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APPEALS TO HIS MAJESTY IN COUNCIL.

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THE following Rules of His Majesty in Council are published for general information.

J. W. O'HALLORAN,  
Prothonotary.

Prothonotary's Office,  
Melbourne, 14th September, 1909.

# STATUTORY RULES AND ORDERS, 1908.

No. 1288.

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## JUDICIAL COMMITTEE.

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### JURISDICTION AND PROCEDURE: GENERAL RULES AS TO APPEALS.

THE JUDICIAL COMMITTEE RULES, 1908.

AT THE COURT AT BUCKINGHAM PALACE.

THE 21ST DAY OF DECEMBER, 1908.

*Present :*

THE KING'S MOST EXCELLENT MAJESTY.

ARCHBISHOP OF CANTERBURY.  
LORD PRESIDENT.

LORD CHAMBERLAIN.  
LORD FITZMAURICE.

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.

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1.—(1) In these Rules, unless the context otherwise requires :—

Interpretation.

- “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 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 ;
- “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 the 6th March, 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 connexion 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.

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.

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.

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.

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.

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.

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.

8. Rules 3 to 7 (both inclusive) shall apply *mutatis mutandis* to Petitions for leave to appeal *in forma 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 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 grounds of appeal.

9. Where a Petitioner obtains leave to appeal *in forma pauperis*, he shall not be required to lodge security for the costs of the Respondent or to pay any Council Office fees.

10. A Petitioner whose Petition for leave to appeal *in forma 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.

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 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.

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 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.

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  
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)—1½d. per folio of English matter, 2d. per folio of Indian matter, and 3d. per folio of foreign matter.

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.

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 50 copies thereof, or such other number as in the opinion of the said Registrar the circumstances of the case require.

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.

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.

27. Each party who has entered an Appearance shall be entitled to receive, for his own use, six copies of the Record.

Number of copies of Record for parties.

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.

How costs of printing Record are to be borne.

#### PETITION OF APPEAL.

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:

Times within which Petition shall be lodged.

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.

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 augmentative matter or travel into the merits of the case.

Form 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 indorse such copy with the date of the lodgment.

Service of Petition.

#### WITHDRAWAL OF APPEAL.

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 before 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.

Withdrawal of Appeal after Petition of Appeal has been lodged.

#### NON-PROSECUTION OF APPEAL.

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 where Appellant takes no step in prosecution thereof.

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;

Dismissal of Appeal for non-prosecution after Appellant's Appearance and before lodgment of Petition of Appeal.

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.

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

Dismissal of Appeal for non-prosecution after lodgment of Petition of Appeal.

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  
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. *7*

41. Two or more Respondents may, at their own risk as to costs, enter separate Appearances in the same Appeal.

Non-appearing  
Respondent  
not entitled to  
receive notices  
or lodge Case.  
Procedure on  
non-appearance  
of Respondent.

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.

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:—

- (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  
*forma pauperis*.

44. A Respondent who desires to defend an Appeal *in forma 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 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 indorsed 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.



48. Where a Petition is expected to be lodged, or has been lodged, which does not relate to any Caveat. 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.

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. Service of Petition.

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 of 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. Verifying Petition by Affidavit.

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 for Order of Revivor or Substitution.

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. Petition containing scandalous matter to be refused.

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. Setting down Petition.

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. Times within which set-down Petitions shall be heard.

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. Notice to parties of day fixed for hearing Petition.

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. Procedure where Petition is consented to or is formal.

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 Petitioner 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. Withdrawal of Petition.

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.

#### CASE.

60. No party to any 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. Lodging of Case.

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 40 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 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, &c.,  
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.

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.

Only two  
Counsel heard  
on a side in  
Appeals.

72. At the hearing of an Appeal not more than two Counsel shall be admitted to be heard on a side.

Nautical  
Assessors.

73. In Admiralty Appeals the Judicial Committee may, if they think fit, require the attendance of two Nautical Assessors.

#### 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.

## 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.

76. The taxation of costs in England shall be limited to costs incurred in England.

What costs taxed in England

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 48 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.

Order to tax.

78. The Taxing Officer may, if he thinks 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.

Power of Taxing Officer where taxation delayed through the fault of the party whose costs are to be taxed.

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.

Appeal from decision of Taxing Officer.

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.

Amount of taxed costs to be inserted in His Majesty's Order in Council.

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.

Taxation on the pauper scale.

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.

Security to be dealt with 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 connexion 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 the Registrar of the Privy Council notice in writing of the change.

Change of Agent.

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.

Scope of application of Rules.

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.

Mode of citation and date of operation.

## 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 8½ 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 38s. 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).	Fiji.
Basutoland.	Hong Kong.
British East Africa.	India.
British Honduras.	Mauritius.
British North Borneo.	New Zealand.
Brunei.	Persia.
Ceylon.	Seychelles.
China.	Somaliland Protectorate.
Eastern African Protectorates.	Straits Settlements.
Falkland Islands.	Zanzibar.
Federated Malay States.	

## SCHEDULE C.

## 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 written 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
Attending at the Council Office to examine proof print of Record with the certified Record .. .. .	per diem	3	3
Attending at the Council Chamber on Summons for the hearing of the 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
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
Copying Petition, Case, or Affidavit .. .. .	per folio	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
Copying Bill of Costs .. .. .	per folio	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
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
Subpoena to Witnesses .. .. .	0	10	0
Taxing Fee in Appeals .. .. .	3	0	0
Taxing Fee in Petitions .. .. .	2	0	0