

**2000 No.1816**

**JUDICIAL COMMITTEE**

**The Pitcairn (Appeals to Privy Council) Order 2000**

*Made* -----

12th July 2000

*Coming into Operation*

14th August 2000

At the Court at Buckingham Palace, the 12th day of July 2000

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 1 of the Judicial Committee Act 1844(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows:—

**Citation and commencement**

1. This Order may be cited as the Pitcairn (Appeals to Privy Council) Order 2000 and shall come into operation on 14th August 2000.

**Interpretation**

2. In this Order unless the contrary intention appears:  
“appeal” means appeal from a judgment of the Court to Her Majesty in Council;  
[“Court” means the Pitcairn Court of Appeal established by the Constitution set out in Schedule 2 to the Pitcairn Constitution Order 2010;]

**(Amended by the Pitcairn Constitution Order 2010)**

“the Islands” means the Pitcairn, Henderson, Ducie and Oeno Islands;  
“judgment” means a judgment of the Court given in exercise of any jurisdiction conferred upon it by any law for the time being in force in the Islands and includes a decree, order, ruling, sentence or decision of the Court;  
“the Judicial Committee” means the Judicial Committee of the Privy Council;  
“the record” means the aggregate of papers relating to an appeal (including pleadings, proceedings, evidence and judgments) proper to be laid before Her Majesty in Council on the hearing of an appeal;  
“the Registrar” means the Registrar of the Court or other proper officer having custody of the records of the Court.

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(a) 1844 c. 69.

### **Appeals to Her Majesty in Council**

3. Subject to the provisions of this Order, an appeal shall lie—
  - (a) as of right, from any final judgment where the matter in dispute on the appeal amounts to or is of the value of £5,000 or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards; and
  - (b) at the discretion of the Court, from any other judgment, 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 or general importance or otherwise, ought to be submitted to Her Majesty in Council for decision.

### **Applications for leave to appeal**

4. Application to appeal shall be made by motion or petition within 21 days of the date of the judgment to be appealed from, and the applicant shall give all other parties concerned notice of his intended application.

### **Conditional leave to appeal**

5. Leave to appeal under article 3 of this Order shall, in the first instance, be granted by the Court only—
  - (a) upon condition of the appellant, within a period to be fixed by the Court but not exceeding 90 days from the date of the hearing of the application for leave to appeal, entering into good and sufficient security to the satisfaction of the Court in a sum not exceeding £1,000 for the due prosecution of the appeal and for the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay 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 purposes of procuring the preparation of the record and the dispatch thereof to the Registrar of the Privy Council as the Court, having regard to all the circumstances of the case, may impose.

### **Power of a single judge**

6. All or any of the powers and functions of the Court under this Order, except the exercise of the discretion conferred by article 3(b) of this Order, may be exercised by any judge of the Court:

Provided that any order, directions or decision made or given in pursuance of this article may be varied, discharged or reversed

by the Court when consisting of three judges, which may include the judge who made or gave the order, directions or decision.

### **Stay of execution**

7. Where the judgment appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as the Court considers just; and, if the Court directs the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as Her Majesty in Council thinks fit to make thereon.

### **Manner of providing security**

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

### **Preparation of record**

9.—(1) The preparation of the record shall be subject to the supervision of the Court and the parties may submit any disputed question arising in connection therewith to the decision of the Court; and the Court shall give such directions thereon as the justice of the case may require.

(2) The Registrar, as well as the parties and their legal agents, shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be transmitted with the record.

(3) Where, in the course of the preparation of a record, one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the record as finally printed shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate, in the index of papers or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

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

### **Printing of the record**

**10.**—(1) The record may be printed in the Islands or elsewhere outside the United Kingdom or in the United Kingdom if the parties agree to its being printed but, in the absence of such agreement, shall be duplicated by process approved by the Registrar of the Privy Council. If the record is to be printed, it shall be printed in accordance with the Rules set forth in the Schedule to this Order.

(2) Where the record is printed outside the United Kingdom, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council 30 copies, one of which he shall certify to be correct by signing his name on, or initialling, every 8th page thereof and by affixing thereto the seal of the Court.

(3) Where the record is to be printed or duplicated in the United Kingdom the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council one certified copy, 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 the United Kingdom by or on behalf of the parties to the appeal.

(4) Where part of the record is printed outside the United Kingdom and part is to be printed or duplicated in the United Kingdom, paragraphs (2) and (3) of this Article shall, as far as possible, apply to such parts as are printed outside the United Kingdom and such as are to be printed or duplicated in the United Kingdom respectively.

### **Consolidation of appeals**

**11.** Where there are two or more applications for leave to appeal arising out of the same matter and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the appeals should be consolidated, the Court may direct the appeals to be consolidated and grant leave to appeal by a single order.

### **Failure to prosecute appeal**

**12.** Where an appellant, having obtained an order granting 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 final leave to appeal, the Court may, on an application in that behalf made by the respondent, rescind the order granting conditional leave to appeal, notwithstanding the appellant's compliance with the conditions imposed by such an order, and may give such directions as to the costs of the appeal and security entered into by the appellant as the Court thinks fit, or make such further or other order as, in the opinion of the Court, the justice of the case requires.

### **Notice to other parties**

**13.**—(1) On an application for final leave to appeal, the Court may enquire whether notice of the application has been given by the appellant to parties concerned and, if not satisfied as to the notices given, may defer the granting of the final leave to appeal or may give such other directions in the matter as, in the opinion of the Court, the justice of the case requires.

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

### **Prosecution of appeal**

**14.** An appellant who has obtained final leave to appeal shall prosecute the appeal in accordance with the Rules for the time being regulating the general practice and procedure in appeals to Her Majesty in Council.

### **Withdrawal of appeal**

**15.**—(1) An appellant who has obtained an order granting conditional leave to appeal may, at any time prior to the making of an order granting final leave to appeal, withdraw the appeal on such terms as to costs and otherwise as the Court may direct.

(2) Where an appellant, having obtained final leave to appeal, desires to withdraw the appeal, the Court may, upon an application in that behalf made by the appellant, grant a certificate to the effect that the appeal has been withdrawn; and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may direct.

### **Dismissal for non-prosecution**

**16.** Where an appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the dispatch of the record to the Registrar of the Privy Council, any respondent may, after giving the appellant due notice of the intended application, apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant; and, if the Court grants such a certificate, the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express Order of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may direct.

### **Substituting parties**

17.—(1) Where, at any time between the order granting final leave to appeal and the dispatch of the record to the Registrar of the Privy Council, 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 and 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 without express Order of Her Majesty in Council.

(2) Where the record, after its dispatch to the Registrar of the Privy Council, becomes defective by reason of the death or change of status of a party of the appeal, the Court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of or in addition to the party who has died or undergone a change of status.

### **Printing of case**

18. The case of each party to the appeal may be printed in the Islands or elsewhere outside the United Kingdom or may be printed or duplicated in the United Kingdom and shall, in either event, be printed or duplicated in accordance with the Rules set forth in the Schedule to this Order, and shall be signed by at least one of the counsel who attends at the hearing of the appeal or by the party himself if he conducts the appeal in person.

### **Form of case**

19. The case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the case and the reasons of appeal. Reference by page and line to the relevant portions of the record as printed or duplicated shall, as far as practicable, be printed or duplicated in the margin and care shall be taken to avoid, as far as possible, the reproduction in the case of long extracts from the record. The taxing officer, in taxing the costs of appeal, shall, either of his own motion or at the instance of any party, inquire into any unnecessary prolixity in the case and shall disallow the costs occasioned thereby.

### **Costs incurred otherwise than before Judicial Committee**

20. Where the Judicial Committee directs a party to bear the costs of an appeal incurred otherwise than before the Judicial Committee, such costs shall be taxed by the proper officer of the Court in accordance with the rules for the time being regulating taxation in the Court.

### **Enforcing judgment**

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

### **Special leave to appeal**

**22.** Nothing in this Order contained shall be deemed to interfere with the right of Her Majesty, upon the humble petition of any person aggrieved by any judgment of the Court, to admit his appeal therefrom upon such conditions as Her Majesty in Council may impose.

## SCHEDULE

Articles 10(1) and 18

### RULES AS TO REPRODUCTION OF DOCUMENTS

1.—(1) All records, cases and other proceedings in appeals or other matters pending before her Majesty in Council or the Judicial Committee which are required by the above Rules to be reproduced shall be reproduced on A4 ISO paper.

(2) Each page shall be numbered.

(3) The number of lines on each page of type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

2. The record shall, where practicable, be arranged in two parts in the same volume, viz:

Part I. The pleadings and proceedings, the transcript of the evidence of the witnesses, the judgments, orders etc., of the courts below down to the order admitting the appeal.

Part II. The exhibits and documents.

3.—(1) The index to both parts of the record shall be placed at the beginning of Part I.

(2) Where a record is in more than one volume, each volume shall contain an index of its contents.

(3) The index to Part I shall be in chronological order; the index to Part II shall follow the order of the exhibit marks.

(4) A list of any documents transmitted to the Privy Council but not reproduced shall be inserted in the record after the index to Part II.

4.—(1) The documents in Part I of the record shall be arranged in chronological order.

(2) (a) Part II shall be arranged in the most convenient way for the use of the Judicial Committee, as the circumstances of the case require.

(b) The documents shall be as far as suitable in chronological order, mixing plaintiff's and defendant's documents together when necessary.

(c) Each document shall show its exhibit mark and whether it is a plaintiff's or defendant's document (unless this is clear from the exhibit mark).

(d) Documents relating to the same matter, such as-

(i) a series of correspondence, or

(ii) proceedings in a suit other than the one under appeal, shall be kept together.

(e) The page number of each document shall be inserted in the index.

5.—(1) The documents in Part I shall be numbered consecutively.

(2) The documents in Part II shall not be numbered, apart from the exhibit mark.

6. Each document shall have a heading which shall consist of the number or exhibit mark and the description of the document in the index, without the date.

7. Each document shall have a marginal note which shall be repeated on each page over which the document extends, viz:-

## PART I

- (a) Where the case has been before more than one court, the short name of the court shall first appear. Where the case has been before only one court, the name of the court need not appear.
- (b) The marginal note of the document shall then appear consisting of the number and the description of the document in the index, with the date, except in the case of oral evidence.
- (c) In the case of oral evidence, “plaintiff’s evidence” or “defendant’s evidence” shall appear beneath the name of the court, and then the marginal note consisting of the number in the index and the witness’s name, with “examination”, “cross-examination” or “re-examination”, as the case may be.

## PART II

The word “Exhibits” shall first appear.

The marginal note of the exhibit shall then appear consisting of the exhibit mark and the description of the document in the index, with the date.

8.—(1) The parties shall agree to the omission of formal and irrelevant documents, but the description of the document may appear (both in the index and in the record), if desired, with the words “not reproduced” against it.

(2) A long series of documents, such as accounts, rent rolls, inventories, etc., shall not be reproduced in full unless Counsel so advise, but the parties shall agree to short extracts being reproduced as specimens.