty-one days. The Colonial Appeal Rules are embodied.

HONG KONG.

The colony is administered by a Governor, with an Executive Council and Legislative Assembly.

A ceded colony.

Hong Kong was ceded in perpetuity by the treaty of Nanking (1842), in order that British subjects should have a port at which they could refit and keep their stores. The court then established under the statute 3 & 4 Will. IV. c. 93, at Canton was transferred to Hong Kong. The court of Hong Kong was abolished by Ordinances No. 15 of 1844 and No. 6 of 1845, and the Supreme Court of Hong Kong created a Court of Record. The Supreme Court is a Colonial Court of Admiralty under the Act of 1890. It has jurisdiction also over the town of Kowloon on the mainland, and over British subjects within the peninsula of Macao.

Supreme Court created.

Appeal to the P. C.

An Order in Council of August 3, 1909, revoking instructions of 1846 which had hitherto laid down the rules of appeal from the Supreme Court of the colony of Hong Kong and its dependencies to the Privy Council, provides that an appeal shall lie as of right from any final judgment when (a) the matter in dispute is of the value of $5,000 or upwards, or there is a question of property or some civil right of that amount; (b) in other cases at the discretion of the court. Application for leave to appeal must be made within fourteen days from the date of the judgment appealed from. The applicant shall give the opposite party seven days' notice of his intended application at any time during the period of fourteen days. The security for costs must not exceed $5,000. The Colonial Appeal Rules are adopted.

MAURITIUS AND THE SEYCHELLES.

Conquered colony.

Mauritius was taken from the French in 1810. By the capitulation the laws and customs of the island, which are based on the Code Civil and other French laws, were guaranteed to the inhabitants, and the island was ceded by Art. 8 of the Treaty of Paris, 1814.

The island is administered by a Governor with an Executive and Legislative Council.

Supreme Court.

The Supreme Court was created by Ordinance 2 of 1850, approved by Order in Council dated October 23, 1851.

Further provisions for the improvement of the administration of justice in the island were made by Orders in Council of February 23, 1836, April 26, 1845, and December 12, 1894.

Appeals.

All these Orders and Ordinances, so far as they relate to appeals to the Privy Council, are revoked by an Order in Council, dated February 18, 1909, which provides that the appealable amount shall be Rs. 10,000 or upwards, the limit of time for application for leave to appeal twenty-one days, and the maximum security for costs Rs. 5,000 (*p*).

There is no appeal as of right in divorce (*D'Orliac* v. *D'Orliac*, 6 Moo. 374). Where leave below was granted and no petition for special leave to appeal was brought, the Privy Council dismissed the appeal.

SEYCHELLES.

The Seychelles Islands form a dependency of Mauritius. An Order in Council of August, 1903, constituted a Supreme Court of the Seychelles, and provides that where the value of a civil suit is over Rs. 10,000 there shall be an appeal direct to the Privy Council. A later Order in Council of November 22, 1909, makes fresh regulations for appeals (*p*) from the Seychelles. It does not, however, revoke the Order of August 16, 1903, which fixes the appealable amount, and no fresh provision is made in that respect. Applications for leave to appeal are to be made within twenty-one days, and the security for costs shall not exceed Rs. 7,500.

SIERRA LEONE AND GAMBIA.

Settled colonies.

Sierra Leone was obtained by cession from native chiefs and held under Royal Charter, and afterwards, in 1808, under 47 Geo. III. c. 44, was transferred to the Crown. In 1821 the colony with Gambia and the Gold Coast became the West African Settlements under Charter (1 & 2 Geo. IV. c. 28). In 1843 Gambia became a distinct and separate colony, and after being again united they were finally separated by an Order in Council of 1888.

Supreme Court.

The Supreme Court is a court of original jurisdiction for

(*p*) The Order embodies the Colonial Appeal Rules.

the colony, and is also the Appeal Court from the Supreme Court of the colony of Gambia, which was established by Ordinance in 1851 (Ordinance No. 4 of 1889).

Protectorate.

Beyond the limits of the colony there is a British protectorate over the territories adjacent to Sierra Leone, in which courts have been established under the Foreign Jurisdiction Acts. The chief court is the Circuit Court.

Regulations for appeals.

Provision for the regulation of appeals from the Supreme Court of the colony and the Circuit Court of the protectorate to the Privy Council is made by an Order in Council of February 10, 1909, which fixes the appealable amount for an appeal of right at 500*l.*, and the limit of time for an application to appeal at fourteen days.

SOUTHERN NIGERIA.

Ceded colony.

The kingdom of Lagos was ceded to the Crown of England in 1861, and a Government was established by Letters Patent dated March 13, 1863. On February 13, 1866, it was incorporated with the West African Settlements. In 1886 it was constituted a separate colony under a Governor and Legislative Council.

Supreme Court and Court of Appeal.

By an Ordinance of the Legislative Council, 1888, the Supreme Court is declared to be a Court of Record, and one judge is competent to form it. There is, however, a "full court," and this is to be the Court of Appeal.

Extension of colony.

By Letters Patent of February, 1901, it was provided that the colony of Lagos should be known as the colony of Southern Nigeria, and its limits were defined. Beyond the colony there exists a British protectorate, in which British courts of foreign jurisdiction are established.

By an Ordinance of the colony in pursuance of an Order in Council of February 16, 1906, the Supreme Court was constituted to be the Supreme Court for the protectorate of Southern Nigeria.

Regulation of appeals.

Provision for appeals from the Supreme Court to His Majesty in Council is made by an Order in Council of February 15, 1909 (*q*), which repeals an earlier Order in Council of 1889, and provides that an appeal shall lie as of right from any final judgment of the Supreme Court of Southern Nigeria where the amount in dispute is 500*l.* or

(*q*) See n. (*p*), *supra*.

upwards; application for leave to appeal must be made by notice within twenty-one days.

By an Ordinance of November 28, 1910, the Supreme Court is constituted a Court of Admiralty. Sect. 2 (sub-sects. 2 and 4), sects. 5, 6, and 16 (sub-sect. 3) of the Colonial Courts of Admiralty Act apply to it.

ST. HELENA.

Transfer from East India Company to the Crown.

This island in the South Atlantic Ocean was formerly under the government of the East India Company, who held it under a Charter of 1674 from the Crown. On April 22, 1834, it was transferred to the direct government of the Crown by an Act of Parliament of 1833 (3 & 4 Will. IV. (Imp.) c. 85). The Governor is also Chief Justice (the only judge in the island). The Order in Council under the above Act creating "the Supreme Court of St. Helena" as a Court of Record is dated February 13, 1839. In accordance with it any person may appeal to Her Majesty in Council from "any judgment, decree, order, or sentence of the said Supreme Court."

Supreme Court.

Regulations for appeals.

The Order is amended by an Order in Council of February 15, 1909, which provides that an appeal shall lie as of right from any final judgment where the subject-matter is of the value of 500*l.* or upwards, and at the discretion of the court in any other case. Application for leave to appeal must be made within fourteen days.

The Colonial Courts of Admiralty Act is applied to St. Helena by an Order in Council of May 4, 1911.

THE WEST INDIES.—THE BAHAMAS.

Colony.

This colony was first settled in 1629. The legislative power is vested, by Letters Patent dated April 28, 1876, in the Governor and a Legislative Assembly with an Executive Council responsible to the Crown.

Supreme Court.

By the Bahamas Supreme Court Act, 1896 (59 Vict. c. 26), s. 32, the Supreme Court is a Court of Record, and exercises all civil jurisdiction, including all the jurisdiction vested in the High Court in England. The Supreme Court

possesses Admiralty jurisdiction under the Colonial Courts of Admiralty Act.

Sects. 41 and 42 govern appeals.

Appeals to P. C., in what cases.

41. Where in a civil action a final judgment or order is given or made by the court determining any claim or question, wherein the amount sought to be recovered, or the value of the property in dispute is of the value of 500*l.* or upwards, and where the amount sought to be recovered or the value of the property in dispute is less than 500*l.*, then by leave of the court the party aggrieved thereby may appeal to Her Majesty in Council, provided that within one month from the date of such judgment or order the appellant gives security to the satisfaction of the court or the judge in an amount not exceeding 500*l.* for the due prosecution of the appeal and the payment of all such costs as may be awarded to the respondent by Her Majesty in Council.

Provision for security as to costs.

Execution suspended pending appeal.

42. Upon the appellant giving security to its satisfaction for the performance of such order as Her Majesty in Council may think fit to make, the court shall suspend execution pending the appeal of the judgment or order appealed from.

New rules for appeal have not yet been made.

By rules made under the Bahamas Supreme Court Act the appellant must give notice in writing, either personally or by his counsel or attorney, to the other side of his intention to appeal within ten days or within such other time as the court or judge may allow (rule 562).

By sect. 38 of the Supreme Court Act, 1896, no appeal is to lie in criminal cases; but, *semble*, this does not bar the prerogative.

BARBADOS.

Law in force.

Barbados was settled from England in the first half of the seventeenth century, and has ever since remained a possession of the Crown.

Colony.

The legislative power of the colony is vested by Letters Patent dated March 17, 1885, in a Governor and a Legislative Assembly with a Legislative Council, and is a separate government from the other Windward Islands.

The Courts.

The established courts of the island are the Court of

Common Pleas and the Court of Chancery. The former has the same jurisdiction as the Courts of Common Pleas, the Queen's Bench, and the Exchequer had in England on July 29, 1853 (Barbados Common Pleas Court Act, 1891, s. 2). The Chief Justice hears appeals on questions of law as a Court of Error from the assistant Court of Appeal (Act No. 1 of 1891, s. 51). An Order in Council of March, 1889, established a Court of Appeal for Barbados and the Windward Islands and made provision for appeals to the Privy Council, but the rules under it are now revoked.

Court of Error.

The Court of Appeal (Amendment) Act, 1898 (Ordinance 2 of 1899), gives an appeal to the Court of Appeal of the Windward Islands from any final judgment of the Chief Justice of Barbados in the exercise of his legal, equitable, or ecclesiastical jurisdiction. The Order in Council of June 28, 1909, now regulates appeals to the Privy Council both from the Windward Islands Court of Appeal and the Chief Justice of Barbados in the exercise of his legal, equitable, or ecclesiastical jurisdiction on the same terms as are prescribed for appeals from the other Windward Islands. (See below, p. 116.) The appealable amount is 300*l.*

Rules of appeal.

From the Courts of Common Pleas and of Chancery application for leave to appeal direct to the Privy Council must be made to the Judicial Committee. Cf. *Wilson* v. *Callender*, 9 Moo. 101. *Trent-Stoughton* v. *Barbados Water Supply Co.*, (1893) A. C. 502.

BERMUDA.

A settled colony.

The colony was settled by a chartered company constituted under Letters Patent dated March 12, 1612. Since 1684 the laws of the colony have been enacted by a Legislative Council, a House of Assembly, and a Governor appointed by the Crown.

The legislative power.

Courts.

By a local Act of 1905 the Supreme Court was constituted, and by an Act of 1908 (No. 10) the Court of Error, to which there had hitherto been a right of appeal, was abolished. By the same Act an appeal to the Privy Council is given from a final judgment:

Appeals.

(a) When the subject-matter is of the value of 300*l.* and

upwards, or from a judgment which shall relate to any title to land, or the taking or demand of any duty payable to His Majesty, or to any fee or office, or any annual rent or payment, or such like matter or thing, where rights in future may be bound. Appeal to P. C. from Supreme Court.

(b) From any judgment or order of the court for the issue of the prerogative writ of mandamus whether peremptory or otherwise.

(c) From any other judgment or order in any suit or action where the court may think fit to grant leave. The appeal must be commenced by a petition filed within twenty-one days of the judgment appealed from, and it shall not be allowed unless the appellant within thirty days after obtaining leave gives security for the due prosecution of the appeal within a year of the time of the allowance thereof.

The court may make other rules for the regulation of appeals.

The Colonial Appeal Rules are *not* adopted by the Ordinance.

JAMAICA AND TURK'S AND CAICOS ISLANDS.

Jamaica was taken in 1655 from the Spaniards, by whom it had been settled; and the title of England was finally recognised by the Treaty of Madrid in 1670. The legislative power is vested in a Governor and Legislative Council. The Turk's and Caicos Islands are annexed to Jamaica. The Colony.

By the Judicial Law No. 24, 1879, s. 20, the powers of the Supreme Court are those hitherto vested in the Supreme Court of Judicature, the High Court of Chancery, the Incumbered Estates Court, the Court of the Ordinary, the Court of Divorce and Matrimonial Causes, the Chief Court in Bankruptcy, and the Circuit Courts. An appeal lies to the Full Court from judgments of a single judge. Appeals lie from district courts to the Full Court, whose decisions are final (ss. 27—32). The Supreme Court of Jamaica is a Colonial Court of Admiralty, under the Colonial Courts of Admiralty Act, 1890. The Supreme Court. Colonial Court of Admiralty.

Provision for the regulation of appeals from the Supreme Court to the Privy Council is made by an Order in Council of February 18, 1909, which revokes the Order of 1881, Appeal.

and fixes the appealable amount at 300*l.* and the limit of time for leave to appeal at twenty-one days (*r*).

Misdemeanour.

The Royal Instructions to the Governor of 1710 provided that there should be an appeal to the Privy Council in all cases of fines for misdemeanour which were of the amount of 200*l.* or upwards.

It was questioned in *In re Levien* (1855), 10 Moo., p. 35, whether the right to appeal in misdemeanour cases still remains; but the point was not decided, as pending this appeal the prisoner was pardoned.

LEEWARD ISLANDS.

The constitution of the colony.

These islands, consisting of the Presidencies of Antigua (with its dependencies Barbuda and Redonda), Montserrat, Saint Kitts and Nevis (with their dependencies Anguila and Dominica), and the Virgin Islands, were created, in 1871, a Federal Colony by the Imperial Statute 34 & 35 Vict. c. 107, with power to legislate as to the constitution and jurisdiction of all courts of law, civil and criminal, and their jurisdiction, procedure and practice.

Supreme Court.

By Act No. 23 of 1873 the Supreme Court of the Leeward Islands was constituted, and by sect. 2 the old courts of the islands were abolished.

By the Supreme Court Act No. 2 of 1880, the Legislature of the Federal Colony of the Leeward Islands amended the various acts as to the Supreme Court, which is declared to consist of the Chief Justice and two puisne judges. There is an appeal to the full court.

Appeals.

Appeals to the Privy Council are now regulated by a local Act of 1909 (No. 13), the Privy Council Appeal Act, which provides that the appealable amount shall be 500*l.*, and the time within which leave to appeal is to be asked is twenty-one days. Pending appeals are to be conducted according to the provisions of the Act. An Order in Council of June 28, 1909, revokes the former Order in Council of 1880, which regulated appeals from the Supreme Court. The Act embodies the Colonial Appeal Rules.

TRINIDAD (and Tobago).

Trinidad was ceded to England by the Treaty of Amiens, 1802. It was united with Tobago as one colony as from

(*r*) The Order embodies the Colonial Appeal Rules.

1889. By Order in Council of June 20, 1831, provision was made for the administration of justice. By the Supreme Court Ordinance No. 28 of 1879 the Supreme Court of Trinidad was constituted with the jurisdiction of the High Court of Justice in England, except Admiralty, Divorce and Matrimonial jurisdiction. Supreme Court constituted.

By the Judicature (Tobago) Ordinance No. 34 of 1898, provision is made for the exercise of the jurisdiction of the Supreme Court in respect of matters arising in Tobago. The old right of appeal direct from the island to the Privy Council no longer exists. Tobago.

An Order in Council of April 2, 1909, now regulates appeals from the Supreme Court to the Privy Council, and revokes the former Order of 1831 so far as it related to the islands. The appealable amount is 500*l.*, and the limit of time for asking leave to appeal is twenty-one days (*s*). By a Proclamation of 1813, the Governor is directed to admit appeal to the Sovereign in Council "in all cases of fines imposed for misdemeanours, provided that the fines so imposed amount to or exceed the sum of 100*l.* sterling; the appellant first giving security that he will effectually prosecute the same and answer the condemnation of the sentence by which such fine was imposed in the said island if it shall be confirmed." This right has not expressly been taken away. Appeals. Appeal in criminal cases.

THE WINDWARD ISLANDS.

The Windward Caribbee Islands, or southern group of the West Indian Islands, so called in contradistinction to the Leeward Islands, consist now of the colonies of Grenada and the Grenadines, St. Vincent and St. Lucia, grouped together under one Governor for administrative purposes. There is, however, no federal colony, as in the case of the Leeward Islands. Each colony has its separate legislature and its laws. The Windward Islands. No federal colony.

In virtue of an Imperial Statute (13 & 14 Vict. c. 15), and after legislation by the colonies concerned, a Court of Appeal for the Windward Islands was established by Order in Council of March 3, 1859, and the Act has been amended by the Windward Islands Appeal Court Act, 1889, Courts.

(*s*) See n. (r), *supra*.

and an Order in Council of February, 1901, which restricts the jurisdiction of the court to the islands of Barbados, Grenada, St. Vincent, and St. Lucia. There exists, however, a right of appeal to His Majesty in Council, not only from the judgment of the Court of Appeal, but also from the Supreme Court of each island.

Powers of Chief Justice.

In an appeal from a judgment of the Court of Appeal the functions conferred on the Court may be exercised by the Chief Justice of each island, when the Court of Appeal is not sitting there. The Order in each case adopts the Colonial Appeal Rules.

GRENADA (and the Grenadines).

Islands ceded 1763.

The islands of Grenada and the Grenadines were ceded by France by the Treaty of Paris.

Courts.

Power to constitute Courts of Judicature and Public Justice was given by Letters Patent in 1763 "for the hearing and determining all causes, as well criminal as civil, according to law and equity, with liberty to all persons who may think themselves aggrieved by the sentences of such courts, in all civil cases, to appeal under the usual limitations and restrictions to us in our Privy Council."

By Ordinance 21 of 1896 the Supreme Court of Judicature was continued with the jurisdiction vested in the High Court of Justice except in its constitutional jurisdiction.

Appeals.

An Order in Council of June 28, 1909, revoking the provisions as to appeals contained in the Order in Council of 1859, provides that there shall be an appeal as of right from a final judgment either from the Supreme Court of Judicature or the Court of Appeal for the Windward Islands sitting in Grenada when the amount of the subject-matter is 300*l.* or over. The limit of time for asking leave to appeal is twenty-one days.

ST. LUCIA.

St. Lucia was ultimately surrendered by France to England at the beginning of the nineteenth century.

Courts.

The chief court of the colony is the Royal Court.

An Order in Council of November 22, 1909, revoking former Orders in Council of 1831 and 1889, which regulate

appeals from the Royal Court and the Appeal Court of the Windward Islands respectively, regulates appeals from both courts to the Privy Council on the same terms as are prescribed for Grenada.

Appeals lie from the district court in the colony to the Royal Court, and judgments given on appeal by the Royal Court are declared to be without appeal (sect. 909, Code of Civil Procedure).

ST. VINCENT.

The island was ceded to Great Britain by the Treaty of Paris in 1763, and again assured by the Treaty of Versailles in 1783. The Supreme Court of the colony possesses the jurisdiction formerly vested in the Supreme Court of Judicature and the Court of Chancery. The Supreme Court.

An Order in Council of June 28, 1909, regulates appeals from the Supreme Court of the island and the Appeal Court of the Windward Islands to the Privy Council on the same terms as are prescribed for the other Windward Islands. Appeals.

Leave to appeal may be given direct to the Privy Council from the Supreme Court.

Where a judgment suspending a barrister from practice had a final effect, and it was urgently desirable that delay should be prevented, leave to appeal was successfully invoked without going first to the Court of Appeal of the Windward Islands. *McLeod* v. *St. Aubyn* (St. Vincent, 1899), A. C. 549.

V. Foreign Jurisdiction.

A. In Africa.

It has been pointed out that the King in Council, in addition to his right to hear appeals from any courts in British possessions, may also entertain appeals from British courts set up in territories which are not British possessions by virtue of the power of foreign jurisdiction. By the Foreign Jurisdiction Acts, 1843—1878, the King obtained the right of establishing courts in various protectorates and foreign countries which do not possess a Christian or fully civilised government, and these powers were consolidated in the Foreign Jurisdiction Act of 1890.

The foreign jurisdiction of the Crown is chiefly exercised in Asia and Africa. Following on the great partition of spheres of influence in Africa, an Order in Council was issued in 1889, dealing generally with British jurisdiction in African protectorates, and known as the Africa Order in Council, 1889. It provided for the institution of local jurisdictions on the Continent of Africa and the adjacent islands, and for the regulation of appeals from these courts by the Secretary of State's instructions. It originally applied to the protectorates of Northern and Southern Nigeria (then known as the Oil Rivers), of East Africa and Uganda, and of Barotziland and British Central Africa. By various Orders in Council these territories have been taken out of the general order and new dispositions as regards courts and appeals to the Privy Council have been made. The order applied also to Madagascar and the Congo Free State. But as the one has become a French and the other a Belgian colony, the exterritorial jurisdiction of the English Crown has ceased in these territories. The provisions as to Courts of Appeal made under the order have therefore no application, and appeals to the Privy Council from the protectorates and foreign jurisdictions are now regulated as follows :

NORTHERN NIGERIA.

Establishment of protectorate.

By the Order in Council dated December 27, 1899, the protectorates of Northern and Southern Nigeria are constituted. The protectorate of Northern Nigeria covers the area of the old Niger Company's territories, which is not included in Southern Nigeria. The whole of the territories had originally formed one protectorate.

Courts and regulations for appeal.

The protectorate of Southern Nigeria, as has been stated, has been brought within the rules as to appeal from the Supreme Court of the colony of Lagos or Southern Nigeria. By a Proclamation of 1902 a Supreme Court has been constituted for the Protectorate of Northern Nigeria, and provisions for appeal from this court in common form have been made by an Order in Council of May 17, 1909. The appealable amount is 500*l.*, and the limit of time for asking leave to appeal is twenty-one days.

EAST AFRICA, UGANDA, AND NYASSALAND PROTECTORATES.

A Royal Charter, dated September 3, 1888, recognised the sovereign powers of the Imperial British East Africa Company, and authorised the company to extend those powers in East Africa within British influence. The company, in 1892, by treaty undertook to protect the kingdom of Uganda. In 1894 Uganda was declared by notification to be a British protectorate.

Protectorates.

The protectorate over Nyassaland was notified May 14, 1891, and named the "British Central African Protectorate," May 22, 1893.

Appeal Court.

By an Order in Council of February 15, 1909, a Court of Appeal was constituted for Eastern Africa which is to exercise such appellate jurisdiction and such other powers in relation to the High Courts and other courts in the said protectorates as may be conferred by ordinances passed under the provisions of Orders in Council referring to the protectorates. The order repeals two former Orders in Council of 1902 and 1906.

Appeals to the P. C.

By another order of even date (February 15, 1909) provision is made in common form (see Ch. II.) for the regulation of appeals from the Court of Appeal to His Majesty in Council.

An appeal lies of right when the matter in dispute is of the value of 650*l.* or upwards, or when the appeal involves a claim or question respecting property or some civil right of the value of Rs.10,000 or upwards; the limit of time for asking leave to appeal is twenty-one days in the case of applications from East Africa and Uganda, and three months in the case of applications from Nyassaland, and the security for costs shall not exceed Rs. 5,000.

NORTHERN RHODESIA.

By an Order in Council of May 4, 1911, made under the Foreign Jurisdiction Act, 1890, provision is made for the administration of justice over a territory known as Northern Rhodesia, and former orders relating to Barotziland, or North-Western Rhodesia, and North-Eastern Rhodesia of

1899, 1902 and 1909, and 1900, 1907 and 1909 respectively are revoked.

By sect. 21 of the Order a Court of Record, styled the High Court of Northern Rhodesia, is constituted with full jurisdiction, civil and criminal.

Appeal. By sect. 28 in civil matters where the amount or value in dispute exceeds 500*l.* an appeal lies to His Majesty in Council. The appeal is to be brought within the time and in the manner prescribed by any rules of procedure made by Order in Council. Rules have not yet been made.

NORTH-WESTERN RHODESIA.

There is nothing in the order repugnant to the provisions of the Order in Council of October 13, 1910, which provides for appeals from the Administrator's Court of Barotziland and the High Court of North-Western Rhodesia. By its provisions an appeal shall lie as of right (a) from any final judgment of the Administrator's Court or of the High Court when the matter in dispute is of the value of 500*l.* or upwards, etc., and from any judgment under the laws relating to divorce and matrimonial causes when such judgment is not interlocutory, but is upon the grant or refusal of a decree nisi on petition for dissolution or nullity of marriage ; (b) at the discretion of the court from any other judgment of either tribunal. The limit of time for applying for leave to appeal is forty-two days.

SOMALI COAST PROTECTORATE.

Origin of jurisdiction. A protectorate was declared over Somaliland by Order in Council, 1889, and provision for jurisdiction is made by the Somaliland Order in Council, October 7, 1899, which was issued under the powers of the Foreign Jurisdiction Act,

Court. 1890. Article 20 creates the Protectorate Court with criminal jurisdiction, and all the powers of a Sessions Court in India, and with the same appellate jurisdiction as a High Court in India. But by an Order in Council of February 15, 1909,

Appeals. the rules of the Indian Code of Civil Procedure were abrogated for the Somaliland Protectorate, and new rules of appeal to the Privy Council in the form of the Colonial Rules of Appeal were made for the Somaliland Court.

The appealable amount is 500*l*. Leave to appeal must be asked in twenty-one days.

ZANZIBAR.

A protectorate was established over the dominions of the Sultan of Zanzibar in 1890, and jurisdiction under the Foreign Jurisdiction Act, 1890, is now exercised under the terms of the Order in Council of 1906. Sect. 4 establishes his Britannic Majesty's Court for Zanzibar, with criminal and civil jurisdiction. The Secretary of State may appoint subordinate courts in Zanzibar.

Origin of jurisdiction.

Courts.

The order extends to British subjects, including natives and protected persons, and to foreigners with respect to whom the government whose subjects they are has agreed to the exercise of power and authority of His Majesty, including subjects of the Sultan of Zanzibar, who are plaintiffs.

The court for Zanzibar is treated as if it were a district court of the Presidency of Bombay (sects. 14, 29). The Indian Code of Civil Procedure is to apply as if Zanzibar were a district in the Presidency. There is an appeal in civil matters to the High Court of Bombay as the highest Civil Court of Appeal for the district.

The appeal from the High Court to the Privy Council is regulated by the Indian Code of Civil Procedure. (See *infra*, British India.) The Order in Council of November 7, 1910, confers Admiralty jurisdiction on the Zanzibar Court, and Admiralty appeals to the Privy Council are regulated by sect. 6 of the Colonial Courts of Admiralty Act, 1890.

Appeals.

MOROCCO.

The rights of protection in Morocco originally were settled between the various countries of Europe by the Madrid Convention, signed July 3, 1880; but the country has now become a French colony and the foreign jurisdiction is thereby abolished.

The exercise of His Majesty's power and jurisdiction within the dominions of His Majesty the Sultan of Morocco and Fez was hitherto regulated by the Morocco Order in Council, 1889, by which His Britannic Majesty's Consular Court for Morocco is established.

Morocco O. in C. 1889.

Appeals

An appeal from the court for Morocco in civil cases is given to the Supreme Court of Gibraltar (Art. 92), and Art. 105 provides: For purposes of appeal to the King in Council, a decision of the Supreme Court on appeal has the effect of a decision in its primary jurisdiction, *i.e.*, an appeal lies from the Gibraltar court in respect of its appellate jurisdiction on the same conditions as in respect of its primary jurisdiction.

The appeal also lay from the decision of the Consul-General, acting as a Court of Appeal, by special leave of the Privy Council.

B. Foreign Jurisdiction in Asia and Europe.

CHINA.

Origin of jurisdiction.

Since 1833 the British Sovereign has exercised foreign jurisdiction in China. An Order in Council of 1865, which applied also to Japan, regulates the jurisdiction of His Majesty in the far east, and provides for the establishment of Consular Courts. By Order in Council, 1899, the operation of the order as regards Japan was terminated. By the Order of 1865 a Supreme Court for China was established, to sit usually at Shanghai, but elsewhere if duly approved.

Appeals.

Appeals from the Supreme Court to the Privy Council are now regulated by the China Order in Council, 1904 (Stat. R. and O. 193). The appealable amount is 500*l.*; and leave to appeal must be asked within fifteen days from the date of the judgment; and the appellant must give security not exceeding 500*l.* within one month of filing the notice of appeal. The appeal in criminal cases lies only by special leave of the Privy Council.

Exclusion of Corea from Order.

By an Order in Council of January 23, 1911, the provisions of the China Orders in Council no longer apply to Corea, except as regards judicial matters pending in any of the courts in Corea at the date of the commencement of the Order.

Admiralty jurisdiction.

By an Order in Council of November 7, 1910, the Supreme Court in China has Admiralty jurisdiction, and the Colonial Courts of Admiralty Act, 1890, s. 6, applies to appeals to His Majesty in Council.

FEDERATED MALAY STATES.

By the agreement entered into in July, 1895, between Her Majesty's Government and the rulers of the following

Malay States, Perak, Selangor, Pahang, and Negri Sembilan, the chiefs placed themselves and their states under British protection, and agreed to constitute their countries a federation to be known as the Protected Malay States, to be administered under the advice of the British Government.

Courts. By an Order in Council of 1906 (R. and O. 945), His Majesty's jurisdiction was regulated, an Appeal Court was established, and provisions for appeals from the Appeal Court to the Privy Council were made.

Appeals. The appealable amount is 500*l.*, but the court may give leave to appeal in any case where it thinks fit. Leave to appeal must be asked for within fifteen days of the date of the judgment, unless some other time is prescribed by the court. The appellant must give security within two months from filing the motion for leave to appeal.

MUSCAT.

O. in C., 1867. His Majesty's consular jurisdiction in the dominions of the Sultan of Muscat is exercised under the Muscat Order in Council, November 4, 1867, made under the Foreign Jurisdiction Act, 1843. The consul is sole judge and arbiter in all suits, disputes, differences and causes of litigation of a civil nature. There is an appeal to the High Court of Bombay where the value of the matter at issue is $200 (sect. 6). The High Court has also concurrent jurisdiction. The Order in Council is silent as to the appeal to the King from the High Court of Bombay. Under these circumstances special leave should be asked.

Consular judge.

Appeal to H. C. of Bombay.

Appeal.

PERSIA.

Origin of jurisdiction. The Order in Council providing for the exercise of His Majesty's jurisdiction in Persia is dated December 13, 1889. The term Persia (except as in the Order expressly provided) does not include or apply to any place for the time being included within the limits to which any other Order in Council for the time being in force relating to the Persian coasts and islands applies.

Courts. By sect. 10 courts of first instance, called provincial courts, are to be held by the Vice-Consul or Consul-General, and the court of the Consul-General is to hear appeals from the provincial court.

Appeals.

An appeal is given to the Privy Council in a civil suit from a final judgment of the Consul-General where the subject-matter is of the value of 500*l.* The party aggrieved must apply within fifteen days to the Consul-General for leave to appeal (sect. 230).

Security to an amount not exceeding 500*l.* must be given within a month from the filing of the motion proper for leave to appeal.

The Consul-General may give leave to appeal in any other case where he sees fit to do so.

PERSIAN COAST AND ISLANDS.

The portion of the coasts and islands of the Persian Gulf and Gulf of Oman, which is within the dominions of the Shah of Persia, is excepted from the Persian Order in Council, and English jurisdiction in this area is now regulated by the Persian Coasts and Islands Order in Council,

Appeals.

1907. Appeals from the highest courts lie in the first place to the High Court of Bombay and thence to the Privy Council in accordance with the terms of the Indian Code of Civil Procedure. See BRITISH INDIA, *infra.*

By the Order in Council of November 7, 1910, Admiralty jurisdiction is conferred on the court of the Consul-General for Faro and the coasts and islands of the Persian Gulf, whether held by the Consul-General or the Judicial Assistant, and Admiralty appeals from the court to His Majesty in Council are regulated by sect. 6 of the Colonial Courts of Admiralty Act, 1890. Article 29 of the Order of 1907 is repealed.

SARAWAK.

An agreement was made in 1888 between Lord Salisbury and Rajah Brooke for placing Sarawak under the protection of Great Britain. "Such protection shall confer no right" on His Majesty's Government "to interfere with the internal administration of the state" further than provided in the agreement. His Majesty is to have the right to establish British consular officers in any part of the state who shall receive exequaturs in the name of the Government of Sarawak. The agreement with the ruler of Sarawak

was made by the light of the British Settlements Act, 1887, which had been passed in the previous year, but it is probable that the jurisdiction is administered only by virtue of the Foreign Jurisdiction Act, 1890.

No Order in Council or other rules have been issued with reference to judicial proceedings. In the event of any grievance in the nature of an appeal from a decision of His Majesty's Consul in Sarawak, the right course would seem to be to present a petition to the King through the Secretary of State, who will refer the same for hearing to the Privy Council.

SIAM.

Origin of jurisdiction.

The jurisdiction possessed by His Majesty in Siam is based upon the Treaty of April 18, 1855, and a supplementary agreement of May 13, 1856. These powers are now exercised under Orders in Council, 1889 and 1906. His Majesty's Britannic Court for Siam is established by the Order of 1906, and provision made for its jurisdiction.

Appeals.

By the Order in Council of 1906 (sect. 104) an appeal now lies from the Full Court of Siam to His Majesty in Council. The appealable amount is 500*l.*, and leave to appeal must be asked within fifteen days, unless the court prescribes a different term ; and security is to be given by the appellant within two months from the filing of the motion proper for leave to appeal.

Admiralty jurisdiction.

By the Order in Council of November 7, 1910, the court for Siam has Admiralty jurisdiction, and Admiralty appeals to the Privy Council are regulated by sect. 6 of the Colonial Courts of Admiralty Act, 1890. The Order only operates in Siam to the extent of and in the cases where the provisions of the principal Order (of 1906) are in operation.

Criminal appeals.

No appeal lies from a judgment of the Full Court to His Majesty in Council in a criminal case save by special leave of His Majesty in Council.

CYPRUS.

Origin of jurisdiction.

On June 4, 1878, the island of Cyprus was assigned to Great Britain to be occupied and administered by England. Cyprus is to be restored to Turkey when Russia restores Kars. An Order in Council (under the Foreign Jurisdiction

Cyprus Order 1878.

Acts, 1843 to 1878) dated September 14, 1878, made provision for the exercise of His Majesty's power and jurisdiction in and over the island. By Art. 27, the Ottoman Order in Council, 1873, is repealed as to Cyprus. By Ordinance No. 1 of 1878, a Court of Record, called the King's High Court of Justice for Cyprus, was created, but by Order in Council of 1882 (which is amended by an Order of June 11, 1910), the Supreme Court of Cyprus is established, to which all the jurisdiction of the High Court is transferred.

Regulations for appeal.

Regulations for appeal from the Supreme Court to the Privy Council were made by Art. 41 of the Order of 1882; but this article is revoked and new regulations for appeal are made by an Order in Council of August 10, 1909, by which an appeal of right is provided from any final judgment of the Supreme Court when the subject-matter of the appeal is 300*l.* or upwards, and at the discretion of the court in all other cases. Application for leave to appeal must be made within thirty days, and it is provided in rule 7.

Translation.

There shall be included in the record a translation into the English language and certified by the registrar or assistant-registrar of the court to be a true and correct translation of all such portions of the record as are in the Turkish or Greek language. The other rules are in common form.

The S. C. is a Colonial Court of Admiralty.

An Order in Council of November 23, 1893, gives the Supreme Court Admiralty jurisdiction, and applies the Colonial Courts of Admiralty Act to the Supreme Court.

Rules of court for the exercise of Admiralty jurisdiction were appended, but by Order in Council, dated May 31, 1910, these rules have been revoked, and fresh rules have been made. See p. 371.

THE OTTOMAN EMPIRE.

Origin of jurisdiction.

The King has jurisdiction in the dominions of the Sublime Ottoman Porte by virtue of very ancient capitulations, which are still in force and which were confirmed by the treaty of peace concluded at the Dardanelles in 1809. The privileges granted by the capitulations and articles of peace are very wide, and apply not only to English subjects, but in certain instances to all merchants navigating under the English flag. This jurisdiction has been exercised by

the Crown since the abolition of the Levant Company in 1825 by the 6 Geo. 4, c. 33. Levant Company.

The various Foreign Jurisdiction Acts which date from 1843 confer powers on His Majesty to exercise jurisdiction under the capitulations.

In pursuance of these powers various Orders in Council were approved by Her late Majesty regulating Her Majesty's jurisdiction in the Ottoman Empire. The Order in Council now in force is dated November 7, 1910, and is made by virtue of the Foreign Jurisdiction Act, 1890. The Ottoman O. in C.

The limits of the Order are the dominions of the Sublime Ottoman Porte, including Egypt as far as the 22nd parallel of north latitude. Egypt.

The order defines "British subject" as including a British protected person. And the jurisdiction extends over:

(i.) British subjects, as herein defined, within the limits of this Order.

(ii.) The property and all personal or proprietary rights and liabilities within the said limits of British subjects, whether such subjects are within the said limits or not.

(iii.) Ottoman subjects and foreigners in the cases and according to the conditions specified in this Order, and not otherwise.

(iv.) Foreigners with respect to whom any state, King, chief, or government, whose subjects or under whose protection they are, has by any treaty as herein defined or otherwise agreed with His Majesty for, or consents to, the exercise of power or authority by His Majesty.

(v.) British ships with their boats, and the persons and property on board thereof, or belonging thereto, being within the Ottoman dominions.

The Order establishes a court styled "His Britannic Majesty's Supreme Consular Court for the dominions of the Sublime Ottoman Porte." This court sits usually at Constantinople, if required at Alexandria, and on emergency at any other place within the Ottoman dominions (Art. 14). Two judges of the Supreme Court are to be appointed by His Majesty by warrant under his royal sign manual, and the Secretary of State may appoint a special judge Supreme Court.

temporarily. Art. 17 provides for provincial courts, which are Courts of Record, and Art. 19 for local courts.

Appeal to Supreme Court.

An appeal lies to the Supreme Court from the provincial courts in respect of a matter of 50*l.* or upwards. An appeal in civil matters is given from the Supreme Court to His Majesty in Council by Art. 122 in the following terms :

Appeal to the Sovereign.

(1) Where a final judgment or order of the Supreme Court made in a civil action involves the amount or value of 500*l.* or upwards, any party aggrieved thereby may, within the prescribed time, or if no time is prescribed within fifteen days after the same is made or given, apply by motion to the Supreme Court for leave to appeal to His Majesty the King in Council.

Security to prosecute.

(2) The applicant shall give security to the satisfaction of the court to an amount not exceeding 500*l.* for the prosecution of the appeal, and for payment of all such costs as may be awarded to any respondent by His Majesty in Council, or by the lords of the Judicial Committee of His Majesty's Privy Council.

Expense of record.

(3) He shall also pay into the Supreme Court a sum estimated by that court to be the amount of the expense of the making up and transmission to England of the transcript of the record.

When leave to be given.

(4) If security and payment are so given and made within one month from the filing of the motion paper for leave to appeal, then, and not otherwise, the Supreme Court shall give leave to appeal, and the appellant shall be at liberty to prefer and prosecute his appeal to His Majesty in Council according to the rules for the time being in force respecting appeals to His Majesty in Council from his colonies, or such other rules as His Majesty in Council from time to time thinks fit to make concerning appeals from the Supreme Court.

Special leave.

(5) In any case the Supreme Court, if it considers it just or expedient to do so, may give leave to appeal on the terms and in the manner aforesaid.

Suspending execution.

125.—(1.) Where leave to appeal to His Majesty in Council is applied for by a person ordered to pay money, or do any other act, the Supreme Court shall direct either that the order appealed from be carried into execution, or that

the execution thereof be suspended pending the appeal, as the court thinks just.

(2) If the court directs the order to be carried into execution, the person in whose favour it is made shall, before the execution of it, give security to the satisfaction of the court for performance of such order as His Majesty in Council may think fit to make. Security.

(3) If the court directs the execution of the order to be suspended, the party against whom it is given shall, before an order for suspension is made, give security to the satisfaction of the court for performance of such order as His Majesty in Council may think fit to make.

126. This order shall not affect the right of His Majesty at any time, on the humble petition of a person aggrieved at the decision of the Supreme Court, to admit his appeal on such terms as His Majesty thinks fit, and to deal with the decision appealed from in such manner as may seem just. Prerogative.

Article 88 provides that there shall be no criminal appeal except by special leave of His Majesty in Council. Criminal Appeal.

The Foreign Jurisdiction (Admiralty) Order in Council of November 7, 1911, extends to all persons and to all property subject to the Ottoman Order in Council, 1910, and confers Admiralty jurisdiction on the Supreme Court, and, during the absence from Egypt of a judge of the Supreme Court, and subject to any rules of court, on the Provincial Court at Alexandria. Sect. 6 of the Colonial Courts of Admiralty Act, 1890, applies to appeals to the Privy Council. Admiralty jurisdiction.

FOREIGN JURISDICTION.

C. PACIFIC ISLANDS (POLYNESIA).

The foreign jurisdiction over the Pacific Islands was originally established by the Pacific Islanders Protection Act, 1875. The jurisdiction as now regulated by the Pacific Ocean Order in Council, 1893, made by virtue and in exercise of the power vested in Her Majesty by the British Settlements Act, 1887, the Pacific Islanders Protection Act, and the Foreign Jurisdiction Act, 1890. The Pacific Ocean O. in C., 1893.

The High Court, which was created by an Order of 1877, is continued (sect. 12). The Supreme Court of Fiji is the Court of Appeal. The High Court is a Colonial Court of Admiralty. Courts.

Appeals. Its decisions on appeal are subject to appeal to His Majesty in Council in the same manner and on the same conditions as any other decision of the court, so that an appeal lies from the Fiji Court on the terms set out above. (See Fiji, p. 82.)

New Hebrides. By a convention made in 1906 between England and France, the New Hebrides are placed under the dual control of High Commissioners appointed by the two Governments, and a joint court is established composed of their judges. The judgments of this court are declared to be final (Art. 15), and would therefore not be subject to review by the Privy Council; but by sect. 9 of the New Hebrides Order in Council, 1907, the Pacific Isles Order in Council still applies subject to the provisions of the Convention, and is binding on all persons over whom His Majesty has jurisdiction.

VI. THE STRAITS SETTLEMENTS.

Extent and origin of the Settlements. Special rules regulate the practice in appeals from the Straits Settlements to the Privy Council, and these are therefore set out in full.

The English Settlements in the Malay Peninsula, Singapore, Penang and Malacca, with their dependencies, which were formerly part of the Indian dominions, were constituted a separate colony by the Imperial Statutes of 1866 (29 & 30 Vict. c. 115); by Orders in Council of 1886 and 1888 the Cocos Islands have been transferred to the colony; and by Letters Patent, dated October 30, 1906, the boundaries of the colony have been extended so as to include Labuan, an island which was ceded to England in 1846.

Courts. A Recorder's Court was established in Penang in 1807, and a Court of Judicature in the other settlements in 1855. By Ordinance No. 5 of 1868, the Court of Judicature was abolished and the Supreme Court of the Straits Settlements was established; and in 1893 an Appeal Court for the colony was created.

Appeals. Appeals now lie to the Privy Council from the Court of Appeal, and the procedure is very fully regulated by the rules in the Code of Civil Procedure (Act 31 of 1907, of which c. 53 deals with appeals to the King in Council). The Code has been amended by Act 12 of 1909, of which

sects. 57—59 embody a number of further rules for appeals to the Privy Council which are taken from the Judicial Committee Rules issued in 1908.

The rules of the Code are as follow:—

When appeals lie to the King in Council.

1154. Subject to such rules as may from time to time be made by His Majesty in Council regarding appeals from Colonial courts, and to the provisions hereinafter contained, an appeal shall lie from the Court of Appeal to His Majesty in Council:

(a) From any final judgment or order;

(b) From any interlocutory judgment or order which is certified as hereinafter provided to be a fit one for appeal to His Majesty in Council; or

(c) Where the case is from its nature a fit one for appeal.

Appealable value.

Provided always, that in the case mentioned in clause (a) the amount or value of the subject-matter of the suit must be 2,500 dollars or upwards, and the amount or value of the matter in dispute on appeal to His Majesty in Council must be the same sum or upwards or the judgment or order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value.

Application for leave to appeal.

1155.—(1) Whoever desires to appeal under this part to His Majesty in Council must apply by petition to the Court of Appeal within six months from the date on which the decision appealed against was given or within such further time not exceeding twelve months from such date as may be allowed by the Court of Appeal.

(2) Such petition must contain:

(a) A concise statement of the material facts of the case;

(b) The order of the Court of First Instance;

(c) The order of the Court of Appeal; and

(d) The grounds of the proposed appeal.

It must also pray for a certificate either that as regards amount or value or nature the case fulfils the requirements of sect. 1154, or that it is otherwise a fit one for appeal to His Majesty in Council.

(3) Upon receipt of such petition, the Court of Appeal may, if it thinks fit, direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Certificate of fitness.

If the Court of Appeal is not sitting the petition may be dealt with by the Supreme Court in any Settlement. But the certificate that the interlocutory order is a fit one for appeal referred to in clause (b) of sect. 1154 of the principal Ordinance may be granted by the Court of Appeal only.

Dismissal of petition.

1157. If the certificate be refused, the petition shall be dismissed.

Procedure after grant of certificate.

1158. If the certificate be granted the applicant shall, within six months from the date of the judgment or order complained of, or within six weeks from the grant of the certificate, whichever is the later date, or within such further time as may be allowed by the Court of Appeal :

(a) Give security for the costs of the respondent to an amount not exceeding two thousand dollars;

(b) Deposit the amount required to defray the expense of translating, transcribing, indexing, and transmitting to His Majesty in Council a correct copy of the whole of the proceedings in the suit, except :

(i.) Formal documents directed to be excluded by any Order of His Majesty in Council for the time being in force ;

(ii.) Papers which the parties agree to exclude ;

(iii.) Accounts or portions of accounts which the registrar considers unnecessary and which the parties have not specifically asked to be included ; and

(iv.) Such other documents as the Supreme Court may direct to be excluded.

Admission of appeal and procedure thereon.

1159.—(1) When such security has been completed and deposit made to the satisfaction of the Supreme Court, the Court may :

(a) Declare the appeal admitted ; and

(b) Give notice thereof to the respondent; and shall then

(c) Transmit to His Majesty in Council under the seal of the court a correct copy of the said record except as aforesaid ; and

(d) Give to either party one or more authenticated copies of any of the papers in the cause on his applying therefor and paying reasonable expenses incurred in preparing them.

Then follow some sub-sections which incorporate the Colonial Rules of Appeal as to the consolidation of petitions,

the withdrawal of appeals, the dismissal for non-prosecution of appeal, the record becoming defective by reason of the death of a party, etc.

These rules are set out at pp. 28—32.

Revocation of acceptance of security.

1160. At any time before the admission of the appeal, the Supreme Court may, upon cause shown, revoke the acceptance of such security and give further directions thereon.

Power to order further security.

1161.—(1) If at any time after the admission of the appeal, but before the transmission of the copy of the proceedings except as aforesaid to His Majesty in Council, such security appears inadequate or further payment is required for the purpose of translating, transcribing, indexing or transmitting the copy of the record except as aforesaid, the Supreme Court may order the appellant to furnish within a time to be fixed by the court, other and sufficient security or to make within like time the required payment.

(2) If the appellant fails to comply with such order the proceedings shall be stayed and the appeal shall not proceed without an order in that behalf of His Majesty in Council, and in the meantime execution of the judgment or order appealed against shall not be stayed.

Power of Supreme Court pending appeal.

1162.—(1) Notwithstanding the admission of any appeal under this part, the judgment or order appealed against shall be unconditionally enforced unless the Supreme Court otherwise directs.

(2) The Supreme Court may, if it thinks fit, on any special cause shown by any party interested in the suit or otherwise appearing to the court :

(a) Impound any immoveable property in dispute or any part thereof ; or

(b) Allow the judgment or order appealed against to be enforced, taking such security from the respondents as the court thinks fit for the due performance of any order which His Majesty in Council may make on the appeal ; or

(c) Stay the execution of the judgment or order appealed against taking such security from the appellant as the court thinks fit for the due performance of the judgment or order appealed against, or of any order which His Majesty in Council may make on the appeal ; or

(d) Place any party seeking the assistance of the court under conditions, or give such other direction respecting the subject-matter of the appeal as it thinks fit.

Increase of security found inadequate.

1163.—(1) If at any time during the pending of the appeal the security so furnished by either party, as in the last preceding section mentioned, appears inadequate, the Supreme Court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the court, if the original security was furnished by the appellant the court may, on the application of the respondent, issue execution of the judgment or order appealed against as if the appellant had furnished no security, and if the original security was furnished by the respondent the court shall, so far as may be practicable, stay all further execution and restore the properties to the positions in which they respectively were when the security which appears inadequate was furnished, or give such directions respecting the subject-matter of the appeal as it thinks fit.

1164. The security required under sects. 1158, 1161 and 1163, may be given either by deposit of cash in court or by bonds of not less than two approved sureties.

When such security is proposed to be given by bond, the names of the proposed obligors shall be submitted by the appellant for the approval of the respondent. If the respondent objects to any of the proposed obligors, the objection shall be referred to the Judge in Chambers, whose decision shall be final.

Preparing record.

1165. When a certificate is granted under sect. 1155, the appellant shall forthwith apply in court to the registrar to prepare an index of all papers, documents, or accounts in the case and to make an estimate of the cost of preparing and transmitting the record, stating in his application whether the record is to be printed in the colony or in England. On receipt of the application the registrar shall prepare the index, dividing the papers, documents, etc., into two classes: (a) papers to be transmitted to the Registrar of the Privy Council; (b) formal and other papers not to be so transmitted, and he shall make an estimate of the cost of translating, transmitting, and forwarding to the Registrar of the Privy Council the record of the case, including a margin of 1,000 dollars,

and shall on application send copies of his estimate to the solicitor of the appellant.

Then follow the rules for the printing of the record in the colony which agree with those in the Colonial Appeal Rules, and are set out above at pp. 27—28.

Reference to judge.

1166. At any time within fourteen days from the delivery of the copy of the order and estimate, the appellant may object thereto, and if the registrar refuses to allow the objection the matter shall be referred to the Judge in Chambers, whose decision shall be final.

1167. Ordinarily the whole of the proceedings in the action shall be included in the record with the exception of such papers, documents and accounts as are specified in the exceptions to sect. 1158.

Verification by translator.

All translations required for the purpose of an appeal shall be by a sworn interpreter of the court, care being taken to give explanations of all local terms, and shall bear the signature of the interpreter and the seal of the court.

1169. Immediately after the court has declared the appeal to be admitted the appellant shall furnish a copy of the index to the respondent, or the solicitor of the respondent, and the respondent may within seven days of the receipt of the same apply to the registrar to include in the transcript any documents, papers, or accounts which he may consider necessary. Such application shall either be allowed by the registrar or shall be referred to the Judge in Chambers, whose decision shall be final.

(2) 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 the colony 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.

1170. Immediately after the copy of the record has been transmitted to the Registrar of the Privy Council the registrar of the court shall give notice to the solicitors of the respective parties to the appeal.

Refund of balance of deposit.

1171. When the copy of the proceedings (except as aforesaid) has been transmitted to His Majesty in Council, the

appellant may obtain a refund of the balance (if any) of the amount which he has deposited under sect. 1158.

Procedure to enforce Order of His Majesty in Council.

1172. Whoever desires to enforce or to obtain execution of any Order of His Majesty in Council shall file a certified copy of the order sought to be enforced or executed to the Supreme Court, which shall thereupon enforce or execute it in the manner and according to the rules applicable to the execution of its own judgments.

Saving clause as to limited operation of Ordinance.

1173. Nothing herein contained shall be understood:

(a) To bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council or otherwise howsoever; or

(b) To interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force for the presentation of appeals to His Majesty in Council or their conduct by the said Committee.

Taxation of costs.

1174. All costs incurred in the colony in connection with appeals to His Majesty in Council shall be subject to taxation, and shall be recovered from the party liable to pay the same in like manner as costs in an action.

Colonial Court of Admiralty.

The Supreme Court of the colony is the Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890. The rules made in pursuance of the Act for regulating the procedure and practice in Admiralty cases in the Supreme Court of the Straits Settlements are contained in an Order in Council dated October 3, 1895.

Criminal appeal.

The Ordinance No. 7 of 1892, which establishes a Code of Criminal Procedure, enacts that no appeal shall lie from a judgment of a criminal court except as provided for by the Code, or by any other law for the time being in force. The Code makes no provision for an appeal in criminal matters to the Crown beyond saving the royal prerogative.

BRUNEI.

Grant of jurisdiction.

The State of Brunei was placed under the protection of Her Majesty the Queen in 1888.

Appeal.

By an Order in Council of 1908 an appeal lies from the High Court of Brunei to the Appeal Court of the Straits Settlements, and thence, under the conditions prescribed for appeals from the Straits Settlements, to the Privy Council.

CHAPTER IV.

RULES OF APPEAL FOR BRITISH INDIA AND CEYLON.

The largest number of cases which come before the Privy Council are brought from the courts of British India, and special rules govern the conditions of appeal from this portion of the British Empire. Some provinces have their own regulations; but a large part of the rules are uniform for the whole of British India. In view of the large number of Indian appeals and the peculiar regulations which affect them, the practice of the Privy Council in relation to India is treated separately.

Transfer to Crown.

In 1858, the territories under the government of the East India Company were transferred to the Crown, and are known as British India (21 & 22 Vict. c. 106). The term India includes besides British India any territories under any native prince or chief who is under the suzerainty of His Majesty.

Courts.

By a charter of George I., 1726, courts were established at the three settlements at Madras, Bombay, and Bengal. An appeal to His Majesty in Council was given by the same charter, and judicial charters of 1732 and 1753 gave an additional appeal to His Majesty in Council from the courts of the Mayor and the superior courts in the presidencies. Subsequent charters of 1774, 1800, and 1823 constituted Supreme Courts, and these in time were replaced by High Courts created under the Charter Acts, 1861 (24 & 25 Vict. c. 104) in the three presidencies Bengal, Madras, and Bombay. These High Courts were constituted by Letters Patent, which were dated December 28, 1865, and which contained rules defining their jurisdiction, and providing for appeals to the Privy Council. The rules

High Courts.

as to appeal contained in these Letters Patent are set out below, pp. 147—149.

In 1866, the High Court of the North-Western Provinces was created under the Charter Act by Letters Patent, and rules for appeal were prescribed in the same form. Since 1902 the North-Western Provinces have been united with Oudh as the United Provinces of Agra and Oudh, but the High Court of Allahabad retains jurisdiction over the whole province of Agra.

There are, moreover, other Courts in British India ranking as High Courts which were not created either by charter or by Letters Patent, but owe their existence to the legislative powers of the Governor-General in Council. The highest court of appeal in any part of British India in which there is a local government is a High Court. (See General Clauses Act, 1897.)

Oudh.

By the Oudh Civil Courts Act, 1877, ss. 18 and 20, the Court of the Judicial Commissioner of Oudh is the highest civil court of appeal in Oudh, and by an Act of 1891 it is deemed a High Court when composed of the Judicial Commissioner and the Assistant Commissioner acting together.

The Punjab.

The Chief Court of the Punjab is a court of final appellate jurisdiction. (Act 18 of 1884.)

Upper Burma.

The Court of the Judicial Commissioner for Upper Burma is likewise a High Court. (See the Upper Burma Civil Justice Regulation, 1886, s. 8 (1).) By the Civil Justice Regulation, 1896, s. 12 (1), the court has all the powers of a High Court not established under the statute 24 & 25 Vict. c. 104, and is the court of final appellate jurisdiction throughout the area to which the regulation applies.

Lower Burma.

The Lower Burma Courts Act, 1900, created a new tribunal (the Chief Court for Lower Burma), which is the highest Civil Court of Appeal and the highest court of Criminal Appeal and Revision in and for Lower Burma (*a*). Before this Act was passed there had existed three Courts of Appeal from which appeals lay to the Sovereign in Council; *first*, the Court of the Judicial Commissioner of Lower Burma; *secondly*, the Special Court, which was the Court of

(*a*) Act 6 of 1900, s. 8.

Appeal for the towns of Rangoon and Moulmein; and *thirdly*, the Court of the Recorder of Rangoon, which was a High Court for certain purposes. The Chief Court is now the High Court for the whole of Burma (inclusive of the Shan States) in reference to proceedings against European British subjects and persons jointly charged with European British subjects.

Central Provinces. By Act 19 of 1896, the Court of the Judicial Commissioner of the Central Provinces is a High Court.

Coorg. By the Coorg Courts Regulations of 1881 the Court of the Judicial Commissioner is to be deemed a High Court.

Sindh. By the Bombay Act, 12 of 1866, the Sadr Court of Sindh is the highest Court of Appeal in the Province.

Ajmere. By the Ajmere Courts Regulation Act, 1877 (s. 23) (amended by Regulation 9 of 1893) the Court of the High Commissioner is the highest Court of Appeal for the district, and when he is sitting in certain cases his decisions are to have the effect of a judgment of the High Court (ss. 34—37). When the Chief Commissioner is not so sitting, the appeal lies to the High Court of the North-West Provinces in the first place, instead of, by virtue of sect. 109 of the Code of Civil Procedure, to the Sovereign in Council.

Assam H. C. In Assam, by Act 12 of 1887, s. 3, four courts are constituted, of which the Court of the District Judge is the highest Court of Appeal in the district, and, as such, a High Court whence an appeal will lie under the Code of Civil Procedure.

British Beluchistan H. C. In British Beluchistan, by the Civil Justice Regulation 9 of 1896, s. 7 (1), the Court of the Judicial Commissioner is to be deemed the High Court for British Beluchistan in civil jurisdiction. The Judicial Commissioner may, for sufficient reason, review any decision or order which has been passed by himself, and from which an appeal has not been preferred to His Majesty in Council. (Sect. 73 (1).)

Aden. Aden and Perim are included in the Bombay Province, and are part of British India (Aden Laws: Regulation 2 of 1891), and the Court of the Resident, which administers civil and criminal justice, is the highest Court of Appeal. No appeal lies from any revisional, or appellate, or original decision of the Resident to any court in British India (Act 1 of 1864), and the court is therefore a High Court from

which an appeal lies to the Privy Council. It is, however, subject to the superintendence of the High Court of Bombay (see *Municipal Officer of Aden* v. *Hajee Ismail* (1905), L. R. 33 I. A. 38), but an appeal lies to the Privy Council in respect of orders made in exercise of the superintending jurisdiction.

Powers to establish new High Courts.

By sect. 2 of the Indian High Courts Act, 1911 (1 & 2 Geo. 5, c. 18), the power of His Majesty under sect. 16 of the Indian High Courts Act, 1861, may be exercised from time to time, and a High Court may be established in any portion of the territories within His Majesty's dominions in India, whether included or not within the limits of the local jurisdiction of another High Court.

Scheduled districts.

The Scheduled Districts are various parts of British India which have never been brought within, or have from time to time been removed from, the operation of the general Acts and Regulations and the jurisdiction of the ordinary courts of judicature, and are set out in the first schedule to the Scheduled Districts Act, No. 14 of 1874, as modified up to October 1, 1895. The districts include those mentioned in the first schedule, and other territories added by resolution under sect. 1 of 33 & 34 Vict. c. 3 (1870), an Act to make better provisions for making laws and regulations for certain parts of India. That Act gives power to the local government, with the sanction of the Governor-General in Council, by a notification published as above mentioned, to extend to any Scheduled Districts any enactment which is in force in any part of British India. Under this power the provisions of the Code of Civil Procedure as to appeals have been extended to many of the Scheduled Districts.

Districts added by resolution under 33 & 34 Vict. c. 3.

Scheduled Districts not under C. C. P.

An appeal lies to the Privy Council from the highest Courts of Appeal for the district, which for the purposes of appeal to the Privy Council are High Courts. The Order in Council of 1838 contains the only rules in force for appeals from Scheduled Districts to which the Code of Civil Procedure is not so applied, but in practice the rules in the Code are also followed.

However in an unreported case (*Hitchins and Another* v. *Secretary of State for India*), in which judgment had been entered on appeal from the District Judge in the High Court of British Beluchistan, after the appellants had obtained

leave to appeal from the said High Court, and had received a certificate that the case was, as regards value and nature, fit for appeal to Her Majesty, and that it therefore fulfilled the requirements of the Code of Civil Procedure, and had deposited in court 3,000 rupees as security for costs, and paid 800 rupees for the cost of the transcript, it was ascertained that the Code of Civil Procedure had not been extended to British Beluchistan. The British Beluchistan Civil Justice Regulation of 1890 makes no express provision for appeals to Her Majesty, but sect. 73 of the Regulation assumes that such appeals may and will be preferred. In these circumstances, on a petition by the appellants setting out these facts, Her Majesty gave special leave to appeal, upon depositing in the Registry of the Privy Council the sum of 300*l.* sterling as security for costs. Liberty was also given to the appellants to apply to the High Court of British Beluchistan for the release of the 3,000 rupees, and it was directed that the transcript transmitted to the Registrar of the Privy Council should be treated as the record in the appeal. In this case the leave to appeal in the court below had been asked under the Code of Civil Procedure, and not under the Order in Council.

An appeal where C. C. P. did not apply.

Outside British India there are no less than 780 native states which are not subject to the Crown, though to a greater or smaller extent they are dependent on it. Within these states British jurisdiction of two kinds is exercised. (1) In certain native states British officers exercise, for and on behalf of the states and over their subjects, a civil and criminal jurisdiction vesting in the states concerned. (2) In the territories of the native states generally British courts exercise, for and on behalf of the Crown, any personal civil and criminal jurisdiction which the Crown may possess over its own subjects or protected subjects, or a territorial civil and criminal jurisdiction which has been ceded to the Crown by the states concerned over their own subjects within certain areas. In the first case the jurisdiction of the British officer is political and not judicial in its character, and the ultimate appeal from his decision is to the Secretary of State for India in Council and not to His Majesty in Council. Cf. *Hemchand Devchand* v. *Azam Sakarlal* and *The Jaluka of Kotda-Sangani* v. *The State of*

Native States.

Gondal (L. R. 33 I. A. 1 and (1906) A. C. 212), where it was held that in two cases brought in the Court of the Assistant Political Agent in Kathiawar an appeal did not lie to the Privy Council from the appellate decrees of the Governor of Bombay in Council. Special leave to appeal had been obtained, but the Judicial Committee in that case found that Kathiawar was not a part of the King's dominions and that the Courts of the Political Agents were not judicial courts ((1906) A. C. p. 237), nor were their decisions judicial decisions. At the same time they held that if such a court acted judicially, a person aggrieved by their judgment would not be precluded from applying to the King in Council for redress merely by the fact that he was not the King's subject (p. 238). But if its action were political the appeal lay to the Secretary of State in Council in virtue of sect. 3 of 21 & 22 Vict. c. 106. The political jurisdiction exercised by His Majesty in these native states is entirely distinct from that exercised by the High Courts in British India. *Maharajah Madhawa Singh* v. *Secretary of State for India* (1904), L. R. 31 I. A. 239, where it was held that an appeal would not lie from the report of special commissioners appointed to inquire into an alleged crime of the Maharajah. The appellant might, indeed, apply to His Majesty to refer the matter specially under sect. 4 of 3 & 4 Will. IV. c. 41 to the Judicial Committee. See the case of *The Nawab of Surat* (9 Moo. P. C. 88, and *infra*, p. 241).

Appeal from political jurisdiction.

Subsequently in an appeal in the suits of *Hansraj* v. *Sudar Lal* and *Hansraj* v. *Devarka Das* ((1908), 35 I. A. 88) special leave was given to appeal from a decree of the court of the Political Agent to the Governor-General in Central India affirming a decree of the Political Agent at Sehore. Liberty, however, was given to the Secretary of State for India to intervene upon the question whether His Majesty in Council should entertain an appeal in the suit on account of the authority from which the appeal was brought being one from which an appeal should not be admitted. As, however, their lordships were of opinion that the decision appealed from was correct, the question of the competency of the appeal was not settled.

Foreign jurisdiction

(2) In those cases, however, where British courts are

established in native states to try either British subjects or protected subjects or subjects over whom jurisdiction has been delegated by the rulers of the native states to the Crown, the jurisdiction is truly judicial and is exercised under powers like those in other native protectorates in the empire, in virtue of the Foreign Jurisdiction Acts. The jurisdiction was formerly based upon the Indian Act, 21 of 1879, but the rules of that Act are now displaced by the Order in Council of June 11, 1902, which was issued under the Foreign Jurisdiction Act, 1890. The Order in Council vests in His Majesty personal jurisdiction over all British subjects and territorial jurisdiction over all subjects in native states when such jurisdiction has been ceded to the Crown. Wherever the English Court is constituted under this Order, an appeal lies to His Majesty in Council whenever the court or the Privy Council thinks fit to allow the appeal, though there may be an intermediate appeal to an Indian High Court. in native states.

Thus, where the English resident in a native state governed on behalf of the Crown, the jurisdiction was held to be judicial, and an appeal lay to the Privy Council from the appellate order of a High Court in a suit brought before the Resident's court. Cf. *In re Lubeck* (1905), 32 I. A., 217, where the Judicial Committee reversed an Order of the Resident in the state of Mysore, suspending a barrister from practice for four months. Appeal to P. C.

To several of the British courts in native states the Code of Civil Procedure has been applied, and its rules regulate appeals from these courts to the Privy Council. The Code of Civil Procedure applies to the following courts acting as High Courts or as Courts of Final Appellate Jurisdiction, for cases arising in the native states: (1) the Court of the Chief Judge of Mysore; (2) the Court of the Resident at Hyderabad with appellate jurisdiction from the Judicial Commissioners of East and West Berar, "Hyderabad Assigned Districts"; (3) the Court of the Resident of Kashmir; (4) Rajputana and various other courts.

An Order in Council of 1838, issued under 3 & 4 Will. IV. c. 41, s. 24, dealt with appeals from all courts of judicature in the territories under the government of the East Rules of appeal.

India Company, and still applies to appeals from the whole of British India. The clauses which are applicable are set out below at pp. 146—147, but the rules for appeal are now to be found mainly in the Code of Civil Procedure, of which a new edition was made by an Act of the Governor-General in Council, 1908. The sections of the Code and the Order which contains additional rules are set out below at pp. 149 ff. The Code, however, does not apply to those courts in the Scheduled Districts to which it has not been expressly made applicable by the notification of the Viceroy, and for the courts in those districts the Order in Council alone strictly supplies the regulations of appeal. Besides the rules of the Code, however, the regulations contained in the Letters Patent by which the High Courts in the four provinces were constituted apply to appeals from those courts.

Code of Civil Procedure.

Rules for Chartered High Courts.

These rules, which are identical for the four chartered high courts, are set out below, at pp. 147—149.

It is to be noted that they agree with the like rules in the Code of Civil Procedure as to the appealable amount in a civil case and as to the transmission of the record, but they confer an extended right of appeal from interlocutory judgments and in criminal cases where the High Court certifies that the case is a fit one for appeal.

High Court Rules.

Moreover, the High Courts (including those courts of highest appellate jurisdiction which rank as High Courts) have exercised powers given them by the Code of Civil Procedure (ss. 129—131) to make rules regarding the admission of appeals to the Privy Council which define, more exactly than the rules of the code, the procedure to be adopted in making up the record, etc. These rules have been published, and are set out at pp. 165 ff.

Finally, the Judicial Committee Rules of 1908, which deal with the steps to be taken when the appeal has been brought to England, apply to appeals from India. These rules with the notes upon them are to be found in Part II.

In an appeal from India it is necessary to take account of all these various sets of rules governing the practice.

Appended is a table of the rules governing the appeals from the High Courts :

Court by which the Rules were framed.	Where the Rules have been published.	Provisions regulating Appeals to His Majesty in Council.
Bombay High Court...	Chapter VI. of the Rules of the Bombay High Court, Appellate Side.	Charter creating S. C.; O. in C. 1838 and 1908; Letters Patent creating H. C.; C. C. P.
Calcutta High Court...	Published in the *Calcutta Gazette* of 20th May, 1891, Part I., page 497, etc.	Do.
Madras High Court ...	Published in *Fort St. George Gazette* of 28th November, 1876, Part II., pages 460 and 461.	Do.
N. W. P. High Court	Published in *North-Western Provinces and Oudh Gazette* of 7th December, 1889, Part II., page 1844, etc.	O. in C.; Letters Patent; C. C. P.
Court of the Judicial Commissioner, Oudh	*Oudh Gazette* of 11th July, 1874, Part II., page 13, etc.	O. in C., 1838: C. C. P. applied under Sched. Dist. Act.
Punjab Chief Court...	Published in Chapter LXI. of Vol. I. of the Rules and Orders of the Punjab Chief Court (1893).	Do.
Court of the Judicial Commissioner, Central Provinces ...	Published in *Central Provinces Gazette* of 2nd July, 1887, Part II., page 112, etc.	Do.

Rules of Appeal in Order in Council, 1838,

The Order in Council recites that by an Act passed in the fourth year of the reign of His late Majesty King William the Fourth, intituled, "An Act for the better Administration of Justice in His Majesty's Privy Council," it is amongst other things enacted, that "it shall be lawful for His Majesty in Council from time to time to make any such rules and orders as may be thought fit for regulating the mode, form, and time of appeal to be made from the decisions of the courts of judicature in India or elsewhere to the eastward of the Cape of Good Hope (from the decisions of which an appeal lies to His Majesty in Council),

Order in Council made by virtue of 3 & 4 Will. IV., c. 41, s. 24.

Courts Eastwards of the Cape of Good Hope.

and in like manner from time to time to make such other regulations for the preventing delays in the making or hearing such appeals, and as to the expenses attending the said appeals, and as to the amount or value of property in respect of which any such appeal may be made, and proceeds to approve of the several rules, orders, and regulations contained in the schedule hereunder written, and to order that the same be respectively observed by Her Majesty's Supreme Courts of Judicature at Fort William in Bengal, Fort St. George and Bombay respectively, and all other courts of judicature in the territories under the government of the East India Company, and by all persons whom it shall or may concern."

THE SCHEDULE TO ORDER IN COUNCIL, APRIL 10, 1838.

1. That from and after December 31 next, no appeal to Her Majesty, her heirs, and successors, in Council, shall be allowed by any of Her Majesty's Supreme Courts of Judicature at Fort William in Bengal, Fort St. George, Bombay, or by any other courts of judicature in the territories under the government of the East India Company, unless the petition for that purpose be presented within six calendar months (*n*) from the day of the date of the judgment, decree, or decretal order complained of, and unless the value of the matter in dispute in such appeal shall amount to the sum of 10,000 company's rupees (*o*) at least.

Petition for the purpose of appeal within six months.

10,000 rupees.

2. That in all cases in which any of such courts shall admit an appeal to Her Majesty, her heirs and successors, in Council, it shall specially certify on the proceedings that the value of the matter in dispute (*p*) in such appeal amounts to the sum of 10,000 company's rupees or upwards, which certificate shall be deemed conclusive of the fact, and not be liable to be questioned on such appeal by any party to the suit appealed.

Certificate of value.

(*n*) This accords with the Charter of 1774. The six months will be calculated from the final decision given in review of judgment. This period is absolute, and will not be enlarged by the court in India.

(*o*) And, where there is no certificate that the case is fit for appeal, the amount or value of the subject-matter in the suit must be 10,000 rupees, in the court of first instance.

(*p*) These words relate to the whole matter involved in the suit which was the subject of judicial inquiry in the suit. *Mussumat Ameena Khatoor* v. *Radhabenod Misser*, 7 Moo. I. A. 261 (1859).

3. Provided nevertheless, that nothing herein contained shall extend, or be construed to extend to take away, diminish or derogate from the undoubted power and authority of Her Majesty, her heirs and successors, in Council, upon the petition at any time of any party aggrieved by any judgment, decree, or decretal order of any of the aforesaid courts, to admit an appeal therefrom upon such other terms and upon and subject to such other limitations, restrictions, and regulations, as Her Majesty shall in any such special case think fit to prescribe. Prerogative preserved.

Rules in Letters Patent creating High Courts of Calcutta, Madras, Bombay and Allahabad.

Appeals to Privy Council.

39. And we do further ordain that any person or persons may appeal to us, our heirs and successors, in our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order of the said High Court of Judicature made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by judges of the said High Court, or of any Division Court, from which an appeal shall not lie to the said High Court under the provision contained in the 15th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree, or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to us, our heirs or successors, in our or their Privy Council. Subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to ourselves in Council from the courts of the said presidency; except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as we may, with the advice of our Privy Council, hereafter make in that behalf. Power to appeal.

Appeal from interlocutory judgments.

40. And we further ordain that it shall be lawful for the said High Court of Judicature, at its discretion, on the motion, or if the said High Court be not sitting, then for any judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to us, our heirs and successors, in our or their Privy Council, subject to the same rules, regulations, and limitations, as are herein expressed respecting appeals from final judgments, decrees, orders, and sentences.

Appeal in criminal cases, etc.

41. And we do further ordain that from any judgment, order, or sentence of the said High Court of Judicature made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to us, our heirs or successors, in Council, provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as we may with the advice of our Privy Council, hereafter make in that behalf.

Rule as to transmission of copies of evidence and other documents.

42. And we do further ordain that, in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature to us, our heirs or successors, in our or their Privy Council, such High Court shall certify and transmit to us, our heirs and successors, in our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made, in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to us, our heirs and successors, in our or their Privy Council, a copy of the reasons given by the judges of such court, or by any of such judges, for or against the judgment or determination appealed against.

And we do further ordain that the said High Court shall, in all cases of appeal to us, our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as we, our heirs or successors, in our or their Privy Council, shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal orders, or other order or rule of the said High Court, should or might have been executed.

INDIAN CODE OF CIVIL PROCEDURE.

(Act 5 of 1908). Part VII., and Order XLV., Schedule I.

APPEALS TO THE PRIVY COUNCIL.

109. Subject to such rules as may from time to time be made by His Majesty in Council (*q*) regarding appeals from the courts of British India, and to the provisions hereinafter contained, an appeal shall lie (*r*) to His Majesty in Council:

(a) From any (*s*) decree or final order passed on

Decrees from which appeals lie.

(*q*) The Orders in Council containing "such rules" specifically applying to the courts of British India are dated April 10, 1838 (made under 3 & 4 Will. IV. c. 41, s. 24), and December 21, 1908. See *infra*, Part II.

(*r*) The application for leave to appeal must be made within six months from the date of the decree. The period is fixed by the Order in Council of 1838, and also by the Limitation Act 9 of 1908, Schedule 179. Sect. 5 thereof gives power to enlarge the time. But this power would seem to be *ultra vires*. *Gajadhur Pershad* v. *The Widows of Emam Ali Beg*, 15 Bengal L. R. (1875), at 223 (P. C.); and see *Jawahir Lal* v. *Narain Das*, 1 All. (1878) 644. Cf. *Kirkland* v. *Modee Pestonjie Khoodsedjee* (3 Moo. I. A. 220.

(*s*) Decree is defined in sect. 2 of the Act as the formal expression of an adjudication which so far as regards the court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit, and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within sect. 47 or sect. 144, but shall not include (*a*) any adjudication from which an appeal lies as an appeal from an order; or (*b*) any order of dismissal for default..

A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

appeal by a High Court (*t*) or by any other court of final appellate jurisdiction (*u*) ;

(b) From any decree or final order (*t*) passed by a High Court in the exercise of original civil jurisdiction ;

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(c) From any decree (*x*) or order when the case, as

(*t*) *Decree or Final Order.*—A decree directing accounts is final within the section. *Rahimbhoy Hubibbhoy* v. *Turner* (1890), L. R. 18 I. A. 6 ; 15 Bom. p. 155. No order, judgment, or other proceeding can be final which does not at once affect the status of the parties for whichever side the decision may be given ; so that if it is given for the plaintiff it is conclusive against the defendant, and if it is given for the defendant it is conclusive against the plaintiff. *Per* Brett, L.J., *Standard Discount Co.* v. *La Grange*, 3 C. P. D. p. 71.

An order of a District Court in execution proceedings limiting the recovery of mesne profits is in the nature of a final decree, and is appealable. *Raja Bhup Bahadur Singh* v. *Bijai Bahadur Singh* (1900), L. R. 27 I. A. 209.

An order passed by the High Court deciding that a person should be allowed to sue in *formâ pauperis* in not a final decree passed in an appeal within this section, nor is it a final judgment made on appeal within sect. 39 of the Letters Patent, so that the High Court has no power to grant a certificate for leave to appeal from it. *Sakan Sing* v. *Gopal Neogi* 9 C. W. N. 296.

An order of the High Court refusing to admit an appeal after the period of limitation prescribed by the Act is not a decree passed on appeal by the court under sect. 109 of the Code, and there is therefore no jurisdiction to grant leave to appeal therefrom. *Sundir Koer* v. *Chandishur Prosed Singh* 30 Calc. 179 ; *Karsondas Dharansey* v. *Gangarai*, L. R. 32 Bomb. 108.

Definition of "High Court."

"High Court" shall mean the highest Civil Court of Appeal in the part of British India in which the Act or Regulation containing the expression operates. The definition of "High Court" applies to all Acts of the Governor-General in Council made after January 3, 1868. "District" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction, and includes the local limits of the ordinary civil jurisdiction of the High Court.

(*u*) *Appellate Jurisdiction.*—When the High Court of Bombay in the exercise of its extraordinary original civil jurisdiction, removed to itself for trial a suit instituted in the Resident's Court at Aden, a certificate for leave to appeal to the Privy Council was granted under sect. 40 of the amended Letters Patent, the value of the subject-matter being over 10,000 rupees and the question raised being one of jurisdiction. *Municipal Officer, Aden* v. *Abdul Karim*, I. L. R. 28 Bomb. 292).

(*x*) A limit is placed upon the discretion of the High Court of certifying by sect. 111. See note (*c*), p. 154, *infra*. It would seem from the wording of this sub-sect. (c) of the Code and the limitation of the restriction in sect. 110 to clauses (a) and (b) of sect. 109, that the Legislature intended to repose a discretion in the Indian courts to admit an appeal from any decree, whether it is of the value of 10,000 rupees or not, or whether a substantial question of law is involved or not—in fact, in any case of great importance or any test case—and that the employment of that exceptional discretion will not

hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council.

Value of subject-matter.

110. In each of the cases mentioned in clauses (a) and (b) of sect. 109, the amount or value of the subject-matter of the suit in the court of first instance must be 10,000 rupees (*y*) or upwards, and the amount

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afterwards be questioned in England if facts exist which justified it. In preferring an appeal to the Privy Council in a case which is under the appealable amount, the applicant should first apply to the High Court for a certificate under the second part of rule 5 (below) that the case is otherwise a fit one for appeal. *Moti Chand* v. *Ganga Pershad Singh* (1901), 29 I. A. 40.

(*y*) "Subject-matter of the suit" is not the same as subject-matter in dispute. *Hikmat* v. *Wali-un-nissa*, 12 All. at p. 509 (1889). Where the counter-claim is below the appealable amount, the total amount must be looked at. *Manley* v. *Palache*, 73 L. T. 98 (1895); 11 R. 566; see also *Kalka Singh* v. *Paras Ram*, P. C. Arch. (1894). The whole amount is to be looked at as it affects the interest of the party who is prejudiced by it. *Macfarlane* v. *Leclaire*, 15 Moo. P. C. 181; *Allan* v. *Pratt*, 13 A. C. 780 (1888), *Joogulkishore* v. *Jotendro Mohun Tagore*, 8 Calc. 210 (1882). For the mode of estimating the value, see *Sree Mutty* v. *Sutteeschunder*, *supra*. The stamp duty is not conclusive. *Mohun Lall Sookul* v. *Bebee Doss*, 7 Moo. I. A. 428 (1860).

Value of Suit.—Unless the case complies with both conditions, the appeal is inadmissible. Where the amount involved is under the appealable amount, before the application for special leave to the Privy Council, the applicant should first apply to the High Court for a certificate that the case is otherwise a fit one for appeal. Where the plaintiff claimed damages above the appealable amount and his suit was dismissed without determination of the amount that would have been recoverable, and the High Court refused leave to appeal, the Judicial Committee granted special leave. *Moulvi Mahomed Huq* v. *Wilkie*, L. R. 33 I. A. 166.

Appealable amount under Letters Patent.—In the Letters Patent of 1865 and 1866 creating the High Courts of Bengal, Madras, Bombay and the North-West Provinces, it is provided that an appeal shall lie from any final judgment of the High Court when the sum or matter in issue is of the value of 10,000 rupees, or such judgment, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to the value of 10,000 rupees. As to the right of appeal under this clause, see *Court of Wards* v. *Rajah Leelarund Singh*, 16 Sutt. W. R. 191; and cf. *Gurra Prosunno Lahiri* v. *Jotundra Mohun Lehiri* (1905), 32 Calc. 963. There a case having been sent back by the Judicial Committee to the High Court with a direction to take certain accounts, and a Division Bench of the High Court having taken the account and made a final decree, it was held that an appeal would lie to His Majesty in Council from the decree under sect. 39 of the Letters Patent. The amount in dispute was over 10,000 rupees, and the section of the Civil Procedure Code did not apply.

Cross-appeal.—Appeal from part of a decree does not open to respondents the whole decree. In certain circumstances they have been allowed to present a cross-appeal. *Myna Boyee* v. *Oottoram*, 1 Suth. W. R. 452, 456 (1861). The measure of value for determining a

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or value of the matter in dispute on appeal to His Majesty in Council must be the same sum or upwards, or the decree or final order must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value.

And where the decree appealed from affirms (*z*) the

plaintiff's right of appeal is the amount for which the defendant has successfully resisted a decree. Mesne profits, if demanded by the plaint, must enter into the calculation of the value. *Mahideen Hadijiar* v. *Pitchey*, (1893), A. C. 193; 62 L. J. P. C. 96.

(*z*) "*Affirms.*"—This provision is a re-enactment of sect. 5 of the Act 6 of 1874, which purports to limit the appeals under sect. 39 of the Letters Patent. Cf. as to the power of Indian legislature to so restrict appeals, *In re Feda Hossein*, 1 Calc. (1876) 431.

Special appeal.

The appeal by which a case heard on its merits by two successive courts can be brought before the High Court is known as a "special appeal." *Golam Ali* v. *Kalikista Thakoor*, 18 Suth. W. R. 299; and 12 Beng. L. R. P. C. 107 (1872). Cf. *Ramchunder Dutt* v. *Chunder Coomar Mundul*, 13 Moo. I. A. 181; *Moulvie Sayyud Ughur Ali* v. *Mussumut Bebee Ultaf Fatima*, *ibid.* 232 (Bengal, 1869). If, therefore, it is desired to reopen the facts before the Judicial Committee, it is necessary to apply in due time for special leave to appeal. *Golam Ali, etc.* (*supra*), 12 Beng. L. R. 107, at p. 108.

Concurrent findings.

Section 110 lays down in a somewhat more stringent form a rule which the Judicial Committee generally observe, that they will not, unless under very exceptional circumstances, disturb a finding of fact in which the courts below have concurred. In an appeal, therefore, from an appellate judge who has affirmed the judgment of a lower court, every subsequent court, including their lordships of the Judicial Committee, will be bound by the findings of facts, unless special leave to appeal therefrom be first obtained. Cf. *Lachman Singh* v. *Mussumat Puna*, L. R. 16 I. A. 125 (1889); *Ramratan Sukal* v. *Mussumat Nandu*, L. R. 19 I. A. 1 (1891); *Jagarneth Pershad* v. *Hanuman Pershad* (1908), L. R. 36 I. A. 221. The Judicial Committee is peculiarly unwilling to interfere with a concurrent finding of fact when the question embraces a great number of facts whose significance is best appreciated by those who are most familiar with Indian manners and customs. Cf. *Umreo Begam* v. *Irshed Husain*, 21 I. A. 163; and *Kunwar Sauwel Singh* v. *Rani Kunwar*, 33 I. A. 53. Concurrent findings will not be interfered with unless very definite and explicit grounds are assigned. *Moung Tha Hnyeen* v. *Moung Pan Nyo*, L. R. 27 I. A. 166 (1900). The rule is none the less applicable because the courts below have not taken precisely the same view of the weight to be attached to oral and documentary evidence respectively. *Ram Narain Singh* v. *Chowdhery Hanuman Sahai*, (1902) 30 I. A. 41. (See below, pp. 347 ff.)

Second appeals.

Second Appeals.—In *Rajah Amir Hassan Khan* v. *Sheo Baksh Singh*, L. R. 11 I. A. 237, the appeal was allowed where there was sunstantial error or defect in procedure. Cf. *Rani Hemanta* v. *Kumari Debi Brojendra Kishore*, L. R. 17 I. A. 65. A second appeal will lie on a finding of mixed law and fact, *e.g.*, adverse possession, where such finding depends upon the proper legal conclusion to be drawn from the findings as to simple facts. *Maharajah Sir Luchmeswar Singh Bahadoor* v. *Sheik Manowar Hossein*, L. R. 19 I. A. 48 (1891). Although the third court cannot enter upon the soundness of

decision or final order of the court immediately below the court passing such decree or final order, the appeal must involve some substantial question of law (*a*). Concurrent findings.

111. Notwithstanding anything contained in section 109, no appeal shall lie to His Majesty in Council from the decree or order of one judge of a High Court established under the Indian High Courts Act, 1861 (*b*), Bar of certain appeals.

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findings of fact, it can nevertheless adjudicate as matter of law upon the soundness of the conclusions which have been derived from those findings. *Ram Gopal* v. *Shamskaton*, L. R. 19 I. A. 228 (1892); *Lukhi Naragin Jagadeb* v. *Maharajah Jodu Nath Deo*, L. R. 21 I. A. at 45 (1893). Where additional evidence was taken by the appellate court, and the finding of the first court overruled, the Board refused on a question of fact to reverse the decree appealed from. The finding must be shown to be clearly wrong though the materials for decision are different in the two courts. *Jagarnath Pershad* v. *Hanuman Pershad* (1908), 36 I. A., p. 221. Cf. too, *Rani Srinati* v. *Khajindra Narain Singh*, L. R. 31 I. A. 12, where the Judicial Committee refused to interfere with concurrent findings of fact, though they thought the case one of great difficulty.

(*a*) The High Court certificate should show that the requirements of this section are fulfilled, or that the case is fit for appeal within sect. 109 (c). Where the decree affirms the court below, the certificate must show that a substantial question of law is involved. It is desirable that the High Court in refusing a certificate for leave to appeal to His Majesty in Council shall give their reasons for refusing it. *Venganat Swaroosathil* v. *Cherakunnath Namviyathan*, (1906) L. R. 33 I. A. 67.

Substantial Point of Law.—Where an appeal was admitted contrary to the section requiring a substantial point of law to be involved if the decree appealed from affirms the decision of the court below, it was dismissed by the Judicial Committee without a hearing. The High Court had granted leave to appeal stating that there seemed to be a point of law, which, however, had not been argued, but the Privy Council held there was no substantial point of law. *Karuppanai Servai* v *Srinivasai Chetti*, 1901, L. R. 29 I. A. 38.

Where no certificate of value was given, it was held that the High Court had no jurisdiction to give leave to appeal. Where the High Court partially allowed an appeal from a decision of the judge in a land valuation case, upholding the collector's award, it was held that the decree of the High Court was properly a decree of affirmance of the first court's decree as regards the subject-matter of the proposed appeal, and as there was no question of law the application should be refused. *Srie Nath Roy Bahad* v. *Secretary of State for India*, 8 C. W. N. 294.

(*b*) "*Established under the Indian High Courts Act*, 1861."—These are the High Courts at Calcutta, Madras, Bombay, and Allahabad. By sect. 15 of the Letters Patent, 1865 and 1866, thereunder, an appeal is given from such judges, not being such majority, to the High Court, as follows:— High Courts.

> And we do further ordain that an appeal shall lie to the said High Court of Judicature at Fort William, in Bengal, from the judgment (not being a sentence or order passed or made in any criminal trial) of one judge of the said High Court, or of one

or of one judge of a Division Court, or of two or more judges of such High Court, or of a Division Court constituted by two or more judges of such High Court whenever such judges are equally divided in opinion, and do not amount in number to a majority of the whole of the judges of the High Court at the time being; or from any decree (*c*), which under section 102, is final.

Saving of His Majesty's pleasure,

112. Nothing contained in this Code shall be deemed:

(a) To bar the full and unqualified exercise of His Majesty's pleasure (*d*) in receiving or rejecting

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judge of any Division Court, pursuant to sect. 13 of the said recited Act, and that an appeal shall also lie to the said High Court from the judgment (not being a sentence or order as aforesaid) of two or more judges of the said High Court, or of such Division Court, wherever such judges are equally divided in opinion, and do not amount in number to a majority of the whole of the judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court, or of such Division Court, shall be to us, our heirs, or successors, in our or their Privy Council as hereinafter provided.

This appeal, given by sect. 15 of the Letters Patent, has not been taken away, nor is the appeal to the Privy Council from the decision of such High Court. See *Sri Gridhoriji Maharaj Tickait* v. *Purushotum Gossami*, 10 Calc. at 817 (1884).

(*c*) The effect of this provision is to limit the decrees which the court under sect. 109 can certify as fit for appeal. Sect. 102 is as follows:

Second appeal.

No second appeal shall lie in any suit of the nature cognizable in courts of small causes, when the amount or value of the subject-matter of the original suit does not exceed 500 rupees.

The C. C. P. contains the following provision as to the hearing of appeals:

Judges differing in opinion.

Sect. 98. When the appeal is heard by a Bench of two or more judges, the appeal shall be decided in accordance with the opinion of such judges or of the majority (if any) of such judges. Where there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed: Provided that where the Bench hearing the appeal is composed of two judges belonging to a court consisting of more than two judges, and the judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other judges of the same court, and shall be decided according to the opinion of the majority (if any) of all the judges who have heard the appeal, including those who first heard it.

As to appeals from one judge sitting on appellate side as to the interpretation of a Privy Council decretal order, see *Rajah Lalanund Singh* v. *Maharajah Lakchmissar Singh*, 14 W. R. P. C. 23 (1870).

Special leave.

(*d*) *Special leave.*—Before an application for special leave to appeal is made to the Privy Council, leave should be applied for from the High Court, although the matter isbelow the appealable amount. *Moti Chand*

appeals to His Majesty in Council, or otherwise howsoever; or

(b) To interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee. and of rules for conduct of business before Judicial Committee.

Nothing herein contained applies to any matter of criminal (*e*) or admiralty or vice-admiralty jurisdiction or to appeals from orders and decrees of prize courts. Criminal and Admiralty Appeals.

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v. *Ganga Parshad Singh*, L. R. 29 I. A. 42. Where such application has not been made, the reason for the omission should be set out in the petition to His Majesty in Council for special leave to appeal. *Gungowa* v. *Erawa*, 13 Moo. I. A. 433 (1870). But in most cases where there is a doubt whether the matter is below the appealable value, it is as well to ask for leave to appeal below, if for no other reason than to obtain an opinion from the court as to whether they would be favourable to admitting the appeal if they had the power. See *Mutusawny Jagavera* v. *Vencataswara Yettai*, 10 Moo. I. A. at 320 (1865); *Gooroopersad Khoond* v. *Juggut Chunder*, 8 Moo. I. A. at 168 (1860). His Majesty's prerogative right to admit an appeal is not interfered with by the code. *Rahimbhoy Hubibbhoy* v. *C. A. Turner* (1890), I. L. R. 15 Bomb., p. 155. The Indian legislature has no power to limit that prerogative without the sanction of the Crown. *Modee Kaikhoorrow Hormusjee* v. *Cooverbaee*, 1 Suth. P. C. 268, 271. Where the High Court refused, for want of jurisdiction, to direct the manager of an estate to remain in possession pending an appeal which had not been certified by the High Court, but granted by special leave of the Queen, the Privy Council declined to interfere, but advised the grant of an order staying proceedings, the petitioner being answerable in damages, and any aggrieved respondent having leave to move to discharge the order. *Mohesh Chaudra Dhal* v. *Satrughan Dhal*, L. R. 26 I. A. (1899) 281.

(*e*) The Letters Patent, 1865 (in terms practically identical for Bengal, Madras and Bombay), contain, also, the following provision:

> Sect. 41. And we do further ordain that from any judgment, order, or sentence of the said High Court of Judicature made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner heretofore provided by any court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to us, our heirs or successors, in Council, provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as we may, with the advice of our Privy Council, hereafter make in that behalf. Letters Patent as to criminal appeal.

The Indian Criminal Procedure Code, 1898, s. 404 (cf. Act V. of 1898, p. 605), enacts that no appeal shall lie from any judgment or order of a criminal court except as provided by this Code or by any other law for the time being in force. It was formerly a question of consider

Order XLV.

Rules of appeal.

Order XLV. contains the following rules for appeal to the King in Council which further specify the procedure.

1. In this Order unless there is something repugnant in the subject or context, the expression "decree" shall include a final order (*f*).

2. Whoever desires to appeal to His Majesty in Council shall apply by petition to the court whose decree is complained of.

Certificate as to value or fitness.

3. Every petition shall state the grounds of appeal

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able doubt whether the Crown had reserved the power to grant leave to appeal in criminal cases coming from the Indian courts which had been established by royal charter. In the case of *Aga Kurboolie Mahumed* v. *Reg.*, 3 Moo. I. A. 164, an appeal in a criminal case on the ground of misdirection was allowed; but in the *Queen* v. *Eduljee Byramjee* it was held that the Crown had by the terms of the Charter of 1823 (granted by virtue of 4 Geo. IV. c. 71), parted with its prerogative in criminal appeals in Bombay. The correctness of this decision, however, has been questioned, and the better opinion is that it would not be followed. In *Cushing* v. *Dupuy*, 5 A. C. 409, where it was declared that a provincial legislature cannot derogate from the prerogative of the Crown to allow appeals as an act of grace, the case of *The Queen* v. *Eduljee Byramjee* was quoted in argument; but the principle established by the judgment is that the prerogative can only be taken away or cut down by express words and not by inference. Nevertheless, the Judicial Committee is very loth to grant leave to appeal from any criminal conviction by an Indian Court. Cf. *Re Rajendro Nath Mukerji*, L. R. 26 I. A. 242, and *Re Macrea*, L. R. 20 I. A. 90.

A criminal appeal as of right is admissible only from a judgment of the High Court in its original criminal jurisdiction, or on a point of law reserved for the High Court where the High Court declares it fit for appeal. The High Court, in determining what case is fit for appeal, follows the decisions of the Judicial Committee. *Reg.* v. *Pestanji Diusha*, 10 Bomb. H. C. p. 92. A point of law was reserved for the Sovereign in Council in *Yusufud Din* v. *The Queen* (Punjab, 1897), 76 L. T. 813, and misdirection was alleged in *Gangadhar Tilak* v. *The Queen*, L. R. 25 I. A. 1.

India.

Divorce appeals.—As to appeals in matrimonial jurisdiction, Act 4 of 1869, s. 56, provides that any person may appeal to His Majesty in Council from any decree (other than a decree *nisi*) or order under this Act of the High Court made on appeal or otherwise, and from any decree (other than a decree *nisi*) or order made in the exercise of original jurisdiction by judges of the High Court or of any Division Court, from which an appeal shall not lie to the High Court, where the High Court declares that the case is a fit one for appeal to His Majesty in Council.

Admiralty and Prize Court appeals are treated later. See Part III., p. 370.

(*f*) For meaning of "final order," see above, p. 150.

and pray for a certificate (*g*), either that, as regards amount or value and nature, the case fulfils the

(*g*) The certificate is to appear upon the proceedings, and is to be conclusive. The certificate is required, by Order in Council, 1838, s. 2, to be given in all cases in which any of the Indian courts admit an appeal to the Sovereign in Council. If the certificate as to the amount or value, given by the court appealed from is not borne out by the facts, the Judicial Committee will not be bound by it. In a case where it was certified, "That as regards the nature of the case, it fulfils the requirements of sect. 596 of Act No. 14 of 1882" (now s. 110), after the hearing of the appeal had proceeded for some time, the Judicial Committee ascertained that the amount in question was little more than 4,000 rupees. The court below had not been asked to certify and had not certified that, although as regards amount or value and nature the case did not fulfil the requirements of sect. 596, yet that it was "otherwise a fit one for appeal." "To certify that a case is of that kind," said Lord Hobhouse, in delivering the judgment of the Judicial Committee, "though it is left entirely in the discretion of the court, is a judicial process which could not be performed without special exercise of that discretion, evinced by the fitting certificate." *Banarsi Parshad* v. *Kashi Krishu Narain* (*Ex parte*) (Allahabad), (1900) 28 I. A. 11. The mere assent of the respondent cannot give the appellant a right of appeal which the Code does not allow, or sustain a certificate which is erroneous. *Ibid.* And cf. *Radha Krishu Das* v. *Rai Krishu Chand*, 1901 (P. C. Archives, 18th June).

The certificate.

In granting a certificate for leave to appeal from concurrent findings of fact, the High Court must show what point of law is raised by the appeal.

Certificate that substantial point of law is raised.

It was held in *Rajah Tasedduq Rasul Khan* v. *Manik Chand*, 30 I. A. p. 35, that the word decision means merely the decision of the trial by the court, and cannot be taken, like the word judgment, to mean the statement of the grounds on which the court proceeds to make the decree. If the Appellate Court affirms the decree, it is taken also to affirm the decision, and there must be some substantial question of law to justify a certificate for leave to appeal further to the Privy council. Where the decree of the Appellate Court was that the appeal be dismissed, but the court granted a certificate for leave to appeal on the ground that it had not affirmed the court below, it was held that the certificate was invalid. But the certificate was held to be defective solely because the judge had placed a wrong meaning on "decision," and, in a later case, a certificate of appeal given pursuant to sects. 595 and 600 of the Civil Procedure Code (now s. 109 and rule 3 above), that the case is a fit one for appeal, was held to be valid. *Webb* v. *Macpherson*, 30 I. A. 238.

The respondent may show cause why a certificate of leave to appeal should not be granted by the court. If he desires to do so, he should give notice to the applicant in the following form:

Showing cause against grant of certificate.

> Take notice that has applied to this court for a certificate that as regards amount or value and nature the above case fulfils the requirements of sect. 110 of the Code of Civil Procedure, 1908, and that it is otherwise a fit one for appeal to His Majesty in Council.
>
> The day of , 19 , is fixed for you to show cause why the court should not grant the certificate asked for.
>
> Given under my hand and the seal of the court this day of .

requirements of sect. 110, or that it is otherwise a fit one for appeal to His Majesty in Council.

Upon receipt of such petition, the court shall direct notice to be served upon the opposite party to show cause why the said certificate should not be granted.

Consolidation of suits.

4. "For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated; but suits decided by separate judgments shall not be consolidated notwithstanding that they involve substantially the same questions for determination."

Cf. *Denaran Singh* v. *Guni Singh*, I. L. R. 34 Calc, 401, where leave to appeal was granted in a number of cases which had been tried together, that were all dependent on the same subject, though the value of each suit was below 10,000 rupees, but taken in the aggregate the amounts in dispute were over that sum. For consolidation of separate judgments for purposes of appeal under the Statute (12 Geo. III. c. 70, s. 21), see *Moofti Mohummed Ubdsoleh* v. *Mootechund*, 1 Suth. P. C. 156.

Objection to grant of certificate.

5. In the event of any dispute arising between the parties as to the amount or value of the subject-matter of the suit in the court of first instance, or as to the amount or value of the subject-matter in dispute on the appeal to His Majesty in Council, the court to which a petition for a certificate is made under rule 2 may, if it thinks fit, refer such dispute for report to the court of first instance, which last-mentioned court shall proceed to determine such amount or order and shall return its report, together with the evidence, to the court by which the reference was made.

Effect of refusal of certificate.

6. If such certificate is refused, the petition shall be dismissed.

In the event of a refusal, the petitioner may nevertheless apply to His Majesty in Council for special leave to appeal. The petitioner should state in detail the facts and specifically

show the legal grounds of objection. See *Goree Monee Dossee* v. *Juggut Indro Narain*, 11 Moo. I. A. 1.

Procedure on grant of certificate.

7. When the certificate is granted, the applicant shall, either six months from the date of the decree complained of, or within six weeks from the grant of the certificate, whichever is the later date (*h*):

(a) Furnish security for the costs of the respondent; (*i*) and

(b) Deposit the amount required to defray the expense of translating, transcribing, indexing, and transmitting to His Majesty in Council a correct copy of the whole record (*k*) of the suit, except:

(1) Formal documents directed to be excluded by any Order of His Majesty in Council in force for the time being;

(*h*) The period mentioned in this section (unlike that in the Order in Council of 1838) is directory only, and may be enlarged for cogent reason. *Burjore* v. *Bhagana*, L. R. 11 I. A. 7 (1883) 10 Calc. 557; *Fazul-un-nissa Begam* v. *Mulo*, 6 All. 250 (1884); *Kangasayi* v. *Mahalashmamma* (1890), 14 Mad. 391. It would seem that application should be made to the court below to enlarge the time. *Mussumat Shyam Komadi* v. *Rajah Rameuwar Singh*, P. C. Arch. 26th May, 1900.

There is no appeal from the grant of a certificate (*Luft Ali Khan* v. *Asaur Reza*, 17 Calc. 455), nor from refusal to extend time. *Kishen Pershad Panday* v. *Tiluckdhari Lall*, 18 Calc. 182 (1890).

(*i*) The amount is estimated, and the balance, if any, remaining after defraying the costs is refunded. Translation is a necessary part of the costs of appeal to the Sovereign in Council. *Ram Coomar Ghose* v. *Prusunno Coomar Sannyal*, 10 Calc. 106.

(*k*) In *Sri Rajah Row Venkata Surya, etc.* v. *The Court of Wards* (August 3, 1897, P. C. Arch.), the Judicial Committee directed the Registrar of the Madras High Court to transmit only so much of the original record as properly bore upon, and might be material for, the decision of the questions of law which were decided by the High Court, and which formed the subject of the appeal. The petition showed that the record was of enormous bulk, and that the cost of transmitting the whole of it would be so great that it would prove a denial of justice and would be absolutely thrown away. See further as to record, Order in Council, 1908, p. 267 ff.

The High Court at Calcutta has invariably applied this rule also to cases where special leave to appeal has been granted by the Privy Council. The High Court has power to extend the term for depositing the estimated cost of translating, etc., but it ought not to do so without adequate reason. *Jotindra Nath Chowdhrey* v. *Prasanna Kumar Bahadur* C. W. N. 1104. Where there had been reckless extravagance in printing the record, their lordships directed that only the costs of two volumes should be allowed, limited to what was fair and reasonable. *Venkayyamma Garu* v. *Venkataramannayyamma*, 29 I. A. 106.

(2) Papers which the parties agree to exclude;

(3) Accounts, or portions of accounts, which the officer empowered by the court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and

(4) Such other documents as the High Court may direct to be excluded:

(2) When the applicant prefers to print in India (*m*) the copy of the record, except as aforesaid, he shall also, within the time mentioned in sub-rule (1), deposit the amount required to defray the expense of printing such copy.

Revocation of acceptance of security.

8. Where such security has been furnished and deposit made to the satisfaction of the court, the court shall:

(a) Declare the appeal admitted;

(b) Give notice thereof to the respondent;

(c) Transmit to His Majesty in Council under the seal of the court a correct copy of the said record except as aforesaid; and

(d) Give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

9. At any time before the admission of the appeal (*n*),

Printing of transcript.

(*m*) For further directions as to the transcript, see the Judicial Committee Rules of 1908, pp. 267 ff. The record is generally printed in India; otherwise, unless the appellant, within four months of the arrival of the transcript at the Privy Council Office, applies to have it printed, or takes some step the appeal may be dismissed without further order.

(*n*) Until the petition of appeal is lodged (which is the first step before the Judicial Committee (see pp. 278—279), the Judicial Committee have no jurisdiction to entertain any application in any appeal. *Gungadhur Seal* v. *Sreemutty Raddamoney*, 9 Moo. I. A. 411; cf. the provision of rule 11 as to stay of appeal until Order of His Majesty in Council, which contemplates an application "in the matter of an appeal."

the court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Power to order further security or payment.

10. Where at any time after the admission of the appeal, but before the transmission of the copy of the record, except as aforesaid, to His Majesty in Council, such security appears inadequate, or further payment is required for the purpose of translating, transcribing, printing (*o*), indexing, or transmitting the copy of the record, except as aforesaid, the court may order the appellant to furnish, within a time to be fixed by the court, other and sufficient security, or to make, within the like time, the required payment.

Effect of failure to comply with order.

11. Where the appellant fails to comply with such order, the proceedings shall be stayed, and the appeal shall not proceed without an Order in this behalf of His Majesty in Council, and in the meantime execution of the decree appealed against shall not be stayed (*p*).

Refund of balance of deposit.

12. When the copy of the record, except as aforesaid, has been transmitted (*q*) to His Majesty in Council, the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

Powers of court pending appeal.

13.—(1) Notwithstanding the grant of a certificate

(*o*) As to printing the record abroad or in England, see Judicial Committee Rules, *infra*, Chap. IX. Where the record is to be printed in England, if effectual steps are not taken by the appellant, the appeal will stand dismissed. As to the form and type to be used in printing records, see *infra*, p. 268.

(*p*) Although the appeal is admitted, there is no stay of execution unless expressly ordered under rule 13.

"*Proceedings*," *i.e.*, proceedings in the appeal.

"*In the meantime*" refers to the period between the failure to comply and the Order of His Majesty in Council allowing the appeal to proceed.

(*q*) Within four months of the arrival, the appellant must apply to have the record printed and engage to pay the cost (where the printing has not been done in India), otherwise the appeal will stand dismissed. (Judicial Committee Rules, p. 274.) Within twelve months of the arrival of the record, the appellant must take effectual steps to set down the appeal for hearing (*ibid.*, see p. 294); otherwise the respondent may move to dismiss for want of prosecution.

for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the court otherwise directs.

(2) The court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the court:—

(a) Impound any movable property in dispute or any part thereof; or

(b) Allow the decree appealed from to be executed, taking such security from the respondent as the court thinks fit for the due performance (*r*) of any Order which His Majesty in Council may make on the appeal; or

(c) Stay the execution of the decree appealed from, taking such security from the appellant as the court thinks fit for the due performance of the decree appealed from, or any Order which His Majesty in Council may make on the appeal; or

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(*r*) Where upon an application to stay execution the judges in India had differed in opinion, the Judicial Committee ordered a stay. *Chutraput Singh Doorga* v. *Dwarkanath Ghose and Another*, L. R. 12 I. A. 170 (1894), staying execution in India.

The court in India from which the appeal is brought now has power to order a stay of execution where special leave to appeal has been obtained from the Judicial Committee. Under the old rule by which the court admitting the appeal only has such power, it was held that the High Court could not order a stay. Cf. *Mohesh Chandra Dhal* v. *Gatrughna Dhal*, (1899) L. R. 26, I. A. 281. But in a petition brought under the new rules, where special leave to appeal was granted by the Judicial Committee, and a petition was subsequently presented to them for an order that execution should be stayed in India, the High Court being in doubt whether it had power to order a stay in the circumstances, the Committee held that the High Court had such power. It was said by Lord Macnaghten that the High Court was in a better position than the Board to determine whether execution should be stayed, and if so on what terms. *Srimati Nityumasi Dari* v. *Madhu Sudar Sen*, (1911) 38 I. A. 73.

An application for a stay of execution cannot be granted before an appeal to the Privy Council is finally admitted. *Jurag Kumari* v. *Gopi Chand Bothra*, 5 C. W. N. 562.

Application for a stay should always be made in the first instance to the court in India which has power to deal with the matter according to the circumstances, and has knowledge of details which the Judicial Committee cannot possess on an interlocutory application. Where the High Court thought that a stay should be granted but that

(d) Place any party seeking the assistance of the court under such conditions, or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

Increase of security found inadequate.

14.—(1) Where, at any time during the pendency of the appeal, the security furnished by either party appears inadequate, the court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the court:—

(a) If the original security was furnished by the appellant, the court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security;

(b) If the original security was furnished by the respondent, the court shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

Procedure to enforce Orders of the King in Council.

15.—(1) Whoever desires to enforce or to obtain execution of any Order of His Majesty in Council shall apply by petition (*t*), accompanied by a certified copy (*u*) of the decree passed or order made in appeal

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they had no power to allow it, the Judicial Committee allowed a stay on terms. *Vasudeva Modehai* v. *Sadagopi Modehai*, (1906) 33 I. A. 132.

Execution of Sovereign's Order.

(*t*) "*Apply by petition*" within twelve years. See Act 9 of 1908, Sched. I. (Limitation Act). The Order of His Majesty affirming a decree becomes the paramount decision. *Luchmun Persad Singh* v. *Kishem Persad Singh*, 8 Calc. 218 (1882). An Order of His Majesty amounts to a direction to the court below to clothe that declaration in the proper form of a mandatory order, and to give effect to such order. *Barlow* v. *Orde*, 2 Suth. W. R. 669 (1872).

(*u*) "*Certified copy.*" The terms of the recommendation of the Judicial Committee in their judgment are not sufficient; the formal Order of His Majesty is necessary. *Juggernath Sahoo* v. *Judoo Roy*

and sought to be executed, to the court from which the appeal to His Majesty was preferred.

(2) Such court shall transmit the Order of His Majesty in Council to the court which passed the first decree appealed from, or to such other court as His Majesty in Council by such Order may direct, and shall (upon the application of either party) give such directions as may be required (*x*) for the execution of the same; and the court to which the said Order is so transmitted shall enforce or execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

Directions as to execution of the King's Order.

When any moneys expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being (*y*) fixed at the date of the making of the order by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of His Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.

Appeal against order relating to execution.

16. The orders made by the court (*z*) which enforces or executes the Order of His Majesty in Council, relating to such execution, shall be appealable in the same manner and subject to the same rules as the

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Singh, 5 Calc. (1879), at 330. This section is directory only. *Hurrish Chunder Chowdry* v. *Kali Sundari Debia*, L. R. 10 I. A. 4 (1882).

A refusal by a judge to issue execution is appealable to the High Court. *Ibid.*

Directions as to execution.

(*x*) "*Give such directions.*" Such an order may amount to a judgment from which an appeal under sect. 39 of Letters Patent, 1865, would lie. An Order of the Privy Council for possession of lands was held to carry mesne profits. *Rajah Lelanund Singh* v. *Luckmissur Singh*, 13 Moo. I. A. 490 (1870). And where the decree of the court below was affirmed by the Order of the Sovereign in Council, it was held that mesne profits were recoverable up to the date of such order; and for a further period not exceeding three years until recovery of possession. *Raja Bhup Indar Bahadur Singh* v. *Bijai Bahadur Singh*, L. R. 27 I. A. 209 (1900).

Mesne profits.

(*y*) See *Param Sukh* v. *Ram Dayal*, 8 All. (1886) 650.

(*z*) This is the court which made the first decree appealed from, or such other court as His Majesty directs.

order of such court relating to the execution of its own decrees.

RULES *as to Appeals made under the Code of Civil Procedure by the Indian High Court.*

BOMBAY.

Rules regarding the admission of Appeals to His Majesty in Council from decrees passed on the Appellate Side of the High Court.

Security for costs.

1. Within the period prescribed by law, the appellant shall ordinarily find security for the payment of costs to the extent of Rs. 4,000, and may either deposit cash or Government securities to that amount, or may give as security immovable property, or enter into a recognizance with two sureties, to be approved of by the High Court. If he intends to give immovable property as security, he shall file a mortgage-bond duly registered; and, in order that the security may be tested, the parties thereto shall specify distinctly the origin and ground of their title. Provided that if on inquiry such security appears to be insufficient, the appellant may be called upon to deposit Rs. 4,000 in cash, or in Government securities, within six weeks from the date of the service upon him of such order. In cases of special magnitude and importance the court will, if necessary, require security for costs of appeal to a larger amount, but in no case exceeding Rs. 10,000.

Deposit for cost of transcript.

2. The appellant shall also, within the prescribed period, deposit in court, towards defraying the fees and expenses to be incurred in preparing the transcript record, the sum of Rs. 2,000.

Translation and transcript.

3. In all criminal and civil cases, the entire record, exclusive of all merely formal documents, will, with the exceptions hereinafter noted, be transcribed. On application being granted in a civil case the registrar or other proper officer of the court shall serve upon the parties notices calling upon them to specify within a certain time not

exceeding one month, what accounts attach to the record they consider to be necessary evidence in the appeal. And it shall be in the discretion of the said officer to omit from the transcript any accounts which have not within the time specified been expressly asked for by the parties. If either party shall expressly ask for translations of any accounts, the circumstance shall be noted in the transcript. Further, with a view to reducing in civil cases the bulk of the papers transmitted, a list of the papers which make up the record of the case will be furnished to the parties, as soon as possible after the grant of certificate ; and it will be competent to either party, within one month of his receiving such list, to indicate any documents which he considers immaterial to any question to be determined upon the appeal. If the parties are agreed as to the documents to be omitted, such documents will not be translated or transcribed, but in the case of the parties differing as to the proposed omissions, the matter may be brought before the court for determination. If either party expressly requests that a document held by the registrar or other proper officer to be merely formal may be translated and transcribed, such document shall be translated and transcribed and appended to the transcript record, the circumstance being noted on the document itself.

4. Within two weeks after the date of any final notification to the registrar, or other proper officer, specifying the papers to be translated, the chief translator or other proper officer shall certify by estimate whether the deposit made by the appellant will be sufficient to cover the expense with a margin of Rs. 300 ; and, if not, what further deposit will be necessary. The registrar, or other proper officer, will notify the amount of the further deposit to the appellant, who will be required to deposit this further amount within one month of the service of notice upon him. When the actual cost of the transcript has been ascertained, the balance, if any, of the amount deposited will be returned to the appellant.

5. If the appellant shall fail within the time prescribed to furnish security for costs of appeal, or to deposit the amount required for the preparation of the transcript record in accordance with rules 1, 2 and 4, the proceedings shall be

stayed, and the appeal shall not proceed without an Order in this behalf of His Majesty in Council.

Fees for translation.

6. The translations of documents required for the transcript record in appeals to His Majesty in Council will be made by the court's translators, or by such other persons as the honourable the Chief Justice may from to time appoint in that behalf. The parties on each side will be invited from time to time to inspect such translations, and in cases of disagreement, the points in dispute, which must be stated in writing, will be submitted to the chief translator, who shall decide. The translations thus made shall be examined and authenticated by the chief translator, or such other person as the honourable the Chief Justice may from time to time appoint in that behalf, and will be filed with the record of the case. A fee of R. 1 per folio will be levied on account of translation; R. ½ per folio on account of examination and authentication; and 2 annas per folio on account of transcription.

CALCUTTA (*a*).

Time for applications.

I. Matters connected with appeals to His Majesty in Council shall ordinarily be heard at such time as the Divisional Bench appointed to deal with such matters shall fix.

Ex parte applications.

II. Applications (1) for an order to transmit Orders in Council for execution to the lower courts, where no special directions are required; (2) transmit securities to the Mofussil Courts for investigation as to their sufficiency; and (3) for refunds of surplus deposits made for the purpose of preparing translations, manuscripts, etc., may, under ordinary circumstances, be made without notice to the opposite party. A separate list will be made of such applications, and they will be called on at the sitting of the court, when the court will determine whether notice must be given.

On notice.

III. In all other applications notice is necessary.

Form of notice.

IV. In all cases in which it is necessary that notice to any party shall issue, such notice shall be given by delivering to

(*a*) *Cal. Gazette*, Pt. I., May 20, 1891; Procedure and Practice, Chap. IV., Appeals to Privy Council.

the proper person a copy of this petition, together with a notice in the following form :

> Take notice that this application will be made in court on the day of 18 , at o'clock in the forenoon, when you are required to attend and show cause against the application if you are desirous to do so.

Service of notices.

V. A notice which it is necessary to serve under these rules or under sect. 600 of the Code of Civil Procedure, (*b*) may be served in the manner provided by the Code of Civil Procedure for the service of notices, or upon a vakeel who appeared for the party to whom notice is to be given in the appeal to this court, unless the vakalutnama of such vakeel has been cancelled with the sanction of the court. If there is no vakeel upon whom notice can be served, then unless the Divisional Bench shall otherwise direct, the notice must be served upon the party in Calcutta through the sheriff, or in the Mofussil through the court, on paying the usual fee. Such payment to be made by stamp affixed to the notice intended to be served. Notices intended to be served by the sheriff or in the Mofussil, will be signed by a judge if left with the clerk in charge of the department for that purpose.

Time for service.

VI. If the notice is to be served in Calcutta, it shall be served twenty-four hours before the sitting of the court at which the application is to be made : if it is to be served in the Mofussil, then the time is to be regulated by the time table prescribed in Rule XV., Chap. XVIII.

Setting down.

VII. All applications of which notice has been given to the clerk in charge of the department will be set down in a list in the order in which they are notified to him. The cases in the list will be called on peremptorily in their turn ; and if by the fault of the applicant, the application cannot be proceeded with, it will be liable to be dismissed.

Filing petition and application for estimate.

VIII. With the petition to be presented under sect. 598 (*c*) of the Code of Civil Procedure, the party desirous to appeal shall file an application, accompanied by a fee of Rs. 16, to the Clerk of Privy Council Appeals to prepare an estimate of the expense of translating, transcribing or printing, and forwarding to the Registrar of the Privy Council the record of the case.

(*b*) Now rule 3 of Order XLV., see p. 158.
(*c*) Now rule 2 of Order XLV.

IX. Such estimate shall be prepared with as little delay as possible, and ordinarily only on the paper book of the appeal as heard by the Division Bench in the particular case : Preparation of estimate.

Provided that it shall be competent to the Division Bench to require the applicant to state within a prescribed period what papers he may desire to have translated or transcribed for the purposes of his appeal, if admitted, and to pass orders accordingly.

X. The application for estimate shall state whether or not the record is to be printed in India. Printing.

XI. The applicant may, at the next sitting of the court, object to such estimate ; but such objection is not to delay the making of the deposit, except by leave of the court. Objection to estimate.

XII. All documents which are to be included in the transcript for the Privy Council, if not originally in English, shall be translated into that language, and all translations made or used shall be revised and certified by the sworn examiner. Translation of transcript.

XIII. An index of all the documents included in the transcript shall be prepared and annexed to the record in the following form, and shall be followed by a list of all other papers, documents and exhibits in the cause not included in the transcript ; the draft of this index and list shall be furnished to the parties, who shall be at liberty to object thereto within three weeks from the date of receipt. Index of documents.

Number on Record.	Mark (if any) in the court below.	Description and date of paper.	Whether the whole, portion, and (in case of a portion) what portion to be inserted in the transcript.	Page of transcript (to be filled in after).

XIV. Any of the parties to the suit may, within three weeks from the receipt of the draft of the index and list referred to in the preceding rule, apply to the Division Bench for an order that any paper on the record, not already Adding to and excluding documents from the transcript.

included in such index and list, may be added to, or, if already included, may be excluded from, the transcript under preparation for the Privy Council. Any cost incurred on such account shall be borne in such manner as the Division Bench may direct, provided that no such application shall be heard except after notice to the opposite party.

Order of documents in transcript.

XV. In the index and transcript the papers shall be placed in the following order:

Plaint.
Written statements.
Examination of parties, or their agents, etc.
Injunctions.
Orders of attachment, etc., (if any) obtained before judgment.
Issues found (if any).
Exhibits of plaintiff.
Depositions of witnesses for plaintiff.
Exhibits of defendant.
Depositions of witnesses for defendant.
Report of commission (if any), with maps, depositions, etc. annexed.
Judgment and decree.
Memorandum of appeal.
Cross-appeal or memorandum of objections under sect. 348 (if any).
Proceedings in Appellate Court (if any).
Judgment and decree of that court.
Petition of appeal to Privy Council, affidavits, etc.
Appendix (if any).
List of papers omitted under clause 2 of His Majesty's Order in Council, and under clause 6 of sect. 602 of the Code of Civil Procedure.

Charges.

The following charges shall be payable in respect of the matters specified:

	Rs.	*a.*	*p.*
Estimate of costs	16	0	0
Translation of vernacular portion of record, per 1,000 words	6	10	8
Examination of ditto ditto	3	5	4
Copying English portion of record, for every 1,440 words or part thereof	1	0	0

	Rs.	a.	p.
Examining English portion of record, for every 1,440 words, etc.	0	8	0
Transcribing (one copy) per folio of 72 words	0	2	0
(Or at the option of appellant.)			
Printing (55 copies) per printed page Rs. 2 to	3	0	0
Examination of transcript record, for every 72 words or part thereof	0	1	0
Examination of proofs, for every 750 words	1	0	0
Certifying two copies of printed record, for every 10 printed or manuscript pages, or part of 10 pages	1	0	0
Preparation of index, for every 16 papers or part of 16 papers	1	0	0

The above rates will be subject to alteration.

Appellant incurs cost.

XVI. The estimate shall include the matters referred to in the preceding rule and be framed in accordance with the charges above specified, and any appellant who has filed his petition of appeal shall be deemed to have incurred the charge for the preparation of an index and estimate, whether the appeal be admitted or not.

Nature of security.

XVII. In all cases the security offered under sects. 602, 605 and 609 of the Code of Civil Procedure (*z*) shall consist either of cash, or Government securities, or immovable property, and in the latter case the party finding the security shall file a mortgage bond duly registered, together with a specification of the title to the property.

Testing security.

XVIII. When such bond has been filed, the court shall, if the property be situate in Calcutta, direct the security to be tested by the registrar on the original side ; if in the Mofussil, by the judge of the district in which the immovable property offered as security is situate.

Objecting to sufficiency.

XIX. Upon the arrival of any report as to the sufficiency of any security, the clerk in charge of the department will enter the case in the list of business of the Division Bench, specifying the nature of the case. All parties desirous of objecting thereto, shall, within six days of the case being inserted in such list, file a notice specifying their objections,

(*z*) Now rules 7, 10 and 14 of Order XLV. See above.

and serve a copy of such notice upon the other parties to the appeal. All such objections will be disposed of at the next sitting but one after the arrival of the report.

Where security insufficient.

XX. If the security tendered be found insufficient, the appellant shall be bound, within six weeks of the date of such finding, to deposit cash or Government secureties to the extent of Rs. 4,000, or to such amount as will bring up the value of the security to Rs. 4,000.

Court closed.

XXI. In case the last day for making the deposit or giving the security under sects. 602, 605, and 609 (*aa*) of the Code of Civil Procedure shall fall on a day upon which the court is closed, the deposit may be made, or the security given, upon the first day upon which the court re-opens.

Next friend or guardian of infants, etc.

XXII. All applications by or on behalf of an infant or a person of unsound mind shall be made in the name of the infant or person of unsound mind by the person whose name is on the record as his next friend or his guardian; and whenever any application is consented to or opposed by an infant or person of unsound mind, the infant or person of unsound mind shall in like manner be represented by the person who appears in the record as his next friend or guardian.

Appointment of next friend, etc.

XXIII. In case there is no next friend or guardian upon the record, a separate application for appointment of a next friend or guardian must be made.

Certificate to successful appellant.

XXIV. When a party who has been successful in an appeal to His Majesty in Council applies for a certificate of the costs incurred in the appeal in this court the deputy registrar shall, upon production of the Order of His Majesty in Council for the payment of such costs and without reference to the court, prepare such certificate and place it on the record of the Privy Council appeal.

A copy of the certificate will then be taken by the party in the usual way.

MADRAS (*b*).

Petition for certificate.

I. Any person wishing to appeal to His Majesty in Council, must apply by petition to the High Court for the certificate

(*aa*) See note (*z*), p. 171.

(*b*) *Fort St. George Gazette*, Pt. 2, p. 460, November 28, 1876. Rules of High Court of Judicature of Madras (passed November 20, 1876).

prescribed in sect. 9 (*c*), and must set out in the petition the grounds of appeal to His Majesty in Council.

II. On such a petition being filed, a day shall be fixed by the registrar for the hearing of the petition, and notice thereof shall (unless otherwise ordered) be given to the opposite party. Notice of petition.

III. If the court grants the certificate, a certificate in the form hereinafter annexed shall be drawn up. Form of certificate.

IV. The sum to be deposited under clause (a), sect. 11 (*cc*), of the Act as security for the costs of the respondent shall, unless otherwise ordered, be Rs. 4,000. The deposit shall ordinarily be made in the form of Government securities. The security to be deposited under sects. 14 and 18 (f) shall be such further sums as shall in the circumstances of the case appear to the court to be adequate. The interest on the deposits shall be disbursed to the depositor as it falls due or allowed to accumulate, at his option. Amount of deposit.

V. When the security offered consists of immovable property, the appellant shall file a mortgage bond duly registered, together with a specification of the surety's title. Security on immovable property.

When such bond has been filed, the court shall direct the security to be tested, either by the registrar, or by the judge of the District Court in which the immovable property pledged is situated. If the security shall be found insufficient, the appellant shall be bound, within six weeks from the date of an order to that effect, to deposit cash or Government securities to the amount of Rs. 4,000, or to such amount as may raise the value of such security to Rs. 4,000.

But in any special case the court may, if it think fit, on the application of the respondent, require security to a larger amount; in no case, however, exceeding Rs. 10,000. Limit of security.

VI. It shall be competent to the court at any time before the admission of the appeal, upon cause shown, to revoke the acceptance of any security, and to make further directions thereon. Revocation of acceptance.

(*c*) That is, sect. 9 of the Privy Council Appeals Act (Act 6 of 1874), which became Chapter 45 of the 1882 Code of Civil Procedure (sects. 594—616), and Chapter 7 of the Act of 1908. See Order XLV., r. 3, *supra*, p. 156.

(*cc*) See rule 7, p. 159, and rule 14, p. 163.

Deposit for record.

VII. A sum of Rs. 500 (to be afterwards increased if necessary) shall be deposited to meet the expenses of preparing the record.

Certificate as to security.

VIII. When the security has been given, and the expense of preparing the record deposited, a certificate shall be granted in the form hereinafter annexed, and the preparation of the record shall proceed under the orders of the registrar.

Petition to admit appeal.

IX. Any time after the deposit of the security and expenses of preparing the record, the petitioner shall be at liberty to apply to the court by petition to declare his appeal admitted.

Order thereon,

X. On the admission of the appeal, an order in the form hereinafter annexed shall be drawn up, and notice thereof given to the respondent.

Further security before transmission of record.

XI. If, at any time after the admission of the appeal, but before the transmission of the record to England, it shall be shown to the satisfaction of the court that the security given by the appellant is insufficient, or it shall appear to the court that further payment is required for the purposes of the transcript, the court may call on the appellant to furnish other and sufficient security, or to make the required payment within a time to be limited, and if the appellant fail to comply with such order, the proceedings may be stayed, and the appeal shall not proceed without an order of the Judicial Committee, and in the meantime execution of the decree of the High Court shall not be stayed.

Transmission of record.

XII. Upon the registrar being satisfied that the notice in Rule X. has been duly served, the record may be completed and transmitted to England.

Printed copies.

XIII. If the record is printed by the High Court, thirty copies are to be delivered between the parties on each side, but the whole cost of preparing the record, whether printed or not, is in all cases to be paid by the appellant.

Form of Certificate.

Certificate under rule 3 of Order XLV., that the case is fit for appeal.

Read petition presented under sect. 7 of Act 6 of 1874 (*d*), praying for the grant of a certificate to enable the petitioner to appeal to His Majesty in Council against the decree of this court in suit, No. of .

(*d*) Now Act V. of 1908, Order XLV., r. 3.

This petition coming on for hearing: Upon perusing the petition and the grounds of appeal to His Majesty in Council, and upon hearing the arguments of for the petitioner, and of for the counter-petitioner (if he appears), it is hereby certified that (as regards the value of the subject-matter or the nature of the questions involved) the case fulfils the requirements of sect. 5 of Act 6 of 1874 (or that the case is otherwise than on the grounds stated in sect. 5 of Act 6 of 1874 a fit one for appeal to His Majesty in Council).

Certificate that Appellant has given Security for Costs of Respondent, etc.

Certificate that security has been given under sect. 602.

I certify that has this day deposited in the office of the registrar of the High Court the sum of as security for the costs of the respondent in an appeal sought to be preferred to His Majesty in Council against the decree of the High Court in suit No. of , and has deposited the sum of to defray the expenses of translating, transcribing, indexing, and transmitting to His Majesty in Council a correct copy of the whole record of the said suit.

Order Admitting Appeal to His Majesty in Council.

Order under sect. 603 declaring appeal admitted.

Read petition stating that in accordance with sect. 11 of Act 6 of 1874 the petitioner has deposited the sum of as security for the costs of the respondent in the appeal sought to be preferred by petitioner against the decree of this court in suit, No. of , bearing date the day of , 19 , and that he has also deposited a further sum of to defray the expense of preparing a copy of the record to be transmitted to His Majesty in Council, and praying that under sect. 12 of Act 6 of 1874, the High Court will be pleased to declare his appeal to His Majesty in Council admitted.

Read also certificate of this court granted under the provisions of sect. 9 of Act 6 of 1874, stating that the case fulfils the requirements of sect. 5, or is otherwise a fit one for appeal to His Majesty in Council.

Read also the certificate of the registrar of this court, dated , stating that on the day of , 19

the petitioner deposited in the office of the registrar a sum of as security for the costs of the respondent, and that he did also on the day of deposit with the registrar the further sum of to defray the expense of translating, transcribing, indexing, and transmitting to His Majesty in Council a correct copy of the record of this suit.

This petition coming on for hearing: Upon hearing the arguments of , and it appearing that petitioner has fulfilled the requirements of sect. 11 of Act 6 of 1874 in regard to giving security for the costs of the respondent and making deposit of the amount required to defray the expense of preparing a copy of the record for transmission to His Majesty in Council, this court doth hereby declare that the appeal of the petitioner to His Majesty in Council against the decree of this court in suit, No. of is admitted.

(Signed)

NORTH WEST PROVINCES (*d*)

1. The following classes of cases shall ordinarily be heard and disposed of by a single judge of the court:

(i.) All motions for the admission of appeals from original and appellate decrees and orders.

* * * * *

Security under rule 7.

224. The security for the costs of the respondent required by sect. 602 (*e*) of the Code of Civil Procedure shall in ordinary cases amount to Rs. 4,000. Such security shall consist of cash or of Government securities or of immovable property or of any or all together, if necessary, to secure the amount.

In the event of the court deeming it proper to call on the appellant under sect. 605 (*e*) of the Code of Civil Procedure to furnish further security, such further security shall consist of cash or of Government securities or of immovable property, or of any or all together, if necessary, to secure the amount, but in no case shall security be required, nor under sect. 605 (*e*) shall it be increased, to an amount exceeding Rs. 10,000.

225. The amount of the security to be furnished by the

(*d*) North West Provinces Rules, *N. W. P. and Oudh Gazette*, December 7, 1889, Pt. 11, p. 1844, etc. Dated November 30, 1889. In force January 1, 1890.

(*e*) Now rules 7 and 10 of Order XLV.

appellant or respondent under sect. 608 or sect. 609 shall be such as the court shall deem sufficient, and shall consist of cash or Government securities or of immovable property.

Immovable property as security.

226. When the security offered under sect. 602, sect. 605 (*f*), sect. 608, or sect. 609 consists, either *in whole or in part* of immovable property, the appellant or respondent, as the case may be, shall file a bond, duly registered, mortgaging the property, together with a specification of the title of the mortgagor.

Testing the security.

227. When such bond has been filed, the court shall direct the security to be tested, either by the registrar or by the judge of the court of the district within which the immovable property mortgaged is situate.

Estimate of cost of transcript.

228. When a certificate is granted, the applicant shall forthwith apply to the registrar to prepare list A (of papers to be transmitted to the Registrar of the Privy Council) and list B. (of formal and other papers not to be so transmitted), and to make an estimate of the cost of preparing the record for transmission, and shall state whether the transcript is to be printed in India or not.

229. On the receipt of the application, together with a fee of sixteen rupees, the registrar shall prepare or cause to be prepared the lists before mentioned, and make, or cause to be made, an estimate of the expense of translating, transcribing or printing, and of forwarding to the Registrar of the Privy Council the record of the case, including a margin of Rs. 200, and shall upon application to him deliver copies of the lists and estimate to the advocate, attorney or vakél of the applicant.

Objections to estimate.

230. At any time within two weeks from the delivery of copies of the list and estimate, the applicant may object thereto, and if the registrar refuse to allow the objection, the matter shall be at once submitted to a judge or judges for orders.

231. Ordinarily the whole record shall be *printed or transcribed*, with the exception of such documents, papers, and accounts as are specified in sect. 602, sub-sects. (1), (2), (3), and (4).

Translation.

232. All documents not drawn up or written originally in the English language, and which have not been translated

(*f*) Now rules 7, 10, 13, and 14 of Order XLV.

for the use of the court shall be translated into English, and all translations so made shall be certified by one of the court translators.

Index and list of documents.

233. An index of all the documents included *in the print or transcript* shall be prepared and annexed to the record in the form subjoined, and shall be followed by a list (B) of all other papers, documents, and exhibits in the cause not included in the print or transcript.

1	2	3
Serial number.	Description of document.	Remarks.

Arrangement of transcript.

234. In the index *and in the print or transcript* the papers shall be placed in the following order :

Plaint.
Written statements.
Examination of parties or their agents, etc.
Injunction.
Orders of attachment, etc. (if any) obtained before judgment.
Issues framed (if any).
Exhibits of plaintiff.
Exhibits of defendant.
Report of Commissioner (if any) with maps, dispositions, etc., annexed.
Judgment and decree.
Memorandum of appeal.
Cross appeal or memorandum of objections under sect. 561 (if any).
Proceedings in Appellate Court (if any).
Judgment and decree of that court.
Petition of appeal to Privy Council, affidavits, etc.
Appendix (if any).
List B of papers omitted under rule 231 of these rules.

Charges.

235. The following charges shall be estimated for and payable in respect of the matters specified :

	Rs.	a.	p.
Translation of vernacular portion of record, for 150 or any less number of words than 150	1	0	0
Copying English portion of record for printing, for every 1,440 words or for any less number of words than 1,440	1	0	0
Examining copy of the English portion of record for printing, for every 1,440 words or for any less number of words than 1,440	0	8	0
Printing, when required by an appellant or appellants (55 copies) per printed page, not exceeding	2	4	0
Correction of proof, per full page	0	8	0
Certifying two copies of printed record, for every 10 pages	1	0	0
Transcribing one copy, when required by an appellant or appellants, for Privy Council, for every 800 words or for any less number of words than 800	0	8	0
Preparation of index, for every 16 papers ...	1	0	0

Maps as per estimate to be initialled by the registrar.

Four consecutive figures or, if there be not four consecutive figures, then any less number of consecutive figures, shall be counted as one word.

In all cases estimates of the charges for maps shall be initialled by the registrar.

Lists of documents.

236. Immediately after the court shall have declared the appeal admitted, copies of the lists A and B shall be furnished to the advocate, vakél or attorney of the respondent, who may within two weeks of the receipt of the same apply to the registrar to include in list A any documents, papers, or accounts which he may consider necessary. Such application shall either be allowed by the registrar or be referred by him for the order of a judge or judges.

Recovery of costs of appeal.

237. Every application for the recovery of costs incurred in British India in connection with appeals to His Majesty in Council shall ordinarily be made to the Bench from whose order or decree an appeal is presented, and no such application shall be entertained except on proof that fourteen days'

notice of the intention to make the application, together with a memorandum of the costs claimed, has been given to the other party.

Notice of despatch of record.

238. In all cases appealed to His Majesty in Council notice of the despatch to England of the records of the cases shall be given to the parties through their advocate, attorney or vakél.

Where the Government is a party.

239. In cases in which the Government is a party, the requisite notice will be given to the Government advocate or Government pleader.

THE PUNJAB (*e*).

Rules made by the Chief Court of the Punjab under the powers conferred by sect. 612 (*f*) of the Code of Civil Procedure regulating the practice and proceedings of the court in regard to the admission of appeals to His Majesty's Privy Council.

Notices and their service.

I. Notices under sect. 600 or sect. 603 of the Code of Civil Procedure (*g*) shall be in the prescribed forms, and shall be served under the rules in force for the service of ordinary processes of the chief court.

Amount and nature of security.

II. The security for the costs of the respondent referred to in sects. 602 and 605 (*h*) of the Code shall ordinarily be to the amount of Rs. 4,000, and shall consist either of cash or of Government securities.

In any special case the chief court may, if it think fit, upon the application of the respondent, require security to a larger amount; in no case, however, exceeding Rs. 10,000.

The security referred to in sects. 608 and 609 of the Code shall be of such nature and amount as the court may, on the merits of the case, decide.

Estimate of costs.

III. Upon the application of the appellant, accompanied by the prescribed fee, an estimate of the amount required to defray the expense of translating, transcribing, indexing and transmitting to England the copy of the record of the suit

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(*e*) Rules regulating the preparation of transcript records in appeals admitted by the Chief Court to His Majesty's Privy Council.

(*f*) Now sect. 130.

(*g*) Now rules 3 and 8 of Order XLV.

(*h*) Now rules 7 and 10 of Order XLV.

shall be prepared under the orders of the registrar, with reference to the rates for the time being in force, within fourteen days of such application :

Estimates may be dispensed with.

Provided that it shall be at the discretion of the registrar to dispense with the estimate, and allow the appellant to deposit such sum on account of expenses as may, under the circumstances of the case, seem reasonable.

List of papers.

IV. Within fourteen days of the admission of the appeal, a list of all the papers in the record shall be prepared, under the orders of the registrar, with a column showing which papers it is proposed to transcribe and which to omit, the papers marked for omission being ordinarily those specified in sect. 602, clause b, (1) and (3) of the Code ; and copies of this list shall be forwarded to the appellant and respondent.

Documents omitted by agreement of parties.

V. It shall be competent to either party in the cause, within fourteen days of the receipt of the list, to indicate any documents, besides those marked for omission, which they wish to exclude.

If the parties concur in the additional omissions proposed, the documents so indicated will be omitted ; in the event of the parties differing as to the proposed omissions, the matter will be laid before a judge of the court, whose decision will be final.

Translation of documents.

VI. All documents which are not originally in the English language, and which have not been translated for the use of the court, shall be translated into English, under the orders of the registrar, and all the translations made or used shall be revised and authenticated by the head translator of the court.

[*Note.*—For such translation, revision, and authentication, a time not exceeding four months shall be fixed by the registrar.]

Transcribing of record.

VII. The translation, revision, and authentication having been completed, the preparation and examination of the transcript record for despatch to England shall be carried out under the orders of the registrar, who shall certify under his hand the correctness of the transcript.

[*Note.*—For the purpose of this rule a period of two months shall be allowed.]

Chronological arrangement and index.

VIII. As soon as the transcript record is complete, it shall be reduced, as far as possible, to chronological order, and a

complete index of all the papers, documents, and exhibits in the cause, with a list showing which have been omitted from the transcript record, shall be prepared under the orders of the registrar within a period of one month.

Arrangement may be other than chronological.

IX. It shall be competent to either party to apply that the papers composing the transcript record may be arranged in some other order than chronological order.

If both parties agree to the order proposed, and the registrar approve, the papers shall be so arranged; and if not, the question shall be referred to a judge, whose decision shall be final.

Analytical index.

X. Either party may apply that an analytical index be prepared of the papers composing the transcript record, in addition to the chronological index referred to in Rule VIII.; and if the application be approved by the court, such index shall be prepared under the orders of the registrar, at the expense of the appellant.

Transmission of transcript record to England and notice to parties.

XI. When the transcript record and index are complete, the whole shall be transmitted without delay to the registrar of the Judicial Committee of the Privy Council, and intimation of the despatch shall be given to the appellant and respondent.

Extension of period under the rules.

XII. The periods prescribed in Rules III., IV., VI., VII., and VIII. for the several stages in the compilation of the the transcript record may, for sufficient reason, be extended under orders of the court.

Court means a single judge.

XIII. For all purposes of these rules where the orders of the court are required, the order of one judge shall be sufficient.

Registrar may depute his duties to another.

XIV. The registrar may, under the orders of the court, depute any of the duties which devolve upon him under these rules to the deputy registrar or other officer of the court.

SCHEDULE.

Charges in respect of the matter provided for in the Privy Council Appeal Rules:

	Rs.	*a.*	*p.*
Estimate of costs	16	0	0
Preparation of list of papers, per 10 entries, or part of 10 entries	1	0	0

	Rs.	a.	p.
Report on agreement or disagreement of parties as to omission, for each entry	0	1	0
Translation of vernacular papers, per 1,000 words	8	0	0
Revision of vernacular papers, per 1,000 words	4	0	0
Transcribing record, per 1,000 words	1	2	0
Examining and certifying ditto	0	10	0
Chronological index, per 10 entries, or part thereof	3	0	0
Analytical index	Special charge		

Notes.—(a) Translation includes the reading of the translated documents to the examiner.

(b) The above charges are subject to alteration by order of the court.

CEYLON (*i*).

Ceylon.—Ceylon was taken from the Dutch in 1796, and was constituted a separate colony in 1801. The Roman-Dutch law is in force.

Supreme Court.

The Supreme Court was created by Royal Charter in 1833. It has equitable jurisdiction by virtue of the Roman-Dutch law, though there is no Court of Chancery.

Appeals.

The appeal to the Sovereign from the Supreme Court was till recently subject to the rules in the Ceylon Civil Procedure Code Ordinance No. 2 of 1899, but is now regulated by a local Ordinance, No. 31 of 1909, and by an Order of 1910 made subject to that Ordinance for further regulating the procedure.

Appealable amount.

The Ordinance provides that the Rules of Colonial Appeal in general shall apply to appeals from Ceylon, subject to certain additional provisions, set out below, and to the special provisions of the rules of 1910. The appealable amount is Rs. 5,000 or upwards, and an appeal may be allowed in any other case where the court thinks fit.

Application for leave.

Application to the court for leave to appeal must be made by petition within thirty days from the date of the judgment appealed from. Security must be given within three months, and shall not exceed Rs. 3,000.

(*i*) Ceylon is not a part of India, but a separate colony; it is treated here for the sake of convenience.

There are special provisions with regard to security as follows :

(4) At any time before giving final leave to appeal, the court may, upon cause shown, revoke the acceptance of any such security and make further directions thereon.

Provisions as to further security.

(5) If at any time after final leave to appeal is allowed, but before the transmission of the copy of the record to His Majesty in Council, such security appears inadequate, the court may order the appellant to furnish within a specified time other and sufficient security.

Failure to give additional security —execution to issue.

(6) If the appellant fails to comply with such order, the proceedings shall be stayed, and the appeal shall not proceed without an Order in that behalf of His Majesty in Council, and in the meantime execution of the decree appealed against shall not be stayed.

Security when not required in case of immovable property.

(9) In any case where the subject of litigation shall consist of immovable property, and the judgment appealed from shall not change, affect, or relate to the actual occupation thereof, no security shall be demanded either from the respondent or appellant for the performance of the judgment to be pronounced or made upon such appeal ; but if such judgment shall change, affect, or relate to the occupation of any such property, then such security shall not be of greater amount than may be necessary to secure the restitution free from all damage or loss of such property, or of the intermediate profit which, pending any such appeal, may probably accrue from the intermediate occupation thereof.

Security in cases of movable property.

(10) In any case where the subject of litigation shall consist of money or other chattels, or of any personal debt or demand, the security to be demanded, either from the respondent or the appellant for the performance of the judgment to be pronounced or made upon such appeal, shall be either a bond to be entered into in the amount or value of such subject of litigation by one or more sufficient surety or sureties, or such security shall be given by way of mortgage or voluntary condemnation of or upon some immovable property situate and lying within this island, and being of the full value of such subject of litigation over and above the amount of all mortgages and charges of whatever nature upon and affecting the same.

The provision as to the execution of the judgment is likewise more elaborate than in the case of other colonies. The Ordinance sect. 31 provides as follows: "Any Order which His Majesty in Council may think fit to make on an appeal from a judgment of the court may be enforced and executed in manner hereinafter appearing:

Judgment of Privy Council, how enforced.

Whoever desires to enforce or obtain execution of an Order of His Majesty in Council shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the court.

Such court shall, when the court which made the first decree appealed from is the Supreme Court, enforce and execute such order in the manner and according to the rules applicable to the enforcement and execution of its original decrees; but when the court which made the first decree appealed from is a court other than the Supreme Court, shall transmit the Order of His Majesty to the court which made such decree, or to such other court as His Majesty by his said Order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the court to which the said Order is so transmitted shall enforce and execute it accordingly in the manner and according to the rules applicable to the enforcement and execution of its original decrees.

"The Act of 1909 does not expressly repeal sect. 791 of the Civil Procedure Code, 1889, which may therefore be taken to remain in force; it provides that:

Order enforcing judgment of Privy Council, how far appealable.

"The orders made by the court which enforces or executes the Order of His Majesty in Council relating to such enforcement or execution, shall be appealable in the same manner and subject to the same rules as the orders of such court relating to the enforcement or execution of its own decrees."

Power to make rules.

The judges of the Supreme Court have power to make rules and orders of court regulating the procedure under the ordinance; and their power has been exercised by the issue of the rules given below.

Finally, provision is made for the conduct of appeals pending at the date of the ordinance and brought under the old rules.

ORDER FOR REGULATING THE PROCEDURE UNDER THE APPEALS ORDINANCE, 1909.

Interpretation.

1. In this Order "The Ordinance" means "The Appeals (Privy Council) Ordinance, 1909"; "The Scheduled Rules" means the rules in Schedule I. to the Ordinance; and, for the purpose of applications under the Scheduled Rules, "Court" means the Supreme Court of Ceylon consisting of not less than two judges.

A court of two judges may refer matter to a full court, and a single judge to two judges.

2. A court consisting of not less than two judges may refer any matter before it arising under the Ordinance or the scheduled rules to a court of not less than three judges; and a single judge whether sitting in court or in chambers may refer any such matter before him to a court of not less than two judges.

Notices.

3. A party who is required to serve any notice may himself serve it or cause it to be served, or may apply by motion in court before a single judge for an order that it may be issued by and served through the court; and in the latter case he shall, within two days after obtaining the order, lodge in the registry a notice in duplicate, prepared for the registrar's signature and duly stamped. The notice may be served either on the party or on his proctor.

Appointments of proctors to be filed in the registry.

4. A party to an application under the Ordinance, whether applicant or respondent, shall, unless he appears in person, file in the registry a document in writing appointing a proctor of the Supreme Court to act for him in connection therewith; provided nevertheless that, if he has already filed in the registry a writing appointing a proctor to act for him for the purposes of the original appeal to the court, and empowering him to act under the Ordinance, no further appointment shall be required.

Security for costs of appeal.

5. The security to be given by the applicant under rule 3 (a) of the scheduled rules shall be by deposit of a sum of Rs. 3,000 with the registrar and hypothecation thereof by bond, or by such other security as the court shall, on application made after notice to the other side, approve.

Deposit to meet costs of transcribing, etc.

6. (a) The applicant, on obtaining conditional leave to appeal, either shall deposit with the registrar a sum of Rs. 300 in respect of the amounts and fees mentioned in sect. 5 (2) (b) and (c) of the Ordinance; or may apply in writing

to the registrar, stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees, and thereafter deposit the estimated sum with the registrar.

(b) If it appears at any time that the Rs. 300 or the estimated sum is not or will not be sufficient, the court or a judge in chambers may, on the application of the registrar, on notice to the applicant, require any further sum to be deposited.

(c) The deposit shall be made within three months from the date of the hearing of the application for leave to appeal.

(d) Any balance of the deposit, after payment of the said amounts and fees, shall on application therefore by the depositor be repaid to him by the registrar.

Application for final leave to appeal.

7. Application for final leave to appeal shall be by petition, which shall state how the conditions ordered under rule 3 of the scheduled rules have been complied with.

Documents to be included in the record.

8. The appellant shall, within ten days after obtaining final leave to appeal, serve on the respondent a list of all such documents as he shall consider necessary for the due hearing of the appeal; and the respondent shall, within five days after the receipt of such list, return it to the appellant, having first added to it any other documents that he may consider necessary for the hearing of the appeal, and notified thereon which (if any) of the documents in the appellant's list he considers to be unnecessary; and the appellant shall, within three days after the return of such list, lodge it with the registrar, having first notified in like manner which (if any) of the documents added by the respondent he considers to be unnecessary.

If the record is printed in Ceylon.

9. If the appellant elects to print the record or any part of it in Ceylon, he shall deliver the prints thereof to the registrar for examination and certification within two months after obtaining final leave to appeal.

If conditions not complied with, registrar not to forward record to Privy Council.

10. If, after final leave to appeal has been obtained, the conditions (if any) imposed under rule 3 of the scheduled rules or the terms of this Order have not been complied with, the registrar shall not transmit the record to the Privy Council until the appellant has obtained an order for the transmission thereof from the court.

Applications under rules 26 and 27.

11. Before making an order on an application under rule 26 or 27 of the scheduled rules, the court may refer the application to the court of original jurisdiction in which the action was brought, to inquire and report who 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.

Fees and amounts payable for transcribing, etc., the record.

12. The amounts and fees payable under sect. 5 (2) of the Ordinance shall be in accordance with the scale in Schedule I. hereto, and shall be allowed on taxation.

Stamp on certificate of appeal.

13. Stamps for the duty payable in respect of the registrar's certificate in appeal to the King in Council shall be lodged by the party applying for leave to appeal at the same time at which he gives security for the prosecution of his appeal.

Applications in chambers.

14. All applications to enlarge or abridge the time prescribed by this Order or by any order made thereunder, and all applications for payment out of money deposited in court, may be made to a single judge in court or in chambers. All application in chambers must be by motion in writing, and may be supported or opposed by the proctors representing the parties.

Minute book.

15. There shall be kept in the registry a book in which shall be entered in order of date under the head of each action a record of all proceedings taken and things done under the Ordinance from the filing of the application for leave to appeal; and the book may be inspected by the parties or their proctors.

Extension of time.

16. The court may, for good cause, extend the time allowed by this Order for doing any act, notwithstanding that the time has expired.

Commencement of this Order.

17. This Order shall come into operation when the ordinance is proclaimed, and may be cited as "The Appellate Procedure (Privy Council) Order, 1910."

Forms.

18. The forms contained in Schedule II. to this Order may be used, or others to the like effect.

SCHEDULE I.

(a) Fees to be paid to the Registrar of the Supreme Court for examining and certifying copies of the record for

transmission to the Registrar of the Privy Council, whether they are printed or typed or in manuscript :

	Rs.	c.
Where the record contains 150 folios or under, a fee of	105	0
Where the record contains over 150 folios but under 250 folios.....	157	50
For every 25 folios or part thereof in excess of 250 folios, a further sum of	10	50

(b) Amounts payable in respect of translating, transcribing, indexing, and transmitting the record :

For translating where any documents are specially ordered by the court to be translated :		
For every folio	0	37½
With a minimum charge of	5	0
For fair copying the record and examining the transcript thereof :		
For every folio	0	20
With a minimum charge of	10	0
For examining the record when printed :		
For every folio	0	7½
With a minimum charge of	5	0
For transmitting the record, the actual sum paid by the registrar for transmission by post or otherwise and for insurance.		

(A folio to consist of 120 words.)

SCHEDULE II.

(a) Form of Petition for Conditional Leave to Appeal.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

(*Title of Action.*)

To the Honourable the Chief Justice and the Justices of the Supreme Court.

The humble petition of *A.B.*, $\frac{\text{plaintiff}}{\text{defendant}}$, appellant above named (appearing by his Proctor *C. D.*),

Showeth as follows :

1. That feeling aggrieved by the judgment and decree of this honourable court pronounced on the day of

, 191 , the , appellant, is desirous of appealing therefrom.

2. That the said judgment is a final judgment, and the matter in dispute on the appeal amounts to or is of the value of Rupees five thousand or upwards (*a*).

Wherefore the appellant prays for conditional leave to appeal against the said judgment of this court dated the day of , 191 , to His Majesty the King in Council.

(*a*) If the appeal falls under the latter part of sub-sect. (a) of Scheduled Rule 1, or if the application is made under Scheduled Rule 1 (b), it shall be here set out. N.B.—If the appellant desires, the petition can embody an application for settlement of security under paragraph 5 of the Order.

(b) Form of Petition for Final Leave to Appeal.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

(*Title of Action.*)

The humble petition, etc., .

Showeth as follows:

1. That the appellant on the day of , 191 , obtained conditional leave from this honourable court to appeal to His Majesty the King in Council against the judgment of this court pronounced on the day of 191 .

2. That the appellant has in compliance with the conditions on which such leave was granted (*here set out in what manner security has been given, the registrar's fees deposited, and any other condition complied with*).

Wherefore the appellant prays that he be granted final leave to appeal against the said judgment of this court dated the day of 191 , to His Majesty the King in Council.

(c) Form of Bond where security is by Deposit with Registrar.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

(*Title of Action.*)

Know all men by these presents that I, *A. B.*, the appellant above named, am held and firmly bound to *E. F.*,

Registrar of the Supreme Court, or to the registrar of the said court for the time being, in the sum of Rupees , which amount I deposited with the said registrar on the day of , 191 , and for the payment of which sum I bind myself, my heirs, executors, and administrators firmly by these presents.

And for further securing the payment of the said sum of Rupees , I do hereby specially mortgage and hypothecate unto the said *E. F.* and his successors in the said office of registrar the sum of Rupees so deposited with him as aforesaid.

Dated at , this day of , 191 .

Whereas the said *A. B.*, on the day of , 191 , obtained leave to appeal to His Majesty the King in his Privy Council against the judgment and decree of the Supreme Court pronounced on the day of , 191 :

And whereas such leave to appeal was granted subject (*inter alia*) to the condition that the said *A.B.* should within three months from the date of the hearing of the application deposit with the Registrar of the Supreme Court the sum of Rupees :

Now the condition of this obligation is such that if the above bounden appellant shall duly prosecute the said appeal to His Majesty in Council, and shall and will well and truly pay or cause to be paid all such costs as may become payable to the respondents in the event of the appellant 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 the respondent's costs of appeal (as the case may be), then this obligation to be void and of no effect; otherwise to remain in full force.

Signed and delivered in the presence of .

PART II.

CONDITIONS AND RULES OF APPEAL IN THE PRIVY COUNCIL.

CHAPTER V.

APPEAL BY RIGHT OF GRANT.

Power of Colonial Court to grant leave to appeal.

In the former part of this book it has been pointed out that in nearly every possession of the British Crown, and in every place where the Sovereign has jurisdiction, the conditions of appeal in accordance with the royal grant have recently been laid down by Orders in Council on a uniform scheme. Under this scheme the Colonial Court or the Court of Foreign Jurisdiction may give leave to appeal to the Sovereign in two sets of cases. First, when the appellant establishes that the suit is a final judgment and is within an appealable amount fixed for the court by the Order in Council or Ordinance regulating appeals. Secondly, when, though not within the appealable amount or not a final judgment, the question involved in the appeal in the opinion of the court is one which by reason of its great general or public importance or otherwise ought to be submitted to His Majesty in Council. In the first case the local court cannot refuse the leave to appeal if it is applied for within the prescribed time, and the appellant is willing to fulfil the prescribed conditions. In the second case it is entirely in the discretion of the court to grant or refuse leave to appeal. Till recently the appeal by right of grant only comprised, in the case of most colonies, those suits which were within the appealable amount, and in every other suit the appellant had to obtain special leave from the Privy Council before he could bring his appeal. But in accordance with the desire of the Colonial Conference of

1907, the prerogative to grant special leave to appeal has been largely delegated to the discretion of the local courts, so that now an appeal may be allowed by the local court in any case whatsoever save where an Imperial or local statute provides otherwise. And wherever leave is given by a colonial court, the appeal is brought by right of grant.

The appeal as of right.

Where a grant, which is issued either by virtue of the royal prerogative or in pursuance of an enabling statute, such as the 7 & 8 Vict. c. 69, exists, the subject is said to possess an appeal as of right to the Sovereign in Council. Where no such grant has been made and the Sovereign has not parted with the prerogative, the subject, notwithstanding, possesses the general right to petition the Crown to exercise its prerogative by entertaining or permitting an appeal (*a*). If the right of granting an appeal is reserved to the Crown, the right of applying for it is reserved also (*b*). The grant by Order in Council normally extends only to the Appellate Court in the colony or possession. But the enabling statute, passed in 1843 (7 & 8 Vict. c. 69), which has been greatly utilised, enabled the Sovereign, notwithstanding that he had, in granting a constitution or otherwise, ordained that an appeal shall lie only from a Court of Error, to provide that an appeal may be had direct from any court of justice in the possession without proceeding first to a Court of Error.

In such a case, however, special leave to appeal must be obtained from the Privy Council.

Special reference.

Besides the cases in which there is a right of appeal, and the cases as to which special leave to appeal should be asked, there exists a further class of cases which, though in fact constituting an appeal to the prerogative of the Crown as the fountain-head of justice, do not strictly come within the one class or the other. These are the cases which come before the Council by special reference. This class consists of two kinds: namely, where the Sovereign exercises an original jurisdiction, and where the cases in which the jurisdiction exercised is of an appellate nature, though the subject-matter of the appeal may not be a grievance which

(*a*) *Reg.* v. *Bertrand* (N. S. W. 1867), L. R. 1 P. C. at p. 529.
(*b*) *The Queen* v. *Eduljee Byramjee* (Bombay, 1846), 5 Moo. at p. 290.

can strictly be dealt with as an appeal from a judgment of a court of judicature. These matters are dealt with in a later chapter. (See below, pp. 238 ff.)

Right of appeal by grant.

The general rule of law in this country is that an appeal does not lie as of right unless given by reason of express enactment (*c*). In French Canadian law the presumption is in favour of the existence of what has been called the "sacred right of appeal" (*d*).

Conditions binding on colonial court.

The colonial court, or other court before which the cause is heard, and from which the appeal is sought, has no power to give leave to appeal to the Sovereign unless first authorised by some enactment, such as an Order in Council. So, where (as, for instance, under the charter of justice for British Guiana, Order in Council, 1831, clause 11) an appeal could not be admitted by the colonial court unless the securities were perfected within the time specified by the charter, viz., three months from the date of the petition for leave to appeal, the court had no discretion in the matter, and it was held that if it granted permission to appeal on the securities being perfected at a later date, the permission was invalid; and it could not acquire validity from any waiver or implied consent on the part of the respondent (*e*).

Discretion of court below.

The court below is generally absolutely bound by the rules of the Order in Council or other instrument which governs the admission of the appeal, and, unless specially authorised, is unable to extend any of the periods mentioned therein. Where the appeal enactment is the provision of the local legislature, the court often has the power to extend the time limited for the conditions of appeal being performed. It is, therefore, advisable to ask the court below to extend the time. It has been held that, under the Civil Procedure Code of India, the court below should be so asked. *Mussumat Shyam Komadi* v. *Rajah Ranenwar Singh*, 1900. There is no appeal from a refusal to grant time. *Kishen Pershad Panday* v. *Tiluck Lall*, 1892, 18 Calc. 182.

Interlocutory judgments.

The colonial court is bound by the terms of the grant,

(*c*) *Mayor, etc. of Montreal* v. *Brown and Another* (Quebec, 1876), 2 A. C. at p. 184; cf. *Att.-Gen.* v. *Sillem* (1864), 10 H. L. Ca. 704.

(*d*) *Ibid.*, 2 A. C. at 184.

(*e*) *Retemeyer* v. *Obermuller* (Berbice, 1837), 2 Moo. 93. The appellant should apply to the Judicial Committee for special leave in such cases.

and cannot grant leave to appeal from an interlocutory judgment unless authorised (*f*). The recent Orders in Council which define the conditions of appeal from the Colonial Appellate Courts provide in almost all cases that the leave may be granted in a suitable cause from an interlocutory as well as a final judgment, if the court thinks the case fit for appeal. (See Chap. II., above.) But it has generally been deemed advisable to require that the appeal should be reserved until the final or definitive determination or judgment. When this is given, then, upon appeal from the final judgment, any subsidiary or interlocutory finding or judgment can be attacked or questioned. The Judicial Committee will not encourage appeals from interlocutory orders of a temporary character. Cf. *Croudace* v. *Zobel*, (1899) A. C. 258.

Final judgment.

"No order, judgment, or other proceeding can be final, which does not at once affect the status of the parties for whichever side the decision may be given, so that if it is given for the plaintiff it is conclusive against the defendant, and if it is given for the defendant, it is conclusive against the plaintiff" (*g*). Where in an action for account the court at the request of the plaintiff selected one item, and in respect thereof after hearing the evidence made an order that the action be dismissed, it was held that an appeal might be taken therefrom as a final order. *Macdonald* v. *Belcher*, (1904) A. C. 429.

When the colonial court had given leave to appeal where it was doubtful whether the order appealed against was a final judgment, but the question in controversy was of considerable importance, the Judicial Committee gave special leave to appeal at the hearing. Cf. *Salisbury Gold Mining Co.* v. *Hathorn* (Natal), (1897) A. C. 268, and *Dangino* v. *Belliotti*, 11 A. C. 604.

"Judgment or determination."

Where the charter authorised appeal from a "judgment or determination," it was held not to apply to a rule refusing to strike a person off the rolls (*h*), nor to an appeal from an order removing a Master in Equity from his office, as the

Refusal to strike off the Rolls.

(*f*) *Goldring* v. *La Banque D'Hochelaga* (Quebec, 1880), 5 A. C. 371.
(*g*) *Standard Discount Co.* v. *La Grange* (1877), 3 C. P. D. at p. 71, *per* Brett, L.J.; and cf. *Goldring* v. *La Banque D'Hochelaga*, *supra*, at p. 373.
(*h*) *Morgan* v. *Leech* (Bombay, 1841), 3 Moo. 368.

court acts *ex officio* and not in the course of a judicial proceeding. Such matter is the subject of a special reference or special leave (*i*). A judgment of a Court of Appeal reversing the judgment of the court below by which the appellant's action was dismissed, is not a final judgment, and therefore not appealable as such to the Privy Council (*j*).

Final and definitive.

If an order be in its nature final, leave to appeal should be given, though it may purport to be a provisional order only, *e.g.*, where in a suit in the Royal Court of Jersey between husband and wife for a separation, the court ordered the children to be left provisionally in the custody of their mother (*k*).

New trial.

An order refusing a rule *nisi* for a new trial is an appealable order (*l*); and the discharge of that rule, when granted, is an appealable order. A verdict which is the act of the jury, not of the court, is not appealable if no motion to set it aside has been made in the court below (*m*); nor is a verdict on an issue directed from the equity side of the court (*n*). Nor is the finding on a reference to a Master, until confirmed by the court (*o*). The objection that a new trial has not been moved for in the court below should be taken before the hearing (*p*).

Steps where rules exist.

Where rules of appeal exist, the conditions of the rules must be duly complied with (*q*). The appellant, in the event of failure to do so, will be placed in the position of a person who has no right of appeal, and will have to ask for special leave to appeal by a petition addressed to the Sovereign in Council, seeking the exercise of the royal prerogative.

(*i*) *In re Minchin* (Madras, 1847), 6 Moo. 43; *Smith* v. *Justices of Sierra Leone* (Sierra Leone, 1841), 3 Moo. 361; but see *In re The Justices of the Common Pleas of Antigua* (1829), 1 Knapp, 267.

(*j*) *Siniard* v. *Townsend* (Quebec, 1856), 6 L. Can. R. 147.

(*k*) *Belson* v. *Belson* (Jersey, 1849), 7 Moo. 30.

(*l*) *Tronson* v. *Dent* (Hong Kong, 1853), 8 Moo. 419.

(*m*) *Ibid.*; and *Nathoobhoy Ramdass* v. *Mooljee Madowdass*, 3 Moo. 87.

(*n*) *Nathoobhoy Ramdass* v. *Madowdass and Others* (Bombay, 1840), 3 Moo. 87; *Dagnino* v. *Belliotti* (Gibraltar, 1886), 11 A. C. 604.

(*o*) *Ibid.*, 3 Moo. at p. 96.

(*p*) *Stace* v. *Griffith* (St. Helena, 1869), 6 Moo. N. S. 18.

(*q*) Even where the court may be informally constituted, the regular procedure should be followed. *Ex parte Kensington* (Leeward Islands, 1863), 15 Moo. 209.

Time for assertion of right.

The rules always provide for the assertion within a limited period of the appellant's right or intention of appealing. The time runs from the date of the judgment. The appeal is asserted by the appellant moving the court below within the period limited or presenting a petition of leave to appeal which is granted upon his complying with the conditions of appeal. The appellant has to show that he is a person who by the terms of the grant possesses the right of appeal. Having appealed, the appellant will not be permitted to object for the first time on the hearing of the appeal that the judgment from which he appeals is void for want of parties. *Orphan Board* v. *Van Reenen*, 1 Knapp, 91.

Conditions of appeal.

If the conditions of appealing are not duly complied with, the failure may be made by the respondent a ground of objection to the appeal in the Appellate Court; the irregularity cannot be waived by the respondent or cured by consent. Where an appeal was admitted from India contrary to the section in the Civil Code requiring a substantial point of law to be raised if the decree appealed from affirms the decision of the court below, it was dismissed without hearing. Cf. *Karuppanai Servai* v. *S. Chetti*, (1901) 29 I. A. 38.

Appealable amount.

The Colonial Rules of Appeal regularly provide an appealable amount which varies from 300*l.* to 2,000*l.* Where the amount in issue is equal to or exceeds the appealable amount the party aggrieved has a right of appeal; and it is often therefore a moot question whether the amount involved comes within the limit. A number of decisions have been given on the point, which provide an idea of the true measure of value. In the case of most colonies the appeal lies as of right either where the matter in dispute on the appeal amounts to or is of the value of the appealable sum, 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 the appealable sum or upwards. (See Chap. II., above.)

Rule as to measure of value.

The proper measure of value for determining the question is in the case of a plaintiff appellant the amount for which the defendant has successfully resisted a decree in the lower courts. *Mohideen Hadijar* v. *Pitchey*, (1893) A. C. 193. And where the defendant is an appellant, the amount which

has been recovered by the plaintiff in the action and against which the appeal would be brought. *Allan* v. *Pratt*, 13 A. C. 780. The rule is that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal. Where an action for possession and mesne profits was dismissed, the appealable amount was the value of the property and the mesne profits. *Mohideen Hadijar, etc.* (*supra*). In some cases the value to the defendant of an adverse judgment is greater than the value laid by the plaintiff to his claim. If so, it would be unjust that he should be bound not by the value to himself, but by the value originally assigned to the subject-matter of the action by his opponent. *Allan* v. *Pratt* (*supra*).

Value where third party appeals.

A sum less than 500*l.* sterling, the appealable amount, had been obtained by a decree in Lower Canada, and certain proceedings had been instituted in which the judgment creditor claimed the goods in the hands of third persons to satisfy the judgment. The court in Canada adjudged that the goods, which were worth a sum considerably more than the appealable amount, were liable to satisfy the judgment creditor. The matter was not of equal value to the judgment creditor and the owner of the goods. The court in Lower Canada gave the third party leave to appeal against the order adjudging that the goods were liable, and the Judicial Committee held, on a petition to rescind the leave, that the matter in dispute upon which the appeal was founded exceeded the appealable limit, and that leave was rightly given. *Macfarlane* v. *Leclair*, 15 Moo. 81.

Where a *cestui que trust* who was entitled to half of a trust fund of 700*l.* brought an action against the trustees alleging breaches of trust with respect to the whole fund, and judgment was given for the defendants, the Victorian Court held that the case was not within the appealable amount (500*l.*) and refused leave to appeal. *Skinner* v. *Trustees and Executors Agency*, 27 V. L. R. 377.

The fact that the appellant is entitled to be recouped the amount of the judgment against him by a third party does not debar him from having an appeal as of right, if he is liable in the first instance to pay a sum exceeding the

appealable amount. *Kidney* v. *Melbourne Tramway Co.*, 8 A. L. R. 29.

Consolidation, when allowed.

Several suits in which separate judgments have been given cannot be consolidated for the purpose of permitting an appeal by making the aggregate amount exceed the appealable amount. *Moofti Mahummud Ubdoolleh* v. *Baboo Motechund*, 1 Moo. I. A. 363.

But where an important question of law was raised in five suits in each of which the value was under the appealable amount, though in the aggregate the sums claimed were over that amount, leave to appeal was granted on the parties undertaking to abide by the decision in the first appeal. *Baboo Gopal Lall Thakoor* v. *Teluk Rai*, (1860) 7 Moo. I. A. 346.

Value where damages unascertained.

In an Indian case, where the plaintiff claimed damages above the appealable amount and his suit was dismissed without determination of the amount that would have been recoverable, and the High Court refused leave to appeal, the Judicial Committee granted special leave. *Moulvi Mahommed Huq* v. *Wilkie*, L. R. 33 I. A. 176. A declaration claiming unliquidated damages for 5,000*l.* for slander has been held a matter at issue above the appealable amount such as will entitle the plaintiff to appeal when judgment has been given for the defendant. *Simmons* v. *Mitchell*, L. R. 6 A. C. 156.

Value where payment ordered.

Where a decree has been pronounced ordering the payment of a sum of money, the sum so adjudged furnishes a measure of value, whether it be purely a principal sum or be made up of principal and interest combined. For instance, where a sum was awarded for damages by a jury, and a rule *nisi* to set aside the verdict was moved and discharged, and judgment was entered for the plaintiff for an amount including the damages and interest thereon to judgment, such sum formed the measure for the appealable value (*r*). But if the appealable amount can only be reached by interest subsequent to the judgment or decree, there is no appeal as of right. It is in such a case a matter of discretion with the Colonial Court or the Privy Council to permit an appeal (*r*).

(*r*) *Bank of New South Wales* v. *Owston* (N. S. W. 1879), 4 App. Cas., following *Gooroopersad Khoond* v. *Juggutchunder* (Calcutta, 1860), 8 Moo. I. A. at p. 168.

Where judgment in a Victorian suit was given for 500*l.* damages for breach of warranty, and the amount claimed had been 525*l.*, the court refused leave to appeal under the Order in Council, as the matter at issue was not above 500*l.*, the court being of opinion that the later clause of the Order in Council, dealing with any civil right of that value, is intended to provide for cases not comprised in the former. *Gardiner* v. *M'Culloch*, 2 V. L. R. (1876) 128.

Costs no part of appealable value.

The costs of a suit are no part of the subject-matter in dispute (*s*). But where in an action of trespass the judge, on the application of the defendant one hour after the trial, deprived the plaintiff of costs, and the full court upon appeal held that the application was too late and that the judge had no jurisdiction to entertain it, and ordered the defendant to pay plaintiff's costs which exceeded the appealable amount, it was held by the Victorian court an appeal lay. *Ricketson* v. *Bourchier*, 16 V. L. R. 800.

No appeal as to costs.

An appeal will not be allowed merely as to costs where the costs are in the discretion of the court, even if they amount to the appealable value (*t*). But where discretion as to costs has not been fairly exercised, or the court below has proceeded upon a mistake or misapprehension, an appeal will lie (*u*).

Aliter where mistake in law.

Where there has been *bonâ fide* care and discretion exercised on the part of the judge who decided the case, no appeal will lie in respect of costs alone. The court will not inquire whether the discretion has been exercised wisely (*x*). If, however, there has been a mistake upon some matter of law which governs or affects the costs, the party prejudiced is entitled to have the benefit of correction by appeal (*y*). So

(*s*) *Doorga Doss Chowdry* v. *Ramanauth Chowdry* (Calcutta, 1860), 8 Moo. I. A. 262. See *Nilmadhub Doss* v. *Bishumber Doss* (Bengal, 1869), 13 Moo. I. A. 85; *Great Western Railway of Canada* v. *Braid* (Up. Can. 1863), 1 Moo. (N. S.) 101.

(*t*) *Credit Foncier of Mauritius* v. *Paturau* (Mauritius, 1876), 35 L. T. 869, P. C.; *Wilson* v. *Reg.* (V.-Adm. Sierra Leone, 1866), L. R. 1 P. C. 405; *Mussumat Keemee Baee* v. *Latchman-Das Narrain-Das* (Bombay, 1837), 1 Moo. I. A. 470.

(*u*) *Attenborough* v. *Kemp* (Arches Court of Canterbury, 1861), 14 Moo. 351.

(*x*) *Ibid.*; *Inglis* v. *Mansfield* (1835), 3 Cl. & Finn. at 371; *Richards* v. *Birley* (York, 1864), 2 Moo. (N. S.) 96; *Wilson* v. *Reg.* (Sierra Leone, 1866), 4 Moo. (N. S.) 307; *S. C.*, L. R. 1 P. C. 45, 405; *Rieken* v. *Justices of Yorke Peninsula District*, (1908) A. C. p. 454.

(*y*) *The Orient* (1871), 8 Moo. (N. S.) 74; L. R. 3 P. C. 696; *Rajunder Narian Rae* v. *Bijai Govind Sing* (Bengal, 1839), 2 Moo. I. A. at

where a court, which was by law required to order costs to be paid to the party in whose favour the decree was made, took upon itself to direct that each party should pay his own costs, the Privy Council affirmed the decision of a Court of Appeal by which this direction was reversed (*z*).

Leave wrongly refused by court below.

Where the court below should have granted leave to appeal, the question in dispute being of the appealable value, but it has refused, a petition should be presented addressed to His Majesty in Council by way of appeal from such refusal, and asking that such order may be set aside and leave to appeal be granted. Cf. *Wilson* v. *Callender*, 9 Moo. 100; *Bank of Australasia* v. *Harris*, 16 Moo. 97; *In re Sibmarain Ghose*, 8 Moo. 257.

Evidence of value.

The Judicial Committee has recommended the grant of leave to appeal, on being satisfied as to the real value, even where it is greater than the stamp duty would have indicated. In one case in which leave was granted, the true value was stated in the judgment of the court below. In another case, the order admitting the appeal directed that the registrar of the court below "should transmit, together with the record, satisfactory evidence, to be supplied by the appellants, that the real or market value of the land in dispute exceeded the sum of Rs. 10,000, otherwise that such leave to appeal be null and of no effect" (*a*). The court which is asked to grant leave to appeal should ascertain the value of the suit. Where there was a right of appeal to the Supreme Court in the colony in certain cases where the amount involved was over 500*l*., the Judicial Committee held that the Supreme Court was wrong in refusing to hear an appeal on the ground that the value should be found and stated by the court appealed from, and could not be ascertained by themselves on affidavit. *Falkners' Gold Mining Co., Ltd.* v. *M'Kinnery*, (1901) A. C. 581.

Where no definite pecuniary value.

The Victorian courts have given several decisions upon the interpretation of the words contained in the Colonial

260; see also *Emery* v. *Binns* (Jamaica, 1850), 7 Moo. 195; *Yeo* v. *Tatem*, L. R. 3 P. C. at p. 702.

(*z*) *Mussumat Keemee Baee* v. *Latchman-Das Narrain-Das* (Bombay 1837), 1 Moo. I. A. 470.

(*a*) *Mussumat Ameena Khatoor* v. *Radhabenod Misser* (Calcutta, 1859), 7 Moo. I. A. 261; *Mohun Lall Sookul and Another* v. *Bebee Doss and Others* (1860), 7 Moo. I. A. 428.

Rules of Appeal, which prescribe an appeal as of right in certain other cases besides those in which the matter in issue on the appeal is within a fixed pecuniary amount. And though these decisions have no binding force for other colonies they may be referred to for the purpose of showing the circumstances in which an appeal may be claimed.

"*Any civil right of the value of* 500*l.* In *Gardiner* v. *McCulloch*, 2 V. L. R. (1876), 128 (Law), where a municipality sued for 18*l.* rates, and the defence was that the plaintiffs were not duly incorporated, and at the time of application for leave to appeal there was due to plaintiffs 600*l.* for rates, the plaintiffs were held entitled to appeal. Cf. *Municipal District of Gundagai* v. *Norton*, 15 N. S. W. Rep. (1894) 459; and see *Att.-Gen.* v. *Municipal Council of Sydney*, 13 N. S. W. (Eq. 1892) 151.

Where the plaintiff recovered 200*l.* from a municipality for damages caused to his property by the overflow of water from a drain, it was held that the judgment involved the civil right of the municipality to keep the drain in order which was a right above the value of 500*l.*, and leave to appeal was therefore granted. *Kanimbrick* v. *Mayor of Hawthorn*, 29 V. L. R. 433.

Ontario.

In Ontario there is no general appeal as of right unless the matter in dispute exceeds the amount of $4,000. For the practice when civil rights of unliquidated pecuniary value are in issue, see pp. 54 ff.

Fixing security and conditions of appeal.

Where an appeal is admitted by right of grant, the court admitting the appeal must fix the amount of security to be furnished by the appellant for the costs of the appeal and the other conditions of the appeal according to the terms of the Order in Council which regulates the procedure.

The court below fixes the security.

The court from which the appeal lies, upon application being made for leave to appeal, in the first place grants only conditional leave and fixes the security. The appellant has to see to the completion of the security within the time limited by the rules. The appellant in his application for leave generally asks, where the rules provide for it, to have execution suspended. Where the court refuses to stay execution, it often requires the respondent to give security to carry out the order which the Sovereign in Council may direct. The rules regularly provide in any

case, as a condition of the appeal, that security shall be given by the appellant for all such costs as the court may think likely to be incurred by the appeal up to a limit named in the rules, and by way of security for the prosecution of the appeal. It is the usual practice for the court to order that the appeal be admitted upon the required security being given, and when the security has been completed to the satisfaction of the court, to declare by a final order that the appeal is admitted.

It sometimes happens that before the appellant has obtained leave to appeal, the respondent has obtained execution without furnishing security to the appellant as required by the Order in Council; in such case, application may be subsequently made by the appellant to have such omission repaired (*b*), but the court may decline to interfere (*c*).

Where the decree concerns realty, the practice in India is to estimate the mesne profits for three years, and require the decree holder to give security to that amount, that being considered the time necessary to obtain a decision of the Privy Council on the issue (*d*). The judge will have the sufficiency determined by a proper inquiry, and not decide off-hand that it is inadequate (*e*).

Result of non-compliance.

If the conditions of the appeal are not duly complied with, the omission may be the subject of a preliminary and fatal objection to the hearing of the appeal.

On refusal to admit appeal.

It may happen that the court below may misconstrue the Order or other instrument under which the appeal is enabled to be brought. In such a case the appellant must apply for special leave as explained in the next chapter.

Discretion of court below as to security.

As a general rule, the Privy Council will not interfere in any matter which has been left to the discretion of the local court (*f*), but, on the other hand, it will review its arbitrary exercise. Where the appellant was suing *in formâ*

(*b*) *Mussumat Jariut-ool-Butool* v. *Mussumat Hosseinee Begum* (1865), 10 Moo. I. A. 196; followed in *Sooruj Monee Dayee* v. *Sudanund Mohapattur* (1869), 12 Suth. W. R. 296.

(*c*) *Haro Soonduree Debia* v. *Stevenson* (Misc. 1866), 5 Suth. W. R. 13.

(*d*) *Ameroonissa Khatoon* v. *Dunne* (1870), 14 Suth. W. R. C. R. 361.

(*e*) *Dunne* v. *Ameroonissa Khatoon* (1870), 13 Suth. W. R. C. R. 41.

(*f*) *Johnson* v. *Voight* (Lagos, 1896), 75 L. T. 57.

pauperis and the local court ordered him to find 500*l.* security as a condition of prosecuting the appeal (which was the whole value of the suit) the Judicial Committee interfered. In another case, it reduced the security required from 1,200*l.* to 300*l.* (*g*), and where the Attorney-General of the Isle of Man, suing in the Court of Exchequer of the island, in respect of an injury to Her Majesty's property, was allowed leave to appeal upon the condition of his entering into recognizances for costs of the appeal, the Judicial Committee, on his petition heard *ex parte*, removed the condition (*h*).

Sufficiency of security.

The decision of the court below is final as to the amount, value, sufficiency, and the reception of the security tendered (*i*), but not on the question whether the local court has rightly applied the law as to the security to be required (*k*).

"Proper security."

Where the Act, on an appeal from Canada, required "proper security," security with proper sureties was to be understood (*l*). A bond entered into by the appellant alone, of which the condition is that it should be void if the appellant should effectually prosecute his appeal and answer the condemnation, and pay such costs as might be awarded, etc., is not a "proper security," because, in the event of his death pending the appeal, there could be neither principal nor surety to the bond (*m*).

How security furnished.

There is no rule that the security must be delivered into the hands of the respondents, and the Judicial Committee can interfere where such a condition has been declared by the colonial court necessary to validate the appeal. Cf. *Melbourne Tramway Co.* v. *Mayor of Fitzroy*, (1901) A. C. at p. 173.

The appellant company there executed bonds for the amount of security required by the court in favour of the respondent city, but deposited the bonds with the prothonotary of the court and not with the city. The Australian

(*g*) *Hulm* v. *H.* (Mauritius, 1843), 4 Moo. 262.

(*h*) *Att.-Gen. of Man* v. *Cowley* (Man, 1859), 12 Moo. 27; *Robertson* v. *Dumaresq* (N. S. W. 1864), 2 Moo. (N. S.) at 80; cf. *The Att.-Gen. of Victoria* (Vict. 1866), 3 Moo. (N. S.) 527.

(*i*) *Cambernon* v. *Egroignard* (Mauritius, 1830), 1 Knapp, 251; *Laing* v. *Ingham* (Mauritius, 1839), 3 Moo. 28.

(*k*) *Craig* v. *Shand* (Demerara, 1830), 1 Knapp, 253.

(*l*) *Powell* v. *Washburn* (U. C. 1838), 2 Moo. 199.

(*m*) *Ibid.*

court, on the application of the respondent, then discharged the order granting the appeal, which compelled the appellants to proceed by special leave from the Privy Council. The Judicial Committee held that the Australian court proceeded on an erroneous construction of the Order in Council, which did not require delivery to the respondent of the bonds constituting his security. Any effectual delivery was a compliance with the order, and it was a convenient practice to deliver bonds to the prothonotary.

Conditions of appeal when reviewed by P. C.

As a general rule the Judicial Committee will not interfere with the discretion of the colonial court in fixing the conditions of the appeal.

The court below is, however, bound to exercise its judgment as to whether any particular case is appealable or not; and where a Canadian court, upon an application for the deliverance of security upon the appeal to His Majesty in Council allowed the security, but directed that "this Order shall not prejudice the right of the respondent to object to the competence of the said appeal," the Judicial Committee held that the appeal was incompetent, and ordered the appellants to pay the costs of the appeal. *Gillett & Co.* v. *Lumsden*, (1905) A. C. 601.

In formâ pauperis.

In formâ pauperis.—The court below, where authorised to grant leave to appeal subject to certain specified conditions as to security, cannot give leave to appeal *in formâ pauperis*. Such leave must be asked before the Judicial Committee; and is not given of course. *Quinlan* v. *Quinlan*, (1901) A. C. 615. But where the case as regards amount, value and nature is fit to be taken to appeal, the Judicial Committee will grant special leave (*Ponnamma* v. *Arumogam*, (1902) A. C. 511). Application, however, for leave to appeal should first be made within due time to the court below. (See *infra*, "Special Leave to Appeal," p. 226.)

The course the respondent should pursue when irregularity.

The proper course, when an irregularity has happened which may be fatal to the appeal, is for the respondent to apply by petition as early as possible, and before the cases are lodged, and the expense of preparing them is incurred, in order to bring the point before the Judicial Committee and to get the appeal dismissed. It is then open to their lordships either to recommend His Majesty to dismiss the appeal, in which case the parties are not put to the expense

of preparing for the hearing, or to grant special leave to appeal (*n*).

Appeal at discretion of colonial court.

When the case is not within the appealable limit prescribed by the Order in Council affecting the particular colony or possession for admitting an appeal as of right, the colonial court may nevertheless admit the appeal if it regards the question as one which from its public or general importance is fit for appeal. (See p. 24.) In determining the interpretation of these words the colonial courts will doubtless be influenced by the decisions of the Judicial Committee in cases where special leave to appeal was applied for. The colonial courts have virtually obtained a delegated power to grant special leave. (For these cases see the next chapter, pp. 215-220).

(*n*) *Sauvageau* v. *Gauthier* (Quebec, 1874), L. R. 5 P. C. 494, 500; *Pisani* v. *Att.-Gen. of Gibraltar, ibid.* at p. 525.

CHAPTER VI.

APPEAL BY SPECIAL LEAVE.

When necessary to obtain special leave.

WHERE no appeal lies by right of grant from the colonial court, or where a court below has no power to grant leave, or where it has power but has refused to grant leave to appeal, if a party desire to appeal from the decision of any court or judicial officer, he must present a petition addressed to the King in Council for special leave to appeal.

The Consolidated Rules of the Judicial Committee issued in December, 1908, provide as follows in regard to the leave to appeal:

Leave to Appeal.

Leave to appeal generally.

2. All appeals shall be brought either in pursuance of leave obtained from the court appealed from, or, in the absence of such leave, in pursuance of special leave to appeal granted by His Majesty in Council upon a petition in that behalf presented by the intending appellant.

Form of petition for special leave to appeal.

3. A petition for special leave to appeal to His Majesty in Council shall state succinctly and fairly all such facts as it may be necessary to state in order to enable the Judicial Committee to advise His Majesty whether such leave ought to be granted. The petition shall not travel into extraneous matter, and shall deal with the merits of the case only so far as is necessary for the purpose of explaining and supporting the particular grounds upon which special leave to appeal is sought.

Three copies of petition to be lodged together with affidavit in support.

4. The petitioner shall lodge at least three copies of his petition for special leave to appeal together with the affidavit in support thereof prescribed by rule 50 hereinafter contained.

Time for lodging petition.

5. A petition for special leave to appeal may be lodged at any time after the date of the judgment sought to be appealed from, but the petitioner shall, in every case, lodge his petition with the least possible delay.

Rules as to petitions.

The general rules as to petitions before the Judicial Committee, 47—50 and 52—59 (both inclusive), apply to petitions for special leave to appeal. (See rule 7.) These rules specify the form of the petition, the provision for a person claiming a right to appear to lodge a caveat, the obligation to serve the petition, the method of verifying it by affidavit, and the regulations for setting down and hearing the petition. They are set out below at pp. 257 ff.

Petition must be frank.

The petition for special leave seeks the exercise of the prerogative power, and therefore ought to disclose in the fullest and frankest manner the circumstances under which the leave is sought (*o*), and should contain a statement of the proceedings sufficiently full and precise to enable the Judicial Committee to form an opinion (*p*). The petition should indicate the questions to be raised at the hearing (*q*), disclose a general point of law to be decided and a substantial case upon the merits, and should be supported by affidavit. If the statements in the petition are too vague and general, it will either be dismissed or ordered to stand over for amendment (*p*).

Special grounds.

Special grounds must be disclosed in the petition asking leave (*r*). The petition should show that application has been made to the court below for leave, or the reason for the omission should be stated. The grounds upon which leave is asked should be stated succinctly but fairly. This is important to bear in mind, since parties are required to confine themselves to the petition. It is therefore usual in the petition to set forth the salient passages of the judgment to which objection is

(*o*) *Lyall* v. *Jardine*, 7 Moo. (N. S.) 116; *Mussoorie Bank* v. *Raynor*, 7 A. C. 328; *Baudains* v. *The Jersey Banking Co.*, 13 App. Cas. 832.

(*p*) *Goree Monee Dossee* v. *Juggut Indro Narain Chowdry* (Bengal, 1866), 11 Moo. I. A. 1. See hereon *Canada Central Railway* v. *Murray* (1883, S. C. Can.), 8 A. C. at p. 576; *Dumoulin* v. *Langtry* (Quebec, 1887), 57 L. T. 317.

(*q*) *Sheo Singh Rao* v. *Dakho* (Calc. 1878), L. R. 5 I. A. 87; *Annundomoyee Chowdrain* v. *Sheab Chunder Roy*, 9 Moo. I. A. 287.

(*r*) For a precedent of a petition, see Appendix D., p. 470.

taken (*s*). The argument on the appeal should accordingly be consonant with the grounds set forth in the petition for special leave. *Sheo Singh Rao* v. *Mussumat Dakho*, L. R. 5 I. A. 87. The petition is referred to the Judicial Committee, who advise the Crown as to the propriety of granting or withholding permission. Until an appeal is permitted and the papers are sent to England by the proper authorities, the Judicial Committee has no control over the record and proceedings. Special grounds.

The petition should be supported by affidavit, on foolscap, made by the solicitor lodging the petition (*t*). The general rule is to grant the leave upon the *ex parte* statements made in the petition. *Brown* v. *McLaughan*, 7 Moo. (N. S.) 306. Affidavit.

Untrue Statements.—If the statements in the petition for leave to appeal are untrue, the appeal will be dismissed with costs. *Wilson* v. *Callender*, 9 Moo. 100.

Now that the power of granting leave to appeal has been delegated to most colonial courts of appeal, the Judicial Committee will be particularly loth to grant special leave except in a strong case. It has always been their rule to pay attention to the wishes of the colony as expressed by their legislation, and the exercise of the prerogative will not be recommended except in cases of general importance (*u*). Even then leave will be refused if it appears that the court below has decided the case independently of any point of law upon a particular view of the facts, for the Privy Council adopts the facts as found by the court below, and will not review such findings in an appeal entertained as an act of grace (*v*). The Privy Council have, however, granted special leave on a point of general law (*w*). Cases vary so widely in their circumstances that the principles upon which an appeal ought to be allowed do not admit of anything approaching to exhaustive definition. In some cases, The exercise of the prerogative.

(*s*) *Canada Central Railway* v. *Murray* (Canada, 1883), 8 A. C. 576.
(*t*) *McKellar* v. *Wallace* (Calcutta, 1853), 8 Moo. 378, 395.
(*u*) *Cité de Montreal* v. *Seminaire de Ste. Sulpice* (S. C. of Canada, 1889), 14 App. Ca. 660; *Dumoulin* v. *Langtry*, 57 L. T. 317. Cf. *Prince* v. *Gagnon* (S. C. of Canada, 1882), 8 App. Ca. 103; *Robinson* v. *Canadian Pacific Railway*, (1892) A. C. 481.
(*v*) *Bank of New Brunswick* v. *McLeod* (N. B. 1882).
(*w*) *Goree Monee Dossee* v. *Jogendro Narain Chowdry*, 12 Jur. (N. S.) 477.

as in *Prince* v. *Gagnon*, their lordships have had occasion to indicate certain particulars the absence of which will have a strong influence in inducing them to advise that leave should not be given, but it by no means follows that leave will be recommended in all cases in which these features occur.

A case, it was there said, may be of a substantial character, may involve matter of great public interest, and may raise an important question of law, and yet the judgment from which leave to appeal is sought may appear to be plainly right, or at least to be unattended with sufficient doubt to justify their lordships in advising the Sovereign to grant leave to appeal.

Applications for special leave, how made.

Ex parte.—Applications for leave to appeal may be made *ex parte* (*x*) and granted at once upon the credit of the statements contained in the petition, if the case stated is sufficiently strong (*y*). Although, however, applications for special leave to appeal are often made *ex parte*, it has been the practice of the Judicial Committee, when it appears from the papers or from information otherwise forthcoming that the respondents in the matter are likely to be resident or in business in England, to direct the application for leave to appeal to stand over to permit of such possible opponents to be served with notice. Where it appeared, after the petition for leave to appeal was lodged at the Council Office, that the respondents had a branch in London, the petitioners appeared at the Board and asked that their petition for leave should stand over on their undertaking that the respondents should in the meantime be duly served with a copy of the petition. The request was granted and the respondents duly entered a caveat (*z*).

Respondent in England.

Where an application to stay proceedings pending appeal was made *ex parte* and the application had some merits, but justice could not be done in the absence of the other party, the petition was dismissed without prejudice to any further application to the court (*a*). The court grants the leave

(*x*) See *Cremidi* v. *Parker* (Adm. 1857), 11 Moo. at p. 85.
(*y*) *Lyall* v. *Jardine* (Hong Kong, 1870), L. R. 3 P. C. 318.
(*z*) *North Australia Territory Co.* v. *Goldsborough, Mort & Co.*, P. C. Arch. February 22, 1890.
(*a*) *Rajah Perladh Sein* v. *Baboo Singh*, 10 Moo. I. A. 78.

where there is any reasonable ground for contending that the grievance is appealable. But where there is some doubt as to the competency of the appeal, liberty is generally reserved for the other side to apply by petition to discharge the order granting leave to appeal (*b*).

Evidence on Application for Leave.—If at the hearing of the application for leave to appeal it is thought necessary to refer to the record of the proceedings of the court below, or to any part of them, copies under the seal of the lower court, or at least copies verified by the affidavit (*c*) of the party exhibiting them, ought to be produced.

The Order giving Leave to Appeal.—When leave to appeal is granted, the order granting it generally directs the registrar of the court below to transmit to the Registrar of the Privy Council, without delay, authenticated copies, under the seal of the court, of the record, pleadings, proceedings, and evidence, and the reasons of the judges proper to be laid before His Majesty on the hearing of the appeal. The order, also, generally imposes conditions.

Petition to dismiss.

Counter-petition to Dismiss.—Whether liberty be reserved or not for the respondent to apply to discharge the order giving leave to appeal, the other side may so apply upon reasonable grounds; and if at any time it subsequently appears that there has been any misstatement, even one which does not necessarily imply bad faith (*d*), the order giving leave to appeal is rescinded, upon a counter-petition by the respondent to dismiss. For the statements in such counter-petition, see *Ex parte Robinson* (N. S. W. 1857), 11 Moo. at p. 291. Such counter-petition may be presented without leave. *Sibnarain Ghose* v. *Hullodhin Doss* (Calc. 1854), 4 Moo. 354.

Objection to competency of appeal.

Objection to the Competency of the Appeal should be taken at the earliest possible moment, whether the leave to appeal has been granted by the court below or by the Privy Council, in order to save all parties from needless vexation

(*b*) *Robertson* v. *Dumaresq* (N. S. W. 1864), 2 Moo. (N. S.) 96; *Hill* v. *The Queen* (Jamaica, 1852), 8 Moo. 138, 149; *In re Ames* (Jersey, 1841), 3 Moo. 409.

(*c*) Affidavits may be sworn before the Registrar of the Privy Council. See Judicial Committee Rules 85, p. 259.

(*d*) *Bulkeley* v. *Scutz* (Constantinople, 1870), L. R. 3 P. C. 196; *Quinlan* v. *Quinlan*, (1901) A. C. 612.

and expense, and the conduct of a party who has not objected in due time will affect the question of costs (*e*).

Special leave when inapplicable.

Courts of Special Jurisdiction.—Where the court below is one of special jurisdiction, as, for instance, the court constituted under the Controverted Elections Act of Canada, and the instrument by which it is constituted declares that its judgments shall be final, special leave to appeal will be refused if it appears that the matters in dispute have only a narrow application, and it is desirable that they should be speedily decided (*f*). So leave will be refused where a court below has acted by agreement of the parties as a court of special reference (*g*).

Where the Decision below is not susceptible of Appeal.—Where under the Quebec Controverted Elections Act, 1875, the Superior Court in the province of Quebec was constituted a court to hear election petitions, and it was provided that the judgment should not be susceptible of appeal, leave to appeal was refused (*h*).

Court guided by Equity and Good Conscience.—The Supreme Court of Tasmania was, by the Colonial Act, 10 of 1858, created a land court to determine disputes concerning lands hitherto ungranted by the Crown. The decision was to be final and the court guided by equity and good conscience and not by the judicial rules of evidence. In these circumstances it was held that the Crown's prerogative right to grant leave to appeal was inapplicable (*i*).

Where, however, a Colonial Act declared that the decision of a court to try questions of the natives' right should be final and conclusive, but did not expressly exclude the prerogative, it was held that the right of appeal to His Majesty remained, the court being concerned with the ordinary legal rights of subjects to the King. *In re Wi Matua,* (1908) A. C. 448.

Application to the court below where possible.

Before applying by petition to the Sovereign in Council for special leave to appeal, an application should be made to

(*e*) *Loughnan* v. *Haji Joosub Bhulladina* (*The Hydroos*) (Bombay, 1851), 7 Moo. 373; *Shire* v. *Shire* (Mauritius, 1845), 5 Moo. 81, 82.
(*f*) *Kennedy* v. *Purcell* (Ontario, 1888), 59 L. T. 279.
(*g*) *Att.-Gen. of Nova Scotia* v. *Gregory* (S. C. Can. 1886), 11 A. C. 229; cf. *Ward* v. *Bishop of Mauritius*, 99 L. T. 854.
(*h*) *Théberge* v. *Laudry* (Quebec, 1876), 2 A. C. 102.
(*i*) *Moses* v. *Parker* (Tasmania), (1896) A. C. 245.

the court below in the event of that court having power to grant leave to appeal (*k*). For if the appellant has not applied to the court below, the Privy Council, if it should appear that the court had power to permit an appeal, will not entertain the application without a satisfactory explanation of the circumstances, or unless some general right is called in question or some special grounds be shown why leave to appeal should be granted as an act of grace (*l*).

Points not raised in Appeal below.—If there has been an appeal below on a special point, it is often desired to appeal generally from points not appealed from. In such a case the appellant should not wait for the hearing, but should apply before the hearing for special leave to appeal (*m*).

Where Leave granted is Insufficient.—Leave to appeal from the judgment upon an interpleader issue had been granted by the Supreme Court. In the course of the argument it appeared that the real question was whether the Interpleader Act was in force in the Colony (Tobago) and therefore whether the order directing the parties to interplead was correct. *Colonial Bank* v. *Warden*, 5 Moo. 340. As the petition for leave to appeal did not include that order, the Judicial Committee gave leave to present a petition for leave to amend the petition of appeal by inserting therein the order in question, upon terms of paying the costs of the change.

Appeal from refusal of leave coupled with petition for special leave.

Leave refused because below Appealable Value.—When the court below has refused leave to appeal on the ground that the question in the suit is below the appealable value, or that it was irregularly brought, and an appeal is brought from such refusal, it is frequently convenient in the petition of appeal to ask for special leave to appeal (*n*). In advising the Crown to exercise the prerogative in such a case, the Judicial Committee will be governed by a consideration of

(*k*) *Maharajah Sutteeschunder Roy* v. *Guneschunder* (Calc. 1860), 8 Moo. I. A. 164; *Mutusawmy Jagavera Yettapa Naiker* v. *Vencataswara Yettia* (Madras, 1865), L. R. 1 P. C. 1.

(*l*) *Ko Khine* v. *Snadden* (Bengal, 1868), 5 Moo. (N. S.) 67.

(*m*) *Golam Ally* v. *Kalikisto Tagore* (1872), 18 Suth. W. R. P. C. 299. Cf. *Palgrave Co.* v. *McMillan* (Nova Scotia), (1892) A. C. at 470.

(*n*) *Rahimbhoy Habibbhoy* v. *Turner* (Bomb. 1890), 15 Bomb. 155; *Frith* v. *Frith*, (1906) A. C. 254.

the circumstances in each particular case (*o*). In the event of it appearing that the court below was right in holding that the amount in dispute was below the appealable value, the Judicial Committee may, upon it appearing that the question affects some general right (*p*), recommend special leave and either adjourn the hearing or hear the appeal subject to an Order in Council being made by the Sovereign on their recommendation that the appellant shall have special leave to appeal. Upon such an Order being made, the report of the Judicial Committee to the Sovereign upon the hearing will go forward, upon which a further Order in Council is drawn up in pursuance of the conclusions come to by the Committee on the hearing. It is usual to file this Order in the court appealed from.

Discretion wrongly exercised by Court below.—Leave to appeal has been given where the court below in considering the amount to be fixed for security as a condition of the appeal has gone into the merits of the case which are not then properly before it, and has directed security to be given for the sum awarded by the verdict as well as for the costs of the appeal. *Johnson* v. *Voight* (Lagos, 1896), 75 L. T. 87. On the other hand, where the court appealed from has properly exercised its discretion and has fixed the conditions and restrictions subject to which the appeal will be admitted, an application for leave to appeal in contravention of those conditions will not be entertained.

Special leave. Two classes.

The appeals which are the subject of special leave may be divided into two kinds or classes:—(A) Where leave to appeal is sought purely as an act of grace because (1) the court below (*e.g.*, the Supreme Court of Canada) does not possess power to grant leave to appeal, or (2) because the case is not within the grant to the colonial court; (B) where the appellant seeks by virtue of the statute 7 & 8 Vict. c. 69

(*o*) *Allan* v. *Pratt* (L. C. 1888), 13 App. Ca. 780.

(*p*) *Gungowa Kome Malupa* v. *Erawa Kome Jogapa* (Bombay, 1870), 13 Moo. I. A. 433. See *Ranee Surut Soondree Debea* v. *Baboo Prosonno Coomar Tagore* (Bengal, 1870), 13 Moo. I. A. 607. In *Brown* v. *McLaughan* (South Australia, 1870), L. R. 3 P. C. 458, special leave to appeal was allowed on the ground that the question involved the construction of a Colonial Act which affected the interests of a large class in the colony. The appeal was limited by the order to the construction of the statute.

to avoid having recourse to an intermediate appeal to a Court of Error or a Court of Appeal within the colony.

Special grounds.

(A) *Where leave to appeal is sought as an Act of Grace* (I.) —In a few possessions no rules of appeal from the judgment of the local courts exist and an appeal can only be brought by special leave, as from Sarawak; or the court from which appeals were brought may cease to exist and appeals from the colony can only be brought by special leave pending a first Order in Council or charter.

In absence of grant.

Where no rules of appeal existed in Heligoland, leave was granted, there being no question as to the adequacy of the amount in dispute (*q*).

Where court no longer exists.

So in New South Wales, where the Court of Appeal from which an appeal had been given by the charter of 1823 ceased to exist, the Privy Council in several cases (*r*) granted leave to appeal in pursuance of 7 & 8 Vict. c. 69.

S. C. of Canada.

Appeals from the Supreme Courts of Canada and South Africa can only be brought by special leave.

Question affecting status.

(II.) *Questions which have not a certain Pecuniary Value.* —Where the charter of justice did not give a right to appeal in matrimonial causes, the Judicial Committee, under the general powers reserved by the charter to the Crown, granted leave to appeal. No special merits need be shown where the question concerns the validity of marriage, title to dower, questions of legitimacy, the status of the issue, or the custody of children, which are all civil rights, and may be said to be beyond pecuniary value (*s*). In *D'Orliac* v. *D'Orliac*, Lord Brougham said it was monstrous to say you might appeal for 1,000*l.* and not in a case where legitimacy is involved (*s*).

(*q*) *Siemens* v. *Heirs of Bufe* (Heligoland, 1856), 11 Moo. 62. And see *Henderson* v. *Henderson* (Newfoundland, 1843), 4 Moo. 259.

(*r*) *Flint* v. *Walker* (N. S. W. 1847), 5 Moo. 179; *Bank of Australasia* v. *Breillat* (N. S. W. 1847), 6 Moo. 152; *Marchioness of Bute and Others* v. *Mason and Others* (N. S. W. 1849), 7 Moo. 1.

(*s*) *Hulm* v. *Hulm* (Mauritius, 1843), 4 Moo. 262; *D'Orliac* v. *D'Orliac* (Mauritius, 1844), 4 Moo. 374; *Shire* v. *Shire* (Mauritius, 1845), 5 Moo. 81. See also *Churchwardens of St. George, Jamaica* v. *May* (Jamaica, 1858), 12 Moo. 282; *In re Skinner* (N. W. P. 1870), L. R. 3 P. C. 451; 7 Moo. (N. S.) 296; *Le Meunier* v. *Le Meunier* (Ceylon), (1894) A. C. 283; *Le Mesurier* v. *Le Mesurier* (Ceylon), (1895) A. C. 517, where the Supreme Court dismissed a suit for divorce and refused leave to appeal; *Lemm* v. *Mitchell* (Hong Kong, 1912). It has been pointed out that now most colonial courts have power to admit an appeal in these cases.

Of general public importance.

Rights of great Public Interest.—The Royal Court of Guernsey refused seven parishioners leave to appeal from an assessment made on real and personal property, of sums varying from 13*l.* 17*s.* 6*d.* to 40*l.*, and amounting in all to 169*l.* 18*s.* 9*d.* The sums in question were both separately and collectively below the amount fixed for ordinary appeals. The Judicial Committee gave leave, as the question affected the rights of the whole parish (*t*).

Where the matter is of a substantial character and of great public interest, as, for example, the rights over the streams which flow down to the Ottawa River, special leave will be given. *Caldwell* v. *McLaren*, 9 A. C. 392. So where the question was whether the gold and silver minerals in the "Railway Belt" in British Columbia are vested in the Crown as represented by the Government of the Dominion, or in the Crown as represented by the Government of the Province. *Att.-Gen. of British Columbia* v. *Att.-Gen. of Canada* (1889), 14 A. C. 295. Where leave has been granted on the ground that the matter is one of general importance, the parties will not be permitted to argue the case at the hearing on a question of fact. *Corp. of St. John's* v. *Central Vermont Railway* (S. C. Can. 1889), 14 A. C. 590.

A matter may, however, be of considerable importance to the litigants concerned and be calculated to attract public attention, yet its determination may not affect any other interests than those of the parties, nor be decisive of any general principle of law. In these circumstances the Board will consider whether the case is of such importance or of such nicety as to require in the interests of justice that the judgment shall be reviewed. *Dumoulin* v. *Langtry* (Can.), P. C. Arch. June 18, 1887. Cf. *Macmillan* v. *Grand Trunk Railway Co. of Canada*, P. C. Arch. May 17, 1889.

Academic Questions.—"It is not the province of the Judicial Committee to debate or resolve academic questions." Therefore, where it was urged that the Supreme Court of Natal had laid down the proposition, that under no conceivable circumstances could that court interfere with the proceedings of the town council in issuing or refusing licences,

(*t*) *In re Tupper* (Guernsey, 1834), 2 Knapp, 201; and cf. *Martyn* v. *M'Cullock* (Guernsey, 1837), 1 Moo. 308.

however improper their proceedings might be, their lordships refused to express their opinion upon the general proposition, which was not necessary for their decision. *Vanda* v. *Mayor of Newcastle*, 79 L. T. 600. Cf., too, *Att.-Gen. for Ontario* v. *Hamilton Street Railway*, (1903) A. C. 520, where it was declared that it was not their lordships' practice to give opinions on speculative questions submitted to them.

Abstract right.

Special leave will not be granted to appeal from a judgment which is not impeached merely with a view to have an abstract point of law not arising in the case decided by the Judicial Committee. *R.* v. *Louw, Ex parte the Att.-Gen. for the Cape of Good Hope*, (1904) A. C. 412.

The respondent in the appeal had been found guilty and sentenced, but a special point of law was reserved for the Supreme Court of the Cape of Good Hope, and though that court upheld the conviction, the majority of the judges were of opinion that there had been a misdirection, and that the presiding judge at the trial had ruled out a defence which might have been open to the prisoner.

The petitioner contended that the doctrine laid down by the Supreme Court, which involved the question of whether a rebel in arms was entitled to the rights of a belligerent, should not be allowed to stand, but as there was no judgment or determination of the Supreme Court but only an expression of opinion which was sought to be reversed, special leave to appeal was refused.

Aliter, where injury to character.

But where the decision appealed from has caused permanent injury to character, though the effect of the sentence has been concluded, leave to appeal may be granted. *In the Petition of F. W. Quarry*, L. R. 7 I. A. 6. (See p. 220.)

Absence of jurisdiction.

Court below acting without Jurisdiction.—Special leave was granted to appeal where the allegation on behalf of the Crown was that the Supreme Court, in quashing an order forfeiting recognizances of sureties made by a police magistrate, had acted without jurisdiction (*u*). Where the Court of British Guiana had treated the publication of letters in newspapers by a barrister criticising the administration of justice as a contempt of court, the Judicial Committee recommended special leave to appeal, as it

(*u*) *The Queen* v. *Price* (Ceylon, 1854), 8 Moo. 203.

appeared *primâ facie* that it was not within the competency of the court to deal with the case as one of contempt. *In re De Souza*, P. C. Arch. December 1, 1888. Cf. *In re M. A. Taylor, The Times*, December 2, 1911, and 105 L. T. 974.

Decision determining several suits.

Several Suits taken conjointly exceed the Appealable Amount.—Where the suits are substantially for the same matter, and involve the same questions, and the court below has pronounced as its decision one judgment which is to determine all the suits, the Privy Council may give leave to appeal. It has directed in such a case that if the parties should, within two months, agree that all the suits were to abide the event of the appeal in the first suit on the list, the record of the first suit only should be transmitted to this country; otherwise that all the records should be transmitted (*x*). So where many other suits depended upon the decision (*y*).

Questions of revenue.

Public Revenue concerned.—Where the rights of the Crown were concerned in the application of Her Majesty's revenue, arising in the island, leave to appeal from Jersey was granted, although the sum in dispute was 45*l.* 12*s.* and the appealable amount was 80*l.* (*z*). So where a very important question as to the jurisdiction of the Supreme Court of Bombay in matters of revenue was involved, the Judicial Committee allowed the East India Company to appeal, although the amount in question was only Rs. 250, the appealable amount being Rs. 10,000, on the terms that the company paid the respondent's costs of appeal (*a*).

Important Point of Law.—Under the special circumstances of the case, an important point of law being in dispute, the Judicial Committee have recommended the granting of leave to appeal, although the amount in question

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(*x*) *Baboo Gopal Lall Thakoor* v. *Teluk Chunder Rai* (Calc. 1860), 7 Moo. I. A. 548; *Ko Khine* v. *Snadden* (Bengal, 1868), L. R. 2 P. C. 50.

(*y*) *Joykissen Mookerjea* v. *Collector of East Burdwan* (Calc. 1860), 8 Moo. I. A. 265.

(*z*) *Att.-Gen. of Jersey and Others* v. *Capelain* (1842), 4 Moo. 37. See, further, *Lindo* v. *Barrett* (Jamaica, 1856), 9 Moo. 456; *Churchwardens of St. George, Jamaica* v. *May* (1858), 12 Moo. 282; *In re Att.-Gen. of Victoria* (1866), 3 Moo. (N. S.) 527.

(*a*) *Spooner* v. *Juddow* (Bombay, 1850), 6 Moo. 257.

was less than the appealable amount (*b*). But where the judgment from which leave to appeal is made is not attended with doubt, the Judicial Committee will not recommend the granting of the petition. *De Jager* v. *Att.-Gen. of Natal*, (1907) A. C. 326.

Questions of constitutional interest.

Question of Constitutional Interest.—Several verdicts had been obtained against the Crown in a colonial court, and the points involved in all the cases were the same, and materially concerned the rights of the Crown and the duties of the Governor. The Privy Council, although the value was in two of the cases below the appealable amount, permitted the Attorney-General to appeal, the appeals being consolidated (*c*). Where the Attorney-General of a colony had exhibited a criminal information against a person for an assault, which he charged to be a contempt of the local legislature, and the colonial court had allowed a demurrer to the information, the Committee gave the Attorney-General leave to appeal (*d*). So also where a question involved a principle of general local application, and of local importance in judicial proceedings (*e*). So where the construction of a Colonial Act was in question, leave to appeal was granted, though only as to that part (*f*). Cf. *Ex parte Gregory*, (1901) A. C. 128.

Where leave granted below a nullity.

Where Leave granted below is a Nullity.—If the court below grants leave to appeal in a case which for any reason is not appealable (*g*), or has granted leave in contravention of the orders regulating the appeal practice, the permission is a mere nullity. In such cases it is necessary to obtain special leave to appeal from the Sovereign in Council (*h*).

(*b*) *Castrique* v. *Buttigieg* (Malta, 1855), 10 Moo. 94; *Kerakoose* v. *Brooks* (Madras, 1860), 14 Moo. 452; *Rogers* v. *Rajendro Duth* (Calc. 1860), 8 Moo. I. A. 103; *Sun Fire Office* v. *Hart* (of general importance to insurance offices) (Windward Islands, 1889), 14 A. C. 98.

(*c*) *In re Att.-Gen. of Victoria* (1866), L. R. 1 P. C. 147; 3 Moo. (N. S.) 527.

(*d*) *Att.-Gen. of New South Wales* v. *Macpherson* (N. S. W. 1870), 7 Moo. (N. S.) 49.

(*e*) *Emery* v. *Binns* (Jamaica, 1850), 7 Moo. 195.

(*f*) *Brown* v. *McLaughan* (South Australia, 1870), 7 Moo. (N. S.) 306.

(*g*) *Morgan* v. *Leach* (Bombay, 1841), 3 Moo. 368; *D'Orliac* v. *D'Orliac* (Mauritius, 1844), 4 Moo. 374; *Shire* v. *Shire* (Mauritius, 1845), 5 Moo. 81; *In re Minchin* (Madras, 1847), 6 Moo. 43.

(*h*) *Retemeyer* v. *Obermuller* (Berbice, 1837–8), 2 Moo. 93.

Omission to ask leave below.

Where the East India Company omitted to appeal from the decree determining the rights of the parties and directing consequential inquiries until after the inquiries had been held in Chambers, and the six months within which the time to appeal from such final decree had expired, the Judicial Committee refused to recommend that leave to appeal should be given until they had been satisfied of the reason for the delay (*i*).

Where jurisdiction doubtful.

The Supreme Court of Nova Scotia having given the appellant leave to appeal in a criminal case the respondent petitioned His Majesty in Council that the orders admitting the appeal might be set aside, and on the hearing of these petitions the Judicial Committee directed them to stand over till the hearing of the appeal with instructions that if at the hearing there should appear to be substantial doubt as to whether the appeals were or were not properly brought without special leave, and their lordships should then be of opinion that it was a case for granting special leave, they would be prepared to order accordingly. Subsequently the Committee decided to hear the case on the footing that the appellant had lodged petitions for special leave to appeal. *Townsend* v. *Cox*, (1907) A. C. 214.

Injury to character.

Injury to Character.—The High Court of the North West Provinces suspended a vakeel for three months. Before his application to the Judicial Committee for leave to appeal was heard, this period had expired, but that fact alone, it was intimated, would not induce the Board to refuse the application, if a lasting stigma on a man's character had been passed. The Judicial Committee being of opinion that the High Court had acted within their jurisdiction, declined to interfere. *Petition of F. W. Quarry* (1869), L. R. 7 I. A. 6; cf. *Petition of Doleance of N.* (Jersey, 1879), 5 A. C. 346. The Judicial Committee have granted special leave to appeal against an order of the acting Chief Justice of a Crown colony directing the petitioner, a barrister and solicitor of the Supreme Court of the colony, to pay a fine of 100*l.* for alleged contempt of court and against two orders of the Chief Justice, the first of which imposed upon him a fine of 20*l.* and the second ordering his

(*i*) *East India Co.* v. *Syed Ally*, 7 Moo. I. A. 526.

name to be struck off the roll of barristers and solicitors. *In the Matter of M. A. Taylor, Times*, November 14, 1910.

But where an appeal from an order of the court removing the applicant from the roll of vakeels would have involved indirectly an appeal from a conviction of forgery, the Privy Council refused to admit it. *In re Rajendro Nath Mukerji*, L. R. 26 I. A. 242.

Time for appeal expired.

Delay through mistaking Remedy.—Where land was seized in execution by a sequestrator in pursuance of a decree against A., and B. presented a petition in the suit claiming the land, which was dismissed, and then B., instead of appealing, filed a bill asserting his right to the land to which a demurrer was allowed: though the time for appealing from the order in the original suit had expired, B. obtained special leave from the Judicial Committee upon the ground that he had mistaken his remedy (*k*).

Delay while obtaining Advice.—Where heavy accounts were involved, and a correspondence between persons in India and in England became necessary respecting proofs, and counsel in England had to be consulted as to the expediency of appeal, and the appeal limit had expired, special leave was granted (*l*).

Laches.—But where there has been neglect in complying with the conditions of appeal, the right will become forfeited (*m*). So where, in a case relating to the revenues of the Crown, no appeal was prayed within the time limited, and no step taken for two years, special leave was refused. The Judicial Committee held that the Crown had no greater right in a general case involving its interests, to come in after such a delay than the subject (*n*).

Poverty.—Where there has been excessive delay and laches, poverty alone will not form sufficient grounds for special leave (*o*). But where a man had been fined for a breach of the Revenue Laws and the court below had refused to hear him because he was unable to give security for costs and refused him liberty to appeal, the Judicial

(*k*) *In re Mushadee Mahomed Cazum Sherazee* (Bombay, 1852), 7 Moo. 391.
(*l*) *McKellar* v. *Wallace* (Calc. 1853), 8 Moo. 378.
(*m*) See *Ex parte Kensington* (Leeward Islands, 1863), 15 Moo. 209.
(*n*) *Laing* v. *Ingham* (Mauritius, 1839), 3 Moo. 26.
(*o*) *In re Sarchet* (Guernsey, 1857), 10 Moo. 533.

Committee gave him special leave to appeal *in formâ pauperis* (*p*). And where leave to appeal was obtained on an *ex parte* application, and the appellant having taken no steps to prosecute the appeal or perfect the security ordered, the respondent filed a counter-petition to revoke the leave to appeal, the Judicial Committee imposed further and more stringent terms on the appellant, increasing the security and ordering him to lodge his appeal within six weeks.

Where the High Court of India had refused to admit an appeal from a decree given three years previously, on the ground that the delay which was attributed to filing the appeal in a wrong court was not under the circumstances sufficient cause for not appealing in due time, the Judicial Committee upheld the order and refused special leave to appeal. *Ram Narain Joshi* v. *Parmeswar Mahta*, L. R. (1902), I. A. p. 20.

Delay in prosecuting cross-appeal.

Delay in Prosecuting Cross-appeal.—Where, by mistake, the respondents failed to lodge their cross-appeal in time, the Judicial Committee granted them special leave to enter and prosecute their cross-appeal on giving the regular security for costs (*q*).

So where in a case of maritime collision there had been cross-actions, and the owners of one of the ships were prepared to abide by the decree if their adversaries did so; but the owners of the other ship appealed, and did not inform the owners of the first ship until after the time for appealing had expired: the owners of the first ship, having been guilty of no laches, obtained leave to appeal (*r*).

Non-completion of conditions through circumstances out of control of appellant.

Non-completion of Conditions, where no Laches.—A person desirous of appealing from a judgment of the Royal Court of St. Lucia had used every effort to perfect his securities within the time limited by the Order in Council by which appeals were then governed, and had in fact perfected them; but the court, owing to the suspension and removal of judges, was not legally constituted at the time. When the court was again duly constituted it dismissed the appeal, on the ground that security had not been given

(*p*) *George* v. *The Queen*, 4 Moo. (N. S.) 287.

(*q*) *Nana Narain Rao* v. *Hurree Punt Bhao* (N. W. P. 1856), 11 Moo. 36.

(*r*) *The Mœander* (1862), 1 Moo. (N. S.) 42.

within the proper period. The Privy Council granted leave to the appellant to prosecute his appeal; and it was ordered that all proceedings against him, in consequence of the judgment, should be stayed until the hearing of the appeal or further order to the contrary; without prejudice to the power of the opposite party to contest his right to his appeal at a future stage of the proceedings. Upon the appeal coming on for hearing, a preliminary objection was taken by the respondents, on the ground of irregularity in not perfecting the security in the court below, and the consequent absence of any security as required by the Order in Council. The Judicial Committee, however, overruled the objection, and directed the appeal to be proceeded with, the appellant undertaking to give security for costs to the amount of 300*l.* (*s*).

Special leave under 7 & 8 Vict. c. 69.

(B) Where the appellant seeks to appeal from a court of first instance he must obtain special leave to appeal by a petition to His Majesty in Council. This may happen either where the court below does not possess power to grant leave to appeal or where the appellant desires to appeal direct from the colonial court of first instance instead of having recourse to an intermediate Court of Error or Court of Appeal within the colony. The statute enables the Sovereign to admit an appeal from colonial courts other than those to which the right of admitting an appeal has been delegated; and the power can be exercised notwithstanding that the function of framing provisions on the subject of appeal has been granted to the colonial legislature. The Judicial Committee only entertain appeals direct from a court of first instance in the colonies where a question of law is raised by the proceedings. *Harrison* v. *Scott*, 8 Moo. 357. But it is noteworthy that there are few if any modern cases where the right of granting special leave in such circumstances has been exercised. A few examples, however, are given from old decisions of the Judicial Committee.

Where there is a point of Law which deserves Discussion.—In several cases from Jamaica, the Privy Council granted leave to appeal to the Queen in Council directly from the

(*s*) *Inglis* v. *De Barnard* (St. Lucia, 1841), 3 Moo. 425.

Supreme Court, without an intermediate appeal (which would have been attended with much expense and delay) to the Court of Error in the island. In each of those cases there was manifestly some point of law raised which deserved discussion (*t*).

Where a Question of Principle is involved.—An appeal was allowed, where a man had brought an action of trespass for assault and false imprisonment in the Supreme Court (Jamaica), laying his damages at 3,000*l.*, and had recovered 40*s.* damages ; and the question was, whether under certain local Acts, a man could, by laying damages at an extravagant sum, enable himself to sue in the Supreme Court and recover Supreme Court costs, although the verdict he recovered was within the pecuniary limits of the jurisdiction of an inferior court, and would have entitled him, if he had sued in that court, to costs upon a lower scale (*u*).

Appeal from court-martial.

There is no right of appeal by right of grant from special tribunals, and leave to appeal from their sentences will not be given except in a strong case. Special leave to appeal will not be granted from the judgment affirming acts done by the military authorities in a district where martial law has been proclaimed. *Ex parte Marais*, (1902) A. C. 109.

Where the colonial legislature had passed an Act of Indemnity covering the sentence of the military authorities and confirming their special Acts, leave to appeal from a sentence was refused. *Tilonko* v. *Att.-Gen. of Natal*, (1907) A. C., pp. 93 and 461.

A subsequent petition of the same appellant to appeal from a judgment of the Supreme Court of Natal dismissing his application which questioned the legality of his detention in gaol was likewise rejected and for the same reason. *Ibid.*, p. 461.

In delivering judgment in the first case Lord Halsbury pointed out that what is called martial law is no law at all. If there is war, there is the right to repel force by

(*t*) *In re Barnett* (Jamaica, 1844), 4 Moo. 453 ; *Harrison* v. *Scott* (Jamaica, 1846), 5 Moo. 357 ; *Att.-Gen. of Jamaica* v. *Manderson* (Jamaica, 1848), 6 Moo. 239.

(*u*) *Emery* v. *Binns* (Jamaica, 1850), 7 Moo. 195.

force, but it is found convenient and desirous from time to time to authorise what are called 'courts' to administer punishment and to restrain by acts of repression the violence that is committed in time of war instead of leaving such punishment and repression to the casual action of persons acting without sufficient consultation. . . . But to attempt to make these proceedings of so-called 'courts-martial' administering summary justice under the supervision of a military commander analogous to the regular proceedings of courts of justice is quite illusory. Appeals do not lie to His Majesty in Council from such tribunals, and his intercession can only be invoked, if at all, by a petition for special reference."

A petition for special leave to appeal direct to the Privy Council from the sentence of a court-martial in Natal was dismissed on the ground that, martial law having been proclaimed by the executive government of the colony and there having been no application to the court of the colony, the application was in substance an appeal from the act of the executive in which the Judicial Committee had no jurisdiction. *Ex parte Mgomini*, 94 L. T. 558; 22 T. L. R. 413.

PETITIONS AND APPEALS IN FORMÂ PAUPERIS.

Petition.

Security has to be given in all appeals in the Privy Council by the appellant, unless leave be given to appeal *in formâ pauperis*. Such leave can only be obtained from the Judicial Committee by a petition for special leave brought in accordance with the Judicial Committee Rules; but application for leave to appeal must first be made within due time to the court below.

Judicial Committee rules.

The rules as to petitions for leave to appeal *in formâ pauperis* provide as follows;

Petitions for special leave to appeal *in formâ pauperis*.

8. Rules 3 to 7 (*w*) (both inclusive) shall apply *mutatis mutandis* to petitions for leave to appeal *in formâ pauperis*, but in addition to the affidavit referred to in rule 4 every such petition shall be accompanied by an affidavit from the petitioner stating that he is not worth 25*l.* in the world excepting his wearing apparel

(*w*) See above, pp. 207—8, and Chapter VIII., pp. 257, ff.

and his interest in the subject-matter of the intended appeal, and that he is unable to provide sureties, and also by a certificate of counsel that the petitioner has reasonable ground of appeal.

Exemption of pauper appellant from lodging security and paying office fees.

9. Where a petitioner obtains leave to appeal *in formâ pauperis*, he shall not be required to lodge security for the costs of the respondent or to pay any Council Office fees.

Exemption of unsuccessful petitioner for leave to appeal *in formâ pauperis* from payment of office fees.

10. A petitioner whose petition for leave to appeal *in formâ pauperis* is dismissed may, notwithstanding such dismissal, be excused from paying the Council Office fees usually chargeable to a petitioner in respect of a petition for leave to appeal, if His Majesty in Council, on the advice of the Judicial Committee, shall think fit so to order.

The applicant for leave to appeal as a pauper must therefore state succinctly all the main facts of the case as well as the facts of his poverty, and three copies of the petition and the affidavits must be lodged together with copies of the

Certificate of poverty.

certificate of at least one counsel that he has reasonable grounds of appeal. The fact that the certificate is only signed by a counsel who appeared at the original hearing and not by any independent counsel is not sufficient reason for refusing leave. *Mitchell* v. *New Zealand Loan Co.*, (1904) A. C. 149. The Judicial Committee must be satisfied of the poverty, and the petition should state that the applicant has no funds to provide security for costs. Cf. *Brouard* v. *Dumaresque*, 3 Moo. 457 ; and 6 Moo. 412.

Application to court below.

Where the court below has power to grant leave on the usual conditions, the Judicial Committee will not in general entertain a petition for leave to prosecute an appeal *in formâ pauperis*, unless in the first instance an application for leave to appeal has been made within due time to the court from which it is proposed that the appeal should be brought. The Judicial Committee refused an application for leave to appeal from a decision of the Supreme Court of New South Wales where no application for leave to appeal within due time to that court had been made. *Walker* v. *Walker*, (1903) A. C. 170.

Special leave to appeal *in formâ pauperis* was granted where a colonial Code made no provision for appeals in that form, and the total value of the subject-matter of litigation was greater than the minimum appealable amount. *Ponnamma* v. *Arumogam*, (1902) A. C. 561. Where leave to appeal was obtained in the regular form, the appeal may be presented *in formâ pauperis*. *Pollard* v. *Harragin*, (1891) A. C. 454; *Quinlan* v. *Child*, (1900) A. C. 496.

Consideration of merits.

But if it appears that there is no real question of fact, the Order in Council granting leave to appeal *in formâ pauperis* will be rescinded. *Quinlan* v. *Quinlan*, (1901) A. C. 612.

On the hearing of petitions of this kind the Judicial Committee occasionally deem it right to enter into consideration of the merits of the case. *Kishen Dutt Misr* v. *Tameswar Parshad* (1879) Wheeler's P. C. 86; *Quinlan* v. *Quinlan*, (1901) A. C. 612; *Mitchell* v. *The New Zealand Loan Co.*, (1904) A. C. 149.

It is their regular practice to do so in an appeal in a criminal case. *In re Dillet*, 12 A. C. 459.

The petition will not be granted unless the petitioner shows a good *primâ facie* case for appeal. *Paddington* v. *Sidgwick*, *The Times*, December 17, 1909.

When the object of the appeal is to try a public right, the petition will not be granted. *Bowie* v. *Marquis of Ailsa*, 13 A. C. 371.

Next friend.

The Judicial Committee will admit an appeal by a next friend *in formâ pauperis* where the petitioner is a pauper and a native of India, or of any other country, and cannot speak English (*x*). The Judicial Committee will allow the appearance of a next friend *in formâ pauperis* where a solvent next friend cannot be found for a minor appellant (*y*).

Relief obtained.

A petitioner *in formâ pauperis* cannot be relieved from the expenses of preparing and printing the record in the appeal. He will, however, not be required to pay any fees

(*x*) See *Kishen Dutt Misr* v. *Tameswar Parshad*, P. C. Ar. June 14, 1879.

(*y*) *Gaudin* v. *Messervy* (Jersey, 1864), 2 Moo. (N. S.) 372, where a person was interested in a fund in Chancery, and there was no prospect of an immediate or early payment, she was considered as destitute of funds and allowed to appeal *in formâ pauperis*; *Bishop* v. *Wildbore*, 9 Moo. 408.

in the Privy Council Office. Sometimes their lordships think it right that a pauper, when successful in his appeal, should have his costs; but these are only allowed on the footing of an appeal, in form, from the date on which the petitioner is admitted, on the recommendation of the Board, to appeal as a pauper (*z*). See p. 336.

Costs.

The rule of the House of Lords as to costs in pauper cases will be adopted by the Privy Council. *Wasteneys* v. *Wasteneys*, (1900) A. C. 446.

The court fees are regularly remitted if application is made. *Walker* v. *Walker*, (1903) A. C. 172.

Respondent *in formâ pauperis.*

A respondent may obtain leave to defend an appeal *in formâ pauperis* in the same circumstances and under the same conditions as an appellant may obtain leave to bring the appeal.

Rule 44 provides:

Respondent defending appeal *in formâ pauperis.*

A respondent who desires to defend an appeal *in formâ pauperis* may present a petition to that effect to His Majesty in Council, which petition shall be accompanied by an affidavit from the petitioner stating that he is not worth 25*l.* in the world excepting his wearing apparel and his interest in the subject-matter of the appeal.

A respondent was allowed to defend the appeal *in formâ pauperis* in *Spurrier* v. *La Cloche*, a case which came from Jersey, (1902) A. C. 446.

Criminal Appeals.

Criminal law.

The criminal law is administered in accordance with the principles of the common law of England throughout the British Empire. The criminal law can be varied within the empire by the legislative authority, and in foreign jurisdictions of the Crown without the empire it can be varied by the Crown, the sole legislative authority in such matters (*a*).

(*z*) See *Pollard* v. *Harragin* (Trinidad), (1891) A. C. at p. 454; *M'Kensie* v. *Brit. Linen Co.* (H. L. 1881), 6 A. C. 113; *Mackie* v. *Herbertson* (H. L. 1884), 9 App. Cas. 344.

(*a*) *Ex parte Carew* (Japan), (1897) A. C. 719.

The Inherent Prerogative.—"Upon principle, and reference to the decisions of this Committee," it was said in the course of the judgment of the Judicial Committee in *Reg.* v. *Bertrand* (*b*), "it seems undeniable that in all cases, criminal as well as civil, arising in places from which an appeal would lie, and where, either by the terms of a charter (*c*) or statute, the authority has not been parted with, it is the inherent prerogative right, and, on all proper occasions, the duty of the Queen in Council to exercise an appellate jurisdiction, with a view not only to ensure, so far as may be, the due administration of justice in the individual case, but also to preserve the due course of procedure generally. The interest of the Crown, duly considered, is at least as great in these respects in criminal as in civil cases; but the exercise of this prerogative is to be regulated by a consideration of circumstances and consequences; and interference by Her Majesty in Council in criminal cases is likely, in so many instances, to lead to mischief and inconvenience, that in them the Crown will be very slow to entertain an appeal by its officers on behalf of itself or by individuals. The instances of such appeals being entertained are, therefore, rare. The opinions stated by this Committee in the following cases: *Ames et al.*, 3 Moo. 409; *The Queen* v. *Joykissen Mookerjee*, 1 Moo. (N. S.) 272; *The Falkland Islands Co.* v. *The Queen*, 1 Moo. (N. S.) 299, establish this position. The result is that any application to be allowed to appeal in a criminal case comes to this Committee labouring under a great preliminary difficulty—a difficulty not always overcome by the mere suggestion of hardship in the circumstances of the case; yet the difficulty is not invincible. It is not necessary to attempt to point out all the grounds which may be available for the purpose; but it may safely be said, that when the suggestions, if true, raise questions of great and general importance, and likely to occur often, and also where, if true, they show the due and orderly administration of the

Difficulties in the way of a criminal appeal.

Grounds for criminal appeal as stated in *Bertrand's Case.*

(*b*) (N. S. W. 1867), L. R. 1 P. C. at pp. 529 *et seq.*

(*c*) It would seem open to question whether the Crown can, without the sanction of Parliament, abandon the prerogative right to hear appeals from subjects. Cf. *Reg.* v. *Alloo Paroo* (Bombay, 1847), 3 Moo. I. A. 488, *per* Lord Brougham. Such an abandonment must certainly be in express terms: see *Théberge* v. *Laudry* (Low. Can. 1876), 2 App. Cas. at p. 106.

Questions of great and general importance.

Due administration of justice interrupted.

Administration of justice diverted into new course, creating a precedent.

law interrupted, or diverted into a new course, which might create a precedent for the future, and also where there is no other means of preventing these consequences, then it will be proper for this Committee to entertain an appeal, if referred to it for its decision" (*d*).

The Judicial Committee, in the above case, gave leave to appeal on the terms that the prisoner remained in prison until delivered in due course of law (*e*). The judge at a second trial had irregularly, instead of taking the evidence of the witnesses anew, read the notes of evidence taken by him at the prior trial of the prisoner, when the jury, being unable to agree, had been discharged.

Rules stated in Riel's Case.

It is the usual rule of the Judicial Committee not to grant special leave to appeal in criminal cases, except when some clear departure from the requirements of justice is alleged to have taken place (*f*), and "it is shown that by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done" (*g*). Special leave to appeal on these principles was allowed in *Dillet's Case*, on the ground stated in the petition for leave to appeal, that the conviction was obtained in a manner so unsatisfactory that the conviction alone ought not to be conclusive as a ground for striking the petitioner off the roll. The defendant was a barrister and solicitor, and appealed against his conviction on a charge of perjury and the consequential

(*d*) *Reg.* v. *Bertrand* (N. S. W. 1867), L. R. 1 P. C. 529.

(*e*) *Ibid.*, p. 525.

(*f*) *Riel* v. *The Queen* (Manitoba, 1885), 10 A. C. 675. As to appeal on a case reserved, see *Reg.* v. *Coote* (Quebec, 1873), L. R. 4 P. C. 599. For instance of such leave being refused, see *In re Macrae* (Allahabad), (1893) A. C. 346.

(*g*) See the celebrated judgment delivered by Lord Watson in *Dillet's Case* (Brit. Hon. 1887), 12 A. C. 459; approved in *Ex parte Deeming* (Victoria), (1892) A. C. 422; *Ex parte Kops* (N. S. W.), (1894) A. C. 652; and *Ex parte Carew* (Japan), (1897) A. C. 719; and *Tshingumuzi* v. *Att.-Gen. of Natal*, (1908) A. C. 248. For an instance of an appeal to remit part of a sentence, see *Re Martin Fonaris* (Minorca, July 29, 1719), referred to in 1 Moo. 129. For a case in which a point of law was reserved for the consideration of the Sovereign in Council, *Yusuf-ud-Din* v. *The Queen* (Punjab, 1897), 76 L. T. 813, and a case in which misdirection was alleged, *Gangadhar Tilak* v. *The Queen* (Bombay, 1897), L. R. 25 I. A. 1, may be seen. In *John Makin and Sarah Makin* v. *Att.-Gen. for N. S. W.* (N. S. W. 1893), special leave was given to appeal from a judgment of the Supreme Court upon a special case stated as to the admissibility of evidence in a prosecution for child murder.

order striking off the rolls (*h*). Unless there is a departure from the broad principles of natural justice, an informality will not prevail to support an application for leave to appeal from a judgment in a criminal case (*i*).

Grounds for criminal appeal as stated in *Dillet's Case*.

Pardon.—Where the petitioner had been discharged from prison before the hearing of the appeal the Judicial Committee dismissed the petition without costs. Cf. *Levien* v. *Reg.*, L. R. 1 P. C. 536.

It is a usual order to dismiss an application for special leave to appeal from a criminal conviction without costs.

The following cases illustrate the practice of the Privy Council in dealing with appeals in criminal cases:

Recent criminal appeals.

In *Alade* v. *The King* special leave to appeal was refused to a barrister convicted by the Supreme Court of the Gold Coast of breach of trust because the case was not within the principle in *Dillet's Case*, 1910.

Where the appellants who had been summarily committed to prison for wilful and corrupt perjury before the Bankruptcy Court had not been informed by the judge of what statements made by them constituted the perjury, and had had no opportunity of showing cause before sentence, special leave to appeal was granted, and on the hearing, the committal order was rescinded. *Chang Hang Kiu* v. *Piggott*, (1909) A. C. 312.

Disputed evidence.

Where three appellants were convicted of the murder of a female servant, and the case against them, so far as direct evidence was concerned, depended entirely on the evidence of another servant, aged fourteen, the Board held that the case was not quite strong enough to warrant their interference with the verdict. *Ulungama Eugenie Hamia* v. *Regem*, 1909.

In a case of disputed evidence on which the judges had differed, special leave to appeal was refused to the convicted man. It was impracticable, said the Lord Chancellor, to think that the Board could judge better than those who had heard the witnesses themselves. "The fact that there was a difference of opinion among the judges is not a ground on which by itself their lordships could act in a case like the present." *Tshingumuzi* v. *Att.-Gen. of Natal*, (1905) A. C. 248.

(*h*) *Dillet's Case*, p. 467. For other cases of striking off rolls, see *Re Monckton*, 1 Moo. 455 (P. E. I. 1837); *Emerson* v. *Newfoundland Judges* (Newfoundland, 1852), 8 Moo. 157; *Re M. A. Taylor*, 105 L. T. 974.

(*i*) *Dinizulu* v. *Att.-Gen. for Zululand* (Zululand, 1889), 61 L. T. 740.

Delay.

A petition for leave to appeal in a criminal case in which more than three years had elapsed since the expiration of the sentence on the petitioner, and no *primâ facie* case of miscarriage of justice was disclosed, was dismissed. The petitioner had been convicted of criminal libel and sentenced to seven months' imprisonment; and the grounds alleged for the delay were that he had no means in the interval. *Badger* v. *Att.-Gen. for New Zealand* (1908), 97 L. T. 621.

Special court.

Where a special court was established in the colony of Natal to try persons accused of offences against the state during the Boer war a petition for special leave to appeal from a judgment convicting the applicant of high treason was entertained but dismissed on the merits. *De Jager* v. *Att.-Gen. of Natal*, (1907) A. C., p. 326.

Misdemeanour.

In the Governor's Instructions in several of the West Indian Colonies, an appeal was given in cases of misdemeanour where the fine exceeded a certain sum. But it is doubtful if this right would be permitted to-day. It has become obsolete.

Finality of trial of felony.

There is no instance of a new trial being granted in a capital case (*k*), and but one of a new trial in a case of felony, where the power of the court to grant it was not argued. This precedent the Judicial Committee has declined to follow (*l*). "When the jury have been brought together and the prisoner has been given in charge and the trial has commenced, the right course, if practicable, is that the jury should give their verdict convicting or acquitting the prisoner. When the jury have once found a verdict of conviction or acquittal, the matter has become *res judicata*, and after that there can be no further trial" (*m*). These remarks relate to a verdict returned upon a good indictment for felony before a competent tribunal. There are, however, cases of defeat of jurisdiction in respect of time, place, or person, cases of verdicts so insufficiently expressed or so ambiguous that a judgment could not be founded thereon (*n*), where an appeal has been allowed.

(*k*) Cf. *Ex parte Carew* (Japan), (1897) A. C. at p. 720.

(*l*) *Reg.* v. *Scaife* (1851), 17 Q. B. 238; *R.* v. *Bertrand* (N. S. W. 1867), L. R. 1 P. C. at p. 533; *R.* v. *Murphy* (N. S. W. 1869), L. R. 2 P. C. 535.

(*m*) *Per* Blackburn, J., in *R.* v. *Winsor*, L. R. 1 Q. B. 313.

(*n*) *Att.-Gen. for N. S. W.* v. *Murphy* (N. S. W. 1870), 21 L. T. N. S. 598; *R.* v. *Murphy* (N. S. W. 1868), 5 Moo. N. S. 47; and *ibid.* 6 Moo. (N. S.) 178.

It was stated in the case of *Reg.* v. *Byramjee* (*supra*) that it was contrary to the policy of the common law of England to allow an appeal in a case of felony; and though since the foundation of the Court of Criminal Appeal in England the right of bringing an appeal from a conviction for felony in England has been established, the objections urged in the Indian case to granting appeal from the judgment of a colonial court in a capital matter still holds good: "A long period must elapse before the application to the Crown could be made and its decision could be known. And eventually when the leave to appeal was refused (and it must be presumed that this would generally be the case) execution would follow the sentence at so long an interval that all benefit to be expected from public example would be lost; and to this it may be added that in a great majority of cases the criminals themselves would be kept in a state of miserable suspense to suffer in the end the same ignominious death to which they were sentenced." 3 Moo. I. A. 482.

But where the jurisdiction of the court to entertain the case was raised, leave to appeal was given in a capital case. *Nga Hoong* v. *The Queen* (1857), 7 Moo. I. A. 72.

Court not validly constituted.

Technical Objections.—Technical objections, as on a writ of error, will not be encouraged, unless there has been a departure from the principles of natural justice. An objection that the court was not validly constituted, or had acted without or beyond its jurisdiction, might constitute a ground for special leave to appeal (*o*), but leave is not readily granted. In such a case, a subject of His Highness the Nizam of Haidarabad, in the Deccan, obtained special leave to appeal to the Privy Council from the judgment or order of the Chief Court of the Punjab dismissing the appellant's application to have a warrant which had been issued against him cancelled, and certain proceedings pending against him before the District Magistrate quashed. The appellant had been arrested within the dominions of the Nizam, under a warrant for an offence alleged to have been committed at Simla. The justification for the arrest was said to be a grant made to the British Government by the Nizam of civil and

(*o*) *Dinizulu* v. *Att.-Gen. of Zululand*, 61 L. T. 740; *Rex* v. *Marais* (Natal), (1902) A. C. 104.

Want of jurisdiction for arrest.

criminal jurisdiction along the lands occupied by a railway within his territory. Upon the hearing of the appeal it appeared that the grant did not subject persons thereon to criminal procedure for offences committed elsewhere, and the Judicial Committee recommended that the warrant of arrest and proceedings should be set aside (*p*).

Contempt.

The Judicial Committee will not consider a case of fine or imprisonment for contempt of court where no irregularity appears and the punishment was appropriate (*q*). The Judicial Committee cannot (*semble*) remit a fine for contempt of court (*q*). The Judicial Committee cannot order the release of anyone imprisoned for contempt of court pending an appeal in the matter (*r*).

Prerogative of mercy.

Their lordships have no power to make any judicial representation to the Sovereign touching the exercise of the prerogative of mercy. Any application for that purpose must be made in some other quarter (*s*).

It is doubtful whether a criminal appeal can be brought from Canada. (See p. 49.)

Conditions of Appeal.—The general conditions as to security apply in criminal as in civil cases.

Conditions attached to Special Leave.

In granting special leave to appeal, the Judicial Committee will put the petitioner upon such terms as the circumstances of the case require (*t*). Occasionally it has been made a term that the petitioner shall in any event pay the costs of both sides (*u*).

Judicial Committee Rules as to Security.—The provision of the Judicial Committee Rules on the subject of security when special leave to appeal is granted is as follows:

(*p*) *Syad Muhammud Yusuf-ud-Din* v. *The Queen* (Punjab, 1897), 76 L. T. 813.

(*q*) *McDermott* v. *British Guiana JJ.* (1868), 5 Moo. (N. S.) 466; *Rainey* v. *Sierra Leone JJ.* (Sierra Leone, 1853), 8 Moo. 47.

(*r*) *Hughes* v. *Porral* (Gib. 1842), 4 Moo. 41.

(*s*) *In re De Souza* (British Guiana, December 1, 1888), P. C. Arch.

(*t*) *In re Sibnarain Ghose* (Calc. 1853), 8 Moo. 276. The usual form is upon "submitting to pay to the respondents their costs of the appeal in any event if upon the determination of the appeal their lordships shall so direct."

(*u*) *Mair* v. *Stark* (Victoria), O. in C. November 17, 1888; *Shenton* v. *Smith* (W. Australia), O. in C. May 16, 1893.

6. Where the Judicial Committee agree to advise His Majesty to grant special leave to appeal, they shall, in their report, specify the amount of the security for costs (if any) to be lodged by the petitioner, and the period (if any) within which such security is to be lodged, and shall, unless the circumstances of a particular case render such a course unnecessary, provide for the transmission of the record by the registrar of the court appealed from to the Registrar of the Privy Council and for such further matters as the justice of the case may require. Security for costs and transmission of record.

Usual Security required.—It is the practice of the Judicial Committee, in granting special leave to appeal, to do that which the local courts are required to do when they permit an appeal to be brought under a charter or other grant, viz., to take security from the appellant to answer the respondent's costs (*v*), and (where necessary) to ensure the diligent prosecution of the appeal. Ordinarily the Judicial Committee fix the security at 300*l*. Sometimes the Judicial Committee require security, in addition, for the performance of the decree, and the preservation of any property liable to be affected by the litigation, and they impose such terms, in all respects, as justice may seem to require (*x*). Security.

The appellant is usually required to lodge in the Registry of the Privy Council a certain sum. In some special cases the security has been fixed at 100*l*. as in appeals from the Channel Islands and the Isle of Man. The amount deposited may be sometimes increased on the respondent's petition, where the transcript proves to be long (*y*). If the appeal fails, the respondent's costs are paid out of the deposit. If it succeeds, the deposit is returned to the agent of the appellant. The payment of this deposit is not required until the arrival of the transcript record in England; but it must then be made immediately, because costs may be incurred on behalf of the respondent. No security is demanded in appeals admitted *in formâ pauperis*. Security required.

(*v*) *Att.-Gen. I. of Man* v. *Cowley* (1859), 12 Moo. 27.
(*x*) See *Stace* v. *Griffith* (St. Helena, 1869), 6 Moo. (N. S.) 18.
(*y*) *Boswell* v. *Kilborn* (Low. Can. 1860), 13 Moo. 476.

Stay of execution.

Where special leave was granted in the *Bank of Australasia* v. *Breillat*, 6 Moo. at p. 169, it was said, "The admission of the appeal will of course stay the proceedings in the court below." From more recent decisions it appears as if a direction to that effect must at any rate be contained in the order giving leave (*z*).

Order where judgment for damages.

Stay of Execution on Terms.—Where damages had been given against the defendant (appellant), Her Majesty's Order was that the petitioner should be at liberty to enter and prosecute his appeal from the said judgment of, etc., upon depositing in the Registry of the Privy Council within one month from the date of the report of the Council the sum of 300*l.* sterling, as security for the costs of the respondent in case the said appeal be dismissed; and also upon giving proper security within one calendar month from the same date, to be approved by the Registrar of the Privy Council, for the payment of the sum of 450*l.* awarded to the plaintiff by the said sentence in case the said appeal be dismissed, or *upon depositing the said amount in the Registry of the Privy Council*, the respondent agreeing to suspend proceedings in his action pending this appeal (*a*). The petitioner should satisfy the Judicial Committee (1) that a serious injury will result to him unless a stay is granted; (2) that he has come promptly to make application for stay (*b*).

In India, where the High Court indicated its opinion that there should be a stay of execution pending appeal, an Order in Council was made to that effect upon condition that the petitioner should file his case and petition within a fortnight from the receipt of the record; and leave was given to the respondent to apply to the High Court for the appointment of a receiver or payment into court. *Vasudeva Modehai* v. *Shadagopa Modehai* (1906), 33 I. A., p. 132.

(*z*) *Moheshchundra* v. *Satruyhgan* (1899), 27 Calc. 1.

(*a*) *Stace* v. *Griffith*, 6 Moo. (N. S.) 18. See further *Montaignac* v. *Shitta* (Lagos, 1890), 15 A. C. 357; *Secretary of State for India in Council* v. *Nellacutti*, August 10, 1888, P. C. Arch.; *Klingebial* v. *Palmer* (S. A. 1868), 2 S. A. L. R. 235, where the court below was held to be unable to stay proceedings after special leave granted by the Judicial Committee; but it has been held that the High Court in India has power to order a stay where special leave has been granted (*Nityamasi Dasi* v. *Madhu Sudan Sen*, 38 I. A. 74).

(*b*) *Nawab Sidhee Nuzur Ally Khan* v. *Rajah Oojoodhyaram Khan* (Bengal, 1865), 10 Moo. I. A. at p. 327.

Security where special appeal under 7 & 8 Vict. c. 69.

Leave under 7 & 8 *Vict. c.* 69.—Where the Privy Council, under statute 7 & 8 Vict. c. 69, s. 1, admits a special appeal direct from the Supreme Court without proceeding to the Court of Error in the island, the Judicial Committee usually fix the amount of security for costs on the same terms as when they grant special leave (*c*).

Security for judgment when time expired.

Time to Appeal expired.—A decree of the Supreme Court of Newfoundland was pronounced *ex parte* without notice to the defendant. The period of fourteen days allowed by the charter for applying to the court below having expired, he obtained special leave to appeal from the Privy Council, on terms of lodging his case within three months, and lodging within thirty days from the date of the Order in Council the certificates of recognizance to Her Majesty, in a penalty of 18,100*l.* (being the sums declared due from him, with about 300*l.* additional). *Henderson* v. *H.*, 4 Moo. 259.

Where the Sudder Court of Bombay awarded, in execution of a decree of the Privy Council, interest upon the amount found due to the plaintiff, and having given leave to appeal, discovered that the six months allowed for appeal had expired, and rescinded the leave, the Judicial Committee gave special leave to appeal on the terms of giving security for the amount of the interest in question and paying the costs of the application. *Kirkland* v. *Modee Pestonjee Khoorsedjee*, 3 Moo. I. A. 224.

Appellant paying costs.

Appellant paying Costs in any Event.—The East India Company obtained leave to appeal in a question as to the jurisdiction of the Supreme Court of Bombay in a matter of revenue, although a very small amount (250 rupees) was at issue, upon the company undertaking to pay all costs, charges, and expenses of the respondent as well as of the appellants (*d*).

Appeals by Public Officers.—Where leave to appeal was obtained by a public officer representing the Crown, several appeals were consolidated so as to make the proceeding as little onerous as possible, and security was not required (*e*).

(*c*) See order in *Re Barnett* (Jamaica, 1844), 4 Moo. at p. 457; *Hitchens* v. *Hollingsworth* (Jam. 1852), 7 Moo. 228; *Att.-Gen. Jamaica* v. *Manderson* (1848), 6 Moo. 239.

(*d*) *Spooner* v. *Juddow* (Bombay, 1850), 6 Moo. 257.

(*e*) *Att.-Gen. of Isle of Man* v. *Cowley*, 12 Moo. 27; *Att.-Gen. of New South Wales* v. *Macpherson* (N. S. W. 1870), 7 Moo. (N. S.) 49.

So also where the appeal was by the government of a colony on a matter of petition of right (*f*).

Enforcing conditions.

Discharging Order for Leave.—Where the conditions on which special leave to appeal has been granted are not punctually complied with, the order granting leave may, on petition, be discharged and the appeal dismissed.

Compromise pending Appeal.—In the case of a compromise pending an appeal, the appellant may move the Judicial Committee on petition, praying that the order granting leave to appeal be dismissed and the recognizance discharged (*g*).

Vacating security.

The security entered into abroad is vacated upon dismissal of the appeal for non-prosecution. If the appeal is restored fresh security will be required (*h*).

The Supreme Court of Victoria granted leave to appeal under the Colonial Act, upon the condition of the appellant giving security by bond in a sum of 250*l*. The appellant failed to complete the security within the time limited by the Act, and the Supreme Court revoked the leave to appeal; in the circumstances the Judicial Committee granted leave to appeal on the appellant depositing 300*l*. Liberty was given to apply to the Colonial Court to cancel the security bond deposited (*i*).

On a petition to restore an appeal, the order was made on the terms that the petitioner deposited in the Registry of the Privy Council such sum as would, with the sum (if any) already deposited in India as security for costs, make up such security to 300*l*. The petitioner was ordered to pay the costs of the petition (*k*).

(*f*) *Robertson* v. *Dumaresq* (N. S. W. 1864), 2 Moo. (N. S.) 96; *In re Att.-Gen. for Colony of Victoria* (Vict. 1866), 3 Moo. (N. S.) 527; L. R. 1 P. C. 47, *S. C.*; see *Att.-Gen. of Manitoba* v. *M.*, May 11, 1901.

(*g*) *Reed* v. *Dabee* (Calc. 1857), 11 Moo. 151.

(*h*) *Ranee Birjobuttee* v. *Sing* (Calc. 1860), 13 Moo. 465; and see *infra*, p. 297.

(*i*) *Webster* v. *Power* (Victoria, 1866), L. R. 1 P. C. 150; 3 Moo. (N. S.) 531.

(*k*) *Muthu Bommaya* v. *Nainappa Chetty* (Madras), P. C. Arch. March 24, 1900.

CHAPTER VII.

CONCERNING MATTERS WHICH ARE THE SUBJECT OF SPECIAL REFERENCE AND OF COMPLAINTS WITH RESPECT TO JUDGES.

BESIDES the appeals in which the appellant brings his grievance before the Sovereign in Council as of right and the appeals in which he has first to ask the Sovereign to exercise the royal prerogative by granting in the particular case permission to present a petition of appeal, there exists the further class of appeals which are the subject of a special reference to the Privy Council for their advice. The appeals of the two first named classes are such as complain of the determination of some court or judicial officer. Such appeals come to the Sovereign because all judicial power is derived from the Crown. Appeals which may be heard on special reference are those which cannot strictly come within either of the former classes. These come to the Crown as the source and fountain of all justice, and arise of that inherent right which is inseparable from the supremacy of the Sovereign in the administration of the laws, whether of a temporal, ecclesiastical, or military nature.

Exercise of the prerogative on special reference.

It has, accordingly, been well said, that it is the prerogative right, and therefore the duty of the Sovereign, as the fountain of justice, "on all proper occasions, to see that justice is done" (*a*).

Statute.

The statute (3 & 4 Will. IV. c. 41) which established the Judicial Committee of the Privy Council (after having provided that all appeals, and complaints in the nature of appeals, shall be referred to and heard by the Judicial Committee (*b*)) affirmed the Sovereign's prerogative right to deal with petitions in all matters whatsoever (*c*). Sect. 4 of that statute declares "it shall be lawful for His Majesty to refer to the said Judicial Committee for hearing or consideration any such other matters whatsoever

(*a*) *Supra*; *Reg.* v. *Bertrand* (N. S. W. 1867), L. R. 1 P. C. 520.
(*b*) S. 3.
(*c*) S. 4.

as His Majesty shall think fit, and such Committee shall thereupon hear or consider the same, and shall advise His Majesty thereon in manner aforesaid." This wide and general provision must of course be read subject to the limitation and restriction declared by statute.

Matters other than judicial decisions.

It is to be noticed that the matters to be thus specially referred are any matters other than appeals, and complaints in the nature of appeals, from a decision of any court, judge, or judicial officer. If the matter complained of is the determination of a court of justice, it might constitute matter for an application for special leave to appeal under 7 & 8 Vict. c. 69, s. 1, but not for special reference under the Act of 3 & 4 Will. IV. c. 41. Of the occasion upon which such reference shall be made the Sovereign is sole judge (*d*).

Order of special reference.

The reference of a petition for advice may be either to the Judicial Committee under sect. 4 of 3 & 4 Will. IV. c. 41, or it may be to a general Committee of the Privy Council. In the former case the Judicial Committee only possess power to advise the Crown judicially, and will not enter into considerations of policy; but in the latter the Committee of the Privy Council may advise the Crown acting in its legislative capacity (*e*).

Terms of special reference.

By the Appellate Jurisdiction Act, 1909, s. 5, the word "appeals" in the section which enables His Majesty to make a continuing order instead of an annual order, directing appeals to be referred to the Judicial Committee, includes any complaints in the nature of appeals, and any petitions in the nature of appeals, and therefore partly covers the subject of the old special reference. The matters referred will be found to be of two kinds: first, those in which the jurisdiction exercised is original; secondly, those in which the jurisdiction exercised is of an appellate nature, although the decision in review is not one of a strictly judicial character. It has been thought

(*d*) The words of sect. 4 of 3 & 4 Will. IV. c. 41 are "as His Majesty shall think fit."

(*e*) *D'Allain* v. *Le Breton* (Jersey, 1857), 11 Moo. at pp. 70, 75; and cf. *In re the States of Jersey* (1853), 9 Moo. at p. 186, where the question being one as well of policy as law, and involving the constitutional rights of the states and the inhabitants of the Island of Jersey, was referred by Her Majesty to a mixed Committee of the Privy Council, comprising members of the Government as well as of the Judicial Committee, who were attended by the law officers of the Crown, the Attorney-General and the Solicitor-General, as Assessors to the Committee.

sufficient to indicate the existence of the two kinds of matters which may be referred, while, on the other hand, it has been felt convenient to make no such arbitrary arrangement in the cases referred to in this chapter. The Committee are guided by the terms of the reference as to whether they are called upon to advise the Crown judicially, or in its executive and administrative character.

Not necessarily an open court.

The report or recommendation of the Judicial Committee to the Sovereign in Council with reference to matters of appeal from any court or judicial officer is in a distinct category from the advice to be given in any such other matter as he may think fit to refer to them. The manner in which the advice is to be tendered is the same, that is to say, in the same manner as has been heretofore the custom with respect to matters referred by His Majesty to the whole of his Privy Council or a Committee thereof; but in the case of a judicial matter the nature of the report or recommendation must always be stated in open court. No such restriction appears to be placed upon the advice which the Sovereign may think fit to seek in other matters. It accordingly is not the practice for the Judicial Committee to make a pronouncement in the nature of a formal judgment showing the decision to which they have come before making their report on special reference to the Sovereign in Council.

But in a special case where the late Chief Justice of a colony petitioned against his suspension from office by the direction of the Governor acting on the report of the Executive Council, the report of the Committee to which the petition was referred was publicly stated. *In the Matter of the Suspension of Mr. J. B. Walker*, *The Times*, December 16, 1908.

Non-judicial award.

Award of Non-Judicial Officer.—Where the Governor in Council of Bombay was empowered by an Act of the legislature to administer the estate of the Nawab of Surat, and no provision was made for any appeal from his decision, it was held that the award was not such a judicial act as could be questioned upon appeal, but could only be brought before the Judicial Committee under sect. 4 of 3 & 4 Will. IV. c. 41 (*f*).

(*f*) *In re Nawab of Surat* (Bombay, 1854), 9 Moo. 88; and cf. *Maharajah Madhawe Singh* v. *Sec. of State for India*, (1904) 31 I. A. 239.

And so where a British agent had jurisdiction in a native state, which was political and not judicial in its character, it was held that an appeal did not lie from appellate orders therein passed by the Governor of Bombay in Council to His Majesty in Council, but the matter, it was suggested, might be brought before the Privy Council by special reference after application to His Majesty. *Hemchand Devchand* v. *Azam Sakarlal Chotamlal*, (1906) A. C. 212, at p. 221.

The recall of legislative Orders in Council.

Upon the petition of a committee, appointed at a public meeting of the inhabitants of Jersey, the Crown issued, without communicating with the States of the island, certain Orders in Council for the establishment of a sitting magistrate, a paid police, and a court of requests for the recovery of small debts. The Royal Court, upon receiving these orders for registration, suspended provisionally the registration of them, and referred them to the States, who petitioned the Crown (*g*) to rescind them, as having been passed in violation of the privileges of the States. The Orders in Council were suspended for a time, and the States passed six Acts as substitutes for the Orders, which Acts were transmitted for Her Majesty's approbation. Petitions in favour of the Orders and against the Acts were preferred by certain merchants and other inhabitants of St. Heliers, in Jersey, and were referred, along with the Orders and the Acts, to a mixed Committee of the Privy Council. In accordance with the practice above mentioned in cases heard upon special reference no judgment was pronounced. Although the Orders were well calculated in their main provisions to improve the administration of justice, serious doubts existed whether the establishment of such provisions by the Crown without the assent of the States was consistent with the constitutional rights of the island; and the Acts, though liable to objection, did to a considerable extent carry into effect the provisions of the Orders (*h*). Accordingly by the report Her Majesty was advised to revoke the Orders and to confirm and ratify the Act.

No judgment pronounced.

Report of Committee advising revocation.

Petition asking royal confirmation of Act to be withheld.

Sometimes a petition that the royal sanction to an Ordinance passed in one of the possessions of the Crown

(*g*) *In the Matter of the States of Jersey* (1853), 9 Moo. 185.
(*h*) Cf. *The Jersey Prison Board Case* (1894).

should be withheld is presented and referred to a Committee of the Privy Council for advice. In such a case no judgment is given. The Committee report whether in their opinion it be advisable for His Majesty to approve of the legislation.

It is generally the case that the instructions to the Governor of a colony require him to reserve for the royal assent enactments of an unusual nature touching the prerogative of the Crown or the rights of His Majesty's subjects not resident in the colony, and also as to currency, the army and navy, differential duties, and the effect of foreign treaties.

Petition to withhold royal sanction to an Act.

A petition presented by certain civil officers and inhabitants, ratepayers, praying that Her Majesty would withhold her sanction to an Act of the States of Jersey, was heard by the Lords of the Committee for the affairs of Jersey (*i*).

In another case from Jersey the advocates of the island opposed the confirmation of an Act of the States of Jersey throwing open the Bar of the *Cour Royale*. Cases were lodged on behalf of the advocates and the States, and both parties were represented by counsel (*k*).

Constitutional questions between legislative bodies.

Questions arising as to their relative rights and powers between the legislative bodies of a colony are properly dealt with by a special reference to the Judicial Committee. A dispute of this kind arose between the Legislative Council and the Legislative Assembly of Queensland in 1885. Certain documents together with the following questions were, on the petition of those bodies, submitted by the Sovereign to the Judicial Committee, namely: (1) Whether the Constitution Act of 1867 confers on the Legislative Council powers co-ordinate with those of the Legislative Assembly in the amendment of all Bills, including money Bills? (2) Whether the claims of the Legislative Assembly as set forth in their message are well founded? The Judicial Committee answered the first of the questions in the negative and the second in the affirmative (*l*).

(*i*) *In re The States of Jersey, in the Matter of Gibaut* (1858), 11 Moo. 320; *In the Matter of the Jersey Jurats* (Jersey, 1866), L. R. 1 P. C. 94.

(*k*) *The Jersey Bar* (Jersey, 1859), 13 Moo. 263.

(*l*) *Queensland Money Bills Case*, P. C. Arch., April 3, 1886.

Petition for cancelment of rules of court.

One of the justices of Grenada petitioned that a rule made by the Chief Justice prohibiting the assistant justices from acting in chambers be declared invalid. The petition was referred and a counter-statement put in by the Chief Justice (*m*).

Severance of colony having responsible government. *Cape Breton Case.*

Certain inhabitants of the island of Cape Breton petitioned the Crown, that the constitution which had been granted to them by royal letters patent in 1784, should be restored and that the annexation of the island to Nova Scotia, which took place in 1820, might be annulled. The petition rested on grounds partly of law and partly of policy and expediency. It was referred to the Judicial Committee, with directions that the petitioners should be confined in their argument to the legal question raised by the petition, and should not be permitted to enter into any questions of public convenience or policy. Notice was also required to be given of the petition having been so referred to the Legislative Council and House of Assembly of Nova Scotia, who were authorised, if they thought fit, to appoint counsel to appear on their behalf and oppose the claim of the petitioners (*n*). The petitioner being so directed put in a case with reasons. The Crown also put in a case, and both the petitioner and the Crown appeared by counsel.

Intercolonial differences.

Boundaries of Colonies.—Differences having arisen between two colonies as to a tract of land which was claimed by each of them as part of the territory thereof, the Governors of the colonies with the consent of their councils respectively, agreed to submit their differences to the Queen in Council; they then joined in a commission to take evidence, and when it had been duly executed and returned, each Governor presented a petition (accompanied with a record of the evidence), praying for Her Majesty's decision which was accordingly given upon the report of the Judicial Committee (case of Pental Island, 1872). In relation to a question between the Provinces of Ontario and Manitoba respecting the western boundary of Ontario, a special case was in 1884 agreed upon and signed by the Attorney-General of each province and submitted by petition to the

(*m*) *In re Wells* (Grenada, 1840), 3 Moo. 216.
(*n*) *In re Island of Cape Breton* (Nova Scotia, 1846), 5 Moo. 259; 6 State Tr. (N. S.) 283.

Sovereign with a prayer that Her Majesty in Council would be pleased to take the special case into consideration, and that the special case might be referred to the Judicial Committee to report thereon.

The petition was admitted, and the Judicial Committee reported on it. The pending dispute between the Government of Newfoundland and the Dominion of Canada as to the exact boundaries of Labrador is to be settled in the same manner. The Privy Council, in 1878, likewise adjudicated in virtue of this power on the joint request of the Governments of Ontario, and Manitoba on disputes as to the division of assets and liabilities between the two provinces, which had originally been united.

The Crown, however, will not refer matters to the Committee, unless they are such that the Committee has a proper right to intervene and can effectually do so. Hence, in 1872, the Crown refused to refer the question whether certain enactments of the legislature of New Brunswick on the subject of schools were such as to give the Dominion Parliament powers to pass remedial legislation under section 93 of the British North America Act, 1867, on the ground that the Queen in Council having no power to determine the matter, the decision given would not be binding on the parties in Canada. Again, in 1879, the Secretary of State for the Colonies declined to refer the question of the right of the Dominion Government to dismiss the Lieutenant-Governor of Quebec, because the Dominion Government was not a party to the request for reference, and could not have been bound by the decision. See Keith's Responsible Government in the Dominions, pp. 271-2.

Interpretation of treaties.

Questions of enforcing obligations under treaties may be referred to the Privy Council. Thus, after the conclusion of the Peace of 1815, an appeal was given to the Privy Council under the statute 59 Geo. III. c. 31 (1819) from the awards of the Commissioners appointed under that statute for liquidating the claims founded upon the Convention between Great Britain and France with reference to the Acts of the Revolutionary Government (*o*).

(*o*) See sect. 10 of that statute. For appeals thereunder, see 2 Knapp, at pp. 7, 295, 336, 345, 350, 353, 358, 369, and 386. See also *Count de Wall's Case* (1848), 6 Moo. 216.

Petition by a foreigner within the dominions.

Civil Status.—A native of France having been removed from the Mauritius by the Governor of that colony, submitted his case to the Secretary of State for the Colonies, and with the concurrence of the government, preferred his complaint by petition to the King in Council. The petition was referred by His Majesty to the Judicial Committee to advise:

1. What was the status of the petitioner?
2. Whether the legal rights incident to such status had been infringed by his removal from the colony?

The decision of the Committee on the legal questions referred was accompanied by an expression of their opinion, that the case was one of great hardship, and of their hope that this opinion, being represented in the proper quarter, might be available towards the relief of the party. The Judicial Committee there laid down that a person's civil status must be decided by the laws of England (*p*), but his rights and liabilities incident to such status by the law of the colony (*q*).

Review of decision of court with special jurisdiction.

By a Colonial Act, a special jurisdiction (relating to the registration of apprenticed labourers) was given to a court in the island of Grenada, without appeal. The Judicial Committee, in 1838, held that it had no jurisdiction to entertain an appeal; and that the only course was for the petitioner to present a petition to the Crown through the Secretary of State, and then it could be referred to the Judicial Committee generally for their opinion (*r*). But now by virtue of 7 & 8 Vict. c. 69, where the special jurisdiction is vested in a court of justice, His Majesty, with the advice of the Privy Council, may admit an appeal without the matter being specially referred under 3 & 4 Will. IV. c. 41, s. 4. But in *Thèberge* v. *Laudry* (*s*) (Quebec), it was held no appeal lay from the Canadian Court for hearing

(*p*) Following *Donegani* v. *Donegani* (Low. Can. 1835), 3 Knapp, 63, where it was decided that the prerogative of the Crown with regard to aliens must be determined by the laws of the particular colonies in which the questions arise, and not by the law of England, which is only to be looked at in order to determine who are, and who are not, aliens.

(*q*) *In re Adam* (Mauritius, 1837), 1 Moo. 460.

(*r*) *In re Stronach* (Grenada, 1838), 2 Moo. at p. 316. Cf. *Att.-Gen. of Nova Scotia* v. *Gregory* (S. C. Can. 1886), 11 A. C. 231, where the petitioner had come in and consented with the sanction of the court to be bound by its order, which was to be considered a final disposition of all contentions whether now in litigation or not.

(*s*) (1876) 2 A. C. 102.

election petitions to Her Majesty, as such court exercises a peculiar jurisdiction which had hitherto existed in the legislative assembly, depending on rights and privileges in complete independence of the Crown.

Ecclesiastical dispute.

A dispute between two prelates, where there has been no regular judicial proceeding, will form the proper subject for special reference (*t*).

Appeal from court-martial.

A petition for leave to appeal from the sentence of a court-martial must be the subject of a special reference. See *supra*, p. 225.

Interference of executive with judge.

Upon a special reference from the Crown, a Committee of the Privy Council (before the organisation of the present Judicial Committee) heard the petition of the sole surviving judge of the Supreme Court of Bombay, complaining that the government had interfered with the court in the execution of its duties (*u*).

Conduct of officers of court.

For the proper course to be pursued where it appears to the court that the conduct of one of its officers requires explanation, see the observations of the Judicial Committee at the end of the judgment in *Emerson* v. *Judges of Newfoundland*, 8 Moo. 163.

Admission of advocates.

Admission to Practise as Advocate.—A person conceiving himself entitled to be admitted as an advocate at the Bar of the Royal Court of Jersey, petitioned the Queen in Council (stating the facts of the case) that an order should be directed to the bailiff of the island to admit the petitioner to take the oaths of an advocate and to practise in the court. The petition was referred to the Judicial Committee. The petition having been served on the bailiff, he put in an answer ; the petitioner put in a case, and both parties were heard by counsel. The Judicial Committee refused to comply with the prayer of the petition ; but, as the Committee thought the petitioner was justified in obtaining the opinion of their Lordships, gave no costs (*x*).

Fine for contempt.

There is no appeal from the imposition of a fine for contempt by a Court of Record acting within its discretion,

(*t*) Cf. *Ward* v. *Bishop of Mauritius*, 99 L. T. 854 ; 23 T. L. R. 52. Cf., too, *Re Bishop of Natal* (1864), 3 Moo. (N. S.) 116 ; and *Bowerbank* v. *Lord Bishop of Jamaica* (1839), 2 Moo. 449.

(*u*) *In re Supreme Court of Bombay* (Bombay, 1829), 1 Knapp. 1.

(*x*) *D'Allain* v. *Le Breton* (Jersey, 1857), 11 Moo. 64 ; cf. *Gallais* v. *De Veulle* (1833), *ibid.* 72.

the Judicial Committee can therefore make no order on appeal in respect thereof (*y*). The right course is to petition the Crown for a special reference (*z*). Where the legal practitioner was wrongly suspended, but had been guilty of disrespect to the court below, the Judicial Committee directed that he should apply to the court below to discharge the orders, "and in case he should make such application, they thought that the orders should be rescinded and discharged, unless some sufficient reason to the contrary (other than the reasons referred to in the orders) should be alleged and established against the appellant" (*a*).

Questions of precedence of colonial judges.

Where a judge was refused by other judges the precedence to which the letters patent sanctioned by warrant under Royal Sign Manual and Seal entitled him, a petition was referred to the Judicial Committee to determine the question. As the question involved the prerogative of Her Majesty's Crown, the Crown appeared by the Attorney-General. The judges set forth their reasons for their determination in statements, but did not appear by counsel (*b*).

Disregard of prerogative writs by the court in Jersey.

The Royal Court of Jersey having refused to register a writ of *habeas corpus* granted by the Vice-Chancellor of England, and two warrants issued by the Lord Chancellor for the arrest of persons who had committed a contempt of the Court of Chancery, the person aggrieved by this refusal petitioned Her Majesty in Council (*c*), praying her to declare and order that the writ of *habeas corpus* did of right run into and ought to be obeyed within the island, and also to order and direct the Royal Court to register and publish the warrants, and to give directions to the Governor and others to be aiding and assisting in the execution thereof (*d*).

(*y*) *Smith* v. *Justices of Sierra Leone* (1841), 3 Moo. 365, 367; *Rainy* v. *Justices of Sierra Leone* (1853), 8 Moo. at p. 55.

(*z*) *Re Ramsay* (L. Can. 1872), 7 Moo. (N. S.) at p. 272; cf. *Re Pollard* (Hong Kong, 1868), 5 Moo. (N. S.) 111.

(*a*) *Smith* v. *Justices of Sierra Leone* (1848), 7 Moo. at p. 186.

(*b*) *In re Justice Bedard* (Canada, 1849), 7 Moo. 23, 29.

(*c*) *In re Belson* (Jersey, 1850), 7 Moo. 114.

(*d*) The prerogative writ of *habeas corpus* ran at common law to all dominions of the Crown. *The King* v. *Cowle* (1759), 2 Burr. 856, per Lord Mansfield; and *Ex parte Anderson* (1861), 3 Ell. & Ell. 487, in which a writ was issued by the Queen's Bench at Westminster to the Sheriff of the County of York, Upper Canada. In consequence of this decision the 25 & 26 Vict. c. 20 (Imp.), was enacted, as the prerogative right could not be taken away, except by express enactment. By sect. 1 of this Act no writ of *habeas corpus* shall issue out of England

No judgment was delivered, but the Queen, on an elaborate report of the Lords of the Committee, ordered: "That the Royal Court of Jersey do forthwith register and publish the warrants signed and issued by the Right Honourable the Lord High Chancellor of Great Britain; and Her Majesty was further pleased to order and direct the Lieutenant-Governor of the Island of Jersey, the viscount, denunciators, officers of justices, constables, and centeniers, and all other Her Majesty's subjects within the said Island to be aiding and assisting in the due execution of the said warrants."

Special References connected with Public Institutions.

Universities of Oxford and Cambridge.

By stat. 17 & 18 Vict. c. 81, for the government of the University of Oxford, and stat. 19 & 20 Vict. c. 88, for the University of Cambridge, certain powers of internal legislation were entrusted to the local authorities, subject to the approval of the University Commissioners, or to the Commissioners alone; and, after the expiration of the Commission, to the academical councils named in the Acts.

Oxford.—By 25 & 26 Vict. c. 26, s. 1, further power is conferred of making statutes. By sect. 8 such statutes are liable to alteration or repeal, subject to the approval of His Majesty in Council. By sect. 9, statutes made under 17 & 18 Vict. c. 81, are subject to alteration and repeal, with the approval of His Majesty in Council. By 25 & 26 Vict. c. 26, s. 7, the Committee of Council by which His Majesty is to be advised must contain five members, two of whom, not including the Lord President, must be members of the Judicial Committee.

Cambridge.—By sect. 43 of the Cambridge University Act, 19 & 20 Vict. c. 88, the statutes under that Act are subject to repeal or amendment, with the approval of His Majesty in Council. By the 40 & 41 Vict. c. 48 (1877), s. 44, a Committee of His Majesty's Privy Council, styled the Universities Committee of the Privy Council, is created,

Universities Committee.

into any colony or foreign dominion of the Crown where His Majesty has a lawfully established court of justice having authority to grant and issue the said writ and to ensure the due execution thereof throughout such colony or dominion. Sect. 2 provides that the Act shall not affect or interfere with any legally existing right of appeal to His Majesty in Council. Cf. *Re Sekgome*, (1910) 2 K. B. 576.

and shall consist of the President of the Privy Council, the Archbishop of Canterbury, the Lord Chancellor, the Chancellors of the Universities of Oxford and Cambridge if members of the Privy Council, and such other member or two members of the Privy Council as His Majesty shall think fit to appoint, that other member or one at least of those two other members being a member of the Judicial Committee. The powers of the Committee are to be exercised by any three or more members, one being the Lord Chancellor or a member of the Judicial Committee.

Durham.—By the Durham University Act, 1861 (24 & 25 Vict. c. 82), ordinances may be referred by Order in Council to the five members of the Privy Council, of whom two, not including the Lord President, shall be members of the Judicial Committee (sect. 8).

Scottish Universities Committee.

By the Universities (Scotland) Act, 1889 (52 & 53 Vict. c. 55), s. 9, a Scottish Universities Committee of the Privy Council is created, consisting of the Lord President of the Privy Council, the Secretary for Scotland, the Lord Justice General if a member of the Privy Council, the Lord Justice Clerk if a member of the Privy Council, the Lord Advocate if a member of the Privy Council, the Chancellor and the Lord Rector of each of the Universities if a member of the Privy Council, one member at least of the Judicial Committee, and such other members of the Judicial Committee as His Majesty may from time to time appoint. The powers of the Committee may be exercised by three or more of the Committee. (As to references under the Act, see sects. 20 and 21.)

Irish Universities Committee.

By the Irish Universities Act, 1908 (8 Edw. VII. c. 38), s. 18, there is established a Committee of the Privy Council in Ireland, styled the Irish Universities Committee, which shall consist of not less than five members of the Privy Council in Ireland appointed by the Lord Lieutenant, of whom two at least shall be or shall have been judges of the Supreme Court. The powers and duties of the Committee may be exercised by a tribunal of not less than three members, so long as one is a judge, but in the case of an appeal from a decision of the Commissioners or a scheme, at least two members of the court must be persons who are or have been judges. The costs of all parties of and

incident to the hearing are in the discretion of the Committee, and the Lord Lieutenant in Council may make rules generally for regulating the procedure.

By sect. 17 the Lord Lieutenant in Council shall refer to the Committee any appeal presented to him (a) against any scheme of the Commissioners relating to the transfer of property, or any provision thereof, by the governing body of either of the new universities or of the new college having its seat at Dublin, or by any person directly affected by the scheme; and (b) against any scheme in relation to existing officers, and any determination of the Commissioners with respect to the payment of compensation by the governing body of either of the new universities, viz., Queen's College, Cork, or Queen's College, Galway, or by any existing officer. A petition was presented under the Act in 1909, praying that the statutes of the Queen's University, Belfast, as far as they provided that scholastic philosophy should be one of the subjects of the Faculty of Arts, should be disallowed. The Committee dismissed the petition without costs. *Ex parte Macdermott, The Times*, October 15, 1909.

Schemes of Ecclesiastical Commissioners.

Under stat. 3 & 4 Vict. c. 113, s. 83, and 31 & 32 Vict. c. 114, s. 3, schemes of the Ecclesiastical Commissioners respecting capitular estates are to be laid before the King in Council along with the objections. On the hearing of such objections, the Committee will hear two counsel on each side (*e*).

Endowed Schools Act, 1869 (*f*).

Under the Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 39, if the governing body of any endowment to which a scheme of the Commissioners appointed under that Act relates, or any person or body corporate directly affected by such scheme, feels aggrieved by the scheme, on any of the grounds mentioned in the Act, such governing body, etc., may, within two months after the publication of the scheme, when approved, petition His Majesty in Council to withhold

(*e*) Durham Capitular Estates Scheme, November 13, 1872. The Lord Chancellor being *ex officio* a member of the Ecclesiastical Commission, but not having taken any active part with reference to the Durham Scheme, was held by the Committee not to be disqualified from sitting on the hearing of the objections to the scheme. The Durham Scheme was expressly referred by Her Majesty to the Judicial Committee, and so was the Merton College Scheme.

(*f*) For *locus standi*, see *Re Colchester School*, (1898) A. C. 477. The powers of the Commissioners are now exercised by the Board of Education. (See 2 Edw. VII. c. 42, s. 13.)

his approval. The petition is referred to the Judicial Committee, and is heard and dealt with in like manner as an appeal from a court from which an appeal lies to His Majesty. The Judicial Committee shall hear and deal with such petitions in like manner as such appeals, and shall have the same power with respect to the costs of the parties to the petition and otherwise as they have with respect to any such appeal. The report or recommendation to His Majesty is to be made in like manner as in such appeal. The nature of it is to be stated in open court. Endowed Schools Act (1869) Amendment Act, 1873 (36 & 37 Vict. c. 87), s. 14) (*g*).

Municipal corporations.

Petitions to the Crown, asking for the grant of a charter of incorporation under the Municipal Incorporations Act are referred under statute to a Committee of the Privy Council, called the Committee of Council (*h*).

Complaints with Reference to Judges.

Amotion from office held during pleasure.

An office held during the pleasure of the Crown is not comprised within the terms of stat. 22 Geo. III. c. 75 (*i*), which applies only to offices held by patent and to offices held for life, or for a certain term. Consequently, amotion from an office held during pleasure is not an appealable grievance under that statute (*k*), and the Judicial Committee can therefore not grant special leave to appeal, since there is no appeal as of right, nor is the appeal one from the decision of a court or of a judicial officer acting in that capacity (*l*).

(*g*) Cf. *Funds of Dulwich College* (1876), 1 A. C. 68; *Re Hodgson's School* (1878), 3 A. C. 857; *Shaftoe's Charity* (*Haydon Bridge*), *ibid.*, 872; *Re Sutton Coldfield Grammar School* (1881), 7 A. C. 91; *Ross* v. *Charity Commrs.* (1882), *ibid.*, 463; and *Hemsworth School* (1887), 12 A. C. 444.

(*h*) 45 & 46 Vict. c. 50, ss. 211—218; 46 & 47 Vict. c. 18, ss. 5 and 6.

(*i*) For an appeal in which the right of appeal was exercised under this statute and the case was referred under 3 & 4 Will. IV. c. 41, and no judgment in the appeal was delivered, see *Willis* v. *Gipps*, 5 Moo. 379.

(*k*) *Ex parte Robertson* (N. S. W. 1857), 11 Moo. 288. The Crown has power to dismiss at pleasure either its civil or military officers, except where it is otherwise expressly provided. This principle of English law holds good whether it be in England or in the colonies, since it is an implied term of the contract of service. *Gould* v. *Stuart* (N. S. W.), (1896) A. C. 575. Cf. *Shenton* v. *Smith*, (1895) A. C. 229.

(*l*) Cf. the refusal of the Judicial Committee to grant leave to appeal where the applicant had been dismissed from the office of Moonsiff in Bengal, an office held during pleasure. *In re Sree Mohun Ghutuck* (Calc. 1870), 13 Moo. I. A. 343.

But if the appellant has not been properly heard before his dismissal, the Committee may allow an appeal by its inherent powers. Cf. *Case of Mr. J. B. Walker, The Times*, November 6, 1908. A petition for special reference is sometimes addressed to the Sovereign in Council and presented through the Secretary of State. This petition may then be referred to the Judicial Committee under sect. 4 of the 3 & 4 Will. IV. c. 41. Unless so referred the Judicial Committee do not enter into the consideration of such acts as are done by the Governor and council of a dependency in the exercise of the power and authority committed to them. Accordingly, where the matter came before the Judicial Committee sitting judicially by the terms of the reference, they held that although the conduct of the judge was erroneous and improper they could not advise the Crown to remove him for misconduct. In that case the judge had fined magistrates for writing depositions in the third instead of the first person. *Repres. of Grenada* v. *Sanderson*, 6 Moo. 38.

Where suspension from office instead of amotion.

There is no right of appeal under 22 Geo. III. c. 75, where there has not been a positive amotion from office, but only an order of suspension. A petition complaining of an order of suspension is sometimes dealt with by the Secretary of State, who advises the Crown to confirm or allow it; but the matter is commonly, on the recommendation of the Secretary of State, referred by the Sovereign, under the 3 & 4 Will. IV. c. 41, s. 4, to the Judicial Committee or to a Committee of Council generally in accordance with the practice existing before the passing of the Judicial Committee Act of 1833. There is nothing in the fourth section of the Act which limits or interferes with the right of the Crown to refer "other matters" to a Committee of the Council constituted as theretofore instead of to the Judicial Committee. It is open to the Sovereign, however, to summon any other members of the Privy Council to attend the meetings of the Judicial Committee. The Lord President and the Secretary of State for the Colonies sometimes sit where a matter concerns the colonies, and the Secretary of State for Home Affairs when the Channel Islands are affected, as in appeals with reference to amotion from office, if the reference be to the Judicial Committee.

Constitution of committee in special cases.

The Lord President recently sat on the Committee which was constituted "In the matter of the suspension of Mr. J. B.

Walker from his office of Chief Justice of Grenada." On the advice of the Secretary for the Colonies an inquiry had been held by the executive council of the colony into the conduct of the petitioner, and by the direction of the Governor he was suspended from his office. He submitted a petition to His Majesty against the action of the Governor, and the petition was referred to the Judicial Committee. *The Times*, November 6 and December 18, 1908.

Practice as to lodging cases in special references.

In cases of special reference, where there are not two parties litigating on ordinary terms, the practice has not been uniform. The recent tendency has been to require both parties to be represented by counsel and printed cases to be lodged (*m*).

Amotion of judge holding patent office.

A judge in a colony who has been removed from his office may appeal as of right by virtue of 22 Geo. III. c. 75, s. 2, against the order of removal as in other cases of appeal from such colony. Notice must be given to the authority whose order is appealed against, or at least to the Governor, who ought to appear and to put in a case and be heard by the counsel (*n*).

The amotion of judges.

The case of the Crown.

It was intimated by the Judicial Committee in the case of *Cloete* v. *The Queen* (*o*), where the Recorder of Natal had been suspended by the Lieutenant-Governor under a local ordinance, that when the Crown appears as respondent it ought not to support the suspension in its case as a matter of course. Even when the Judicial Committee consider that the appellant judge should be indemnified for the expenses to which he has unjustly been put by reason of having to appeal against the order of suspension, it would seem that no order can be made against the Crown, since in the above case the Committee expressed the view that the appellant should be indemnified, but no order was in fact made (*p*).

Special leave granted where special reference as to acts not strictly judicial.

In *Morgan* v. *Leach* (Bombay, 1841) (*q*), the Judicial Committee were of opinion that where a matter (not an

(*m*) Cf. petition of Mr. Justice Grant of Bombay (1829), 1 Knapp, 1; Justices of Common Pleas of Antigua (1830), *ibid.*, 267. Cf. the Order for special leave in *De Souza's Case*, December 17, 1888.

(*n*) *Willis* v. *Gipps* (N. S. W. 1846), 5 Moo. 379; *Montagu* v. *Lieutenant-Governor of Van Dieman's Land* (1849), 6 Moo. 489.

(*o*) (1854), 8 Moo. 484.

(*p*) *Ibid.*

(*q*) 3 Moo. at p. 374; and cf. *In re Minchin* (Madras, 1847), 6 Moo. 43.

appealable grievance, the decision not being in the nature of a judgment or determination) was specially referred, their lordships, under the general powers of 3 & 4 Will. IV. c. 41, could advise Her Majesty to grant leave to appeal. The appeal was concerned with the admission of parties to practise as attornies in the Supreme Court of Bombay. This proceeding would seem to apply to matters which are not strictly judicial acts.

Practice on appeals in the nature of complaints against judges.

Where special leave to appeal is sought by practitioners who have been struck off the rolls, or suspended from practice by the order of a judge, or been convicted of contempt of court, it is the practice (following the analogous practice in a *doléance* from the Channel Islands, p. 95, *supra*, which is in the nature of a complaint against the judge) for the Judicial Committee, when granting leave, to recommend that the petition be referred to the judge in order that he may make such observations on the petition and the allegations therein contained as he may think fit; and the judge is directed to return such observations to the Registrar of the Privy Council with all convenient speed in order that the same may be laid before the lords of the Committee. It is further directed that the judge be at liberty (if he shall think fit) to appear by counsel at the bar to show cause against the prayer of the petitioner (*r*). The Judicial Committee have no power under the general jurisdiction to issue an order in the nature of a mandamus requiring judges below to do their duty. Should judges, however, refuse to do what they ought to do, and refuse to proceed as they ought to proceed, a representation may be made in the proper quarter of their misconduct or a peremptory order may be issued (*s*).

Petition per *doléance*.

Notice to judges.

Notice of leave, given *ex parte*, to appeal from an order of judges suspending an advocate from practising should be

(*r*) Cf. the Order in Council dated August 12, 1885 (12 App. Cas. 459), in *Re Dillett* (British Honduras), and *In re Southekul Krishna Row*, Order in Council dated November 26, 1886 (*Coorg.*) P. C. Arch. In each of these cases the judge made his observations in writing, but did not appear by counsel. See also *Re Louis de Souza* (British Guiana); *McLeod* v. *St. Aubyn* (St. Vincent), (1899) A. C. 549. In the last-named case the judge put in a case and appeared by counsel. See, further, *Ex parte Renner* (Gold Coast), (1897) A. C. 219; and *Re M. A. Taylor*, 105 L. T. 579.

(*s*) *In re Muir* (Tobago, 1839), 3 Moo. 150; *In re Assignees of Manning* (Antigua, 1840), *ibid.* at 165.

given to the judges (*t*). It is not sufficient that the judges have been required to forward the original record containing the order of suspension and the evidence (*u*). Security for costs is required (*x*).

Notice of the charge on amotion of judges.

In the case either of amotion with the right of appeal, or of temporary suspension with a reference to England, the Governor who feels himself called upon to take so decided a step is bound to give the accused person full notice of all the charges against him, and to call upon him for his answer and hear it (*y*); and also for his own justification to send home the minutes of Council, the written statements, and all material documents relating to the case in a clear and intelligible shape.

Evidence.

Evidence upon affidavit is permitted to be filed in the Privy Council in such matters (*z*).

Petition for removal of judge.

There are cases, however, in which the Legislative Assembly of a colony may think fit to petition the Sovereign in Council for the removal of a judge. There is no regular system of pleadings and procedure in such cases (*a*). The proceedings being quasi-criminal, the acts complained of must be specificially stated and clearly expressed, and the accused person should have full notice of all that is to be proved against him. When the issues are settled both sides produce affidavits and other written testimony.

Order for removal.

Where the Committee recommends the removal of a judge from his office the Order made by His Majesty in Council commands the Secretary of State for the Colonies to direct the Governor of the colony to revoke the letters patent under which the judge holds office. *Beaumont's Case*, 1866.

(*t*) *Smith* v. *Justices of Sierra Leone* (1848), 7 Moo. 175; *In re Downie and Arrindell* (British Guiana, 1841), 3 Moo. 414; *Emerson* v. *Judges of Newfoundland* (1854), 8 Moo. 163.

(*u*) *Ibid.*; and see *In re Monckton* (P. E. I. 1837), 1 Moo. 455.

(*x*) *Smith* v. *Justices of Sierra Leone*, 7 Moo. 175; *Emerson* v. *Judges of Newfoundland* (1854), 8 Moo. 163.

(*y*) Where the Judicial Committee were of opinion that the judge had not had due opportunity of being heard, they advised that the order of amotion should be reversed notwithstanding that they held there were sufficient grounds for the order. *Willis* v. *Gipps* (1846, N. S. W.), 5 Moo. 379.

(*z*) Cf. *Smith* v. *Justices of Sierra Leone* (1841), 3 Moo. 365.

(*a*) See the Memorandum as to the Removal of Colonial Judges, Appendix to 6 Moo. (N. S.) p. xii. as to the unsatisfactory character of such proceedings before the Judicial Committee as a court of first instance.

CHAPTER VIII.

GENERAL PRACTICE AS TO PETITIONS.

THE rules given hereunder, which are comprised in the Consolidated Rules of the Judicial Committee, issued in 1908, are to be followed in every case where a petition in any appeal pending before the Judicial Committee is presented.

Form and Procedure of Petitions.

The general rules as to petitions before the Privy Council apply both to petitions for leave to appeal and to any interlocutory petitions concerned with the appeal.

Mode of addressing petitions.

45. All petitions for orders or directions as to matters of practice or procedure arising after the lodging of the petition of appeal and not involving any change in the parties to an appeal shall be addressed to the Judicial Committee. All other petitions shall be addressed to His Majesty in Council, but a petition which is properly addressed to His Majesty in Council may include, as incidental to the relief thereby sought, a prayer for orders or directions as to matters of practice or procedure.

Thus a petition for leave to appeal must be addressed to His Majesty in Council, while a petition for leave to amend the record of appeal after the petition of appeal has been lodged would be addressed to the Judicial Committee. Petitions addressed to His Majesty require to be disposed of by Order in Council, a more costly and less speedy process.

Orders on petitions which need not be drawn up.

46. Where an order made by the Judicial Committee does not embody any special terms or include any special directions, it shall not be necessary to draw

up such order, unless the Committee otherwise direct, but a note thereof shall be made by the Registrar of the Privy Council.

Form of petition.

47. All petitions shall consist of paragraphs numbered consecutively and shall be written, type-written, or lithographed, on brief paper with quarter margin and endorsed with the name of the court appealed from, the short title and Privy Council number of the appeal to which the petition relates or the short title of the petition (as the case may be), and the name and address of the London agent (if any) of the petitioner, but need not be signed. Petitions for special leave to appeal may be printed and shall, in that case, be printed in the form known as demy quarto or other convenient form.

Service of petition.

49. Where a petition is lodged in the matter of any pending appeal of which the record has been registered in the Registry of the Privy Council, the petitioner shall serve any party who has entered an appearance in the appeal with a copy of such petition, and the party so served shall thereupon be entitled to require the petitioner to furnish him, at his own expense, with copies of any papers lodged by the petitioner in support of his petition.

This rule applies to petitions in any appeal of which the record has arrived and been registered in England. It covers petitions for withdrawal of the appeal, for revivor, and for dismissal for non-prosecution. (See later, p. 293 ff.)

Verifying petition by affidavit.

50. A petition not relating to any appeal of which the record has been registered in the Registry of the Privy Council, and any other petition containing allegations of fact which cannot be verified by reference to the registered record or any certificate or duly authenticated statement of the court appealed from, shall be supported by affidavit. Where the petitioner prosecutes his petition in person, the said affidavit

shall be sworn by the petitioner himself and shall state that, to the best of the deponent's knowledge, information, and belief, the allegations contained in the petition are true. Where the petitioner is represented by an agent, the said affidavit shall be sworn by such agent and shall, besides stating that, to the best of the deponent's knowledge, information, and belief, the allegations contained in the petition are true, show how the deponent obtained his instructions and the information enabling him to present the petition.

Thus, a petition for leave to appeal, or a counter-petition against the grant by leave to appeal, must be supported by affidavit; but a petition for revivor if accompanied by a certificate from a court appealed from in accordance with rule 51 (see p. 309), does not require an affidavit.

Affidavits may be sworn before the registrar of the Privy Council.

85. Affidavits relating to any appeal, petition, or other matter pending before His Majesty in Council or the Judicial Committee may be sworn before the Registrar of the Privy Council.

Petition containing scandalous matter to be refused.

52. The Registrar of the Privy Council may refuse to receive a petition on the ground that it contains scandalous matter, but the petitioner may appeal, by way of motion, from such refusal to the Judicial Committee.

This rule corresponds with the general jurisdiction of the High Court to expunge scandalous matter in any record or proceeding. (Cf. *Re Miller*, 54 L. J. Ch. 205, and cf. the Annual Practice, Order 19, r. 27).

Setting down petition.

53. As soon as a petition is ready for hearing, the petitioner shall forthwith notify the Registrar of the Privy Council to that effect, and the petition shall thereupon be deemed to be set down.

Times within which set-down petitions shall be heard.

54. On each day appointed by the Judicial Committee for the hearing of petitions the Registrar of the Privy Council shall, unless the Committee otherwise direct, put in the paper for hearing all such petitions

as have been set down. Provided that, in the absence of special circumstances of urgency to be shown to the satisfaction of the said registrar, no petition, if unopposed, shall be so put in the paper before the expiration of three clear days from the lodging thereof, or, if opposed, before the expiration of ten clear days from the lodging thereof unless, in the latter case, the opponent consents to the petition being put in the paper on an earlier day not being less than three clear days from the lodging thereof.

Notice to parties of day fixed for hearing petition.

55. Subject to the provisions of the next following rule, the Registrar of the Privy Council shall, as soon as the Judicial Committee have appointed a day for the hearing of a petition, notify all parties concerned by summons of the day so appointed.

Consent petition.

56. When the prayer of a petition is consented to in writing by the opposite party, or when a petition is of a formal and non-contentious character, the Judicial Committee may, if they think fit, make their report to His Majesty on such petition, or make their order thereon, as the case may be without requiring the attendance of the parties in the council chamber, and the Registrar of the Privy Council shall not in any such case issue the summons provided for by the last preceding rule, but shall with all convenient speed after the Committee have made their report or order, notify the parties that the report or order has been made and of the nature and date of such report or order.

Withdrawal of petition.

57. A petitioner who desires to withdraw his petition shall give notice in writing to that effect to the Registrar of the Privy Council. Where the petition is opposed, the opponent shall, subject to any agreement between the parties to the contrary, be entitled to apply to the Judicial Committee for his costs, but where the petition is unopposed, or where, in the case of an opposed petition, the parties have come to an agreement as to the costs of the petition, the petition

may, if the Judicial Committee think fit, be disposed of in the same way *mutatis mutandis* as a consent petition under the provisions of the last-preceding rule.

58. Where a petitioner unduly delays bringing a petition to a hearing, the Registrar of the Privy Council shall call upon him to explain the delay, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said registrar, insufficient, the said registrar may treat the said petition as set down and may, after duly notifying all parties interested by summons of his intention to do so, put the petition in the paper for hearing on the next following day appointed by the Judicial Committee for the hearing of petitions for such directions as the committee may think fit to give thereon.

Procedure where hearing of petition unduly delayed.

59. At the hearing of a petition not more than one counsel shall be admitted to be heard on a side.

Only one counsel heard on a side in petitions.

48. Where a petition is expected to be lodged, or has been lodged, which does not relate to any pending appeal of which the record has been registered in the Registry of the Privy Council, any person claiming a right to appear before the Judicial Committee on the hearing of such petition may lodge a caveat in the matter thereof, and shall thereupon be entitled to receive from the Registrar of the Privy Council notice of the lodging of the petition, if at the time of the lodging of the caveat such petition has not yet been lodged, and, if and when the petition has been lodged, to require the petitioner to serve him with a copy of the petition, and to furnish him, at his own expense, with copies of any papers lodged by the petitioner in support of his petition. The caveator shall forthwith after lodging his caveat give notice thereof to the petitioner, if the petition has been lodged.

Caveat.

This provision relates to a petition for leave to appeal or any interlocutory petition lodged or expected to be lodged before the record is registered.

CHAPTER IX.

PRACTICE ON APPEALS IN ENGLAND—STEPS BEFORE THE HEARING—TRANSMISSION OF TRANSCRIPT—PRINTING THE RECORD—APPEARANCE—LODGING PETITION OF APPEAL—CASE.

It has been pointed out that the new rules for appeal issued since the Imperial Conference of 1907 are based on the assumption that the court appealed from is best qualified to deal with any questions that may arise in connection with the appeal up to the despatch of the record to England. Upon delivery of the judgment in the court from which the appeal lies to the Sovereign in Council, the practitioner should therefore at once consult the provisions (Part I., *supra*) by which the right of appeal is governed.

Asserting the appeal below.

Assertion of Appeal.—The intention of appealing must generally be asserted by way of motion or petition for leave to appeal presented to the court which has delivered the judgment which is to be questioned (*a*). The usual practice in the colonial courts, frequently regulated by rules made by the judges of the Supreme Court of the colony, is that the petition or motion should be lodged in court and notice given by the appellant to his opponent, before the application for leave is made upon the petition or notice of motion, and within the period laid down by the rules of appeal applicable to the particular possession or foreign jurisdiction.

The conditions imposed by the Order in Council or other instrument by which the court is authorised to permit an appeal to be brought must be strictly observed. The court from which the appeal lies has regularly a discretion as to the issue of execution pending the appeal and as to what, if any, security shall be taken from the respondent in respect

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(*a*) See, further, Ecclesiastical and Admiralty appeals, which are noticed separately, Part III., *infra*.

of the execution. Such security is intended for an indemnity to the appellant against any loss he might suffer by reason of the execution pending the appeal. Security may also be taken from the respondent for due performance of any Order that may be made by the Sovereign in Council.

It is always desirable for the appellant to file his application for leave to appeal without delay, otherwise, if execution is issued and possession obtained by the decree-holder, it will not be set aside, and the appellant will have to take the consequences.

The appellant must see that he duly complies with the conditions imposed within the periods limited. When leave to appeal is given, the appellant must see to the preparation of the transcript or copy record which has to be transmitted to the Registrar of the Privy Council. He must ascertain and deposit with the court the costs required for making the copies and translations, and, where necessary, for printing the record abroad.

Rules of procedure in England.

The practice as regards the application for leave to appeal and the preparation of the record in the colony has already been explained. (See Chapters II. and VI.) We are now concerned with the steps which have to be taken for the prosecution of the appeal in this country. The Rules of the Judicial Committee have been consolidated and amended by an Order in Council of December 21, 1908, which came into operation at the beginning of 1909. By this Order the Orders in Council of 1842, 1853, 1888, 1891, 1893 and 1905 which had hitherto regulated the conduct of appeals in England were revoked; and it was provided that "subject to the provisions of any statute or of any statutory rule or order to the contrary, the new rules should apply to all matters falling within the appellate jurisdiction of His Majesty in Council" (rule 87). The Judicial Committee, however, have powers to excuse from compliance with the rules in a proper case, where good cause is shown.

Among the miscellaneous provisions it is stated by rule 83:

Power of Judicial Committee

83. The Judicial Committee may, for sufficient cause shown, excuse the parties from compliance with

to excuse from compliance with rules.

any of the requirements of these rules, and may give such directions in matters of practice and procedure as they shall consider just and expedient. Applications to be excused from compliance with the requirements of any of these rules shall be addressed in the first instance to the Registrar of the Privy Council, who shall take the instructions of the Committee thereon and communicate the same to the parties. If, in the opinion of the said registrar, it is desirable that the application should be dealt with by the Committee in open court, he may, and if he receives a written request in that behalf from any of the parties, he shall, put the application in the paper for hearing before the Committee at such time as the Committee may appoint, and shall give all parties interested notice of the time so appointed.

Arrival of transcript.

The appellant should take care to be informed as to the date of the arrival of the transcript at the Council Office at Whitehall; this his agent must ascertain by examination of the register at the Privy Council Office. It is no part of the duty of the Registrar of the Privy Council to inform agents. Therefore where agents were instructed to appear for a respondent C., not knowing that there were other respondents, and requested the registrar to inform them of the arrival of transcript in *A.* v. *C.*, and the registrar did not inform them owing to the appeal being entitled *A.* v. *B. C. & D.*, the appeal was heard *ex parte* in the absence of C., and the Judicial Committee refused C. a rehearing (*c*).

Agent to subscribe declaration.

The agent who is to represent a party before the Privy Council, whether appellant or respondent, must have first signed the form of declaration at the Privy Council Office which is set out in an Order in Council, March 6, 1896 (*d*). Every proctor or solicitor practising in London can subscribe the declaration, upon producing the Incorporated Society's certificates of each member of his firm for the current year, without fee. Having signed the roll, the agent will be

(*c*) *Ex parte Kisto Nauth Roy* (Calc. 1869), L. R. 2 P. C. 274.
(*d*) See Appendix C., p. 468.

informed when the transcript of the record has arrived. It is provided by rule 86 :

Change of agent.

86. Where a party to an appeal, petition, or other matter pending before His Majesty in Council changes his agent, such party, or the new agent, shall forthwith give the Registrar of the Privy Council notice in writing of the change.

It is also usual for the agent already on the register to send a letter to the registrar stating that he retires and that the new agent has paid his costs, and that he has handed over all the papers in the case.

Lodging caveat.

Where it is expected that a petition for leave to appeal will be or has been lodged at the Privy Council Office, but the record has not yet been registered at the registry, any person who claims the right to appear before the Judicial Committee on the hearing may lodge a caveat in the matter, and will then receive notice of the lodging of the petition, and shall be entitled to require the petitioner to serve him with a copy of the petition. If the petition has been lodged he must give notice of his caveat to the petitioner. The rule states :

48. Where a petition is expected to be lodged, or has been lodged, which does not relate to any pending appeal of which the record has been registered in the Registry of the Privy Council, any person claiming a right to appear before the Judicial Committee on the hearing of such petition may lodge a caveat in the matter thereof, and shall thereupon be entitled to receive from the Registrar of the Privy Council notice of the lodging of the petition, if at the time of the lodging of the caveat such petition has not yet been lodged, and, if and when the petition has been lodged, to require the petitioner to serve him with a copy of the petition, and to furnish him, at his own expense, with copies of any papers lodged by the petitioner in support of his petition. The caveator shall forthwith after lodging his caveat give notice thereof to the petitioner, if the petition has been lodged.

Agent to ascertain arrival of transcript

In order to be informed as early as possible of the arrival of the transcript the agent should notify the title of the appeal for the purpose of it being entered in the Enquiries Book at the Council Office. He will then, on being notified of its arrival and registration at the Council Office, be informed of the registered number, and will be supplied with an appearance form. It is necessary for both the agent for the appellant as well as the agent for the respondent to enter an appearance in the appeal. A fee of ten shillings is payable on entering the appearance. If the transcript has not been printed abroad, or if it has not been printed according to the rules, it will be necessary that it shall be copied and printed in England. A form of request to copy and print will be supplied from the Council Office to the agent of the appellant for his signature.

Application for further leave to appeal.

Where the appellant desires to appeal, not only from the part of the decree in respect of which an appeal lies as of right, but also from the rest of the decree in respect of which no such right exists, an application for special leave to appeal will be necessary (see *supra*, p. 213, Chapter VI.) before the appeal comes on for hearing in England, notwithstanding that the court appealed from has granted leave to appeal so far as it has power to do so. The instructions sent to the agent in London should be such as will enable him to properly brief counsel to make such application. A caveat may be entered by respondent against the granting of such application without notice being first given to him.

In forwarding instructions to the London agent care must always be taken to give him an accurate transcript of the title of the appeal (the name of the appellant appearing first), so that he may be able to search for the entry of the arrival of the transcript record at the Council Office.

Transmission of transcript.

The registrar, or other proper officer having the custody of records in the court or special jurisdiction from which the appeal comes, is required to send by post, with all possible despatch, a certified copy of the transcript record in each cause to the Registrar of the Privy Council. This should be done so soon as leave to appeal has been obtained, whether by an order of the court appealed from or by an Order of His Majesty in Council granting special leave to appeal.

A copy of the order granting leave is filed in the court appealed from, and that court is understood to give notice to all parties that proceedings are now tied up pending the result of an appeal to the Sovereign. Further, when the record in the case reaches the Privy Council Office a letter is addressed to the registrar below, intimating that unless the appeal is prosecuted within two or four months it will stand dismissed. (See p. 274.)

Order granting leave to be filed.

Normally the first step in the appeal in England is to see to the preparation and printing of the record. The Rules of the Judicial Committee relative to this step are as follows:

Preparation of record.

I.—Record.

11. As soon as an appeal has been admitted, whether by an order of the Court appealed from or by an Order of His Majesty in Council granting special leave to appeal, the appellant shall without delay take all necessary steps to have the record transmitted to the Registrar of the Privy Council.

Record to be transmitted without delay.

The procedure which the respondent may adopt when the appellant does not comply with the provisions of this rule is stated in rule 21 of the Colonial Appeal Rules. (See Chapter II., p. 31.)

The respondent may, after giving the appellant due notice of the application, apply to the colonial court for a certificate that the appeal has not been effectually prosecuted by the appellant.

12. The record shall be printed in accordance with rules I. to IV. of Schedule A hereto. It may be so printed either abroad or in England.

Printing of record.

Rules 12—18 are practically identical with rules 8—14 of the Colonial Appeal Rules. Schedule A is as follows:

Rules as to Printing.

I. All records and other proceedings in appeals or other matters pending before His Majesty in Council or the Judicial Committee which are required by the above rules

to be printed shall henceforth 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.

V. The price in England for the printing by His Majesty's Printer of 50 copies in the form prescribed by these rules shall be 38*s.* per sheet (eight pages) of pica with marginal notes, not including corrections, tabular matter, and other extras.

Number of copies to be transmitted, where record printed abroad.

13. Where the record is printed abroad, 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, if any, of the court appealed from.

The old Order in Council required 48 plain copies and 2 certified copies to be sent.

One certified copy to be transmitted, where record to be printed in England.

14. 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 copy of the record shall be transmitted to the agents in England by or on behalf of the parties to the appeal.

The appellant only bears the expense in the first place; the costs of and incidental to the printing of the record normally form part of the costs of the appeal. (See rule 28, below, p. 276.)

Record. printed partly abroad, partly in England.

15. Where part of the record is printed abroad and part is to be printed in England, rules 13 and 14 shall, as far as practicable, apply to such parts as are printed abroad, and such as are to be printed in England respectively.

Reasons for judgments to be transmitted.

16. 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.

Exclusion of unnecessary documents from record.

17. The registrar, as well as the parties and their 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 printed or copied shall be enumerated in a list to be placed after the index or at the end of the record.

Documents objected to to be indicated.

18. 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 abroad 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.

Rule 7 of the Colonial Appeal Rules provides that:

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.

And rule 18 is to be read subject to this provision in the colonial regulations of appeal.

It is further provided by rule 22 of the Colonial Rules of Appeal that

Amendment of record.

Where at the 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 His Majesty in Council.

Registration and numbering of records.

The procedure which must be followed where the record becomes defective by reason of the death, etc., of a party after its despatch to England is dealt with in Chapter XI., p. 305 ff.

19. As soon as the record is received in the Registry of the Privy Council, it shall be registered in the said registry, with the date of arrival, the names of the parties, the date of the judgment appealed from, and the description whether "printed" or "written." A record, or any part of a record, not printed in accordance with rules I. to IV. of Schedule A hereto, shall be treated as written. Appeals shall be numbered consecutively in each year in the order in which the records are received in the said registry.

Power is given in the rules to amend any document lodged in a matter pending before the Judicial Committee by rule 84, which runs as follows:

Amendment of documents.

84. Any document lodged in connection with an appeal, petition or other matter pending before His

Majesty in Council or the Judicial Committee, may be amended by leave of the Registrar of the Privy Council, but if the said registrar is of opinion that an application for leave to amend should be dealt with by the Committee in open court, he may, and if he receives a written request in that behalf from any of the parties, he shall, put such application in the paper for hearing before the Committee at such time as the Committee may appoint, and shall give all parties interested notice of the time so appointed.

Addition to record.

An Order may be made by the Judicial Committee for the production of notes of evidence and the reasons given by the judges as well on courts in any foreign dominion of the Crown as on courts in any colony or foreign settlement (*e*). Neglect to obey such Order of the Judicial Committee is contempt, and punishable (*f*).

The transcript is regarded as the only authentic source of information as to the proceedings which have taken place in the court from which the appeal is brought (*g*), and the Judicial Committee will not allow the judge's notes in the transcript to be impugned by reference to shorthand notes (*h*). The record should be concluded when judgment is given (*i*). But if any document essential to the understanding of a cause has been omitted from the transcript, the Judicial Committee will, at any stage of the cause, require its transmission, by issuing (on petition) a Committee order directing the registrar of the lower court to transmit it; or if undue delay occur in sending any documents, direct the lower court to transmit it forthwith (*k*). Where the document required is one which ought to have accompanied the transcript, it is generally obtained by an official

Documents not in transcript.

Delay in forwarding transcript.

(*e*) 7 & 8 Vict. c. 69, s. 10. See Appendix A., p. 438.
(*f*) *Ibid.* s. 12.
(*g*) *Stanford* v. *Brunette* (Cape of G. H. 1860), 14 Moo. 64; *Donegani* v. *Donegani* (L. C. 1835), 3 Knapp, 63; *Riche* v. *Voyer* (L. C. 1874), L. R. 5 P. C. at 481.
(*h*) *Stanford* v. *Brunette*, 14 Moo. 64.
(*i*) *Brown* v. *Gugy*, 2 Moo. (N. S.) at 365.
(*k*) For a petition for the purpose, see *Casi Persad Narain* v. *Kawa Besi Kooer* (Bengal, 1851), 5 Moo. I. A. 146; and see *Mason* v. *Att.-Gen. of Jamaica* (1843), 4 Moo. 228; *McCarthy* v. *Judah* (L. Can. 1858), 12 Moo. 47.

letter from the Registrar of the Privy Council by consent of the parties without a Committee order. A similar course is adopted in obtaining corrections of portions of the record.

Contents of transcript.

Preparation of the Transcript.—The transcript has to be accompanied by a correct and complete index of all papers, documents, and exhibits put in below, and the decrees, judgments, or orders pronounced, as well as necessary certificates given from time to time by the officers of the courts below. A copy of the security bond and of the judges' reasons should be included in the transcript. The record should also contain an index of all documents omitted, either by consent of parties or as useless on appeal. Care is to be taken not to allow any document to be set forth more than once. No other certified copy of the record is to be transmitted on behalf of the parties; and the officer below should transmit the original certified copy direct to the Registrar of the Privy Council, and not, as is sometimes most irregularly done, through the solicitor of the appellant in the record.

Index with transcript.

Access to transcript.

The appellant's agent, where the transcript has not been printed abroad, will require to peruse the record in order to see what part is necessary to be printed for the hearing of the case. Having perused the typed copy received from the Council Office, he should communicate with the respondent's agent in order to ascertain what part of the transcript he may require to be printed. In preparing the record for the printer marginal notes should indicate the nature of the documents, which should be numbered consecutively. An index showing the documents printed and omitted is agreed upon by the agents and printed immediately before the record.

Marginal notes and index.

II.—Appearance.

Appearance.

It is necessary for either party to enter an appearance in the Council Office as a condition of taking any effective steps in the appeal. An appearance cannot be entered by either party till the record has arrived when the appeal has been granted by the court appealed from, or after special leave to appeal has been given by the Judicial Committee. So soon as an appearance has been entered, an account is opened with the agent on the roll in the Council Office. It is provided by the Judicial Committee Rules:

20. The parties shall be entitled to inspect the record and to extract all necessary particulars therefrom for the purpose of entering an appearance.

Limit of time for appellant to enter appearance.

The limit of time within which the appellant must enter an appearance is the same as that within which he must bespeak a copy of the record. (See p. 274, below.)

The Judicial Committee Rules further provide:

Notice of appearance by appellant.

22. The appellant shall forthwith, after entering his appearance, give notice thereof to the respondent, if the latter has entered an appearance.

The rules for the entering of an appearance by the respondent are numbers 38–41, and are dealt with more fully later. They provide as follows:

Time within which respondent may appear.

38. The respondent may enter an appearance at any time between the arrival of the record and the hearing of the appeal, but if he unduly delays entering an appearance he shall bear, or be disallowed, the costs occasioned by such delay, unless the Judicial Committee otherwise direct.

Notice of appearance by respondent.

39. The respondent shall forthwith after entering an appearance give notice thereof to the appellant, if the latter has entered an appearance.

Form of appearance where all the respondents do not appear.

40. Where there are two or more respondents, and only one, or some, of them enter an appearance, the appearance form shall set out the names of the appearing respondents.

Separate appearances.

41. Two or more respondents may, at their own risk as to costs, enter separate appearances in the same appeal.

A respondent who has not entered an appearance is not entitled to receive any notices relating to the appeal from the Registrar of the Privy Council, or to lodge a case. After entering an appearance the appellant must see to the preparation of the record if it does not arrive in the required form. When the record arrives in England wholly or partly written, the appellant must take steps to have it printed

within a reasonable time. Otherwise he runs the risk of having his appeal dismissed. (See rule 34, p. 293.)

The limits of time provided for the appellant by the rules are as follows:

Times within which a copy of a written record shall be bespoken.

21. Where the record arrives in England either wholly written, or partly written and partly printed, the appellant shall, within a period of four months from the date of such arrival in the case of appeals from courts situate in any of the countries or places named in Schedule B hereto, and within a period of two months from the same date in the case of appeals from any other courts, enter an appearance and bespeak a type-written copy of the record, or of such parts thereof as it may be necessary to have copied, and shall engage to pay the cost of preparing such copy at the following rates per folio typed (exclusive of tabular matter)—1½*d.* per folio of English matter, 2*d.* per folio of Indian matter, and 3*d.* per folio of foreign matter.

The countries or places mentioned in Schedule B are:—
Australia (and the constituent states thereof).
Basutoland.
British East Africa.
British Honduras.
British North Borneo.
Brunei.
Ceylon.
China.
Eastern African Protectorates.
Falkland Islands.
Federated Malay States.
Fiji.
Hong Kong.
India.
Mauritius.
New Zealand.
Persia.
Seychelles.

Somaliland Protectorate.
Straits Settlements.
Zanzibar.

The list corresponds with the old category of colonies and plantations east of the Cape of Good Hope, in respect of which the old time limit for printing and prosecuting the appeal was six months. By the new rules the appellant must enter an appearance and see to the printing within four months when the record arrives in England from one of these places written. If the record comes from any place not included in Schedule B the appellant must proceed with the printing within three months when it arrives written. In either case he must lodge his petition within one month later. (See pp. 278—9.)

The rules for printing the record run thus:

Preparation of copy of record for printer.

23. As soon as the appellant has obtained the type-written copy of the record bespoken by him, he shall proceed, with due diligence, to arrange the documents in suitable order, to check the index, to insert the marginal notes and check the same with the index, and, generally, to do whatever may be required for the purpose of preparing the copy for the printer, and shall, if the respondent has entered an appearance, submit the copy, as prepared for the printer, to the respondent for his approval. In the event of the parties being unable to agree as to any matter arising under this rule, such matter shall be referred to the Registrar of the Privy Council, whose decision thereon shall be final.

Lodging copy of record for printing.

24. As soon as the type-written copy of the record is ready for the printer, the appellant shall lodge it, with a request to the Registrar of the Privy Council to cause it to be printed by His Majesty's Printer or by any other printer on the same terms, and shall engage to pay at the price specified in rule V. of Schedule A hereto the cost of printing fifty copies thereof, or such other number as in the opinion of the said registrar the circumstances of the case require.

For rule V of Schedule A, see p. 268.

Examining proof of record.

A further precaution to secure the accuracy of the record is provided by the rule which required the registrar to give notice to all parties who have entered an appearance to attend to examine together the proof of the record.

Examination of proof of record and striking off copies.

26. The Registrar of the Privy Council shall, as soon as the proof prints of the record are ready, give notice to all parties who have entered an appearance requesting them to attend at the Registry of the Privy Council at a time to be named in such notice in order to examine the said proof prints and compare the same with the certified record, and shall, for that purpose, furnish each of the said parties with one proof print. After the examination has been completed, the appellant shall, without delay, lodge his proof print, duly corrected, and (so far as necessary) approved by the respondent, and the Registrar of the Privy Council shall thereupon cause the copies of the record to be struck off from such proof print.

Number of copies of record for parties.

27. Each party who has entered an appearance shall be entitled to receive, for his own use, six copies of the record.

The costs of and incidental to the printing of the record normally form part of the costs of the appeal, but if either party has objected to the inclusion of a particular document which has been marked accordingly as the subject of objection, and if on taxation of costs the document is held to be unnecessary or irrelevant, the costs of and incidental to its printing must be borne by the party responsible for its inclusion.

How costs of printing record are to be borne.

28. Subject to any special direction from the Judicial Committee to the contrary, the costs of and incidental to the printing of the record shall form part of the costs of the appeal, but the costs of and incidental to the printing of any document objected to by one party, in accordance with rule 18, shall, if such document is found on the taxation of costs to be unnecessary or

irrelevant, be disallowed to, or borne by, the party insisting on including the same in the record.

Submitting special case.

While the appeal is still before the Colonial Court, or after the transcript has arrived in England, it may appear to the parties that the decision of the matter is likely to turn exclusively on a question of law. In such a case an application may be made to the Registrar of the Privy Council for the purpose, and with his sanction the question of law may be submitted to the Judicial Committee in the form of a special case.

When this procedure is followed, the whole record need not be printed, but only those parts of it which bear upon the special point of law to be submitted. In order to save the parties the expense which the statement of the case in full involves, the Registrar of the Privy Council may endeavour to narrow down the issue in an appeal to a special question of law, and report accordingly to the Judicial Committee.

The rule of the Judicial Committee which treats of such cases provides as follows:

Special case.

25. Whenever it shall be found that the decision of a matter on appeal is likely to turn exclusively on a question of law the parties, with the sanction of the Registrar of the Privy Council, may submit such question of law to the Judicial Committee in the form of a special case, and print such parts only of the record as may be necessary for the discussion of the same. Provided that nothing herein contained shall in any way prevent the Judicial Committee from ordering the full discussion of the whole case, if they shall so think fit, and that, in order to promote such arrangements and simplification of the matter in dispute, the said registrar may call the parties before him, and having heard them, and examined the record, may report to the Judicial Committee as to the nature of the proceedings.

III.—Petition of Appeal and Preparation of Case.

Lodging the petition of appeal.

Normally, the next step to be taken in the appeal after the printing of the record has been completed, is for the

appellant to lodge his petition of appeal. The rules, indeed, allow an appellant to lodge his petition of appeal prior to the arrival of the record in the country, if there are special reasons which render that course desirable. The Code of Civil Procedure in Quebec contemplates this procedure in certain cases where the appellant desires the execution of a judgment to be stayed, and provides that a certificate of the lodging of the appeal will be given by the Registrar of the Privy Council for filing with the clerk of the court which rendered the judgment. It is usual in such appeals for the officers of the court below to send to the Registrar of the Privy Council a certificate that the appeal has been admitted. The appellant's agent obtains a copy of the certificate, and draws the petition of appeal from the particulars given therein and the instructions which he has received.

Limit of time for lodging appeal.

The time is fixed in all cases within which the appellant must lodge his petition of appeal. The new rules provide the limit of time for two sets of circumstances, which again are each sub-divided according to two further contingencies:

1. When the record arrives in England *printed:*
   (a) From countries named in Schedule B, four months from the date of arrival;
   (b) From any other countries or places, two months from that date.
2. Where the record arrives in England *written:*
   (a) From countries named in Schedule B;
   (b) From any other countries;

within one month from the date of completion of the printing, *i.e.*, in cases which fall within (a) not more than five months after the arrival of the record in England; and in cases which fall within (b) not more than three months after that event.

Petition of Appeal.

Times within which petition shall be lodged.

29. The appellant shall lodge his petition of Appeal:
   (a) Where the record arrives in England printed, within a period of four months from the date of such arrival in the case of appeals from courts situate in any of the countries or places named in Schedule B hereto, and within a period of two months from the same

date in the case of appeals from any other courts;

(b) Where the record arrives in England written, within a period of one month from the date of the completion of the printing thereof:

Provided that nothing in this rule contained shall preclude an appellant from lodging his petition of appeal prior to the arrival of the record, if there are special reasons why it should be desirable for him to do so.

Jurisdiction before petition lodged.

Where an appeal has been brought as of right from a decision of the court below, the Judicial Committee has questioned whether it has jurisdiction to entertain any application in the appeal until the petition of appeal has been lodged. *Gungadhur Seal* v. *Sreenatty Dossee*, 9 Moo. 411; *How* v. *Kirchner*, 11 Moo. 21. But as soon as the petition is lodged, the Judicial Committee is fully seised of the case, and can report upon it.

Cross appeals.

Every party who feels aggrieved by a decree ought to appeal against that part of it which he complains of (*l*). Each party so appealing should lodge a petition of appeal at the Council Office. A petition for leave to enter a cross appeal is addressed to His Majesty in Council. Where a cross appeal was ordered to come to a hearing on the same printed case as the principal appeal, liberty was reserved to respondent, if the principal appeal was dismissed for non-prosecution, to prosecute the cross appeal as a separate cause. If the appeal is from part only of a decree, the whole is not open to the respondent, who should therefore present a cross appeal if he desires to review the whole decree. In an appeal by *Ambard and Another* v. *The Trinidad Asphalt Co.*, where it was alleged in the petition of the respondents that the order appealed from was in the main favourable to them, the Sovereign in Council made an order on the respondents' petition giving them leave to appeal from so much of the order as was adverse to them. P. C. Arch., November 29, 1898.

Leave to the respondents to agree to cross appeal may be

(*l*) *Nana Naran Rao* v. *Pant Bheo*, 11 Moo. 36; *Omanath Chowdry* v. *Sheikh Nujeeb Chowdry*, 8 Moo. I. A. 68; *Myna Borjee* v. *Ootoran* 8 Moo. I. A. 400.

given at the hearing, though a petition has not been lodged before. Cf. *Toronto Railway Co.* v. *King*, (1908) A. C. 260.

The respondents there asked in their printed case that the verdict of the jury which had been upheld by the Court of Appeal should be restored, but did not lodge a cross petition to that effect, and their lordships being of opinion that the necessary relief would have been granted, if they had applied for it at the time, the appellants obtained special leave to appeal allowed them to put in such a petition at the hearing. And when the merits of the case are clear, and the Judicial Committee have given leave to bring a cross appeal, it may grant the respondents what they would have been entitled to if they had entered a cross appeal, though it had not in fact been entered. Cf. *Cassin Ahmed Jerva* v. *Naranan Chetty*, 37 I. A. 133.

The respondents there had obtained a decree from the appellate court in Lower Burmah for the amount of a promissory note executed by the appellant, and by a consent Order in Council they were given leave to appeal on the point that the decree did not include interest. They entered no cross appeal, but on the appellant's appeal being dismissed, it was held that the respondents might have the decree amended as they asked.

Form of petition.

30. The petition of appeal shall be lodged in the form prescribed by rule 47 hereinafter contained. It shall recite succinctly and, as far as possible, in chronological order, the principal steps in the proceedings leading up to the appeal from the commencement thereof down to the admission of the appeal, but shall not contain argumentative matter or travel into the merits of the case.

The petition of appeal may be drawn by counsel: material for the purpose may be obtained from the transcript, as has already been mentioned, and this step may be taken before any appearance has been entered by the respondent. The petition contains in general a narrative or abstract of the proceedings in the court below, with a conclusion alleging that the petitioner is aggrieved by the judgment, has obtained leave to appeal from it in the colony or here and now prays for its reversal or alteration. If the appeal

is not from the whole judgment, the petition should specify the part of the judgment complained of, and the orders (if any) appealed against. The narrative should be short, and the draughtsman should be most particular about dates, as some error in date might eventually creep into the Final Order of the Judicial Committee. (For the form prescribed by rule 47, see p. 258, and see Appendix I, p. 472.)

Lodging petition.

The petition of appeal is lodged by bringing it into the Privy Council Office and leaving it with the officers there, who make a memorandum of the date when it is deposited.

Service of petition.

31. The appellant shall, after lodging his petition of appeal, serve a copy thereof without delay on the respondent, as soon as the latter has entered an appearance, and shall endorse such copy with the date of the lodgment.

When the petition of appeal has been lodged, by virtue of the general order of reference the appeal is now pending before the Sovereign in Council and becomes liable to be dismissed with costs under rule 36 of the Order in Council of 1908, if it is not set down within twelve months. (See p. 294.)

When the appellant desires to proceed with the appeal, after lodging his petition he must take steps to see that the respondents shall appear, in case they have not already entered an appearance. He must next lodge his own case, and should the respondents fail to lodge a case he may serve a case notice on them. (See p. 288.) It occasionally happens that after the transcript record arrives in England it is followed by a supplemental record. When this is the case, the limit of time for printing of two or four months, as the case may be, runs from the arrival of the original record.

Supplemental record.

So soon as the record has arrived where the leave has been granted below, or so soon as special leave has been granted in England, the respondent may enter an appearance (*m*). In the last resort, if a respondent does not come in within three months after the petition of appeal is lodged, and it appears that he has received notice of the appeal, the

Respondent to be served.

(*m*) *Retemeyer* v. *Obermuller* (British Guiana, 1837), 2 Moo. at 98.

appellant is at liberty to set down the appeal *ex parte* against him. (See below.) Their lordships may specifically direct in the order granting special leave that the respondent must be served with the copy of the order.

Service of petition in a special reference.

Special reference.—Where a petition is specially referred under sect. 4 of 3 & 4 Will. IV. c. 41 to the Judicial Committee or to a Committee of the Privy Council, and the respondent would have no notice that such a petition was about to be preferred, as he would have when leave to appeal has been given by a court below, it would appear to be the right practice for the appellant to serve the respondent personally with notice of the petition.

Respondent's appearance.

If the respondent has appeared, both parties proceed to prepare their respective cases. But the appellant may prepare his case at any time.

The rules dealing with the right of the respondent to enter an appearance at any time between the arrival of the record and the hearing of the appeal have been set out above. Until the respondent has entered an appearance he is not entitled to receive any notices either of the arrival of the record or of any other step in the appeal from the Registrar of the Privy Council; nor can he lodge a case in the appeal.

Non-appearing respondent not entitled to receive notices or lodge case.

42. A respondent who has not entered an appearance shall not be entitled to receive any notices relating to the appeal from the Registrar of the Privy Council, nor be allowed to lodge a case in the appeal.

Non-appearance of respondent.

If the respondent, though served by the appellant with notice of the leave to appeal, and notice of the despatch of the record to England, fails to put in an appearance, the rules provide that the appellant, after the expiration of three months from the date of the lodging of the appeal or the date on which the respondent, if added as a party subsequently to the admission of the appeal, was served with a copy of the order making him a party, may set down the appeal *ex parte* against him.

The rule which states the procedure is as follows:

Procedure on non-appear-

43. Where a respondent fails to enter an appearance in an appeal, the following rules shall, subject to any

special Order of the Judicial Committee to the contrary, apply: ance of respondent.

(a) If the non-appearing respondent was a respondent at the time when the appeal was admitted, whether by the order of the court appealed from or by an Order of His Majesty in Council giving the appellant special leave to appeal, and it appears from the terms of the said order, or Order in Council, or otherwise from the record, or from a certificate of the registrar of the court appealed from, that the said non-appearing respondent has received notice, or was otherwise aware, of the order of the court appealed from admitting the appeal, or of the Order of His Majesty in Council giving the appellant special leave to appeal, and has also received notice, or was otherwise aware, of the despatch of the record to England, the appeal may be set down *ex parte* as against the said non-appearing respondent at any time after the expiration of three months from the date of the lodging of the petition of appeal;

(b) If the non-appearing respondent was made a respondent by an Order of His Majesty in Council subsequently to the admission of the appeal, and it appears from the record, or from a supplementary record, or from a certificate of the registrar of the court appealed from, that the said non-appearing respondent has received notice, or was otherwise aware, of any intended application to bring him on the record as a respondent, the appeal may be set down *ex parte* as against the said non-appearing respondent at any time after the expiration of three months from the date on which he shall have been

served with a copy of His Majesty's Order in Council bringing him on the record as a respondent.

Provided that where it is shown to the satisfaction of the Judicial Committee, by affidavit or otherwise, either that an appellant has made every reasonable endeavour to serve a non-appearing respondent with the notices mentioned in clauses (a) and (b) respectively and has failed to effect such service, or that it is not the intention of the non-appearing respondent to enter an appearance to the appeal, the appeal may, without further order in that behalf and at the risk of the appellant, be proceeded with *ex parte* as against the said non-appearing respondent.

The last provision secures that where the respondent is acting in a way to evade service, or where it is clear that he does not intend to enter an appearance, the appellant may dispense with service of the notice, and at his own risk may proceed *ex parte* with the appeal against the respondent.

Consolidation of appeals.

Where several decrees in one suit or in cross suits.—Where two or more parties appeal against one decree, or where the same party appeals against several decrees, whether made in the same suit (*n*) or in cross suits, the Judicial Committee will, if the ends of justice seem likely to be furthered thereby, permit them to be consolidated, and to come on for hearing upon one printed case on each side and a single appendix; and this permission may be given upon the application either of appellant or respondent (*o*). It has been noted that the Colonial Rules of Appeal empower the court from which the appeal is brought in most cases to consolidate suits on the application for leave to appeal, where it seems to be convenient. (See p. 28.) It may be, however, that the possibility or desirability of consolidation does not become apparent till the

(*n*) *Campbell* v. *Dent* (British Guiana, 1838), 2 Moo. at p. 299.
(*o*) *Retemeyer* v. *Obermuller* (Berbice, 1838), 2 Moo. 93; *Colonial Bank* v. *Warden*, 5 Moo. 340; *Prinsep and East India Company* v. *Dyce Sombre and others*, 10 Moo. 232.

record has reached England; and then a petition to consolidate must be brought before the Judicial Committee. But it is an established practice of the Board not to entertain any *ex parte* application to consolidate unless every effort is first made on the part of the appellant by service of notice (of which evidence by affidavit is required), to induce each respondent to enter an appearance and be represented. In the appeals between *Maharani Indar Kunwar and Another* v. *Maharain Jaipal Kunward*, three appeals from Oude, the question of consolidation was discussed on the hearing of a petition presented for that purpose. Their lordships made an order that the petition "be dismissed with liberty to the petitioners to renew the application when the proper steps have been taken to bring in the respondents in the said appeal" (*p*). In the appeal of *Henderson* v. *Atwood and Others*, from Jamaica, a petition to consolidate was opposed by certain of the parties and was dismissed (*q*).

Where distinct suits.—Where two appeals deal practically with the subject-matter and there would be a saving of expense if heard together, an order of consolidation may be made although the suits are distinct (*r*). Several suits, each for a sum less than the appealable amount, may be consolidated if there is some special ground. (See above, Chapter V., p. 199.) For a form of petition for consolidation, see Appendix D (*s*).

Preparation of case.

If the respondent has entered an appearance to the appeal, then both he and the appellant proceed to the preparation of their respective cases. If he has not entered an appearance, then after the interval provided for in rule 43, *supra*, the appellant alone proceeds with the preparation of his case, which will have been set down *ex parte* against the respondent. The rules make the lodging of a case a necessary step for all parties in the appeal, except in special circumstances.

(*p*) P. C. Arch. July 9, 1887.
(*q*) P. C. Arch. June 24, 1893.
(*r*) *Hiddingh* v. *Denyssen* (C. G. H. 1886), 12 A. C. 107; cf. *Ex parte Gopal Lal Thakoor* (Bengal, 1860), 8 W. R. 224; *Moofti Mohummud Ubdoollah and Another* v. *Baboo Mootechund* (Bengal, 1837), 1 Moo. I. A. 363.
(*s*) *Infra*, p. 474.

Case.

Lodging of case.

60. No party to an appeal shall be entitled to be heard by the Judicial Committee unless he has previously lodged his case in the appeal. Provided that where a respondent is merely a stakeholder or trustee with no other interest in the appeal, he may give the Registrar of the Privy Council notice in writing of his intention not to lodge any case, while reserving his right to address the Judicial Committee on the question of costs.

The case.

The transcript, or so much of it as may be necessary for the purpose, is laid before counsel to enable him to draw the case. Each case is required to be signed by one or more of the counsel, who shall attend at the hearing of the cause. When both cases are lodged, but not before, the respective cases are exchanged between the agents, and the opponents then for the first time see one another's plan of argument.

Exchange of cases.

The case consists of a detailed statement of the proceedings in the court below, or such parts of them as are favourable to the purposes of the appellant or respondent, as the case may be, and should show the orders made below, and, in conclusion, the reasons or grounds of appeal should be shortly set forth. The party (appellant or respondent) should state the facts as they were proved in the court below. He may also, if he please, argue the law which arises upon them, and may cite legal authority in support of the argument in such mode as he deem most expedient for the interest of his cause. The cases are generally drawn by the junior, and settled by the leading and junior counsel in consultation, and usually signed by both. The General Council of the Bar has recently stated that it is not in accordance with the etiquette of the Bar for an English King's Counsel to draft or settle a petition or case in proceedings before the Privy Council without the assistance of a junior. The cases are prepared by each side without consultation with one another, and are lodged in the Council Office when printed. The cases are printed as directed by the Order in Council of 1908.

Drawn by counsel.

References to Documents.—Where, in framing the printed cases, documents are referred to, care ought to be taken to insert marginal references to the documents printed in the record. Marginal references to documents.

61. The case may be printed either abroad or in England, and shall, in either event, be printed in accordance with rules I. to IV. of Schedule A hereto (see p. 267), 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. Printing of case.

62. Each party shall lodge forty prints of his case. Number of prints to be lodged.

63. 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. Form of case.

As two respondents may at their own risk as to costs enter separate appearances, so also they may lodge separate cases in the same appeal.

64. Two or more respondents may at their own risk as to costs, lodge separate cases in the same appeal. Separate cases by two or more respondents.

Either party, after lodging his case, must give notice

of that step to the other, so that their cases may be exchanged.

Notice of lodgment of case.

65. Each party shall, after lodging his case, forthwith give notice thereof to the other party.

When the party has taken this step, he may within three days after giving the notice of lodging his case to the other, serve him with a case notice, as provided in rule 66. (See form, App. D, p. 475.)

Case notice.

66. Subject as hereinafter provided, the party who lodges his case first may, at any time after the expiration of three clear days from the day on which he has given the other party the notice prescribed by the last preceding rule, serve such other party, if the latter has not in the meantime lodged his case, with a "case notice," requiring him to lodge his case within one month from the date of the service of the said case notice and informing him that, in default of his so doing, the appeal will be set down for hearing *ex parte* as against him, and if the other party fails to comply with the said case notice, the party who has lodged his case may, at any time after the expiration of the time limited by the said case notice for the lodging of the case, lodge an affidavit of service (which shall set out the terms of the said casenotice), and the appeal shall thereupon, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the party in default. Provided that no case notice shall be served until after the completion of the printing of the record and that it shall be open to the taxing officer, in adjusting the costs of the appeal, to inquire, generally, into the circumstances in which the said case notice was served and, if satisfied that there was no reasonable necessity for the said case notice, to disallow the costs thereof to the party serving the same. Provided also that nothing in this rule contained shall preclude the

party in default from lodging his case, at his own risk as regards costs and otherwise, at any time up to the date of hearing.

There is no express limit of time for lodging the printed case on either side; but the object of the rule is to prevent undue delay in preparing the case, either on the part of the appellant or the respondent after the completion of the printing of the record. It is to be noted, however, (1) that the serving of the case notice will not be allowed on taxation unless unreasonable delay is shown; and (2) that the notice does not prevent the other party from lodging his case.

New evidence.

Where it is desired to introduce fresh evidence on the hearing of the appeal, a petition to the Judicial Committee should be presented for that purpose (*t*). Where necessary a Commission to examine witnesses may be issued. See sect. 7 of 3 & 4 Will. IV. c. 41 (*u*). The Judicial

(*t*) *Meiklejohn* v. *Att.-Gen. of Lower Canada* (1834), 2 Knapp, 330; and see *Jephson* v. *Riera* (Gib. 1835), 3 Knapp, at 136, 140.

(*u*) Such a Commission was issued in *Falle* v. *Le Sueur* (Jersey, 1859), 12 Moo. 501. For form of Commission appointing special examiner, see *ibid.* at p. 520. In *The Bank of China, Japan, and the Straits, Ltd.* v. *The American Trading Co.*, such a Commission to take further evidence in London was issued: (1894) A. C. 266, 272. See also *Mellin* v. *Mellin*, 2 Moo. 493. Where it is intended to use in evidence a document not before the court below, a motion for an order should be made before the hearing. *Canepa* v. *Larios* (1834), 2 Knapp, at pp. 277, 278; *Meiklejohn* v. *Att.-Gen. and Caldwell*, *ibid.* at p. 330; *Hughes* v. *Porral* (1842), 4 Moo. at p. 50. Although fresh evidence is sometimes admitted on appeals, the Judicial Committee will generally decline to admit it unless tendered in the court below, unless some strong ground is made out. Cf. *Harrison* v. *Harrison* (Arches Court of Canterbury, 1842), 100; *Colby* v. *Watson*, *The Endeavour* (1848), 6 Moo. 334. As to the admission of further evidence, cf. *Anon.* (1855), 9 Moo. 434; *Kirby* v. *The Scindia* (Vice-Adm. Court, C. of G. H. 1866), 4 Moo. (N. S.) 84; *Hocquard* v. *The Queen*, *The Newport* (Vice-Adm. Court, St. Helena, 1857), 11 Moo. (N. S.) 155; *The Laura* (Vice-Adm. Court, Antigua, 1865), 3 Moo. (N. S.) 181. In an appeal from Jersey, on a petition presented by the appellants praying that certain documents not referred to in the court below scheduled thereto might be treated as part of their case, the Judicial Committee ordered that the appellants should be at liberty to lodge them in the office of the Registrar of the Privy Council and that they might be referred to on the appeal, subject to any objection as to their admissibility. *Att.-Gen. of Jersey* v. *Le Moignan*, (1892) A. C. 402. In another recent case, *Blue and Deschamps* v. *Red Mountain Railway*, (1909) A. C. 36, the Judicial Committee admitted evidence which the Appellate Court in the Colony was precluded from admitting because it was not in the evidence at the original hearing. Where the ground for an examination of witnesses *vivâ voce* is that they were tampered with previously to their examination below, direct proof must be given. *Craig* v. *Farnell* (1849), 6 Moo. 448.

Committee has power to appoint one of the clerks of the Privy Council to take any formal proofs. 7 & 8 Vict., c. 69, s. 8.

Setting down *ex parte.*

In the contingency of the respondent not entering an appearance (after notice in accordance with rule 43) the appellant may proceed *ex parte*. And in the event of one party not lodging a case after notice in accordance with the last rule, the other party may likewise set down the case *ex parte*. But subject to these two provisions, an appeal is set down *ipso facto* as soon as the cases on both sides are lodged.

Setting down appeal and exchanging cases.

67. Subject to the provisions of rule 43 and of the last preceding rule, an appeal shall be set down *ipso facto* as soon as the cases on both sides are lodged, and the parties shall thereupon exchange cases by handing one another, either at the offices of one of the agents or in the Registry of the Privy Council, ten copies of their respective cases.

Hearing *ex parte.*

But even after a cause has been set down for hearing *ex parte*, if the other party lodge his printed case before the day appointed for argument, the Judicial Committee will allow him to appear at the hearing, and argue the case in the usual way. Should he, however, so far delay the bringing in of his printed case that the necessary copies can neither be conveniently distributed among the members of the Board, nor be seen and considered by the opposite party, the delay will be a good ground for applying to the court to postpone the hearing, and to make the party in default pay the costs of the day. As to costs up to lodging of case, where at the last counsel do not appear to argue, see "Costs," *infra*.

Respondent appearing after order to hear *ex parte*.

Binding record.

When the cases of the two parties have been duly lodged and exchanged between the parties, the record and the cases must be bound together for the use of the members of the Judicial Committee by the appellant. The rules for binding the record are as follows:

Binding Records, etc.

Mode of binding records, etc., for use of Judicial Committee.

68. As soon as an appeal is set down, the appellant shall attend at the Registry of the Privy Council and obtain ten copies of the record and cases to be bound for the use of the Judicial Committee at the hearing. The copies shall be bound in cloth or in half leather with paper sides, and six leaves of blank paper shall be inserted before the appellant's case. The front cover shall bear a printed label stating the title and Privy Council number of the appeal, the contents of the volume, and the names and addresses of the London agents. The several documents, indicated by incuts, shall be arranged in the following order: (1) Appellant's Case; (2) Respondent's Case; (3) Record; (4) Supplemental Record (if any); and the short title and Privy Council number of the appeal shall also be shown on the back.

Time within which bound copies shall be lodged.

69. The appellant shall lodge the bound copies not less than four clear days before the commencement of the sittings during which the appeal is to be heard.

Setting down in list.

The cause being set down in its proper place in the list comes on in due order for argument before the Judicial Committee.

CHAPTER X.

DISMISSAL FOR NON-PROSECUTION AND WITHDRAWAL OF APPEALS.

An appellant must either prosecute his appeal to the Privy Council with due diligence or withdraw it. If he does not take any of the steps required for the regular prosecution of the appeal within the time prescribed by the rules of the Judicial Committee, or within reasonable time, he runs the risk of having his appeal dismissed without a hearing. Dismissal may take place at various stages.

I. Dismissal in the Colony.

Dismissal in colony.

It has already been pointed out that if the appellant does not take effectual steps to prosecute the appeal in the colony by procuring the despatch of the record to England, the respondent may apply to the Colonial Court for a certificate that the appeal has not been effectually prosecuted; and if the court grants the certificate, the appeal shall therefore stand dismissed.

The rule to this effect is No. 21 of the Colonial Appeal Rules.

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 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.

II. Dismissal in England.

If the record has been transmitted to England, the appeal can only be dismissed at the instance of the registrar if the appellant take no steps at all to prosecute it within a prescribed time. If the appellant has gone so far as to lodge a petition of appeal, then the case is before the Judicial Committee, and it can be dismissed only by a King's order.

The Judicial Committee Rules which provide for the dismissal of an appeal from a prosecution when the record has been despatched to England, are as follows :

Non-Prosecution of Appeal.

Dismissal of appeal where appellant takes no step in prosecution thereof.

34. Where an appellant takes no step in prosecution of his appeal within a period of four months from the date of the arrival of the record in England in the case of an appeal from a court situate in any of the countries or places named in Schedule B hereto, or within a period of two months from the same date in the case of an appeal from any other court, the Registrar of the Privy Council shall, with all convenient speed, by letter notify the registrar of the court appealed from that the appeal has not been prosecuted, and the appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further order.

Dismissal of appeal for non-prosecution after appellant's appearance and before lodgment of petition of appeal.

35. Where an appellant who has entered an appearance—

(a) fails to bespeak a copy of a written record, or of part of a written record, in accordance with, and within the periods prescribed by, rule 21 [*i.e.*, four or two months, as the case may be, see p. 274]; or

(b) having bespoken such copy within the periods prescribed by rule 21, fails thereafter to proceed with due diligence to take all such further steps as may be necessary for the

purpose of completing the printing of the said record; or

(c) fails to lodge his petition of appeal within the periods respectively prescribed by rule 29 (see above, p. 278),

the Registrar of the Privy Council shall call upon the appellant to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said registrar, insufficient, the said registrar shall, with all convenient speed, by letter notify the registrar of the court appealed from that the appeal has not been effectually prosecuted, and the appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further order, and a copy of the said letter shall be sent by the Registrar of the Privy Council to all the parties who have entered an appearance in the appeal.

Dismissal of appeal for non-prosecution after lodgment of petition of appeal.

36. Where an appellant, who has lodged his petition of appeal, fails thereafter to prosecute his appeal with due diligence, the Registrar of the Privy Council shall call upon him to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said registrar, insufficient, the said registrar shall issue a summons to the appellant calling upon him to show cause before the Judicial Committee at a time to be named in the said summons why the appeal should not be dismissed for non-prosecution, provided that no such summons shall be issued by the said registrar before the expiration of one year from the date of the arrival of the record in England. If the respondent has entered an appearance in the appeal, the Registrar of the Privy Council shall send him a copy of the said summons, and the respondent shall be entitled to be heard before the Judicial Committee in the matter of the said summons at the time named and to ask for his costs and such other relief as he may be advised. The

Judicial Committee may, after considering the matter of the said summons, recommend to His Majesty the dismissal of the appeal for non-prosecution, or give such other directions therein as the justice of the case may require.

When the appellant neither withdraws his appeal nor takes any effectual steps to prosecute it, in accordance with the rules set out above, his appeal may be dismissed for non-prosecution. The steps which are necessary to effect its dismissal vary in three different cases:

1. When the appellant takes no steps after the arrival of the record in England, within four months of its arrival from the Eastern Colonies mentioned in Schedule B (see above, p. 274), and within two months in other cases, the Registrar of the Privy Council shall inform by letter the registrar of the court appealed from, and the appeal shall stand dismissed from the date of the letter.

2. When the appellant enters an appearance, but (a) fails to bespeak a copy of the record within the time prescribed (see above, p. 274); or (b) fails to proceed with the printing of the record with due diligence; or (c) fails to lodge his petition of appeal within the time prescribed (see above, p. 278), the Registrar of the Privy Council shall call upon him to explain his default; and if he gives an inadequate or no explanation, the Registrar shall notify the registrar of the court below that the appeal has not been effectually prosecuted. It shall thereupon be dismissed.

3. When the appellant has lodged his petition of appeal, but fails to prosecute the appeal with due diligence, the registrar shall call on him to explain, and in default of a satisfactory explanation shall, at the expiration of a year from the arrival of the record in England, summon him to show cause before the Judicial Committee why the appeal should not be dismissed for non-prosecution. The Judicial Committee may thereupon recommend the dismissal of the appeal or make any other order they think fit.

Costs of respondent.

In the last case the respondent has the opportunity of appearing before the Judicial Committee and asking for his costs and other relief. In the two former cases he does not have this opportunity, but he is entitled to ask for his costs,

etc., in the court from which the appeal is being brought, and will usually be able to satisfy them out of the amount deposited by the appellant as security for the costs of the appeal. The order allowing the appeal should contain the words that the costs should abide the result of the appeal in case the appeal should be dismissed for want of prosecution. But even if these words are omitted, the court can allow the respondent to satisfy his costs out of the fund deposited as security. *Milson* v. *Carter*, (1893) A. C. 640.

Costs on dismissal.

Where leave to appeal has been granted here and money for costs deposited, on dismissal for want of prosecution the respondent's costs will be ordered to be paid out of that sum and the balance returned to the appellant (*a*).

Extension of time.

An application to extend the time limited by the Order in Council for taking effectual steps to prosecute cannot be entertained by the Judicial Committee until the petition of appeal has been lodged (*b*). And it would seem that an application by the respondent by way of motion would not be in order till the petition is presented, as no matter is before the Judicial Committee (*c*).

Death of appellant.

Upon the death of the appellant the respondent may move to dismiss the appeal, and terms will be imposed. The interposition of revivor proceedings will not prevent the application of the rules of the Order in Council as to dismissal of the appeal.

Limit of time in cases of special leave.

Where an authenticated copy of the transcript has been handed in to the Council Office on a petition for special leave to appeal, and the order granting special leave directs such record to be admitted as the official record in the appeal, the time under the Orders in Council runs from the date of the order granting special leave, and the appeal will be dismissed on failure of the appellant to make the necessary application for printing the transcript within the prescribed period (*e*).

(*a*) *Gour Monee Debia* v. *Khajah Abdool Gunnee* (Calcutta, 1864), 10 Moo. I. A. 59; and see p. 331.

(*b*) *Lanux* v. *de la Giroday* (Mauritius), O. in C. March 20, 1891; *Gungadhur Seal* v. *Sreemutty Raddamoney Dossee*, 9 Moo. 412.

(*c*) *How* v. *Kirchner*, 11 Moo. 25. But *contra*, *Ettershank* v. *Zeal and Johnston* (1884), P. C. Arch.

(*e*) *McMillan* v. *Davies*, P. C. Arch., August 27, 1894; *Hoskyn* v. *Drui Syndicate*, October 3, 1894.

If two appeals be consolidated by order of the court below, the time will be reckoned according to the date of the proceedings in the consolidated appeal. Dismissal affected by consolidation.

The person complaining of delay should not be guilty of laches (*g*), and generally any objection to the appeal should be taken at earliest opportunity (*h*). The respondent is not required to wait till his case is printed before applying to dismiss (*i*). Laches in objecting.

The appellant may present a petition to the Judicial Committee asking for the restoration of his appeal which has been dismissed. The Judicial Committee Rules provide as follows:— Restoration of appeal.

37. An appellant whose appeal has been dismissed for non-prosecution may present a petition to His Majesty in Council praying that his appeal may be restored. Restoring an appeal dismissed for non-prosecution.

In one case of unintentional laches, an appeal which had been dismissed for want of prosecution was restored after ten years. *Rajah Deedar Hossein* v. *Ranee Zuhovrar Nisse* (1841), 2 Moo. I. A. 441.

Special terms may be ordered by the Committee as to security for costs on allowing the petition. When the security in India still stood and was sufficient, the Judicial Committee did not require fresh security. Cf. *Seti Luckmee Chund* v. *Seti Zorawar Mull* (1854), 9 Moo. 351. Terms as to security.

But when an appeal stood dismissed for want of prosecution, and upon application the Privy Council restored it, there being special circumstances and infants being interested, they imposed the condition that the appellant should undertake to have it set down for hearing by a specified time and should deposit 600*l.* in the registry. *Ranee Birjolutee* v. *Pertaub Singh*, 13 Moo. 405.

In that case the Judicial Committee were of opinion that

(*g*) *St. Louis* v. *St. Louis* (L. C. 1836), 1 Moo. at 147.

(*h*) Cf. *Pisani* v. *Att.-Gen. of Gibraltar* (Gibraltar, 1874), L. R. 5 P. C. 517, where the objection was that the right of appeal had been waived by agreement of the parties.

(*i*) *Jackson* v. *Prothero* (Trinidad, 1842), 3 Moo. at p. 492.

by the dismissal the security given below becomes vacated, and therefore fresh security has to be given. In another case their lordships ordered that fresh security should be given in England so far as there should be a deficiency of security in India, by reason of the security there being altered wholly or in part.

Dismissal at instance of respondent.

Besides the cases where an appeal may be dismissed automatically for non-prosecution, it is open to the respondent to present a petition for the dismissal of an appeal either on the ground that an appeal does not lie in the case, or that the appellant has not taken effective steps to prosecute it.

Counter-petition to rescind leave to appeal.

Where leave to appeal has been given by the Privy Council upon an *ex parte* petition, a counter-petition that the order giving leave may be rescinded and the appeal dismissed may be presented at any time before the hearing (*k*), and a motion to that effect may thereupon be made. It may proceed upon the ground that the leave to appeal was given in a matter not legally appealable, or that it was unduly obtained, or that the conditions imposed by the order granting leave have not been complied with (*l*), or on the ground of want of jurisdiction in the court below (*m*).

No leave need be obtained to present such counter-petition (*n*).

It is usually supported by affidavit or such other evidence as may be satisfactory to the court (*o*).

Dismissal where appeal out of time.

When a final decree was made against the appellant in the colonial court, and a motion to set it aside was dismissed in the following year, and again after an

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(*k*) *Cuvillier* v. *Aylwin* (Quebec, 1832), 2 Knapp, 72; *Ex parte Robertson* (N. S. W. 1857), 11 Moo. 288, at 290; *In re Ames* (Jersey, 1841), 3 Moo. 411; *Bulkeley* v. *Scutz* (Constantinople, 1870), L. R. 3 P. C. 196.

(*l*) *Ibid.*; and *McKellar* v. *Wallace* (Calcutta, 1853), 5 Moo. I. A. 372.

(*m*) *Macfarlane* v. *Leclaire* (Quebec, 1862), 15 Moo. 181.

(*n*) *Sibnarain Ghose* v. *Hullodhur Doss* (Calcutta, 1854), 6 Moo. I. A. 207; 9 Moo. 354.

(*o*) *Quebec Fire Insurance Co.* v. *Anderson* (Low. Can. 1861), 13 Moo. 477.

interval of five years, and an application to restrain execution was refused a year later, it was held on the respondent's petition that the appeal from this last order must be dismissed without hearing. It was merely a repetition of the order dismissing the motion to set aside the judgment from which an appeal was barred. Special leave to appeal from the order dismissing these motions was likewise refused, having regard to the delay and the impossibility of obtaining any relief without reversing the original judgment to which no objection could be maintained. *Grieve* v. *Tasker*, L. R., (1906) A. C. 132.

Dismissal where leave obtained by misrepresentation

If it appear at any stage of the cause that the leave to appeal was obtained by misrepresentation, even unintentional, the Privy Council (*p*) will at once dismiss the appeal with costs, without hearing it upon the merits (*q*).

In ordinary circumstances an Order in Council granting leave to appeal, obtained upon an *ex parte* petition which omitted to state the true facts, will be discharged with costs; but if there has been laches in applying to discharge the order on the part of the respondent, no costs will be given (*r*).

Upon the hearing of such a counter-petition the discussion will be confined to the competency of the appeal, or the immediate question at issue, whatever it may be, upon the counter-petition. The merits of the case itself will not be regarded.

Misapprehension should be corrected

Where a petitioner has presented a petition in which he has in fact, although inadvertently, misled their lordships by not stating the true nature of the question in the court

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(*p*) *Wilson* v. *Callender*, 9 Moo. 100, at 102; *Sibnarain Ghose* v. *Hullodhur Doss*, 9 Moo. at 355; *Cremidi* v. *Parker* (Admiralty, 1856), 11 Moo. at 85; and *Bulkeley* v. *Scutz* (Constantinople, 1870), 6 Moo. (N. S.) at 483.

(*q*) *Ram Sabuk Bose* v. *Monmohini Dossee* (Calcutta, 1874), L. R. 2 Ind. App. at 81; approved in *Mussoorie Bank* v. *Raynor* (Allahabad, 1882), 7 App. Cas. 321; L. R. 9 I. A. 70, where the Judicial Committee, as the petition stated correctly two valid grounds for granting leave, heard and allowed the appeal, but without costs.

(*r*) *Mohun Lall Sookul* v. *Bebee Doss* (Calcutta, 1861), 8 Moo. I. A. 193.

below, he should come forward at the earliest moment to say that he did not know, and that he could not by ordinary inquiry have known, what the grounds of the judgment were (*s*).

Respondent's duty as to incompetent appeal.

Where an appeal is informal and not competent, and ought not to be discussed on the merits, it is the duty of the respondent to apply to quash the appeal on that ground, whether allowed specially by the Privy Council or granted as of course by the court below (*t*). The preliminary objection that the amount in dispute is below the appealable amount comes too late at the hearing of the appeal (*u*).

Where a court has granted leave to appeal, without jurisdiction to do so, the Privy Council will on petition rescind the order (*x*). If an appeal is brought in violation of an undertaking duly given in the court below, the Privy Council will dismiss it unheard (*y*).

Right of next friend after coming of age of infant.

Where an infant sole appellant, on coming of age, has authorised his agent to withdraw the appeal, an application by the respondent to have the appeal dismissed accordingly cannot be resisted by the next friend on the ground of any interest he may have in the matter in dispute, or the costs of the litigation (*z*).

The Withdrawal of an Appeal.

Withdrawal of appeal before petition of appeal has been lodged.

If at any period during the preparation of the appeal the appellant desires to withdraw it from the consideration of the Privy Council, the rules prescribe the steps which he

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(*s*) *Ex parte Baudains* (Jersey, 1888), 13 App. Cas. 834.

(*t*) *Pisani* v. *Att.-Gen. for Gibraltar*, L. R. 5 P. C. 525; *Sauvageau* v. *Gauthier*, L. R. 5 P. C. 494. See, too, *Canadian Central Railway Co.* v. *McLaren* (1884), P. C. Arch. March,

(*u*) *Nilmadub Doss* v. *Bishumbur Doss*, 12 Suth. W. R. P. C. pp. 29, 31.

(*x*) *Macfarlane* v. *Leclaire* (Lower Canada, 1862), 15 Moo. at 185; and an opportunity to apply for special leave will not be granted unless the circumstances are such as to render it desirable. *Allan* v. *Pratt* (1888), 13 App. Cas. at p. 782.

(*y*) *Moonshee Ameer Ali* v. *Mahumed Singh*, 14 Moo. I. A. 203.

(*z*) *Ranee Bistoopria Putmadaye* v. *Numd Dhul*, 13 Moo. I. A. 602.

must take to that end. He should act upon them as soon as possible, in order that there may not be an application for dismissal for non-prosecution.

These steps differ according as he has or has not lodged his petition of appeal. In the latter case the appeal is not regarded as being before His Majesty's Council, and he need only give notice in writing to the Registrar of the Privy Council of his desire. The rule runs :

Withdrawal of appeal before petition of appeal has been lodged.

32. Where an appellant, who has not lodged his petition of appeal, desires to withdraw his appeal, he shall give notice in writing to that effect to the Registrar of the Privy Council, and the said Registrar shall, with all convenient speed after the receipt of such notice, by letter notify the registrar of the court appealed from that the appeal has been withdrawn, and the said appeal shall thereupon stand dismissed as from the date of the said letter without further order.

Withdrawal in colony.

If the appellant comes to the determination to withdraw the appeal prior to the despatch of the decree to England, not even this formality is required, because the appeal is not before the Privy Council at all; and in such circumstances the Colonial Rules of Appeal provide that he may apply to the colonial court for a certificate to the effect that the appeal has been withdrawn.

(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 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. (See above, Chapter II., pp. 29, 30.)

Withdrawal after lodging petition.

But if the appellant has lodged his petition of appeal, and then desires to withdraw his appeal, the procedure is

more elaborate. The appeal is in such case regarded as being before His Majesty in Council ; and can only be removed by a petition to that effect to His Majesty in Council. Cf. *Gain Mohun Chebrubeti* v. *Tara Sunedri Deli*, I. L. R. 17 Calc. 693.

Withdrawal of appeal after petition of appeal has been lodged.

33. Where an appellant, who has lodged his petition of appeal, desires to withdraw his appeal, he shall present a petition to that effect to His Majesty in Council. On the hearing of any such petition a respondent who has entered an appearance in the appeal shall, subject to any agreement between him and the appellant to the contrary, be entitled to apply to the Judicial Committee for his costs, but where the respondent has not entered an appearance, or, having entered an appearance, consents in writing to the prayer of the petition, the petition may, if the Judicial Committee think fit, be disposed of in the same way *mutatis mutandis* as a consent petition under the provisions of rule 56 hereinafter contained. (See *supra*, Chapter VIII., p. 260. And for form of petition, Appendix D, p. 474.)

The provisions of rule 56 are to the effect that :

Procedure where petition is consented to or is formal.

Where the prayer of a petition is consented to in writing by the opposite party, or where a petition is of a formal and non-contentious character, the Judicial Committee may, if they think fit, make their report to His Majesty on such petition, or make their order thereon, as the case may be, without requiring the attendance of the parties in the Council Chamber, and the Registrar of the Privy Council shall not in any such case issue the summons provided for by the last preceding rule, but shall with all convenient speed after the Committee have made their report or order notify the parties that the report or order has been made and of the date and nature of such report or order.

The parties need not be summoned to the hearing of the petition for the withdrawal of the appeal, and the Privy Council may make their formal order on the petition in their absence.

Withdrawal by compromise.

Where, pending an appeal, one of the appellants entered into an agreement with the respondent to compromise and withdraw his appeal, on a petition to Her Majesty in Council, his name was erased or withdrawn from the proceedings on appeal in England (*a*).

Petition to vacate recognizance.

When a case has been compromised after leave to appeal has been obtained from the Judicial Committee, and the usual recognizance has been given, the course is to present a petition addressed to the King in Council, praying leave to withdraw the appeal or that the order granting leave to appeal be rescinded and the recognizance discharged (*b*).

Enforcement of terms of compromise.

The Judicial Committee will reserve liberty to the parties to apply to the court below to take proceedings in pursuance of the compromise (*c*). If the parties consent, and no difficulties of detail exist, the Privy Council will issue any orders which may be necessary to carry out the terms of the compromise. Such orders may be necessary where there is anything to be done in Great Britain. Thus, in a case in which the local court had refused to interfere, where the fund in dispute in the appeal (and which under the compromise was to belong to the appellant) was standing in the name of the Accountant-General of the Court of Chancery in the West India Compensation Account of the Court of Chancery, "subject to suits," an order was made on the petition of the appellant that the Accountant-General of the Court of Chancery should transfer the fund to him in full settlement of the claim made by him, and that all further proceedings in the original actions might be stayed and the appeal dismissed (*d*).

Abandonment of appeal in ecclesiastical causes.

Where an appeal is abandoned in an ecclesiastical case by a special proxy under the appellant's hand and seal, and a

(*a*) *Sheikh Imdad Ali and Others* v. *Mussumat Kootby Begum* (Bengal, 1842), 3 Moo. I. A. 1.

(*b*) *Reed* v. *Sreemutty Gourmoney Dabee* (Calc. 1857), 6 Moo. I. A. 490; cf. *Chastey* v. *Ackland* (H. L. E. 1897), A. C. 155.

(*c*) *Raja Sutti Churn Ghosal* v. *Sri Mudden Kishore Indoo* (Bengal, 1850), 5 Moo. I. A. 107; 7 Moo. 140.

(*d*) *M'Turk* v. *Douglas* (British Guiana, 1849), 6 Moo. 500.

declaration by the proctor that the appellant proceeds no further in the appeal, the respondent may move to dismiss the petition, and to confirm the sentence appealed from, and to remit the cause to the lower court, and to condemn the appellant in the costs of appeal (*e*).

(*e*) *Brownlow* v. *Garson* (H. C. Adm. 1843), 4 Moo. 272; *West* v. *Johnson* (Arches Ct. 1856), 10 Moo. 421.

CHAPTER XI.

Of the Abatement and the Revivor of an Appeal.

Abatement.

An appeal is said to abate upon the transmission of the interest in the appeal of any of the parties, which is usually caused by death. An abatement does not put an end to the suit. It is a present suspension of the proceedings which may be revived. To determine whether an abatement has taken place, it is necessary to look to the circumstances of each case and the rules of law in the country from which the appeal is brought. An appeal is said to revive when the proper parties are substituted.

Proper parties necessary.

The Privy Council, like every other tribunal, must have proper parties before it, or its decrees will not be binding. Where, therefore, it becomes known before the lodging of the petition of appeal at the Council Office that either a party appellant or respondent has died since the date of the order finally giving leave to appeal to the Sovereign in Council, an Order of Revivor must be obtained before the petition of appeal can be lodged. Under the new Judicial Committee Rules it is for the court below to determine who are the right parties.

The court does not readily attend to any technical objections as to the absence of parties (*a*), and if no objection has been taken in the court below it cannot be taken on appeal. But wherever circumstances occur which would cause an abatement of the suit in the court below, the appeal is abated and must be revived. For this purpose an Order of Revivor is obtained by or against the person entitled to stand in the shoes of the party whose interest has abated.

Death of sole appellant.

On the death of a sole appellant the respondent may obtain an order, where the next of kin are entitled, that they should revive the appeal (*b*). Where there are three "legal representatives" of deceased appellant, and only one of them is willing to be made appellant, the others

(*a*) *Marchioness of Bute* v. *Mason* (N. S. W. 1849), 7 Moo. 1.
(*b*) Macqueen, H. of L. p. 243; *House* v. *Stamp* (1728), *ibid.*

should be brought on the record as respondents (*c*). The respondent may require the surviving appellants, where one of several dies, to revive the appeal (*d*).

An appeal granted to the Dean of Jersey, judge of the Ecclesiastical Court of the island, against a sentence in the nature of a writ of prohibition, became abated by his death. Upon his successor presenting a petition to Her Majesty in Council, praying that Her Majesty would be pleased to order the appeal so granted to be revived, it was so ordered, and that he might stand and be the appellant in such appeal as Dean of the said Island of Jersey (*e*).

When to ask for fresh security.

In a Canadian case pending the appeal to His Majesty in Council, and subsequent to its allowance by the Court of Appeals of Upper Canada, the appellant died, having by his will appointed certain persons his executors, by whom an Order of Revivor was obtained from His Majesty in Council, and the respondents appeared to the Order of Revivor. Subsequently the respondents, having examined the security bond given by the deceased appellant, discovered that it was not binding on his executors, and moved that the executors should give security or the appeal stand dismissed. It was held that they, having appeared to the Order of Revivor, were then too late, and that they should have moved to dismiss the appeal on the death of the appellant, when terms would have been imposed (*f*).

Inquiry in court below.

It has, however, for long been the practice of the Judicial Committee to act on the finding of the court below. In an Indian case they approved of the statement in Mr. Macpherson's book (p. 241): "In such cases the proper evidence must be given of the representative character of the persons by or against whom the revivor is sought. The title is more generally established upon petition to the court below, which thereupon makes any enquiries it may deem necessary, and orders the petition and proofs to be transmitted to England for such order as the Judicial Committee may think fit to make" (*g*).

(*c*) *Ghamandi Lal* v. *Amir Begam* (1894), I. L. R. 16 All. 211.
(*d*) *Blake* v. *Bogle*, Macqueen, p. 244.
(*e*) *Dean of Jersey* v. *Rector of* ——— (1840), 3 Moo. at p. 231.
(*f*) *Powell* v. *Washburn* (U. C. 1838), 2 Moo. 205.
(*g*) *Shaikh Haidar Ali* v. *Tasadduk Rasul*, P. C. Arch., 1888, July 21st.

The rule in cases under the Church Discipline Act.

Where the promoter of an ecclesiastical cause has died pending an appeal to the Privy Council, the Board allows a proper promoter to be substituted in his place. In some cases the executor of the original promoter appears to have been substituted as a new promoter, on the ground, probably, of his having an interest in the costs which the testator promoter had obtained by the judgment appealed from. In other cases the new promoter has been the successor in office of the first promoter. But the power of the court to appoint a new promoter is not limited to the two cases of a deceased promoter, whose representative has a pecuniary interest, and of a deceased promoter who was clothed with an official character (*i*).

Death of sole Respondent. Order of Revivor.

When a sole respondent dies pending an appeal, the appellant ought to apply to the Judicial Committee for an Order of Revivor to revive the appeal against the legal personal representatives (*k*).

Revivor on death of respondent.

Where the heirs of the respondent renounced succession, and a curator was appointed by court, the appeal was revived against the curator on his petition (*l*). After respondent's death the appeal was revived, on the appellant's application, by making the heir the respondent (*m*). Pending an appeal the respondent died intestate leaving children, who, by reason of litigation respecting their father's right of succession, objected to be made respondents. The Judicial Committee ordered the petition to revive to stand over, with liberty to apply to the Royal Court of Jersey to appoint a proper person to represent the estate. That court appointed the Viscount of the Island as official representative of the estate, and the appeal was revived in his name (*n*).

Revivor by infant.

Infants, it was said in an old case, are not to be prejudiced by the negligence of their guardians, and therefore, if His Majesty were to dismiss an appeal on account of the neglect of the guardians to bring it to a decision, when the infants

(*i*) *Elphinstone* v. *Purchas* (Arches Ct. 1870), 7 Moo. (N. S.) at pp. 33, 34; cf. *Liddell* v. *Beal* (1860), 14 Moo. at p. 12.

(*k*) *Gobindchunder Sein* v. *Ryan* (Cal. 1861), 15 Moo. at p. 247; and *Carr* v. *Henton* (1787), Macqueen, p. 244; *Cameron* v. *Kyte* (Berbice, 1835), 3 Knapp, 332; see *Wise* v. *Kishencoomar Bous* (Calcutta, 1847), 4 Moo. I. A. 201.

(*l*) *Ermatinger* v. *Gugy* (L. C. 1844), 5 Moo. 1.

(*m*) *Ahier* v. *Westaway* (Jersey, 1855), 9 Moo. 395.

(*n*) *La Cloche* v. *La Cloche* (Jersey, 1872), L. R. 4 P. C. 325.

attain their full ages they would have a right to revive it. *Orphan Board* v. *Van Reenan*, 1 Knapp, 94.

Abatement upon marriage.

Where the interest of a female appellant, or of a female respondent, plaintiff in the court below, and possibly also of any female respondent whose interest in the appeal, by virtue of the marriage, becomes vested by the *lex fori* in the husband, the appeal appears to abate (*o*).

Insolvency of appellant.

An appellant was adjudicated an insolvent under the Indian Insolvency Act, 11 Vict. (Imp.) c. 21, his estate and effects became vested in the official assignee of the Insolvent Court in India, and the appeal thereby abated. The court allowed it to stand over for six months, that notice might be served by the respondent on the official assignee, and that the official assignee might take such proceedings as he might be advised, in default of which the appeal was dismissed (*p*). In *Bute* v. *Mason* (*q*) an insolvent was allowed to appeal as trustee.

Action brought by committee of lunatic.

A suit was instituted in a court of the East India Company by the committee of a lunatic, claiming from the Government, on behalf of the lunatic, the possession of a certain jaghire, or land grant, in perpetuity, with mesne profits. The courts decided against the claim, and the plaintiff appealed to the Queen in Council. Before any steps were taken in the appeal or the petition of appeal was lodged, the lunatic died, and special administration of his estate and effects was granted to his widow. The committee also died. A petition was presented by the two sisters and the administratrix to revive, in which it was submitted that the two sisters were entitled to the jaghire, as co-heiresses of the deceased, and the administratrix was entitled to the mesne profits; and an order was made that the appeal should stand revived, and that the petitioners should be allowed to come in and prosecute the appeal in the place of the committee (*r*).

Order of revivor by co-heiress and administratrix.

(*o*) Macqueen, p. 247.

(*p*) *Gooroochurn Sein* v. *Radanauth Sein and Others* (Calcutta, 1857), 11 Moo. at p. 78; 7 Moo. I. A. 1. Cf. *Re Hamilton*, 14 N. S. W. Rep. 96. Cf. as to abatement by reason of marriage, death or bankruptcy, under the Rules of the Supreme Court in England, Ord. XVII. r. 1; and Williams on Bankruptcy, as to effect of bankruptcy.

(*q*) (N. S. W. 1849), 7 Moo. 1.

(*r*) *Troup and Others* v. *East India Company* (Agra, 1857), 7 Moo. I. A. at p. 119.

Amendment of record in colony.

It has been pointed out (see above, Chapter II., pp. 31 ff.) that by the Colonial Appeal Rules, now applied in most colonies, when the change of parties occurs between the time of granting final leave to appeal in the colony and the despatch of the record to England, the colonial court may, on application made by any person interested, grant a certificate showing who should be substituted and entered on the record, and no express Order of the Privy Council is required to effect the change in the record. See rule 21 of the Colonial Appeal Rules.

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 His Majesty in Council.

Petition of revivor when necessary.

So soon, however, as the Privy Council is seised of the appeal by the arrival of the record in England, the Order of Revivor can only be made on a petition to the Sovereign in Council. It would be very inconvenient that the Board should try the facts necessary for the alteration of the parties, and it regularly relies on the finding of the court below.

Procedure.

The Judicial Committee Rules now provide that there shall be a certificate from the court appealed from, showing who is the proper person to be entered on the record.

Petition for Order of Revivor or substitution.

51. A petition for an Order of Revivor or substitution shall be accompanied by a certificate or duly authenticated statement from the court appealed from showing who, in the opinion of the said court, is the proper person to be substituted, or entered, on the record in place of, or in addition to, a party who has died or undergone a change of status.

By the Colonial Rules of Appeal applied by the various

Orders in Council the colonial court shall cause such a certificate to be transmitted to the Registrar of the Privy Council on the application of anybody interested. When it has inquired into the matter, the petition to revive, and the evidence thereon together with the certificate, should be forwarded by the officer of the colonial court to the Council Office in the form of a supplemental record. (For form of petition see pp. 257 ff., and Appendix D, p. 473.)

It may be, however, that satisfactory evidence may be placed before the Judicial Committee as to the proper person to be placed upon the record without any certificate being first obtained from the court below. Such a case occurred in *Ledgard* v. *Bull* (*s*). On the death of a party to the appeal in India, his original will was produced showing his representatives, and an Order of Revivor was made.

Costs in revived appeal.

A legal personal representative obtaining an order to revive adopts the position of the deceased party, and becomes entitled to or liable to submit to an order to pay costs personally in like manner as the deceased party would have been (*t*).

Recognizance for costs.

Security may be required at any time, and on the substitution of a new party fresh security may be required.

Judgment in an abated appeal.

When pending the hearing of the appeal the respondent died and the Judicial Committee heard the appeal in ignorance of the death, and the appellant was ordered to pay costs, the court below refused to ignore the decree of the Sovereign in Council (*u*).

(*s*) P. C. Arch., July 9, 1885; cf. *ibid.* (1886), L. R. 13 I. A. 134.
(*t*) *Boynton* v. *Boynton* (1879), 4 A. C. at p. 736.
(*u*) *Flood* v. *Egan* (1899), 20 N. S. W. Rep. 337.

CHAPTER XII.

THE HEARING OF THE APPEAL.

Privy Councillors members of the Judicial Committee.

THE hearing of the appeal takes place at the bar of the Privy Council in Downing Street before the Judicial Committee of the Privy Council. The following Privy Councillors are members of the Judicial Committee: The Lord President for the time being of His Majesty's Privy Council and such of the members of His Majesty's Privy Council as shall from time to time hold the office of Lord Keeper or First Lord Commissioner of the Great Seal of Great Britain, and also all persons, members of His Majesty's Privy Council, who shall have been Lord President thereof or shall have held any of the other offices hereinbefore mentioned, and any two persons being Privy Councillors appointed by the Sovereign under sign manual (*a*); the present or past Lords Justices of Appeal who are Privy Councillors (*b*); such members of His Majesty's Privy Council as are for the time being holding or have held any of the offices in the Appellate Jurisdiction Act, 1876 (*c*), and the Appellate Jurisdiction Act, 1887 (*d*), described as high judicial offices; the two Judges of India or other possessions beyond the seas who may be appointed under 3 & 4 Will. IV. c. 41, s. 30, members of the Judicial Committee (*e*); the Chief Justices of the Colonies mentioned in 58 & 59 Vict. c. 44, as amended by 8 Edw. VII. c. 51, not exceeding five, who shall be named by His Majesty in Council (*f*); and the judges empowered to sit by the Appellate Jurisdiction Act, 1908 (8 Edw. VII. c. 51) (*g*).

Lords of Appeal in Ordinary.

(*a*) 3 & 4 Will. IV. c. 41, s. 1.
(*b*) 44 & 45 Vict. c. 3.
(*c*) 39 & 40 Vict. c. 59, s. 25.
(*d*) 50 & 51 Vict. c. 70, ss. 3, 5.
(*e*) 50 & 51 Vict. c. 70, s. 4. Such judges are members of the Judicial Committee for all purposes.
(*f*) *Supra*, pp. 16, 17.
(*g*) *Supra*, p. 17.

Nautical assessors.

In Admiralty appeals the Judicial Committee may, if they think fit, require the attendance of two nautical assessors, and in ecclesiastical causes the archbishops and certain of the bishops may be called on to sit as assessors. Appellate Jurisdiction Act, 1876, s. 14.

Hearing.

Notice to parties of date of commencement of sittings; entering appeals for hearing.

70. As soon as the Judicial Committee have appointed a day for the commencement of the sittings for the hearing of appeals, the Registrar of the Privy Council shall, as far as in him lies, make known the day so appointed to the agents of all parties concerned, and shall name a day on or before which appeals must be set down if they are to be entered in the list of business for such sittings. All appeals set down on or before the day named shall, subject to any directions from the Committee or to any agreement between the parties to the contrary, be entered in such list of business and shall, subject to any direction from the Committee to the contrary, be heard in the order in which they are set down.

Notice to parties of day fixed for hearing appeal.

71. The Registrar of the Privy Council shall, subject to the provisions of rule 42, notify the parties to each appeal by summons, at the earliest possible date, of the day appointed by the Judicial Committee for the hearing of the appeal, and the parties shall be in readiness to be heard on the day so appointed.

Rule 42 provides that a respondent who has not entered an appearance shall not be entitled to receive any notice from the registrar. He may, however, enter an appearance and lodge a case at any time down to the hearing of the appeal.

Hearing in absence of one party.

Ex parte Hearings.—No matter will be taken *ex parte* without giving the other party an opportunity of appearing (*h*). In questions regarding office, and personal conduct

(*h*) *In re Butts* (British Guiana, 1842), 4 Moo. at p. 95; and see *supra*, p. 290, and cf. *Willis* v. *Sir G. Gipps* (N. S. W. 1846), 5 Moo. at p. 384. Respondents have been allowed to enter appearance after *ex parte* hearing but before judgment.

and personal rights (*i*), the Privy Council has often been compelled, by the non-attendance of one of the parties, to decide upon consideration only of the arguments urged by the party who does attend. This also happens occasionally in ordinary litigation. When the Judicial Committee is satisfied that all parties have had notice of the proceedings, and an opportunity of attending them, it does not hesitate to entertain the case and to pronounce judgment (*k*), and such judgment is final; and like all other judgments of the court, it cannot be reviewed, except for the correction of mistakes in drawing up, after an Order in Council has been passed for confirming the report (*l*).

Parties to have opportunity of attending.

A party will not be heard when the appeal comes on for hearing unless he has lodged a printed case (*m*).

Necessity for printed case.

Two counsel on each side, and no more, are heard (rule 72), and it is the uniform practice to allow the appellant's counsel to begin, and also to reply, whatever may be the practice of the court appealed from (*n*).

Number of counsel heard.

If there are several parties in one appeal, who are in different interests, the practice is to hear them by separate counsel. But if they are in the same interest, the court makes them arrange so as to be heard by the same counsel (*o*).

There is a right of audience before the Privy Council to members of the English, Scotch and Irish Bar and to those Indian and Colonial practitioners whose position corresponds to that of barristers in this country. The General Council of the Bar, in reply to a question recently submitted to them, stated that there is no rule of the profession which prevents an English King's Counsel from appearing alone

(*i*) *E.g.*, cases as to judges holding office under 22 Geo. III. c. 75; and as to civil servants and barristers and pleaders aggrieved by suspension, *supra*, p. 255. In the order giving leave, liberty is given to the party as to whose order complaint is made to put in an answer and appeal by counsel. For orders where judges were respondents, see *Re Dillett*, O. in C. August 12, 1885, and April 3, 1886, Pr. C. Arch.; *Ex parte Southekul Krishna Row* (Madras), O. in C. November 26, 1886; L. R. 14 I. A. 154; *Ex parte Louis de Souza* (British Guiana), December 1, 1888; and *McLeod* v. *St. Aubyn* (St. Vincent), (1899) A. C. 549.

(*k*) *Strachan* v. *Dougall* (Jamaica, 1851), 7 Moo. 365, at p. 371.

(*l*) *Ex parte Kisto Nauth Roy* (Calc. 1869), L. R. 2 P. C. 274.

(*m*) *Bengal Government* v. *Mussumat Shurrufutoonnissa* (Calc. 1860), 8 Moo. I. A. 225.

(*n*) *Henfrey* v. *Henfrey*, 4 Moo. p. 33.

(*o*) *In re Downie, etc.*, 3 Moo. 419.

before the Privy Council on the hearing of a petition ; but that upon the hearing of an appeal he ought not to appear without a junior.

Not affected by Consolidation.—Where an order of consolidation is made, the right is reserved to each party to open his own appeal (*p*). Where two appeals are consolidated, each appellant has a right to be represented by two counsel, and the court cannot interfere with this, though the facts and the arguments used might be the same in both cases.

Intervention.

Interveners heard.—Where A. claimed from B. the restitution of an estate which had been illegally sold by the Government to B., the East India Company, which was liable to give compensation to B. if A.'s claim should be affirmed, intervened in the proceedings before the Privy Council (though it had not intervened below), and put in a case, and having been heard by counsel was ordered to pay compensation (*q*).

Intervening when Appeal part heard.—It depends on the particular circumstances whether, in a case where the application to be allowed to intervene in the appeal made is after the appeal has been part heard, the Committee will allow the intervener to come in and join in the appeal (*r*).

The Costs of intervening.—The costs of intervening in any manner in any cause of appeal shall be paid by such party or parties, person or persons, as the Judicial Committee shall order (*s*).

The argument at the hearing.

The reasons stated in the cases should contain all the objections to the decree. An appellant will be precluded from arguing points not so taken (*t*). The argument should be consonant, where special leave has been obtained, with

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(*p*) *Australian Gold Recovery Co.* v. *Lake View Consols*, P. C. March 24, 1900.

(*q*) *Maharajah Ishuree Persaud Narain Singh and Another* v. *Lal Chutterput Singh* (Bengal, 1842), 3 Moo. I. A. 100 ; cf. *Hocquard* v. *The Queen* (V.-A. St. Helena, 1857), 11 Moo. at p. 160.

(*r*) *La Banque D'Hochelaga* v. *Murray* (P. C. Arch. March 25, 1890), 15 A. C. at p. 419 ; but see *Sheikh Sultan Sani* v. *Ajmodin*, P. C. Arch. November 19, 1892, and *Mudder Mohun Dos and Others* v. *Mothura Pershad*, O. in C. June 29, 1896.

(*s*) 6 & 7 Vict. c. 38, s. 12. The costs are to be taxed as directed in that section. See App. A., p. 434.

(*t*) *Sheo Singh Rai* v. *Mussumat Dakho* (Allahabad, 1878), L. R. 5 I. A. 87.

the grounds set forth in the application for special leave (*u*). So, where appellant obtains leave on the ground that he desires to raise a particular question of great and general importance, he cannot be heard to argue that the question turns on a question of fact (*x*).

Case re-argued.

Case re-argued.—In cases of much difficulty (*y*), where some legal point of importance has been evolved in the course of the argument, their lordships permit, and indeed occasionally direct, the case to be re-argued before them by one counsel on each side, and generally with reference to specific points of law; and when the members of the Committee who have heard the case disagree or entertain grave doubts, it is usual to call for such further argument, and to obtain the attendance of additional members of the Committee (*z*). The argument may sometimes be necessary by reason of the death of one of the judges forming the quorum, pending the hearing of the appeal (*a*).

Costs where re-argued.—Though only one counsel may be heard, costs are allowed to two (*b*).

The Privy Council is not a court of first instance.

The Privy Council is a court of the last resort, and it ought not to be called upon, without the most urgent necessity, to perform the functions of the court of first instance, as it would thus be deprived of the benefit of the

(*u*) *Ibid.*

(*x*) *Corporation of St. John's* v. *The Central Vermont Railway Co.* (S. C. Can. 1889), 14 A. C. 590.

(*y*) See *Frankland* v. *M'Gusty* (Demerara, 1830), 1 Knapp, 274; *Long* v. *Commissioners for Claims on France* (1832), 2 Knapp, at p. 59; *Hodges* v. *Sims* (Admiralty, 1835), 3 Knapp, 94; *Heathorn* v. *Darling* (Admiralty, 1836), 1 Moo. at 10; *Sherwood* v. *Ray* (Arches Ct. Cant. 1837), 1 Moo. at p. 392; *Gahan* v. *Lafitte* (St. Lucia, 1842), 3 Moo. at p. 397; *Kielley* v. *Carson* (Newfoundland, 1842), 4 Moo. at p. 82; *Allen* v. *Kemble* (British Guiana, 1848), 6 Moo. at p. 316; *Harmer* v. *Bell* (Admiralty, 1851), 7 Moo. at p. 278; *Ruckmaboye* v. *Lulloobhoy Mottichund* (Bombay, 1852), 8 Moo. at p. 11.

(*z*) *Sorensen* v. *The Queen* (The Baltica) (Admiralty, 1857), 11 Moo. at p. 143. See also *Oriental Bk.* v. *Wright*, 5 A. C. 842; *Gipps* v. *Messer*, (1891) A. C. 248; *Tennant* v. *Union Bank of Canada*, (1894) A. C. 31; *Corp. of Canterbury* v. *Wyburn*, (1895) A. C. 89; *Gnana-Samba's Case*, L. R. 27 I. A. 69.

(*a*) *Tarrick Chunder Buttacharjya* v. *Bykuntnath Sunnyal*, L. R. 8 I. A. 65; *Falck* v. *Williams*, (1900) A. C. 176; *Wentworth* v. *Wentworth*, *ibid.* 163; *Falkingham* v. *Victorian Railway Commr.*, April 6, 1900, P. C. Arch.

(*b*) *Thakur Rohan Sing* v. *Thakur Surat Sing* (Oudh, 1884), L. R. 12 I. A. 52; *Beningfield* v. *Baxter* (Natal, December 31, 1886); *Secretary of State for India* v. *Srimati Fahamidunnissa Begum* (Bengal, 1889), L. R. 17 I. A. 40.

discussion and judgment in the court below, and be obliged to pronounce a judgment from which there is no appeal (*c*). Thus where an appeal was taken upon the question of adding parties to the case and the Judicial Committee reviewed the finding of the lower court, it refused to hear the case upon its merits. Cf. *Kent* v. *La Communauté de Sœurs*, (1903) A. C. 220.

The practice of the Board in this regard was clearly stated in the recent case of *Ponnamma* v. *Arumogam*, (1905) A. C. p. 390, where it was said (*per* Lord Davey): "Without limiting the extent of His Majesty's prerogative, their lordships can safely say that it is not the practice of the Board to entertain any other appeal than one strictly so called in which the question is whether the order of the court from which the appeal was brought was right on the materials which that court had before it." The Board may, however, receive fresh evidence or remit the case for further hearing where it is satisfied that material points have not been considered by the lower court. As it was said in the same judgment:

"The Board may, however, think that the court below had not sufficient materials for its judgment, or improperly omitted to receive or require further evidence or to try some issue, in which case it may remit the case for further hearing."

In accordance with this principle the Judicial Committee is very unwilling to entertain any point which has not been duly raised and considered in the court appealed from (*d*). If, indeed, any very important point of substantial law, which ought to govern the case (such as an established rule of inheritance, or an express enactment), has been overlooked in the court below, the Judicial Committee will not refuse to entertain it (*e*), but it will not entertain an objection of mere

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(*c*) *Head* v. *Sanders* (Arches Ct. Cant. 1842), 4 Moo. at p. 197; *Re Gould* (Jersey, 1838), 2 Moo. at 192; *Kent* v. *La Communauté de Sœurs, etc.*, (1903) A. C. 220.

(*d*) *Mohummud Zahoor Ali Khan* v. *Mussumat Thakooranee Rutta Koer* (Agra, 1867), 11 Moo. I. A. 467; *Gray* v. *Manitoba N. W. Railway Co.*, (1897) A. C. 254; *Archambault* v. *Archambault*, (1902) A. C. 575.

(*e*) *Lawson* v. *Carr*, 10 Moo. at p. 174; *Forbes* v. *Meer Mahomed Hossein* (1873), 12 Beng. L. R. 210; 20 Suth. W. R. 44; *Ameeroonissa Khatoon* v. *Abedoonissa Khatoon* (1874), L. R. 2 I. A. 87; 15 Beng. L. R. 67; 23 Suth. W. R. 208.

form (*f*). The Board will not try issues of fact which have been left open by the courts below. Neither will the Board entertain an appeal on a finding of fact which was not questioned in the appellate court below. *Dhanudari Singh* v. *Singh*, (1906) 34 I. A. 164. The Judicial Committee may direct further evidence to be taken or remit the the case for re-hearing. 3 & 4 Will. IV. c. 41, s. 8. New facts.

Where the lower court has declined to consider evidence, the Judicial Committee may remand a case to the lower court to enable fresh evidence to be taken (*g*). Remitting case for re-hearing.

Where a case is reversed on appeal by the Judicial Committee, and meanwhile another appeal involving the same point is brought, the Judicial Committee may remand the case to be decided on the basis of such decision (*h*).

The Judicial Committee are extremely loth to send a case for re-trial, much more to decide it upon points which appear to have been raised for the first time at their Bar, and which possibly may have been treated as agreed upon, and too clear for argument by the court below (*i*). So a question not raised before the jury cannot be raised on appeal (*k*).

Where the writ and declaration charged fraud, and such charges failed, the appellant was not allowed to contend on final appeal for the first time, that the pleadings and evidence disclosed such negligence or breach of duty as was sufficient to infer liability (*l*). Points not raised below.

The Judicial Committee in *The Pleiades* (*m*) approved the language used by Lord Herschell, in a judgment in the House of Lords (*The Tasmania*), where he said : "A

(*f*) *Orphan Board* v. *Kraegelius* (B. Guiana, 1855), 9 Moo. 438, 447 ; *Bank of Bengal* v. *McLeod* (Bengal, 1849), 7 Moo. 35 ; *Bank of Bengal* v. *Fagan* (Bengal, 1849), 7 Moo. 61 ; *Baboo Puhlwan Singh* v. *Maharajah Buhah Singh*, 2 Suth. P. C. (1871), pp. 442, 444.

(*g*) *Thakur Shere Bahadur Sing* v. *Thakurain Dariao Kuar* (Oude, 1877), 3 Cal. 645.

(*h*) *Kaleepershad Tewanee* v. *Lalla Binda Lall*, 12 Moo. I. A. 343, 349 ; *Ponnamma* v. *Arumogam*, (1905) A. C. p. 390.

(*i*) *Mackay* v. *Commercial Bank of New Brunswick* (New Brunswick, 1874), L. R. 5 P. C. 394, 409.

(*k*) *Victoria Corporation* v. *Patterson* (Can. 1899), A. C. 615.

(*l*) *Connecticut Fire Insurance Co.* v. *Kavanagh* (Quebec 1892), A. C. 473.

(*m*) (Vice-Adm. Gibraltar), (1891) A. C. at p. 263. See also *Borough of Randwick* v. *Australian Cities Investment Co.* (1893), 14 N. S. W. Rep. (P. C.), at p. 420.

Court of Appeal ought only to decide in favour of an appellant on the ground there put forward for the first time, if it be satisfied beyond doubt, first, that it has before it all the facts bearing upon a new contention as completely as would have been the case if the controversy had arisen at the trial; and, secondly, that no satisfactory explanation could have been offered by those whose conduct is impugned, if any opportunity for explanation had been afforded them when in the witness box."

And in *Archambault* v. *Archambault*, (1902) A. C. 58, it was said: "It is a rule of practice by this Board that a new point will not be entertained by their lordships which might have been met by evidence in the courts below."

On the other hand, as regards a legal point, it has been said: "When a question of law is raised for the first time in a court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent, but expedient, in the interests of justice to entertain the plea. The expediency of adopting that course may be doubted, when the plea cannot be disposed of without deciding nice questions of fact, in considering which the court of ultimate review is placed in a much less advantageous position than the courts below. But their lordships have no hesitation in holding that the course ought not, in any case, to be followed, unless the court is satisfied that the evidence upon which they are asked to decide establishes beyond doubt that the facts, if fully investigated, would have supported the plea" (*n*). Although not disposed to hold parties too strictly to their pleadings in the lower courts, the Judicial Committee consider that it would be an act of great injustice to allow defences to be set up on appeal which have not been suggested or attended to below (*o*).

(*n*) *Connecticut Fire Insurance Co.* v. *Kavanagh* (Quebec, 1892), A. C. 480.

(*o*) *Garden Gully United Quartz Mining Co.* v. *McLister* (Victoria, 1875), 1 App. Ca. 39, 57; and see *Corporation of Adelaide* v. *White* (South Australia, 1886), 55 L. T. (N. S.) p. 3; *Lyall* v. *Jardine* (Hong Kong, 1870), L. R. 3 P. C. at 328; *Raja Row Vencata* v. *Enoogoonty Sooriah* (Madras, 1834), 2 Knapp, 259; *Mackay* v. *Commercial Bank of New Brunswick* (Canada S. C. 1874), L. R. 5 P. C. at 409; *Borough*

Objections to the appeal.

Any objection to the right of appeal, on the ground of the want of appealable value, ought to be taken when the petition of appeal is lodged (*p*), but may be raised in the case (*q*).

Objection not raised below—

Where no question as to the plaintiff's right to sue as heir of a person deceased was raised in the courts in India, the Judicial Committee refused to entertain an objection on that score, which was founded on matter of fact, not on matter of law. Had it been founded on matter of law—*e.g.*, had the suit been brought by a man as heir, who by his own showing could not possibly be heir, his statements disclosing the existence of another person who stood before him in the legal order of succession—the objection must have been allowed at any stage (*r*). And so of a question on the Law of Limitation, which arises upon the record (*s*); but not where it turns upon facts which (owing to the point not being raised) have not been inquired into in the court below (*t*).

founded on fact;

founded on law.

Formal objections.

Where an objection for want of parties (*u*), or for misjoinder of parties (*x*), or an objection to the form in which the action is brought, or in which the proceedings have been had, or any other objection merely of a formal or a captious nature, and which, if made in the court below, might perhaps have been removed (as in the case of evidence, the reception of which has not been objected to in the lower court, where better evidence might have been

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of Randwick v. *Australian Cities Investment Corporation* (N. S. W. 1893), (1893) A. C. at p. 325.

(*p*) *Nilmadhub Doss* v. *Bishumber Doss* (Bengal, 1869), 13 Moo. I. A. 85.

(*q*) *Aldridge* v. *Cato*, L. R. 4 P. C. 319.

(*r*) *Mills* v. *Modee Pestonjee Koorsedjee* (Bombay, 1838), 2 Moo. I. A. 37.

(*s*) *Maharajah Deraj Rajah Mahatab Chund Bahadoor* v. *Government of Bengal* (1850), 4 Moo. I. A. 466.

(*t*) *Mussumat Imam Bandi* v. *Hurgovind Ghose* (Bengal, 1848), 4 Moo. I. A. 403.

(*u*) *Orphan Board* v. *Van Reenan* (Cape, 1829), 1 Knapp, 83; *Bowes* v. *City of Toronto* (Upper Canada, 1858), 11 Moo. 463; *Dhurm Das Pandey* v. *Mussumat Shama Sondri Dibiah* (Bengal, 1843), 3 Moo. I. A. 229; *Frankland* v. *M'Gusty*, 1 Knapp, at p. 298.

(*x*) *Marchioness of Bute and Others* v. *Mason and Others* (N. S. W. 1849), 7 Moo. 1; *Att.-Gen. of Newfoundland* v. *Cuddily* (1836), 1 Moo. at p. 87; *Thornton* v. *Robin* (Jersey, 1837), 1 Moo. at p. 450; *Bank of Bengal* v. *Macleod* (Bengal, 1849), 7 Moo. at p. 60; 5 Moo. I. A. 1; *Hill* v. *The Queen* (Jamaica, 1854), 8 Moo. at p. 138.

adduced) (*y*), is urged for the first time in appeal, or where relief (such as a general account) is prayed in appeal which was not duly asked for at the proper time in the court below (*z*); or where, in an appeal heard after leave to appeal has been granted, it is urged that the proper course would have been to apply to the court below for a new trial (*a*); the Privy Council will not at the hearing entertain questions of this nature, nor objections on matters of practice, unless it is clear that justice has not been done (*b*).

Where, pending an appeal, the appellant died, and by order of the court below one of the respondents was substituted, the Judicial Committee refused to hear objection thereto, the court below not having been moved (*c*).

"It is a wholesome province of this court (*d*) to disregard points of mere form raised upon an appeal, when they do not in any manner affect the substance of the subject in controversy, and have not in any respect a tendency to mislead or prejudice the defendant." But where matters of form have been raised below, and the discretion of the court below has been improperly exercised so as to constitute a substantial denial of justice, they will be regarded, and the relief will be given (*e*).

Technical Objections.—The Judicial Committee will look to the broad principles of justice, and discourage mere technical objections which do not affect the merits, and more especially will discountenance the introduction of objections that may have occurred in the course of litigation, but were not raised at the commencement of the trial (*f*). Where the appellant obtained special leave to appeal from a decree of the Supreme Court of Canada on a petition stating that the construction of a statute was a

(*y*) *Frankland* v. *M'Gusty* (Demerara, 1830), 1 Knapp, at p. 310.
(*z*) *Flint* v. *Walker* (N. S. W. 1847), 5 Moo. at p. 201.
(*a*) *Stace* v. *Griffith* (St. Helena, 1869), 6 Moo. (N. S.) at p. 26.
(*b*) *Moulvie Abdool Ali* v. *Mozuffer Hossein Chowdry* (Calcutta, 1871), 16 Suth. W. R. P. C. 22.
(*c*) *Baboo Kasi Persad Narain* v. *Mussumat Kawalbasi Kooer* (Bengal, 1851), 5 Moo. I. A. 146; and see *Seths Gujmull* v. *Mussumat Chahee Kowar* (Ajmere and Mairwára, 1874), L. R. 2 I. A. 34.
(*d*) *Orphan Board* v. *Kraegelius* (B. Guiana, 1855), 9 Moo. 438, 447.
(*e*) *Pollard* v. *Harragin* (Trinidad and Tobago, 1891), A. C. 450.
(*f*) *Zemindar of Ramnad* v. *Zemindar of Yettiapooram* (Madras, 1859), 7 Moo. I. A. 441.

matter of general public importance, without stating that since the original judgment the statute had been repealed, but the omission was immaterial and *bonâ fide*, the objection to the admission of the appeal was not upheld, and the successful appellant was not deprived of his right to costs. *MacDonald* v. *Belcher*, (1904) A. C. 429.

Change of law by Imperial statute not on the record.

The Judicial Committee will recognise a change in the statute law made since the case was instituted. By a change in the law introduced by the Imperial statute 17 & 18 Vict. c. 104, s. 299, the loss, in a case of collision between two vessels, was made chargeable wholly against the ship which, in contravention of sect. 295, had not exhibited lights. The Judicial Committee, upon this point being urged for the first time on appeal, decided that the collision had taken place under such circumstances as to bring the vessel within the meaning of the statute. Lord Kingsdown said (*g*), "Their lordships regret that in this, as it has happened in some other cases, they are obliged to decide a point on which in truth no opinion has ever been expressed by the learned judge from whom the appeal is brought. They cannot, however, deprive the party of the right to avail himself of the objection."

Change of law by colonial statute not on the record.

Colonial Statute.—But, it was said in another case, if in consequence of an Act of the provincial legislature any alteration in the rights of the parties has taken place, the Judicial Committee will take no notice of it unless it appears on the record (*h*) (but cf. *MacDonald* v. *Belcher* above).

Points patent on the record.—Although a point has not been taken in the court below, yet, if it is patent on the face of the proceedings, the court can take judicial notice of it (*i*).

Original documents

The Privy Council, if the case presented to it is imperfect, will itself call for a proceeding or document

(*g*) *Lawson* v. *Carr* (Adm. 1856), 10 Moo. at p. 174.
(*h*) *Donegani* v. *Donegani* (Lower Canada, 1835), 3 Knapp, at 88; cf. *Devine* v. *Holloway* (N. S. W. 1861), 14 Moo. at p. 298.
(*i*) *Devine* v. *Holloway*, 14 Moo. at p. 298; cf. *Sreemutty Dossee* v. *Ranee Lalunmonee* (Calcutta, 1869), 12 Moo. I. A. 470; *Council of the Borough of Randwick* v. *Australian Cities Investment Corporation, Ltd.* (N. S. W. 1893), A. C. 322.

which ought to have been laid before it (*k*), and will, on petition, where original documents are necessary to be produced, order their transmission (*l*), or will inquire, through its registrar, into the practice and precedents of any court from which an appeal has been brought (*m*). For cases in which the Board has ordered fresh evidence to be brought before it, see p. 289.

Evidence—Impeached Documents—If an original document of importance in a cause be impeached, the court will, on a petition for the purpose, direct it to be transmitted to the Council Office (*n*).

Reference to court below as to its practice.

In a case from Jersey (*o*) the Privy Council ordered a reference to the court below to certify to them a point of practice. The certificate having been returned, the court refused to allow the respondent at the hearing to allege that the certificate was inaccurate, as he might have alleged it in a petition supported by affidavits and asked for a fresh reference.

Evidence as to facts which could not be before the court below.

The Privy Council receives (generally upon affidavit) evidence which was not and could not be before the court below, when the question is as to the circumstances under which such court ordered the suspension of a practitioner or the like, and it will postpone the hearing to enable the necessary evidence to be obtained (*p*); and it constantly receives affidavits on both sides upon applications for leave to appeal.

Affidavits on leave to appeal.

Power of Judicial Committee to take evidence.

It has been stated above that by 3 & 4 Will. IV. c. 41 (*q*), ss. 7, 8, the Judicial Committee has the power of taking evidence. Where evidence tendered to the court below is sought to be used before the Privy Council, a petition to the Judicial Committee ought to be presented for that

(*k*) *Mason* v. *Att.-Gen. of Jamaica* (1843), 4 Moo. 231; *Blue and Deschamps* v. *Red Mountain Railway*, (1909) A. C. 36.

(*l*) *McCarthy* v. *Judah* (Lower Canada, 1858), 12 Moo. at p. 56.

(*m*) *Jackson* v. *Wilson* (I. of M. 1838), 3 Moo. at p. 182.

(*n*) *Mussumat Khoor Konwur* v. *Baboo Moodnarain Singh* (Calcutta 1861), 9 Moo. I. A. at p. 10; *McCarthy* v. *Judah* (Low. Can. 1858), 12 Moo. 47; and see order for certified copy of documents of title, *Mason* v. *Att.-Gen. of Jamaica* (Chancery of Jam. 1843), 4 Moo. 228; *Ranee Surnomoyee* v. *Maharajah Sutteeschunder Roy Bahadoor* (Calcutta, 1864), 10 Moo. I. A. 123.

(*o*) *Lequesne* v. *Nicolle* (Jersey, 1830), 1 Knapp, 257.

(*p*) *Smith* v. *Justices of Sierra Leone* (1841), 3 Moo. at p. 365.

(*q*) See Appendix A, p. 423.

purpose, who, if they see fit, will issue a Committee order for its transmission by the court below (*r*).

Evidence not given below.

When additional evidence has been tendered only on an application to review, and the refusal to review is not appealed from, the Judicial Committee will not admit such evidence (*s*). Certain documents put in evidence before a subordinate court were suppressed by the judge of that court, so that the reviewing court from which the appeal came to the Privy Council had no opportunity of considering them. The Judicial Committee in such circumstances remitted the case to the court below that such evidence might be taken into consideration (*t*).

Cases remitted for evidence.

For cases which have been remitted for further evidence to be taken, see *Le Feuvre* v. *Sullivan* (*u*), *Wallace* v. *McSweeney* (*x*), *Dyson* v. *Godfrey* (*y*).

Power of Judicial Committee to refer questions and to issue commission.

The Judicial Committee may refer a question to an arbitrator under sect. 17 of 3 & 4 Will. IV. c. 41, and possess all the powers which His Majesty's courts formerly possessed of issuing a commission for the examination of witnesses on interrogatories and otherwise by virtue of 13 Geo. III. c. 63, s. 44, and 1 Will. IV. c. 22.

Where the court below has not found all the facts necessary for the final disposal of the case, the Judicial Committee, deciding so far as they have materials for judgment, may remit the case in order that the needful inquiries may be made and justice finally done (*z*). If ample opportunities existed of bringing the evidence forward before, the case will not be remitted (*a*).

Fresh appeal, when necessary.

If the case is remitted to the court below to take and consider further evidence, the reference to the Judicial

(*r*) *Jephson* v. *Riera* (Gibraltar, 1835), 3 Knapp, 130, 136; *Canepa*, v. *Larios*, 2 Knapp, at 278. See *Meiklejohn* v. *Att.-Gen. Lower Canada* (1834), 2 Knapp, at 330.

(*s*) *Sheikh Imdad Ali* v. *Mussumat Kooiby Begum* (Bengal, 1841), 3 Moo. I. A. 1.

(*t*) *Juveer Bhaee* v. *Vuruj Bhaee* (Bombay, 1844), 3 Moo. I. A. 324.

(*u*) (Jersey, 1855), 10 Moo. 1.

(*x*) (Nova Scotia, 1868), 5 Moo. (N. S.) 244.

(*y*) (Jersey, 1884), 9 App. Cas. 726.

(*z*) *Muttusawmy Jagavera Yettaya Nailker* v. *Vencataswara Yettaya* (Madras, 1868), 12 Moo. I. A. 203.

(*a*) *Raja Row Vencatta Niladoy Rao* v. *Enoogoonty Sooriah* (Madras, 1834), 2 Knapp, 259; *Seth Lukhmee Chund Rao* v. *Sett Indra Mull* (Agra, 1870), 13 Moo. I. A. 365.

Committee is exhausted and a fresh appeal is necessary to bring the matter again before them (*b*); but otherwise if the order of the Privy Council is to "take evidence and remit it" (*c*).

Appeal from interlocutory order.

The suitor need not appeal from every interlocutory order which does not purport to dispose of the cause and by which he may feel himself aggrieved, nor in appealing from the final decision is he bound to appeal in express terms from any interlocutory order of which he may complain—the appeal from the final decision enables the court to correct any interlocutory order which it may deem erroneous (*d*). (Cf. p. 195 *supra*.) The same rule applies to courts practising according to the civil law, if the interlocutory order has not the force or effect of a definitive sentence (*e*). The objections to the interlocutory orders should be stated in the appellant's case.

Appeal from decision in lower court.

But where, on appeal to the Privy Council from a decision of the High Court given on special appeal, it is desired to include in the appeal the decisions of the lower courts on the facts, an application for special leave to do so should be made previous to the hearing. The Judicial Committee will not, as a rule, allow a petition of appeal from those decisions to be put in at the hearing, *nunc pro tunc* (*f*).

Alteration after appeal.

The High Court of Bombay after the appeal was presented made an alteration in the order. Strictly speaking such an alteration was beyond the competency of the court; the Judicial Committee, however, accepted it, and dismissed the appeal (*g*).

(*b*) *Thakur Shere Bahadur Singh* v. *Thakurain Dariao Kuar* (1877), I. L. R. 3 Calc. 645; *Jeswunt Sing-jee Ubby Sing-jee* v. *Jet Sing-jee Ubby Sing-jee* (Bombay, 1844), 3 Moo. I. A. 245.

(*c*) *Ibid.*

(*d*) *Maharajah Moheshur Sing* v. *The Bengal Government* (Calc. 1859), 7 Moo. I. A. at 302; followed in *Forbes* v. *Ameeronissa Begum* (Calc. 1865), 10 Moo. I. A. at 359; *Sheonath* v. *Ramnath* (Oude, 1865), *ibid.* at 423.

(*e*) *Cameron* v. *Fraser* (British Guiana, 1842), 4 Moo. 1; and cf. *The Queen* v. *Belcher* (Adm. 1849), 6 Moo. 471; *Williams* v. *Bishop of Salisbury* (Canterbury, 1863), 2 Moo. (N. S.) 377; and *Jones* v. *Gough* (Canterbury, 1865), 3 Moo. (N. S.) at p. 12.

(*f*) *Golam Ali* v. *Kallykishen Thakoor* (1872), 12 Bengal, L. R. P. C. 107; followed in *Nilmoney Singh Deo* v. *Beer Singh and the Government*, P. C. Archives, July 18, 1872.

(*g*) *Navivahoo* v. *Turner* (Bombay, 1889), L. R. 16 I. A. 156.

CHAPTER XIII.

COSTS.

WHEN an appellant obtains leave to appeal to the Sovereign in Council, whether the leave be given in the court below in pursuance of a general grant of the right of appeal, or whether the leave be granted upon a special application to the Sovereign in Council, the leave is invariably subject to the condition that the appellant shall give security for the payment of the respondent's costs of the appeal. By sect. 15 of the Act of 1834 it is enacted that "the costs incurred in the prosecution of any appeal or matter referred to the Judicial Committee, and of such issue as the same Committee shall under the Act direct, shall be paid by such party or parties, person or persons, and be taxed by the Registrar of the Privy Council, or such other person or persons, to be appointed by His Majesty in Council or the Judicial Committee, and in such manner as the said Committee shall direct." By sect. 28 of the same statute the same power is given to the Sovereign in Council of enforcing judgment decrees and orders (for costs) as are exercised by the High Court of Chancery or the Court of King's Bench (and both *in personam* and *in rem*), or as are given to any Court Ecclesiastical by the 2 & 3 Will. IV. c. 93.

3 & 4 Will. IV. c. 41, s. 15.

By sect. 12 of 6 & 7 Vict. c. 38, the costs of defending any decree or sentence appealed from as of prosecuting any appeal, or in any manner intervening in any cause of appeal, and the costs on either side, or of any party, in the court below, and the costs of opposing any matter which shall be referred to the said Judicial Committee, and the costs of all such issues as shall be tried by direction of the said Judicial Committee respecting any such appeal or matter, shall be paid by such party or parties, person or persons, as the said Judicial Committee shall order. Such costs are taxed as directed by sect. 15 of 3 & 4 Will. IV. c. 41. The

Costs in the discretion of the Board.

costs of the proceedings both in the court below and on appeal may be ordered to be paid by either party, and the costs in the various proceedings in the action may be set off: *McKellar* v. *Wallace* (1853), 8 Moo. 378–415.

Regulations as to costs in the Privy Council are now provided by the Judicial Committee Rules, which apply to all matters falling within the appellate jurisdiction of His Majesty in Council (*a*).

Taxation of costs.

75. All bills of costs under the orders of the Judicial Committee on appeals, petitions, and other matters, shall be referred to the Registrar of the Privy Council, or such other person as the Judicial Committee may appoint, for taxation, and all such taxations shall be regulated by the Schedule of Fees set forth in Schedule C. hereto.

The Schedule of Fees is in two parts, the first dealing with the fees allowed to agents, the second with the fees of the Council Office.

I.

Fees allowed to Agents conducting Appeals or other Matters before the Judicial Committee of the Privy Council.

	£	*s.*	*d.*
Retaining Fee	0	13	4
Perusing written Record, at the rate of, for every 25 folios	0	6	8
Perusing printed Record, at the rate of, for every printed sheet of 8 pages	1	1	0
Attendances at the Council Office, or elsewhere, on ordinary business, such as to enter an Appearance, to make a search, to lodge a Petition or Affidavit, or to retain Counsel	0	10	0

(*a*) A pamphlet on Costs in Privy Council Appeals, with Precedents of Bills of Costs and Notes, has recently been written by Mr. W. Reeve Wallace, Chief Clerk of the Judicial Department of the Privy Council Office. It is published by H.M.'s Stationery Office. Price 1*s.* 6*d.*

	£	s.	d.
Attending at the Council Office to examine proof print of the Record with the certified Record *per diem*	3	3	0
Attending at the Council Chamber on Summons for the hearing of a Petition	1	6	8
Attending at the Council Chamber all day on an Appeal not called on	2	6	8
Attending the Hearing of an Appeal.....*per diem*	3	6	8
Attending a Judgment	1	6	8
Correcting English proofs, at the rate of, for every printed sheet of 8 pages	0	10	6
Correcting Foreign or Indian Proofs, at the rate of, for every printed sheet of 8 pages	1	1	0
Instructions for Petition	0	10	0
Drawing Petition, Case, or Affidavit.....*per folio*	0	2	0
Copying Petition, Case, or Affidavit.....*per folio*	0	0	6
Instructions for Case	1	0	0
Instructions to Counsel to argue an Appeal.....	1	0	0
Instructions to Counsel to argue a Petition.....	0	10	0
Attending Consultation	1	0	0
Sessions Fee for each year or part of a year from the date of Appearance	3	3	0
Drawing Bill of Costs.....*per folio*	0	1	0
Copying Bill of Costs.....*per folio*	0	0	6
Attending Taxation of Costs of an Appeal.....	2	2	0
Attending Taxation of Costs of a Petition.....	1	1	0

II.

Council Office Fees.

Entering Appearance	0	10	0
Lodging Petition of Appeal	2	0	0
Lodging any other Petition	1	0	0
Lodging Case	1	0	0
Setting down Appeal (chargeable to Appellant only)	2	0	0
Setting down Petition (chargeable to Petitioner only)	1	0	0
Summons	0	10	0

	£	s.	d.
Committee Report	1	10	0
Original Order of His Majesty in Council determining an Appeal	4	0	0
Any other Original Order of His Majesty in Council	2	0	0
Plain Copy of an Order of His Majesty in Council	0	5	0
Original Order of the Judicial Committee	1	10	0
Plain Copy of Committee Order	0	5	0
Lodging Affidavit	0	10	0
Certificate delivered to Parties	0	10	0
Committee References	2	0	0
Lodging Caveat	1	0	0
Subpœna to Witnesses	0	10	0
Taxing Fee in Appeals	3	0	0
Taxing Fee in Petitions	2	0	0

The rules as to the taxing of costs are :

What costs taxed in England.

76. The taxation of costs in England shall be limited to costs incurred in England.

The Colonial Rules of Appeal provide that :

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

Order to tax.

77. The Registrar of the Privy Council shall, with all convenient speed after the Judicial Committee have given their decision as to the costs of an appeal, petition, or other matter, issue to the party to whom costs have been awarded an order to tax and a notice specifying the day and hour appointed by him for taxation. The party receiving such order to tax and notice shall, not less than forty-eight hours before the time appointed for taxation, lodge his bill of costs

(together with all necessary vouchers for disbursements), and serve the opposite party with a copy of his bill of costs and of the order to tax and notice.

Power of taxing officer where taxation delayed through the fault of the party whose costs are to be taxed.

78. The taxing officer may, if he think fit, disallow to any party who fails to lodge his bill of costs (together with all necessary vouchers for disbursements) within the time prescribed by the last-preceding rule, or who in any way delays or impedes a taxation, the charges to which such party would otherwise be entitled for drawing his bill of costs and attending the taxation.

Appeal from decision of taxing officer.

79. Any party aggrieved by a taxation may appeal from the decision of the taxing officer to the Judicial Committee. The appeal shall be heard by way of motion, and the party appealing shall give three clear days' notice of motion to the opposite party, and shall also leave a copy of such notice in the Registry of the Privy Council.

Amount of taxed costs to be inserted in His Majesty's Order in Council.

80. The amount allowed by the taxing officer on the taxation shall, subject to any appeal from his taxation to the Judicial Committee and subject to any direction from the Committee to the contrary, be inserted in His Majesty's Order in Council determining the appeal or petition.

Security to be dealt with as His Majesty's Order in Council determining appeal directs.

82. Where the appellant has lodged security for the respondent's costs of an appeal in the Registry of the Privy Council the Registrar of the Privy Council shall deal with such security in accordance with the directions contained in His Majesty's Order in Council determining the appeal.

For the guidance of practitioners the following points, which are taken by permission from Mr. Wallace's pamphlet, are to be noted:

1. Agency, in the technical sense, does not apply to Privy Council Appeals, and the London solicitor is treated as a principal by the Privy Council Office.

Form of bills.

2. Bills should be drawn in the High Court form, and disbursements should be shown in an inner column.

Papers and vouchers should be lodged with the bill, and, in cases where Colonial Counsel are engaged, the attention of solicitors is specially directed to the desirability of obtaining vouchers for fees from them before they leave England, so that the taxation may not be delayed.

Basis of taxation.

3. Unless otherwise specially provided, costs are taxed upon a party and party basis, and letters between the London and Colonial solicitors are not as a rule allowed. In this connection it should be noted that the fees for perusing the record, examining the proof and correcting the revise, are intended to cover, as a rule, all attendances and letters connected with the record, except those shown in the precedents. It may also be observed that perusing and making copies of documents outside the record (such as Colonial Statutes, etc.) are party and party costs only in exceptional circumstances. It is, however, sometimes convenient that an Appendix of Statutes, the construction of which is the subject-matter of an appeal, should be prepared. In such a case, where both parties consent in writing that the costs of the Appendix shall be costs in the appeal, effect will be given upon taxation to such an agreement.

4. A party desiring his own costs to be taxed as between solicitor and client should lodge a formal petition for the purpose.

5. Attention is drawn to rule 76 of the Judicial Committee Rules, 1908, which directs that the taxation of costs in England shall be limited to costs incurred in England.

Costs in colonial court.

In every appeal there are costs incurred in the court appealed from before the despatch of the record to the Privy Council Office, and these, which are invariably provided for in the King's Order disposing of the appeal, are dealt with by the taxing officer of that court.

There is one exception to this rule. In appeals (limited in practice to Canada) where the case is drawn by Colonial counsel, and brought over by him when he comes to argue the appeal, the London solicitor, though his part in the preparation of the case is limited to lodging it at

the Privy Council Office, should nevertheless include in his bill of costs the drawing, etc., on the scale shown in Precedent 3. This is the only way in which a successful party can obtain these costs at all, as the taxing officer in the court appealed from would certainly exclude them from any bill brought in to him for taxation, on the ground that they were not technically incurred in the Colonial Court, but in the Privy Council. The amounts so allowed can be, and no doubt in practice invariably are, easily adjusted between the London and Colonial solicitors.

When jurisdiction arises.

6. It should be borne in mind that until the petition of appeal has been lodged the Judicial Committee has no jurisdiction to make an order for the taxation of costs. In the event, therefore, of an appeal being dismissed for non-prosecution or withdrawn before this step, the respondent's only method of obtaining an order for payment of his costs incurred up to such dismissal or withdrawal is to apply by petition for a King's Order for the purpose.

Reference to tax.

An order of reference to tax the costs is made to the registrar, and the amount of the taxed costs is inserted in the report of the Judicial Committee to the Sovereign in Council, and is embodied in the Order in Council which contains the final decree.

Costs dealt with in decree.

The judgment of the Judicial Committee, upon which the report to the Sovereign is based, is read in open court, when the several parties should attend. It then becomes the duty of the solicitors to take care that the decree which is drawn up thereon is not entered in extraordinary terms as to costs or otherwise.

Costs should be asked for at the hearing.

Costs should be asked for at the hearing, while the facts are fresh in the recollection of the court, and while any special circumstances which the case presents can be considered. In *Lindo* v. *Barrett* (*b*) the Judicial Committee in the report gave no directions as to costs, and the Order in Council was delivered from the Council Office to the appellant and transmitted to Jamaica and there acted upon.

(*b*) (Jamaica, 1856), 9 Moo. at p. 461.

In these circumstances, the Judicial Committee held it was too late for the appellant to ask for costs. In a later case where no mention was made of costs in the report of the Judicial Committee, the Order in Council when drawn up ordered that the appeal be allowed with costs (*c*).

Discretion as to costs.

Discretion.—The discretion of the Judicial Committee as to costs is absolute.

Costs rest so much in the discretion of all tribunals that it is difficult to lay down any positive rules with regard to them; but it may be useful to notice the mode in which the subject has in general been dealt with by the Judicial Committee, though the Board is apt to treat each case upon its own merits and not to be bound by the practice in past cases or circumstances alleged to be similar.

Exercise of discretion where appellant successful.

There are many circumstances which will weigh with the Judicial Committee against allowing to a successful appellant the costs of his appeal. Sometimes they give no costs (*d*); as where his conduct has been such as to mislead the opposite party (*e*), or to put them to needless expense (*f*), or where his proceedings have been unreasonably dilatory (*g*) or in any way litigious or vexatious, or his claims exorbitant (*h*). So where damages were assessed at an excessive figure, and the amount recovered fell short of the appealable value, no costs were given (*i*).

So, where the appellant succeeds in obtaining a slight variation of the decree complained of, but the variation confers no real benefit upon him, he may not get his costs (*k*). Where the decree of the court below was affirmed, with the addition of a declaration which the appellant had an opportunity of obtaining from the court below without

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(*c*) *Chotayloll* v. *Manickchund* (Calc. 1856), 10 Moo. at p. 139.
(*d*) *Lawson* v. *Carr* (Adm. 1856), 10 Moo. 174.
(*e*) *Batten* v. *The Queen* (Adm. 1857), 11 Moo. at p. 287.
(*f*) *Mackellar* v. *Wallace* (Calc. 1853), 8 Moo. at p. 418.
(*g*) *Pattabhiramia* v. *Vencatarow Naicken* (Madras, 1870), 13 Moo. I. A. 560.
(*h*) *Nedham* v. *Simpson* (Jamaica, 1831), 2 Knapp, 1; *Harrison* v. *The Queen* (V.-A. St. Helena, 1856), 10 Moo. at p. 225.
(*i*) *Mudhem Mohun Doss* v. *Gokul Doss*, 10 Moo. I. A. 563.
(*k*) *Labouchere* v. *Tupper* (I. of M. 1857), 11 Moo. at p. 223; *Boardman* v. *Quayle* (I. of M. 1857), *ibid.* at p. 271; *Van Breda* v. *Silberbauer* (C. G. H. 1869), L. R. 3 P. C. 84, 100; also *Lalla Bunseedhur* v. *Koonwur Bindeseree Dutt Singh* (Agra, 1866), 10 Moo. I. A. 454, 490.

appealing, the Privy Council dismissed the appeal with costs; or where he has prevailed through a point which was not taken in the court below, the Judicial Committee sometimes, if the general principle of the judgment appealed from is affirmed, make him pay the costs of the appeal (*l*).

It may be a special condition of leave to appeal that the appellant should pay the costs in any event. (Cf. *Commissioners of Taxation* v. *Antill* (1902), A. C. p. 422.)

Where new trial with new pleadings ordered.

Where the Privy Council ordered that a new trial be had in the court below and that the appellant should be at liberty to amend his declaration as he should think fit, they imposed the terms of the defendant being allowed to plead *de novo*, and of the appellant paying the costs of the trial and all subsequent costs already incurred in the court below, and also (as the appellant had not applied to amend the pleadings at the proper time, and had refused a non-suit) the costs of the appeal (*m*).

Where the Privy Council ordered a new trial, but the appeal was below the appealable value, and special leave had been given on the ground that the decision was of general importance, the Committee ordered the respondent to pay the appellants the costs incurred by them in the colonial courts but made no order as to costs in the Privy Council appeal. *Sun Fire Office* v. *Hart*, 14 A. C. 105.

Appellant unsuccessful.

Where there had been inaccuracies in the judge's summing-up, which might reasonably lead the appellant to think that his case had not been properly understood by the court below, the Privy Council, though dismissing the appeal, gave the respondent no costs of the appeal (*n*). Where there is more than one respondent, though separate cases are lodged, sometimes only one set of costs is given (*o*).

(*l*) *Bertram* v. *Godfrey* (Jersey, 1830), 1 Knapp, 381; see *Thompson* v. *Cartwright* (Jamaica, 1841), 3 Moo. at p. 424; *Stratton* v. *Symon* (St. Vincent, 1837), 2 Moo. at p. 132.

(*m*) *Rainy* v. *Bravo* (Sierra Leone, 1872), L. R. 4 P. C. 287; *Jenoure* v. *Delmege* (Jamaica, 1891), A. C. at 80; *Devine* v. *Wilson* (N. S. W. 1855), 10 Moo. at 532; *Humphrey* v. *Nowland* (N. S. W. 1862), 15 Moo. at 374.

(*n*) *General Iron Screw Company* v. *Moss* (Adm. 1861), 15 Moo. at p. 132.

(*o*) *North Sydney Investment and Tramway Co.* v. *Higgins*, February 25, 1899; *secus*, *Bank of N. S. W.* v. *McMahon and Others*, June 9, 1899.

Each party pay their own costs.

There are many cases in which, although the appellant succeeds and is free from blame, yet it would be hard to make the respondent pay the costs of both parties; in such cases the Privy Council, in the exercise of their discretion, leave each to pay his own costs (*p*). So where on the point decided below the appellant succeeds, but owing to the Privy Council hearing the case on the merits the appeal is dismissed on grounds wholly different from those on which the court below gave its decision, it may be without costs (*q*).

Further evidence on appeal.

It seems that where further evidence is gone into before the Privy Council, this circumstance will tend to prevent them from giving costs to the appellant, even if the decree of the court below is reversed (*r*).

Case fairly open to doubt.

The Privy Council often decline to allow costs against the appellant, though unsuccessful, where they consider the case to be in itself one which is fairly open to doubt and upon which it was reasonable to take their opinion (*s*). So also where each party succeeds and each fails upon a substantial issue. In such a case the respondent may be ordered to pay one moiety of the costs of the record (*t*).

Where there was an appeal to a cross appeal, and each party succeeded in points, no costs were given. Cf. *Retemeyer* v. *Obermuller* (1837), 2 Moo. p. 125; *Bombay, etc., Trading Co.* v. *Mirza Mahomed Sherazee* (1878), C. A. 5 I. A. 130).

Appellant partly successful.

As to the apportionment of costs where a party is partly successful, see *Suraj Bunsi Koer* v. *Sheo Proshad Singh* (*u*).

Decree affirmed; damages altered.

Where the Judicial Committee affirmed the judgment appealed from, but reduced by one-half the amount of damages thereby given, the affirmance was without costs (*x*);

(*p*) *Maxwell* v. *Deare*, 8 Moo. at p. 377; *Beaudry* v. *Mayor, etc. of Montreal* (1858), 11 Moo. at p. 426; *Rajendro Nath Holdar* v. *Jogendro Nath Banerjee* (Bengal, 1871), 14 Moo. I. A. 67.

(*q*) *Fischer* v. *Kamala Naicker* (Madras, 1860), 8 Moo. I. A. 170.

(*r*) *Sorensen* v. *The Queen* (Adm. 1857), 11 Moo. at p. 140.

(*s*) *Churchward* v. *Palmer* (Adm. 1856), 10 Moo. at p. 487.

(*t*) *Peacock* v. *Byjnauth* (Bengal, 1891), L. R. 18 I. A. 78.

(*u*) (Bengal, 1879), L. R. 6 I. A. 88; 5 Calc. 148.

(*x*) *Gahan* v. *Lafitte* (St. Lucia, 1842), 3 Moo. at p. 397.

but on increasing the damages they have given costs (*y*). Where the decree appealed from is varied in respect of the rate of interest allowed on the principal sum, this circumstance has some weight in the decision of the Committee on costs; but it is not conclusive (*z*).

Reckless charges of fraud, etc.

In a case where the appellant, who had been recklessly charged by the respondent, obtained a reversal of the decree, the Judicial Committee ordered the respondent to pay the appellant's costs both here and below (*a*).

Costs out of the estate, when.

The Judicial Committee allows the costs of both parties to be paid out of the estate, whether the appeal be successful or not, in those cases only where the circumstances are such as would have justified the court below in making a similar allowance (*b*).

New trial.

Sometimes when a new trial is ordered, the costs of the appeal as well as those of the court below are directed to abide the event of such new trial (*c*).

Contempt of court.

Where the order of a colonial court for contempt of court is reversed, the Privy Council generally make no order as to costs (*d*); in a case, however, where there had been no contempt of court, the judge below was ordered to pay the costs of the appeal (*e*).

Leave to appeal by misrepresentation.

Where the appellant has obtained leave to appeal upon false pretences, the appeal will be dismissed with costs, upon the misrepresentation being discovered (*f*).

(*y*) *Lord* v. *Commissioners of Sydney* (1859), 12 Moo. at p. 500.

(*z*) *Murtunjoy Chuckerbutty* v. *Cochrane* (Calcutta, 1865), 10 Moo. I. A. 229; *Lalla Bunseedhur* v. *Koonwar Bindeseree Dutt Singh* (Agra, 1866), 10 Moo. I. A. 454.

(*a*) *Nana Nurain Rao* v. *Huree Punth Brao* (Agra, 1862), 9 Moo. I. A. 96.

(*b*) *Arbuthnot* v. *Norton* (Madras, 1846), 5 Moo. at p. 231; *Croker* v. *Marquis of Hertford* (Prerog. Ct. Cant. 1844), 4 Moo. at p. 368; *Bremer* v. *Freeman* (Prerog. Ct. Cant. 1857), 10 Moo. at p. 374; *Dimes* v. *Dimes* (Prerog. Ct. Cant. 1856), *ibid.* at p. 440; *Scouler* v. *Plowright*, *ibid.* at p. 458.

(*c*) *Devine* v. *Wilson* (N. S. W. 1855), 10 Moo. at p. 535; *Bray* v. *Ford*, (1896) A. C. 44.

(*d*) *In re Downie and Arrindell* (Brit. Guiana, 1841), 3 Moo. 414, *supra*; see *Newton* v. *Judges of High Court of North-Western Provinces* (1871), 8 Moo. (N. S.) at p. 223; L. R. 4 P. C. 18; *In re Ramsay* (Low. Can. 1870), 7 Moo. (N. S.) at p. 270; L. R. 3 P. C. 427.

(*e*) *McLeod* v. *St. Aubyn* (St. Vincent), (1899) A. C. at p. 562.

(*f*) *Wilson* v. *Callender* (Barbadoes, 1853), 9 Moo. at p. 103; *Bulkeley* v. *Scutz* (Constantinople, 1870), 6 Moo. (N. S.) at p. 483.

Where objection was not taken by the respondent until a late stage of the hearing, and it did not appear that the misstatement was intentional, the appeal was allowed, but without costs (*g*).

Leave *ex parte* wrongly given.

Where leave to appeal had been given in a criminal proceeding and was afterwards rescinded, the court being of opinion that it ought not to have been given, but that the conduct of the parties was in no way involved, the rescission was made without costs on either side (*h*).

Appellant becoming insolvent.

After a cause was set down for hearing, the appellant was declared an insolvent under the provisions of 11 & 12 Vict. c. 21, and the appeal was ordered to stand over in order that the official assignee might have notice. The official assignee having taken no steps, the appeal was dismissed, but each party was left to pay his own costs (*i*).

Taxation on the pauper scale.

31. Where the Judicial Committee directs costs to be taxed on the pauper scale, the taxing officer shall not allow any fees of counsel, and shall only award to the agents out-of-pocket expenses and a reasonable allowance to cover office expenses, such allowance to be taken at about three-eighths of the usual professional charges in ordinary appeals.

In a successful appeal of *Johnson* v. *Lindsay*, (1892) A. C. 110, the pauper appellant's costs having been taxed on the "dives" scale at 260*l.* were on review of the taxation taxed at 50*l.* on this basis.

Where the respondent was ordered to pay the costs of the appellants, who pending the appeal had obtained leave to continue the appeal *in formâ pauperis*, the costs were ordered from that date to be taxed on that footing. *McLeod* v. *St. Aubyn*, (1899) A. C. 562. If the party appeared *in formâ pauperis* in the court below, such costs will be awarded as would be payable in the colony in pauper cases. *Wasteneys* v. *W.*, (1900) A. C. 446.

Costs against the Crown.

The Privy Council have sometimes, in cases where they

(*g*) *Ram Sabuk Bose* v. *Kaminee Koomaree Dossee* (1874), 14 Beng. L. R. 394; *Mussoorie Bank* v. *Raynor* (Allahabad, 1882), 7 A. C. 321.
(*h*) *In re Ames* (Jersey, 1841), 3 Moo. at p. 413.
(*i*) *Gooroochurn Sein* v. *Radanauth Sein*, 11 Moo. 76; 7 Moo. I. A. 1.

cannot allow costs, expressed an opinion on the merits with a view to induce the Crown to allow them (*k*).

The practice of the Board as regards costs in cases between the Crown and a subject was considered in the appeal of *Johnson* v. *Regem*, (1904) A. C. 819, at p. 824.

The Board declared that it would in future adhere to the practice of the House of Lords, and that the rule would be that the Crown neither pays nor receives costs unless the case is governed by some local statute or there are exceptional circumstances justifying a departure from the ordinary rule.

No interest payable.

Although money paid under a decree when ordered to be refunded is payable with interest, no interest is payable upon costs so refunded (*l*).

No appeal as to costs.

No appeal lies as to costs merely (*m*), but where the court possesses no discretion in disallowing costs (*n*), or where there has been mistake (*o*), they may be made the subject of appeal.

Constitutional questions.

Where a reference is made concerning constitutional questions under powers such as those conferred by the Ontario statute (53 Vict. c. 13, s. 7, *supra*, p. 56), it is the rule of the Judicial Committee to make no order as to costs (*p*).

Respondent lodging case and not appearing.

When respondents lodged a case, but did not appear at the hearing, the appeal was dismissed with costs to be paid to respondents down to the lodging of the cases, and ordered to be paid out of the deposit placed in the registry as security (*q*).

Separate cases, same interest, one set of costs.

Where parties in the same interest, who might have acted

(*k*) Cf. *Cloete* v. *Reg.* (Natal, 1854), 8 Moo. 492; *Smyth* v. *Reg.*, (1898) A. C. 788.

(*l*) *Rodger* v. *Comptoir d'Escompte* (Hong Kong, 1871), L. R. 3 P. C. at p. 477; 7 Moo. (N. S.) 331.

(*m*) *Richards* v. *Birley* (Prerog. Ct. York, 1864), 2 Moo. (N. S.) 96; *Rieken* v. *Yorke Peninsula Justices*, (1908) A. C. 454.

(*n*) *Mussumat Keemee Baee* v. *Latchman Das Narain-Das* (Bombay, 1837), 1 Moo. I. A. 470.

(*o*) *Attenboro'* v. *Kemp* (Arches Court, 1861), 14 Moo. 351; *Yeo* v. *Tatem* (H. C. Adm. 1871), L. R. 3 P. C. 696.

(*p*) *Att.-Gen. of Dom.* v. *Att.-Gen. of Ont.*, (1898) A. C. at 255. Cf. *Same* v. *Same*, *ibid.* p. 717; *Same* v. *Same*, (1894) A. C. at 201; and see (1896) A. C. at 371.

(*q*) *O'Shanassy* v. *Joachim* (N. S. W. 1876), 1 A. C. 82.

together in an appeal, think proper to put in separate cases, or to employ different solicitors, the Judicial Committee generally inclines, unless very good reason be given for the severance, to allow only one set of costs out of the estate (*r*), such costs being awarded to the party first entering an appearance (*s*).

Several respondents.

Where there were three respondents, and the appeal was dismissed with costs, the Judicial Committee ordered the deposit (300*l.*) to be rateably divided between them (*t*).

The general rule to allow but one set of respondents' costs will not be departed from in favour of a party who comes forward as a separate respondent when the suit is already substantially defended (*u*).

Costs of counsel.

The costs of three counsel are very rarely allowed upon taxation between party and party (*x*).

Set-off of costs.

A set-off will be directed of any costs which the successful party may have to pay against the general costs of the appeal payable by the unsuccessful party (*y*). The party ordered to pay costs in the Privy Council will not be allowed to set off costs ordered to be paid him in the court below. *Adams* v. *Young*, 20 N. S. W. Rep. (1899), p. 169, following *Russell* v. *Russell*, (1898) A. C. 307.

Costs disallowed of irrelevant matter.

The registrar has been directed to disallow on taxation irrelevant matter inserted in the record (*z*). Where the record is bulky, the cost of perusing only so much as is applicable to the question to be argued and decided will

(*r*) *Turner* v. *Cox*, 8 Moo. 288; *Prinsep and East India Company* v. *Dyce Sombre and others* (Prerog. Ct. Cant. 1856), 10 Moo. 300; *Shah Mukhun Lall* v. *Baboo Sree Kishen Singh* (Calc. 1868), 12 Moo. I. A. 157.

(*s*) *Woomatara Debia* v. *Kristo Kaminee Dossee* (Calc. 1872), 18 Suth. W. R. C. R. 163.

(*t*) *Lyall* v. *Jardine* (Hong Kong, 1870), 7 Moo. (N. S.) at p. 133; cf. *Sribal Dei* v. *Kadar Nath* (1901), 28 I. A. 188.

(*u*) *Woomatara Debia* v. *Kristo Kaminee Dossee* (Calc. 1872), 18 Suth. W. R. C. R. 163; 12 Beng. L. R. 170.

(*x*) *Prinsep and East India Co.* v. *Dyce*, 10 Moo. at 234, n.; *Castle* v. *Torre*, 2 Moo. pp. 141—148; *Tewajee* v. *Trinibuk-jee*, 3 Moo. I. A. 139.

(*y*) *Rudapersad Singh* v. *Ram Parmeswar* (Bengal, 1882), 9 Calc. 797; *Melbourne Tramway Co.* v. *Fitzroy* (Victoria, 1901), A. C. at 174.

(*z*) *Bishenmun Singh* v. *Land Mortgage Bank of India, Ltd.* (Bengal, 1884), L. R. 12 I. A. 7; *Rajah of Pittapur* v. *Sri Rajah Row Buchi Sittaya Garu* (Madras, 1884), L. R. 12 I. A. 22; *Peacock* v. *Byjnauth* (1891), L. R. 18 I. A. at 111; *Raja Yarlagadda Case*, 1900.

be allowed. *Budri Narain* v. *Sheokoer* (Bengal, 1889), L. R. 17 I. A. 1.

The Judicial Committee's order as to costs.

The direction of the Privy Council as to costs is embodied in their report to the Crown, and is made contingent upon His Majesty's approbation of the report. The direction is repeated in the Order in Council, though it is, strictly speaking, a direction of the Committee and not of the Crown (*a*). The Order of His Majesty in Council is sent to the court from which the appeal was brought.

Liability to pay.

A party who has been ordered to pay costs is liable to the process provided for enforcing payment, and is also liable to an action of debt for the amount, and this is the case even where the proceeding of which he has been ordered to pay the costs is merely collateral, and the principal suit is still pending. Thus, in a suit between A. and B. in a colonial court, certain property had been attached and sold as belonging to B. C. intervened, claiming it as his own. The original suit and intervention proceedings were brought before the Privy Council on appeal. The Privy Council referred it to a special arbitrator, to inquire whether the property belonged to B. or to C. Upon his report they ordered the proceeds to be paid to C., and directed that A. should pay the costs of the inquiry ; the appeal in the main suit between A. and B. remaining undetermined. It was held that A. must pay the costs as ordered ; and that he was liable to an action of debt for the amount. *Hutchinson* v. *Gillespie*, 11 Ex. 798.

Enforcing order.

The decree of the Sovereign in Council is registered in the court appealed from, and by that court a copy may be transmitted to the court first appealed from to carry into execution with such directions as may be necessary. It is only the costs of the appeal that can be recovered in the Privy Council ; the costs of proceedings in the courts below must, if allowed by the Privy Council, be recovered in those courts (*c*).

(*a*) See the terms of the provisions 3 & 4 Will. IV. c. 41, s. 15, and 6 & 7 Vict. c. 38, s. 12. Appendix A., p. 434.

(*c*) *Bamundoss Mookerjea* v. *Omeish Chunder Raee and Others* (Calc. 1856), 6 Moo. I. A. 289.

But by the Colonial Appeal Rules the colonial court must execute any order as to costs made by the Judicial Committee.

(26) 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.

CHAPTER XIV.

CONCERNING THE JUDGMENT OF THE COMMITTEE, AND OF THE DECREE OF THE SOVEREIGN IN COUNCIL.

Judgment of the Committee delivered in open court.

By 3 & 4 Will. IV. c. 41, s. 3 (see Appendix A.), the Judicial Committee are to make a report or recommendation to the Sovereign for his decision thereon, on all appeals, causes, and matters referred by him to them as theretofore; the nature of such report and recommendation is to be stated in open court. It is the practice where there is a question of law, inasmuch as the court is one of last resort, to take time to consider, and after full communication with all those who have been present to pronounce a written judgment. A notice in such case must be given to the parties to attend for the delivery of the judgment.

Notice to parties of day fixed for delivery of judgment.

74. Where the Judicial Committee, after hearing an appeal, decide to reserve their judgment thereon, the Registrar of the Privy Council shall in due course notify the parties who attended the hearing of the appeal by summons of the day appointed by the Committee for the delivery of the judgment.

One judgment.

There has been hitherto only one statement of reasons by one judge on behalf of the Committee. In this the practice of the Judicial Committee differed from that of other courts. It arose out of the duty the Privy Councillor owes to the Crown not to disclose his advice. The practice was the subject of criticism at the Imperial Conference by colonial representatives, who prefer to know the opinion of the various judges, and weigh the opinions according to their accredited merit, and it will probably be changed, and dissentient judges will in the future be able to express their opinion.

The court has sometimes stated the fact that it was not unanimous, as, for instance, in *Cowie* v. *Remfrey* (1846), 5 Moo. at p. 251, and in *Gorham's Case*, where in the course

of the judgment it was stated that the Bishop of London did not concur. And the Lord Chief Baron in the case of *Ridsdale* v. *Clifton* (1877), 2 P. D. 276, claimed a right to express his dissent from a judgment of the Board. This was, however, contrary to Article 4 of the Order in Council of February 20, 1627, and to the established practice, which declared that no publication is to be made how the particular opinions went (*a*).

Voices not published.

Decree reversed without prejudice to new application.

Where the decree in the court appealed from is irregularly made, the appeal may be allowed without prejudice to another application being made to the court below, as where in India in a suit concerning charities the court refused to hear the Advocate-General (*b*).

Can assess damages.

Where the whole case is before the Committee, and there appears no case made for taking fresh evidence, and the judge below would have only those materials for a judgment which are before their lordships, the Judicial Committee will not decide the appeal on narrow grounds, but will carefully examine the whole of the proceedings and the evidence, and pronounce what in their opinion should have been the decision of the court below and endeavour to make the decree which the court below ought to have made; and will, when necessary, assess damages (*c*). (See p. 351.)

Remission—

The Judicial Committee avoid acting as a court of first instance (*d*), and will remit the case, accompanied sometimes with a direction that a party should be allowed to amend his pleadings (*e*), or with an expression of opinion for the guidance of the court below as to the point of law which has to be decided (*f*). The jurisdiction of the Sovereign in Council is no greater than that of the court from which the appeal originally came. Thus, where the Court of

(*a*) Cf. The Report of *Gorham's Case*, by E. F. Moore, p. 458.

(*b*) *The Att.-Gen.* v. *Brodie* (Mad. 1846), 6 Moo. 12; cf. *In re Whitfield* (Jersey, 1838), 2 Moo. 269; *Maharajah Nitrasur Singh* v. *Baboo Lall Singh* (Calc. 1860), 8 Moo. I. A. at p. 220.

(*c*) *Mudhem Mohun Doss* v. *Gokul Doss* (N. W. P. 1866), 10 Moo. I. A. at p. 575; *Le Breton* v. *Ennis* (Jersey, 1844), 4 Moo. at p. 331; *Brooke* v. *Kent* (Prerog. Ct. 1840), 3 Moo. 344.

(*d*) *Head* v. *Sanders* (Arches Ct. 1842), 4 Moo. 197.

(*e*) *Mohummud Zahoor Ali Khan* v. *Mussumat Thakooranee Rutta Koer* (N. W. P. Agra, 1867), 11 Moo. I. A. 468.

(*f*) *Le Gros* v. *Le Breton* (Jersey, 1833), 2 Knapp, 181; *Macrae* v. *Goodman* (Brit. Guiana, 1846), 5 Moo. 338; *Devine* v. *Wilson* (N. S. W. 1855), 10 Moo. 532; *Le Feuvre* v. *Sullivan* (Jersey, 1855), 10 Moo. at p. 16.

Ontario could not conduct the sale or take possession of land in Manitoba, since the judgment was invalid, it was held that the Sovereign in Council as Appeal Court had no more extensive powers (*g*). Occasionally their lordships will advise His Majesty to remit the case to the court below, with a declaration as to the rights of the parties (*h*), while at the same time they will dismiss the appeal as against any of the respondents who may have been improperly made parties (*i*). with a declaration.

In granting new trials the Judicial Committee apply the law in force in the particular possession from which the appeal comes. Cf. *Royal Mail Steam Packet Co.* v. *George and Branday*, (1900) A. C. p. 493. It follows that where the English common law is in force, the rules laid down by the House of Lords will, subject to any principles introduced by statute which are inconsistent with those of the English judicature rules, govern applications for new trials before the Judicial Committee. The leading cases decided in the House of Lords and Judicial Committee relating to the granting of new trials will be found below (*k*). The consolidated laws of British Honduras prescribed that a new trial must be applied for by notice within a specified period after the trial. The Board held that it was bound by the section: and in an appeal from a judgment entered after verdict could not relax it, and could not consider any contention New trials.

(*g*) *King* v. *Henderson* (Can. 1898), 79 L. T. at 37.

(*h*) *Chuoturya Run Murdun Syn* v. *Sahub Purhulad Syn* (Calc. 1857), 7 Moo. I. A. at p. 53; *Gopeekrist Gosain* v. *Gungapers and Gosain* (Calc. 1854), 6 Moo. I. A. 53.

(*i*) *Mohummud Zahoor Ali Khan* v. *Mussumat Thakooranee Rutta Koer* (N. W. P. 1867), 11 Moo. I. A. 468.

(*k*) Misdirection, *Bray* v. *Ford*, (1896) A. C. 44; *Jenoure* v. *Delmege* (Jamaica, 1891), A. C. 73; *Kingston Race Stand* v. *Mayor and Council of Kingston*, (1897) A. C. 509. Non-direction, *Nevell* v. *Fine Art and General Ins. Co.*, *ibid.* p. 76. Improper rejection of evidence, *Manley* v. *Palache* (Jamaica, 1894), 73 L. T. 98. Against the weight of evidence, *Metropolitan Railway Co.* v. *Wright* (1886), 11 A. C. 152, 187; *Council of Municipality of Brisbane* v. *Martin* (Queensland, 1894), A. C. 249; *Phillips* v. *Martin* (1890, N. S. W.), 15 A. C. 193; *Brown* v. *Commrs. of Railways*, *ibid.* 240. Where evidence on both sides is properly submitted to jury, the verdict ought to stand, *Commrs. of Railways* v. *Brown* (N. S. W. 1887), 13 A. C. 133. Contradictory verdicts, *Australasian Steam Nav. Co.* v. *W. Howard Smith* (N. S. W. 1889), 14 A. C. 321. Whether there is any evidence for the jury is a question for the judge: *Metropolitan Railway* v. *Jackson* (H. L. 1877), 3 A. C. 193.

directed to a new trial. *George D. Emery Co.* v. *Wells*, (1906) A. C. 515.

New trial. Motion first to court below.

The Judicial Committee will not by its judgment review a verdict where the ground of appeal is that the verdict was not warranted by the evidence or that the verdict was wrong, unless the court below has been moved for a new trial. Where the rules of the court permit, the Judicial Committee in such case allow an appeal to be brought. The party appealing should first exhaust the remedies which the rules and practice of the court below prescribe (*l*). The Judicial Committee will not recommend a new trial on points raised for the first time before them, which may possibly have been treated as agreed upon or too clear for argument by the court below. *Mackay* v. *Commerical Bank of New Brunswick* (1874) L. R. 5 P. C. 374.

Judicial Committee may enter judgment on the facts.

There is nothing in the statutes to limit the right of the Judicial Committee sitting as a Court of Appeal to enter judgment on an application for a new trial, and where all the facts are before them they will enter judgment instead of directing a new trial. But if application for judgment has not been made in the court below, the Judicial Committee will not order it. An appeal was brought from the Court of Appeal in New Zealand where the majority of the judges had held that the verdict of a jury against the appellants in the court below must stand, and dismissed the appellants' motion to enter verdict and judgment for them, or in the alternative for a new trial. The Board were of opinion that the verdict was so unsatisfactory that it ought not to be maintained ; but they refrained from entering judgment for the appellants because that point was not submitted to the Appellate Court in the colony. It appeared that that court had powers enabling judgment to be entered according to the evident justice of the case, but had not been pressed to exercise them, and the Board followed the view of the dissenting judge by directing that a new trial should take place. *Clouston & Co., Ltd.* v. *Corry*, (1906) A. C. p. 122.

Misdirection.

A new trial will be ordered where a misdirection was calculated materially to influence the verdict of the jury, or where the Judicial Committee hold that the court below has not weighed all the circumstances in evidence

(*l*) *Dagnini* v. *Bellotti* (1881), 11 A. C. p. 601.

with sufficient accuracy to justify the verdict given, or if it appears that the court below has not sufficiently inquired into material facts.

Principle applied.

The Judicial Committee will apply its own principles as to granting a new trial for misdirection when an appeal is brought to it against an order by the court below directing a new trial upon that ground. It will reverse the order unless there was substantial misdirection in the first court. *Blue and Deschamps* v. *Red Mountain Railway*, (1909) A. C. 361.

Nor will the Judicial Committee allow the respondents in an appeal against an order for a new trial on the ground of misdirection to rely on another misdirection to which they had not excepted at the trial or in the notice of appeal, or in oral argument before the Appellate Court in the colony. *White* v. *Victoria Timber Co., Ltd.*, (1910) A. C. p. 606.

Non-direction.

Non-direction is only ground for a new trial when the verdict is against the weight of evidence. *G. W. R. of Canada* v. *Braid* (1863), 1 Moo. (N. S.) 102.

Evidence on both sides submitted to a jury.

Where the question is one of fact and there is evidence on both sides properly submitted to the jury, the verdict of the jury, if neither unreasonable nor unfair, once found, will be allowed to stand (*m*). Where cross actions involving the same questions of law and fact are separately tried with the result that contradictory verdicts are obtained, if the evidence at each trial is so fairly balanced that a jury might reasonably find either way, both cases ought to be tried again, not separately, but together (*n*).

Rejection of immaterial evidence.

Before a new trial is granted for rejection of evidence, it must be shown that the evidence might have materially influenced the verdict (*o*). So where in an action tried before a judge alone evidence is improperly admitted, a new trial will not be granted if, rejecting that evidence, sufficient remains to support the finding (*p*).

Where an order for a new trial is sought for, the judge of

(*m*) *Commrs. for Railways* v. *Brown*, 13 A. C. 134.

(*n*) *Australian Steam Navigation Co.* v. *Smith and Sons* (1889), 14 A. C. 321.

(*o*) *East India Co.* v. *Oditchurn Paul* (Bengal, 1849), 7 Moo. 85 at p. 100; cf. *Doe* d. *Devine* v. *Wilson* (N. S. W. 1855), 10 Moo. 502 at p. 512.

(*p*) *Mohur Sing* v. *Ghuriba* (1870), 6 Beng. L. R. 495.

Verdict disapproved by judge below.

the court below having disapproved of the verdict, the Privy Council will incline to be guided by the opinion of the judge, unless upon consideration of the evidence it is satisfied that the verdict was right (*q*).

Verdict against the evidence.

It is a settled rule that a verdict ought not to be disturbed on the ground that it is against the evidence or the weight of evidence, unless, to use the words of Lord Herschell in *Metropolitan Railway Co.* v. *Wright*, 11 A. C. 152, it was one which a jury, viewing the whole of the evidence reasonably, could not properly find (*r*). In order to be justified in granting the new trial, the Judicial Committee must be satisfied that the evidence so strongly preponderates as to show that the jury have either wilfully disregarded the evidence, or failed to understand or appreciate it. *The Connecticut Mutual Life Insurance Co. of Hartford* v. *Moore* (Can. 1881), 6 A. C. 644. Where there is evidence on both sides properly submitted to the jury, the verdict of the jury once found ought to stand (*s*). The Judicial Committee may restore the verdict of a jury which has been reversed in the Appellate Court of the colony. In a case where the Supreme Court of Canada had set aside the verdict of a jury for the plaintiff on the ground that there was no exact proof of the defendant's negligence, the Board reversed the order on the ground that there was sufficient evidence on which the jury could find. Cf. *McArthur* v. *Dominion Cartridge Co.*, (1905) A. C. 72.

Judicial Committee will generally uphold findings on fact.

The court below, which has had the advantage of seeing the demeanour of the witnesses, is better able to judge as to their credibility than the Court of Appeal. But if the Court of Appeal sees cogent reason for saying that the court below has taken a wrong view of the evidence, whether due to local prejudice or any other reason, the case may be sent back for further inquiry (*t*). The Judicial Committee will therefore uphold the finding of the court below unless they entertain an opinion, strong and clear, that the court

(*q*) *Humphrey* v. *Nowland* (N. S. W. 1862), 15 Moo. 343.

(*r*) *Phillips* v. *Martin* (N. S. W. 1890), 15 A. C. at p. 194; *Brown* v. *Commrs. for Railways* (N. S. W. 1890), *ibid.* at p. 240; *Council of the Municipality of Brisbane* v. *Martin* (Queensland, 1894), A. C. 249; *Cox* v. *English, Scottish and Australian Bank, Ltd.*, (1905) A. C. 108.

(*s*) *Commrs. of Railways* v. *Brown* (N. S. W. 1887), 13 A. C. 133.

(*t*) *Santa Cana* v. *Ardevol* (Gibraltar, 1830), 1 Knapp, 269; *Canepa* v. *Larios* (Gibraltar, 1834), 2 Knapp, 276.

below was wrong (*u*). This is specially so where, as in a question of boundaries, the finding depends upon local investigation and inquiry (*x*). The above rule does not apply where there has been miscarriage of justice, either by the reception of or in the appreciation of evidence (*y*).

Concurrent judgments of courts below.

The invariable rule.

Where there have been concurrent findings of fact by judges below who have been unanimous, the almost invariable rule of the Judicial Committee is, unless it is absolutely clear that some blunder or error has been made in the way in which the facts have been dealt with, to uphold the finding of the court below. The question before the Judicial Committee is not, under such circumstances, what conclusion they would have arrived at if the matter had been before them for the first time, but whether it has been established that the judges below were clearly wrong (*z*),

The rule was stated in a recent case thus: "It is incumbent on the appellant to adduce very clear proofs that there is an error in the judgment appealed from. It is not sufficient to allege that the judges in the court below have

(*u*) *Chunder Monee Debia Chowdhoorayn* v. *Munmoheenee Debia* (Calc. 1861), 8 Moo. I. A. at 489.

(*x*) *Ram Gopal Roy* v. *Gordon Stuart* (1872), 14 Moo. I. A. 453; cf. *Maharaj Kumar Baboo Ganeshwa Sing* v. *Durga Dutt* (1871), 7 Bengal L. R. at p. 652.

(*y*) *Richardson* v. *Madras Government* (1864), 1 Suth. W. R. P. C. at 49; *Cheyt Ram* v. *Chowdhree Nowbut Ram* (Agra, 1858), 5 Suth. W. R. P. C. 3; 7 Moo. I. A. 207; *Kripamoye Debia* v. *Romanath Chowdhry* (Calc. 1861), 2 Suth. W. R. P. C. 1; *Mussumat Kripomoye Debia* v. *Genia Gerischunder Lahore* (Calc. 1861), 8 Moo. I. A. 467; *Ghoolan Moortoozah Khan* v. *Government of Madras* (1863), 9 Moo. I. A. at 478.

(*z*) *Allen* v. *Quebec Warehouse Co.* (Quebec, 1886), 12 App. Cas. 104, following *Naragunty Lutchmeedavamah* v. *Vengama Naidoo* (Madras, 1861), 9 Moo. I. A. at 87; but see *Tayammaul* v. *Sashachalla Naiker* (Madras, 1865), 10 Moo. I. A. 429. "Concurrent findings on questions of fact are not to be always binding on this Committee, since it is the duty of the Appellate Court to weigh the evidence and probabilities and form an independent judgment" (Lord Chelmsford, p. 436); and cf. *Owners of the P. Caland*, H. L. (E)., (1893) A. C. per Lord Herschell at p. 215, and per Lord Watson at p. 217; *McIntyre* v. *McGavin*, H. L. (E.), (1893) A. C. at 272; *Tareeny Churn Bonnerjee* v. *Maitland* (Calc. 1867), 11 Moo. I. A. 338; *Vencateswara Iyan* v. *Shekhari Varma* (Madras, 1881), L. R. 8 I. A. 143; *ibid.* p. 150; *Thakur Harihar Buksh* v. *Thakur Umam Pershad* (Oudh, 1886), L. R. 14 I. A. at 16 (reluctance to disturb concurrent findings as to family custom); *Ram Lal* v. *Saiyid Medhi Husain* (Oudh, 1890), L. R. 17 I. A. at 71; *Syed Ashgar Reza* v. *Syed Medhi Hossein Khan* (Bengal 1892), L. R. 20 I. A. 38 (held not sufficient concurrence to prevent further inquiry); *Kunwar Singh* v. *Rani Kanwar*, (1905) I. A. 33. And see above, p. 152.

approached the question from a wrong point of view, and have failed to give weight to minute circumstances." *Whitney* v. *Joyce*, 95 L. T. 74.

The rule will not be enforced in the same rigid manner where the Appeal Court below affirms the judgment of the lower court without giving reasons for such affirmance (*a*).

There must, however, be not a mere balance of testimony, but so strong a preponderance of testimony against the finding that they can confidently pronounce it to be wrong (*b*); so that there is no evidence such as would warrant the conclusion arrived at (*c*). The grounds assigned must be definite and explicit (*d*).

The rule is not exclusive.

The Judicial Committee refuse to lay down any exclusive rule as to appeals from judgments of the court below which are rested entirely upon the facts; they are, however, most reluctant to come to a conclusion different from the judge below merely on a balance of testimony where the judge has had the opportunity of seeing and testing the conduct and demeanour of the witnesses (*e*). The Judicial Committee, being a court of last resort, will, however, examine the whole evidence in a doubtful case, and form for itself an opinion on the whole case (*f*).

Thus the Judicial Committee will disregard the concurrent judgment of two lower courts, and decide the case upon the evidence contained in the record, where the lower courts have never dealt with the real question raised by the issues, and have drawn wrong inferences from the evidence (*g*). And they will, notwithstanding the weight due to the finding of the court below, reverse or alter the sentence, or the amount of damages, according to the merits (*h*).

(*a*) *Guthrie* v. *Abool Mozuffer* (Bengal, 1871), 14 Moo. I. A. at p. 63. Cf. *Mowbray* v. *Drew* (Victoria), (1893) A. C. at 301.

(*b*) *Ranee Surrut Soonduree Dabea* v. *Kooer Poreshnarain Roy* (Calcutta, 1871), 16 Suth. W. R. P. C. at 11.

(*c*) *Maharaj Kumar Baboo Ganeshwa Sing* v. *Durga Dutt* (1871), 7 Bengal L. R. 652.

(*d*) *Moung Tha Hnyeen* v. *Moung Pan Nyo*, L. R. 27 I. A. 166.

(*e*) *The Alice and the Princess Alice* (1868), L. R. 2 P. C. p. 248; following *The Julia*, 14 Moo. 210; cf. *The Calabar*, L. R. 2 P. C. 238.

(*f*) *Modhoo Soodun Sundial* v. *Suroop Chunder Sirkar Chowdry* (Bengal, 1849), 4 Moo. I. A. 431.

(*g*) *Moulvie Sayyud Uzhur Ali* v. *Mussumat Bebee Fatima* (Bengal, 1869), 13 Moo. I. A. 232.

(*h*) *Gahan* v. *Lafitte* (St. Lucia, 1841–2), 3 Moo. at p. 397; *Mudhoo Soodun Sundial* v. *Suroop Chunder Sirkar Chowdry* (Bengal, 1849),

The above rule of practice of the Judicial Committee does not relieve the court of its duty to weigh the evidence and probabilities, and to form an independent judgment; and if on so doing they are of opinion that the evidence relied on is so unsatisfactory that the decree appealed from cannot be supported, the appeal will succeed (*i*). But as a general rule, the mere fact that a part of the evidence in the suit has not been considered by the lower court does not prevent the rule applying when both courts have arrived at the same result (*k*).

The Judicial Committee form independent opinion.

Absence of Explicit Findings.—Where in cross suits by an heir against a widow for possession and mesne profits, and by the widow against the heir to establish her right to dower, the courts below, without ascertaining either the amount of dower or of mesne profits, set one off against the other, the Judicial Committee considered the want of explicit findings to constitute exceptional circumstances such as to justify them in refusing to follow their ordinary rule of practice (*l*).

Where questions of fact are mixed up with questions of law, the rule may be relaxed (*m*).

In *Srimati Rani Hurripria* v. *Rukimini Debi* (*n*), the judge of first instance had refused to admit a copy of a document in evidence, on the ground that in his opinion no sufficient proof of search for or loss of the original had been given. The Judicial Committee said such a point was one proper to be decided by the judge of first instance, and is treated as depending very much on his discretion, which

Admission of secondary evidence. Judge of first instance.

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4 Moo. I. A. at 433; 7 Suth. W. R. P. C. 73; *Sundur Koomaree Debbea* v. *Gudhadur Pershad Tewarree* (Calcutta, 1858), 7 Moo. I. A. at 63; *Bunwaree Lull* v. *Maharajah Hetnarain Sing* (Calcutta, 1858), 7 Moo. I. A. at 166.

(*i*) *Tayammaul* v. *Sashachalla Naiker* (Madras, 1865), 10 Moo. I. A. 429.

(*k*) *Ram Lal* v. *Saiyid Mehdi Husain* (Oudh, 1890), L. R. 17 I. A. p. 71.

(*l*) *Mussumat Babee Bacheen* v. *Sheik Hamid Hossein* (Bengal, 1871), 14 Moo. I. A. at 386; see also *Hay* v. *Gordon* (Punjab, 1872), 18 Suth. W. R. 480, where the judgments were not truly concurrent, the decree of court of first instance not being binding till confirmed by the chief court, and where evidence had been improperly admitted; *ibid.* L. R. 4 P. C. 337.

(*m*) *Pauliem Valoo Chetty* v. *Pauliem Sooryah Chetty* (1877), I. L. R. 1 Madras, p. 258; L. R. 4 I. A. at 114; *Venkateswara Iyan* v. *Shekhari Varma* (Madras, 1881), L. R. 8 I. A. at 150.

(*n*) (Bengal, 1892), L. R. 19 I. A. at 81.

should not be overruled except in a very clear case of miscarriage. There the view of the subordinate judge had been supported by the Appellate Court.

The nature of concurrence.

As to the nature of the concurrence which will justify the Judicial Committee in abiding by the decisions of the lower courts, see *Syed Ashgar Reza* v. *Syed Medhi Hossein Khan* (*o*).

Interference with judicial discretion.

Where the matter appealed is one of judicial discretion such as the amount awarded for salvage, it is the settled rule and one of great utility that the difference of estimate ought to be considerable to justify the Judicial Committee to review the decision (*p*). In the case of *Master and Owners of S.S. Baku Standard* v. *Master and Owners of S.S. Angèle*, (1904) A. C. 409, it was stated that it is not the custom of the Committee to vary the decision of a court below on a question of amount merely because they are of opinion that if the case had come before them in the first instance they might have awarded a smaller sum. To establish a case for the exercise of such appellate jurisdiction, the appellant may show that the judge in estimating the amount of remuneration has miscarried by allowing his judgment to be influenced by something which ought not to have influenced it; or by giving undue, or failing to give due, consideration to some circumstance fairly within his consideration (*q*). Nautical assessors are generally summoned to attend the Judicial Committee in Admiralty appeals. These occasionally differ in opinion from those who assisted in the court below. The rule of the Judicial Committee requiring them to be satisfied beyond mere doubt that the court below was wrong before reversing the judgment removes the difficulty which might otherwise be experienced.

In an Indian case the Judicial Committee declared that it was reluctant to overrule the discretion of an Indian Court in granting a declaratory decree. *Thahurain Kunwar* v. *Bhaiwa Indar Bahadur Singh* (31 I. A. 67).

(*o*) (1893), L. R. 20 I. A. at p. 47.

(*p*) Cf. *The De Bay*, 8 App. Cas. 559; *The Thomas Allen* (1886), 12 App. Cas. p. 121, approving *The Glenduror* (1871), L. R. 3 P. C. 589; *The Carrier Dove* (1863), 2 Moo. (N. S.) 254; *The Clarisse* (1858) 12 Moo. 340; *The Scindia* (1866), L. R. 1 P. C. 241; *The England* (1868), L. R. 2 P. C. 253.

(*q*) *The Amérique* (1874), L. R. 6 P. C. at p. 472.

Adding interest to damages.

The power of adding interest, from the finding to the time of judgment on appeal, to the amount of damages found below is within the common law jurisdiction of the court (*r*).

Interest runs from the date of the judgment in a suit, and may be recovered upon an Order of His Majesty in Council dismissing the appeal (*s*).

Assessing damages.

In a case where a party was found entitled to damages, but where the judges below could have little better means of fixing a fair amount of damages than the Privy Council, the Judicial Committee, after declaring the principle upon which they proceeded, named a gross sum, by way of damages, to put an end to the litigation (*t*); and in *McArthur* v. *Cornwall* the Judicial Committee dismissed an appeal from a decree ordering a new trial as to damages, and at the same time indicated the true measure of damages (*u*).

Practice in court below.

The Judicial Committee, unless clearly satisfied that the court below has made a great mistake in the construction put upon their statutes, will not interfere with the judgment of the colonial court as to its own forms and procedure (*x*).

Recommendation by Judicial Committee.

Where the Privy Council is, as for instance in a criminal case, for any reason unable to do justice by the terms of the reference, but the Crown has power to do justice, the Privy Council will sometimes, in giving judgment, make such observations as may form the basis of a proper application to the Crown by the parties (*y*).

Minutes of judgment.

If the Committee agree to recommend the Crown to vary the decree appealed from, or to make another decree in its

(*r*) *Bank of Australasia* v. *Breillat* (N. S. W. 1847), 6 Moo. 152, 206 (*secus*, where writ of error and not appeal, *ibid.*); cf. *Toulmin* v. *Millar* (1887), 12 App. Cas. 747; *Allcock* v. *Hall* (1891), 1 Q. B. 448, C. A.; *Cox* v. *Hakes* (1890), 15 App. Cas. 535. And see *infra*, p. 360.

(*s*) *Kirkland* v. *Modee Pestonjee Khooreejee* (Bombay, 1843), 3 Moo. I. A. 220; cf. (Imp. Stat.) 1 & 2 Vict. c. 110, ss. 17 and 18.

(*t*) *Raja Burdakanth Roy* v. *Aluk Munjooree Dasaih and others* (Bengal, 1848), 4 Moo. I. A. 321.

(*u*) (Fiji, 1892) A. C. 75. In this case, which related to consolidated appeals from the Supreme Court of Fiji, which had affirmed the decree of the High Commissioner's Court for the Western Pacific at Samoa, a treaty, dated June 14, 1889, had been entered into pending the appeal between England, Germany, and the United States, under which exclusive jurisdiction in all civil suits had been transferred to a new Supreme Court in Samoa held under the treaty and not subordinate to Her Majesty in Council.

(*x*) *Boston* v. *Lelièvre* (Quebec, 1870), L. R. 3 P. C. at p. 163; *Grant* v. *Ætna Insurance Co.* (Lower Canada, 1862), 15 Moo. at p. 528.

(*y*) *R.* v. *Murphy* (N. S. W. 1869), L. R. 2 P. C. 552.

stead, it is customary to require the parties to draw up the minutes, upon the principles laid down in the judgment, and these minutes being agreed to and signed by the counsel or agents on both sides, are afterwards incorporated in the report of the Committee, and form the basis of the Order in Council which finally decides the appeal.

Respondent seeking to appear after judgment.

It has happened that a respondent or respondents against whom all the orders for appearance have been taken out by the appellant have applied (after the conclusion of the hearing of an appeal but before the final Order in Council is approved) to be permitted to come in at that late stage and be heard. Bearing in mind that if such application were granted the appellant might be put to the unexpected expense of a double hearing, the Board have usually refused the relief prayed for and directed the respondent or respondents to pay the costs incurred by the application (*z*). There is no rule entitling a respondent, after he has had notice of an appeal pending, to have further notice that the record has been transmitted, or that the appeal is set down for hearing if he has not entered an appearance (*a*).

In another case, *Maharajah Pertab Narain Singh* v. *Mehanee Subhao Koer* (1878), L. R. 5 I. A. 171, where the report of the Judicial Committee had been finally approved by Order in Council, the applicant, who had been a respondent below, alleged that by an accident he had not been represented in the hearing before the Judicial Committee and asked for a re-hearing. The petition was dismissed, but the Board in their report declared that if a new suit should ever be brought in India in the matter of the appeal in question, the determination of the Indian courts upon it would be subject to appeal.

Report of Committee to Sovereign.

The reasons for their judgment set forth by the Board in the Council Chamber are not inserted in the report to the Sovereign. At the first Council held after the judgment has been delivered, the report is submitted to the Sovereign for approval.

(*z*) *The Zemindar of Merangi* v. *Sri Raja Satrucharla Ramabadra Razu* (Madras, 1891), L. R. 18 I. A. 55.

(*a*) *Lalta Pershad and Others* v. *Sheikh Azzir-ud-din Ahmid* (All. 1896), L. R. 24 I. A. 49; *Ranee Sumomoyee* v. *Shoshee Mookhee Burmonia* (Bengal, 1868), 12 Moo. I. A. 257; and *Harriss* v. *Brown* (Bengal,) P. C. Ar., May 11, 1901.

Order in Council.—When the decision of the Board has been reported to His Majesty and embodied in an Order in Council, it becomes the decree or order of the final Court of Appeal (*b*). The Order in Council recites and approves the report and gives judgment accordingly, and it is the duty of every subordinate tribunal to whom the order is addressed to carry it into execution (*c*). It was the ancient practice to enrol the judgments and orders on appeal in the books of the Privy Council along with matters of a purely political nature, so that they were not accessible to persons interested without danger of disclosing secrets. The statute 3 & 4 Will. IV. c. 41, s. 16, provides that the orders or decrees made in pursuance of any recommendation of the Judicial Committee in any matter of appeal from the judgment or order of any court or judge shall be enrolled for safe custody in such manner, and the same may be inspected and copies thereof taken under such regulations, as His Majesty in Council shall direct. This provision does not extend to those other matters not strictly of a judicial character dealt with under sect. 4 of that Act and discussed in Chapter VII. of this book. The order is afterwards delivered from the Council Office to the agent of the successful party, who transmits it in due course to its place of destination. The money deposited by the appellant as security for costs is dealt with in accordance with the terms of the order, which provides for its being either handed back to the appellant or for the deduction from it first of the respondent's costs. If, as sometimes occurs, the costs of the respondent exceed the amount of the deposit, the deposit money is handed in its entirety to the respondent, and he is left to recover the balance in the colony appealed from according to the terms of the final order.

Decisions embodied in O. in C.

Decrees to be enrolled.

In the absence of the original Order of the Sovereign in Council which is issued to the successful party at the Council Office for production to the court below, and is addressed to the Governor of the dependency "and to all other persons whom it may concern," a copy of the Order is admissible evidence. *Hurrish Chunder Chowdry* v. *Srimati Kali Soondari Debi* (Bengal, 1882), L. R. 10 I. A. 4.

Copy of Order in Council.

(*b*) *Pitts* v. *La Fontaine* (Constantinople, 1880), 6 App. Cas. 483.
(*c*) *Pitts* v. *La Fontaine* (Constantinople, 1880), 6 App. Cas. 484.

Decree by consent.

Decree by Consent.—A decree is occasionally taken by consent. In such a case no argument is required, but the report to the Sovereign states that the decree is by consent.

Subordinate tribunal to enforce decree.

Enforcement of Order in Council.—The court below is bound to use its best endeavours to carry His Majesty's decree as contained in the Order in Council into execution. If there is any ambiguity therein, the judgment of the Judicial Committee may be looked at for its interpretation (*d*). Should the subordinate tribunal neglect or refuse to carry the decree into execution, a peremptory order will be made (*e*). The petition for such order should be to His Majesty in Council, and will be specially referred to the Judicial Committee, who will order on whom it should be served (*f*).

It sometimes happens that the Privy Council can do no more than make a declaration of right. In such cases the court which executes the decree must throw the declaration into a mandatory form and give effect to it accordingly (*g*).

In Colonial Courts of Admiralty appeals.

In appeals under the Colonial Courts of Admiralty Act, 1890, the already full powers of the Sovereign in Council and of the Judicial Committee of the Privy Council for making and enforcing judgments, for punishing contempts, for requiring the payment of money into court, or for any other purpose, have been amplified (53 & 54 Vict. c. 27, s. 6 (3)—(5)). See p. 364.

Finality of decree.

Finality of Decisions as to Third Parties.—Since the law as to the rights of property is based to a great extent on decisions, the decisions of a final Court of Appeal become

Binding effect of previous decision.

elements in the composition of the law. It is, however, difficult to say that they are as to third parties under all circumstances and in all cases absolutely final, but they will not be reopened without the very greatest hesitation. This view of the finality of the decisions of the Privy Council

(*d*) *Pitts* v. *La Fontaine*, 6 App. Cas. p. 487.

(*e*) *Ibid.* p. 488; and see 3 & 4 Will. IV. c. 41, s. 21. Appendix A,

(*f*) See *In re Rajah Vassareddy Lutchmeputty Naidoo* (Madras, 1852), 5 Moo. I. A. 300; 8 Moo. at pp. 129, 136, where a peremptory order was made. See also 3 & 4 Will. IV. c. 41, ss. 21 and 28; and *Hebbert* v. *Purchas* (1872), L. R. 4 P. C. 301 (approved *Mackonochie* v. *Ld. Penzance* (1881), 6 App. Cas. 460), where a clerk in holy orders was suspended *ab officio et a beneficio.* In Admiralty, *Barton* v. *Field* (1842), 4 Moo. 273; 2 Moo. p. 26, n.; and 7 & 8 Vict. c. 69, ss. 11 and 12.

(*g*) *Barlow* v. *Orde* (Punjab, 1872), 18 Suth. W. R. C. R. 175.

does not affect in the same degree as in other cases decisions in ecclesiastical causes where they depend upon questions of historical research. Nor will the Judicial Committee necessarily follow the dictum of a judge in delivering the judgment of the Board in a previous case affecting the same subject-matter. Cf. *The Dominion of Canada* v. *The Province of Ontario*, (1910) A. C. 64, where the Board did not follow a dictum of Lord Watson in *St. Catherine's, etc., Co.* v. *The Queen*, 14 A. C. 60. Where third parties are affected the Privy Council are in any case "at liberty to examine the reasons upon which that decision was arrived at, and if they should find themselves forced to dissent from those reasons, to decide upon their own view of the law (*h*). They will be the more willing to follow this view if the earlier decision was given *ex parte*" (*i*).

Laws to be applied in the execution of decree.

Where the appeal has been decided by English law, it is wrong to apply the Colonial Dutch law in the proceedings taken in execution of the judgment (*j*).

Amendment of judgment of Committee after decree.

In the case of *The Montreal Assurance Co.* v. *M'Gillivray* (*k*) both sides were desirous that some alteration should be made in the form of the report on which Her Majesty's Order had been passed. The defendants in the Superior Court in Canada had appealed from the judgment given for the plaintiff to the Court of Queen's Bench; the court confirmed the judgment in the court below. The defendants then appealed to the Sovereign in Council. The Judicial Committee in their report to the Queen recommended that the judgment of the Court of Queen's Bench should be set aside, but omitted either to advise that the judgment in the Superior Court should be set aside, or to advise in what way the Court of Queen's Bench should proceed. The latter court merely filed the Order in Council, but declined to do anything more. The report of the Judicial Committee was accordingly amended by directing that the judgment of the Superior Court should be reversed and the verdict of the jury vacated, and that the cause should be sent back to

(*h*) *Ridsdale* v. *Clifton* (1877), 2 P. D. 306; *Read* v. *Bishop of Lincoln*, (1892) A. C. p. 654. Cf. *Tooth* v. *Power* (N. S. W.), (1891) A. C. at 292.
(*i*) *Ibid.*
(*j*) *Lindsay* v. *Duff* (Ceylon, 1862), 15 Moo. 452.
(*k*) (1859), 13 Moo. at p. 125.

the Superior Court with directions (*l*), and an Order in Council was made embodying the amended report.

Revocation of decree of Sovereign.

In another case, after Her Majesty's Order had been passed, a vital irregularity in the proceedings (viz., the omission by the appellant to give notice of the appeal to some of the respondents) was discovered at the last moment, and the registrar having reported this fact to the Privy Council, their lordships reported to Her Majesty that the Order should be revoked. The appeal then stood over for further directions, and the appellant was ordered to serve a personal notice of the appeal on each of the respondents who had not appeared (*m*). The indulgence extended in such cases is owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where, by some accident, without any blame, the party has not been heard, and an order has been inadvertently made as if the party had been heard (*n*). The Judicial Committee admitted there may be exceptional circumstances where a case may be reheard, even after their advice has been acted upon by the Sovereign in Council.

Interpretation of judgments.

The Judicial Committee interpret the Order in Council made upon their own judgment by the light of the terms to be found in their judgment (*o*). So also the practice of the court in a colony will not be permitted to prevail against the construction which appears to be a natural one of a judgment delivered by their lordships. Where the High Court in India in execution of an Order in Council had

(*l*) See Order in Council made therein, *ibid.* p. 131.

(*m*) *McLeary* v. *Hill and Others*, cited and distinguished by Judicial Committee in *Ex parte Kistonauth Roy* (Calcutta, 1869), 6 Moo. (N. S.) at p. 367, and 12 Moo. I. A. 254, 362, in which the application of a respondent for a rehearing was refused, because it was owing to his default that the appeal was heard in his absence. See *supra*, pp. 282—283, as to compelling respondents to appear.

(*n*) *Rajunder Narain Rae* v. *Bijai Govind Sing* (Bengal, 1836), 1 Moo. 117; and *Venkata Narasimha Appa Row* v. *The Court of Wards* (Madras, 1886), 11 App. Cas. 663; and see *Maharajah Pertab Narain Singh* v. *Maharanee Subhao Koer* (Oudh, 1878), L. R. 5 I. A. p. 171, where *Rajunder Narain Rae* v. *Bijai Govind Sing* (Bengal, 1836), 1 Moo. 117, and *Ex parte Kistonauth Roy* (Calc. 1869), L. R. 2 P. C. 274, were approved. Proceedings will not be allowed to be reopened merely by reason of discovery of fresh evidence. *Srimantu Rajah Yarlagaddu* v. *Srimantu Mullikarjuna*, 14 Madras, 439. Cf. *The Singapore* (1866), L. R. 1 P. C. 378.

(*o*) *Harrison* v. *The Queen*, 10 Moo. 225; *Pitts* v. *La Fontaine*, 6 A. C. 487.

interpreted an Order in a manner not intended, the Judicial Committee, pending an appeal from the High Court decree, expressed an opinion as to the intention of the Order. *In the Matter of the Petition of Yalargaddu Parshed Nayeddu*, 31 I. A. 64. And where a court instead of executing the decree of the Sovereign in Council puts a construction upon it which amounts to a re-hearing, the Judicial Committee will give relief. *Udwant Singh* v. *Tokhan Singh* (Bengal, 1901), L. R. 28 I. A. 57.

Rectification of judgments.

The Judicial Committee possesses the power to rectify mistakes made in drawing up its own judgments (*p*). "An order once made—that is, a report submitted to Her Majesty and adopted by being made an Order in Council—is final and cannot be altered." But if by misprision in embodying the judgments errors have been introduced, His Majesty in Council, as well as the House of Lords, "possess, by common law, the same power which the Courts of Record and Statute have of rectifying mistakes which have crept in." In the elaborate judgment delivered by Lord Brougham in that case, he says: "With the exception of one case in 1669, of doubtful authority here, and another in Parliament of still less weight in 1642, . . . at a time when the government was in an unsettled state, no instance, it is believed, can be produced of a re-hearing upon the whole case, and an entire alteration of the judgment once pronounced." The above case had been heard *ex parte*, the appellant not having appeared. The judgment of the Judicial Committee had dismissed the appeal and affirmed the judgment appealed from. This form of judgment, in the circumstances, was incorrect, inasmuch as it should not have affirmed the judgment. The order of the Judicial Committee permitting the case to be re-heard stated that the judgment only meant that the appeal was dismissed, and they allowed the appellant to be heard notwithstanding the dismissal—that is, they restored the appeal (*q*).

Re-hearing.

The Privy Council being a court of the last resort, it is not considered expedient that a cause once fully heard and determined by them should be permitted to be discussed

(*p*) *Rajunder Narain Rae* v. *Bijai Govind Sing* (Bengal, 1836), 1 Moo. 126; 2 Moo. I. A. 781.

(*q*) 1 Moo. p. 141, and the order set out at p. 142.

again before them; although in a new case they will reconsider points decided by themselves in other cases (*r*).

The Judicial Committee will, however, interpret the Order in Council made upon their judgment and report, and if any extraordinary terms are used therein which are not to be found in their judgment they will construe it accordingly, and if any unjust demand has been made in pursuance of such terms such party making them may be condemned in costs (*s*).

The practice as to re-hearing was fully considered in *Venkata Narasimha Appa Row* v. *The Court of Wards* (*t*), where the doctrine laid down by Lord Brougham was approved in a judgment delivered by Lord Watson. The Judicial Committee for the purposes of their decision assumed that a case of relevant new matter had been made out. The doctrine so laid down, and now approved, was that it is unquestionably the strict rule that no cause in the court can be re-heard, and that an order once made, that is, a report submitted to His Majesty, and adopted by being made an Order in Council, is final, and cannot be altered. Whatever, therefore, has been really determined by the court must stand, there being no power of re-hearing for the purpose of changing the judgment pronounced. The Courts of Equity may correct the decrees made while they are in minutes; when they are complete they can only vary them by re-hearing; and when they are signed and enrolled they can no longer be re-heard, but they must be altered, if at all, by appeal. The courts of law, after the term in which the judgments are given, can only alter them so as to correct misprisions, a power given by the Statutes of Amendment. The privilege if allowed is an indulgence, not a right, and is extended to prevent irremediable injustice being done, where by accident a party has not been heard.

Mistakes in decree.

In *Srimantu Rajah Yarlagaddu Durga* v. *Srimantu Mulli-*

(*r*) *Kielley* v. *Carson* (Newfoundland, 1842), 4 Moo. at p. 91, where *Beaumont* v. *Barrett* (Jamaica, 1836), 1 Moo. 59, and *Burdett* v. *Abbott* (1811), 14 East, 137, are examined; see also *Lindo* v. *Barrett* (Van Dieman's Land, 1858), 9 Moo. 456, and *Fenton* v. *Hampton*, 11 Moo. 347, 396, where *Kielley* v. *Carson* is reviewed and upheld. And where the case had been heard *ex parte* an order was made before judgment for rehearing. *Bahadur Singh's Case*, July 4, 1901.

(*s*) *Harrison* v. *The Queen*, 10 Moo. 225.

(*t*) 11 A. C. at p. 662; 10 Mad. 73, under title *In re Appa Rao.*

karjuna, Lord Watson said a re-hearing of an appeal decided by the Judicial Committee and followed by the Order of the Sovereign in Council could only be granted in cases referred to in the above decision (*In re Appa Rao*), "and in the event of some misprision having occurred, as, for instance, the terms of the decree adjudicating something which had not been, in the view of their lordships' Board, decided, or which they had not had the means of deciding, or where the decree did not carry out the terms of the judgment" (*u*). The House of Lords, however, have gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments, or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies (*x*). The Archives of the Privy Council possess precedents where the Sovereign in Council has, after the Order in Council has been passed, corrected by the issue of a new Order in Council manifest inaccuracies which have inadvertently crept into the decree of the Sovereign (*y*).

Inadvertent inaccuracies.

In the ecclesiastical cause of *Hebbert* v. *Purchas* (*z*), before the report of the Judicial Committee had been made and approved, the Judicial Committee refused a re-hearing, although the matter was not *res judicata*, the Board thinking that great public mischief would arise if any doubt was thrown on the finality of its decisions; the petition for a re-hearing was addressed to Her Majesty in Council and was specially referred to the Judicial Committee, who declined to entertain it. In the above case the appeal had been heard *ex parte* (*a*).

Re-hearing refused.

When an order directing the appellant to pay money into court was made by the Privy Council in ignorance of the fact that an order to the same effect had already been made

Variation of order.

(*u*) I. L. R. 14 Madras (1891), 439.

(*x*) 1 Moo. 117, 126 *et seq.*

(*y*) *Apap* v. *Strickland* (Malta, 1882), 7 A. C. 156; and see *Ravenna Chitty's Case*, P. C. Arch. 1883, where the inaccuracy in a date was discovered after the judgment but before the issue of the Sovereign's decree.

(*z*) L. R. 3 P. C. 664.

(*a*) See also in *Mussumat Ranee Surno Moyee* v. *Shooshee Mokhee Burmonia* (Calcutta, 1869), 6 Moo. (N. S.) 360.

by the High Court in India and acted upon by the appellant, their lordships, on ascertaining the true facts of the case, varied their order. *Rajah Deedar Hossein* v. *Ranee Zuhorrunissa*, 2 Moo. I. A. 441.

Money paid pending appeal bears interest.

The Committee, in recommending the reversal of a decree of the court below for the payment of a sum of money which has been executed pending appeal, will direct the repayment of the money, with interest. The lower court, in executing such a decree made on appeal, should enforce the payment of interest on the sum so paid, even where interest is not mentioned in the decree; the courts, from the lowest to the highest, being considered, as it were, an aggregate authority, by whose acts justice must be fully done, which would not be the case unless interest were allowed (*b*).

When interest not payable.

But the Board's decree will not direct interest to be paid upon a sum of money claimed by the plaintiff where interest was not asked for in the original action, and will disallow it if the court below orders payment. Thus where a decree of the Court of Appeal, affirmed by an Order in Council, had ordered the repayment of money received by the appellant in excess of his salary, but was silent as to interest on the sum, it was held that as the Order in Council intentionally omitted a direction to pay interest, the discretion of the court below in making an order to pay interest should be overruled. No claim for interest was made at the beginning of the action, and it should be charged only on the amount decreed from the date of the decree of the Court of Appeal. *Burland* v. *Earle*, (1905) A. C. 570.

Refusal to carry Sovereign's decree into execution.

In the case of *Rodger*, *etc.* the appellant obtained leave to appeal from the refusal of the court below to issue execution for interest upon the amount of the judgment money paid into court by the appellant as the condition of his being allowed to appeal, and presented a petition to the Privy Council praying that the matter should be referred to the Judicial Committee. The Privy Council, however, were of opinion that it was a matter for a supplementary appeal (7 Moo.

(*b*) *Rodger* v. *Comptoir d'Escompte de Paris* (Hong Kong, 1871), 7 Moo. (N. S.) at p. 332; see also *Gopee Kissen Gossamee* v. *Brindabun Chunder Sircar* (Bengal, 1872), 19 Suth. W. R. C. R. 41.

(N. S.) 320). The Judicial Committee held that the court below having to execute and carry into effect the judgment of the Sovereign has power to order payment of interest; as otherwise the successful appellant who had to pay into court the amount of the judgment as a condition of appealing would not be restored to all he had lost by reason of the judgment reversed. Supplemental appeal.

PART III.

THE PRACTICE IN APPEALS TO THE SOVEREIGN IN COUNCIL IN ADMIRALTY, PRIZE COURT AND ECCLESIASTICAL MATTERS.

CHAPTER XV.

ADMIRALTY APPEALS.

Appellate jurisdiction of Judicial Committee.

THE appellate jurisdiction formerly vested in the Court of Delegates and the Commissioners of Prize, and which, on the constitution of the Judicial Committee in 1833, was transferred to that body (*a*), has of late years undergone a change. The jurisdiction of the High Court of Admiralty is now vested in the Admiralty Division of the High Court of Justice. Appeals which formerly lay to the Privy Council now go (except in cases of Prize) (*b*) to the Court of Appeal and thence to the House of Lords. This applies to appeals from the High Court of Justice in Ireland as well as in England (*c*).

Court exercising jurisdiction of High Court of Admiralty.

Transfer of appeals.

Prize Courts.

Appeals lie to the Sovereign in Council from all Prize Courts, whether at home or abroad (*d*).

Admiralty matters where appeal to Sovereign in Council.

In Admiralty matters appeals still lie to the Sovereign in Council from the Court of Admiralty of the Cinque Ports (*e*), from the Royal Courts of Jersey and Guernsey in their Admiralty jurisdiction, from the Staff of Government Division

(*a*) Cf. 2 & 3 Will. IV. c. 92, and 3 & 4 Will. IV. c. 41.
(*b*) 54 & 55 Vict. c. 53, s. 4.
(*c*) Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 18.
(*d*) 27 & 28 Vict. c. 25, ss. 5 and 6, and 54 & 55 Vict. c. 53.
(*e*) *The Clarisse* (1856), Swabey, 129; 12 Moo. 340; cf. *Lord Warden of Cinque Ports* v. *Rex* (1831), 2 Hag. Adm. at 447.

of the Isle of Man judiciary in its appellate Admiralty jurisdiction, and from Colonial Courts of Admiralty (*f*).

Colonial Courts of Admiralty.

The English Admiralty jurisdiction abroad was, as from July 1, 1891, vested in every court in a British possession declared, in pursuance of the Colonial Courts of Admiralty Act, 1890, to be a Colonial Court of Admiralty; or, where no such declaration is in force in the possession, in the court which possesses in such possession unlimited civil jurisdiction (*g*). The jurisdiction is to be exercised over like places, persons, matters, and things, and to as full an extent as in the High Court of England (*ibid.* s. 2 (2)).

Jurisdiction in Prize and Slave Trade matters.

A Colonial Court of Admiralty is to have the more limited jurisdiction conferred on a Vice-Admiralty Court by any Act as to Prize or Slave Trade, and not the jurisdiction thereby conferred exclusively on the High Court of Admiralty or the High Court of Justice. Unless duly authorised, the Colonial Court is not to exercise any jurisdiction in relation to Prize (*ibid.* s. 2 (3)).

Enactments as to appeals in Admiralty matters.

All enactments relating to appeals to His Majesty in Council or to the powers of His Majesty in Council, or the Judicial Committee in relation to those appeals, are to apply to appeals under the Act. See sub-sect. 5 of sect. 6, which provides as to appeals. Local rules of court approved by His Majesty are to have force as part of the Act (s. 7). The provisions of the Act with respect to appeals to His Majesty in Council are as follows:

Local Admiralty appeal.

5. Subject to rules of court under this Act, judgments of a court in a British possession given or made in the exercise of the jurisdiction conferred on it by this Act, shall be subject to the like local appeal, if any, as judgments of the court in the exercise of its ordinary civil jurisdiction, and the court having cognizance of such appeal shall for the purpose thereof possess all the jurisdiction by this Act conferred upon a Colonial Court of Admiralty.

Admiralty appeal to the Sovereign in Council.

6.—(1.) The appeal from a judgment of any court in a British possession in the exercise of the jurisdiction conferred by this Act (*h*), either where there is as of right no local

(*f*) Cf. ss. 17, 9 and 6 of the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27).

(*g*) 53 & 54 Vict. c. 27, s. 2, and s. 16 (1).

(*h*) By sect. 2 (3) (b), a Colonial Court of Admiralty is to have jurisdiction under the Slave Trade Act, 1873. By sect. 21 of that Act an

appeal or after a decision on local appeal, lies to Her Majesty the Queen in Council.

Conditions.

(2) Save as may be otherwise specially allowed (*k*) in a particular case by Her Majesty the Queen in Council, an appeal under this section shall not be allowed—

(a) from any judgment not having the effect of a definitive judgment unless the court appealed from has given leave for such appeal, nor

(b) from any judgment unless the petition of appeal has been lodged within the time prescribed by rules (*l*), or if no time is prescribed within six months from the date (*m*) of the judgment appealed against, or if leave to appeal has been given then from the date of such leave.

(3) For the purpose of appeals under this Act, Her Majesty the Queen in Council and the Judicial Committee of the Privy Council shall, subject to rules under this section, have all such powers for making and enforcing judgments, whether interlocutory or final, for punishing contempts, for requiring the payment of money into court, or for

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appeal is given to the Treasury from any decree, order, or declaration which is made by any British Slave Court in pursuance of that Act, and involves the payment by the Treasury of any bounty, costs, expenses, compensation, damages, or other moneys in like manner as if they were parties to the proceeding in which such decree, order, or declaration was made. See sect. 30 of the Slave Trade Act.

(*k*) This removes a hardship. In 5 Geo. IV. c. 113 (incorporated with the Slave Trade Act, 1873), conditions of appeal had been absolutely introduced by statute. Cf. *Logan* v. *Burslem* (Sierra Leone, 1842), 4 Moo. 296, where the Judicial Committee held they "had no power to dispense with the enactment." For circumstances in which the time may be extended, cf. *Cassanova* v. *The Queen* (Sierra Leone, 1866), 3 Moo. (N. S.) 484; *The Aquila* (St. Helena, 1849), 6 Moo. 102. Foreigners as well as British subjects are equally bound by the time limit, it being the law of the forum. *Logan* v. *Burslem*, *supra*.

(*l*) This enactment makes it clear that the asserting or interposing the appeal is not referred to. The time within which the appeal is to be asserted is fixed by the local rules. In appeals from Colonial Courts of Admiralty, which are courts of civil jurisdiction exercising the jurisdiction as such under this Act, the appeal in the Privy Council follows the practice in civil cases, and the petition of appeal is lodged with the Registrar of the Privy Council instead of being lodged with the King's Registrar in the Admiralty Division of the High Court, as was the old practice, and as is still the rule in Prize cases.

(*m*) "From the date" means the date the judgment is given, not when drawn up. *The Brinhilda* (1881), 45 L. T. (N. S.) 389. See *The Ricardo Schmidt* (1866), L. R. 1 P. C. 115, The Judicial Committee Rules, however, now fix a different limit (see p. 278), and probably would be followed.

any other purpose, as may be necessary, or as were possessed by the High Court of Delegates before the passing of the Act (*n*) transferring the powers of such court to Her Majesty in Council, or as are for the time being possessed by the High Court in England or by the court appealed from in relation to the like matters as those forming the subject of appeals under this Act. Enforcing judgment.

(4) All Orders of the Queen in Council or the Judicial Committee of the Privy Council for the purposes aforesaid or otherwise in relation to appeals under this Act shall have full effect throughout Her Majesty's dominions, and in all places where Her Majesty has jurisdiction (*o*).

(5) This section shall be in addition to and not in derogation of the authority (*p*) of Her Majesty in Council or the Judicial Committee of the Privy Council arising otherwise than under this Act, and all enactments relating to appeals to Her Majesty in Council or to the powers of Her Majesty in Council or the Judicial Committee of the Privy Council in relation to those appeals, whether for making rules (*q*) and orders or otherwise, shall extend, save as otherwise directed by Her Majesty in Council, to appeals to Her Majesty in Council under this Act.

Old rules as to appeals from Vice-Admiralty Courts no longer in force.

The operation of the Colonial Courts of Admiralty Act was delayed in New South Wales, Victoria, St. Helena, and British Honduras, but by Order in Council of May 4, 1911, the Act is brought into force as from July 1, 1911, in these four colonies ; and thus appeals from Vice-Admiralty Courts are now, except possibly from India (see *infra*, p. 370), altogether abolished. Until new rules under the Act of 1890 have been approved by the Sovereign in Council (s. 7), the rules in operation at the passing of the Act governing the steps to be taken in the court below are to remain in force (s. 16 (3)) ; so far as such rules are inapplicable or do not extend, the rules of court for the exercise by the court of its ordinary jurisdiction shall have effect (*ibid.*). In

(*n*) The 2 & 3 Will. IV. c. 92.

(*o*) See Foreign Jurisdiction Act, 1890, and cf. the British Settlements Act, 1887.

(*p*) See further, 3 & 4 Will. IV. c. 41, ss. 21, 28. App. A., p. 427, ff.

(*q*) The power under 6 & 7 Vict. c. 38, s. 15, by which the Judicial Committee made rules as to practice in appeals from Admiralty and Vice-Admiralty Courts is repealed.

practically all the courts of the colonies and foreign jurisdictions which are invested with Admiralty jurisdiction rules have now been passed regulating the conduct of appeals in the court from which it is brought. In most cases the rules follow the form of the Rules of 1883, which had general application to appeals from Vice-Admiralty Courts, and are set out below.

Rules of 1865 now apply to Ecclesiastical appeals only.

With regard to the steps to be taken in the appeal when it arrives in England, the rules of practice introduced by the Order in Council of 1853 never applied to Vice-Admiralty or Ecclesiastical appeals; certain other rules appended to an Order in Council, dated December 11, 1865, were made applicable to these matters under the Judicial Committee Act, 1843. (See p. 374, ff.) But as the Vice-Admiralty Courts are now abolished these rules now only govern the procedure and the steps to be taken in the Privy Council in Prize and Ecclesiastical appeals. They do not apply to appeals coming from Colonial Courts of Admiralty, which will follow in England the procedure indicated in appeals from the courts in their civil jurisdiction. (See Chapters VIII.—XIII.)

Limit of appeal.

The appeal to the Sovereign under the Colonial Courts of Admiralty Act, 1890, lies only from a definitive judgment unless the court below gives leave. This accords with the old practice of the Admiralty Court. The consequence is that the power is reserved of appealing at the same time from all grievances that have been done previously or inflicted in the suit by the judge from whom the appeal is brought. *The Sally*, 2 Rob. 227. The Judicial Committee Rules as to the printing of the record and lodging the petition of appeal must be followed. They are rules prescribing the time within sect. 6 (2) (b) of the Colonial Courts of Admiralty Act.

Rules for appeals from Colonial Courts of Admiralty.

Local Rules have been made and approved by Order in Council under sect. 7 of the Colonial Courts of Admiralty Act in the following possessions: Gibraltar, Canada, Jamaica, Newfoundland, Straits Settlements, Fiji, and Queensland.

In the case of the Exchequer Court of Canada and the Supreme Court of Jamaica and Fiji, the rules which govern the procedure of appeal to the Privy Council in

civil cases are applied also to Admiralty appeals. In the other colonies special rules are provided for the steps to be taken in the Admiralty appeals in the colonial court. Save in the case of Gibraltar, which is dealt with below, these rules follow the form of those that were in use for Vice-Admiralty Courts under the Order in Council of 1883. (See p. 368.)

Exchequer Court of Canada.

The Exchequer Court of Canada, being a court of "unlimited civil jurisdiction" as defined by the Colonial Courts of Admiralty Act, is within Canada a Colonial Court of Admiralty, and as a Court of Admiralty within Canada has and exercises all the jurisdiction, powers, and authority conferred by the Colonial Courts of Admiralty Act, 1890, and the Admiralty Act, 1891 (Dom.). See 54 & 55 Vict. (Dom.) (1891), c. 29, s. 3. Cf. *Bow, McLachlan & Co.* v. *Ship Camosun*, (1909) A. C. 597.

By sect. 14 an appeal lies to the Exchequer Court from any final judgment, decree, or order of any local judge in Admiralty. An appeal may, however, be made direct to the Supreme Court of Canada from any such judgment, etc., of a local judge, subject to the provisions of the Exchequer Court Act regarding appeals. An appeal of right lies from the Canadian Supreme Court under the same section from a judgment pronounced in an appeal thereto from a decree of a Colonial Court of Admiralty; and special leave need not be obtained from the Privy Council, as is the case with other appeals from the Supreme Court. *Richelieu and Ontario Navigation Co.* v. *Owners of S.S. Breton*, (1907) A. C. 112. By sect. 17 of the Dominion Act, until otherwise provided by the Governor-General in Council, the following provinces shall be constituted Admiralty districts:—(a) the province of Quebec with a registry at the city of Quebec; (b) the province of Nova Scotia with a registry at Halifax; (c) the province of New Brunswick with a registry at St. John; (d) the province of Prince Edward Island with a registry at Charlottetown; and (e) the province of British Columbia with a registry at Victoria; and by sect. 18, there shall be a registry of the Exchequer Court on its Admiralty side at Toronto, and the Governor in Council may from time to time fix the limits of such registry, which shall be known as the "Toronto Admiralty District."

Rules of 1883 repealed.

The Canada Order in Council, March 15, 1893, provides rules regulating procedure and practice in the Exchequer Court of Canada in its Admiralty jurisdiction, and by rule 230 repeals the rules for the Vice-Admiralty Courts, 1883.

No rules in place thereof.

Rule No. 228 of those appended to the Order in Council provides: "In all cases not provided for by these rules, the practice for the time being in force in respect to Admiralty proceedings in the High Court of Justice in England shall be followed."

Inasmuch as no one of the rules of the High Court of Justice applies to appeals to the Privy Council, and the Order in Council does not provide any substitute for the rules 150—155 of the Rules of 1883 as to the proceedings to be taken in the court appealed from on appeals to the King in Council, the rules governing procedure in appeals in civil cases (*semble*) apply also to appeals in Admiralty cases.

The Rules of 1883, which form the model of the rules made under the Act of 1890 for governing the procedure in the court below in appeals from a Colonial Court of Admiralty to the Privy Council, and which apply to such appeals where no special rules have been made, are as follows:

Colonial Rules in Admiralty Appeals.

Notice of appeal.

A party desiring to appeal shall within one month from the date of the decree or order appealed from, file a notice (*s*)

(*s*) **Form of Notice of Appeal (No. 51) under Rule .**

In the Colonial Court of Admiralty of .

[*Title of Action.*]

Form of notice of appeal.

Take notice that I, A. B., plaintiff [*or* defendant], appeal from the decree [*or* order] of the Judge of the said Court made the day of .

Dated the day of .

(Signed) A. B., Plaintiff.

Defendant.

Where neglect is made to interpose the notice of appeal in time, if leave be granted by the Judicial Committee, it may be only on terms such as payment of costs. *Queen* v. *Belcher* (1849), 6 Moo. 471. Ignorance of the rule is not sufficient excuse for non-compliance and will not entitle the appellant to be let in to appeal. *The Queen* v. *Diaz* (*The Aquila*) (St. Helena, 1849), 6 Moo. 102; and see *Lindo* v. *The King* (Sierra Leone, 1836), 1 Moo. 3; and *Cremidi* v. *Parker* (1857), 11 Moo. 79.

of appeal and give bail (*t*) in such sum, not exceeding 300*l*., as the judge may order, to answer the costs of the appeal.

Notwithstanding the filing of the notice of appeal, the judge may at any time before the service of the inhibition proceed to carry the decree or order appealed from into effect, provided that the party in whose favour it has been made gives bail to abide the event of the appeal, and to answer the costs thereof in such sum as the judge may order. Bail.

An appellant desiring to prosecute his appeal is to cause the registrar to be served with an inhibition and citation, and a monition for process, or is to take such other steps as may be required by the practice of the Appellate Court. Inhibition, citation, or monition.

On service of the inhibition and citation all proceedings in the action will be stayed. Stay.

On service of the monition for process the registrar shall forthwith prepare the process at the expense of the party ordering the same. Process.

The process which shall consist of a copy of all the proceedings in the action shall be signed by the registrar, and sealed with the seal of the court, and transmitted by the registrar to the registrar of the Appellate Court. Transmission of process.

An Order in Council of 22nd April, 1910, prescribes the following rules for the Supreme Court of Gibraltar in its Admiralty jurisdiction :— Admiralty appeals from Gibraltar.

In Ecclesiastical and Admiralty cases the party who is cited to appear, if he denies the right to appeal, ought to appear under protest, and not absolutely. *Sherwill* v. *The King* (Gib. 1836), 2 Moo. 1; *Loughnan* v. *Haji Joosub Bhulladina* (*The Hydroos*) (Bombay, 1851), 7 Moo. 373; *Shire* v. *Shire* (Mauritius, 1845), 5 Moo. 81; *Casement* v. *Fulton* (Calc. 1845), 5 Moo. 130. So if a party is cited as a resident within the jurisdiction, and appears and pleads without objection, he cannot afterwards put that fact in issue. *Chichester* v. *Donegal*, 6 Madd. 275. If he appears absolutely and only objects by his case, and by his counsel at the hearing, or only objects when the appeal is ready for hearing, and actually entered in the paper, this conduct will affect the question of costs; but it does not appear that it will prevent the Judicial Committee from entertaining his objection, especially if it be to the effect that the appeal has been perempted, or that the leave granted was a nullity. *Loughnan* v. *Haji Joosub Bhulladina* (*The Hydroos*), 7 Moo. 373; *Retemeyer* v. *Obermuller* (Berbice, 1838), 2 Moo. 93; and see *Pisani* v. *Att.-Gen. of Gibraltar* (1874), L. R. 5 P. C. at p. 525. To deny right of appeal, respondent should appear under protest.

(*t*) Where bail has been given in the court below in pursuance of this rule, the Privy Council may dispense with a requirement to give additional bail. *Hunter* v. *SS. Hesketh*, (1891) A. C. 628.

(1) A party desiring to appeal to His Majesty in Council from a judgment of the court shall, within one month from the date of such judgment, file in the said court a notice of appeal, if the said judgment is a definite judgment, and a petition for leave to appeal if the said judgment is a judgment not having the effect of a definite judgment, and shall serve the opposite party with a copy of such notice or petition.

(2) A party desiring to appeal to His Majesty in Council from a definitive judgment of the court, or having obtained leave to appeal to His Majesty in Council from a judgment not having the effect of a definitive judgment, shall, within a period to be fixed by the court, but not exceeding three months from the notice of appeal, or from the obtaining of leave to appeal, as the case may be, enter into good and sufficient security to the satisfaction of the court, in a sum not exceeding 300*l.* for the due prosecution of the appeal and the payment of all such costs as may thereafter become payable to the respondent, and shall without delay take all necessary steps for procuring the preparation of the record of proceedings and the dispatch thereof to England.

Then follow rules for the stay of execution, the preparation of the record, the consolidation of appeals, and the withdrawal or dismissal of an appeal which agree with those in the Colonial Appeal Rules (Chap. II., *supra*). And finally power is given to the court to enlarge or abridge the time appointed by the rules or fixed by any order enlarging time on such terms, if any, as the justice of the case may require.

Colonial Courts of Admiralty in India.

Admiralty Appeals from India.—The Colonial Courts of Admiralty (India) Act, 1891, constituted the following courts of unlimited civil jurisdiction as Colonial Courts of Admiralty:

(1) The High Court, Bengal.
(2) The High Court, Madras.
(3) The High Court, Bombay.
(4) The Chief Court of Lower Burmah.
(5) The Court of the Resident at Aden.
(6) The District Court of Karachi.

Rules by Order in Council have been made under sect. 7 of the Colonial Courts of Admiralty Act, 1890, as to the

Courts at Aden, Bombay, and Karachi, and Calcutta. (See as to the last an Order in Council, December 16th, 1911.)

The rules provide that the forms in use in the Admiralty Division of the Supreme Court in England shall be followed as nearly as the circumstances allow, and that the proceedings in suits brought in the court in the exercise of its jurisdiction under the Colonial Courts of Admiralty Act, 1890, not provided for by the rules, shall be regulated by the rules and practice of the court in suits brought in it in the exercise of its ordinary original civil jurisdiction. It is presumed therefore that the rules in the Code of Civil Procedure applicable to appeals to the Privy Council will apply also to Admiralty appeals from the Indian courts.

Colonial Courts of Admiralty in foreign jurisdictions.

The British courts established under the Foreign Jurisdiction Acts have been constituted Colonial Courts of Admiralty by various Orders in Council (*u*), wherever they are situate in a maritime country. Where no special rules have been made for the Admiralty jurisdiction, it is presumed that the rules governing the procedure before the Colonial court in civil appeals will apply.

Cyprus.

In the case of Cyprus, an Order in Council of 1910 provides special rules for Admiralty appeals as follows:

A party desiring to appeal to His Majesty in Council from any definitive judgment of the court shall—

Notice of appeal within a month.

(a) within one month of the date of the judgment appealed from, serve upon every other party to the action and upon the registrar of the court a notice in writing signed by him or his advocate stating that he appeals from such judgment; and

Security.

(b) within a period to be fixed by the court but not exceeding three months from the date of such judgment give security to the satisfaction of the court to an amount not exceeding 300*l.*, and shall without delay take all necessary steps for forwarding the preparation of the record of proceedings and the despatch thereof to England (*v*).

(*u*) See above, pp. 118 ff.

(*v*) The other rules are identical with those which regulate civil appeals, save that the court is given power to enlarge or abridge the times appointed by the rules.

CHAPTER XVI.

APPEALS FROM PRIZE COURTS (*a*).

Prize appeals.

THE jurisdiction of the High Court of Admiralty when acting as a Prize Court under the Naval Prize Act, 1864, is now vested in the High Court in England (Probate, Divorce and Admiralty Division). The appeal lies to the King in Council (*a*) from "any order or decree of a Prize Court as of right in case of a final decree, and in other cases with the leave of the court making the order or decree" (*b*).

High Court in England.

The appeal from the High Court (Admiralty Division) when acting under sect. 14 of the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), with reference to a claim to a ship, etc., captured as "prize of war" in violation of His Majesty's neutrality, is to the Court of Appeal. (See sect. 27.)

Prize Courts.

The Admiralty Division of the High Court of Justice at home, and the Colonial Courts of Admiralty abroad, when duly empowered by their commissions, constitute the Prize Courts of First Instance (*c*).

Jurisdiction in prize Colonial courts.

A Colonial Court of Admiralty (*d*) possesses the jurisdiction conferred by the Naval Prize Act, 1864, the Slave Trade Act, 1873, and by any enactment relating to prize or the slave trade, on a Vice-Admiralty Court. It does not possess the jurisdiction by any of those Acts conferred exclusively on the High Court of Admiralty or the High Court of Justice. But unless for the time being duly authorised, the Colonial Court of Admiralty is not authorised to exercise any jurisdiction under the Naval Prize Act, 1864, or otherwise in relation to prize.

Colonial Courts of Admiralty acting as Prize Courts.

Rules in respect of prize proceedings in Colonial Courts of Admiralty have been made by an Order in Council of

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(*a*) See Supreme Court of Judicature Act, 1891 (54 & 55 Vict. c. 53). The Naval Prize Bill which was introduced into Parliament in 1911, and is likely to be reintroduced this year, provides a new Code of Prize Law. An appeal is given not to the King in Council but to a Supreme Prize Court consisting of certain members of the Judicial Committee. Power is given to make new rules regulating the procedure of the Supreme Prize Court.

(*b*) Naval Prize Act, 1864, s. 5.

(*c*) For the practice in prize cases, see "A Manual on Naval Prize Law" (1888), by T. E. Holland.

(*d*) See Col. Cts. of Adm. Act, 1890, s. 2 (3) (b).

1898. These rules, so far as they relate to procedure, are instructions, under sect. 2 of the Prize Courts Act, 1894, for regulating the procedure of such courts as Prize Courts. Rules Nos. 229—234 relate to appeals from Colonial Courts of Admiralty acting as Prize Courts, and are taken from and almost identical with the Rules of August 22, 1883 (see p. 369), governing the steps to be taken in Vice-Admiralty Courts on appeal to the Crown in matters of ordinary Admiralty jurisdiction. A set of rules, approved by Order in Council dated October 20, 1898, governs the practice in proceedings in prize in the High Court. The rules as to appeals are in the same terms. The above-named rules apply to the steps to be taken in the appeal in the Prize Court of first instances, but do not apply to the steps to be taken in the Appellate Court, which are regulated by rules made in 1865.

Rules of procedure in Appellate Court.

It is submitted that as the Rules of 1908 apply subject to the provisions of any statute or any statutory rule or order to all matters falling within the appellate jurisdiction of His Majesty in Council they are to be read together with the Rules of December 11, 1865 (*infra*, p. 374), which govern the steps to be taken in the Appellate Court in appeals in ecclesiastical and prize causes, and still regulate appeals in prize from Colonial Courts of Admiralty. (See note (*a*) *supra*.)

Time for inhibition.

High Court and Colonial courts.

If the appeal be from the High Court of Admiralty, the usual inhibition must be extracted within three months of the date of the order appealed from, and within six months if the appeal be from a Colonial Admiralty Court, though the Judicial Committee have a discretion in extending the time.

Registrar.

The Registrar of His Majesty in prize appeals, a special official appointed by their lordships, is the proper custodian of all processes and documents required in any appeal (*dd*). Formerly all prize appeals prayed to the Sovereign were received and allowed by their lordships without previous petition of appeal to or reference from the Sovereign, and the sentence either affirmed or reversed by the Judicial Committee without any report of their opinion to the Sovereign. This practice is now altered, and the petition of appeal will be

(*dd*) The Naval Prize Bill proposes that the Registrar of the Judicial Committee shall be the Registrar of the Supreme Prize Court.

lodged and the reference to the Judicial Committee follow the practice prescribed in the Rules of December 11, 1865.

Enforcement of decree in prize appeal.

The High Court in England (Admiralty Division) is empowered by statute to enforce any order or decree either of the Judicial Committee or of a Vice-Admiralty Court in matters of prize.

Rules of 1865.

Rules for the conduct before the Privy Council of ecclesiastical and maritime appeals made by Order in Council of 1865—though it has been proposed to change them—still apply to prize and to ecclesiastical appeals, save where they are displaced by special rules prescribed by Act of Parliament.

Definitions.

1. In the construction of these rules, the following terms shall (if not inconsistent with the context or subject-matter) have the respective meanings hereinafter assigned to them (that is to say) :—

Appeal. "Appeal" shall mean an appeal to Her Majesty in Council in any ecclesiastical or maritime cause:

Judicial Committee. "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. "Registry" shall mean the registry of Her Majesty's Court of Appeals in ecclesiastical and maritime causes:

Registrar. "Registrar" shall mean the registrar of His Majesty in ecclesiastical and maritime causes (*f*):

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

Month. "Month" shall mean calendar month.

Solicitors entitled to practise in appeal.

2. Any solicitor, attorney, or proctor who shall be entitled to practise in the High Court of Chancery in England, in

(*f*) The duty of the King's Registrar is now discharged by the Registrar of the Privy Council. See O. in C. 1904, *infra*, p. 403.

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.

Petition of appeal.

3. Any 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* (*g*), 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 (*h*).

Reference of petition.

4. When the registrar has ascertained that the petition of appeal has been referred to the Judicial Committee, he may, on the application (*i*) 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.

Inhibition, citation and monition.

Dismissal of inhibition, etc., not taken out in one month.

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 (*k*) and citation and the monition for process (*l*), the appeal shall stand dismissed.

(*g*) An appeal *apud acta* is when, on the decree being made by the court, the solicitor or proctor for the party aggrieved gives personally notice to the registrar that he appeals therefrom, and the registrar enters this appeal in the court minute book. An appeal *in scriptis* is an instrument of appeal in writing on a shilling stamp (see Stamp Act, 1870; and cf. *Smyth* v. *S.*, 4 Hagg. Eccl. 72 (1831)) attested by a notary and two witnesses. The appeal should be interposed within fifteen days of the judgment. Cf. *The Ulster* (1862), 1 Lush. 424, and *The Florence Nightingale* (1862), *ibid.* 530. The appellant should not only be expeditious in asserting his right or intention of appealing, but he should do nothing in furtherance of the sentence or judgment as attending to tax; otherwise he may forfeit or perempt his right. *Brown* v. *Devonport* (York, 1857), 11 Moo. 297; *Lloyd* v. *Poole* (1831), 3 Hagg. Eccl. at 481; *Greg* v. *G.* (1824), 2 Add. Eccl. 276.

(*h*) See *infra*, p. 381.

(*i*) When the appeal from the lower court was not as of right, and leave to appeal was applied for *ex parte*, the Judicial Committee declined to issue inhibition, but directed a citation and monition to issue.

(*k*) The inhibition is generally issued as a matter of course; but if there is doubt as to the competency of the appeal, the court will consider whether there is sufficient ground for issuing the inhibition. *Herbert* v. *Herbert* (1817), 2 Phill. 444; *Poole* v. *Bishop of London* (1861), Brod. & Freem. Eccl. Cas. 176.

(*l*) The process consists of the whole proceedings and proofs in the court below.

Service of inhibition, etc.

6. The inhibition and citation shall be served on the registrar (*m*) 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 (*n*).

Inhibition, etc., to be returned, served together with the process.

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 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.

Appearance by respondent.

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.

Declaration of adhesion by respondent.

9. If the respondent's solicitor desires to adhere (*o*) to the

(*m*) As to service in an Ecclesiastical appeal of a citation where respondent is out of England by posting at the Royal Exchange, see *Law* v. *Campbell* (1827), 1 Hagg. 55. The court below may at any time, unless stayed by an inhibition, proceed to the enforcement of the sentence. But if, after being served, the court below proceeds, or refuses to comply with the monition from the Judicial Committee, attachment will be issued against the judge and registrar for contempt. *Barton* v. *The Queen* (Gibraltar, 1840), 2 Moo. 20 ; *ibid.* p. 23, the inhibition is set forth ; and see the orders there made, p. 27. See further, the same case, *Barton* v. *Field* (1843), 4 Moo. 273. As to enforcement of decree of Judicial Committee where monition to pay taxed costs has not been obeyed, cf. *Lapraik* v. *Burrows* (Vice-Adm. 1859), 13 Moo. 132 ; and *Martin* v. *Mackonochie* (1870), 7 Moo. (N. S.) at p. 254, and cases referred to in note (*a*) thereto.

Attachment of judge for contumacy.

Enforcement of decree.

(*n*) The court appealed from cannot afterwards declare an appeal to be deserted. That power remains with the Court of Appeal. *Rookes* v. *R.* (1840), 2 Curt. 350.

Non-appellant party adhering.

(*o*) It is competent to a non-appellant party in the original cause to adhere to the appeal interposed by another party therein, so far as his interest is prejudiced by the sentence or decree appealed from. By so doing he takes the benefit of the appeal, and obtains a re-hearing of the question, which more particularly regards himself. *Hitchings* v. *Wood* (1838), 2 Moo. 355. *See Hocquard and Others* v. *The Queen* (St. Helena, 1857), 11 Moo. 155, as to a party not cited in the monition being admitted by the Appellate Court to intervene in the appeal. If

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.

Printed copies of appendix by appellant.

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 (*p*), and if he shall not do so, the appeal shall stand dismissed (*q*).

Appendix. Index.

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.

Appellant's case.

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 (*q*).

Respondent's case.

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.

Case to stand for hearing.

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.

Appellant out of kingdom to give security.

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*

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however, the appeal is dropped, the adherence drops also, and the adherent cannot appeal. It is therefore common for parties to appeal independently in preference to adhering.

(*p*) That is, the record or appendix of the documents and other papers referred to in the cases of the parties, or documents filed in the court below material to the issue of the appeal. Cf. r. 28, note (*t*), *infra*.

(*q*) Cf. *Brownlow* v. *Garson* (1843), 4 Moo. 272, decided under the old practice, in which, on the appeal not being prosecuted, the cause was remitted to the court appealed from.

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.

Proxy.

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 (*r*) 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.

Proxy of abandonment.

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.

Extension of time.

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

Costs.

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.

Reinstatement of 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.

Relaxation of inhibition.

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

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(*r*) Proxies were formerly exhibited by each party without being called on to do so. See the statement of Dr. Lushington as to the practice in the Court of Admiralty and in the Ecclesiastical Courts as to proxies in *Harvey* v. *Owners of SS. Euxine* (Malta, 1871), L. R. 4 P. C. 8.

a relaxation of the inhibition. A form of the relaxation of inhibition is given in the Appendix, and is marked No. 11.

Remission of cause.

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.

Pleading specially.

23. Neither solicitor shall be entitled to plead specially, whether in objection to the jurisdiction, or in respect of *noviter preventa* 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.

References to registrar.

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.

Monition for payment.

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

Attachment or sequestration.

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 attach-

(*s*) For enforcing decree by attachment and sequestration, see *Martin* v. *Mackonochie* (1870), 7 Moo. (N. S.) 239. As to framing monition to churchwardens and issue of a second monition where first incorrectly framed, see *Liddell* v. *Beal* (1860), 14 Moo. 1. The Judicial Committee possess the power of suspension both *ab officio* and *ab beneficio* as a summary punishment for contumacy. This power was exercised where there was persistent contumacy in disobeying a monition. *Hebbert* v. *Purchas* (Eccl. 1872), L. R. 4 P. C. 301, approved in *Mackonochie* v. *Penzance* (1881, H. L.), 6 A. C. 424.

ment, 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.

Number of copies of case or appendix.

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

Filing documents.

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.

Order by consent.

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.

Fees.

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.

Abolition of proceedings before surrogates.

Existing practice.

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

Instruments returnable before Judicial Committee or a surrogate.

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.

(*t*) The following table of fees on hearing appeals in prize cases which was issued as a schedule to an Order in Council of June, 1853, still applies:—

FEES ON HEARING APPEALS IN PRIZE CAUSES.

Hearing a Cause.

To the successful party	5	15	6
Do. unsuccessful party	2	2	0
Where both parties may succeed, although the sentence may have been in part reversed	3	18	9
Desertion of appeal	2	17	9

Sentence taken by Consent or In pœnam.

To the successful party to whom the fees of interlocutory are charged by registrar	4	15	6
Where counsel is heard, cause not determined, each party	2	2	0
Motion by counsel, gaining party	1	1	0
Hearing an admission of allegations, or act on petition, gaining party	2	2	0
If part admitted and part rejected, each party	1	1	0

SCHEDULE annexed to the foregoing Order.

FORM No. 1.

Petition of Appeal.

In Her Majesty's Court of Appeal.

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 Court below*], the [*state name of Judge*], the Judge of the said Court, did on the day of 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 18 .

[*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 authorize 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 thereof. And that you warn them that if they do not enter an appearance as aforesaid, we shall proceed to determine the said appeal, or make such order in the premises as to us shall seem meet.

Given at London, under the seal which we use in this behalf, the day of in the year of our Lord 18 .

(L.S.) A. B.
Inhibition and citation H. M. Registrar.
Taken out by .

FORM NO. 3.

Monition for Process.

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

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 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 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 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 Privy Council : We do hereby authorize and command you jointly and severally to monish or cause to be monished the said [*state name and title of Judge of Court below*] his registrar or actuary, and all other persons in whose custody or control any of the proceedings which in any way relate to the said cause do now remain, that within days after service hereof they transmit or cause to be transmitted the whole proceedings had and done in the said cause, in a proper and authentic form, to the registry of our Court of Appeals for ecclesiastical and maritime causes situate in together with these presents.

Given at London, under the seal which we use in this behalf, the day of in the year of our Lord, 18 .

(L.S.) A. B.,
H. M. Registrar.

Monition for process
Taken out by .

FORM NO. 4.

Appearance (*u*).

In Her Majesty's Court of Appeals.

From the [*state Court appealed from*].

[*State Title of Appeal.*]

I [*state name and address of solicitor*] hereby certify, that

(*u*) Rule 8.

I am authorized to and do enter an appearance in this appeal on behalf of [*state name, address, and description of party*].

Dated the day of 18 .

[*To be signed by the solicitor or by his clerk for him.*]

FORM NO. 5.

Declaration of Adhesion (*x*).

In Her Majesty's Court of Appeals.

From the [*state Court appealed from*].

[*State Title of Appeal.*]

Whereas in a cause lately depending in [*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 Court below*], the [*state name of Judge*], the Judge of the said Court, did on the day of 18 , decree or order [*state purport of decree or order appealed from*], from which decree or order an appeal has been made to Her Majesty in Council on behalf of the said [*state name of appellant*], and has by Her Majesty been referred to the Judicial Committee of her said Council. Now I [*state name*], the solicitor for the said [*state name*], the respondent in the said appeal, do hereby adhere to the same appeal, and do dissent from the said decree or order in so far as [*state part of decree or order from which respondent's solicitor dissents*].

Dated the day of 18 .

[*To be signed by the respondent's solicitor or by his clerk for him.*]

FORM NO. 6.

Bail Bond (*y*).

In Her Majesty's Court of Appeals.

From the [*state Court appealed from*].

[*State Title of Appeal.*]

Whereas in a cause lately depending in [*state Court*

(*x*) Rule 9. (*y*) Rule 15.

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 Court below*], an appeal has been made to Her Majesty in Council on behalf of [*state name of appellant*], and has by Her Majesty been referred to the Judicial Committee of her said Council. Now therefore we [*state names and descriptions of sureties*] hereby jointly and severally submit ourselves to the jurisdiction of the said Judicial Committee, and consent that if *he* the said [*state name of appellant*] shall not pay what may be adjudged against *him* for the costs of the said appeal, execution may issue forth against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding [*state sum in words and figures*] pounds.

This bail bond was signed by the said and , the sureties, the day of , 18 .
Before me .

Signatures of sureties.

[*To be signed before the registrar or one of the clerks in the registry, or before a commissioner.*]

FORM No. 7.

Affidavit of Justification (*z*).

In Her Majesty's Court of Appeals.

From the [*state Court appealed from*].

[*State Title of Appeal.*]

I [*state name, address, and description*], one of the proposed sureties for [*state name, address, and description of the person for whom bail is to be given*], make oath and say, that I am worth more than the sum of [ ] hundred pounds after payment of all my debts.

On the day of 18 , the said was duly sworn to the truth of this affidavit at .
Before me
Commissioner.

Signature of surety.

(*z*) Rule 15.

FORM No. 8.

Commission to take Bail (*a*).

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 commissioner*] greeting:

Whereas in the above-named appeal now depending before the Judicial Committee of our Privy Council bail is required to be taken on behalf of [*state name and description of appellant*], the appellant, in the sum of two hundred pounds, to answer judgment so far as regards the costs of the said appeal: We therefore hereby authorize you to take bail in the said sum on behalf of the said [*state name of appellant*] from two sufficient sureties, who may be produced before you for that purpose, upon the bail bond hereto annexed, and to swear the said sureties to the truth of the annexed affidavits as to their sufficiency; and we command you, upon the said bail bond and affidavits being duly executed and signed by the said sureties, to transmit the same, attested by you, into the registry of our Court of Appeals for ecclesiastical and maritime causes.

Given at London, under the seal which we use in this behalf, the day of , in the year of our Lord, 18 .

(L.S.) A. B.,
Commission for bail. H. M. Registrar.
Taken out by .

The Form of Oath to be indorsed on the Commission, and to be administered to each of the Sureties.

You swear that the contents of the affidavit to which you have signed your name are true.

So help you God.

(*a*) Rule 15.

FORM No. 9.

Proxy (*b*).

In Her Majesty's Court of Appeals.

From the [*state Court appealed from*].

[*State Title of Appeal.*]

I [*state name, address and description*], lately the [*state whether plaintiff or defendant*] in a cause which was depending in the [*state in what Court*] and from the decree in which an appeal has been interposed to Her Majesty in Council, and now the [*state whether appellant or respondent*] in the said appeal, do hereby appoint [*state name and address of solicitor*] to appear and conduct all proceedings in my behalf in this appeal.

Dated the day of , 18 .

[*To be signed by the party.*]

Witness,

FORM No. 10.

Proxy of Abandonment (*c*).

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 authorize 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,

(*b*) Rule 16.

(*c*) Rule 17.

FORM NO. 11.

Relaxation of Inhibition (*d*).

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.) A. B.,
Relaxation of Inhibition H. M. Registrar.
Taken out by .

(*d*) Rule 21.

FORM NO. 12.

Remission (*e*).

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*], 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 authorize 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.) A. B.,

Remission H. M. Registrar.

Taken out by .

(*e*) Rule 22.

FORM NO. 13.

Monition for Payment (*f*).

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) the said 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, the day of , in the year of our Lord, 18 .

(L.S.) A. B.,
Monition to pay £ H. M. Register.
Taken out by .

FORM NO. 14.

Attachment (*g*).

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

(*f*) Rule 26. A monition to churchwardens should not be issued to them *nominatim*, but "for the time being." *Liddell* v. *Beal* (1860), 14 Moo. 1.

(*g*) Rule 27. Cf. form of attachment issued in *Barton* v. *The Queen*, 2 Moo. at p. 26, note, to the Judge, Registrar, and Deputy-Marshall of the Vice-Admiralty Court of Gibraltar, for contumacy.

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.) A. B.,
Attachment H. M. Registrar.
Taken out by .

Indorsement.

In Her Majesty's Court of Appeals. } To receive into your custody the body of 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 undermentioned [*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 abovenamed 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.

Given at London, under the seal which we use in this behalf, the day of , in the year of our Lord, 18 .

(L.S.) A. B.,
Supersedeas of attachment H. M. Registrar.
Taken out by .

FORM No. 16.

Sequestration (*h*).

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:

(*h*) Rule 27; and see 7 & 8 Vict. c. 69, s. 12, *supra*; cf. *Lapraik* v. *Burrows* (Hong Kong, 1859), 13 Moo. at p. 161,

To [*state names, addresses, and descriptions of the sequestrators*], 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 process of sequestration against the real and personal estate and effects of [*state name, address, and description of person whose property is to be sequestered*], 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, confiding in your prudence and fidelity, hereby command you [or two of you] that you do at certain proper and convenient days and hours enter upon all the messuages, lands, tenements and real estate whatsoever and wheresoever situate within our dominions of the said [*state name of person whose property is to be sequestered*] and that you collect and receive into your hands the rents and profits of his said real estate and all his personal estate wheresoever lying within our dominions, and keep the same in your hands until you shall have levied [*here state the sum, if any, to be levied, and any necessary directions as to the disposal thereof*], or until the said [*state name of person whose property is to be sequestered*] shall have cleared his contempt [*or as the case may be*], and our said Judicial Committee shall make other order to the contrary; and that you from time to time report to us what you shall do in the premises.

Given at London, under the seal which we use in this behalf, this day of , in the year of our Lord 18 .

(L.S.) A. B.,
Sequestration H. M. Registrar.
Taken out by .

FORM No. 17.

Relaxation of Sequestration.

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 names and addresses of sequestrators*], greeting:

Whereas the Judicial Committee of our Privy Council has ordered that the sequestration heretofore issued in the above-named appeal against [*state name of person whose property was sequestered*], bearing date the day of 18 , be relaxed, we therefore hereby command that you release all the messuages, lands, tenements, and real estate whatsoever and wheresoever situate within our dominions of the said [*state name of person whose property was sequestered*], and desist henceforth from collecting or receiving the rents and profits of his said real estate; and further, that you release all his personal estate wheresoever lying within our dominions which may not have been already disposed of by you in accordance with the tenor of our said sequestration; and that you duly report to us what you shall have done in the premises.

Given at London, under the seal which we use in this behalf this day of , in the year of our Lord, 18 .

(L.S.) A. B.,
H. M. Registrar.

Relaxation of sequestration
Taken out by .

FORM No. 18.

Sequestration of Benefice.

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 Right Reverend Father in God , by divine permission Lord Bishop of , 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 process of sequestration against [*state name of the person whose benefice is to be sequestered*], rector of the rectory [*or* vicar of the vicarage] and parish church of , in the county of , and within your diocese: We therefore hereby command that you enter into the said rectory [*or* vicarage] and parish church of and take and sequester the same into your possession, together with the rents, tithes, rentcharges in lieu of tithes, oblations, obventions, fruits, issues and profits thereof, and all other ecclesiastical goods in your diocese of and belonging to the said rectory [*or* vicarage] and parish church, and to the said as rector [*or* vicar] thereof; and that you hold the same in your possession until [*state here the purpose for which the sequestration is made, and any other necessary directions, according to the circumstances*], and until our said Judicial Committee shall make other order to the contrary; and that you from time to time report to us what you shall do in the premises.

Given at London, under the seal which we use in this behalf, this day of , in the year of our Lord, 18 .

(L.S.) A. B.,
Sequestration of benefice H M. Registrar.
Taken out by .

FORM NO. 19.

Relaxation of Sequestration of Benefice.

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 Right Reverend Father in God by divine permission Lord Bishop of , greeting :

Whereas the Judicial Committee of our Privy Council has ordered that the sequestration heretofore issued in the above-named appeal against [*state name of person whose benefice was sequestered*], rector of the rectory [*or* vicar of the vicarage] and parish church of in the county of and within your diocese, bearing date the day of 18 , be relaxed: We therefore hereby command that you release the said rectory [*or* vicarage] and parish church, together with the rents, tithes, rentcharges in lieu of tithes, oblations, obventions, fruits, issues and profits thereof, and all other ecclesiastical goods in your diocese of and belonging to the said rectory [*or* vicarage] and parish church and to the said as rector [*or* vicar] thereof, except such as may have been already disposed of by you in accordance with the tenor of our said sequestration; and that you duly report to us what you shall do in the premises.

Given at London, under the seal which we use in this behalf, this day of , in the year of our Lord, 18 .

(L.S.) A. B.,
H. M. Registrar.

Relaxation of sequestration of benefice
Taken out by .

CHAPTER XVII.

APPEALS FROM ECCLESIASTICAL COURTS.

The creation of Ecclesiastical Courts.

THE various Ecclesiastical Courts of the country were established, and their jurisdiction is determined very largely according to present-day use by a statute of Henry VIII. (24 Hen. VIII. c. 12). This statute provided for appeals from the lower to the higher courts, making the Court of the Archbishop the court of ultimate resort (*ibid.* ss. 6, 7), save only in matters touching the King, which were to be determined before the Upper House of Convocation. By a later statute, however, 25 Hen. VIII. c. 19, s. 4, "for reason of the lack of justice in the Courts of the Archbishop," an appeal was given therefrom to the King in Chancery, and it was enacted that upon such appeal "a commission shall be directed under the Great Seal to such persons as shall be named by the King, like as in case of appeal from the Admiral's Court to hear and definitively determine such appeals." The sentence of the said commissioners was to be definitive, and no further appeal allowed. Under this provision the refusal of the archbishop to entertain a suit is a matter of appeal. *Read* v. *Archbishop of Canterbury*, P. C. Arch. 1888. But the promoters, on establishing an ecclesiastical offence of illegal procedure in ceremonial and worship, are not entitled to a monition as of right, since the archbishop is entitled to accept an assurance of future submission. *Read* v. *Bishop of Lincoln*, (1892) A. C. 644.

Appeal to King in Chancery.

High Court of Delegates.

The commission above contemplated came to be known as the High Court of Delegates, on account of their receiving a special commission or delegation to try each particular cause.

Appeal to King in Council.

The High Court of Delegates was abolished, and the appeal was given to the King in Council by 2 & 3 Will. IV. c. 92, s. 3; subsequently, on the formation of the Judicial Committee, it was enacted by 3 & 4 Will. IV. c. 41, that

the hearing of appeals which may be brought before the King in Council from or in respect of the determination, sentence, rule, or order of any court, judge, or judicial officer, shall be referred to His Majesty in Council, and heard before that body. *Ibid.* s. 3. The presence of three bishops as assessors is required at the hearing of every ecclesiastical appeal.

Courts. The ordinary ecclesiastical courts are :

(1) The Provincial Courts of Canterbury and York.
The Provincial Courts of Canterbury are—
The Court of Arches (*a*), or the Supreme Ecclesiastical Court of Appeal ;
The Court of the Vicar-General ;
The Court of the Master of the Faculties ;
The Court of Audience ;
The Court of the Commissary of the Archbishop ;
[The Prerogative Court] ;
and of York—
Chancery Court or Supreme Court of the Province ;
The Consistory Court ;
The Court of Audience ;

(2) The Diocesan Courts, being the Consistorial Court of each diocese exercising general jurisdiction, *e.g.*, under the Clergy Discipline Acts.

(3) The Courts of Commissaries.

(4) The Archidiaconal Courts.

(5) Courts of various Peculiars. These courts are practically abolished. (Phill. p. 927.)

A new Court has been created by the Benefices Act, 1898.

Appeals. Appeals formerly lay directly to the High Court of Delegates, or more properly to the King in Chancery, from the following Courts :

(1) The Provincial Courts of the several Archbishops (*b*) in England and Ireland.

(*a*) See Phillimore's Ecclesiastical Law (ed. 1895), p. 22.

(*b*) *The Archbishop's Court.*—In *Lucy* v. *Bishop of St. David's* ((1693), 1 Ld. Raymond, 447, 539 ; 1 Salk. p. 134), the argument was that the citation "to appear before the Archbishop or his vicar-general in the Hall of Lambeth House" was not a citation before any court whereof the law takes notice, but that the citation should have

(2) The Peculiar Courts, such as that of the Dean and Chapter of Westminster, and many others exempt from archiepiscopal jurisdiction. Among these should be included, as partaking in some degree of an ecclesiastical character, the Court of the House of Convocation of Oxford University, from the delegates of which there are on record several appeals to the High Court of Delegates.

The civil jurisdiction comprised testamentary (*c*) and matrimonial (*c*) causes, and various kinds of ecclesiastical causes more properly so called, such as suits for church rates (*d*), tithes (*d*), and dilapidations, faculty causes, pew causes, questions as to the election of churchwardens, causes *duplicis querelæ*, instituted by a clergyman presented to a benefice to compel the bishop to admit him, and other suits in which the right of presentation or title to a benefice was in dispute.

The only ecclesiastical appeal brought under the general jurisdiction in recent years was a petition to the Judicial Committee for special leave to appeal *in formâ pauperis* against the decision of the Court of Arches upholding the judgment of a Consistory Court, which dismissed a suit against churchwardens for making alterations in a church without a faculty. But the petition was dismissed because the Board held that the petitioner had not made out a *primâ facie* case for appeal, which was necessary when it was sought to appeal *in formâ pauperis*. *Paddington* v. *Sidgurch and Others*, *The Times*, December 18, 1909.

The criminal jurisdiction embraced all "causes of correction" instituted either against a clergyman or a layman for any offence against the ecclesiastical law. Such, for instance, were suits against a clergyman for simony, non-

been before the Arches or some other court of the Archbishop. It was decided that "the Archbishop hath a provincial power over all the clergy of his province, and may hold his court where he pleases; and he may convene before himself and sit judge himself; and so may any other bishop; for the power of a chancellor or vicar-general is only delegated in the case of a bishop." This was an answer to the plea that the bishop should be tried before the Court of Arches, and this ruling was followed in *Ex parte Read*, 13 P. D. 221.

(*c*) Now sent to the High Court (20 & 21 Vict. cc. 77, 85).

(*d*) Mostly now sent by statute to the civil magistrate.

residence, neglect of duty, or irregularity in its performance; against churchwardens for not duly rendering their accounts, or for making alterations in a church without a faculty; or against either clergyman or layman for heresy, nonconformity, immorality or brawling (*e*).

Statutory jurisdiction.

Besides the above appeals, the jurisdiction to entertain which has been transferred by 2 & 3 Will. IV. to the King in Council, who now refers them to the Judicial Committee by virtue of 3 & 4 Will. IV. c. 41, appeals under the Church Discipline Act, 1840 (*f*), and the Clergy Discipline Act, 1892 (*g*), lie direct to the King in Council.

Election of Appellate Court.

By sect. 4 (4) of the Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), however, if the appellant elect to proceed by way of appeal to the Provincial Court, he is unable to appeal further to the Judicial Committee.

An appeal also lies direct to the King in Council from the Court constituted under the Public Worship Regulation Act, 1874.

Appeals from Channel Islands, etc.

Appeals from the Ecclesiastical Courts of the Channel Islands are heard and determined by the Bishop of Winchester in person, and that See being vacant, by the Archbishop of Canterbury in person. Canon 56. (It is doubtful whether there is a further appeal to Judicial Committee.) See *Dean of Jersey* v. *Rector of* ——, 3 Moo. 232, 233.

In the Isle of Man, a local statute, 37 Vict. (Stat. Isle of Man, vol. 4, p. 329), transferred the jurisdiction of the Court of the Archdeacon to the Episcopal Court of Sodor and Man, thus assimilating the practice to that of other diocesan courts.

Time limit for appeals.

The general rule in ecclesiastical matters has been that the appeal shall be asserted within fifteen days of the judgment (*h*). This period has been adopted in the Rules of 1866 under the Church Discipline Act, 1843, in the Arches Court of Canterbury, and in the Rules of 1879 under the Public Worship Regulation Act. In the Rules under the

(*e*) Ecclesiastical Courts Commission, 1883, p. 180.
(*f*) See sect. 15.
(*g*) See sect. 4.
(*h*) This time is said to have been fixed on the analogy of the time appointed for final appeals to the Archbishop by 24 Hen. VIII. c. 12, s. 6. The appeal is asserted by giving notice of appeal. Cf. *Schultes* v. *Hodgson* (1822), 1 Add. at 108.

Clergy Discipline Act, 1892, the time for giving notice of appeal varies. Where the appeal is in respect of any matter of law, the period is twenty-eight days (r. 60). Where leave is required to appeal in respect of the facts, the petition for leave must be presented within fifteen days (r. 61); and where leave is required to appeal from an interlocutory judgment, the application must be made on the judgment being given (r. 62); in either case the notice of appeal must be given within fourteen days of leave given (r. 63). Rule 90 provides for the enlargement of time by the Appellate Court, though the application for the same is not made till after the expiration of the time limited; but in order to obtain enlargement of time to appeal a perfect explanation must be given of the delay incurred. Where the petitioner lodged his petition for leave to appeal six months after an order of deprivation had been made, and alleged poverty as a reason for delay, the Board dismissed the petition. *Lee* v. *Atherton*, (1904) A. C. 805. Clergy Discipline Act.

The appeal in any case must be prosecuted, according to usage, within a year and a day from the date of the sentence appealed from; and under the Clergy Discipline Act, 1892, the appeal must be set down for hearing not less than fourteen and not more than twenty-eight days after notice of appeal is given (r. 70). Under this latter Act appeal cannot be brought from an interlocutory judgment which has not the effect of a definitive judgment on the merits except by leave of the court. This differs from the old practice of the Canon law (3 Bl. Com. 56), according to which, if a party proceeds to take any step in the cause after a grievance complained of, he is held to have perempted or lost his appeal thereon.

The rules relating to the proceedings to be taken in the court appealed from under the Church Discipline Act, 1840, in the Arches Court of Canterbury, under the Public Worship Regulation Act, 1874, and under the Clergy Discipline Act, 1892, in appeals to the King in Council are set out below. Appeal rules.

The above-mentioned rules under the Church Discipline Act, 1840, and the Public Worship Regulation Act, 1874, apply merely to the steps to be taken in the court appealed

from. The steps in such appeals in the Appellate Court are wholly governed by the Ecclesiastical and Maritime Rules of 1865. (See above, pp. 374 ff.) The rules for appeals under the Clergy Discipline Act, 1892, refer to the steps both in the court appealed from and in the Appellate Court. Rule 74 thereof conflicts with the practice under the general rules of 1865. It is, therefore, in appeals under the Clergy Discipline Act, 1892, not the practice to lodge either a printed or a written case. The lodging of any case or appendix, written or printed, appears to be clearly dispensed with by rule 74 of the Rules of 1892. To that extent the procedure in regard to such appeals prescribed by the Rules of 1865 has been altered, the object being to reduce the costs.

The statutory right of appeal.

The Clergy Discipline Act, 1892, does not render a clergyman liable to be tried thereunder in respect of any question of doctrine or ritual. With regard to proceedings instituted under the Church Discipline Act, 1840, for such offences an appeal as of right is given "to any party who shall think himself aggrieved by the judgment pronounced" (sect. 15). There, however, is "no appeal from any interlocutory decree or order not having the force or effect of a definitive sentence, and thereby ending the suit in the Court of Appeal of the province, save by the permission of the judge of such court" (sect. 13). Under the Clergy Discipline Act, 1892 (which by sect. 10 (1) thereof includes the offences referred to in the sections of the earlier Church Discipline Act which is re-enacted in the schedule of the new statute, the right of appeal is given to either party, but only from a judgment of a Consistory Court in respect of a matter of law (sect. 10 (1)). The defendant may appeal from a judgment in respect of the facts, by leave of the Appellate Court, but he must first satisfy that court that there is a *primâ facie* case. If the application appears idle and frivolous, leave will be refused. Therefore, where ample evidence was before the Chancellor of the Consistory Court to justify the decision, and it was only suggested that some evidence would be forthcoming which might to some extent qualify the evidence given before, and no definite proposition was put before the Judicial Committee, and no definite evidence suggested, and the defen-

dant, being a competent witness, did not tender himself for examination nor deny the facts alleged against him, and no new fact was alleged which ought to re-open the inquiry, their lordships were of opinion that leave to appeal ought to be refused. *Evans* v. *Wood* (Worcester Con. Ct.), L. R., (1901) A. C. 338. An appeal against any interlocutory judgment, although it has not the force or effect of a definite sentence on the merits, may be allowed by leave of the court. An appeal under the Act may be to the Provincial Court or to the Sovereign in Council at the option of the appellant, but if to the Provincial Court the decision is final (sect. 10 (4)). The appeal stays proceedings (sect. 10 (5)).

Under the Public Worship Regulation Act, 1874, an appeal as of right lies from every judgment of the judge, or monition issued in accordance therewith (sect. 9). The judge may, on application in any case, suspend the execution of such monition pending an appeal, if he shall think fit.

In any proceedings under the Public Worship Regulation Act either party may appear by himself in person, or by counsel, or by any proctor or solicitor (sect. 11, P. W. Act). The special case settled by the judge or a copy of the short-hand written notes, as the case may be, shall be transmitted to the Privy Council, for the purposes of the appeal. No further evidence will be allowed on appeal to the Sovereign in Council without the permission of the tribunal hearing the appeal (sect. 12).

The Registry.

The lodging of the case and the issue of other proceedings under the Rules of 1865 now takes place at the Council Office. The duties of His Majesty's Registrar in Ecclesiastical and Admiralty causes, which used to be performed by His Majesty's Registrar at the Admiralty Registry of the Royal Courts of Justice are, by an Order in Council, 1904, henceforth to be discharged during His Majesty's pleasure by the Registrar of the Privy Council for the time being.

The court under the Benefices Act.

The Benefices Act, 1898 (61 & 62 Vict. c. 48), creates a new Ecclesiastical Court, consisting of an archbishop and a judge of the Supreme Court, who shall be nominated from time to time for the purposes of the Act. The court constituted under the Act shall be a Court of Record, and its proceedings held in public, and at any hearing the legal

rules of evidence shall prevail. The judge is to decide questions of law and fact in respect of matters to which the Act applies, and the archbishop is to give judgment accordingly, and that judgment shall be final. The judgment is, therefore, apparently made that of the archbishop, and the court a court "of the archbishops of this realm." If this is so, an appeal would seem to lie by virtue of the 25 Hen. VIII. c. 19. As no provision is made for the procedure in such an appeal, it would seem to be open to an aggrieved party to make an application for special leave to appeal, since the prerogative right to admit an appeal cannot be taken away except by express words.

The execution of a sentence is suspended during the appeal. Cf. the "Inhibition," Form No. 2 in the Appendix to the Rules in the Order in Council of December 11, 1865 (p. 381).

No special reference of an ecclesiastical appeal is now necessary. See 6 & 7 Vict. c. 38, s. 11, and 7 & 8 Vict. c. 69, s. 9.

Application of practice under 3 & 4 Will. IV. c. 41.

The general practice under the 3 & 4 Will. IV. c. 41, applies to such appeals. (See Appendix A.) Thus the Judicial Committee may take evidence *vivâ voce*, or may direct the depositions of witnesses to be taken, or may remit causes for rehearing, or order issues to be tried. The Judicial Committee possess extensive powers for the examination of witnesses by commission, upon interrogatories and otherwise. Matters may be referred to the registrar (sect. 17) The President of the Council may issue a *subpœna ad testificandum* or *duces tecum* (sect. 19). Sect. 20 deals with the time within which appeals shall be brought.

Proceedings on appeal in the Appellate Court.

In ecclesiastical as in other appeals, the petition of appeal has now to be lodged with the Registrar of the Council, who has taken the place of the old Registrar of Ecclesiastical and Maritime Appeals. The registrar, on the application of the solicitor, issues an inhibition, forbidding the court below to proceed further in the cause, and a citation to the respondent to appear, and a monition for process, *i.e.*, a requisition to transmit the proceedings had in the court appealed from (*i*).

In ordinary practice the inhibition issues as a matter of

(*i*) Rule 4 of 1865. See *supra*, pp. 375 ff.

course, and the appeal stands dismissed, unless the inhibition, etc. are taken out within one month from the date of the petition of appeal being referred (*j*).

Remission of cause to court below.

When the Privy Council approve of the sentence of the judge below, they usually send back or remit the whole cause to him with all its incidents, to be by him carried into execution; or they may, if they please, though they remit the cause, retain the taxation and enforcement of the costs (*k*). A remit takes place more especially if anything still remains to be done; *e.g.*, where (the appeal having only been interposed from a grievance) the principal cause requires to be proceeded with, or where taxation of costs will follow upon a definitive sentence (*l*). The remission is contained in an instrument under the seal of the Superior Court, and, on its being filed in the court below, authorises the judge to proceed according to the tenor of former Acts, and to continue the proceedings as if no appeal had been brought from his decree. Where the Judicial Committee think proper to reverse the decree appealed from, they sometimes, but very rarely, retain the principal cause. Where the Court of Arches reversed the sentence of the Consistorial Court, and the Judicial Committee affirmed the sentence of the Court of Arches, the cause was retained before the Judicial Committee (*m*). A cause is also sometimes retained where the decision of the court below is affirmed. But when a cause is retained the Privy Council becomes, in effect, a court of original jurisdiction, and proceeds with the cause just as a court of first instance ought to do. There is, however, no appeal from its decisions, and for this reason it is unwilling to retain any cause, whether upon an affirmance or a reversal, where the effect of its retention would be to make the Privy Council decide it in the first instance, and to deprive it of the benefit of the discussion and judgment in the court below (*n*). If the appeal be from a grievance, and it be proved to the satisfaction of the

Retention.

(*j*) Rule 5 of 1865. As to the effect of a caveat entered against the issue of an inhibition in ecclesiastical matters, see *Herbert* v. *H.* (1817), 2 Phill. 444, and *Poole* v. *Bishop of London* (1861), Brod. & Frem. Eccl. Cas. 176.

(*k*) 2 Browne, Civ. & Adm. Law, 441.

(*l*) *Douglas* v. *Smith and Brown*, 3 Knapp, 1.

(*m*) *Harrison* v. *Harrison* (Arches Ct. 1842), 4 Moo. 96.

(*n*) *Head* v. *Sanders* (Arches Ct. 1842), 4 Moo. 186.

Appellate Court, or admitted by the appellee, the cause is retained, and the Appellate Court goes on and hears the whole merits (*o*). Where the question raised (*p*) in appeal was, whether the judge of the Arches Court was right in admitting an appeal to himself from the Consistorial Court of London (it being alleged that the person appealing from the Consistorial Court was disabled from appealing because he was in contempt), the Judicial Committee holding that the judge of the Arches Court was right, did not remit the cause to him to try on appeal, but, considering it important that the case should be heard soon, advised Her Majesty to retain it before themselves.

In *Martin* v. *Mackonochie* (February 22, 1882), in remitting the case to the Court of Arches to complete the decree by directing such lawful and canonical censure as it deemed just, the Judicial Committee declared, following *Head* v. *Sanders* (4 Moo. 197), that "except under peculiar circumstances, a Court of Final Appeal ought not to decide any cause in the first instance, as it ought to have the benefit of the discussion and judgment in the court below, and there ought not to be an original judgment pronounced from which there is no appeal."

One judgment.

As in appeals other than ecclesiastical, the practice of the Judicial Committee, following the ancient procedure laid down as to the Privy Council in the Order in Council of February 20, 1627, is to deliver but one judgment without disclosing "how the voices and opinions went." (*q*)

Appeal from Colonial Ecclesiastical Courts.

An appeal lies from Ecclesiastical Courts in the possessions of the Crown to the King in Council as well as from such courts within the realm. (See 25 Hen. VIII. c. 19, s. 4, *supra* ; and *Re Bishop of Natal* (1864), 3 Moo. (N.S.) 116.) In all such appeals the rules of 1865 govern the proceedings in the final Appellate Court.

(*o*) 1 Browne, Civ. & Adm. Law, 497 ; 2 Browne, Civ. & Adm. Law, 439.

(*p*) *Harrison* v. *Harrison, supra*, 4 Moo. 96.

(*q*) An Order in Council of February 4, 1878, re-affirming the ancient rule and practice was issued. As to the controversy caused by the late Lord Chief Baron in the Folkestone Ritual Case (*Ridsdale* v. *Clifton* (1877), 2 P. D. 276), divulging that he differed from the judgment delivered by the Lord Chancellor as that of the Judicial Committee, see Lord Selborne's pamphlet, "The Judicial Procedure in the Privy Council, 1891," and that by W. F. Finlason (1878).

The appeal lies only from some judicial determination, and it was held recently that an appeal will not lie from the act of a colonial bishop in withdrawing the nomination of a colonial chaplaincy within his diocese, since there was no litigation which the bishop had jurisdiction to detemine. *Ward* v. *Bishop of Mauritius* (95 L. T. 85).

Rules under the Appellate Jurisdiction Act, 1876, *for the Attendance of Bishops as Assessors at Ecclesiastical Appeals* (*r*). Rules for bishops acting as assessors.

I.—The Archbishop of Canterbury, the Archbishop of York, and the Bishop of London shall be *ex officio* assessors of the Judicial Committee of Her Majesty's Privy Council on the hearing of ecclesiastical cases according to the following rota, that is to say, the Archbishop of Canterbury from this day until January 1, 1878 ; the Archbishop of York from January 1, 1878, till January 1, 1879 ; and the Bishop of London from January 1, 1879 until January 1, 1880, and so on by a similar rotation for the period of one year each. Rota for Archbishops of Canterbury and York, and Bishop of London.

II.—The other bishops of dioceses within the provinces of Canterbury and York shall attend as assessors of the Judicial Committee on the hearing of ecclesiastical cases, according to the following rota, that is to say, from this day until January 1, 1878, the four bishops who on this day are the four junior bishops for the time being, seniority for the purpose of this Order to be reckoned from the date of appointment to the episcopal see ; from January 1, 1878, till January 1, 1879, the four bishops who on January 1, 1878, shall be the four bishops next in order of seniority; and from January 1, 1879, till January 1, 1880, the four bishops who on January 1, 1879, shall be the four bishops next in order of seniority, and so on by a similar rotation until the senior bishop for the time being is reached, when the rotation shall be carried back to and again commenced with the junior bishop. Other bishops.

III.—In the event of any one, or more than one vacancy occurring in the office of ecclesiastical assessor, the vacancy or vacancies shall be filled up by the person or persons then next according to the rotations aforesaid. Vacancy.

(*r*) See 39 & 40 Vict. c. 59, s. 14, and p. 11, *supra*.

Three assessors to be present at hearing.

IV.—A summons to attend on the hearing of every ecclesiastical case about to be heard before the said Judicial Committee shall be issued to the five ecclesiastical assessors for the time being; and no case shall be heard before the said Judicial Committee unless there are at least three of such assessors present at the hearing: Provided that the assessors present at the commencement of the hearing of any such case shall continue to be the assessors for that case until it shall be fully heard and disposed of, although their term of office, according to the rotation aforesaid, may in the meantime have expired: Provided also that in the event of the death, resignation, or absence, by reason of illness or other unavoidable cause, of any one of the assessors present at the commencement of the hearing, the hearing of the case may proceed so long as at least two assessors are present.

ARCHES COURT OF CANTERBURY.

RULES *and* REGULATIONS *to be observed in appeals from all causes, suits or proceedings, instituted in the Arches Court of Canterbury under the Church Discipline Act*, 1840 (*s*).

Appeal to be prosecuted within one month,

Rule 23. In the event of an appeal from any decree (*t*), or order made by the judge, such appeal must be asserted either at the time of such decree or order being made, or by notice left in the registry within fifteen days from the time of such decree or order, and the said appeal must be duly prosecuted within one month from the date of such appeal being so asserted.

otherwise proceedings to continue.

Rule 24. If no such appeal be prosecuted within the time limited by the preceding rule, the proceedings shall be continued, or the decree of the court carried into effect, as if there had been no appeal, unless notice be previously lodged in the registry that the proctor asserting the appeal intends to make application to the judge for an extension of time which application may be made in Chambers.

(*s*) The Act of 1840 "now remains only for doctrinal cases, simony, breaches of official duty, some cases difficult to classify, and ritual." Phill. Ecclesiastival Law, 2nd. ed. (1895), p. 1013.

(*t*) For an appeal from a refusal to administer the sacrament. *Jenkins* v. *Cook* (*clerk*) (Court of Arches, 1876), 1 P. D. 80.

RULES *made* (*u*) *under Public Worship Regulation Act* (37 *&* 38 *Vict. c.* 85), *issued by Order in Council, February* 22, 1879.

Appeal to be asserted within fifteen days.

Sect. 34. A party desirous of appealing from a judgment or monition (*x*) shall deliver into the provincial registry a notice of appeal within fifteen days of the service of the monition, in a case where a monition is issued, and in any other case within fifteen days of the date of the judgment; and thereupon the certified notes of evidence or the special case settled by the judge (as the case may be) shall be transmitted by the provincial registrar with the other documents to the appeal registry in manner required by the Court of Appeal.

A form of notice of appeal is given in Appendix, No. 22 (*y*).

(*u*) These rules govern the steps to be taken on asserting the appeal in the court appealed from. The steps to be taken in the Privy Council are governed by the Rules of 1865 made under 6 & 7 Vict. c. 38, s. 15.

(*x*) Where the petitioner sought relief from an inhibition prohibiting the use of vestments, etc., pending an appeal on the merits, the Judicial Committee ordered the decree to be executed pending the appeal, except the removal of a crucifix from a screen. *Ridsdale* v. *Clifton* (Court of Arches, 1876), 1 P. D. 383; 2 P. D. 276.

(*y*) APPENDIX.

FORM No. 22.

Appeal from Judgment or Monition.

In the Court of Canterbury [*or* York].

In the matter of the representation of C. D., made in pursuance of the provisions of the Public Worship Regulation Act, 1874, in which the Reverend E. F., clerk, rector [*or* vicar, *&c.*] of I. K., in the diocese of B., is the person complained of.

Whereas at the hearing of the above representation the Right Hon. , the Judge of the said Court, did, on the day of , 18 , order (*here state tenor of judgment*) [*or* issue a monition commanding the said E. F. to, &c.] (*here state tenor of monition*).

And whereas the said montion was served on the said E. F. on the day of , 18 .

Now, therefore, take notice that I, the said C. D. [*or* E. F.], hereby appeal from the said order [*or* monition] to Her Majesty in Council.

Dated this day of , 18 .

(Signed) C. D.
or
E. F.

To X. Y., Provincial Registrar.

Suspension pending Appeal of the Execution of a Monition.

Suspension of execution pending appeal.

35. A respondent shall be at liberty, at any time after a notice of appeal has been given, to apply for a summons against the complainant to show cause why the execution of a monition should not be suspended pending the appeal. At the hearing of such summons the judge will require such evidence and make such order as he shall think fit.

36. A suspension, if ordered by the judge, shall be issued from the provincial registry upon the application of the respondent, and the delivery of a præcipe for the same.

Forms of suspension and præcipe are given in Appendix, Nos. 23 and 24 (*z*).

(*z*) FORM No. 23.

Suspension of Monition pending Appeal.

Order of suspension of monition.

James Plaisted, Baron Penzance, Official Principal of the Arches Court of the Province of Canterbury [*or* of the Chancery Court of the Province of York], to E. F., clerk, rector [*or* vicar,&c.] of I. K. in the diocese of B., greeting: Whereas in the matter of a representation made by C. B. in pursuance of the provisions of the Public Worship Regulation Act, 1874, in which the said E. F. is the person complained of, a monition was issued by us [*or* by the Right Reverend A., Bishop of B.] bearing date the day of , 18 , and duly served on the said E. F., commanding him to, &c. [*here state tenor of monition*]: And whereas the said E. F. has duly appealed from the said monition to Her Majesty in Council: Now we do hereby, on the application of the said E. F., and for certain good reasons to us made known, suspend the execution of such monition pending the said appeal, or until we shall otherwise order.

Given at the day of , 18 .

(Signed) X. Y.,
Registrar.

FORM No. 24.

Præcipe for Suspension of Monition pending Appeal.

In the Court of Canterbury [*or* York].

Præcipe.

In the matter of the representation of C. D. made in pursuance of the provisions of the Public Worship Regulation Act, 1874, in which the Rev. E. F., clerk, rector [*or* vicar, &c.] of I. K., in the diocese of B., is the person complained of.

Præcipe for suspension of monition pending appeal, in pursuance of the order of the Right Honourable James Plaisted, Baron Penzance, the Judge of the said Court, made on the day of ,

Dated the day of , 18 .

(Signed) E. F.

To X. Y., the Provincial Registrar.

Rules under the Clergy Discipline Act, 1892.

Rules as to Appeal.

Time for appeal on matter of law. [Form 64.]

60. Where either party desires to appeal against the judgment of the Consistory Court in respect of any matter of law, notice of the appeal must be given in manner provided by these rules not more than twenty-eight clear (*a*) days after the day on which the judgment was given.

Time for petition to appeal on facts. [Form 65.]

61. Where a defendant desires to petition for leave to appeal against a judgment of the Consistory Court in respect of the facts, he must lodge a petition for leave to appeal in manner provided by these rules (*b*) not more than fifteen clear (*a*) days after the day on which the judgment was given.

Application for leave to appeal from interlocutory judgment.

62. An application for leave to appeal from an interlocutory judgment of the Consistory Court under the Act must be made at the time when the judgment is given.

Time for appeal where leave to appeal is given. [Forms 66, 67.]

63. Where leave to appeal is granted either from an interlocutory judgment or from the judgment of the Consistory Court in respect of the facts, notice of appeal must be given not more than fourteen clear (*a*) days after the day on which the leave to appeal is granted.

64. Notice of appeal shall be given by—

Mode of giving notice of appeal.

(i.) lodging in duplicate at the registry of the Provincial Court or Privy Council, as the case may be (in these rules referred to as the Appellate Court), a notice of appeal stating the grounds of appeal; and

(ii.) lodging with the registrar of the diocese from the Consistory Court of which the appeal is brought, a copy of the notice of appeal lodged at the registry of the Appellate Court; and

(iii.) serving a like copy of the notice of appeal on the other party to the case.

Lodging of petition to appeal.

65. A petition to the Appellate Court for leave to appeal shall be lodged at the registry of the Appellate Court.

Grounds of appeal not entertained unless stated in notice.

66. A ground of appeal not stated in the notice of appeal shall not be entertained by the Appellate Court except with

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(*a*) By r. 94, the expression "clear days" is defined to mean "exclusively both of the first and the last day."

(*b*) See r. 65, and sect. 4 (2) of the Clergy Discipline Act, 1892.

the consent of the opposite party, or by the leave of the court, and the court may grant that leave on such terms as to adjournment or otherwise as the court thinks fit.

Hearing of petition for leave to appeal. [Form 68.]

67. A petition to the Appellate Court for leave to appeal shall be heard by that court *ex parte*, but if the court on the hearing consider that the prosecutor should have an opportunity of appearing, the court shall adjourn the further hearing of the petition for the purpose, and the defendant shall give notice of the adjournment to the prosecutor.

Hearing of appeal in respect of facts.

68. If an appeal is allowed in respect of the facts of the case, the case shall, subject to these rules, be reheard by the Appellate Court on the note of the case taken by the Chancellor or by his direction, or on such other note of the case as may be allowed by the Appellate Court.

Special provisions as to evidence in Appellate Court.

69. The Appellate Court on any appeal as to the facts may, if in the opinion of the court the justice of the case requires it—

(a) summon any witness heard at the trial to give evidence with respect to the case; and

(b) order any new witness, not heard at the trial, to give evidence with respect to the case.

Setting down of appeal for hearing. [Form 69.]

70.—(1) An appellant shall, not less than fourteen and not more than twenty-eight clear (*c*) days after giving notice of appeal, set down the appeal for hearing by giving notice to the registrar of the Appellate Court and the respondent that the appeal is so set down for hearing.

(2) If at the expiration of twenty-eight clear (*c*) days after a notice of appeal is given the appeal is not set down for hearing, the appeal shall, subject to any order of the Appellate Court, stand dismissed.

Notice of time and place for hearing appeal. [Form 70.]

71. If in an Appellate Court no regular cause list is published, the registrar of that court shall give seven clear (*c*) days' notice of the time and place for hearing a case, where the case is an appeal which has been set down for hearing, both to the appellant and respondent, and, where the case is an application for leave to appeal, to the applicant.

Remission of case to Consistory Court.

72. Where on the decision of an appeal any sentence is to be passed or any further proceeding taken in the case,

(*c*) By r. 94, the expression "clear days" is defined to mean "exclusively both of the first and the last day."

the Appellate Court shall remit the case to the Consistory Court for the purpose.

Notice to registrar of diocese of order on appeal. [Forms 71, 72.]

73. The registrar of the Appellate Court shall give notice of any order of the Appellate Court on an appeal from the Consistory Court to the registrar of the diocese from the Consistory Court of which the appeal is brought, and, if the case is remitted from the Appellate to the Consistory Court to be further dealt with, the registrar of the diocese shall submit the case to the Chancellor, and the Chancellor shall fix a time and place for the further hearing of the case, and cause the registrar to give seven clear days' notice of the time and place fixed to the prosecutor and defendant.

No written statement of case necessary.

74. In an appeal to the Appellate Court under this Act, it shall not be necessary to prepare or to bring into the registry of the Appellate Court any written statement or printed copies of the case (*d*) with reference to which the appeal is brought.

FORM NO. 64.

Notice of Appeal on Point of Law.

Clergy Discipline Act, 1892.

[Complaint No. .]

To the registrar of (1)

I, A. B., prosecutor [*or* C. D., defendant], hereby give notice that I appeal to the Provincial Court of [*or* to Her Majesty the Queen in Council], from the judgment of the Consistory Court of the diocese of , on the trial of the above matter held on the day of , in respect of the following matters of law (2).

On the ground that the judgment of the Court was wrong in law in respect of those matters.

Dated this day of , 18 .

A. B., Prosecutor
[*or* C. D., Defendant].

[N.B.—A ground of appeal must be stated in the notice of appeal, if it is to be entertained by the Appellate Court.]

1 Insert Provincial Court or Privy Council, as case may be.
2 Insert grounds of appeal.

(*d*) It has not been the practice under these rules to lodge any printed or written copies of an appendix or case as required by the Rules of 1865. The object of this rule is to save expense.

FORM NO. 65.

Petition for Leave to Appeal in respect of Facts.

(*Heading as in Form No.* 64.)

To the registrar of (1) .

I, C. D., defendant, hereby give notice that I petition the Provincial Court of [*or* Her Majesty the Queen in Council], for leave to appeal from the judgment of the Consistory Court of the diocese of at the trial of the above matter, held on the day of , in respect of the following facts (2).

On the ground that the judgment of the Court in respect of those facts was not in accordance with the true facts.

Dated this day of, 18 .

C. D., Defendant.

[1] Insert Provincial Court or Privy Council, as case may be.
[2] State facts alleged to have been wrongly found.

FORM NO. 66.

Notice of Appeal where Leave to Appeal on Facts has been granted.

(*Heading as in Form No.* 64.)

To the registrar of the (1)

I, C. D., defendant, hereby give notice that whereas leave has been given to me by the Provincial Court of [*or* by Her Majesty the Queen in Council] to appeal to that Court [*or* to Her Majesty the Queen in Council] from the judgment of the Consistory Court of the diocese of on the trial of the above matter held on the day of in respect of the following facts [ ].

I accordingly appeal from the said judgment to the said Provincial Court of [*or* to Her Majesty the Queen in Council] on the ground that that judgment was not in accordance with the true facts.

Dated this day of , 18 .

C. D., Defendant.

[N.B.—A ground of appeal must be stated in the notice of appeal, if it is to be entertained by the Appellate Court.

[1] Insert Provincial Court or Privy Council, as case may be.

FORM No. 67.

Notice of Appeal from Interlocutory Judgment.

(*Heading as in Form No.* 64.)

To the registrar (1) ,

I, A. B., prosecutor [*or* C. D., defendant] hereby give notice that I appeal to the Provincial Court of [*or* to Her Majesty the Queen in Council] from the following interlocutory judgment of , (2) on the following grounds ; leave to appeal having been granted me by at the time when the said judgment was given.

Dated this day of , 18 .

A. B., Prosecutor,
[*or* C. D., Defendant].

[N.B.—A ground of appeal must be stated in the notice of appeal, if it is to be entertained by the Appellate Court.]

[1] Insert Provincial Court or Privy Council, as case may be.
[2] Insert particulars of judgment.

FORM No. 68.

Notice of Adjournment of Hearing of Petition for Leave to Appeal on Facts.

(*Heading as in Form No.* 64.)

To A. B., prosecutor,

Take notice that the (1) have adjourned the hearing of my petition for leave to appeal from the judgment of the Consistory Court of the diocese of at the trial of the above matter, held on the day of , in respect of the following facts , till the day of in order that you should have an opportunity of appearing at the hearing of the petition.

Dated this day of , 18 .

C. D., Defendant.

[1] Insert Provincial Court or Privy Council, as case may be.

FORM No. 69.

Notice of Appeal being set down for Hearing.

(*Heading as in Form No.* 64.)

To K. L., registrar of (1) [*or* to A. B., prosecutor, *or* to C. D., defendant].

I, A. B., prosecutor [*or* C. D., defendant] hereby give you notice that my appeal in the above matter is set down for hearing.

Dated this day of , 18 .

A. B., Prosecutor
[*or* C. D., Defendant].

[1] Insert Provincial Court or Privy Council, as case may be.

FORM No. 70.

Notice of Time and Place of Hearing in Appellate Court.

(*Heading as in Form No.* 64.)

To A. B., prosecutor [*or* C. D., defendant].

The hearing of the appeal [*or* the petition to appeal] in the above matter will take place at , on day, the day of , at the hour of in the noon .

Dated this day of , 18 .

K. L., Registrar of the Provincial Court of
[*or* Registrar of the Privy Council].

FORM No. 71.

Notice to Registrar of Consistory Court of Order of Appellate Court on Appeal.

(*Heading as in Form No.* 64.)

To E. F., registrar of the Consistory Court of the diocese of .

Take notice that the Provincial Court of [*or* Her Majesty the Queen in Council] has ordered that the appeal

of in the above matter should be allowed [*or* dismissed] [*or* has ordered on the hearing of the appeal that the case should be remitted to your Court for the purpose of].

Dated this day of , 18 .

K. L., Registrar of the Provincial Court of [*or* of the Privy Council].

FORM No. 72.

Notice of holding of Court for hearing Case remitted on Appeal.

(*Heading as in Form No.* 64.)

To A. B., prosecutor [*or* C. D., defendant].

Take notice that the above case has been remitted from the Provincial Court of [*or* by Her Majesty the Queen in Council] to this Court for the purpose of , and that the further hearing of the case for that purpose will take place at , on day, the day of , at the hour of , in the noon.

Dated this day of , 18 .

E. F., Registrar.

APPENDIX A.

IMPERIAL STATUTES DEALING WITH THE JURISDICTION AND PRACTICE OF THE JUDICIAL COMMITTEE.

I.—3 & 4 WILL. IV. c. 41 (1833).

An Act for the better Administration of Justice in His Majesty's Privy Council.

Whereas by virtue of an Act passed in a session of Parliament of the second and third years of the reign of His present Majesty, intituled "*An Act for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to His Majesty in Council*," it was enacted, that from and after the first day of February, one thousand eight hundred and thirty-three, it should be lawful for every person who might theretofore, by virtue either of an Act passed in the twenty-fifth year of the reign of King Henry the Eighth, intituled "*The Submission of the Clergy and Restraint of Appeals*," or of an Act passed in the eighth year of the reign of Queen Elizabeth, intituled, "*For the avoiding of Tedious Suits in Civil and Marine Causes*," have appealed or made suit to His Majesty in his High Court of Chancery, to appeal or make suit to the King's Majesty, his heirs or successors, in Council, within such time, in such manner, and subject to such rules, orders and regulations for the due and more convenient proceeding, as should seem meet and necessary, and upon such security, if any, as His Majesty, his heirs and successors, should from time to time by Order in Council direct: AND WHEREAS, by letters patent under the Great Seal of Great Britain, certain persons, members of His Majesty's Privy Council, together with others, being judges and barons of His Majesty's Courts of Record at Westminster, have been from time to time appointed to be His Majesty's Commissioners for receiving,

2 & 3 Will. IV. c. 92.

25 Hen. VIII. c. 19.

8 Eliz. c. 5.

hearing, and determining appeals from His Majesty's Courts of Admiralty in causes of prize: And whereas, from the decisions of various Courts of Judicature in the East Indies, and in the plantations, colonies and other dominions of His Majesty abroad, an appeal lies to His Majesty in Council: And whereas matters of appeal or petition to His Majesty in Council have usually been heard before a committee of the whole of His Majesty's Privy Council, who have made a report to His Majesty in Council, whereupon the final judgment or determination hath been given by His Majesty: And whereas it is expedient to make certain provisions for the more effectual hearing and reporting on appeals to His Majesty in Council and on other matters, and to give such powers and jurisdiction to His Majesty in Council as hereinafter mentioned: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, the President for the time being of His Majesty's Privy Council, [*the Lord High Chancellor of Great Britain for the time being*] (*a*), and such of the members of His Majesty's Privy Council as shall from time to time hold any of the offices following, that is to say, the office of Lord Keeper or First Lord Commissioner of the Great Seal of Great Britain, [*Lord Chief Justice or Judge of the Court of King's Bench, Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, [Judge (b) of the Prerogative Court of the Lord Archbishop of Canterbury,] Judge of the High Court of Admiralty, and Chief Judge of the Court in Bankruptcy,*] (*a*) and also all persons, members of His Majesty's Privy Council, who shall have been President thereof [*or held the office of Lord Chancellor of Great Britain* (*a*)] or shall have held any of the other offices hereinbefore mentioned, shall form a committee of His Majesty's said Privy Council, and shall be

Certain persons to form a committee, to be styled "The Judicial Committee of the Privy Council."

(*a*) These words in brackets are repealed by Statute Law Revision Act (No. 2), 1888 (51 & 52 Vict. c. 57).

(*b*) These words in brackets are repealed by Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).

styled "The Judicial Committee (*c*) of the Privy Council": Provided nevertheless, that it shall be lawful for His Majesty from time to time, as and when he shall think fit, by his sign manual, to appoint any two other persons, being privy councillors, to be members of the said committee.

Appeals from Courts of Admiralty or Vice-Admiralty Courts abroad, etc., shall be made to the King in Council.

[II. *And be it further enacted, that from and after the first day of June, one thousand eight hundred and thirty-three, all appeals or applications in prize suits and in all other suits or proceedings in the Courts of Admiralty, or Vice-Admiralty Courts, or any other Court in the plantations in America, and other His Majesty's dominions or elsewhere abroad, which may now, by virtue of any law, statute, commission or usage, be made to the High Court of Admiralty in England, or to the Lords Commissioners in prize cases, shall be made to His Majesty in Council, and not to the said High Court of Admiralty in England or to such commissioners as aforesaid; and such appeals shall be made in the same manner and form and within such time wherein such appeals might, if this Act had not been passed, have been made to the said High Court of Admiralty or to the Lords Commissioners in prize cases respectively; and that all laws or statutes now in force with respect to any such appeals or applications shall apply to any appeals to be made in pursuance of this Act to His Majesty in Council* (*d*).]

Appeals to King in Council from sentence of any judge, etc., shall be referred to the committee, to report thereon.

III. [*And be it further enacted, that*] (*e*) all appeals or complaints in the nature of appeals whatever, which either by virtue of this Act, or of any law, statute or custom, may be brought before His Majesty or His Majesty in Council from or in respect of the determination, sentence, rule or order of any Court, judge or judicial officer, and all such appeals as are now pending and unheard, shall from and after the passing of this Act be referred by His Majesty to the said Judicial Committee of his Privy Council, and that

(*c*) The quorum of the Judicial Committee is three (14 & 15 Vict. c. 83, s. 16).

(*d*) The above sect. 2 is repealed by the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), s. 18, and Sched. 2, as respects any British possession as from the commencement of the Act (see sect. 16) in that possession, and as respects any courts out of His Majesty's dominions as from the date of any Order applying that Act (sect. 12).

(*e*) These words in brackets are repealed by Statute Law Revision Act (No. 2), 1888 (51 & 52 Vict. c. 57).

such appeals, causes and matters shall be heard by the said Judicial Committee, and a report or recommendation thereon shall be made to His Majesty in Council for his decision thereon as heretofore, in the same manner and form as has been heretofore the custom with respect to matters referred by His Majesty to the whole of the Privy Council or a committee thereof (the nature of such report or recommendation being always stated in open Court) (*f*).

His Majesty may refer any other matters to committee.

IV. [*And be it further enacted, that*] (*g*) it shall be lawful for His Majesty to refer to the said Judicial Committee for hearing or consideration any such other matters (*h*) whatsoever as His Majesty shall think fit, and such committee shall thereupon hear or consider the same, and advise His Majesty thereon in manner aforesaid.

No matter to be heard unless in presence of four members of the committee.

V. [*And be it further enacted, that*] (*g*) no matter shall be heard, nor shall any order, report or recommendation be made, by the said Judicial Committee, in pursuance of this Act, unless in the presence of at least [*four*] (*i*) members of the said committee; and [*that*] no report or recommendation shall be made to His Majesty unless a majority of the members of such Judicial Committee present at the hearing shall concur in such report or recommendation: Provided always [*that*] nothing therein contained shall prevent His Majesty, if he shall think fit, from summoning any other (*j*) of the members of his said Privy Council to attend the meetings of the said committee.

If His Majesty directs the attendance of any member who is a judge, the other judges of the Court to

VI. [*And be it further enacted, that*] (*g*) in case His Majesty shall be pleased, by directions under his sign manual, to require the attendance at the said committee for the purposes of this Act of any member or members of the said Privy Council who shall be a judge or judges of the Court of King's Bench, or the Court of Common Pleas, or of

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(*f*) But the Lords are not to disclose the opinions of the members of the Board. Order in Council, February 20, 1627, s. 9.

(*g*) The words in brackets are repealed by Statute Law Revision Act. 1888.

(*h*) The Judicial Committee have no power to place any limit as to the matters which may be referred to them by the Crown. *Schlumberger's Patent* (1853), 9 Moo. 1.

(*i*) 14 & 15 Vict. c. 83, s. 16, substitutes three for four, exclusive of the Lord President.

(*j*) *Other members.* Cf. Moore's Report of the *Gorham Case*, where prelates attended by Her Majesty's direction.

the Court of Exchequer, such arrangements for dispensing with the attendance of such judge or judges upon his or their ordinary duties during the time of such attendance at the Privy Council as aforesaid shall be made by the judges of the Court or Courts to which such judge or judges shall belong respectively in regard to the business of the Court and by the judges of the said three Courts, or by any eight or more of such judges, including the chiefs of the several Courts, in regard to all other duties, as may be necessary and consistent with the public service.

which he belongs shall arrange with regard to the business of the Court.

VII. [*And be it enacted that*] (*k*) it shall be lawful for the said Judicial Committee, in any matter which shall be referred to such committee, to examine witnesses by word of mouth (and either before or after examination by deposition), or to direct that the depositions (*l*) of any witness shall be taken in writing by the registrar of the said Privy Council to be appointed by His Majesty as hereinafter mentioned, or by such other person or persons, and in such manner, order and course, as His Majesty in Council, or the said Judicial Committee shall appoint and direct; and that the said registrar and such other person or persons so to be appointed shall have the same powers as are now possessed by an examiner of the High Court of Chancery or of any Court Ecclesiastical.

Committee may take evidence *viva voce*, or upon written depositions.

VIII. [*And be it enacted, that*] (*k*) in any matter which shall come before the said Judicial Committee it shall be lawful for the said committee to direct that such witnesses shall be examined or re-examined, and as to such facts as to the said committee shall seem fit, notwithstanding any such witness may not have been examined, or no evidence may have been given on any such facts in a previous stage of the matter; and it shall also be lawful for His Majesty in Council, on the recommendation of the said committee, upon any appeal, to remit the matter which shall be the subject of such appeal to the Court from the decision of which such appeal shall have been made, and at the same time to direct that such Court shall rehear such matter, in such form, and either generally

Committee may order any particular witnesses to be examined, and as to any particular facts, and may remit causes for rehearing.

(*k*) The words in brackets are repealed by Statute Law Revision Act, 1888.

(*l*) "Formal proofs" may be taken and reported on by the clerks of the Privy Council. 7 & 8 Vict. c. 69, s. 8.

or upon certain points only (*n*), and upon such rehearing take such additional evidence, though before rejected, or reject such evidence before admitted, as His Majesty in Council shall direct; and further, on any such remitting or otherwise, it shall be lawful for His Majesty in Council to direct that one or more feigned issue or issues shall be tried in any Court in any of His Majesty's dominions abroad, for any purpose for which such issue or issues shall to His Majesty in Council seem proper.

Witnesses to be examined on oath, and to be liable to punishment for perjury.

IX. [*And be it enacted, that*] (*o*) every witness who shall be examined in pursuance of this Act shall give his or her evidence upon oath, or if a Quaker or Moravian upon solemn affirmation, which oath and affirmation respectively shall be administered by the said Judicial Committee and registrar (*p*), and by such other person or persons as His Majesty in Council or the said Judicial Committee shall appoint; and that every such witness who shall wilfully swear or affirm falsely shall be deemed guilty of perjury, and shall be punished accordingly.

Committee may direct feigned issues;

X. [*And be it enacted, that*] (*o*) it shall be lawful for the said Judicial Committee to direct one or more feigned issue or issues to be tried in any Court of common law, and either at bar, before a judge of assize, or at the sittings for the trial of issues in London or Middlesex, and either by a special or common jury, in like manner and for the same purpose as is now done by the High Court of Chancery.

and may, in certain cases, direct depositions to be read at the trial of the issue;

XI. [*And be it enacted, that*] (*o*) it shall be in the discretion of the said Judicial Committee to direct that, on the trial of any such issue, the depositions already taken of any witness who shall have died, or who shall be incapable to give oral testimony, shall be received in evidence; and further, that such deeds, evidences and writings shall be

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(*n*) Cf. *Wilkinson* v. *Wilson* (1853), 8 Moo. 459. Where the appellant, a mortgagee in possession of a ship, was entitled to proceeds of sale after payment of seamen's wages, and had not claimed payment of the proceeds to himself, the cause was remitted to the Court of Admiralty to enable the appellant to apply to have the proceeds paid out to him. *The Neptune*, 3 Knapp, 94.

(*o*) The words are repealed by Statute Law Revision Act, 1888.

(*p*) See further, 16 & 17 Vict. c. 85, *infra*, as to appointment, and powers, and duties of registrar.

produced, and that such facts shall be admitted as to the said committee shall seem fit.

and may make orders as to the admission of witnesses;

XII. [*And be it enacted, that* (*q*) it shall be lawful for the said Judicial Committee to make such and the like orders respecting the admission of persons, whether parties or others, to be examined as witnesses upon the trial of any such issues as aforesaid, as the Lord High Chancellor or the Court of Chancery has been used to make respecting the admission of witnesses upon the trial of issues directed by the Lord Chancellor or the Court of Chancery.

and may direct new trials of issues.

XIII. [*And be it enacted, that*] (*q*) it shall be lawful for the said Judicial Committee to direct one or more new trial or new trials of any issue, either generally or upon certain points only; and that in case any witness examined at a former trial of the same issue shall have died, or have, through bodily or mental disease or infirmity become incapable to repeat his testimony, it shall be lawful for the said committee to direct that parol evidence of the testimony of such witness shall be received.

Powers of 13 Geo. III. c. 63, and 1 Will. IV. c. 22, shall extend to the Judicial Committee.

XIV. And whereas, by an Act passed in the thirteenth year of His late Majesty King George the Third, and intituled "*An Act for establishing certain Regulations for the better Management of the Affairs of the East India Company, as well in India as in Europe*," and by an Act passed in the first year of the reign of His present Majesty, and intituled "*An Act to enable the Courts of Law to order the Examination of Witnesses upon Interrogatories and otherwise*," certain powers are given to certain Courts therein mentioned to enforce, and provisions are made for the examination of witnesses by commission, upon interrogatories and otherwise; [*be it therefore further enacted, that*] (*q*) all the powers and provisions contained in the two last-mentioned Acts, or either of them, shall extend to and be exercised by the said Judicial Committee in all respects as if such committee had been therein named as one of His Majesty's Courts of law at Westminster.

Costs to be in the discretion of the committee.

XV. [*And be it enacted, that*] (*q*) the costs incurred in the prosecution (*r*) of any appeal or matter referred to the said Judicial Commitee, and of such issues as the same com-

(*q*) The words are repealed by Statute Law Revision Act, 1888.

(*r*) See further provisions 6 & 7 Vict. c. 38, s. 12, *infra*, p. 434, as to costs of party defending a decree or intervening.

mittee shall under this Act direct, shall be paid by such party or parties, person or persons, and be taxed by the aforesaid registrar (*s*) or such other person or persons, to be appointed by His Majesty in Council or the said Judicial Committee, and in such manner as the said committee shall direct.

Decrees to be enrolled.

XVI. [*And be it further enacted, that*] (*t*) the orders or decrees of His Majesty in Council made, in pursuance of any recommendation of the said Judicial Committee, in any matter of appeal from the judgment or order of any Court or judge, shall be enrolled for safe custody in such manner, and the same may be inspected and copies thereof taken under such regulations, as His Majesty in Council shall direct.

Committee may refer matters to registrar in the same manner as matters are by Court of Chancery referred to a master.

XVII. [*And be it further enacted, that*] (*t*) it shall be lawful for the said committee to refer any matters to be examined and reported on to the aforesaid registrar, or to such other person or persons as shall be appointed by His Majesty in Council or by the said Judicial Committee, in the same manner and for the like purposes as matters are referred by the Court of Chancery to a master of the said Court; and [*that*] for the purposes of this Act the said registrar and the said person or persons so to be appointed shall have the same powers and authorities as are now possessed by a master in Chancery (*s*).

His Majesty may appoint registrar.

XVIII. [*And be it further enacted, that*] (*t*) it shall be lawful for His Majesty, under his sign manual, to appoint any person to be the registrar of the said Privy Council, as regards the purposes of this Act, and to direct what duties shall be performed by the said registrar.

Attendance of witnesses, and production of papers, etc., may be compelled by subpœna.

XIX. [*And be it further enacted, that*] (*t*) it shall be lawful for the President for the time being of the said Privy Council to require the attendance of any witnesses, and the production of any deeds, evidences or writings, by writ to be issued by such President in such and the same form, or as nearly as may be, as that in which a writ of subpœna ad

(*s*) The registrar referred to is the Registrar of the Privy Council. As to taxation in Ecclesiastical and Admiralty matters, see 6 & 7 Vict. c. 38, s. 12, and note thereto. Under the powers conferred by this section a great deal of what is generally known as chamber work is performed by the registrar, such as issuing the committee's orders, calling on parties to enter an appearance, to lodge a printed case, orders for taxation of costs, and so on.

(*t*) The words are repealed by Statute Law Revision Act, 1888.

testificandum or subpœna duces tecum is now issued by His Majesty's Court of King's Bench at Westminster; and that every person disobeying any such writ so to be issued by the said President shall be considered as in contempt of the said Judicial Committee, and shall also be liable to such and the same penalties and consequences as if such writ had issued out of the said Court of King's Bench, and may be sued for such penalties in the said Court.

Time of appealing.

XX. [*And be it further enacted, that*] (*u*) all appeals to His Majesty in Council shall be made within such times respectively within which the same may now be made, where such time shall be fixed by any law or usage; and where no such law or usage shall exist, then within such time as shall be ordered by His Majesty in Council; and [*that*], subject to any right subsisting under any charter or constitution of any colony or plantation, it shall be lawful for His Majesty in Council to alter any usage as to the time of making appeals, and to make any order respecting the time of appealing to His Majesty in Council.

Decrees on appeals from Courts abroad to be carried into effect as the King in Council shall direct.

XXI. [*And be it further enacted, that*] (*u*) the order or decree of His Majesty in Council on any appeal from the order, sentence, or decree of any court of justice in the East Indies, or of any colony, plantation, or other His Majesty's dominions abroad, shall be carried into effect in such manner, and subject to such limitations and conditions as His Majesty in Council shall, on the recommendation of the said Judicial Committee direct; and it shall be lawful for His Majesty in Council on such recommendation, by order, to direct that such court of justice shall carry the same into effect accordingly, and thereupon such court of justice shall have the same powers of carrying into effect and enforcing such order or decree as are possessed by or are hereby given to His Majesty in Council: Provided always, that nothing in this Act contained shall impeach or abridge the powers, jurisdiction or authority of His Majesty's Privy Council as heretofore exercised by such council, or in anywise alter the constitution or duties of the said Privy Council, except so far as the same are expressly altered by this Act, and for the purposes aforesaid.

Saving of powers of Privy Council except as hereby altered.

(*u*) The words are repealed by Statute Law Revision Act, 1888.

Orders made on such appeals to have effect notwithstanding death of parties, etc.

XXIII. [*And be it enacted, that*] (*x*) in any case where any order shall have been made on any such appeal as last aforesaid, the same shall have full force and effect notwithstanding the death of any of the parties interested therein; but that in all cases where any such appeal may have been withdrawn or discontinued, or any compromise made in respect of the matter in dispute before the hearing thereof, then the determination of His Majesty in Council in respect of such appeal shall have no effect.

His Majesty may make orders for regulating the mode, etc. of appeals.

XXIV. [*And be it further enacted, that*] (*x*) it shall be lawful for His Majesty in Council from time to time to make any such rules and orders as may be thought fit for the regulating the mode, form and time of appeal to be made from the decision of the courts of judicature in India or elsewhere to the eastward of the Cape of Good Hope (*y*) (from the decisions of which an appeal lies to His Majesty in Council), and in like manner from time to time to make such other regulations for the preventing delays in the making or hearing such appeals, and as to the expenses attending the said appeals, and as to the amount or value of the property in respect of which any such appeal may be made.

Power of enforcing decrees.

XXVIII. [*And be it enacted, that*] (*x*) the said Judicial Committee shall have and enjoy in all respects such and the same power of punishing contempts and of compelling appearances (*z*), and [*that*] His Majesty in Council shall have and enjoy in all respects such and the same powers of enforcing judgments, decrees and orders as are now exercised by the High Court of Chancery or the Court of King's Bench (and both *in personam* and *in rem*,) [*or as are given to any Court Ecclesiastical by an Act of Parliament passed in a session of Parliament of the second and third years of the reign of His present Majesty, intituled "An Act for enforcing*

(*x*) The words are repealed by Statute Law Revision Act, 1888.

(*y*) "*Eastward of Cape of Good Hope.*" As to appeals from colonies and possessions to the westward and elsewhere, and as to other appeals generally, see sect. 20. It will be noticed that in appeals from India and elsewhere to the eastward the power of His Majesty is absolute, but that the power of the Crown under this Act to alter the time of making appeals from colonies generally is subject to rights subsisting under existing charters or constitutions.

(*z*) See *supra*, sect. 21, as to enforcement of the order of decree of His Majesty in Council by the courts abroad. For further provisions in all causes of appeals from Ecclesiastical Courts, 6 & 7 Vict. c. 38, s. 7, *infra*, p. 432. So much of this section as is in italics is repealed.

the Process upon Contempts in the Courts Ecclesiastical of England and Ireland"; and that all such powers as are given to Courts Ecclesiastical, if of punishing contempts or of compelling appearances, shall be exercised by the said Judicial Committee, and if of enforcing decrees and orders shall be exercised by His Majesty in Council, in such and the same manner as the powers in and by such Act of Parliament given, and shall be of as much force and effect as if the same had been thereby expressly given to the said committee or to His Majesty in Council. (Repealed by 6 & 7 Vict. c. 38, s. 6.)] 2 & 3 *Will. IV. c.* 93.

Two retired Indian or colonial judges attending the Judicial Committee shall receive an allowance.

XXX. [*And be it enacted, that*] (*a*) two members of His Majesty's Privy Council who shall have held the office of judge in the East Indies or any of His Majesty's dominions beyond the seas, and who, being appointed for that purpose by His Majesty, shall attend (*b*) the sittings of the Judicial Committee of the Privy Council, shall severally be entitled to receive over and above any annuity granted to them in respect of having held such office as aforesaid, the sum of four hundred pounds for every year during which they shall so attend as aforesaid, as an indemnity for the expense which they may thereby incur; and such sum of four hundred pounds shall be chargeable upon and paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland.

Saving as to treaties with foreign countries appointing certain persons to hear prize appeals.

XXXI. Provided always, [*and be it enacted, that*] (*a*) nothing herein contained shall be held to impeach or render void any treaty or engagement already entered into by or on behalf of His Majesty or be taken to restrain His Majesty from acceding to any treaty, with any foreign prince, potentate or power, in which treaty it shall be stipulated that any person or persons other than the said Judicial Committee shall hear and finally adjudicate appeals from His Majesty's Courts of Admiralty in causes of prize (*c*), but that the judgments, decrees and orders of

(*a*) The words are repealed by Statute Law Revision Act, 1888.

(*b*) Such members of the Judicial Committee are so for all purposes.

(*c*) This provision would cover the reference of prize appeals to the proposed International Prize Court which it is intended to set up at The Hague. The Naval Prize Bill of 1910 made provision for the hearing of prize appeals by a new tribunal, the Supreme Prize Court, to be chosen from the Judicial Committee of the Privy Council, and an appeal was given thence to the International Prize Court.

such other person or persons so appointed by treaty shall be of the same force and effect of which they would respectively have been if this Act had not been passed.

II.—THE JUDICIAL COMMITTEE ACT, 1843.

(6 & 7 Vict. c. 38.)

An Act to make further Regulations for facilitating the hearing of Appeals and other Matters by the Judicial Committee of the Privy Council.

Whereas it has been found expedient to make further regulations for hearing and making report to Her Majesty in appeals and other matters referred to the Judicial Committee of the Privy Council, and for the more effectual appointment of surrogates (*d*) in ecclesiastical and maritime (*e*) causes of appeal, and for making orders or decrees incidental to such causes of appeal, and for the punishment of contempts, and compelling appearances and enforcement of judgments, orders, and decrees of Her Majesty in Council, or of the said Judicial Committee, or their surrogates, in such causes of appeal: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in any appeal, application for prolongation or confirmation of letters patent, or other matter referred or hereafter to be referred by Her Majesty in Council to the Judicial Committee of the Privy Council, it shall be lawful for Her Majesty, by order in Council or special direction under her royal sign manual, having regard to the nature of the said appeal or other matter, and in respect of the same not requiring the presence of more than three (*f*) members of the said committee, to order that the same be heard, and

Appeals, etc. may be heard by not less than three members of the Judicial Committee of the Privy Council under a special order of Her Majesty.

(*d*) Acts and proceedings before surrogates were abolished by rule 31, *supra*, p. 380, of the Order in Council as to Ecclesiastical and Maritime Causes, 1865.

(*e*) The meaning of the term "ecclesiastical and maritime cause of appeal" is extended by sect. 17, *infra*.

(*f*) Four members of the Judicial Committee were previously required. *Supra*, 3 & 4 Will. IV. c. 41, s. 5. Three members now constitute a quorum.

when so ordered it shall be lawful that the same shall be accordingly heard by not less than three of the members of the said Judicial Committee, subject to such other rules as are applicable, or under this Act may be applicable, to the hearing and making report on appeals and other matters by four or more of the members of the said Judicial Committee (*g*).

Powers of the Judicial Committee and their surrogates in respect to appeals from Ecclesiastical [*and Admiralty*] Courts.

II. And be it enacted, that in respect of all incidents, emergents, dependents and things adjoined to, arising out of or connected with appeals from any Ecclesiastical Court, [*or from any Admiralty or Vice-Admiralty Court,*] (*h*) save in giving a definitive sentence, or any interlocutory decree having the force and effect of a definitive sentence,) the said Judicial Committee and their surrogates (*i*) shall have full power, subject to such rules, orders and regulations as shall from time to time be made by the said Judicial Committee, (with the approval of Her Majesty in Council,) to make all such interlocutory orders and decrees, and to administer all such oaths and affirmations, and to do all such things as may be necessary, or the judges of the courts below appealed from or their surrogates in the cases appealed, or the judges of the courts appealed to or their surrogates, [*or the Lords Commissioners of Appeals in Prize Causes or their surrogates,*] (*h*) and the judges delegate or their condelegates under commissions of appeal under the Great Seal in ecclesiastical and maritime causes of appeal, would respectively have had before an Act passed in the third year of the reign of His late Majesty, intituled "*An Act for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to His Majesty in Council,*" and another Act passed in the following session of Parliament,

2 & 3 Will. IV. c. 92.

(*g*) See *Lopez* v. *Burslem, The Guiana* (Sierra Leone, 1843), 4 Moo. 300, and 14 & 15 Vict. c. 83, s. 16, *infra*. Three are now sufficient in any case.

(*h*) The words between the brackets [ ] in sects. 2, 3, 5, 7, 12, and 15 are repealed by The Colonial Courts of Admiralty Act, 53 & 54 Vict. c. 27, s. 18, and Sched. 2, as respects any British possession as from the commencement of the Act (see sect. 16) in that possession, and as respects any Courts out of Her Majesty's dominions as from the date of any order applying the Act (s. 12).

(*i*) Act and proceedings before surrogates were abolished by rule 31, of the Order in Council as to Ecclesiastical and Maritime Causes, 1865.

3 & 4 Will. IV. c. 41.

intituled "*An Act for the better Administration of Justice in His Majesty's Privy Council*," were passed.

Who to be surrogates and examiners of the Judicial Committee in ecclesiastical [*and Admiralty*] appeals.

III. And be it enacted, that the surrogates and examiners of the Arches Court of Canterbury [*and the High Court of Admiralty of England*] (*j*) and such persons as shall from time to time be appointed surrogates (*k*) or examiners of the said courts, shall be by virtue of this Act surrogates and examiners respectively of the Judicial Committee of the Privy Council in all causes of appeal from ecclesiastical courts.

Manner of conducting appeals before the Judicial Committee.

V. And be it enacted, that, subject to such rules and regulations as may from time to time be made by the said Judicial Committee of the Privy Council with the approval of Her Majesty in Council, and save and in so much as the practice thereof may be varied by the said Acts (*l*) of the reign of His late Majesty or by this Act, the said causes of appeal (*m*) to Her Majesty in Council shall be commenced within the same times, and conducted in the same form and manner, and by the same persons and officers, as if appeals in the same causes had been made to the Queen in Chancery.

Punishing contempts, compelling appearances, enforcing judgments, etc. in causes of appeal.

VII. [*And be it enacted, that*] for better punishing contempts, compelling attendances, and enforcing judgments of Her Majesty in Council, and all orders and decrees of the said Judicial Committee or their surrogates, in all causes of appeal from Ecclesiastical Courts [*and from Admiralty or Vice-Admiralty Courts*] (*j*), Her Majesty in Council and the said Judicial Committee and their surrogates shall have the same powers, by attachment and committal of the person to any of Her Majesty's gaols, and subsequent discharge of any person so committed, as by any statute, custom or usage belong to the judge of the High Court of Admiralty of England (*n*); and the said Judicial Committee shall have the same immunities and privileges as are conferred on the

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(*j*) See note (*h*), *ante*.
(*k*) See note (*i*), *ante*.
(*l*) 2 & 3 Will. IV. c. 92, and 3 & 4 Will. IV. c. 41.
(*m*) *Said causes of appeal.* Cf. sects. 1 and 3. This refers to "causes of appeal" from Ecclesiastical Courts mentioned in sect. 3, and not to "appeals and other matters" mentioned in sect. 1
(*n*) Cf. the general powers, *supra*, 3 & 4 Will. IV. c. 41, s. 28.

judge of the High Court of Admiralty of England under an Act passed in the fourth year of the reign of Her Majesty, intituled "*An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of England*," as fully as if the same had been thereby expressly given to the said Judicial Committee. 3 & 4 Vict. c. 65.

IX. And be it enacted, that all inhibitions, citations, monitions, and other instruments incidental to or arising out of such causes of appeal shall be issued in the name of Her Majesty and under seal of Her Majesty in ecclesiastical *and maritime* (*o*) causes, and shall be of full authority in all places throughout the dominions of Her Majesty (*o*). Inhibitions, etc. to be in Her Majesty's name, and of force throughout the British dominions.

X. And be it enacted, that in all appeals in ecclesiastical *and maritime* (*o*) causes to Her Majesty in Council it shall be lawful for Her Majesty in Council, and the said Judicial Committee or their surrogates, at the petition of any person interested in the same to decree monitions for the transmission (*p*) of any sum or sums of money respecting which any order or decree may be made, or any questions may be depending arising out of such causes, and the proceeds of all ships or vessels, goods and cargoes respecting which any appeals may be depending, into the registry of the High Court of Admiralty and Appeals, for the benefit of the person or persons who may be ultimately entitled thereto, or for payment thereof to the person to whom the same may be lawfully due (*o*). Monitions for payments into the registry of the Admiralty Court under orders, etc.

XI. And be it enacted, that it shall be lawful for Her Majesty, by Order in Council, to direct that all causes of appeal from Ecclesiastical Courts [*and from the Vice-Admiralty Court of the Cape of Good Hope, and all Vice-Admiralty Courts to the westward thereof*] (*q*), in which the appeal and petition of reference to Her Majesty shall have been lodged in the registry of the High Court of Admiralty and Appeals within twelve calendar months from the giving or All appeals from Ecclesiastical [*and Admiralty*] Courts may be referred to the Judicial Committee by an Order in Council.

(*o*) The section is repealed, "so far as relates to maritime causes," by Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), s. 18, and Sched. 2.

(*p*) Cf. *Barton* v. *The Queen* (Vice-Admiralty, Gibraltar, 1843), 2 Moo. 19, as to neglect by a judge to obey such a monition. Cf. *The Neptune*, 3 Knapp, 94.

(*q*) These courts are now abolished.

pronouncing of any order, decree or sentence appealed from, shall be referred to the Judicial Committee of the Privy Council, and the said Judicial Committee and their surrogates (*r*) shall have full power forthwith to proceed in the said appeals, and the usual inhibition and citation shall be decreed and issued, and all usual proceedings taken, as if the same had been referred to the said Judicial Committee by a special order of Her Majesty in Council in each cause respectively (*s*).

Costs may be awarded by the Judicial Committee and taxed.

XII. And be it declared and enacted, that as well the costs of defending any decree or sentence appealed from as of prosecuting any appeal, or in any manner intervening in any cause of appeal, and the costs on either side, or of any party, in the court below, and the costs of opposing any matter which shall be referred to the said Judicial Committee, and the costs of all such issues as shall be tried by direction of the said Judicial Committee respecting any such appeal or matter, shall be paid by such party or parties, person or persons, as the said Judicial Committee shall order, and that such costs shall be taxed as in and by the said Act for the better administration of justice in the Privy Council is directed (*t*), respecting the costs of prosecuting any appeal or matter referred by Her Majesty under the authority of the said Act, save the costs arising out of any ecclesiastical *or maritime* (*u*) cause of appeal which shall be taxed by the registrar hereinafter named, or his assistant registrar.

Custody of records, etc. of the Court of Delegates and Appeals.

XIV. And be it enacted that all records, muniments, books, papers, wills and other documents remaining in the registry of the High Court of Admiralty and Appeals, appertaining to the late High Court of Delegates and Appeals for Prizes, shall be and remain in the custody and possession of the said registrar of Her Majesty in ecclesiastical and maritime causes.

(*r*) See above as to abolition of Acts of surrogates.

(*s*) See *Lopez* v. *Burslem* (Sierra Leone, 1843), 4 Moo. 310, n. The Judicial Committee now proceeds with the hearing without any special order when any petition of appeal is lodged with the clerk of the Privy Council. 7 & 8 Vict. c. 69, s. 9, *infra*.

(*t*) 3 & 4 Will. IV. c. 41, s. 15.

(*u*) Repealed by Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), s. 18, and Sched. II.

XV. And be it enacted that it shall 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*] (*x*) Courts, and the conduct and duties of the officers and practitioners therein, and to appoint such officer or officers as may be necessary for the execution of processes under the said seal of Her Majesty, and in respect to all appeals and other matters referred to them, as to them shall seem fit, and from time to time to repeal or alter such rules, orders or regulations: Provided always, that no such rules, orders or regulations shall be of any force or effect until the same shall have been approved by Her Majesty in Council.

Judicial Committee empowered to make rules, etc. respecting practice and mode of proceeding in appeals, etc.

Proviso.

XVII. And be it enacted, that in this Act all words denoting a male person shall be taken to include a female also, and all words denoting one person or thing shall be taken to include also several persons or things, unless a contrary sense shall clearly appear from the context; and that the words "Arches Court of Canterbury," used in this Act, shall be construed to extend to such court as shall exercise the jurisdiction of the said court or be substituted for the same; and that wherever the words "Ecclesiastical Court" have been used in this Act the same shall be construed to extend to such court as shall exercise the jurisdiction or any part of the jurisdiction exercised by any Ecclesiastical Court or be substituted for the same; and the words "ecclesiastical and maritime cause of appeal" shall be construed to extend to causes appealed from Ecclesiastical Courts and such courts as shall exercise the jurisdiction or any part of the jurisdiction exercised by any Ecclesiastical Court or be substituted for the same.

Definition of terms.

"Arches Court of Canterbury."

"Ecclesiastical Court."

"Ecclesiastical and maritime cause of appeal."

(*x*) The words in italics are repealed by 53 & 54 Vict. c. 27, s. 18, Sched. II. The result is that the Order in Council, December 11, 1865, *supra*, Part III., containing rules governing steps on appeal to be taken in Privy Council from the courts mentioned in the brackets no longer applies to Colonial Courts of Admiralty.

III. THE JUDICIAL COMMITTEE ACT, 1844.

(7 & 8 Vict. c. 69.)

An Act for amending an Act passed in the Fourth Year of the Reign of His late Majesty, intituled "An Act for the better Administration of Justice in His Majesty's Privy Council;" and to extend its Jurisdiction and Powers.

3 & 4 Will. IV. c. 41.

Whereas the Act passed in the fourth year of the reign of His late Majesty, intituled "*An Act for the better Administration of Justice in His Majesty's Privy Council*," hath been found beneficial to the due administration of justice: And whereas the Judicial Committee acting under the authority of the said Acts hath been found to answer well the purposes for which it was so established by Parliament, but it is found necessary to improve its proceedings in some respects, for the better despatch of business, and expedient also to extend its jurisdiction and powers: And whereas by the laws now in force in certain of Her Majesty's colonies and possessions abroad no appeals can be brought to Her Majesty in Council for the reversal of the judgments, sentences, decrees and orders of any Courts of Justice within such colonies, save only of the Courts of Error or Courts of Appeal within the same (*y*), and it is expedient that Her Majesty in Council should be authorized to provide for the admission of appeals from other Courts of Justice within such colonies or possessions: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be competent to Her Majesty, by any order or orders to be from time to time for that purpose made with the advice of her Privy Council, to provide for the admission of any appeal or appeals to Her Majesty in Council, from any judgments, sentences, decrees or orders of any Court of Justice within any British colony

Her Majesty, by Order in Council, may provide for the admission of appeals from any court in any colony, although

(*y*) In the case of *Re Levien* (Jamaica, 1855), 10 Moo. at p. 36, the Judicial Committee expressed the view that this statute does not apply to appeals from judgments on indictments tried on the civil side of the Supreme Court, but only to *nisi prius* cases.

or possession abroad, although such court shall not be a Court of Error or a Court of Appeal within such colony or possession ; and it shall also be competent to Her Majesty, by any such order or orders as aforesaid, to make all such provisions as to Her Majesty in Council shall seem meet for the instituting and prosecuting any such appeals, and for carrying into effect any such decisions or sentences as Her Majesty in Council shall pronounce thereon : Provided always, that it shall be competent to Her Majesty in Council to revoke, alter and amend any such order or orders as aforesaid as to Her Majesty in Council shall seem meet : Provided also, that any such order as aforesaid may be either general and extending to all appeals to be brought from any such Court of Justice as aforesaid, or special and extending only to any appeal to be brought in any particular case : Provided also, that every such general Order in Council as aforesaid shall be published in the London Gazette within one calendar month next after the making thereof : Provided also, that nothing herein contained shall be construed to extend to take away or diminish any power now by law vested in Her Majesty for regulating appeals to Her Majesty in Council from the judgments, sentences, decrees or orders of any Courts of Justice within any of Her Majesty's colonies or possessions abroad.

such court shall not be a Court of Error or of Appeal in such colony ; and may revoke such orders.

Orders may be either general or special.

General orders to be published.

Nothing herein to affect the present powers for regulating appeals from the colonies.

VIII. Provided always, and be it enacted, that in the case of any matter or thing being referred to the Judicial Committee, it shall be lawful for the said committee to appoint one or other of the clerks of the Privy Council to take any formal proofs (*z*) required to be taken in dealing with the matter or thing so referred, and shall if they so think fit, proceed upon such clerk's report to them as if such formal proofs had been taken by and before the said Judicial Committee.

Judicial Committee may appoint clerk of Privy Council to take proofs in matters referred to them.

IX. And be it enacted, that in case any petition of appeal whatever shall be presented, addressed to Her Majesty in Council, and such petition shall be duly lodged with the clerk of the Privy Council, it shall be lawful for the said Judicial Committee to proceed in the hearing and reporting

Judicial Committee may hear appeals addressed to Her Majesty in Council without

(*z*) Depositions of witnesses should be taken in writing by the registrar. 3 & 4 Will. IV. c. 41, s. 7, *supra*.

special order of reference, if a general order of reference of such appeals to the committee for the next twelve months shall have been issued in November.

upon such appeal, without any special Order in Council referring the same to them, provided that Her Majesty in Council shall have, by an Order in Council in the month of November, directed that all appeals shall be referred to the said Judicial Committee on which petitions may be presented to Her Majesty in Council during the twelve months next after the making of such order; and that the said Judicial Committee shall proceed to hear and report upon all such appeals in like manner as if each such appeal had been referred to the said Judicial Committee by a special order of Her Majesty in Council: Provided always, that it shall be lawful for Her Majesty in Council at any time to rescind any general order so made; and in case of such order being so rescinded all petitions of appeal shall in the first instance be preferred to Her Majesty in Council, and shall not be proceeded with by the said Judicial Committee without a special order of reference.

General order may be revoked.

Special order then required.

Judicial Committee may on appeals require copies of notes of evidence taken and reasons for judgments given in the courts of any colony, etc.

X. And be it enacted, that it shall be lawful for the said Judicial Committee to make an order or orders, on any court in any colony or foreign settlement, or foreign dominion (*a*) of the Crown, requiring the judge or judges of such court to transmit to the clerk of the Privy Council a copy of the notes of evidence in any cause tried before such court, and of the reasons given by the judge or judges for the judgment pronounced in any case brought by appeal or by writ of error before the said Judicial Committee.

Judicial Committee may make rules to be binding upon such courts requiring judges' notes of evidence, reasons for judgments, etc.

XI. And be it enacted, that it shall and may be lawful for the said Judicial Committee to make any general rule or regulation, to be binding upon all courts in the colonies and other foreign settlements of the Crown, requiring the judges' notes of the evidence taken before such court on any cause appealed, and of the reasons given by the judges of such court or by any of them, for or against the judgment pronounced by such court; which notes of evidence and reasons shall by such court be transmitted to the clerk

(*a*) It will be noted that, in sect. 10, "foreign dominion of the Crown" is mentioned, but omitted in sect. 11. In the latter section the General Rule is said to be binding on the courts in the colonies and foreign settlements, whereas an Order under sect. 10 will also be binding on a court in a foreign dominion of the Crown.

of the Privy Council within one calendar month next after the leave given by such court to prosecute any appeal to Her Majesty in Council; and such order of the said committee shall be binding upon all judges of such courts in the colonies or foreign settlements of the Crown.

In cases of neglect to comply with Order of Council in ecclesiastical or maritime causes persons so neglecting may be punished as for contempt by sequestration.

XII. And be it enacted, that in all causes of appeal to Her Majesty in Council from Ecclesiastical Courts, [*and from Admiralty or Vice-Admiralty Courts,*] (*b*) which now are or may hereafter be depending, in which any person duly monished or cited or requested to comply with any lawful order or decree of Her Majesty in Council, or of the Judicial Committee of the Privy Council or their surrogates, made before or after the passing of this Act, shall neglect or refuse to pay obedience to such lawful order or decree, or shall commit any contempt of the process under the seal of Her Majesty in ecclesiastical and maritime causes (*b*), it shall be lawful for the said Judicial Committee or their surrogates to pronounce such person to be contumacious and in contempt, and, after he or she shall have been so pronounced contumacious and in contempt, to cause process of sequestration (*c*) to issue under the said seal of Her Majesty against the real and personal estate, goods, chattels and effects, wheresoever lying within the dominions of Her Majesty, of the person against or upon whom such order or decree shall have been made, in order to enforce obedience to the same and payment of the expenses attending such sequestration, and all proceedings consequent thereon, and to make such further order in respect of or consequent on such sequestration, and in respect to such real and personal estates, goods, chattels and effects sequestrated thereby, as may be necessary, or for payment of moneys arising from the same to the person to whom the same may be due, or into the registry of the High Court of Admiralty and Appeals, for the benefit of those who may be ultimately entitled thereto.

(*b*) The words between the brackets "and so much of the rest of the section as relates to maritime causes" are repealed by the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), s. 18, and Sched. 2.

(*c*) See Form of Sequestration, No. 16, *supra*, Part. III., in Schedule to Rules, December 11, 1865.

IV. REGISTRAR OF THE PRIVY COUNCIL.

(16 & 17 Vict. c. 85 (1853).)

An Act for removing Doubts as to the Powers of the Registrar of Her Majesty's Privy Council to administer Oaths, and for providing for the Performance of the Duties of such Registrar in his Absence.

Whereas doubts are entertained as to the extent of the powers of the Registrar of Her Majesty's Privy Council appointed under an Act of the session holden in the third and fourth years of King William the Fourth, intituled "An Act for the better Administration of Justice in His Majesty's Privy Council," for taking evidence and administering oaths; And whereas it would be for the public convenience if such registrar were empowered to take affidavits and other evidence and administer oaths in all matters pending before Her Majesty in Council or before the Judicial Committee of the Privy Council, and if provision were made for the appointment of a person to act in the absence of such registrar: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

3 & 4 Will. IV. c. 41.

Registrar may examine witnesses upon oath.

I. It shall be lawful for the registrar for the time being of Her Majesty's Privy Council appointed under the said Act, or such other person or persons as shall be appointed for this purpose by Her Majesty in Council or by the said Judicial Committee, to examine witnesses and take affidavits and depositions upon oath in all appeals, causes, and matters whatsoever pending before Her Majesty in Council or before the said Judicial Committee, and to administer oaths accordingly.

President of the Council may appoint a person to act for registrar in his absence.

II. In case of the absence of the said registrar it shall be lawful for the President of Her Majesty's Privy Council to appoint a person to act for the said registrar during such absence, and such person while so acting shall have the same powers in all respects as are vested in the said registrar.

III. Nothing herein contained shall be taken to affect the power of Her Majesty under the said Act or otherwise, to direct or limit the duties to be performed by the said registrar, or any other authority which might have been exercised by Her Majesty or by her Privy Council or the said Judicial Committee in case this Act had not been passed.

Saving of the existing powers of Her Majesty in Council, and the Judicial Committee.

APPENDIX B.

THE JUDICIAL COMMITTEE RULES, 1908.

Jurisdiction and Procedure: General Rules as to Appeals.

Whereas there was this day read at the Board a representation from the Judicial Committee of the Privy Council in the words following, viz.:

"The Lords of the Judicial Committee having taken into consideration the Practice and Procedure in accordance with which the general Appellate Jurisdiction of Your Majesty in Council is now exercised and being of opinion that the Rules regulating the said Practice and Procedure ought to be consolidated and amended Their Lordships do hereby agree humbly to recommend to Your Majesty that with a view to such consolidation and amendment certain Orders of Her late Majesty Queen Victoria in Council regulating the said Practice and Procedure, viz. the Orders in Council dated respectively the 11th day of August 1842 the 13th day of June 1853 the 31st day of March 1855 the 24th day of March 1871 and the 26th day of June 1873 and also the Order of Your Majesty in Council dated the 20th day of March 1905 amending the said Practice and Procedure ought to be revoked and that the several Rules hereunto annexed ought to be substituted therefor."

His Majesty having taken the said representation into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the said Orders in Council in the said representation mentioned be and the same are hereby revoked and that the rules hereunto annexed be substituted therefor.

A. W. Fitzroy.

ARRANGEMENT OF RULES.

RULE.
1. Interpretation.

Leave to appeal.

2. Leave to appeal generally.

Special Leave to appeal.

3. Form of petition for special leave to appeal.
4. Three copies of petition to be lodged together with affidavit in support.
5. Time for lodging petition.
6. Security for costs and transmission of record.
7. General provisions.
8. Petitions for special leave to appeal *in formâ pauperis.*
9. Exemption of pauper appellant from lodging security and paying office fees.
10. Exemption of unsuccessful petitioner for leave to appeal *in formâ pauperis* from payment of office fees.

Record.

11. Record to be transmitted without delay.
12. Printing of record.
13. Number of copies to be transmitted, where record printed abroad.
14. One certified copy to be transmitted, where record to be printed in England.
15. Record printed partly abroad, partly in England.
16. Reasons for judgments to be transmitted.
17. Exclusion of unnecessary documents from record.
18. Documents objected to to be indicated.
19. Registration and numbering of records.
20. Inspection of record by parties.
21. Times within which a copy of a written record shall be bespoken.
22. Notice of appearance by appellant.
23. Preparation of copy of record for printer.

RULE.
24. Lodging copy of record for printing.
25. Special case.
26. Examination of proof of record and striking off copies.
27. Number of copies of record for parties.
28. How costs of printing record are to be borne.

Petition of Appeal.

29. Times within which petition shall be lodged.
30. Form of petition.
31. Service of petition.

Withdrawal of Appeal.

32. Withdrawal of appeal before petition of appeal has been lodged.
33. Withdrawal of appeal after petition of appeal has been lodged.

Non-prosecution of Appeal.

34. Dismissal of appeal where appellant takes no step in prosecution thereof.
35. Dismissal of appeal for non-prosecution after appellant's appearance and before lodgment of petition of appeal.
36. Dismissal of appeal for non-prosecution after lodgment of petition of appeal.
37. Restoring an appeal dismissed for non-prosecution.

Appearance by Respondent.

38. Time within which respondent may appear.
39. Notice of appearance by respondent.
40. Form of appearance where all the respondents do not appear.
41. Separate appearances.
42. Non-appearing respondent not entitled to receive notices or lodge case.
43. Procedure on non-appearance of respondent.
44. Respondent defending appeal *in formâ pauperis.*

Petitions generally.

RULE.

45. Mode of addressing petitions.
46. Orders on petitions which need not be drawn up.
47. Form of petition.
48. Caveat.
49. Service of petition.
50. Verifying petition by affidavit.
51. Petition for order of revivor or substitution.
52. Petition containing scandalous matter to be refused.
53. Setting down petition.
54. Times within which set-down petitions shall be heard.
55. Notice to parties of day fixed for hearing petition.
56. Procedure where petition is consented to or is formal.
57. Withdrawal of petition.
58. Procedure where hearing of petition unduly delayed.
59. Only one counsel heard on a side in petitions.

Case.

60. Lodging of case.
61. Printing of case.
62. Number of prints to be lodged.
63. Form of case.
64. Separate cases by two or more respondents.
65. Notice of lodgment of case.
66. Case notice.
67. Setting down appeal and exchanging cases.

Binding Records, etc.

68. Mode of binding records, etc., for use of Judicial Committee.
69. Time within which bound copies shall be lodged.

Hearing.

70. Notice to parties of date of commencement of sittings; entering appeals for hearing.

RULE.
71. Notice to parties of day fixed for hearing appeal.
72. Only two counsel heard on a side in appeals.
73. Nautical assessors..

Judgment.

74. Notice to parties of day fixed for delivery of judgment.

Costs.

75. Taxation of costs.
76. What costs taxed in England.
77. Order to tax.
78. Power of taxing officer where taxation delayed through the fault of the party whose costs are to be taxed.
79. Appeal from decision of taxing officer.
80. Amount of taxed costs to be inserted in His Majesty's Order in Council.
81. Taxation on the pauper scale.
82. Security to be dealt with as His Majesty's Order in Council determining appeal directs.

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83. Power of Judicial Committee to excuse from compliance with Rules.
84. Amendment of documents.
85. Affidavits may be sworn before the Registrar of the Privy Council.
86. Change of agent.
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88. Mode of citation and date of operation.
Schedule A. Rules as to printing.
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The Judicial Committee Rules, 1908.

Interpretation.

1.—(1) In these Rules, unless the context otherwise requires :—

"Appeal" means an appeal to His Majesty in Council ;

"Judgment" includes decree, order, sentence, or decision of any court, judge, or judicial officer ;

"Record" means the aggregate of papers relating to an appeal (including the pleading, 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 ;

"Abroad" means the country or place where the court appealed from is situate ;

"Agent" means a person qualified by virtue of Her late Majesty's Order in Council of March 6, 1896, to conduct proceedings before His Majesty in Council on behalf of another ;

"Party" and all words descriptive of parties to proceedings before His Majesty in Council (such as "petitioner," "appellant," "respondent") mean, in respect of all acts proper to be done by an agent, the agent of the party in question where such party is represented by an agent ;

"Month" means calendar month ;

Words in the singular shall include the plural, and words in the plural shall include the singular.

(2) Where by these rules any step is required to be taken in England in connection with proceedings before His Majesty in Council, whether in the way of lodging a petition or other document, entering an appearance, lodging security, or otherwise, such step shall be taken in the registry of the Privy Council, Downing Street, London.

Leave to Appeal.

Leave to appeal generally.

2. All appeals shall be brought either in pursuance of leave obtained from the court appealed from, or, in the absence of such leave, in pursuance of special leave to

appeal granted by His Majesty in Council upon a petition in that behalf presented by the intending appellant.

Special Leave to Appeal.

Form of petition for special leave to appeal.

3. A petition for special leave to appeal to His Majesty in Council shall state succinctly and fairly all such facts as it may be necessary to state in order to enable the Judicial Committee to advise His Majesty whether such leave ought to be granted. The petition shall not travel into extraneous matter, and shall deal with the merits of the case only so far as is necessary for the purpose of explaining and supporting the particular grounds upon which special leave to appeal is sought.

Three copies of petition to be lodged together with affidavit in support.

4. The petitioner shall lodge at least three copies of his petition for special leave to appeal together with the affidavit in support thereof prescribed by Rule 50 hereinafter contained.

Time for lodging petition.

5. A petition for special leave to appeal may be lodged at any time after the date of the judgment sought to be appealed from, but the petitioner shall, in every case, lodge his petition with the least possible delay.

Security for costs and transmission of record.

6. Where the Judicial Committee agree to advise His Majesty to grant special leave to appeal, they shall, in their report, specify the amount of the security for costs (if any) to be lodged by the petitioner, and the period (if any) within which such security is to be lodged and shall, unless the circumstances of a particular case render such a course unnecessary, provide for the transmission of the record by the registrar of the court appealed from to the Registrar of the Privy Council and for such further matters as the justice of the case may require.

General provisions.

7. Save as by the four last preceding Rules otherwise provided, the provisions of Rules 47 to 50 and 52 to 59 (all inclusive) hereinafter contained shall apply *mutatis mutandis* to petitions for special leave to appeal.

Petitions for special leave to appeal *in formâ pauperis.*

8. Rules 3 to 7 (both inclusive) shall apply *mutatis mutandis* to petitions for leave to appeal *in formâ pauperis*, but in addition to the affidavit referred to in Rule 4 every such petition shall be accompanied by an affidavit from the petitioner stating that he is not worth 25*l.* in the world

excepting his wearing apparel and his interest in the subject-matter of the intended appeal, and that he is unable to provide sureties, and also by a certificate of counsel that the petitioner has reasonable ground of appeal.

Exemption of pauper appellant from lodging security and paying office fees.

9. Where a petitioner obtains leave to appeal *in formâ pauperis*, he shall not be required to lodge security for the costs of the respondent or to pay any Council Office fees.

Exemption of unsuccessful petitioner for leave to appeal *in formâ pauperis* from payment of office fees.

10. A petitioner whose petition for leave to appeal *in formâ pauperis* is dismissed may, notwithstanding such dismissal, be excused from paying the Council Office fees usually chargeable to a petitioner in respect of a petition for leave to appeal, if His Majesty in Council, on the advice of the Judicial Committee, shall think fit so to order.

Record.

Record to be transmitted without delay.

11. As soon as an appeal has been admitted, whether by an order of the Court appealed from or by an Order of His Majesty in Council granting special leave to appeal, the appellant shall without delay take all necessary steps to have the record transmitted to the Registrar of the Privy Council.

Printing of record.

12. The record shall be printed in accordance with Rules I. to IV. of Schedule A. hereto. It may be so printed either abroad or in England.

Number of copies to be transmitted, where record printed abroad.

13. Where the record is printed abroad, the registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council forty 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, if any, of the court appealed from.

One certified copy to be transmitted, where record to be printed in England.

14. 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.

Record printed

15. Where part of the record is printed abroad and part is to be printed in England, Rules 13 and 14 shall, as

partly abroad, partly in England.

far as practicable, apply to such parts as are printed abroad and such as are to be printed in England respectively.

Reasons for judgments to be transmitted.

16. 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.

Exclusion of unnecessary documents from record.

17. The registrar, as well as the parties and their 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 printed or copied shall be enumerated in a list to be placed after the index or at the end of the record.

Documents objected to to be indicated.

18. 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 abroad 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.

Registration and numbering of records.

19. As soon as the record is received in the Registry of the Privy Council, it shall be registered in the said registry, with the date of arrival, the names of the parties, the date of the judgment appealed from, and the description whether "printed" or "written." A record, or any part of a record, not printed in accordance with Rules I. to IV. of Schedule A. hereto, shall be treated as written. Appeals shall be numbered consecutively in each year in the order in which the records are received in the said registry.

Inspection of record by parties.

20. The parties shall be entitled to inspect the record and to extract all necessary particulars therefrom for the purpose of entering an appearance.

Times within which a copy

21. Where the record arrives in England either wholly

written, or partly written and partly printed, the appellant shall, within a period of four months from the date of such arrival in the case of appeals from courts situate in any of the countries or places named in Schedule B. hereto, and within a period of two months from the same date in the case of appeals from any other courts, enter an appearance and bespeak a type-written copy of the record, or of such parts thereof as it may be necessary to have copied, and shall engage to pay the cost of preparing such copy at the following rates per folio typed (exclusive of tabular matter) —1½*d.* per folio of English matter, 2*d.* per folio of Indian matter, and 3*d.* per folio of foreign matter. of a written record shall be bespoken.

22. The appellant shall forthwith, after entering his appearance, give notice thereof to the respondent, if the latter has entered an appearance. Notice of appearance by appellant.

23. As soon as the appellant has obtained the type-written copy of the record bespoken by him, he shall proceed, with due diligence, to arrange the documents in suitable order, to check the index, to insert the marginal notes and check the same with the index, and, generally, to do whatever may be required for the purpose of preparing the copy for the printer, and shall, if the respondent has entered an appearance, submit the copy as prepared for the printer, to the respondent for his approval. In the event of the parties being unable to agree as to any matter arising under this rule, such matter shall be referred to the Registrar of the Privy Council, whose decision thereon shall be final. Preparation of copy of record for printer.

24. As soon as the type-written copy of the record is ready for the printer, the appellant shall lodge it, with a request to the Registrar of the Privy Council to cause it to be printed by His Majesty's printer or by any other printer on the same terms, and shall engage to pay at the price specified in Rule V. of Schedule A. hereto the cost of printing fifty copies thereof, or such other number as in the opinion of the said registrar the circumstances of the case require. Lodging copy of record for printing.

25. Whenever it shall be found that the decision of a matter on appeal is likely to turn exclusively on a question of law, the parties, with the sanction of the Registrar of the Privy Council, may submit such question of law to the Special case.

Judicial Committee in the form of a Special Case, and print such parts only of the record as may be necessary for the discussion of the same. Provided that nothing herein contained shall in any way prevent the Judicial Committee from ordering the full discussion of the whole case, if they shall so think fit, and that, in order to promote such arrangements and simplification of the matter in dispute, the said registrar may call the parties before him, and having heard them, and examined the record, may report to the Judicial Committee as to the nature of the proceedings.

Examination of proof of record and striking off copies.

26. The Registrar of the Privy Council shall, as soon as the proof prints of the record are ready, give notice to all parties who have entered an appearance requesting them to attend at the Registry of the Privy Council at a time to be named in such notice in order to examine the said proof prints and compare the same with the certified record, and shall, for that purpose, furnish each of the said parties with one proof print. After the examination has been completed, the appellant shall, without delay, lodge his proof print, duly corrected and (so far as necessary) approved by the respondent, and the Registrar of the Privy Council shall thereupon cause the copies of the record to be struck off from such proof print.

Number of copies of record for parties.

27. Each party who has entered an appearance shall be entitled to receive, for his own use, six copies of the record.

How costs of printing record are to be borne.

28. Subject to any special direction from the Judicial Committee to the contrary, the costs of and incidental to the printing of the record shall form part of the costs of the appeal, but the costs of and incidental to the printing of any document objected to by one party, in accordance with Rule 18, shall, if such document is found on the taxation of costs to be unnecessary or irrelevant, be disallowed to, or borne by, the party insisting on including the same in the record.

Petition of Appeal.

Times within which petition shall be lodged.

29. The appellant shall lodge his petition of appeal—

(a) Where the record arrives in England printed, within a period of four months from the date of such arrival in the case of appeals from courts situate in

any of the countries or places named in Schedule B. hereto, and within a period of two months from the same date in the case of appeals from any other courts ;

(b) Where the record arrives in England written, within a period of one month from the date of the completion of the printing thereof :

Provided that nothing in this rule contained shall preclude an appellant from lodging his petition of appeal prior to the arrival of the record, if there are special reasons why it should be desirable for him to do so.

Form of petition.

30. The petition of appeal shall be lodged in the form prescribed by Rule 47 hereinafter contained. It shall recite succinctly and, as far as possible, in chronological order, the principal steps in the proceedings leading up to the appeal from the commencement thereof down to the admission of the appeal, but shall not contain argumentative matter or travel into the merits of the case.

Service of petition.

31. The appellant shall, after lodging his petition of appeal, serve a copy thereof without delay on the respondent, as soon as the latter has entered an appearance, and shall endorse such copy with the date of the lodgment.

Withdrawal of Appeal.

Withdrawal of appeal before petition of appeal has been lodged.

32. Where an appellant, who has not lodged his petition of appeal, desires to withdraw his appeal, he shall give notice in writing to that effect to the Registrar of the Privy Council, and the said registrar shall, with all convenient speed after the receipt of such notice, by letter notify the registrar of the court appealed from that the appeal has been withdrawn, and the said appeal shall thereupon stand dismissed as from the date of the said letter without further order.

Withdrawal of appeal after petition of appeal has been lodged.

33. Where an appellant, who has lodged his petition of appeal, desires to withdraw his appeal, he shall present a petition to that effect to His Majesty in Council. On the hearing of any such petition a respondent who has entered an appearance in the appeal shall, subject to any agreement between him and the appellant to the contrary, be entitled to apply to the Judicial Committee for his costs, but where

the respondent has not entered an appearance, or, having entered an appearance, consents in writing to the prayer of the petition, the petition may, if the Judicial Committee think fit, be disposed of in the same way *mutatis mutandis* as a consent petition under the provisions of Rule 56 hereinafter contained.

Non-Prosecution of Appeal.

Dismissal of appeal where appellant takes no step in prosecution thereof.

34. Where an appellant takes no step in prosecution of his appeal within a period of four months from the date of the arrival of the record in England in the case of an appeal from court situate in any of the countries or places named in Schedule B. hereto, or within a period of two months from the same date in the case of an appeal from any other court, the Registrar of the Privy Council shall, with all convenient speed, by letter notify the registrar of the court appealed from that the appeal has not been prosecuted, and the appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further order.

Dismissal of appeal for non-prosecution after appellant's appearance and before lodgment of petition of appeal.

35. Where an appellant who has entered an appearance—

(a) fails to bespeak a copy of a written record, or of part of a written record, in accordance with, and within the periods prescribed by, Rule 21 ; or

(b) having bespoken such copy within the periods prescribed by Rule 21, fails thereafter to proceed with due diligence to take all such further steps as may be necessary for the purpose of completing the printing of the said record ; or

(c) fails to lodge his petition of appeal within the periods respectively prescribed by Rule 29 ;

the Registrar of the Privy Council shall call upon the appellant to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said registrar, insufficient, the said registrar shall, with all convenient speed, by letter notify the registrar of the court appealed from that the appeal has not been effectually prosecuted, and the appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further order, and a copy of the said letter shall be

sent by the Registrar of the Privy Council to all the parties who have entered an appearance in the appeal.

Dismissal of appeal for non-prosecution after lodgment of petition of appeal.

36. Where an appellant, who has lodged his petition of appeal, fails thereafter to prosecute his appeal with due diligence, the Registrar of the Privy Council shall call upon him to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said registrar, insufficient, the said registrar shall issue a summons to the appellant calling upon him to show cause before the Judicial Committee at a time to be named in the said summons why the appeal should not be dismissed for non-prosecution provided that no such summons shall be issued by the said registrar before the expiration of one year from the date of the arrival of the record in England. If the respondent has entered an appearance in the appeal, the Registrar of the Privy Council shall send him a copy of the said summons, and the respondent shall be entitled to be heard before the Judicial Committee in the matter of the said summons at the time named and to ask for his costs and such other relief as he may be advised. The Judicial Committee may, after considering the matter of the said summons, recommend to His Majesty the dismissal of the appeal for non-prosecution, or give such other directions therein as the justice of the case may require.

Restoring an appeal dismissed for non-prosecution.

37. An appellant whose appeal has been dismissed for non-prosecution may present a petition to His Majesty in Council praying that his appeal may be restored.

Appearance by Respondent.

Time within which respondent may appear.

38. The respondent may enter an appearance at any time between the arrival of the record and the hearing of the appeal, but if he unduly delays entering an appearance he shall bear, or be disallowed, the costs occasioned by such delay, unless the Judicial Committee otherwise direct.

Notice of appearance by respondent.

39. The respondent shall forthwith after entering an appearance give notice thereof to the appellant, if the latter has entered an appearance.

Form of appearance where all the

40. Where there are two or more respondents, and only one, or some, of them enter an appearance, the appearance form shall set out the names of the appearing respondents.

respondents do not appear.

41. Two or more respondents may, at their own risk as to costs, enter separate appearances in the same appeal.

Separate appearances.

42. A respondent who has not entered an appearance shall not be entitled to receive any notices relating to the appeal from the Registrar of the Privy Council, nor be allowed to lodge a case in the appeal.

Non-appearing respondent not entitled to receive notices or lodge case.

43. Where a respondent fails to enter an appearance in an appeal, the following rules shall, subject to any special order of the Judicial Committee to the contrary, apply :—

Procedure on non-appearance of respondent.

(a) If the non-appearing respondent was a respondent at the time when the appeal was admitted, whether by the order of the court appealed from or by an Order of His Majesty in Council giving the appellant special leave to appeal, and it appears from the terms of the said order, or Order in Council, or otherwise from the record, or from a certificate of the registrar of the court appealed from, that the said non-appearing respondent has received notice, or was otherwise aware, of the order of the court appealed from admitting the appeal, or of the Order of His Majesty in Council giving the appellant special leave to appeal, and has also received notice, or was otherwise aware, of the dispatch of the record to England, the appeal may be set down *ex parte* as against the said non-appearing respondent at any time after the expiration of three months from the date of the lodging of the petition of appeal ;

(b) If the non-appearing respondent was made a respondent by an Order of His Majesty in Council subsequently to the admission of the appeal, and it appears from the record, or from a supplementary record, or from a certificate of the registrar of the court appealed from, that the said non-appearing respondent has received notice, or was otherwise aware, of any intended application to bring him on the record as a respondent, the appeal may be set down *ex parte* as against the said non-appearing respondent at any time after the expiration of three months from the date on which he shall have been served with a copy of His Majesty's Order in

Council bringing him on the record as a respondent.

Provided that where it is shown to the satisfaction of the Judicial Committee, by affidavit or otherwise, either that an appellant has made every reasonable endeavour to serve a non-appearing respondent with the notices mentioned in clauses (a) and (b) respectively and has failed to effect such service, or that it is not the intention of the non-appearing respondent to enter an appearance to the appeal, the appeal may, without further order in that behalf and at the risk of the appellant, be proceeded with *ex parte* as against the said non-appearing respondent.

Respondent defending appeal *in formâ pauperis*.

44. A respondent who desires to defend an appeal *in formâ pauperis* may present a petition to that effect to His Majesty in Council, which petition shall be accompanied by an affidavit from the petitioner stating that he is not worth 25*l.* in the world excepting his wearing apparel and his interest in the subject-matter of the appeal.

Petitions generally.

Mode of addressing petitions.

45. All petitions for orders or directions as to matters of practice or procedure arising after the lodging of the petition of appeal and not involving any change in the parties to an appeal shall be addressed to the Judicial Committee. All other petitions shall be addressed to His Majesty in Council, but a petition which is properly addressed to His Majesty in Council may include, as incidental to the relief thereby sought, a prayer for orders or directions as to matters of practice or procedure.

Orders on petitions which need not be drawn up.

46. Where an order made by the Judicial Committee does not embody any special terms or include any special directions, it shall not be necessary to draw up such order, unless the committee otherwise direct, but a note thereof shall be made by the Registrar of the Privy Council.

Form of petition.

47. All petitions shall consist of paragraphs numbered consecutively and shall be written, type-written, or lithographed, on brief paper with quarter margin and endorsed with the name of the court appealed from, the short title and Privy Council number of the appeal to which the petition relates or the short title of the petition (as the case may be),

and the name and address of the London agent (if any) of the petitioner, but need not be signed. Petitions for special leave to appeal may be printed and, shall, in that case, be printed in the form known as demy quarto or other convenient form.

Caveat.

48. Where a petition is expected to be lodged, or has been lodged, which does not relate to any pending appeal of which the record has been registered in the Registry of the Privy Council, any person claiming a right to appear before the Judicial Committee on the hearing of such petition may lodge a caveat in the matter thereof, and shall thereupon be entitled to receive from the Registrar of the Privy Council notice of the lodging of the petition, if at the time of the lodging of the caveat such petition has not yet been lodged, and, if and when the petition has been lodged, to require the petitioner to serve him with a copy of the petition, and to furnish him, at his own expense, with copies of any papers lodged by the petitioner in support of his petition. The caveator shall forthwith after lodging his caveat give notice thereof to the petitioner, if the petition has been lodged.

Service of petition.

49. Where a petition is lodged in the matter of any pending appeal of which the record has been registered in the Registry of the Privy Council, the petitioner shall serve any party who has entered an appearance in the appeal with a copy of such petition, and the party so served shall thereupon be entitled to require the petitioner to furnish him, at his own expense, with copies of any papers lodged by the petitioner in support of his petition.

Verifying petition by affidavit.

50. A petition not relating to any appeal of which the record has been registered in the Registry of the Privy Council, and any other petition containing allegations of fact which cannot be verified by reference to the registered record or any certificate or duly authenticated statement of the court appealed from, shall be supported by affidavit. Where the petitioner prosecutes his petition in person, the said affidavit shall be sworn by the petitioner himself and shall state that, to the best of the deponent's knowledge, information, and belief, the allegations contained in the petition are true. Where the petitioner is represented by an agent, the said affidavit shall be sworn by such agent and shall,

besides stating that, to the best of the deponent's knowledge, information, and belief, the allegations contained in the petition are true, show how the deponent obtained his instructions and the information enabling him to present the petition.

Petition for order of revivor or substitution.

51. A petition for an order of revivor or substitution shall be accompanied by a certificate or duly authenticated statement from the court appealed from showing who, in the opinion of the said court, is the proper person to be substituted, or entered, on the record in place of, or in addition to, a party who has died or undergone a change of status.

Petition containing scandalous matter to be refused.

52. The Registrar of the Privy Council may refuse to receive a petition on the ground that it contains scandalous matter, but the petitioner may appeal, by way of motion, from such refusal to the Judicial Committee.

Setting down petition.

53. As soon as a petition is ready for hearing, the petitioner shall forthwith notify the Registrar of the Privy Council to that effect, and the petition shall thereupon be deemed to be set down.

Times within which set-down petitions shall be heard.

54. On each day appointed by the Judicial Committee for the hearing of petitions the Registrar of the Privy Council shall, unless the Committee otherwise direct, put in the paper for hearing all such petitions as have been set down. Provided that, in the absence of special circumstances of urgency to be shown to the satisfaction of the said registrar, no petition, if unopposed, shall be so put in the paper before the expiration of three clear days from the lodging thereof, or, if opposed, before the expiration of ten clear days from the lodging thereof unless, in the latter case, the opponent consents to the petition being put in the paper on an earlier day not being less than three clear days from the lodging thereof.

Notice to parties of day fixed for hearing petition.

55. Subject to the provisions of the next following rule, the Registrar of the Privy Council shall, as soon as the Judicial Committee have appointed a day for the hearing of a petition, notify all parties concerned by summons of the day so appointed.

Procedure where petition is consented to or is formal.

56. Where the prayer of a petition is consented to in writing by the opposite party, or where a petition is of a formal and non-contentious character, the Judicial Committee may, if they think fit, make their report to His

Majesty on such petition, or make their order thereon, as the case may be, without requiring the attendance of the parties in the Council Chamber, and the Registrar of the Privy Council shall not in any such case issue the summons provided for by the last-preceding rule, but shall with all convenient speed after the committee have made their report or order notify the parties that the report or order has been made and of the date and nature of such report or order.

Withdrawal of petition.

57. A petitioner who desires to withdraw his petition shall give notice in writing to that effect to the Registrar of the Privy Council. Where the petition is opposed, the opponent shall, subject to any agreement between the parties to the contrary, be entitled to apply to the Judicial Committee for his costs, but where the petition is unopposed, or where, in the case of an opposed petition, the parties have come to an agreement as to the costs of the petition, the petition may, if the Judicial Committee think fit, be disposed of in the same way *mutatis mutandis* as a consent petition under the provisions of the last-preceding rule.

Procedure where hearing of petition unduly delayed.

58. Where a petitioner unduly delays bringing a petition to a hearing, the Registrar of the Privy Council shall call upon him to explain the delay, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said registrar, insufficient, the said registrar may treat the said petition as set down and may, after duly notifying all parties interested by summons of his intention to do so, put the petition in the paper for hearing on the next following day appointed by the Judicial Committee for the hearing of petitions for such directions as the committee may think fit to give thereon.

Only one counsel heard on a side in petitions.

59. At the hearing of a petition not more than one counsel shall be admitted to be heard on a side.

Case.

Lodging of case.

60. No party to an appeal shall be entitled to be heard by the Judicial Committee unless he has previously lodged his case in the appeal. Provided that where a respondent is merely a stakeholder or trustee with no other interest in the appeal, he may give the Registrar of the Privy Council notice

in writing of his intention not to lodge any case, while reserving his right to address the Judicial Committee on the question of costs.

Printing of case.

61. The case may be printed either abroad or in England, and shall, in either event, be printed in accordance with Rules I. to IV. of Schedule A. 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.

Number of prints to be lodged.

62. Each party shall lodge forty prints of his case.

Form of case.

63. 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.

Separate cases by two or more respondents.

64. Two or more respondents may, at their own risk as to costs, lodge separate cases in the same appeal.

Notice of lodgment of case.

65. Each party shall, after lodging his case, forthwith give notice thereof to the other party.

Case notice.

66. Subject as hereinafter provided, the party who lodges his case first may, at any time after the expiration of three clear days from the day on which he has given the other party the notice prescribed by the last-preceding rule, serve such other party, if the latter has not in the meantime lodged his case, with a "case notice," requiring him to lodge his case within one month from the date of the service of the said case notice and informing him that, in default of his so doing, the appeal will be set down for hearing *ex parte* as against him, and if the other party fails to comply with the said case notice, the party who has lodged his case may, at any time after the expiration of the time limited by the said case notice for the lodging of the case, lodge an affidavit of service (which shall set out the terms of the said case notice), and the

appeal shall thereupon, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the party in default. Provided that no case notice shall be served until after the completion of the printing of the record and that it shall be open to the taxing officer, in adjusting the costs of the appeal, to inquire, generally, into the circumstances in which the said case notice was served and, if satisfied that there was no reasonable necessity for the said case notice, to disallow the costs thereof to the party serving the same. Provided also that nothing in this rule contained shall preclude the party in default from lodging his case, at his own risk as regards costs and otherwise, at any time up to the date of hearing.

Setting down appeal and exchanging cases.

67. Subject to the provisions of Rule 43 and of the last-preceding rule, an appeal shall be set down *ipso facto* as soon as the cases on both sides are lodged, and the parties shall thereupon exchange cases by handing one another, either at the offices of one of the agents or in the Registry of the Privy Council, ten copies of their respective cases.

Binding Records, etc.

Mode of binding records, etc., for use of Judicial Committee.

68. As soon as an appeal is set down, the appellant shall attend at the Registry of the Privy Council and obtain ten copies of the record and cases to be bound for the use of the Judicial Committee at the hearing. The copies shall be bound in cloth or in half leather with paper sides, and six leaves of blank paper shall be inserted before the appellant's case. The front cover shall bear a printed label stating the title and Privy Council number of the appeal, the contents of the volume, and the names and addresses of the London agents. The several documents, indicated by incuts, shall be arranged in the following order : (1) appellant's case ; (2) respondent's case ; (3) record ; (4) supplemental record (if any) ; and the short title and Privy Council number of the appeal shall also be shown on the back.

Time within which bound copies shall be lodged.

69. The appellant shall lodge the bound copies not less than four clear days before the commencement of the sittings during which the appeal is to be heard.

Hearing.

70. As soon as the Judicial Committee have appointed a day for the commencement of the sittings for the hearing of appeals, the Registrar of the Privy Council shall, as far as in him lies, make known the day so appointed to the agents of all parties concerned, and shall name a day on or before which appeals must be set down if they are to be entered in the list of business for such sittings. All appeals set down on or before the day named shall, subject to any directions from the committee or to any agreement between the parties to the contrary, be entered in such list of business and shall, subject to any directions from the committee to the contrary, be heard in the order in which they are set down.

Notice to parties of date of commencement of sittings; entering appeals for hearing.

71. The Registrar of the Privy Council shall, subject to the provisions of Rule 42, notify the parties to each appeal by summons, at the earliest possible date, of the day appointed by the Judicial Committee for the hearing of the appeal, and the parties shall be in readiness to be heard on the day so appointed.

Notice to parties of day fixed for hearing appeal.

72. At the hearing of an appeal not more than two counsel shall be admitted to be heard on a side.

Only two counsel heard on a side in appeals.

73. In admiralty appeals the Judicial Committee may, if they think fit, require the attendance of two nautical assessors.

Nautical assessors.

Judgment.

74. Where the Judicial Committee, after hearing an appeal, decide to reserve their judgment thereon, the Registrar of the Privy Council shall in due course notify the parties who attended the hearing of the appeal by summons of the day appointed by the committee for the delivery of the judgment.

Notice to parties of day fixed for delivery of judgment.

Costs.

75. All bills of costs under the orders of the Judicial Committee on appeals, petitions, and other matters, shall be referred to the Registrar of the Privy Council, or such other person as the Judicial Committee may appoint, for taxation, and all such taxations shall be regulated by the schedule of fees set forth in Schedule C. hereto.

Taxation of costs.

What costs taxed in England.

76. The taxation of costs in England shall be limited to costs incurred in England.

Order to tax.

77. The Registrar of the Privy Council shall, with all convenient speed after the Judicial Committee have given their decision as to the costs of an appeal, petition, or other matter, issue to the party to whom costs have been awarded an order to tax and a notice specifying the day and hour appointed by him for taxation. The party receiving such order to tax and notice shall, not less than forty-eight hours before the time appointed for taxation, lodge his bill of costs (together with all necessary vouchers for disbursements), and serve the opposite party with a copy of his bill of costs and of the order to tax and notice.

Power of taxing officer where taxation delayed through the fault of the party whose costs are to be taxed.

78. The taxing officer may, if he think fit, disallow to any party who fails to lodge his bill of costs (together with all necessary vouchers for disbursements) within the time prescribed by the last-preceding rule, or who in any way delays or impedes a taxation, the charges to which such party would otherwise be entitled for drawing his bill of costs and attending the taxation.

Appeal from decision of taxing officer.

79. Any party aggrieved by a taxation may appeal from the decision of the taxing officer to the Judicial Committee. The appeal shall be heard by way of motion, and the party appealing shall give three clear days' notice of motion to the opposite party, and shall also leave a copy of such notice in the Registry of the Privy Council.

Amount of taxed costs to be inserted in His Majesty's Order in Council.

80. The amount allowed by the taxing officer on the taxation shall, subject to any appeal from his taxation to the Judicial Committee and subject to any direction from the committee to the contrary, be inserted in His Majesty's Order in Council determining the appeal or petition.

Taxation on the pauper scale.

81. Where the Judicial Committee directs costs to be taxed on the pauper scale, the taxing officer shall not allow any fees of counsel, and shall only award to the agents out-of-pocket expenses and a reasonable allowance to cover office expenses, such allowance to be taken at about three-eighths of the usual professional charges in ordinary appeals.

Security to be dealt with

82. Where the appellant has lodged security for the respondent's costs of an appeal in the Registry of the

Privy Council, the Registrar of the Privy Council shall deal with such security in accordance with the directions contained in His Majesty's Order in Council determining the appeal. as His Majesty's Order in Council determining appeal directs.

Miscellaneous.

83. The Judicial Committee may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these rules, and may give such directions in matters of practice and procedure as they shall consider just and expedient. Applications to be excused from compliance with the requirements of any of these rules shall be addressed in the first instance to the Registrar of the Privy Council, who shall take the instructions of the committee thereon and communicate the same to the parties. If, in the opinion of the said registrar, it is desirable that the application should be dealt with by the committee in open court, he may, and if he receives a written request in that behalf from any of the parties, he shall, put the application in the paper for hearing before the committee at such time as the committee may appoint, and shall give all parties interested notice of the time so appointed. Power of Judicial Committee to excuse from compliance with rules.

84. Any document lodged in connection with an appeal, petition, or other matter pending before His Majesty in Council or the Judicial Committee, may be amended by leave of the Registrar of the Privy Council, but if the said registrar is of opinion that an application for leave to amend should be dealt with by the committee in open court, he may, and if he receives a written request in that behalf from any of the parties, he shall, put such application in the paper for hearing before the committee at such time as the committee may appoint, and shall give all parties interested notice of the time so appointed. Amendment of documents.

85. Affidavits relating to any appeal, petition, or other matter pending before His Majesty in Council or the Judicial Committee may be sworn before the Registrar of the Privy Council. Affidavits may be sworn before the Registrar of the Privy Council.

86. Where a party to an appeal, petition, or other matter pending before His Majesty in Council changes his agent, such party, or the new agent, shall forthwith give Change of agent.

the Registrar of the Privy Council notice in writing of the change.

Scope of application of rules.

87. Subject to the provisions of any statute or of any statutory rule or order to the contrary these rules shall apply to all matters falling within the appellate jurisdiction of His Majesty in Council.

Mode of citation and date of operation.

88. These rules may be cited as the Judicial Committee Rules, 1908, and they shall come into operation on the 1st day of January, 1909.

Schedule A.

Rules as to Printing.

I. All records and other proceedings in appeals or other matters pending before His Majesty in Council or the Judicial Committee which are required by the above rules to be printed shall henceforth be printed in the form known as demy quarto (*i.e.*, 54 ems in length and 42 in width).

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.

V. The price in England for the printing by His Majesty's printer of 50 copies in the form prescribed by these rules shall be 38*s.* per sheet (eight pages) of pica with marginal notes, not including corrections, tabular matter, and other extras.

Schedule B.

Countries and Places referred to in Rules, 21, 29, *and* 34.

Australia (and the constituent States thereof).
Basutoland.

British East Africa.
British Honduras.
British North Borneo.
Brunei.
Ceylon.
China.
Eastern African Protectorates.
Falkland Islands.
Federated Malay States.
Fiji.
Hong Kong.
India.
Mauritius.
New Zealand.
Persia.
Seychelles.
Somaliland Protectorate.
Straits Settlements.
Zanzibar.

APPENDIX C.

AGENT'S DECLARATION.

THE rules as to the qualification of proctors, solicitors, and agents practising in appeals before the Judicial Committee are now prescribed by an Order in Council of 1896, which replaces an earlier Order of 1870. The rules are as follows:

I. Every proctor, solicitor, or agent admitted to practise before His Majesty's Most Honourable Privy Council, or any of the committees thereof, shall subscribe a declaration to be enrolled in the Privy Council Office, engaging to observe and obey the rules, regulations, orders, and practice of the Privy Council; and also to pay and discharge, from time to time, when the same shall be demanded, all fees or charges due and payable upon any matter pending before His Majesty in Council; and no person shall be admitted to practise, or allowed to continue to practise, before the Privy Council, without having subscribed such declaration in the following terms:—

Form of Declaration.

We, the undersigned, do hereby declare, that we desire and intend to practise as solicitors or agents in appeals and other matters pending before His Majesty in Council; and we severally and respectively do hereby engage to observe, submit to perform, and abide by all and every the orders, rules, regulations, and practice of His Majesty's Most Honourable Privy Council and the committees thereof now in force, or hereafter from time to time, to be made; and also to pay and discharge, from time to time, when the same shall be demanded, all fees, charges, and sums of money due and payable in respect of any appeal, petition, or other matter in and upon which we shall severally and respectively appear as such solicitors or agents.

II. Every proctor or solicitor practising in London (*a*) shall be allowed to subscribe the foregoing declaration, and to practise in the Privy Council, upon the production of his certificate for the current year; and no fees shall be payable by him on the enrolment of his signature to the foregoing declaration.

III. Persons not being certificated London solicitors, but having been duly admitted to practise as solicitors by the High Courts of Judicature in England or Ireland, or by the Court of Session in Scotland, or by the High Courts in any of His Majesty's Dominions respectively, may apply, by petition, to the Lords of the Committee of the Privy Council, for leave to be admitted to practise before such Committee; and such persons may, if the Lords of the Committee please, be admitted to practise by an Order of their Lordships, for such periods and under such conditions as their Lordships are pleased to direct.

IV. Any proctor, solicitor, agent, or other person practising before the Privy Council, who shall wilfully act in violation of the rules and practice of the Privy Council, or of any rules prescribed by the authority of His Majesty, or of the Lords of the Council, or who shall misconduct himself in prosecuting proceedings before the Privy Council, or any committee thereof, or who shall refuse or omit to pay the Council Office fees or charges payable from him when demanded, shall be liable to an absolute or temporary prohibition to practise before the Privy Council, by the authority of the Lords of the Judicial Committee of the Privy Council, upon cause shown at their Lordships' Bar.

(*a*) The Judicial Committee have no power to extend at their discretion the class of those eligible to practice in the Privy Council. Only those solicitors who fall within the terms of Rules II. and III. can be admitted. Cf. *Re Tindale's Petition*, 14 A. C. 328.

APPENDIX D.

FORMS OF PETITIONS.

Petition for Special Leave to Appeal.

In the Privy Council.

On appeal from the Supreme Court of .

Between A. B., *Appellant,* and C.D. and the E. F. Company, *Respondents.*

To the King's Most Excellent Majesty in Council.

The Humble Petition of A. B.

Sheweth,

1. That the petitioner, who is a married woman, instituted an action by specially endorsed writ on February 26, 1905, in the said court against the respondent C. D. as a partner in the E. F. company (thereinafter called "the firm") claiming $5265.68 being principal sums lent and interest due under two promissory notes made by the firm on January 4 and 10, 1904, respectively, and interest on these loans at the rates stated in the promissory notes from the date of the writ till judgment.

2. That by an order of the said court, dated April 2, 1905, the firm were added as defendants.

3. That by an order of the said court, dated June 16, 1905, an issue was directed to be tried without pleadings whether the respondent C. D. was on the said January 4 and 10, 1904, or on either of such dates, a partner in the said firm or liable as such partner.

4. That the issue was tried before the chief justice and a jury, and evidence was adduced on both sides.

5. That the jury found a verdict that the respondent C. D. was a partner in the said firm, and the chief justice thereupon entered judgment in the action for the petitioner with costs.

6. That the respondent C. D. moved the full court for a new trial of the issue on the ground that the verdict was against the weight of evidence.

7. That the full court consisted of the chief justice and the acting puisne judge.

8. That on September 5, 1906, the chief justice delivered his judgment, concurred in by the acting puisne judge, ordering a new trial of the issue not on the ground relied on by the respondent C. D. that the verdict was against the weight of evidence, but on the ground that the chief justice considered that there were suspicious circumstances connected with the petitioner's case.

9. That the following were the circumstances relied on in the judgment of September 5, 1906, as being suspicious, that the petitioner purposely delayed the trial till after the destruction of certain of the firm's books which each party said contained evidence in its favour, that the said books having been placed in the custody of the court in connection with another action and while still in such custody became so injured by mice that on April 13, 1906, they were destroyed by the sanitary authorities.

10. That the said destruction was, as the judgment correctly stated, "owing to circumstances beyond control" and as the judgment correctly stated, the petitioner's solicitors first heard of the said destruction a few days before the trial when they applied to the registrar of the court for inspection of the said books for the purposes of the trial, and the petitioner did not know, and no evidence was given that she knew, of the said destruction till she was then informed thereof by her solicitors.

11. That the delay was also owing to circumstances beyond the petitioner's control, and evidence by her solicitors in explanation of the delay was tendered to the full court but not admitted.

12. That the judgment proceeded to refer to other alleged suspicions regarding the credibility of the petitioner's witnesses who spoke to the contents of the said books, which suspicions the judgment stated were to be tacked on to the suspicions before mentioned.

13. That the new trial was directed because of these alleged suspicions and in order that the jury might pro-

nounce an opinion whether the facts substantiated the chief justice's suspicions.

14. That the petitioner moved the full court again, consisting of the chief justice and the acting puisne judge for leave to appeal to Your Majesty in Council against the judgment of September 5, 1906.

15. That the petitioner contended that such leave should be granted on the grounds that the said judgment was a final judgment within the meaning of the rules which regulate appeals from the said court, and that the question involved in the appeal was one which by reason of its great general importance ought to be submitted to Your Majesty in Council.

16. That on November 28, 1906, the full court delivered judgment, refusing leave to appeal, but expressed much doubt as to the said refusal and observed that the said refusal had the advantage that it could come before Your Majesty in Council on an *ex parte* application, the costs of bringing the respondents before the board being in the first instance avoided.

17. That the petitioner felt herself aggrieved by the judgment of September 5, 1906, ordering a new trial, which she respectfully submitted was wrong on the grounds set forth in the said petition.

And praying Your Majesty in Council to grant her special leave to appeal from the judgment of September 5, 1906, or for such other order as to Your Majesty in Council may seem fit.

Petition of Appeal.

In the Privy Council. No. of 19 .

On appeal from the Supreme Court of the Island of Ceylon.

Between A. B., *Appellant*, and C. D., *Respondent*.

To the King's Most Excellent Majesty in Council.

The Humble Petition of the Appellant.

Sheweth,

1. That on August 31, 1909, the respondent brought an action in the District Court of Colombo against the appellant

as executor of the estate of the late E. F. claiming possession of premises situate at Colpetty within the municipality of Colombo by virtue of a deed dated December 5, 1893, excuted in the respondent's favour by his stepson G. H.

2. That the appellant defended the said action, and on December 20, 1909, the said District Court made a decree in favour of the appellant and dismissed the said action.

3. That the respondent appealed to the said Supreme Court and that court allowed the appeal and made a decree on July 12, 1910, in favour of the respondent.

4. That the appellant being dissatisfied with the said decree of July 12, 1910, obtained leave to appeal therefrom to Your Majesty in Council.

And humbly praying Your Majesty in Council to take this appeal into consideration and that the said decree of the said Supreme Court dated July 12, 1910, may be reversed, altered or varied, or for further or other relief in the premises.

Petition of Revivor.

In the Privy Council. No. of 19 .

On appeal from the High Court of Judicature at Fort William in Bengal.

Between A. B., *Appellant*, and C. D., (since deceased) *Respondent.*

To the King's Most Excellent Majesty in Council.

The Humble Petition of the Appellant.

Sheweth,

1. That the above appeal is pending before Your Majesty in Council.

2. That the respondent has died as appears from a Supplemental Record which has arrived at the Privy Council Office from which it also appears that by an Order of the said High Court dated June 19, 1911, it was declared that E. F., G. H., and I. J.,were the proper persons to be substituted on the Record in the place of the deceased respondent.

And humbly praying that E. F., G. H., and I. J., may be substituted in the above appeal for the deceased respondent, and that the appeal may be revived accordingly.

PETITION FOR CONSOLIDATION.

In the Privy Council. Nos. of 19 .
On appeal from the Court of the Judicial Commissioner of Oudh, Lucknow.

Between A. B., *Appellant*, and C. D. *Respondent*.
And between the said C. D. *Appellant*, and the said A. B. *Respondent*.

To the Lords of the Judicial Committee of the Privy Council.

The Humble Petition of A. B.

Sheweth,

1. That the above appeals are pending before His Majesty in Council.

2. That the decree from which they are brought was made in a suit brought against the petitioner for recovery of principal and interest due on a mortgage.

3. That the appeal of the said C. D. relates to the rate of interest allowed by the said decree.

4. That it will be for the convenience of both parties and will save considerable expense if an order is made for the consolidation of the said two appeals.

And humbly praying that they may be consolidated and heard together on one printed case on each side.

PETITION TO WITHDRAW APPEAL.

In the Privy Council. No. of 19 .
On Appeal from the Supreme Court of Victoria.
Between A. B., *Appellant*, and C. D., *Respondent*.

To the King's Most Excellent Majesty in Council.

The Humble Petition of the Appellant.

Sheweth,

1. That the above appeal is pending before Your Majesty in Council from a judgment of the said Supreme Court dated March 12, 1910.

2. That the record has been transmitted to the Registrar of the Privy Council.

3. That terms of settlement of the matters in dispute have been agreed between the parties and it is desired that

the said appeal should be withdrawn *without any order as to costs* (*a*).

And humbly praying Your Majesty in Council to grant leave to withdraw the said Appeal *without costs* (*a*).

CASE NOTICE.

In the Privy Council.

On appeal from the Supreme Court of Queensland.

Between A. B. *Appellant*, and C. D., *Respondent*.

TAKE NOTICE that you are required to lodge the case on behalf of the within one month from the date of the service of this notice. And further take notice that in default of your so doing the appeal will be set down for hearing *ex parte* as against the .

Solicitors for the .

To Messrs. E. F.
Solicitors for the .

(*a*) Or as the case may be.

APPENDIX E.

TIME TABLE OF STEPS TO BE TAKEN IN AN APPEAL.

I. By Appellant.

A. *Steps to be taken in the Colonial Court.*

Application for leave to appeal to be made by motion or petition within the period fixed by the Order in Council for the particular Colony.

Security for the due prosecution of the appeal and for costs to be given within time fixed by the court.

Printing the record (this step is optional, as the record may be printed in England).

Dispatch of the record to the Registry of the Privy Council.

B. *Steps to be taken in England.*

(1) When leave is not obtained in Colonial Court, a petition for special leave to appeal must be presented to the Judicial Committee.

(2) When the appeal is admitted, if the record is not printed, copy of record must be bespoken and appearance entered—

(a) within four months from the date of its arrival in the case of appeals from places East of Cape Colony;

(b) within two months from all other courts.

Give notice of appearance to respondent if latter has appeared.

(3) Petition of appeal must be lodged—

(i) when record arrives in England printed—

(a) within four months from date of arrival in the case of appeals from places East of Cape Colony;

(b) within two months from all other courts;

(ii) When record arrives in England written.

Within one month from date of completing printing.

(4) Serve petition of appeal without delay on respondent as soon as he has entered appearance.

(5) If respondent does not appear after three months from lodging appeal case may be set down *ex parte*.

(6) Printing case and lodgment of case.

(7) Notice of lodgment of case to other party.

(8) If other party does not lodge case after three clear days from service of notice, serve case notice.

(9) In default of lodgment of case by other party after case notice, after expiration of month lodge affidavit of service and set down appeal *ex parte*.

(10) The case should be set down within one year from the date of the arrival of the record in England. When both cases lodged set down appeal.

(11) Obtain ten copies of record and cases to be bound for use of Judicial Committee.

(12) Bound copies of cases to be lodged not less than four clear days before commencement of sittings during which appeal to be heard.

(13) Hearing of appeal.

II. Steps to be Taken by Respondent.

Steps to be taken in England.

(1) Enter appearance on arrival of record and bespeak copy of record.

(2) Settle the record with appellant.

(3) Give notice of appearance to appellant at once, if latter has entered appearance.

(4) Print and lodge case after petition of appeal served.

(5) Give notice to appellant of lodging case.

(6) Serve case notice on appellant if he does not lodge case as in (9) *supra*.

APPENDIX F.

SPECIMEN OF INDEX OF RECORD.

In the Privy Council. No. 40 of 1894.

On appeal from the Supreme Court of Jamaica.

Between Thomas Albert Samuel Manley (Plaintiff) *Appellant*, and John Thomson Palache (Defenbant), *Respondent.*

Record of Proceedings.

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No.	Description of Document.	Date.	Page.
1	Writ of Summons	10th June, 1892 .	9
2	Postea	3rd June, 1893 .	10
3	Appearance for Defendant . .	1st July, 1892 .	10
4	Amended Statement of Claim. .	5th August, 1892 .	11
5	Motion for Judgment by Default, with Order thereon.	6th March, 1893 .	14
5A	Order on Motion for Judgment .	10th March, 1893.	14
6	Plaintiff's Further and Better Particulars, delivered under Order of 10th March, 1893.	17th March, 1893.	15
7	Order for issue of Commission to examine Hon. H. H. Hocking.	10th April, 1893 .	18
8	Amended Statement of Defence and Counter-claim filed.	17th April, 1893 .	19
9	Defendant's Further Particulars, under Order of 11th April, 1893.	17th April, 1893 .	23
10	Reply	25th April, 1893 .	24
11	Notice of Trial to Defendant . .	25th April, 1893 .	30
12	Rejoinder.	12th May, 1893 .	30
13	Plaintiff's Admission of Facts .	13th May, 1893 .	32
14	Judgment	3rd June, 1893 .	34

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		EXHIBITS.		
15	A1	Nias *v.* Manley, Writ of Summons.	14th June, 1890 .	34
16	A2	„ „ Statement of Claim.	23rd September, 1890.	36
17	A3	„ „ Statement of Defence.	3rd January, 1891	38
18	A4	„ „ Reply . .	3rd March, 1891 .	40
	B	Letter, G. G. Gunter to Lindo and De Cordova.	23rd May, 1893 .	41
20	B	Letter (in reply), Lindo and De Cordova to G. G. Gunter.	23rd May, 1893 .	41
21	C	Notice of Plaintiff's intention to use Evidence at Trial.	22nd May, 1893 .	42
22	G	Conveyance of "Breadlands," Nias to Manley.	23rd August, 1887	43
		[*And so on, setting out the various exhibits printed in the Record, numbered consecutively, and identified by the mark placed upon them at the trial.*]		
66		Notes on Evidence of Trial . .	. . . . .	130-163
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67		Notice and Grounds of Appeal and Motion for a New Trial.	12th June, 1893 .	164
68		Judgment of Mr. Justice Jones on Appeal.	. . . . .	168
69		Judgment of Mr. Justice Lumb on Appeal.	9th October, 1893	172
70		Judgment of the Chief Justice on Appeal.	9th October, 1893	176
71		Order on Motion for New Trial .	9th October, 1893	184
72		Petition for leave to Appeal to H.M. in Council.	17th October, 1893	184
73		Order on Petition for leave to Appeal.	23rd October, 1893	185
74		Bond for security for Costs . .	10th November, 1893.	186
75		Certificate of Register verifying Transcript Record.	9th May, 1894 .	188

List of Documents in Transcript Record omitted from Printed Record by consent of Solicitors.

No. in T. R.	Documents omitted.	Date.	Page in T. R.
6	Affidavit of G. G. Gunter in support of Motion. [*Then followed in like manner the other omitted documents.*]	. . . .	16

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