STATUTORY INSTRUMENTS

1964 No. 1845

SOUTH ATLANTIC TERRITORIES

The St. Helena Court of Appeal Order 1964

Made - - - -	*20th November* 1964
Laid before Parliament	*26th November* 1964
Coming into Operation	*On a day to be appointed by the Governor under article* 1(2)

At the Court at Buckingham Palace, the 20th day of November 1964

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by section 112 of the Government of India Act 1833(a) and by the British Settlements Acts 1887 and 1945(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.—(1) This Order may be cited as the St. Helena Court of Appeal Order 1964.

(2) This Order shall come into operation on such day as the Governor may, by proclamation in the Government Gazette of St. Helena, appoint, which day shall not be earlier than 27th November 1964.

Interpretation.

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

"the Court" means the Court constituted by this Order;

"the existing Court" means the Court of Appeal for Eastern Africa established under the Constitution of the East African Common Services Organization;

"the Governor" means the Governor and Commander-in-Chief of St. Helena;

"St. Helena" means the Colony of St. Helena and its Dependencies.

(2) In this Order, unless the context otherwise requires, a reference to the holder of an office by the term designating his office includes, to the extent of his authority, any person who is for the time being authorised to perform the functions of that office.

(3) 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 purpose of interpreting, and in relation to, Acts of Parliament.

(a) 3 & 4 Will. 4. c. 85. (b) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7.
(c) 52 & 53 Vict. c. 63.

Constitution of Court.

3.—(1) There shall be a court of appeal for St. Helena, styled the St. Helena Court of Appeal, which shall be a superior court of record.

(2) The judges of the Court shall be—

(*a*) a President and two or more Justices of Appeal; and

(*b*) the Chief Justice of the Supreme Court of St. Helena, who shall be a member of the Court *ex officio*.

(3) (*a*) The President and the Justices of Appeal shall be appointed by the Governor in accordance with instructions given by Her Majesty through a Secretary of State and shall hold office on such terms and conditions as the Governor shall, in accordance with such instructions, prescribe;

(*b*) a person shall not be qualified for appointment as the President or a Justice of Appeal of the Court unless—

(i) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or a court having jurisdiction in appeals from any such court; or

(ii) he is entitled to practise as an advocate in such a court and has been entitled for not less than five years to practise as an advocate or a solicitor in such a court;

(*c*) for the purposes of this paragraph, a person shall be regarded as entitled to practise as an advocate or a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—

(i) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or

(ii) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practise.

(4) At any time when the office of President of the Court is vacant or the person holding that office is for any reason unable to perform the functions of that office, those functions shall be performed by such one of the Justices of Appeal or such other person qualified for appointment as a Justice of Appeal as may from time to time be designated in that behalf by the Governor.

(5) The Court shall have and use a seal bearing the style of the Court and a device approved by the President.

(6) Every person appointed to be a judge of the Court shall, before entering upon the functions of his office, take the oaths or affirmations set out in the Schedule to this Order.

Jurisdiction of the Court.

4.—(1) The Court shall have jurisdiction to hear and determine such appeals from the courts of St. Helena as may be prescribed by any law in force in St. Helena.

(2) In connection with any appeal from a court of St. Helena the Court shall, subject to the provisions of this Order and any law in force in St. Helena, have all the powers and jurisdiction that are possessed by that court under any law in force in St. Helena; and decisions of the Court in respect of any appeal from a court of St. Helena shall, subject as aforesaid, be enforced in St. Helena in the same way as decisions of that court.

(3) The Court may, in accordance with any directions issued from time to time by the President, sit in St. Helena, or elsewhere for the purpose of exercising any jurisdiction and powers conferred upon it by or under this article or by any rule made under article 5 of this Order.

Practice and procedure on appeals.

5.—(1) Subject to the provisions of this Order, the President may make rules for regulating the practice and procedure of the Court with respect to appeals from the courts of St. Helena and, in connection with such appeals, for regulating the practice and procedure in any court of St. Helena from which such appeals are brought.

(2) Without prejudice to the generality of paragraph (1) of this article, rules of court may be made for the following purposes :—

(*a*) for regulating the sittings of the Court, whether in divisions or otherwise, and the selection of judges for any purpose ;

(*b*) for regulating the right of practising before the Court and the representation of persons concerned in any proceedings in the Court ;

(*c*) for prescribing cases in which, and conditions upon which, an appellant in a criminal appeal to the Court shall be entitled to be present at the hearing of the appeal ;

(*d*) for providing for summary determination of any appeal which appears to the Court to be frivolous or vexatious or to be brought for the purposes of delay ;

(*e*) for prescribing forms and fees in respect of proceedings in the Court and regulating the costs of and incidental to any such proceedings ;

(*f*) for prescribing and regulating the powers and duties of registrars and officers of the Court ;

(*g*) for prescribing the time within which any requirement of the rules is to be complied with ;

(*h*) for providing for a reference from a decision of a single judge to the Court.

(3) Rules made under this article may fix the number of judges of the Court who may sit for any purpose:

Provided that—

(*a*) an uneven number of judges shall sit, which, for the purposes of any final determination by the Court other than the summary dismissal of an appeal, shall not be less than three ; and

(*b*) any determination by the Court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit for the purpose of determining that matter.

Pending proceedings.

6.—(1) Any proceedings relating to appeals from the courts of St. Helena that are pending immediately before the commencement of this Order in the existing Court may be continued and concluded after the commencement of this Order in that court as if this Order had not been made.

(2) Any judgment of the existing Court given, but not satisfied, before the commencement of this Order, and any judgment of the existing Court given after the commencement of this Order in respect

of any proceedings referred to in paragraph (1) of this article, may be enforced after the commencement of this Order as if it were a judgment of the Court.

Existing appeal laws and rules of court.

7.—(1) Any law in force in St. Helena immediately before the commencement of this Order providing for appeals from the courts of St. Helena to the existing Court and matters relating thereto shall, subject to amendment or repeal by a law of the Legislature of St. Helena or by rules made under article 5 of this Order, continue in force in St. Helena after the commencement of this Order, but shall have effect as if it was a law enacted in pursuance of article 5 of this Order and for that purpose shall be construed with any necessary adaptations and modifications.

(2) All rules of court relating to the hearing and determination of appeals from the courts of St. Helena by the existing Court in force immediately before the commencement of this Order shall, subject to amendment or revocation by rules made under article 5 of this Order, continue in force after the commencement of this Order and shall have effect as if they were rules made under article 5 of this Order and for that purpose shall be construed with any necessary adaptations and modifications.

(3) The Governor may by order made at any time before the 30th June 1965 make such amendments to any law in force in St. Helena as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions.

W. G. Agnew.

(article 3(6)) **SCHEDULE**

FORMS OF OATHS AND AFFIRMATIONS

1. *Oath of Allegiance*

I .....
do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. *Affirmation of Allegiance*

I .....
do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

3. *Judicial Oath*

I .....
do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of (*here insert the description of the office*) and I will do right to all manner of people according to the law without fear or favour affection or ill-will. So help me God.

4. *Judicial Affirmation*

I .....
do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of (*here insert the description of the office*) and I will do right to all manner of people according to the law without fear or favour affection or ill-will.

EXPLANATORY NOTE

(This Note is not a part of the Order, but is intended to indicate its general purport.)

This Order makes fresh provision for the hearing and determination of appeals from the courts of St. Helena.