

1961 No. 59

JUDICIAL COMMITTEE

The Sovereign Base Areas of Akrotiri and Dhekelia (Appeals to Privy Council) Order in Council, 1961

Made - - - - 17th January, 1961

Coming into Operation 1st February, 1961

At the Court at Buckingham Palace, the 17th day of January, 1961

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by section 1 of the Judicial Committee Act, 1844(a), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Interpretation

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

“ appeal ” means appeal to Her Majesty in Council ; and

“ judgment ” includes decree, order, sentence and decision ;

“ the Court ” means the Senior Judge's Court of the Sovereign Base Areas ;

“ record ” means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence and judgments) proper to be laid before Her Majesty in Council on the hearing of the appeal ;

“ registrar ” means the registrar or other proper officer having custody of the records in the Court ;

“ Sovereign Base Areas ” means the areas mentioned in subsection (1) of section 2 of the Cyprus Act, 1960(b).

(2) The Interpretation Act, 1889(c), shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Citation and Commencement

2. This Order may be cited as the Sovereign Base Areas of Akrotiri and Dhekelia (Appeals to Privy Council) Order in Council, 1961, and shall come into operation on 1st February, 1961.

Appeals

3. Subject to the provisions of this Order an appeal shall lie:—

(a) as of right, from any final judgment of the Court where the matter in dispute on the appeal amounts to or is of the value of five hundred pounds sterling or upwards, or where the appeal involves, directly or indirectly,

(a) 7 & 8 Vict. c. 69.

(b) 8 & 9 Eliz. 2. c. 52.

(c) 52 & 53 Vict. c. 63.

some claim or question to or respecting property or some civil right amounting to or of the value of five hundred pounds sterling or upwards ; and from any final judgment of the Court given in an action for the divorce of persons joined in matrimony or for a declaration of nullity of marriage ;

- (b) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if in the opinion of the Court the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council for decision.

Application for leave to appeal

4. Applications to the Court for leave to appeal shall be made by motion or petition within forty-two days from the date of the judgment to be appealed from, and the applicant shall give the opposite party notice of his intended application.

Conditions on which leave to appeal is to be granted

5. Leave to appeal under section 3 of this Order shall in the first instance be granted by the Court only—

- (a) upon condition of the appellant, within a period to be fixed by the Court but not exceeding three months from the date of the hearing of the application for leave to appeal, providing good and sufficient security, to the satisfaction of the Court, in a sum not exceeding five hundred pounds sterling, for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondent in the event of the appellant's not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay the respondent's costs of the appeal as the case may be ; and

- (b) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

Execution of judgment pending appeal

6. Where the judgment appealed from requires the appellant to pay money or perform a duty, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, provide good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as Her Majesty in Council shall think fit to make thereon.

Manner of providing security

7. For the purpose of sections 5 and 6 of this Order a person may provide security in any manner that the Court may approve in his case, and for the avoidance of doubts it is declared that such security may with the approval of the Court consist in whole or in part of a deposit of money.

Preparation of record

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

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

(3) Where in the course of the preparation of the record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and other party nevertheless insists upon its being included the record as finally printed in the Island of Cyprus or printed or duplicated in England shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers or otherwise the fact that, and the party by whom, the inclusion of the document was objected to.

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

Translation into English language

9. Any documents, evidence, records, judgments or other matters tendered heard or given by or before the Court in other than the English language shall for the purposes of their inclusion in the record be translated into the English language. Such translation shall be agreed by the parties to the appeal or failing agreement shall be certified by the registrar to be correct.

Printing of record

10.—(1) The record may be printed in the Island of Cyprus, or, in England, may be printed if the parties agree to its being printed but in the absence of such agreement shall be duplicated by process approved by the Registrar of the Privy Council. Where the record is printed in the Island of Cyprus, it shall be printed in accordance with the Rules set forth in the Schedule to this Order.

(2) Where the record is printed in the Island of Cyprus, the registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council forty copies of the record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page thereof and by affixing thereto the seal of the Court.

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

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

Consolidation of appeals

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

Rescinding leave to appeal

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

Notice to other parties

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

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

Prosecution of appeal

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

Withdrawal of appeal

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

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

Dismissal for non-prosecution

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

Substitution of parties

17.—(1) Where at any time between the order granting final leave to appeal and the despatch of the record to England the record becomes defective by reason of the death or change of status of a party to the appeal, the Court may, notwithstanding the order granting final leave to appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of, or in addition to, the party who has died or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the record as aforesaid without express Order of Her Majesty in Council.

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

Printing of case

18.—(1) The case may be printed in the Island of Cyprus or printed or duplicated in England and shall in either event if printed comply with Rules 1 to 4 contained in the Schedule to this Order.

(2) Whether the case is printed or duplicated every tenth line thereof shall be numbered in the margin and it shall be signed by at least one of the counsel who attends at the hearing of the appeal or by the party himself if he conducts his appeal in person.

Form of Case

19. The case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the same, and the reasons of appeal. References by page and line to the relevant portions of the record as printed or duplicated shall, as far as practicable, be printed or duplicated in the margin, and care shall be taken to avoid, as far as possible, reprinting in the case of long extracts from the record. The taxing officer, in taxing the costs of the appeal, shall, either of his own motion or at the instance of any party, inquire into any unnecessary prolixity in the case and shall disallow the costs occasioned thereby.

Costs in the Sovereign Base Areas

20. Where the Judicial Committee directs a party to bear the costs of an appeal incurred in the Sovereign Base Areas, such costs shall be taxed by the proper officer of the Court in accordance with the rules for the time being regulating taxation in the Court.

Enforcing judgment

21. Any Order which Her Majesty in Council may think fit to make on an appeal from a judgment of the Court shall be enforced in like manner as any judgment of the Court should or might have been enforced.

Special leave to appeal

22. Nothing in this Order contained shall be deemed to interfere with the right of Her Majesty, upon the humble petition of any person aggrieved by any judgment of the Court, to admit his appeal therefrom upon such conditions as Her Majesty in Council shall think fit to impose.

Revocation

23. The Cyprus (Appeal to Privy Council) Order in Council, 1927(a), is hereby revoked.

W. G. Agnew.

SCHEDULE

1. Records and cases in appeals to Her Majesty in Council which are required by the above Order to be printed shall be printed in the form known as demy quarto.

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

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

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

5. Records shall be arranged in two parts in the same volume, where practicable, viz. :—

Part I. The pleadings and proceedings, the transcript of the evidence of the witnesses, the Judgments, Decrees, etc., of the Courts below down to the Order admitting the Appeal.

Part II. The exhibits and documents.

6. The Index to Part I shall be in chronological order, and shall be placed at the beginning of the volume.

The Index to Part II shall follow the order of the exhibit mark, and shall be placed immediately after the Index to Part I.

7. Part I shall be arranged strictly in chronological order, i.e., in the same order as the index.

Part II shall be arranged in the most convenient way for the use of the Judicial Committee, as the circumstances of the case require. The documents shall be as far as suitable in chronological order, mixing Plaintiff's and Defendant's documents together when necessary. Each document shall show its exhibit mark, and whether it is a Plaintiff's or Defendant's document (unless this is clear

(a) S.R. & O. 1927/640, (Rev. XI p. 348: 1927, p. 608).

from the exhibit mark) and in all cases documents relating to the same matter, such as

(a) a series of correspondence, or

(b) proceedings in a suit other than the one under appeal, shall be kept together.

The order in the Record of the documents in Part II will probably be different from the order of the Index, and the proper page number of each document shall be inserted in the Index.

The parties will be responsible for arranging the Record in proper order for the Judicial Committee, and in difficult cases Counsel may be asked to settle it.

8. The documents in Part I shall be numbered consecutively.

The documents in Part II shall not be numbered, apart from the exhibit mark.

9. Each document shall have a heading which shall consist of the number or exhibit mark and the description of the document in the Index, without the date.

10. Each document shall have a marginal note which shall be repeated on each page over which the document extends, viz. :—

PART I

(a) Where the case has been before more than one Court, the short name of the Court shall first appear. Where the case has been before only one Court, the name of the Court need not appear.

(b) The marginal note of the document shall then appear consisting of the number and the description of the document in the Index, with the date, except in the case of oral evidence

(c) In the case of oral evidence, "Plaintiff's evidence" or "Defendant's evidence" shall appear beneath the name of the Court, and then the marginal note consisting of the number in the Index and the witness's name, with "examination," "cross-examination," or "re-examination," as the case may be.

PART II

The word "Exhibits" shall first appear.

The marginal note of the exhibit shall then appear consisting of the exhibit mark and the description of the document in the Index, with the date.

11. The parties shall agree to the omission of formal and irrelevant documents, but the description of the document may appear (both in the Index and in the Record), if desired, with the words "not printed" or "not duplicated" against it.

A long series of documents, such as accounts, rent rolls, inventories, etc., shall not be printed or duplicated in full, unless Counsel so advise, but the parties shall agree to short extracts being printed or duplicated as specimens.

12. In cases where maps sent from the Sovereign Base Areas are of an inconvenient size or unsuitable in character, the Appellant shall, in agreement with the Respondent, prepare in England, from the materials sent from the Sovereign Base Areas, maps drawn properly to scale and of reasonable size, showing, as far as possible, the claims of the respective parties, in different colours.

EXPLANATORY NOTE

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

This Order makes provision for appeals from the Senior Judge's Court of the Sovereign Base Areas of Akrotiri and Dhekelia to Her Majesty in Council.

STATUTORY INSTRUMENTS

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