

CHAPTER 12

COURT OF APPEAL

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

SECTION

1. Short title.
2. Interpretation.

PART II—FIJI COURT OF APPEAL

3. Name of Court and general jurisdiction.
4. Seal of Court.
5. Precedence and seniority.
6. Number of judges.
7. Sessions of Court of Appeal.
8. Registrar of Court of Appeal.
9. Judges not to sit on appeals from their own decisions.
10. Appeals from other territories and under other enactments.
11. Right of audience in appeals from other territories.

PART III—APPEALS IN CIVIL CASES

12. Appeals in civil cases.
13. Powers of Court of Appeal in civil appeals.
14. Wrong ruling as to sufficiency of stamp.
15. Power to reserve question of law for the decision of Court of Appeal.
16. Conditions precedent to appeal.
17. Discretionary power of Court.
18. Judgments.
19. Continuation of civil appeal notwithstanding absence of a judge.
20. Powers of a single judge of appeal.

PART IV—APPEALS IN CRIMINAL CASES

21. Right of appeal in criminal cases.
22. Appeals from Supreme Court in its appellate, etc., jurisdiction in criminal cases.
23. Determination of appeal in ordinary cases.
24. Powers of Court in special cases.
25. Suspension of payment for restoration, etc.
26. Time for appealing.
27. Judge's notes and report to be furnished on appeal.
28. Supplemental powers of Court.
29. Director of Public Prosecutions to be party.

30. Legal assistance to appellant.
31. Right of appellant to be present.
32. Costs of appeal.
33. Admission to bail of appellant and custody when attending Court.
34. Duties of Registrar with respect to notices of appeal, etc.
35. Powers which may be exercised by a judge of the Court.
36. Judgment in criminal appeals.
37. Power to reserve question of law for the decision of the Court of Appeal.
38. Prerogative of mercy.

PART V—RULES

39. Power to make rules of Court.

Ordinances Nos. 2 of 1949, 25 of 1958, 44 of 1959, 37 of 1960, 36 of 1961, 37 of 1965, 37 of 1966, Order 31st Jan., 1967. Order 7th October 1970, Acts Nos. 38 of 1971, 14 of 1973.

AN ACT FOR THE ESTABLISHMENT OF A COURT OF APPEAL AND TO MAKE PROVISIONS FOR APPEALS THERETO

[31st March, 1949.]

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Court of Appeal Act.

Interpretation

- 2.—(1) In this Act, unless the context otherwise requires—
 - “appeal” for the purpose of Part III, includes a motion for a new trial or to set aside any decision;
 - “appellant” includes a person who has been convicted and desires to appeal under this Act; and where the Attorney-General or the Director of Public Prosecutions is, or is deemed to be, a party to any proceedings and desires to appeal under this Act includes the Attorney-General or the Director of Public Prosecutions, as the case may be;
 - “Court” means the Court of Appeal;
 - “Court of Appeal” means the Court of Appeal established for Fiji by section 93 of the Constitution;
 - “decision” includes an order, judgment or decree;
 - “President” means the President of the Court of Appeal;
 - “Registrar” means the Registrar of the Court of Appeal;
 - “sentence” includes any order of the Court made on conviction with reference to the person convicted, and any disqualification, penalty, punishment or recommendation made or imposed by the Court, and “sentenced” shall be construed accordingly;
 - “Supreme Court” means the Supreme Court of Fiji.
- (2) This Act applies to persons convicted or sentenced pursuant to the

provisions of section 11 of the Rotuma Act as it applies to persons convicted on trial held before the Supreme Court of Fiji. (Cap. 122.)
(Section substituted by 37 of 1965, s. 2, and amended by Order 31st Jan., 1967.)

PART II—FIJI COURT OF APPEAL

Name of Court and general jurisdiction

3.—(1) The Court of Appeal shall be called “the Fiji Court of Appeal.”

(2) The Court shall have—

(a) power and jurisdiction to hear and determine all appeals which lie to the Court by virtue of the Constitution, this Act or of any other law for the time being in force;

(b) all such powers and jurisdiction as are or may from time to time be vested in the Court under or by virtue of the Constitution, this Act or any other law for the time being in force.

(Section substituted by Order 31st Jan., 1967.)

(3) For the avoidance of doubt, it is hereby declared that the Court shall have, and shall be deemed always to have had, power to exercise jurisdiction in relation to appeals from the High Court of the Western Pacific or from any court or courts from time to time replacing or succeeding such High Court in any territory in or in relation to which such High Court exercised or exercises jurisdiction.

(Inserted by 13 of 1977 s. 2)

Seal of Court

4. The Court of Appeal shall have and use as occasion may require a seal bearing a device or impression of the Royal Arms with the inscription “The Fiji Court of Appeal”.

Precedence and seniority

5.—(1) The judges of the Court of Appeal, other than the President, shall, as between themselves, take precedence and have seniority as the President shall from time to time determine.

(2) In the determination of such precedence and seniority due regard shall be had to the date of appointment to, and the nature of, any judicial office held, or formerly held, by the judges respectively.

(3) In default of a determination under subsection (1) judges or retired judges of any superior court in the British Commonwealth (including the Supreme Court of Fiji) shall take precedence and seniority according to the respective dates of their first appointment as puisne judges in any territory.

(4) In the absence of the President the senior member of the Court present at any proceedings thereof shall be Vice-President and shall preside; such seniority being at all times determined according to the provisions of this section.

(Section substituted by 37 of 1965, s. 4.)

Number of judges

6.—(1) For the purpose of hearing and determining appeals the Court of Appeal shall be summoned in accordance with directions given by the President and the Court shall be duly constituted if it consists of not less than three judges,

but provision may be made by rules of court for the hearing and determining of specified classes of cases by two judges of the Court of Appeal.

(Amended by 37 of 1965, s. 5.)

(2) Notwithstanding the provisions of subsection (1), the Court of Appeal shall be duly constituted if it consists of not less than two judges in any case or cases where the President is of opinion that it is impracticable to summon a Court of three judges.

(3) In all appeals and applications brought before the Court of Appeal the determination of any question shall be according to the opinion of the majority. If on the hearing of an appeal or application the Court of Appeal is equally divided the appeal or application as the case may be shall be dismissed:

Provided that, if the President so directs, the appeal or application shall, on the request of the appellant or applicant, made within thirty days of the dismissal of the appeal or application or within such further period as the President may, at any time, allow, be re-argued and determined by three judges before appeal to the Privy Council. *(Proviso inserted by 37 of 1965, s. 5.)*

(4) A judge of the Court of Appeal may sit as a judge upon the re-hearing of an appeal or application pursuant to the provisions of the proviso to subsection (3) notwithstanding that he was a member of the Court which was equally divided.

(Inserted by 37 of 1965, s. 5.)

Sessions of Court of Appeal

7. The Court of Appeal shall sit at such places from time to time as the President may determine.

Registrar of Court of Appeal

8. The Chief Registrar of the Supreme Court shall be Registrar of the Court of Appeal.

Judges not to sit on appeals from their own decisions

9. Without prejudice to the provisions of subsection (4) of section 6, a judge of the Court of Appeal shall not sit as a judge on the hearing of an appeal from any order, judgment or decision made by himself or on the hearing of an appeal against a conviction or sentence if he was the judge by or before whom the appellant was convicted. *(Amended by 37 of 1965, s. 7.)*

Appeals from other territories and under other enactments

10.—(1) With respect to appeals from the Courts of other territories, the law to be applied shall be such as shall for the time being be prescribed by or under the enactments in that behalf; and the jurisdiction, powers and authorities of the Court of Appeal with respect to such appeals shall be subject to the provisions of such enactments.

(2) With respect to appeals under enactments of, or in force in, Fiji other than this Act, the jurisdiction, powers and authorities of the Court of Appeal shall be subject to the provisions of such enactments.

(3) The Governor-General is empowered to make such arrangements as he may consider appropriate with the Governments of other territories, from whose Courts appeals lie to the Court of Appeal, for the payment of contributions by such Governments towards the expenses of the Court of Appeal.

(Inserted by 37 of 1965, s. 8.)

Right of audience in appeals from other territories

11. A legal practitioner having right of audience before the Court of any other territory from which an appeal lies to the Court of Appeal, may institute and conduct proceedings in and before, and shall have right of audience before, the Court of Appeal in any such appeal.

(Inserted by 37 of 1965, s. 8.)

PART III—APPEALS IN CIVIL CASES

Appeals in civil cases

12.—(1) Subject to the provisions of subsection (2), an appeal shall lie under this Part in any cause or matter, not being a criminal proceeding, to the Court of Appeal—

- (a) from any decision of the Supreme Court sitting in first instance, including any decision of a judge in chambers;
- (b) from any decision of the Supreme Court under the provisions of the Matrimonial Causes Act;
- (c) on any ground of appeal which involves a question of law only, from any decision of the Supreme Court in the exercise of its appellate jurisdiction under any enactment which does not prohibit a further appeal to the Court of Appeal. (Cap. 51.)

(2) No appeal shall lie—

- (a) from an order allowing an extension of time for appealing from a decision;
 - (b) from an order of a judge giving unconditional leave to defend an action;
 - (c) from the decision of the Supreme Court or of any judge thereof where it is provided by any enactment that such decision is to be final;
 - (d) from an order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree;
 - (e) without the leave of the Court or judge making the order, from an order of the Supreme Court or any judge thereof made with the consent of the parties or as to costs only;
 - (f) without the leave of the judge or of the Court of Appeal from any interlocutory order or interlocutory judgment made or given by a judge of the Supreme Court, except in the following cases, namely:—
 - (i) where the liberty of the subject or the custody of infants is concerned;
 - (ii) where an injunction or the appointment of a receiver is granted or refused;
 - (iii) in the case of a decision determining the claim of any creditor or the liability of any contributory or the liability of any director or other officer under the Companies Act in respect of misfeasance or otherwise; (Cap. 247.)
 - (iv) in the case of a decree nisi in a matrimonial cause or a judgment or order in an Admiralty action determining liability;
 - (v) in such other cases as may be prescribed by rules of Court.
- (3) An order refusing unconditional leave to defend an action shall not be

deemed to be an interlocutory order within the meaning of this section.

(Substituted by 37 of 1965, s. 9.)

Powers of Court of Appeal in civil appeals

13. For all the purposes of and incidental to the hearing and determination of any appeal under this Part and the amendment, execution and enforcement of any order, judgment or decision made thereon, the Court of Appeal shall have all the power, authority and jurisdiction of the Supreme Court and such power and authority as may be prescribed by rules of Court. (Amended by 37 of 1965, s. 9.)

Wrong ruling as to sufficiency of stamp

14. The Court of Appeal shall not grant a new trial or reverse any judgment by reason of the ruling of a court that the stamp upon any document is sufficient or that the document does not require a stamp.

Power to reserve questions of law for the decision of the Court of Appeal

15. In addition and without prejudice to the right of appeal conferred by this Part, a judge of the Supreme Court may reserve for consideration by the Court of Appeal, on a case to be stated by him, any question of law which may arise on the trial of any cause or matter, and may give any judgment or decision, subject to the opinion of the Court of Appeal, and the Court of Appeal shall have power to hear and determine every such question.

Conditions precedent to appeal

16. Subject to the provisions of section 17, the Court of Appeal shall not entertain any appeal made under the provisions of this Part unless the appellant has fulfilled all the conditions of appeal as prescribed by rules of Court.

Discretionary power of the Court of Appeal

17. Notwithstanding anything hereinbefore contained, the Court of Appeal may entertain an appeal made under the provisions of this Part on any terms which it thinks just.

Judgments

18.—(1) The decision of the Court of Appeal in any proceedings under this Part or of any judge taking part in the determination of the proceedings may be delivered by or in the presence of a court constituted differently from that which heard the proceedings, and may, at the discretion of the presiding judge, be delivered by a judge who was not present at the hearing of the proceedings, or by the Registrar, in the presence of the Court as for the time being constituted.

(2) It shall be lawful for any decision to be delivered by the effect thereof being pronounced, in such terms as the Court or judge shall think appropriate provided that the full terms of the decision shall have been reduced to writing and that a copy thereof is made available to the parties.

(Substituted by 37 of 1965, s. 11.)

Continuation of civil appeal notwithstanding absence of a judge

19.—(1) If, in the course of any proceedings under this Part, or in the case of a reserved judgment in any such proceedings at any time before delivery thereof, any judge taking part or having taken part in the hearing of the proceedings dies, or is

unable through illness or any other cause to attend, or continue to attend, the proceedings or otherwise exercise his functions as a judge of appeal in relation thereto, the proceedings shall if the parties consent, continue before, and, without prejudice to the provisions of section 18, the judgment or reserved judgment, as the case may be, shall be given by the remaining judges of the Court, not being less than two, and the Court as so remaining constituted shall, for the purposes of the proceedings, be deemed to be duly constituted notwithstanding the death, absence or inability to act of such judge as aforesaid.

(2) Where, in any such case as is referred to in subsection (1) proceedings continue to be heard before the remaining judges the proceedings shall be decided in accordance with the opinion of the majority of the remaining judges, and, subject to the provisions of the proviso to subsection (3) of section 6, if there is no such majority the decision appealed against shall stand.

(3) If the parties do not consent that the proceedings should continue or that judgment should be given in accordance with the provisions of subsection (1), the appeal shall be re-heard. (*Substituted by 37 of 1965, s. 12.*)

Powers of a single judge of appeal

20. The powers of the Court under this Part—

- (a) to give leave to appeal;
- (b) to extend the time within which a notice of appeal or an application for leave to appeal may be given or within which any other matter or thing may be done;
- (c) to give leave to amend a notice of appeal or respondent's notice;
- (d) to give directions as to service;
- (e) to admit a person to appeal in *forma pauperis*;
- (f) to stay execution or make any interim order to prevent prejudice to the claims of any party pending an appeal;
- (g) generally, to hear any application, make any order, or give any direction incidental to an appeal or intended appeal, not involving the decision of the appeal,

may be exercised by any judge of the Court in the same manner as they may be exercised by the Court and subject to the same provisions; but, if the judge refuses an application to exercise any such power or if any party is aggrieved by the exercise of such power, the applicant or party aggrieved shall be entitled to have the matter determined by the Court as duly constituted for the hearing and determining of appeals under this Act.

(*Inserted by 37 of 1965, s. 13.*)

PART IV—APPEALS IN CRIMINAL CASES

Right of appeal in criminal cases

21. A person convicted on a trial held before the Supreme Court may appeal under this Part to the Court of Appeal—

- (a) against his conviction on any ground of appeal which involves a question of law alone;
- (b) with the leave of the Court of Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone or a

question of mixed law and fact or any other ground which appears to the Court to be a sufficient ground of appeal; and

- (c) with the leave of the Court of Appeal against the sentence passed on his conviction unless the sentence is one fixed by law.

Appeals from Supreme Court in its appellate, etc., jurisdiction in criminal cases

22.—(1) Any party to an appeal from a magistrate's court to the Supreme Court may appeal, under this Part, against the decision of the Supreme Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only (not including severity of sentence):

Provided that no appeal shall lie against the confirmation by the Supreme Court of a verdict of acquittal by a magistrate's court.

(2) For the purposes of this section, a decision of the Supreme Court in the exercise of its revisional jurisdiction or on a case stated, under the provisions of the Criminal Procedure Code, shall be deemed to be a decision of the Supreme Court in such appellate jurisdiction as aforesaid. (Cap. 21.)

(3) On any appeal brought under the provisions of this section, the Court of Appeal may, if it thinks that the decision of the magistrate's court or of the Supreme Court should be set aside or varied on the ground of a wrong decision of any question of law, make any order which the magistrate's court or the Supreme Court could have made, or may remit the case, together with its judgment or order thereon, to the magistrate's court or to the Supreme Court for determination, whether or not by way of trial *de novo* or re-hearing, with such directions as the Court of Appeal may think necessary:

Provided that, in the case of an appeal against conviction, if the Court of Appeal dismisses the appeal and confirms the conviction appealed against, it shall not (save as provided in subsection 4), increase, reduce or alter the nature of the sentence imposed in respect of that conviction, whether by the magistrate's court or by the Supreme Court, unless the Court of Appeal thinks that such sentence was an unlawful one or was passed in consequence of an error of law, in which case it may impose such sentence in substitution therefor as it thinks proper.

(4) If it appears to the Court of Appeal that a party to an appeal brought under this section, though not properly convicted on some charge, has been properly convicted on some other charge, the Court may, in respect of the charge on which it considers that the appellant has been properly convicted, either affirm the sentence passed by the magistrate's court or by the Supreme Court or pass such other sentence (whether more or less severe) in substitution therefor as it thinks proper.

(5) Where a party to an appeal brought under the provisions of this section has been convicted of an offence and the magistrate's court or the Supreme Court could lawfully have found him guilty of some other offence, and on the finding of the magistrate's court or of the Supreme Court it appears to the Court of Appeal that the court must have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the conviction entered by the magistrate's court or by the Supreme Court a conviction of guilty of that other offence, and pass such sentence (whether more or less severe) in substitution for the sentence passed by the magistrate's court or by the Supreme Court as may be warranted in law for that other offence.

(6) On any appeal brought under the provisions of this section, the Court of Appeal may, notwithstanding that it may be of the opinion that the point raised in

the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has in fact occurred.

(7) Without prejudice to the application of sections 33 and 35, in any case where an appeal under the provisions of this section is pending a judge of the Supreme Court may in his discretion grant bail to any convicted person who is a party to such appeal.

(8) The provisions of sections 25, 26, 30, 32, 33, 34, 35, 36, and 38 shall apply *mutatis mutandis* to appeals brought under the provisions of this section.

(Inserted by 37 of 1965, s. 15.)

Determination of appeal in ordinary cases

23.—(1) The Court of Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has occurred.

(2) Subject to the special provisions of this Act, the Court of Appeal shall, if they allow an appeal against conviction, either quash the conviction and direct a judgment and verdict of acquittal to be entered, or if the interests of justice so require, order a new trial.

(3) On an appeal against sentence, the Court of Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted by law by the verdict (whether more or less severe) in substitution therefor as they think ought to have been passed, or may dismiss the appeal or make such other order as they think just.

(Amended by 44 of 1959, s. 6.)

Powers of Court in special cases

24.—(1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some count or part of the information has been properly convicted on some other count or part of the information, the Court may either affirm the sentence passed on the appellant at the trial or pass sentence in substitution therefor as they think proper and as may be warranted in law by the verdict on the count or part of the information on which the Court consider that the appellant has been properly convicted.

(2) Where the appellant has been convicted of an offence, and the judge could on the information have found him guilty of some other offence, and on the findings of the judge it appears to the Court of Appeal that the judge must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by such judge a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(Substituted by 36 of 1961, s. 2.)

(3) If on any appeal it appears to the Court of Appeal that, although the appellant was guilty of the act or omission charged against him, he was insane at the

time the act was done or omission made so as not to be responsible according to law for his actions, the Court may quash the sentence passed at the trial and order the appellant to be kept in custody in such place and in such manner as the Court shall direct until the Governor-General's pleasure be known, and the Governor-General may thereupon and from time to time give such order for the safe custody of the appellant during pleasure and in such place and in such manner as to the Governor-General may seem fit.

(Amended by 37 of 1966, s. 2.)

Suspension of order for restoration or payment of compensation or expenses, etc.

25.—(1) The operation of any order made on conviction by the judge before whom the conviction takes place for the payment of compensation or of any of the expenses of the prosecution or for the restoration of any property to any person, and the operation of the provisions of any law re-vesting in case of any such conviction in the original owner or his personal representative the property in stolen goods, shall (unless the judge before whom the conviction takes place directs to the contrary in any case in which in his opinion the title to the property is not in dispute) be suspended—

- (a) in any case until the expiration of thirty days after the date of the conviction; and
- (b) in cases where notice of appeal or leave to appeal is given within thirty days after the date of conviction, until the determination of the appeal;

and in cases where the operation of any such order or provisions is suspended until the determination of the appeal, the order or provisions shall not take effect as to the property in question if the conviction is quashed on appeal.

(2) The Court of Appeal may by order annul or vary an order made in the trial for the payment of compensation or of any of the expenses of the prosecution or for the restitution of any property to any person, although the conviction is not quashed and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.

Time for appealing

26.—(1) Where a person convicted desires to appeal under this Part to the Court of Appeal, or to obtain leave of that Court to appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of Court within thirty days of the date of conviction. Except in the case of a conviction involving sentence of death, the time, within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Court of Appeal.

(2) In the case of a conviction involving sentence of death or corporal punishment—

- (a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under this section; and
- (b) if notice is so given, the sentence shall not be executed until after the determination of the appeal or, in cases where an application for leave to appeal is finally refused, of the application:

Provided that if a person sentenced to corporal punishment signs a statement that he does not intend to appeal against his conviction or sentence, his right to

appeal shall be deemed to have been abandoned and shall, notwithstanding the provisions of any other written law, thereupon cease, and the sentence may be carried out forthwith.

(Substituted by 14 of 1973 s. 2.)

Judge's notes and report to be furnished on appeal

27. The judge before whom a person is convicted, shall in the case of an appeal under this Part against the conviction or against the sentence, or in the case of an application for leave to appeal under this Part, furnish to the Registrar, in accordance with rules of Court, his notes of the trial; and shall also furnish to the Registrar in accordance with rules of Court a report giving his opinion upon the case or upon any point arising in the case.

Supplemental powers of Court

28. In the exercise of their jurisdiction under this Part the Court of Appeal may, if they think it necessary or expedient in the interests of justice—

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case; and
- (b) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of Court, or in the absence of rules of Court making provision in that behalf, as they may direct, before any judge of the Court or before any officer of the Court or magistrate or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court; and
- (c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such application; and
- (d) where any question arising in the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court conveniently be conducted before the Court, order the reference of the question in manner provided by rules of Court for inquiry and report to a special commissioner appointed by the Court, and act upon the report of any such commissioner as far as they think fit to adopt it; and
- (e) appoint any person with special expert knowledge to act as assessor to the Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case, and exercise in relation to the proceedings of the Court any other powers which may for the time being be exercised by the Court of Appeal on appeals in civil matters and issue any warrants necessary for enforcing the orders or sentences of the Court:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

Director of Public Prosecutions to be party

29. For the purposes of this Act, the Director of Public Prosecutions shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public prosecutor.

Legal assistance to appellant

30. The Court of Appeal may at any time assign counsel to an appellant in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid.

Right of appellant to be present

31.—(1) An appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it and is not prevented by sickness or other cause, on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone, but, in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal shall not be entitled to be present, except where rules of court provide that he shall have the right to be present or where the Court of Appeal gives him leave to be present.

(Amended by 25 of 1958, s. 8.)

(2) The power of the Court of Appeal to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.

Costs of appeal

32.—(1) On the hearing and determination of an appeal under this Part no costs shall be allowed to either side.

(2) The expenses of counsel assigned to an appellant under this Part and the expenses of any witness attending on the order of the Court of Appeal or examined in any proceedings incidental to the appeal, and of the appearance of an appellant when in custody on the hearing of his appeal or on any proceedings preliminary or incidental to the appeal, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the Court for the purpose, or any reference of a question to a special commissioner appointed by the Court, shall be defrayed out of the Consolidated Fund up to an amount allowed by the Court but subject to any provision as to rates and scales of payment made by rules of Court.

Admission of appellant to bail and custody when attending Court

33.—*(1) An appellant who is not admitted to bail pending the determination of his appeal may, at his own request, be treated in like manner as a prisoner awaiting trial.

(2) The Court of Appeal may, if it sees fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.

(3) When an appellant under this Part is admitted to bail under this Act the time during which he is at large after being so admitted shall be disregarded in computing the term of any sentence to which he is for the time being subject.

* Substituted by 14 of 1973 s.3

(4) Subject as hereinafter provided, six weeks of the time during which any appellant, when in custody, is treated as a prisoner awaiting trial in pursuance of the provisions of subsection (1), or the whole of that time if it is less than six weeks, shall be disregarded in computing the term of any such sentence as aforesaid:

Provided that—

(a) the foregoing provisions of this subsection shall not apply where leave to appeal is granted under this Part or where any such certificate as is mentioned in paragraph (b) of section 21 has been given for the purpose of the appeal; and

(b) in any other case, the Court of Appeal may direct that no part of the said time, or such part thereof as the court thinks fit (whether shorter or longer than six weeks) shall be disregarded as aforesaid.

(5) Subject to the foregoing provisions of this section, the term of any sentence passed by the Court of Appeal under this Part in substitution for a sentence passed on the appellant in the proceedings from which the appeal is brought shall, unless the court otherwise directs, begin to run from the time when it would have begun to run if passed in those proceedings, and references in this section to any sentence to which an appellant is for the time being subject shall be construed accordingly.

Duties of Registrar with respect to notices of appeal, etc.

34.—(1) The Registrar shall take all necessary steps for obtaining a hearing under this Part of any appeals or applications, notice of which is given to him under this Act, and shall obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things relating to the proceedings in the court before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

(2) If it appears to the Registrar that any notice of an appeal against a conviction, purporting to be on a ground of appeal which involves a question of law alone, does not show any substantial ground of appeal, the Registrar may refer the appeal to the Court of Appeal for summary determination, and where the case is so referred, the Court may, if they consider that the appeal is frivolous or vexatious, and can be determined without adjourning the same for a full hearing, dismiss the appeal summarily, without calling on any person to attend the hearing or to appear for the Crown thereon.

(3) Any documents, exhibits or other things connected with the proceedings on the trial of any person before the Supreme Court who, if convicted, is entitled or may be entitled to appeal under this Part, shall be kept in the custody of the court of trial in accordance with rules of Court made for the purpose for such time as may be provided by the rules, and subject to such power as may be given by the rules for the conditional release of any such documents, exhibits or things from that custody.

(4) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Part to any person who demands the same, and to officers of courts, the Controller of Prisons and such other officers or persons as he thinks fit and the Controller of Prisons shall cause these forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

(5) The Registrar shall report to the Court or some judge thereof any case in

which it appears to him that although no application has been made for the purpose, counsel ought to be assigned to an appellant under the powers given to the Court by this Act.

Powers which may be exercised by a judge of the Court

35. The powers of the Court of Appeal under this Part to give leave to appeal, to extend the time within which notice of appeal or of an application for leave to appeal may be given, to assign legal aid to an appellant, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to admit an appellant to bail, may be exercised by any judge of the Court in the same manner as they may be exercised by the Court and subject to the same provisions; but, if the judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Court as duly constituted for the hearing and determining of appeals under this Act.

Judgment in criminal appeals

36.—(1) In an appeal under this Part the Court shall ordinarily give only one judgment, which may be given by the senior member of the Court present at the hearing of the appeal or by such other judge present at the hearing of the appeal as he may direct:

Provided that—

(a) if any judge dissents from the judgment of the Court it shall not be obligatory on him to sign the same; and

(b) separate judgments shall be given if the Court is of the opinion that it is convenient that there should be separate judgments.

(2) The judgment of the Court or of any judge present at the hearing of the appeal shall be delivered in open Court either at the hearing of the appeal or at any subsequent time of which notice shall be given by the Registrar to the parties to the appeal.

(3) The judgment of the Court or of any judge present at the hearing of the appeal may be read in open Court by any judge, whether present at the hearing of that appeal or not, or by the Registrar. (*Inserted by 44 of 1959, s. 7.*)

Power to reserve question of law for the decision of the Court of Appeal

37. In addition and without prejudice to the right of appeal conferred by this Part, a judge of the Supreme Court, at the conclusion of the hearing by him of any appeal or case stated from a magistrate's court in any criminal cause or matter, may reserve, on a case stated by him, any question of law which seems to him to be of general public importance and which may have arisen during such hearing, for consideration by the Court of Appeal, and shall give his judgment subject to the opinion of the Court of Appeal on such point of law. The Court of Appeal shall have power after hearing the appellant or his barrister and solicitor, if he appears, and the respondent or his barrister and solicitor, if he appears, to determine every such question, and shall notify the Supreme Court of its decision, and the judge shall make such order, conformable with the decision of the Court of Appeal, as may be necessary:

Provided that in the event of such judge dying or departing from Fiji or being otherwise incapacitated from acting, another judge may make such order.

(*Inserted by 37 of 1960, s. 2.*)

Prerogative of mercy

38. Nothing in this Act shall affect the prerogative of mercy, but the Governor-General in considering the exercise of such prerogative with reference to the conviction of a person by or in the Supreme Court or to the sentence (other than sentence of death) passed on a person so convicted, whether or not the person convicted has petitioned in that behalf, may, if he thinks fit, at any time either—

- (a) refer the whole case to the Court of Appeal and the case shall then be heard and determined by the Court of Appeal as in the case of an appeal by the person convicted; or
- (b) if he desires the assistance of the Court of Appeal on any point arising in the case, refer that point to the Court of Appeal for their opinion thereon, and the Court shall consider the point so referred and furnish the Governor-General with their opinion thereon accordingly.

PART V—RULES

Power to make rules of court

39.—(1) The President of the Court of Appeal may make rules of Court for carrying this Act into effect and for regulating generally the practice and procedure under this Act.

(2) The power to make rules conferred by this section shall include power to adopt, or make rules in the terms of, any of the Rules of Her Majesty's Supreme Court of Judicature in England or Her Majesty's Court of Criminal Appeal in England as made from time to time, with or without modifications.

(Inserted by 37 of 1965, s. 17.)

Controlled by Ministry of the Attorney-General.

CHAPTER 12

COURT OF APPEAL

SECTION 39—COURT OF APPEAL RULES

TABLE OF PROVISIONS

PART I—PRELIMINARY AND GENERAL

RULE

1. Short title
2. Interpretation
3. Convening of sittings, etc.
4. Applications to be filed
5. Appellant confined to the grounds of appeal
6. Application of Supreme Court Rules
7. Application of practice and procedure in England
8. Judgments
9. Taxation of costs
10. Appeal from Registrar
11. Service
12. Sittings in chambers
13. Fees

PART II—APPEALS IN CIVIL CASES

14. Application of Rules to applications for new trial
15. Notice of appeal
16. Time for appealing
17. Security for payment of costs
18. Preparation and costs of record
19. Respondent's notice
20. Amendment of notice of appeal and respondent's notice
21. Directions of the Court as to service
22. General powers of the Court
23. Powers of the Court as to new trials
24. Evidence on appeal
25. Stay of execution, etc.
26. Applications to Court of Appeal
27. Extension of time
28. Appeals against decisions under the Matrimonial Causes Act
29. Appeals from Supreme Court in its appellate jurisdiction in civil cases
30. Additional security and interim orders
31. Notice of hearing
32. Costs and witnesses allowances
33. Non-disclosure of payment into court
34. Stay of execution

PART III—CRIMINAL APPEALS

35. Notice of appeal
36. Appeals from the Supreme Court in its appellate jurisdiction in criminal cases
37. Amendment of notice of appeal
38. Notice of application for leave to appeal
39. Abandonment of appeal
40. Notice of application for extension of time for appealing
- 41.(1) How applications are to be dealt with
- (2) Procedure where judge of Court of Appeal refuses applications under section 35
- (3) Application for leave to be present at hearing
- (4) Sittings of a judge under section 35
42. Registrar to require particulars etc., of proceedings before Supreme Court
43. Fees and expenses on appeal
44. Preparation and costs of record
- 45.(1) Registrar on application of appellant or respondent or when he thinks necessary, to obtain documents, exhibits, etc. for purposes of appeal, and same to be open for inspection
- (2) Court of Appeal may order production of any document or exhibit, etc.
46. Exhibits (other than those to which section 25(1) relates) to be returned to persons producing the same subject to order of Court
47. How appellant or respondent may obtain from Registrar copies of documents or exhibits
48. Registrar to request judge's note
- 49.(1) Report of judge or court of trial
- (2) Judge's report to be furnished to Court of Appeal
50. Judge's certificate
- 51.(1) Appeals where fine only is imposed
- (2) Person in custody in default of payment of fine
- (3) Person fined may intimate appeal and recognizance may be imposed
- (4) Fine to be repaid on success of appeal
- (5) Procedure on breach of recognizance
52. Judge's directions as to custody of exhibits
53. Varying order of restitution
54. Non-suspension of orders for restitution
- 55.(1) Bail. Court of Appeal to specify amount and before whom recognizances to be taken
- (2) Recognizances to be taken before the Registrar or a magistrate
- (3) Registrar on receiving recognizances in due form to notify Controller of Prisons to release appellant
- (4) Form of recognizances
- (5) Presence of appellant on bail, at hearing of his appeal
- (6) Varying order for bail, by Court of Appeal
- (7) Provisions for sureties discharging their obligations
- (8) How appellant on bail to be dealt with on arrest at instance of sureties
- (9) Arrest and commitment of appellant to be notified to Registrar by clerk to magistrates' court

- (10) Power of Court of Appeal to revoke order for bail
- (11) Controller of Prisons on commitment of appellant to notify Registrar
- (12) Surety's rights at common law preserved
- (13) Estreat of recognizances
56. Appellant to surrender on appeal, be searched and remain in custody until further dealt with
- 57.(1) Attendance of witness before Court of Appeal
- (2) Application to Court to hear witnesses
- (3) Order appointing examiner
- (4) Registrar to furnish examiner with exhibits, etc., necessary for examination
- (5) Notification of date of examination
- (6) Proceedings under section 28(b) on reference
58. Notice by Registrar to appellant of result of all applications
- 59.(1) On final determination of appeals, etc., Registrar to notify appellant
- (2) In case of death sentence, notice of appeal and of final determination to be sent to the Governor-General
60. Registrar to notify officer of court of trial result of appeal
61. Reports as to legal aid under section 34(5) to be made to judge of the Court
62. A petitioner under section 38(a) to be deemed an appellant for all purposes
63. Reference to Court under section 38(b)
64. Non-compliance with Rules not wilful may be waived by Court

First Schedule—Part I—Fees in Civil Appeals

Part II—Fees in Criminal Appeals

Rules 16 September 1949, 8 October 1954, 28 November 1959, 5 November 1962, 24 March 1966, 26 November 1968, 17 July 1970†, 7 October 1970‡, 3 June 1977§, 7 May 1984¶, 17 May 1985**

(Made by the President of the Court of Appeal)

PART I—PRELIMINARY AND GENERAL

Short title

1. These Rules may be cited as the Court of Appeal Rules.

Interpretation

2. In these Rules, unless the context otherwise requires—
“Act” means the Court of Appeal Act;
“Court of Appeal” means the Fiji Court of Appeal;
“judge” means a judge of the Court of Appeal; *(Inserted by Rules 24th March 1966.)*

* See Legal Notice No. 177 of 1968.

† See Legal Notice No. 86 of 1970.

‡ See Legal Notice No. 112 of 1970.

§ See Legal Notice No. 67 of 1977.

¶ See Legal Notice No. 51 of 1984.

* See Legal Notice No. 41 of 1985.

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

"Registrar" means the Registrar of the Court of Appeal;

"respondent" includes any person who has been served with notice of appeal or who is entitled to be so served;

"Supreme Court" means the Supreme Court of Fiji;

"Supreme Court Rules" means the Rules of the Supreme Court as for the time being made under section 25 of the Supreme Court Act.

(Inserted by Rules 24th March 1966.)

(Cap. 13.)

Convening of sittings, etc.

3. Sittings of the Court of Appeal shall be convened, and the Court shall be constituted, and the venue and time for all sittings for the hearing and determination of criminal and civil proceedings shall be settled, from time to time, in accordance with directions to be given by the President.

(Inserted by Rules 24th March 1966.)

Applications to be filed

4. All applications, including applications for leave to appeal, and for an extension of time within which to file an appeal or to apply for leave to appeal, shall ordinarily be filed with the Registrar at the Supreme Court Registry, Suva.

Appellant confined to the grounds of appeal

5. The appellant shall not, without the leave of the Court of Appeal, urge or be heard in support of any ground of objection not stated in his notice of appeal, but the Court of Appeal in deciding the appeal shall not be confined to the grounds so stated:

Provided that the Court of Appeal shall not rest its decision on any ground not stated in the notice of appeal, unless the respondent has had sufficient opportunity of contesting the case on that ground.

Application of Supreme Court Rules

6. Subject to these Rules, the Supreme Court Rules shall apply to proceedings in and before the Court of Appeal in civil causes or matters.

(Substituted by Rules 24th March 1966.)

Application of practice and procedure in England

7. Where no other provision is made by these Rules, or by any other enactment, the jurisdiction, power and authority of the Court of Appeal and the judges thereof shall be exercised—

(a) in civil causes or matters, according generally to the course of the practice and procedure for the time being observed by and before Her Majesty's Court of Appeal in England;

(b) in criminal proceedings, according generally to the course of the practice and procedure for the time being observed by and before Her Majesty's Court of Criminal Appeal in England

(Substituted by Rules 24th March 1966.)

Judgments

8. Upon the final determination of an appeal the Registrar shall forthwith transmit to the Chief Registrar of the Supreme Court a certified copy of the judgment of the Court of Appeal.

(Substituted by Rules 5th November 1962.)

Taxation of costs

9. The Registrar shall be the taxing officer.

Appeal from Registrar

10. Any person aggrieved by anything done or ordered by the Registrar, other than anything ordered or done under the direction of the President, may apply to have the act, order or ruling complained of set aside to a judge of the Court of Appeal who may give such direction or make such order thereon as he thinks fit. Such application shall be made by notice of motion supported by affidavit.

Service

11. Service, where required in these Rules, shall be effected in the same manner as is prescribed for service of process of the Supreme Court, and the Supreme Court may make such orders and give such directions as may be required:

Provided that any notice or other document which is required or authorised by the Act or these Rules to be given or sent shall be deemed to be duly given or sent if forwarded by registered post addressed to the person to whom such notice or other document is so required or authorised to be given or sent.

Sittings in chambers

12. Except in proceedings involving the decision of an appeal, the Court of Appeal or a judge may sit and act in chambers.

(Inserted by Rules 24th March 1966.)

Fees

13. The fees set forth in the First Schedule shall be the fees payable in respect of proceedings in the Court of Appeal.

PART II—APPEALS IN CIVIL CASES

Application of Rules to applications for new trial

*14. The rules contained in this Part (except so much of paragraph (1) of rule 15 as provides that an appeal shall be by way of rehearing, and except paragraph (1) of rule 23) apply to an application to the Court of Appeal for a new trial or to set aside a verdict, finding or judgment as they apply to that Court, and references in these Rules to an appeal and to an appellant shall be construed accordingly.

Notice of appeal

*15.—(1) An appeal to the Court of Appeal shall be by way of rehearing and shall be brought by notice of motion (in these Rules 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 decision of the Court below.

(3) In addition to complying with rule 5, every notice of appeal shall specify the precise form of the order which the appellant proposes to ask the Court of Appeal to make.

* Substituted by rules 24 March 1966.

(4) A notice of appeal shall, in addition to being filed in the Court of Appeal, be served upon the Chief Registrar of the Supreme Court and upon all parties to the proceedings in the Court below who are directly affected by the appeal; and subject to the provisions of rule 21 it shall not be necessary to serve the notice on parties not so affected.

Time for appealing

*16. Subject to the provisions of this rule, every notice of appeal shall be filed and served under paragraph (4) of rule 15 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 it to say—

- (a) in the case of an appeal from an interlocutory order, 21 days;
- (b) in any other case, 6 weeks.

Security for payment of costs

†17.—(1) The appellant shall—

- (a) upon filing the notice of appeal, pay to the Registrar the fee for setting down the appeal;
- (b) upon request by the Registrar deposit with the Registrar such sums as he shall assess as the probable expense for the preparation, certification and copying of the record; and
- (c) within 30 days of service of the notice of appeal, apply to the Registrar to fix the amount and nature of the security to be given by him for the prosecution of the appeal, and for the payment of all such costs as may be ordered to be paid by him, or, as the case may be, to dispense with such security.

(2) In the event of non-compliance with paragraph (1) or in the event of any security required to be given not being given, or being only partly given, within the time directed, or within such extended time as a judge of the Supreme Court may allow, all proceedings in the appeal shall be stayed, unless the Court of Appeal shall otherwise order, and the appeal shall be listed for the next, or any subsequent, sitting of the Court of Appeal for a formal order of dismissal.

Preparation and costs of record

†18.—(1) The Chief Registrar of the Supreme Court shall be responsible for the preparation, certification and copying of the record and may for the purpose of the preparation thereof give an opportunity to the parties or their representatives of appearing before him and being heard. The preparation of the record shall be subject to the supervision of the Supreme Court and the parties may submit any disputed question to the decision of a judge of the Supreme Court who shall give such directions thereon as the justice of the case may require.

(2) The Chief Registrar of the Supreme Court as well as the parties and their representatives shall endeavour to exclude from the record all documents (more particularly such as are purely 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

* Substituted by rules 24 March 1966.

† Substituted by Legal Notice 41 of 1985.

documents omitted to be copied, shall subject to Rule 33, be specified in 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 it being included, the record shall, with a view to the subsequent adjustment of the costs of and incidental thereto, indicate the fact that the inclusion of the document was objected to and the party who so objected.

(4) After the completion of the preparation of the record the Chief Registrar of the Supreme Court shall, under his hand and the seal of the Supreme Court, certify it to be the record as made up by him and shall forward it together with four uncertified copies thereof to the Registrar of the Court of Appeal.

(5) Unless, on disposing of an appeal or application for leave to appeal the Court of Appeal otherwise orders, the costs as prescribed of the preparation and certification of the record and of the four uncertified copies to be forwarded to the Registrar, shall be borne by the appellant.

(6) The Chief Registrar of the Supreme Court shall on the application of any party to the appeal furnish such party with a copy of the record, or any part thereof, on payment of the prescribed fees.

Respondent's notice

*19.—(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 shall 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 these Rules 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 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 four copies of the notice to the Registrar of the Court of Appeal.

Amendment of notice of appeal and respondent's notice

†20.—(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;

* Substituted by Rules 4th March 1966.

† Substituted by Legal Notice 41 of 1985.

(b) without such leave, by supplementary notice served, not less than 14 days before the day on which the appeal is listed 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 four copies of the notice to the Registrar.

Directions of the Court as to service

*21.—(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.

General powers of the Court

*22.—(1) In relation to an appeal, the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Supreme 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 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.

* Substituted by Rules 24 March 1966.

Powers of the Court as to new trials

*23.—(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 any decision.

(2) A new trial shall not be ordered on the ground of the improper admission or rejection of evidence 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) 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.

Evidence on appeal

*24. 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 copies thereof;

(b) in the case of evidence given orally, by a copy of the judge's note, or, where an official shorthand note of the evidence was taken, by a copy of the transcript thereof, or by such other means as the Court of Appeal may direct.

Stay of execution, etc.

*25.—(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 any appeal, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court of Appeal otherwise orders.

Applications to Court of Appeal

*26.—(1) Every application to a judge of the Court of Appeal shall be by summons in chambers, and the provisions of the Supreme Court Rules shall apply thereto.

(2) Any application to the Court of Appeal for leave to appeal (whether made before or after the expiration of the time for appealing) shall be made on notice to the party or parties affected.

(3) 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.

Extension of time

*27. Without prejudice to the power of the Court of Appeal, under the Supreme Court Rules as applied to the Court of Appeal, to enlarge the time

* Substituted by Rules 24 March 1966.

prescribed by any provision of these Rules, the period for filing and serving notice of appeal under rule 16 may be extended by the Court below upon application made before the expiration of that period.

Appeals against decisions under the Matrimonial Causes Act.

*28.—(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal against the grant or refusal of a decree *nisi* of divorce or nullity of marriage in a matrimonial cause heard under the provisions of the Matrimonial Causes Act, or of any order made or sought in any such cause. (Cap. 51.)

(2) The period of 21 days or 6 weeks, as the case may be, specified in rule 16 shall be calculated from the date on which the decision is pronounced in court.

Appeals from Supreme Court in its appellate jurisdiction in civil cases

*29.—(1) The following provisions of this rule shall apply to any appeal from the Supreme Court to the Court of Appeal under the provisions of paragraph (d) of subsection (1) of section 12 of the Act, and subject thereto the rules contained in this Part, and the Supreme Court Rules, shall apply to such appeals.

(2) The notice of appeal, in addition to being filed in the Court of Appeal, shall be served upon the Chief Registrar of the Supreme Court as well as upon the party or parties otherwise required to be served under rule 15.

(3) The notice of appeal shall state precisely the question of law upon which the appeal is brought.

(4) In relation to the appeal, rule 16 shall have effect as if for the words "the date on which the judgment or order of the Court below was signed, entered or otherwise perfected" there were substituted the words "the date of the judgment or order of the Court below".

(5) *(Deleted)*

(6) Paragraph (1) (a) of rule 25 shall not apply; but the appeal shall not operate as a stay of proceedings in the Supreme Court or the court of trial unless a judge of the Supreme Court so orders, or unless, within 14 days from the date of the judgment or order appealed from, the appellant deposits a sum fixed by the judge from whose decision the appeal is brought 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.

(Amended by Legal Notice 41 of 1985)

Additional security and interim orders

†30. The Court of Appeal may, in its discretion, require security for the costs of the appeal or for the performance of the orders to be made on appeal (in addition to any security which the Registrar has thought fit to direct, or notwithstanding that the Registrar has dispensed with security, as the case may be).

Notice of hearing

†31. The Registrar shall, upon obtaining the directions of a judge, cause notice of the date of the hearing of the appeal to be served upon the parties to the appeal.

* Substituted by Rules 24 March 1966.

† Substituted by Legal Notice 41 of 1985.

Costs and witnesses allowances

*32.—(1) Costs allowed by the Court of Appeal shall be taxable according to the scales for the time being in force in the Supreme Court.

(2) The allowances for witnesses in the Court of Appeal shall be according to the scales for the time being in force in the Supreme Court.

Non-disclosure of payment into court

†33.—(1) Where—

(a) any question on an appeal in an action for a debt, damages or salvage relates to liability for the debt, damages or salvage or to the amount thereof; and

(b) money was paid into court, in the proceedings in the court below before judgment,

neither the fact of the payment nor the amount thereof shall be stated in the notice of appeal or the respondent's notice or in any supplementary notice or be communicated to the Court of Appeal until all such questions have been decided.

This rule shall not apply in the case of an appeal as to costs only or an appeal in an action to which a defence of tender before action was pleaded.

(2) For the purpose of complying with this rule the appellant must cause to be omitted from the copies of the documents lodged by him every part thereof which states, or from which it can be inferred, that money was paid into court in the proceedings in that court before judgement.

Stay of execution

‡34.—(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 Supreme Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court of Appeal otherwise orders.

‡PART III—CRIMINAL APPEALS

Notice of Appeal

35.—(1) An appeal to the Court of Appeal shall be by way of rehearing and shall be brought by notice of Motion (in these Rules referred to as "notice of appeal").

(2) Subject to the provisions of section 22(1) of the Act, notice of appeal may be given either in respect of the whole or in respect of any specified part of the decision of the Court below.

(3) A person desiring, under the provisions of the Act, to appeal to the Court of Appeal, shall commence his appeal by sending to the Registrar a notice of appeal or notice of application for leave to appeal, or notice of application for extension of time within which such a notice shall be given, as the case may be, in the form of such notices respectively set forth in the Second Schedule.

* Substituted by Rules 24 March 1966.

† Substituted by Legal Notice 41 of 1985.

‡ Part substituted by Legal Notice 41 of 1985.

(4) In addition to complying with Rule 5 such notice of appeal shall precisely specify the grounds (including, if any, questions of law) upon which the appeal is brought.

(5) A notice of appeal shall, in addition to being filed with the Registrar, 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 21 it shall not be necessary to serve the notice on parties not so affected.

Appeals from the Supreme Court in its appellate jurisdiction in criminal cases

36.—(1) The notice of appeal shall state precisely the question of law upon which the appeal is brought.

(2) Subject to the foregoing provision of this Rule, and to the provisions of the Act, the provisions of this Part of the rules (except Rules 49, 50, 57, 59(2), 62 and 63) shall apply *mutatis mutandis* to appeals to the Court of Appeal under the provisions of section 22 of the Act.

Amendment of notice of appeal

37.—(1) A notice of appeal may be amended—

- (a) by or with the leave of the Court of Appeal, at any time;
- (b) without such leave, by supplementary notice filed with the Registrar in quadruplicate and served, not less than 14 days before the opening day of the Sitting of the Court of Appeal at which the appeal is listed to be heard, upon each of the parties upon whom the notice to be amended was served.

Notice of application for leave to appeal

38. Where the Court of Appeal has, on a notice of application for leave to appeal duly served, and in the form provided under these Rules, given an appellant leave to appeal, it shall not be necessary for such appellant to give any notice of appeal, but the notice of application for leave to appeal shall in such case be deemed to be a notice of appeal.

Abandonment of appeal

39. An appellant, at any time after he has duly served notice of appeal or of application for leave to appeal, or of application for extension of time within which, under the Act, such notices shall be given, may abandon his appeal by giving notice of abandonment thereof in the form 3 in the Second Schedule to the Registrar, and upon such notice being given the appeal shall be deemed to have been dismissed by the Court of Appeal.

Notice of application for extension of time for appealing

40. An application to the Court of Appeal for an extension of time within which notices may be given shall be in the form 6 in the Second Schedule. Every person making an application for such extension of time shall send to the Registrar, together with the proper form of such application, a form, duly filled up, of notice

of appeal, or of notice of application for leave to appeal, appropriate to the ground or grounds upon which he desires to question his conviction or sentence, as the case may be.

How applications are to be dealt with

41.—(1) Notice of application for leave to appeal or for extension of time within which notice of appeal or notice of application for leave to appeal may be given, shall be given in the forms in the Second Schedule.

Procedure where judge of Court of Appeal refuses applications under section 35

(2) The Registrar, when any application mentioned in this Rule has been dealt with by a judge, shall notify to the appellant the decision. In the event of such judge refusing all or any of such applications, the Registrar, on notifying such refusal to the appellant, shall forward to him form 13 in the Second Schedule which form the appellant is hereby required to fill up and forthwith return to the Registrar. If the appellant does not desire to have his said application or applications determined by the Court of Appeal as duly constituted for the hearing of appeals under the Act and is not legally represented, he may, if the Court of Appeal give him leave, be present at the hearing and determination by the Court of Appeal of his said application:

Provided that an appellant who is legally represented shall not be entitled to be present without special leave of the Court of Appeal.

Application for leave to be present at hearing

(3) When an appellant duly fills up and returns within the prescribed time to the Registrar form 13 expressing a desire to be present at the hearing and determination by the Court of Appeal of the applications mentioned in this rule, such form shall be deemed to be an application by the appellant for leave to be so present. And the Registrar, on receiving the said form, shall take the necessary steps for placing the said application before the Court of Appeal. If the said application to be present is refused by the Court of Appeal, the Registrar shall notify the appellant; and if the said application is granted, the Registrar shall notify the appellant and the officer in charge of the prison wherein the appellant is in custody.

Sittings of a judge under section 35

(4) A judge of the Court of Appeal sitting under the provisions of section 35 of the Act may sit and act wherever convenient.

Registrar to require particulars etc., of proceedings before Supreme Court

42. When the Registrar has received a notice of appeal, or a notice of application for leave, or a notice of application for extension of time within which, under the Act, such notices shall be given, or where the Governor-General shall exercise his powers under section 38 of the Act, he shall forthwith apply to the Chief Registrar of the Supreme Court for the record of the proceedings before the Supreme Court.

Fees and expenses on appeal

43.—(1) The appellant shall—

(a) Upon filing the notice of appeal or application for leave to appeal pay the Registrar the prescribed fee for setting down the appeal; and

(b) Upon request by the Registrar deposit with the Registrar such sum as he shall assess as the probable expenses of the preparation, certification and copying of the record.

(2) In the event of non compliance with paragraph (1) within the time directed, or within such time as a Judge may allow, all proceedings in the appeal shall be stayed, unless the Court of Appeal shall otherwise order, and the appeal shall be listed for the next or any subsequent sitting of the Court of Appeal for a formal order of dismissal.

Preparation and costs of record

44.—(1) The Chief Registrar of the Supreme Court shall be responsible for the preparation, certification and copying of the record and may for the purpose of the preparation thereof give an opportunity to the parties or their representatives of appearing before him and being heard. The preparation of the record shall be subject to the supervision of the Supreme Court and the parties may submit any disputed question to the decision of a judge of the Supreme Court who shall give such directions thereon as the justice of the case may require.

(2) The Chief Registrar of the Supreme Court as well as the parties and their representatives shall endeavour to exclude from the record all documents (more particularly such as are purely 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 shall be specified in 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 it being included, the record shall, with a view to the subsequent adjustment of the costs of and incidental thereto, indicate the fact that the inclusion of the document was objected to and the party who so objected.

(4) After the completion of the preparation of the record the Chief Registrar of the Supreme Court shall, under his hand and the seal of the Supreme Court, certify it to be the record as made up by him and shall forward it together with four uncertified copies thereof to the Registrar of the Court of Appeal.

(5) Unless, on disposing of an appeal or application for leave to appeal the Court otherwise orders, the costs as prescribed of the preparation and certification of the record and of the four uncertified copies to be forwarded to the Registrar shall be borne by the appellant.

(6) The Chief Registrar of the Supreme Court shall on the application of any party to the appeal furnish such party with a copy of the record, or any part thereof, on payment of the prescribed fees.

Registrar on application of appellant or respondent or when he thinks necessary, to obtain documents, exhibits, etc., for purposes of appeal, and same to be open for inspection

45.—(1) The Registrar may, on an application made to him by the appellant or respondent in any appeal, or where he considers the same to be necessary for the proper determination of any appeal or application, or shall, where directed by the Court of Appeal so to do, obtain and keep available for use by the Court of Appeal any documents, exhibits, or other things relating to the proceedings before the

Court, and pending the determination of the appeal, such documents, exhibits, or other things shall be open as and when the Registrar may arrange, for the inspection of any party interested.

Court of Appeal may order production of any document or exhibit, etc.

(2) The Court of Appeal may, at any stage of an appeal, whenever it thinks it necessary or expedient in the interest of justice so to do, on the application of an appellant or respondent, order any document, exhibit, or other thing connected with the proceedings, to be produced to the Registrar or before it, by any person having the custody or control thereof.

Exhibits (other than those to which section 25(1) relates) to be returned to persons producing the same subject to order of Court

46. Exhibits, other than such documents as are usually kept by the proper officer of the court of trial, shall, subject to any order which the Court of Appeal may make, be returned to the person who originally produced the same, provided that any such exhibit to which the provisions of subsection (1) of section 25 of the Act relate shall not be so returned except under the direction of the Court of Appeal.

How appellant or respondent may obtain from Registrar copies of documents or exhibits

47. At any time after notice of appeal or notice of application for leave to appeal has been given under the Act or these Rules, an appellant or respondent, or other person representing either of them, or any person having a proper interest in the appeal may obtain from the Registrar copies of the record of the proceedings at the trial and of any documentary exhibits in the Registrar's possession under the Act or these Rules for the purposes of such appeal upon payment of the prescribed fee:

Provided that no charge shall be made for any such copies supplied to the Director of Public Prosecutions or to a barrister and solicitor assigned to an appellant under the Act or under the Legal Aid Act. (Cap. 15.)

Registrar to request judge's note

48. The Registrar, when he has received a notice of appeal or a notice of application for leave to appeal under the Act, or a notice of application for extension of the time within which under the Act such notices shall be given, or when the Governor-General shall exercise his powers under section 38 of the Act, shall request the judge of the court of trial, or of an appeal heard under the provision of section 319(1) of the Criminal Procedure Code, to furnish him with the whole of or any part of his note of the trial or appeal or with a copy of such note or any part thereof.

Report of judge of court of trial

49.—(1) The Registrar, when he has received a notice of appeal, or a notice of application for leave to appeal under the Act, or a notice of application for extension of time within which under the Act such notices shall be given, or when the Governor-General shall exercise his powers under section 38 of the Act, or whenever it appears to be necessary for the proper determination of any appeal or application or for the due performance of the duties of the Court of Appeal under the said section, may and whenever in relation to any appeal under the Act the Court of Appeal or any judge thereof directs him so to do, shall, request the judge

of the court of trial to furnish him with a report in writing, giving his opinion upon the case generally or upon any point arising upon the case of the appellant, and the judge of the court of trial shall furnish the same to the Registrar in accordance with such request.

Judge's report to be furnished to Court of Appeal

(2) The report of the judge shall be made to the Court of Appeal, and except by leave of the Court or a judge thereof the Registrar shall not furnish to any person any part thereof.

Judge's certificate

50. The judge of the court of trial may, in any case in which he considers it desirable so to do, inform the person convicted before him that the case is in his opinion one fit for an appeal to the Court of Appeal under paragraph (b) of section 21 of the Act, and may give to such person a certificate to that effect in the form 1 in the Second Schedule.

Appeals where fine only is imposed

51.—(1) Where a person has, on his conviction been sentenced to payment of a fine, and in default of payment to imprisonment, the person lawfully authorised to receive such fine shall on receiving the same retain it until the determination of any appeal in relation thereto.

Person in custody in default of payment of fine

(2) If such person remains in custody in default of payment of the fine, he shall be deemed, for all purposes of the Act or these Rules, to be a person sentenced to imprisonment.

Person fined may intimate appeal and recognizance may be imposed

(3) Where any person has been convicted and is thereupon sentenced to the payment of a fine, and, in default of such payment, to imprisonment, and he intimates to the judge of the court of trial that he is desirous of appealing against his conviction, such judge may, if he thinks right so to do, order such person forthwith to enter into recognizances in such amount and with or without sureties in such amount as such judge may think right, to prosecute his appeal, and subject thereto, may order that payment of the said fine shall be made at the final determination of his said appeal, if the same be dismissed.

Fine to be repaid on success of appeal

(4) An appellant who has been sentenced to the payment of a fine and has paid the same in accordance with such sentence, shall in the event of his appeal being successful, be entitled, subject to any order of the Court of Appeal, to the return of the sum or any part thereof so paid by him.

Procedure on breach of recognizance

(5) If an appellant to whom paragraph (3) applies does not serve, in accordance with these rules, a notice of appeal within thirty days from the date of his conviction, the Registrar shall report such omission to the Court of Appeal who may, after notice in the forms 16 and 17 in the Second Schedule has been given to the appellant and his sureties, if any, order such recognizance and those of his surety or sureties to be estreated and may issue a warrant for the apprehension of the appellant and may commit him to prison in default of payment of his fine or may make such other order as the Court of Appeal may think right.

Judge's directions as to custody of exhibits

52.—(1) The judge of the court of trial may make any order he thinks fit for the custody, disposal or production of any exhibits in the case and any person to whom exhibits are returned shall retain such exhibits for thirty days pending any appeal and shall, on notice from the Registrar, produce or forward the same as and when required so to do.

(2) The Chief Registrar of the Supreme Court shall keep a record of any order or direction of the judge thereof given under this rule.

Varying order of restitution

53. Where, upon the trial of a person entitled to appeal under the Act against his conviction, an order of restitution of any property to any person has been made, any person in whose favour, or against whom an order to which rule 54 relates has been made, and with the leave of the Court of Appeal, any other person, shall, on the final hearing by the Court of Appeal of an appeal against the conviction on which such order of restitution was made, be entitled to be heard by the Court of Appeal before any order under the provisions of subsection (2) of section 25 of the Act annulling or varying such order of restitution is made.

Non-suspension of orders for restitution

54. Where the judge of the court of trial is of opinion that the title to any property the subject of an order of restitution made on a conviction of a person before him or any property to which the provisions of subsection (1) of section 25 of the Sale of Goods Act apply is not in dispute, he, if he shall be of opinion that such property or a sample or facsimile representation thereof is reasonably necessary to be produced for use at the hearing of any appeal, shall give such directions to or impose such terms upon the person in whose favour the order of restitution is made, or in whom such property reverts under such subsection as he shall think right in order to secure the production of such sample, portion or facsimile representation for use at the hearing of any such appeal.

(Cap. 230.)

Bail. Court of Appeal to specify amount and before whom recognizances to be taken

55.—(1) When the Court of Appeal under the Act admits an appellant to bail pending the determination of his appeal on an application by him duly made in compliance with these Rules, the Court shall specify the amounts in which the appellant and his surety or sureties (if any be required) shall be bound by recognizance, and shall direct, if they think right so to do, before whom the recognizances of the appellant and his surety or sureties (if any) may be taken.

Recognizances to be taken before the Registrar or a magistrate

(2) In the event of the Court of Appeal not making any special order or giving special directions under this rule, the recognizances of the appellant, and the recognizances of his surety or sureties (if any) may be taken before the Registrar or a magistrate.

Registrar on receiving recognizances in due form to notify Controller of Prisons to release appellant

(3) The Registrar, on being satisfied that the recognizances of the appellant and his surety or sureties (if any) are in due form and in compliance with the order of the Court admitting the appellant to bail, shall send in form 14 in the Second Schedule a notice to the Controller of Prisons. This notice when received by the said Controller, shall be a sufficient authority to him to release the appellant from custody.

Form of recognizances

(4) The recognizances provided for in this rule shall be in forms 9 and 10 in the Second Schedule.

Presence of appellant on bail, at hearing of his appeal

(5) An appellant who has been admitted to bail under the Act shall, by the order of the Court of Appeal or a judge thereof under which he was so admitted to bail, be ordered to be and shall be personally present at each and every hearing of his appeal, and at the final determination thereof. The Court of Appeal may, in the event of such appellant not being present at any hearing of his appeal, if they think right so to do, decline to consider the appeal, and may proceed to summarily dismiss the same, and may issue a warrant for the apprehension of the appellant:

Provided that the Court of Appeal may consider the appeal in his absence, or make such other order as they think right.

Varying order for bail, by Court of Appeal

(6) When an appellant is present before the Court of Appeal, such Court may on an application made by any person or, if they think right so to do, without any application, make any order admitting the appellant to bail, or revoke or vary any such order previously made, or enlarge from time to time the recognizance of the appellant or of his sureties or substitute any other surety for a surety previously bound as they think right.

Provisions for sureties discharging their obligations

(7) Where the surety or sureties for an appellant under the Act, upon whose recognizances such appellant has been released on bail by the Court of Appeal, suspects that the said appellant is about to depart out of Fiji, or in any manner to fail to observe the conditions of his recognizances on which he was so released, such surety or sureties may lay an information before a magistrate and such magistrate shall thereupon issue a warrant for the apprehension of the said appellant.

How appellant on bail to be dealt with on arrest at instance of sureties

(8) The said appellant shall, on being apprehended under the said warrant, be brought before the magistrates' court in and for which the said magistrate acts and before whom the said information was laid. The said court shall, on verification of the said information by oath of the informant, by warrant of commitment, commit him to prison.

Arrest and commitment of appellant to be notified to Registrar by clerk to magistrates' court

(9) The clerk of the said magistrates' court on the commitment of any such appellant, shall forthwith notify the Registrar to that effect, and forward to him the said information and the deposition in verification thereof taken before such court, together with a copy of the said warrant of commitment.

Power of Court of Appeal to revoke order for bail

(10) At any time after an appellant has been released on bail under the Act, the Court of Appeal may, if satisfied that it is in the interest of justice so to do, revoke the order admitting him to bail, and issue a warrant for his apprehension and order him to be committed to prison.

Controller of Prisons on commitment of appellant to notify Registrar

(11) When an appellant has been released on bail and has, under a warrant under these Rules or by his surety or sureties, been apprehended and is in prison, the Controller of Prisons shall forthwith notify the Registrar, who shall take steps to inform the Court thereof, and the Court of Appeal may give to the Registrar such directions as to the appeal or otherwise as it shall think right.

Surety's rights at common law preserved

(12) Nothing in these Rules shall affect the lawful right of a surety to apprehend and surrender into custody the person for whose appearance he has become bound, and thereby to discharge himself of his suretyship.

Estreat of recognizances

(13) The Court of Appeal may on any breach of the recognizances of the appellant, if it thinks right so to do, order such recognizances and those of his surety or sureties to be estreated.

Appellant to surrender on appeal, be searched and remain in custody until further dealt with

56. An appellant who is not in custody shall, whenever his case is called on before the Court of Appeal, surrender himself to such persons as the Court shall from time to time direct, and thereupon shall be searched by them and shall be deemed to be in their lawful custody until further released on bail or otherwise dealt with as the Court shall direct.

Attendance of witness before Court of Appeal

57.—(1) Where the Court of Appeal has ordered any witness to attend and be examined before the Court under paragraph (b) of section 28 of the Act, an order shall be served upon such witness specifying the time and place at which to attend for such purpose.

Application to Court to hear witnesses

(2) Such order may be made on the application at any time of the appellant or respondent, but if the appellant is in custody and not legally represented the application shall be made by him in form 8 in the Second Schedule.

Order appointing examiner

(3) Where the Court of Appeal orders the examination of any witness to be conducted otherwise than before the Court itself, such order shall specify the person appointed as examiner to take and the place of taking such examination and the witness or witnesses to be examined thereat.

Registrar to furnish examiner with exhibits, etc., necessary for examination

(4) The Registrar shall furnish to the person appointed to take such examination any documents or exhibits and any other material relating to the said appeal as and when requested so to do. Such documents and exhibits and other material shall, after the examination has been concluded, be returned by the examiner, together with any depositions taken by him under this rule, to the Registrar.

Notification of date of examination

(5) When the examiner has appointed the day and time for the examination he shall request the Registrar to notify the appellant or respondent and their legal

representatives, if any. The Registrar shall cause to be served on every witness to be so examined a notice in form 15 in the Second Schedule.

Proceedings under section 28 (b) on reference

(6) The appellant and respondent, or barrister and solicitor on their behalf, shall be entitled to be present at and take part in any examination of any witness to which this rule relates.

Notice by Registrar to appellant of result of all applications

58. When the Court of Appeal has heard and dealt with any application under the Act or these Rules, the Registrar shall (unless it appears to him unnecessary so to do) give to the appellant (if he is in custody and has not been present at the hearing of such application) notice of the decision of the Court of Appeal in relation to the said application.

On final determination of appeals, etc., Registrar to notify appellant

59.—(1) On the final determination of any appeal under the Act or of any matter under section 35 of the Act the Registrar shall give to the appellant, if he is in custody and has not been present at such final determination, and to the Controller of Prisons, notice of such determination.

In case of death sentence, notice of appeal and of final determination to be sent to the Governor-General

(2) In any case of an appeal in relation to a conviction involving sentence of death, the Registrar shall, on receiving the notice of appeal or of application for leave to appeal, send a copy thereof to the Governor-General, and on the final determination of any such appeal by the Court of Appeal shall forthwith notify the appellant, the Governor-General, and the Controller of Prisons.

Registrar to notify officer of court of trial result of appeal

60. The Registrar, at the final determination of an appeal, shall notify in such manner as he thinks most convenient to the Chief Registrar of the Supreme Court the decision of the Court of Appeal in relation thereto, and also any orders or directions made or given by the Court under the Act, or these Rules, in relation to such appeal or any matter connected therewith.

Reports as to legal aid under section 34 (5) to be made to judge of Court

61. A report made by the Registrar under subsection (5) of section 34 of the Act shall be made to a judge of the Court, and any directions given thereupon by such judge shall be final.

A petitioner under section 38 (a) be deemed an appellant for all purposes

62. When the Governor-General exercises his powers under paragraph (a) of section 38 of the Act and refers the whole case to the Court of Appeal, the petitioner whose case is so dealt with shall be deemed to be for all purposes of the Act or these Rules a person who has obtained from the Court of Appeal leave to appeal, and the Court of Appeal may proceed to deal with his case accordingly.

Reference to Court under section 38 (b)

63. Where the Governor-General refers a point to the Court of Appeal under paragraph (b) of section 38 of the Act, such Court shall, unless they otherwise determine, consider such point in private.

Non-compliance with Rules not wilful may be waived by Court

64. Non-compliance on the part of an appellant with these Rules or with any rule of practice for the time being in force under the Act, shall not prevent the further prosecution of his appeal if the Court of Appeal or a judge thereof considers that such non-compliance was not wilful and that the same may be waived or remedied by amendment or otherwise. The Court of Appeal or a judge thereof may in such manner as it or he thinks right, direct the appellant to remedy such non-compliance, and thereupon the appeal shall proceed. The Registrar shall forthwith notify to the appellant any directions given by the Court or the judge thereof under this rule, where the appellant was not present at the time when such directions were given.

FIRST SCHEDULE

(Rule 13)

(Amended by Legal Notice 51 of 1984)

PART I—FEES IN CIVIL APPEALS

	\$
1. On filing a notice of appeal, or a notice of cross-appeal, from any decision, final or interlocutory (this fee includes the fees for setting down, notice of hearing and hearing)	40.00
2. On an application for— (a) leave to appeal; (b) enlargement of time; (c) fixing or dispensing with security; (d) leave to amend; (e) directions for service; (f) stay of execution; or (g) any interim or other order	10.00
3. On filing a respondent's notice	10.00
4. On every bond or deposit	4.00
5. On filing an affidavit or any other document unless otherwise provided for by this Schedule	2.00
6. For every copy of the record of appeal prepared under Rule 18, or of any proceedings, or of any judgment, order or document, per page (with a minimum fee of \$1.00)	0.20
(Provided that, where the fee exceeds \$50.00, the Registrar may on grounds of hardship or for other sufficient reason waive, wholly or in part, the fee in excess of \$50.00).	
7. For certifying any copy, per page (with a minimum fee of \$1.00 and a maximum fee of \$10.00).....	0.20
8. On entering or sealing the judgment or order made on the hearing of an appeal	10.00
9. On entering or sealing any other order made by the Court of Appeal or a judge thereof including orders for leave to appeal, security for costs or enlargement of time	8.00
10. On any certificate by the Registrar (other than certification of a copy or of taxed costs)	2.00

11. On filing a bill of costs and obtaining an appointment to tax—	
For a bill not exceeding \$100.....	7-00
For a bill exceeding \$100 but not exceeding \$200	10-00
For a bill exceeding \$200.....	16-00
(This fee is to be paid on the amount claimed in the bill. No additional fee is payable for taxation).	
12. On a certificate or allocatur of the taxing officer	1-00
13. On application for supervision by the Court of the preparation of the record for the Privy Council on appeal, including such supervision	25-00

PART II—FEES IN CRIMINAL APPEALS

14. On filing a notice of appeal or a notice of cross-appeal (This fee includes the fees for setting down, notice of hearing and hearing) ...	30-00
15. On an application for—	
(a) leave to appeal; or	
(b) enlargement of time	10-00
16. On filing any motion, affidavit or other document unless otherwise provided for in this Schedule	2-00
17. For every copy of the record of the proceedings at the trial or of any documentary exhibits in the possession of the Registrar, per page (with a minimum fee of \$1-00)	0-20
(Provided that, where the fee exceeds \$30-00 the Registrar may on grounds of hardship or for other sufficient reason waive, wholly or in part, the fee in excess of \$30-00).	
18. For certifying any copy, per page (with a minimum fee of \$1-00) and a maximum fee of \$10-00).....	0-20

FORM 3
COURT OF APPEAL RULES*REGINA v.*

NOTICE OF ABANDONMENT OF APPEAL

To: The Registrar of the Court of Appeal.

I, _____ having been convicted by the Supreme Court of Fiji on the _____ day of _____, 19____, of the offence of _____ and having been desirous of appealing and having duly sent notice of that appeal to the Court of Appeal against my said conviction (or sentence of _____ passed upon me on my said conviction) do hereby give you notice that I do not intend to prosecute my appeal but that I hereby abandon all further proceedings in regard thereto as from the date hereof.

Dated this _____ day of _____, 19____.

*Appellant or his Barrister and Solicitor.*FORM 4
COURT OF APPEAL RULESNOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL
AGAINST CONVICTION OR SENTENCE

To: The Registrar of the Court of Appeal.

[*Name of Appellant*] convicted before the Supreme Court of Fiji at _____ of the offence of _____ and sentenced to _____ on the _____ day of _____, 19____, and detained in _____ prison.

I, the above-named appellant, hereby give you notice that I desire to appeal to the Court of Appeal against:—

(a) my conviction;

(b) my sentence;

on the following grounds:—

State:—(a) Whether you desire to be present on the hearing of the appeal.

(b) Whether you desire the Court to assign you legal aid.

Dated at _____ this _____ day of _____, 19____.

(Signed)

Appellant or his Barrister and Solicitor.

FORM 5
COURT OF APPEAL RULES

NOTICE OF APPEAL ON QUESTION OF LAW ALONE

To: The Registrar of the Court of Appeal.

I, _____ having been convicted by the Supreme Court of Fiji of the offence of _____ and being now a prisoner in _____ prison (or now living at _____) do hereby give you notice of appeal against my conviction (particulars of which hereinafter appear) to the Court of Appeal on questions of law, that is to say:—

Dated this _____ day of _____, 19 _____.

(Signed)
Appellant or his Barrister and Solicitor.

Particulars of Trial and Conviction.

1. Date and place of trial.
2. Sentence.
3. Whether above questions of law were raised at the trial.
4. Do you desire the Court to assign you legal aid?

FORM 6
COURT OF APPEAL RULES

NOTICE OF APPLICATION FOR EXTENSION OF TIME WITHIN WHICH
TO APPEAL

To: The Registrar of the Court of Appeal.

I, _____ having been convicted of the offence of _____ by the Supreme Court of Fiji at _____ on the _____ day of _____, 19 _____, and being now a prisoner in _____ prison (or now living at _____) give you notice that I hereby apply to the Court of Appeal for an extension of time within which I may give notice of appeal (or notice of application for leave to appeal) on the grounds following:—

Dated this _____ day of _____, 19 _____.

(Signed)
Appellant or his Barrister and Solicitor.

Witness
Signature
Address

FORM 7
COURT OF APPEAL RULES

NOTICE OF APPLICATION BY APPELLANT FOR BAIL PENDING APPEAL

To: The Registrar of the Court of Appeal.

I, _____ having been convicted of the crime of _____ and being now a prisoner in _____ prison and having given notice of appeal/been granted leave to appeal do hereby give notice that I desire to apply to the Court of Appeal for bail with/without sureties on the following grounds:—

The undermentioned persons are willing to become sureties for my presence at the hearing and determination of the appeal to the amount of \$ _____ : each.

Name

Address

Name

Address

Dated this _____ day of _____, 19 _____.

(Signed)

Appellant or his Barrister and Solicitor

FORM 8
COURT OF APPEAL RULES

NOTICE OF APPLICATION BY APPELLANT FOR LEAVE TO CALL FURTHER WITNESSES

To: The Registrar of the Court of Appeal.

REGINA v.

I, _____ having appealed to the Court of Appeal hereby request you to take notice that I desire that the said Court shall order the witness(es) hereinafter specified to attend the Court and be examined on my behalf, viz.:—

Dated this _____ day of _____, 19 _____.

(Signed)

Appellant or his Barrister and Solicitor

You are required to give the following particulars:—

1. Name and address of witness.
2. Whether such witness has been examined at the trial.
3. If not, state the reason why he/she was not examined.
4. On what matters do you wish him/her to be examined on the appeal.
State shortly the evidence you think he can give.

FORM 9
COURT OF APPEAL RULES
RECOGNIZANCE OF BAIL OF APPELLANT

Be it remembered that whereas _____ was convicted of _____ on the _____ day of _____, 19____, and was thereupon sentenced to _____ and now is in lawful custody in _____ prison and has duly appealed against his conviction (and sentence) to the Court of Appeal and has applied to the Court of Appeal for bail pending the determination of his appeal and whereas the Court of Appeal has granted him bail on his entering into his own recognizance in the sum of \$ _____ : and with _____ surety/ies each in the sum of \$ _____ : the said _____ personally comes before me and acknowledges himself to owe to Her Majesty the Queen the said sum of \$ _____ : of good and lawful money of Fiji to be made and levied of his goods, chattels, lands and tenements to the use of Her Majesty the Queen, her heirs and successors, if he the said _____ fail in the condition hereon endorsed.

Taken and acknowledged this _____ day of _____, 19____, at the _____ prison, before me.

Registrar or Magistrate.

CONDITION

The condition of the above written recognizance is such that if he the said _____ shall personally appear and surrender himself at and before the Court of Appeal at each and every hearing of his appeal to such Court and at the final determination thereof and to then and there abide by the judgment of the said Court and not depart or be absent from such Court or any such hearing without the leave of the said Court, and in the meantime not to depart out of Fiji, then this recognizance to be void or else to stand in full force and effect.

(The following to be filled up by the appellant and signed by him.)

When released on bail my residence, to which any notices, etc., are to be addressed, will be as follows:—

(Signed)

Appellant.

FORM 10
COURT OF APPEAL RULES

RECOGNIZANCE OF BAIL OF APPELLANT'S SURETIES

Be it remembered that on this day of ,
19 , of and of personally came before me
and severally acknowledged themselves to owe to Her Majesty the Queen the
several sums following, that is to say the said the sum of \$, and
the said the sum of \$, of good and lawful money of Fiji to be
made and levied of their goods and chattels, lands and tenements, respectively, to
the use of Her Majesty the Queen, her heirs and successors, if now in
lawful custody in the prison fail in the condition hereon endorsed.

Taken and acknowledged before me the undersigned the day and year first above
mentioned.

Registrar or Magistrate.

CONDITION

The condition of the above written recognizance is such that wherever the
said having been convicted of and now in such lawful custody as
before mentioned under a sentence of for such offence has duly appealed
to the Court of Appeal against his said conviction (and sentence) and having
applied to the Court of Appeal for bail, pending the determination of his said
appeal, has been granted bail on his entering into recognizance in the sum of
\$: with sureties each in the sum of \$: if the
said shall personally appear and surrender himself at and before the said
Court of Appeal at each and every hearing of his appeal to such Court and at the
final determination thereof, and to then and there abide by the judgment of the
said Court and not depart or be absent from the said Court at any such hearing
without the leave of the Court, and in the meantime not to depart out of Fiji, then
this recognizance to be void or else to stand in full force and effect.

FORM 11
COURT OF APPEAL RULES

RECOGNIZANCE OF APPELLANT SENTENCED TO PAYMENT OF A FINE

Be it remembered that whereas _____ of _____ was on the _____ day of _____, 19____, convicted of _____ was thereupon sentenced to pay the sum of \$ _____ as a fine for his said offence by the Supreme Court and has intimated to the said Court that he desires to appeal against the said conviction and whereas the said Court considers the said appellant may in lieu of payment at and upon his said conviction of the said sum be ordered to enter into a recognizance of bail himself in the sum of \$ _____ and with _____ surety/ies each in the sum of \$ _____ to prosecute his said appeal before the Court of Appeal.

The said _____ and _____ of _____ and _____ of _____ personally come before me this _____ day of _____, 19____, and severally acknowledge themselves to owe to Her Majesty the Queen the several sums following that is to say the said _____ the sum of \$ _____, the said _____ the sum of \$ _____, of good and lawful money of Fiji to be made and levied of their goods and chattels, lands and tenements respectively to the use of Her Majesty the Queen her heirs and successors if _____ now before the said Court fail in the condition endorsed hereon.

Taken and acknowledged before me on the day and year above mentioned.

Appellant
Surety
Surety

Chief Registrar, Supreme Court.

CONDITION

The condition of the above-written recognizance is such that if the said _____ shall prosecute his appeal before the Court of Appeal and abide by the judgment of the said Court then this recognizance to be void, or else to stand in full force and effect.

FORM 14

COURT OF APPEAL RULES

To: The Controller of Prisons.

Whereas _____ has duly appealed to the Court of Appeal against his conviction for _____ and sentence of _____ and having applied to the said Court has been granted bail by the said Court pending the determination of the said appeal and whereas I have been given to understand that the said _____ is now in your lawful custody in _____ prison under the said conviction and sentence and whereas I have the recognizances of the said _____ and his sureties and the same are in due form and in compliance with the Order of the Court admitting the said _____ to bail:

Now I do give you notice that if the said _____ do remain in your custody under the said conviction and sentence and for no other cause you shall on receipt of this notice suffer him to go at large.

And this notice shall be your authority in that behalf.

Dated this _____ day of _____, 19 _____.

Registrar of the Court of Appeal.

FORM 15

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Cr. App. No. _____ of 19 _____.

REGINA v.

ORDER TO WITNESS TO ATTEND BEFORE EXAMINER.

To: _____ of _____.

Whereas on good cause shown to the Court of Appeal you have been ordered to be examined as a witness upon the appeal of the abovenamed _____ and your deposition to be taken for the use of the said Court:

This is to give you notice to attend at _____ on the _____ day of _____, 19 _____, before _____ at _____ o'clock in the _____ noon.

You are also required to have with you at the said time and place any books papers or other things under your control or in your possession relating to the said appeal of which you may have had notice so to produce.

Dated this _____ day of _____, 19 _____.

Registrar.

FORM 16

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Cr. App. No. of 19

NOTICE TO APPELLANT SENTENCED TO FINE, OF BREACH OF HIS
RECOGNIZANCES

REGINA v.

To the abovenamed appellant.

Whereas you were convicted on the day of , 19 , of
the offence of and were sentenced to the payment of a fine of \$
\$ and in default of such payment to imprisonment, and under the
Court of Appeal Rules you entered into recognizances in the sum of \$
with sureties in the sum of \$ each to proescute your appeal and whereas
30 days have elapsed since your said conviction and no notice of appeal has been
served by you, now I give you notice that unless you attend at the sitting of the
Court of Appeal to be held at on the day of , 19 ,
at o'clock in the forenoon and then show good cause to the contrary, the
Court may order an estreat of your recognizances and those of your sureties or may
otherwise deal with you according to law.

Dated this day of , 19 .

Registrar.

FORM 17

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Cr. App. No. of 19

NOTICE OF SURETY FOR APPELLANT ON BREACH OF
RECOGNIZANCES

REGINA v.

To: of

Whereas you, the abovenamed, became duly bound on recognizances as surety for
that the said having been convicted of and for his said
offence fined the sum of \$, should duly prosecute an appeal in relation to
his conviction before the Court of Appeal and whereas the said has
not so prosecuted his appeal, now I hereby give you notice that at the sitting of the
Court of Appeal on the day of next your recognizances
may be ordered to be estreated unless you then show good cause to the contrary.

Dated this day of , 19 .

Registrar.

RULES FOR THE PROSECUTION BY PERSONS UNDER SENTENCE OF DEATH OF PETITIONS FOR SPECIAL LEAVE TO APPEAL TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

Notification 21st May, 1969.

Date appointed for execution of sentence

1. The date appointed for the execution of a sentence of death will normally allow an interval of not less than twenty-one and not more than twenty-five days between sentence and the last day for lodging an appeal to the Court of Appeal or, in the event of an appeal, the dismissal of the appeal and the date of execution.

Notice of intention to petition for special leave to appeal to the Judicial Committee of the Privy Council

2.—(1) If he intends to apply for special leave, the applicant should as soon as possible and in any case within the period prescribed in paragraph (2) notify his intention to the Governor-General through his legal representative or, if personally, through the officer in charge of the prison where he is confined.

(2) The period prescribed for notification under paragraph (1) is ten clear days after notification that the Governor-General has not granted a pardon or respite, or, in the event of an appeal to the Court of Appeal, fourteen days after the dismissal of the appeal, if the latter should be longer.

Postponement of execution following notice under rule 2

3. On receipt of a notification under rule 2, the applicant will be informed that the execution will be postponed for twenty-one days, during which period the applicant must furnish the Governor-General with proof that the necessary instructions, papers and funds have been sent to a solicitor practising in London, the instructions and funds by air mail and the papers by registered ordinary mail; and also where the application is to be made *in forma pauperis* that the procedure relating to such applications as set out in rule 4 (c) has been complied with.

The necessary papers to be forwarded

4. The necessary papers alluded to in rule 3 should include—

- (a) three copies, one being a certified copy, of the record of the trial including any documentary exhibits and the judgment and order of the Court; and
- (b) if there has been an appeal, three copies, one being a certified copy, of the record of the proceedings on appeal including the judgment and order of the Court; and
- (c) in the case of a person intending to petition *in forma pauperis*—
 - (i) an affidavit stating that he is not worth £100 in the world except his wearing apparel and that he is unable to provide sureties, and
 - (ii) a certificate of counsel that he has reasonable grounds of appeal.

Necessary funds

5. The necessary funds (except where an application is made *in forma pauperis*) will be at least £115.50 if one counsel is engaged, but, if more than one counsel is engaged or if the record is bulky, £157.50 to £210 will be needed.

Costs etc., on dismissal

6. A petitioner *in forma pauperis* may, if his petition is dismissed, be excused from paying most of the costs usually chargeable, but he may nevertheless be required to pay the London solicitor's out of pocket expenses and an allowance, on a prescribed scale, towards their office expenses.

Solicitors not bound to accept case

7. Solicitors in England are not under any obligation to accept a case *in forma pauperis*.

Name, etc., of solicitor to be supplied

8. When furnishing the required proof, the name and address of the solicitors in London to whom papers and funds have been despatched must be supplied to the Governor-General.

Action where rule 3 not complied with

9.—(1) If the proof required by the provisions of rule 3 is not furnished to the Governor-General before the expiration of the period of twenty-one days referred to in that rule, the execution will not be further postponed unless the Governor-General considers that there are special reasons that would justify exceptionally an extension of the date for furnishing such proof. The applicant or his advisers will be informed by the Governor-General of the new date by which the required proof must be furnished.

(2) If the proof required by the provisions of rule 3 is furnished within the period of twenty-one days referred to in that rule or on or before such date as the Governor-General may have fixed under the provisions of rule 10, execution will be postponed.

Action when execution further postponed

10. If the execution is to be further postponed, the Governor-General will inform the applicant or his advisers of the date by which the application for special leave to appeal should be lodged in the Privy Council Office.

Cases in which execution will not be postponed

11. If the Governor-General is informed by the Foreign and Commonwealth Office—

(a) that the application for special leave has not been lodged by the date fixed;
(b) that the application has been dismissed by the Judicial Committee;
(c) that the appeal has been dismissed by the Judicial Committee;
the execution will not be further postponed, subject, however, to the power of the Governor-General to exercise the Prerogative of Mercy.

Controlled by Ministry of the Attorney-General.