EXPLANATORY NOTE

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

Rule 1 increases certain of the fees payable to examiners of the court. Rule 2 provides that where leave to apply for an order of mandamus, prohibition or certiorari has been granted the case must, within fourteen days thereafter, be put in the list for hearing if the leave is not to lapse. Rule 3 amends the rules governing the practice in regard to notice of taxation of costs.

1955 No. 1885 (L. 18)

The Rules of the Supreme Court (Appeals), 1955

Made - - - -	*13th December,* 1955
Laid before Parliament	*19th December,* 1955
Coming into Operation	*10th April,* 1956

We, the Rule Committee of the Supreme Court, hereby make the following Rules:—

1. Order XXXIX shall be omitted, and the following Orders shall be substituted for Orders LVIII, LVIIIA and LVIIIB:—

"ORDER LVIII

APPEALS TO COURT OF APPEAL

Application of Order

1. This Order applies, subject to the special provisions hereinafter contained with respect to particular appeals, to every appeal to the Court of Appeal, including, so far as it is applicable thereto, any appeal to that Court from an official referee or from any tribunal from which an appeal lies to that Court under or by virtue of any enactment, not being an appeal for which other provision is made by these Rules.

2. This Order (except so much of paragraph (1) of Rule 3 as provides that an appeal shall be by way of rehearing, and except paragraph (1) of Rule 10) applies to an application to the Court of Appeal for a new trial or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that Court, and references in this Order to an appeal and to an appellant shall be construed accordingly.

General Provisions as to Appeals

3.—(1) An appeal to the Court of Appeal shall be by way of rehearing and shall be brought by notice of motion (in this Order referred to as "notice of appeal").

(2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below; and every such notice shall specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court of Appeal to make.

(3) Except with the leave of the Court of Appeal, the appellant shall not be entitled on the hearing of an appeal to rely upon any grounds of appeal, or to apply for any relief, not specified in the notice of appeal.

(4) Every notice of appeal shall specify the list of appeals in which the appellant proposes to apply to set down the appeal.

(5) A notice of appeal shall be served upon all parties to the proceedings in the court below who are directly affected by the appeal; and subject to the provisions of Rule 8 of this Order it shall not be necessary to serve the notice on parties not so affected.

4.—(1) Subject to the provisions of this Rule, every notice of appeal shall be served under paragraph (5) of Rule 3 of this Order within the following period (calculated from the date on which the judgment or order of the Court below was signed, entered or otherwise perfected), that is to say:—

(*a*) in the case of an appeal from an interlocutory order (not being such an order as is mentioned in the next following sub-paragraph), 14 days;

(*b*) in the case of an appeal from an order or decision made or given in the matter of the winding up of a company, or in the matter of any bankruptcy, 21 days;

(*c*) in any other case, 6 weeks.

(2) Where a summons to vary or discharge a certificate and the further consideration of an action are heard together, and an order is made on both, notice of appeal in respect of the order made on the summons may be served at any time before the expiration of the period within which notice of appeal could be served in respect of the order made on further consideration.

5.—(1) The appellant shall, within 7 days after service of the notice of appeal or within such further time as may be allowed by the proper officer, apply in accordance with this Rule to set down the appeal.

(2) An application to set down an appeal shall be made by producing to the proper officer or his deputy the judgment or order of the court below, or an office copy thereof, and leaving with him—

(*a*) a copy of the said judgment or order; and

(*b*) two copies of the notice of appeal, one of which shall be impressed with the appropriate judicature fee stamp, or endorsed with the amount of the fee paid, and the other endorsed with the date on which the notice was served.

(3) Upon application being made as aforesaid, the proper officer shall file one copy of the notice of appeal and cause the appeal to be set down in the proper list of appeals; and the appeal shall come on to be heard according to its order in that list unless the Court of Appeal or a judge of that Court otherwise orders.

(4) Within two days after an appeal has been set down, the appellant shall give notice to that effect to all parties on whom the notice of appeal was served, specifying the list in which the appeal is set down.

(5) In this Rule "the proper officer" means—

(*a*) in relation to an appeal in an Admiralty case, the Admiralty Registrar;

(*b*) in relation to an appeal in a bankruptcy case, the Chief Bankruptcy Registrar;

(*c*) in relation to an appeal in a probate case, or in a matrimonial cause proceeding in London, the Senior Registrar of the Principal Probate Registry;

(*d*) in relation to an appeal in a matrimonial cause proceeding in a District Registry, the Registrar of that Registry;

(*e*) in relation to an appeal in a revenue case, the Queen's Remembrancer; and

(*f*) in relation to any other appeal, the Chief Registrar of the Chancery Division.

6.—(1) A respondent who, not having appealed from the decision of the court below, desires to contend on the appeal that the decision of that court should be varied, either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of that contention and the precise form of the order which he proposes to ask the Court of Appeal to make, or to make in that event, as the case may be.

(2) A respondent who desires to contend on the appeal that the decision of the court below should be affirmed on grounds other than those relied upon by that court shall give notice to that effect specifying the grounds of that contention.

(3) Except with the leave of the Court of Appeal, a respondent shall not be entitled on the hearing of the appeal to contend that the decision of the court below should be varied upon grounds not specified in a notice given under this rule, to apply for any relief not so specified, or to support the decision of the court below upon any grounds not relied upon by that court or specified in such a notice.

(4) Any notice given by a respondent under this rule (in this Order referred to as a "respondent's notice") shall be served on the appellant, and upon all parties to the proceedings in the court below who are directly affected by the contentions of the respondent, and shall be served—

(*a*) in the case of an appeal against an interlocutory order, within 4 days;

(*b*) in any other case, within 21 days,

after the service of the notice of appeal on the respondent.

(5) A party by whom a respondent's notice is given shall, within two days after service of the notice, furnish two copies of the notice to the proper officer as defined by Rule 5 of this Order.

7.—(1) A notice of appeal or respondent's notice may be amended—

(*a*) by or with the leave of the Court of Appeal, at any time;

(*b*) without such leave, by supplementary notice served, before the expiration of one week after the day on which the appeal first appears in the daily cause list as one of the cases next to be heard, upon each of the parties upon whom the notice to be amended was served.

(2) A party by whom a supplementary notice is served under this Rule shall, within two days after service of the notice, furnish two copies of the notice to the proper officer as defined by Rule 5 of this Order.

8.—(1) The Court of Appeal may in any case direct that the notice of appeal be served upon any party to the proceedings in the court below on whom it has not been served, or upon any person not party to those proceedings.

(2) In any case in which the Court of Appeal directs the notice of appeal to be served on any party or person, the Court may also direct that any respondent's notice by which that party or person is directly affected shall be served upon him.

(3) The Court of Appeal may in any case where it gives a direction under this Rule—

(*a*) postpone or adjourn the hearing of the appeal for such period and upon such terms as may be just; and

(*b*) give such judgment and make such order on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

9.—(1) In relation to an appeal the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court.

(2) The Court of Appeal shall have full discretionary power to receive further evidence upon questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner:

Provided that in the case of an appeal from a judgment after trial or hearing of any cause or matter upon the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.

(3) The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.

(4) The powers of the Court of Appeal under the foregoing provisions of this Rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(5) The Court of Appeal may make such order as to the whole or any part of the costs of an appeal as may be just, and may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.

(6) The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

10.—(1) On the hearing of any appeal the Court of Appeal may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below.

(2) A new trial shall not be ordered on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial

was not asked to leave to them, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned.

(3) A new trial may be ordered on any question without interfering with the finding or decision upon any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage as is mentioned in paragraph (2) of this Rule affects part only of the matter in controversy, or one or some only of the parties, the Court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.

(4) In any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the Court may, in lieu of ordering a new trial,— .

(*a*) with the consent of all parties concerned, substitute for the sum awarded by the jury such sum as appears to the Court to be proper;

(*b*) with the consent of the party entitled to receive or liable to pay the damages, as the case may be, reduce or increase the sum awarded by the jury by such amount as appears to the Court to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded;

but except as aforesaid the Court of Appeal shall not have power to reduce or increase the damages awarded by a jury.

(5) A new trial shall not be ordered by reason of the ruling of any judge that a document is sufficiently stamped or does not require to be stamped.

11. Where any question of fact is involved in an appeal, the evidence taken in the court below bearing on the question shall, subject to any direction of the Court of Appeal, be brought before that Court as follows:—

(*a*) in the case of evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed;

(*b*) in the case of evidence given orally,—

(i) where the judge has intimated that in the event of an appeal his note will be sufficient, by a copy of the judge's note; and

(ii) in any other case, by a copy of the transcript of the official shorthand note or by such other means as the Court of Appeal may direct.

12.—(1) Except so far as the court below or the Court of Appeal may otherwise direct,—

(*a*) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;

(*b*) no intermediate act or proceeding shall be invalidated by an appeal.

(2) On an appeal from the High Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the court or a judge otherwise orders.

13.—(1) Every application to a judge of the Court of Appeal shall be by motion, and the provisions of Order LII shall apply thereto.

(2) Any application to the Court of Appeal for leave to appeal (other than an application made after the expiration of the time for appealing) shall be made *ex parte* in the first instance; but unless the application is then dismissed or it appears to the Court that undue hardship would be caused by an adjournment, the Court shall adjourn the application and give directions for the service of notice thereof upon the party or parties affected, and if on the adjourned application leave to appeal is refused the Court may make such order as to the costs of any such party as may be just.

(3) Where an *ex parte* application has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal *ex parte* within 7 days from the date of the refusal.

(4) Wherever under these Rules an application may be made either to the court below or to the Court of Appeal it shall be made in the first instance to the court below.

14. Without prejudice to the power of the Court of Appeal under Rule 7 of Order LXIV to enlarge the time prescribed by any provision of this Order, the period for serving notice of appeal under Rule 4 of this Order or for making application *ex parte* under paragraph (3) of Rule 13 of this Order may be extended by the court below upon application made before the expiration of that period.

Special Provisions as to Particular Appeals

15.—(1) The following provisions of this Rule shall apply to any appeal to the Court of Appeal in a matrimonial cause against a decree nisi of divorce or nullity of marriage.

(2) The period of 6 weeks specified in Rule 4 of this Order shall be calculated from the date on which the decree was pronounced, and Rule 14 of this Order shall not apply in relation to that period.

(3) The appellant shall, within the said period and after service of the notice of appeal, leave with the appropriate Registrar two copies of the notice of appeal (one of which shall be impressed with the appropriate judicature fee stamp or endorsed with the amount of the fee paid, and the other endorsed with a certificate of the date of service of the notice); and the appeal shall not be competent unless this paragraph has been complied with.

(4) One copy of the notice left with the appropriate Registrar as aforesaid shall forthwith be filed by that Registrar; and for the purposes of Rule 5 of this Order the leaving of the said copies shall be sufficient application to set down the appeal, and paragraphs (1) and (2) of that Rule shall not apply.

(5) A party who intends to apply *ex parte* to the Court of Appeal to enlarge the period referred to in paragraphs (2) and (3) of this Rule shall give notice of his intention to the Clerk of the Rules before the application is made; and where any order is made by the Court of Appeal enlarging the said period, it shall be the duty of the proper officer of that Court forthwith to give notice of the making of the order and of the terms thereof to the appropriate Registrar.

(6) In this Rule "the appropriate Registrar" means, in relation to a cause proceeding in London the Senior Registrar of the Principal Probate Registry, and in relation to a cause proceeding in a District Registry the Registrar of that Registry.

16.—(1) The following provisions of this Rule shall apply to any appeal to the Court of Appeal from an order for the revocation of a patent made on a petition under section 32 of the Patents Act, 1949, or on a counterclaim under section 61 of that Act.

(2) The notice of appeal shall be served upon the Comptroller-General of Patents, Designs and Trade Marks (in this Rule referred to as "the Comptroller") as well as upon the party or parties required to be served under Rule 3 of this Order.

(3) If, at any time before the appeal comes on for hearing, the respondent decides not to appear on the appeal or not to oppose it, he shall forthwith serve notice of his decision upon the Comptroller and the appellant; and any such notice served upon the Comptroller shall be accompanied by a copy of the petition or of the pleadings in the action and the affidavits filed therein.

(4) The Comptroller shall, within 14 days after receiving notice of the respondent's decision, serve upon the appellant a notice stating whether or not he intends to appear upon the appeal.

(5) The Comptroller may appear and be heard in opposition to the appeal—

(*a*) in any case where he has given notice under paragraph (4) of this Rule of his intention to appear; and

(*b*) in any other case (including, in particular, a case where the respondent withdraws his opposition to the appeal during the hearing) if the Court so directs or allows.

(6) The Court of Appeal may make such orders for the postponement or adjournment of the hearing of the appeal as may appear to the Court necessary for the purpose of giving effect to the foregoing provisions of this Rule.

17.—(1) The following provisions of this Rule shall apply to any appeal to the Court of Appeal from a decision of the Appeal Tribunal constituted under section 85 of the Patents Act, 1949 (in this Rule referred to as "the Appeal Tribunal").

(2) The notice of appeal shall be served within 14 days from the date of the decision or within such further time as the Appeal Tribunal may allow, and shall be served upon the Comptroller-General of Patents, Designs and Trade Marks as well as upon the party or parties required to be served under Rule 3 of this Order; and the appellant shall, within that period, file two copies of the notice with the Registrar of the Appeal Tribunal.

(3) Rule 5 of this Order shall not apply to the appeal; but the Registrar of the Appeal Tribunal shall make arrangements with the proper officer as defined by that Rule to set down the appeal in a special list to be called Patents Tribunal Appeals, and shall give to the appellant, and to all parties served with the notice of appeal, at least 7 days' notice of the earliest date on which the appeal can come on to be heard.

(4) On receiving the notice given by the Registrar under the last foregoing paragraph, the appellant shall lodge with the Registrar, for the use of the Court of Appeal, a signed copy of the decision of the Appeal Tribunal and two additional unsigned copies, together with three copies of the notice of appeal and of all the evidence used before the Appeal Tribunal.

(5) Any respondent to the appeal may apply to the Appeal Tribunal for an order requiring the appellant to give security for the costs of and occasioned by the appeal.

18.—(1) The following provisions of this Rule shall apply to any appeal to the Court of Appeal from a county court, including, so far as applicable, any such appeal to which Rule 19 of this Order applies.

(2) The notice of appeal shall be served upon the registrar of the county court as well as upon the party or parties required to be served under Rule 3 of this Order.

(3) The notice of appeal shall be served, and application to set down the appeal made, within 21 days from the date of the judgment or order of the county court; and Rule 4 of this Order, and so much of Rule 5 as relates to the time for making such an application, shall not apply.

(4) In relation to the appeal, paragraph (2) of the said Rule 5 shall have effect as if for the words " an office copy " there were substituted the words " a certificate ".

(5) It shall be the duty of the appellant to apply to the judge of the county court for a signed copy of any note made by him of the proceedings and of his decision, and to furnish the said copy for the use of the Court of Appeal; and in default of production of such a note, the Court of Appeal may hear and determine the appeal upon any other evidence or statement of what occurred before the judge of the county court which appears to the Court of Appeal to be sufficient.

(6) Paragraph (1) (*a*) of Rule 12 shall not apply; but the appeal shall not operate as a stay of proceedings in the county court unless the judge of that court so orders or unless, within 10 days from the date of the judgment or order appealed from, the appellant deposits a sum fixed by the judge not exceeding the amount of the money or the value of the property affected by the judgment or order, or gives such security for the said sum as the judge may direct.

19.—(1) The following provisions of this Rule shall apply to any appeal to the Court of Appeal from the decision of a county court on the hearing of an appeal from a registration officer under section 45 of the Representation of the People Act, 1949.

(2) The Court of Appeal may order the costs of any such appeal which is successful to be paid by the registration officer named as respondent to the appeal; and where any person other than the registration officer is respondent to an appeal he shall not be liable for or entitled to costs unless he appears in support of the decision of the county court.

(3) Notice of the decision of the Court of Appeal shall be given by the proper officer of the Court of Appeal to the registration officer, specifying every alteration to be made in pursuance of the decision in the register or list concerned; and a copy of every such notice shall be sent to the registrar of the county court.

ORDER LVIIIA

Appeals to Court of Appeal by Case Stated

1.—(1) Any person who is aggrieved by a decision of the Lands Tribunal as being erroneous in point of law may, within 6 weeks of the date of the decision, by notice in writing addressed to the Registrar of the Lands Tribunal require the Tribunal to state a case setting forth the facts on which the decision was based and the decision of the Tribunal thereon.

(2) The member or members of the Lands Tribunal by whom the decision was given shall, as soon as may be, state and sign the case and shall cause it to be sent by registered post to the person aggrieved.

2.—(1) Where any tribunal other than the Lands Tribunal is or may be empowered or required to state a case on a question of law for determination by the Court of Appeal, any party to the proceedings before the tribunal who is aggrieved by the tribunal's refusal to state a case may apply to the Court of Appeal for an order requiring the tribunal to state a case.

(2) An application under this Rule shall be made by notice of motion served within 21 days after the refusal upon the clerk or registrar of the tribunal and upon every other party to the proceedings before the tribunal, and stating in general terms the grounds of the application, together with the question of law on which it is desired that a case shall be stated and any reasons given by the tribunal for its refusal.

(3) Within two days after service of the notice of motion, the appellant shall lodge two copies of the notice with the proper officer of the Court of Appeal, who shall enter the motion in the appropriate list.

(4) Where a tribunal is ordered to state a case under this Rule, the tribunal shall state and sign the case and shall cause it to be sent by registered post to the party on whose application the order was made within such time as may be directed by the order.

3.—(1) The party at whose instance a case has been stated by any tribunal to which this Order applies shall, within 21 days after receiving the case—

(*a*) serve on every other party to the proceedings before the tribunal a copy of the case, together with a notice of motion setting forth his contentions on the question of law; and

(*b*) serve a copy of the said notice of motion on the clerk or registrar of the tribunal.

(2) Within two days after service of the said notice of motion, the said party shall lodge the case and two copies of the notice of motion with the proper officer of the Court of Appeal, who shall enter the case in a list to be kept for the purpose; and the case shall not come on to be heard until after the expiration of twenty-one days from the date of entry.

(3) Where the enactment under which the case is stated provides that a Minister or government department shall have a right to be heard in the proceedings on the case, a copy of the case and of the notice of motion shall be served upon that Minister or department.

(4) On the hearing of the case the Court of Appeal may, if it thinks fit, amend the case or order it to be sent back to the tribunal for amendment, and shall have power to draw inferences of fact from the facts set forth in the case.

(5) The proper officer of the Court of Appeal shall notify the clerk or registrar of the tribunal of the decision of the Court of Appeal on the case and of any directions given by the Court thereon.

(6) Rule 9 of Order LVIII shall, so far as applicable, apply in relation to a case stated by a tribunal to which this Order applies."

2. For Rule 36 of Order LIX there shall be substituted the following Rule:—

"36. Subject to the provisions of this Order, Rules 9 to 11 of Order LVIII shall, so far as applicable and subject to the necessary modifications, apply to appeals to the High Court from inferior courts of civil jurisdiction as they apply in relation to appeals from the High Court to the Court of Appeal."

3. The following Rule shall be inserted after Rule 36 of Order LIX:—

"36A.—(1) Appeals from orders in bankruptcy matters made by a county court shall be heard by a Divisional Court of that Division of the High Court of which the judge to whom bankruptcy business is for the time being assigned is a member.

(2) Subject to the provisions of the Bankruptcy Rules, Order LVIII shall apply to such appeals as it applies by virtue of Rule 18 of that Order to appeals from a county court to the Court of Appeal."

4.—(1) These Rules may be cited as the Rules of the Supreme Court (Appeals), 1955.

(2) These Rules shall come into force on the tenth day of April, 1956, but shall not affect any appeal brought before that date.

Dated the 13th day of December, 1955.

Kilmuir, C.
Goddard, C.J.
Raymond Evershed, M.R.
A. T. Denning, L.J.
Frederic Sellers, J.
R. G. Micklethwait.
L. S. Holmes.
W. Charles Norton.

EXPLANATORY NOTE

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

These Rules replace Order 39 (which relates to applications for a new trial), and Orders 58, 58A and 58B (which relate to appeals to the Court of Appeal, including appeals from the Patents Appeal Tribunal and the Lands Tribunal) and give effect to a number of recommendations in regard to appeals made in the Final Report of the Committee on Supreme Court Practice and Procedure (Cmd. 8878).