STATUTORY INSTRUMENTS

1966 No. 1174

JUDICIAL COMMITTEE

The Botswana (Procedure in Appeals to Judicial Committee of Privy Council) Order 1966

Made - - - - 20*th September* 1966

Coming into Operation Immediately before 30*th September* 1966

At the Court at Balmoral, the 20th day of September 1966

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in the exercise of the powers in that behalf by section 24 of the Judicial Committee Act 1833(a) as applied by section 5 of the Botswana Independence Act 1966(b) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement.

1. This Order may be cited as the Botswana (Procedure in Appeals to Judicial Committee of Privy Council) Order 1966 and shall come into operation immediately before 30th September 1966.

Interpretation.

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

"appeal" means appeal from a judgment of the Court to the Judicial Committee;

"Court" means the Court of Appeal for Botswana;

"judgment" means a judgment of the Court given in the exercise of any jurisdiction conferred upon it by any law for the time being in force in Botswana and includes a decree, order, ruling, sentence or decision of the Court;

"Judicial Committee" means the Judicial Committee of the Privy Council;

"record" means the aggregate of papers relating to an appeal (including pleadings, proceedings, evidence and judgments) proper to be laid before the Judicial Committee on the hearing of an appeal;

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

(2) The Interpretation Act 1889(c) shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purposes of interpreting, and in relation to, Acts of Parliament.

General procedure.

3. Any jurisdiction conferred on the Judicial Committee by or under section 14 of the Botswana Independence Order 1966(d) or section 108 of the Constitution contained in Schedule 2 thereto shall be exercised in accordance with the Judicial Committee Rules 1957(e) as amended by the Judicial Committee (Fees) Rules 1963(f), subject to the modi-

(a) 1833 c. 41. (b) 1966 c. 23. (c) 1889 c. 63.
(d) S.I. 1966/1171 (1966 III, p. 2842)
(e) S.I. 1957/2224 (1957 I. p. 1205). (f) S.I. 1963/372 (1963 I. p. 333).

fications set out in Schedule 1 to this Order, and the provisions of this Order.

Application for leave to appeal.

4. Applications to the Court for leave to appeal shall be made by motion or petition within twenty-one 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 to the Judicial Committee in pursuance of the provisions of any law relating to such appeals 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 ninety 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 £500 sterling for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay the 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 despatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

Powers of a single judge.

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

(*a*) to hear and determine any application to the Court for leave to appeal in any case where under any provision of law an appeal lies as of right from a decision of the Court;

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

Provided that any order, directions or decision made or given in pursuance of this section 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 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 may be made on the appeal.

Manner of providing security.

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

Preparation of record.

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

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

(3) Where in the course of the preparation of 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 Botswana or in England) shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

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

Printing of the record.

10.—(1) The record may be printed in Botswana or may be printed in England 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 Schedule 2 to this Order.

(2) Where the record is printed in Botswana 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 of the Court.

(3) Where the record is to be printed or duplicated in England, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council one certified copy of such record, together with an index of all the papers and exhibits in the case. No other certified copies of the record shall be transmitted to the agents in England by or on behalf of the parties to the appeal.

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

Consolidation of appeals.

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

Failure to prosecute appeal.

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

Notice to other parties.

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

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

Prosecution of appeal.

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

Withdrawal of appeal.

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

(2) Where an appellant, having obtained final leave to appeal, desires, prior to the despatch of the record to England, to withdraw his appeal, the Court may, upon an application in that behalf made by the appellant, grant him a certificate to the effect that the appeal has been withdrawn, and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express order, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

Dismissal for non-prosecution.

16. Where an appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the despatch of the record to England, any respondent may, after giving the appellant due notice of his intended application, apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant, and if the Court sees fit to grant such a certificate the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express order, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

Substituting parties.

17.—(1) Where at any time between the order granting final leave to appeal and the despatch of the record to England, the record becomes defective by reason of the death or change of status of a party to the appeal, the Court may, notwithstanding the order granting final leave to appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place or 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.

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

W. G. Agnew.

SCHEDULE 1 Section 3

Modifications of the Judicial Committee Rules 1957, as amended by the Judicial Committee (Fees) Rules 1963, in relation to appeals from the Courts of Botswana.

1. Save as is otherwise provided in this schedule or where the context otherwise requires, any reference in the Rules to Her Majesty in Council shall, except in the case of the definition of "Agent" in paragraph (1) of Rule 1, be construed as a reference to the Judicial Committee.

2. For the words "to advise Her Majesty" in Rule 3 there shall be substituted the words "to decide".

3. For the words "agree to advise Her Majesty" in Rule 6 there shall be substituted the word "decide", and the words "in their Report" shall be deleted.

4. The words "Her Majesty in Council, on the advice of" in Rule 10 shall be deleted.

5. The words "recommend to Her Majesty to" in Rule 11 shall be deleted.

6. For the words "recommend to Her Majesty the dismissal of" in Rule 36 there shall be substituted the word "dismiss".

7. The following Rule shall be substituted for Rule 45:—

"45. All Petitions, including 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 the Appeal, shall be addressed to the Judicial Committee.".

8. The words "make their Report to Her Majesty on such Petition, or" and the words "as the case may be" in Rule 56 shall be deleted.

9. For the words "Her Majesty's Order in Council" in the heading to Rule 80 and in that Rule there shall be substituted the words "the Order".

10. For the words "Her Majesty's Order in Council" in the heading to Rule 82 and in that Rule there shall be substituted the words "the Order".

11. The words "Her Majesty in Council or" in Rule 85 shall be deleted.

12. For the words "Her Majesty in Council" in Rule 87 there shall be substituted the words "the Judicial Committee in relation to appeals from the Court of Appeal of Botswana".

13. The following items in Part II of Schedule B to the Rules shall be omitted, that is to say:—

	£	s.	d.
"Original Order of Her Majesty in Council determining an Appeal	6	5	0
Any other original Order of Her Majesty in Council	3	15	0
Plain copy of an Order of Her Majesty in Council ...		6	6.".

Section 10

SCHEDULE 2

RULES FOR PRINTING CASES

1. Records and cases in appeals to Her Majesty in Council shall be printed in the form known as demy quarto.

2. The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and 8½ inches in width.

3. The type to be used in the text shall be pica type, but long primer shall be used in printing accounts, tabular matter and notes.

4. The number of lines in each page of pica type shall be forty-seven or thereabouts, and every tenth line shall be numbered in the margin.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision for the procedure in appeals from the Court of Appeal for Botswana to the Judicial Committee of the Privy Council.