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SCHEDULE.

CHAPTER 16.**APPEALS FROM MAGISTRATES' COURTS.****An Ordinance to make provision for appeals from the decisions of Magistrates.**

[25TH NOVEMBER, 1935.]

24 of 1935.
7 of 1945.
29 of 1946.
33 of 1947.
20 of 1954.

Short title.

1. This Ordinance may be cited as the Appeals from Magistrates' Courts Ordinance, and shall apply to the Colony and the Protectorate.

Definitions.

2. In this Ordinance—

“ Appeal Court ” means the Supreme Court;

“ party ” includes any prosecutor, complainant or informant.

Appeals from Magistrates.

3. (1) Save as hereinafter provided, any person dissatisfied with a decision of a Magistrate in any civil or criminal proceedings to which he is a party may appeal therefrom to the Appeal Court.

(2) The Attorney General may appeal to the Appeal Court from the decision of a Magistrate even though he was not a party to the proceedings.

(3) An appeal to the Appeal Court may be on a matter of fact as well as on a matter of law, provided that there shall be no appeal against an acquittal on a matter of fact.

No appeal on plea of guilty.

4. No appeal shall be had in the case of any accused person who has pleaded guilty and has been convicted on such plea by a Court of summary jurisdiction, except as to the extent or legality of the sentence:

Provided that there shall be no appeal against a sentence of imprisonment passed by such Court in default of the payment of a fine, when no substantive sentence of imprisonment has also been passed unless such sentence in default is an unlawful one.

Limitation.

5. Every appeal against any judgment, decision, order or sentence of a Magistrate's Court established in the Colony shall be entered within fifteen days of the date of such judgment, decision, order or sentence, and every such appeal against any decision of a Magistrate's Court established in the Protectorate shall be entered within thirty days of the date of such judgment, decision, order or sentence:

Provided that the Supreme Court may for good cause shown extend the aforesaid periods in such manner as it may think just.

6. Every appeal shall be made in the form of a petition in writing containing the grounds upon which it is intended to prosecute the appeal, presented by the appellant or his solicitor to the Appeal Court, and every such petition shall state briefly the substance of the decision appealed against: Petition of appeal.

Provided that in the Protectorate, and notwithstanding the provisions of the immediately preceding section, any person desirous of appealing may, in lieu of a petition in writing, give notice of appeal orally and in open court immediately after the decision of the Court is pronounced, in which case he shall make a contemporaneous oral statement of the grounds of appeal. The fact of such appeal and the grounds thereof shall be recorded in writing by the Magistrate and transmitted by him to the Court of Appeal. 33 of 1947.

7. If in the case of a criminal appeal the appellant is in prison, he may present his petition of appeal and the copies accompanying the same to the Director of Prisons, who shall thereupon forward such petition to the Registrar of the Appeal Court. Appellant in prison.

8. Upon receipt of a petition of appeal the Registrar of the Appeal Court shall notify the Magistrate and call for a record of the case and shall cause a copy of the petition to be served upon the respondent. Copies of petition to be served.

9. If the Magistrate's decision be for the payment of any fine or money, the appellant shall pay the amount thereof into court within the fifteen days allowed for appealing, together with such further amount or sum of money as the Magistrate shall be reference to the Schedule and section 36 consider ample and sufficient to cover the costs of appeal, or give security in double the said amounts within such time to abide the judgment of the Appeal Court. Payment into court of fine and of costs of appeal.

10. If the decision or judgment be in favour of the defendant, or a non-suit or dismissal of the plaintiff's claim, or of the charge or complaint against the accused, the plaintiff or complainant, on appealing, shall in like manner pay into the Magistrate's Court the sum of money fixed by the Magistrate as the probable costs of appeal, or give security in double the amount: Security for costs of appeal when plaintiff or complainant appeals.

Provided that nothing in this section shall apply to any appeal instituted by the Attorney General.

In case of imprisonment appellant to pay or give security and to remain in prison until security be given.

11. (1) If the sentence be imprisonment, in addition to or without any fine, the appellant shall, in respect to such fine, pay the amount into Court, together with the amount fixed for the costs of appeal, or give such security as aforesaid; and in respect to such imprisonment the appellant or person sentenced to be imprisoned shall be detained in gaol to abide the judgment of the Appeal Court unless or until he shall give security for the costs of appeal and to abide the judgment of the Appeal Court and to surrender himself into the custody of the Court or of the Sheriff or Director of Prisons to undergo such sentence.

Amount of security.

(2) The amount of such security in respect to such imprisonment shall be in the discretion of the Magistrate; and upon such payment being made and security entered into as herein required the appellant or person sentenced to imprisonment shall be discharged from custody.

Nature of security.

12. The nature of the security hereinbefore required to be given shall be in the discretion of the Magistrate, and may be by the written undertaking of the appellant and one or more substantial sureties, entered on the record of the case and signed by them and attested by a witness or witnesses, to pay the amount fixed by the Magistrate, or by depositing in Court, if the Magistrate shall so allow, any article of property of the plaintiff or of his sureties in value sufficient to cover the amount fixed by the Magistrate, or security in such other manner as the Magistrate may think proper to allow or accept.

Appellant imprisoned may require his being taken to Freetown gaol.

13. If the appellant be detained in custody in any district other than the Police District of Freetown by reason of his not being able to give the required security he may demand that he be taken to Freetown and there be detained in custody in gaol until the appeal be heard or the money be deposited in Court or security be given as aforesaid, or as may be fixed by the Magistrate or by the Appeal Court; and he shall thereupon be taken to Freetown, and on his arrival in Freetown the Director of Prisons shall immediately notify the Registrar of the Appeal Court of such appellant being in the Freetown gaol.

Transmission of record of appeal.

14. Upon payments being made and security entered into in compliance with the foregoing provisions, a copy of the record of the case certified under the hand of the Magistrate as a true copy and the original documents connected therewith

shall be forwarded without delay to the Registrar of the Appeal Court and on payment of the required fees copies of the said record and documents shall also be furnished by the Magistrate to the appellant and respondent:

Provided that the Attorney General shall be entitled to receive any such copies without payment.

15. An appellant may amend or add to the grounds of his appeal at any time within the period allowed by section 5 on giving notice in writing to the Appeal Court. After the expiration of that period no such amendment or addition shall be made except by leave of the Appeal Court.

Additional grounds of appeal.
29 of 1946.

16. The Registrar of the Appeal Court shall thereupon cause notice to be given to the appellant or his solicitor and to the respondent or his solicitor of the time and place at which such appeal shall be heard.

Notice of time and place of hearing.

17. If neither party be present on the day on which the appeal is to be heard, the hearing thereof may be adjourned, or the Appeal Court may proceed to deal with the appeal upon the evidence taken before the Magistrate, and for that purpose shall have all the powers conferred upon it by section 19.

Procedure in absence of both parties.

18. If either or both parties appear the Appeal Court shall proceed to hear the appeal, and may deal with it on the evidence taken before the Magistrate, or may examine all or any of the witnesses called before the Magistrate or receive such other evidence as it thinks fit before dealing therewith. In either case the Court shall have all the powers conferred upon it by section 19.

Procedure where one or both parties attend.

19. The Appeal Court may dismiss an appeal or reverse, vary or amend any judgment, decision, order or sentence which shall have been given contrary to law, or allow an appeal on any ground of law or fact, or vary the punishment inflicted by the Magistrate by substituting therefor any other punishment, whether more or less severe, which the law allows, or remit the case to the same or another Magistrate for re-hearing or taking further evidence therein. In every case the Appeal Court shall give all consequential directions which may be proper or necessary; and in every case the costs of the appeal shall be in the discretion of the Court.

Powers of the Appeal Court.

20. (1) When a case is decided on appeal by the Appeal Court, it shall certify its judgment or order to the Court by

Order of Appeal Court to be certified to lower Court.

29 of 1946.

which the judgment, decision, order or sentence appealed against was recorded or passed. Every judgment of the Appeal Court shall state the substance of the question arising for determination, the decision of the Appeal Court thereon and the reasons for the decision.

(2) The Court to which the Appeal Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the Appeal Court, and, if necessary, the records shall be amended in accordance therewith.

Suspension
of sentence
pending
appeal.

21. (1) After the entering of a petition of appeal by any person entitled to appeal, and pending the hearing of the same, the Appeal Court may, for reasons to be recorded by it in writing, order that the execution of a judgment, decision, order or sentence, appealed against be suspended, and also in the case of a criminal appeal, if the appellant be in confinement, that he be released on bail on his own recognisance or on such other terms as to the Appeal Court shall seem meet.

(2) If an appellant be ultimately sentenced to imprisonment the time during which he is so released shall be excluded in computing the period for which he is so sentenced.

Abatement
of appeals.

22. Every appeal from a Magistrate (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

Case stated.

23. After the hearing and determination by a Magistrate of any summons, charge, information or complaint, either party to the proceedings or the Attorney General even though he was not a party to the proceedings may, if dissatisfied with the said determination as being erroneous in point of law or as being in excess of jurisdiction, apply in writing within fifteen days after the said determination to the said Magistrate to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the Appeal Court, and such party, hereinafter called the appellant, shall within fifteen days after receiving such case transmit the same to the Appeal Court, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceedings in which the determination was given, hereinafter called the respondent.

Recognisance
to be taken
and fees paid.

24. The appellant, at the time of making such application and before the case shall be stated and delivered to him by the Magistrate, shall in every instance enter into a recognisance before the Magistrate, with or without surety or sureties, and

in such sum as to the Magistrate shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the Appeal Court, and to pay such costs as may be awarded by the same; and before he shall be entitled to have the case delivered to him he shall pay to the Magistrate's Clerk the fees prescribed in the Schedule.

The appellant in a criminal case, if then in custody shall be liberated upon the recognisance being further conditioned for his appearance before the Magistrate, or, if that is impracticable, before two Justices of the Peace, within seven days after the judgment of the Appeal Court shall have been given, to abide such judgment unless the determination appealed against be reversed:

Provided that nothing in this section shall apply to an application for a case stated made by or under the direction of the Attorney General.

25. If a Magistrate be of opinion that the application is merely frivolous, but not otherwise, he may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal:

Magistrate may refuse to state a case when he thinks application frivolous.

Provided that a Magistrate shall not refuse to state a case when the application for that purpose is made to him by or under the direction of the Attorney General, who may require a case to be stated with reference to proceedings to which he was not a party.

26. When a Magistrate has refused to state a case as aforesaid it shall be lawful for the appellant to apply to the Supreme Court within fourteen days of such refusal, upon an affidavit of the facts, for a rule calling upon such Magistrate and also upon the respondent to show cause why such case should not be stated, and the Supreme Court may make the same absolute or discharge it, with or without payment of costs, as to the Court shall seem fit, and the Magistrate upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognisance as is hereinbefore provided.

Procedure on refusal of Magistrate to state a case.

27. The Appeal Court shall (subject to the provisions of the next succeeding section) hear and determine the question or questions of law arising on the case stated, and shall thereupon reverse, affirm or amend the determination in respect of which the case has been stated or remit the matter to the Magistrate with the opinion of the Appeal Court thereon, or may make

Appeal Court to determine the questions on the case; its decision to be final.

such other order in relation to the matter and may make such other order as to costs, as to the Court may seem fit, and all such orders shall be final and conclusive on all parties:

Provided always that no Magistrate who shall state and deliver a case in pursuance of this Ordinance or *bona fide* refuse to state one shall be liable to any costs in respect or by reason of such appeal against his determination or refusal, and provided further that no costs shall be awarded against the Crown except where the Attorney General is the appellant.

Case may be sent back for amendment or re-hearing.

28. The Appeal Court shall have power, if it thinks fit—

(a) to cause the case to be sent back for amendment or re-statement, and thereupon the same shall be amended or re-stated accordingly, and judgment shall be delivered after it has been so amended or re-stated;

(b) to remit the case to the Magistrate for re-hearing and determination with such directions as it may deem necessary.

Powers of Magistrate after decision of Appeal Court.

29. After the decision of the Appeal Court has been given on a case stated, the Magistrate shall have the same authority to enforce any judgment, decision, order or sentence which may have been affirmed, amended or made by the Appeal Court, as such Magistrate would have had to enforce his determination if the same had not been appealed against, and no action or proceedings whatsoever shall be commenced or had against the Magistrate for enforcing such judgment, decision, order or sentence by reason of any defect in the same respectively.

Appellant may not proceed both by case stated and by appeal.

Contents of case stated.

30. No person who has appealed under section 3 shall be entitled to have a case stated, and no person who has applied to have a case stated shall be entitled to appeal under section 3.

31. A case stated by a Magistrate shall set out—

(a) the particulars contained in the charge, summons, information or complaint;

(b) the facts found by the Magistrate to be admitted or proved;

(c) any submission of law made by or on behalf of the prosecutor or complainant during the trial or enquiry;

(d) any submission of law made by or on behalf of the accused or defendant during the trial or enquiry;

(e) the judgment, the grounds of the determination and, in the case of conviction, the sentence of the Magistrate;

(f) any question or questions of law which the Magistrate or any of the parties may desire to be submitted for the opinion of the Appeal Court;

(g) any question of law which the Attorney General may require to be submitted for the opinion of the Appeal Court.

32. The Appeal Court may, if it deems fit, enlarge any period of time prescribed by sections 24 or 26.

Appeal Court may enlarge time.

33. When an appeal is presented against the acquittal of a person or a case is stated by a Magistrate after an acquittal the Appeal Court may issue a warrant directing that the accused shall be arrested and brought before it and may commit him to prison pending the disposal of the appeal or case stated or admit him to bail.

Arrest of respondent in certain cases.

34. (1) The Attorney General of his own motion and any other person if aggrieved by a decision of the Appeal Court in a criminal appeal may appeal to the West African Court of Appeal on a matter of law (not including severity of sentence) but not on a matter of fact.

Appeals to West African Court of Appeal.

(2) Every such appeal shall be entered within eight days of the order appealed against and subject to Rules of Court made by the West African Court of Appeal, the provisions of sections 6 to 22 inclusive shall apply *mutatis mutandis* to appeals from the Appeal Court to the West African Court of Appeal:

Provided that the West African Court of Appeal may for good cause shown extend the aforesaid period in such manner as it may think just.

20 of 1954.

35. Subject to the provisions hereinbefore contained no judgment, decision, order or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal on account of any error, omission or irregularity in the complaint, information, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial, unless such error, omission or irregularity has in fact occasioned a failure of justice:

Finding, judgment, sentence or order when reversible by reason of error or omission in charge or other proceedings.

Provided that in determining whether any error, omission or irregularity has occasioned a failure of justice the Court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.

Forfeiture of security if order not obeyed.

36. If the order of the Appeal Court be not obeyed, or the amount paid within the time limited and as directed by the Appeal Court, or if the person sentenced to be imprisoned do not surrender himself if at large within such time as the Appeal Court shall direct, the security given by and on behalf of the appellant shall become forfeited, and the Appeal Court, or the Magistrate by whom the original order was pronounced, may order execution to issue and a levy to be made upon the goods, chattels, moneys and securities, and in default thereof or of a sufficiency thereof, upon the real property of the persons who shall have given or entered into such security, without any action, suit or other proceedings being had or taken against them in respect to such security; and the proceeds of such levy, after paying the amount of the security and of the costs and expenses of the levy, shall be paid to the person or persons whose property shall have been so levied upon; and if there shall be any dispute between such persons, as to the division between them of such balance, the same shall be paid into the Court of the Magistrate before whom the proceedings were originally had, to abide his decision thereon, and such decision shall be final.

Issue of subpœnas.

37. (1) Either party may take out, from the Court or Magistrate by or before whom the proceedings were heard and decision pronounced, subpœnas for the attendance of witnesses at the hearing of the appeal, and such subpœnas shall be issued accordingly, and a note thereof by the Magistrate or Clerk, and of the name of each witness and of the party by or for whom subpœnæd shall be made on the proceedings and proof of service of the subpœnas attached thereto for the information and guidance of the Appeal Court.

(2) No witness from the Sherbro Judicial District shall be required or compelled to proceed to Freetown, whether subpœnæd or not, unless he shall have received from or been tendered by the person or party who shall require his attendance a reasonable sum of money for his expenses or probable expenses consequent on his coming to and returning from Freetown and stay thereat for the hearing of the said appeal, which sum of money shall be settled and determined by the Magistrate of such District, who shall make a note thereof on the proceedings, or of the refusal of the witness to receive the amount; but the amount thereof shall not be allowed in costs, between party and party, beyond the sum which would be allowed to such witness if he had come from any other district, unless the Appeal Court shall otherwise order; and the Appeal Court may at the hearing

of the appeal add to or lessen the amount allowed and paid or tendered to any witness.

38. Any person subpoenaed as a witness and tendered his expenses according to the lower scale of the Schedule or as shall be settled by the Magistrate under the last preceding section, who shall not attend at the hearing of the appeal, shall be liable to the same pains, penalties and punishment to which a person subpoenaed by the Supreme Court is made liable unless good cause be shown to the contrary.

Penalty for disobedience to subpoena.

SCHEDULE.

Section 9.

PART 1.

	£	s.	d.
For making up a copy of the record of the case for the Appeal Court—for every folio of seventy-two words	0	0	4
For serving any written notice mentioned in this Ordinance, including proof of service thereof	0	1	0
Attendance by attorney to take out subpoenas	0	0	6
To the Crown for each person subpoenaed	0	0	6
For serving each subpoena, the same as allowed in Magistrates Court	—		
Attendance in person at the hearing of the appeal, same as allowed to witnesses	—		
Attendance by legal practitioner, according to the importance of the case	0	10	6
		to	
	3	3	0
To counsel or attorney for examining the proceedings, according to the length and importance of the case	0	5	0
		to	
	2	2	0
Attendance of witnesses as under:—			
Labourers for the day	0	0	6
		to	
	0	1	0
Mechanics and artisans	0	1	6
		to	
	0	3	0
Clerks and petty shopkeepers	0	2	6
		to	
	0	5	0
Merchants and gentlemen	0	5	0
		to	
	0	10	0

Double the amount to witnesses coming to Freetown from places distant beyond six miles.

Only one day's attendance shall be allowed unless the Judge shall otherwise order.

PART 2.

Fees to be taken by Magistrate under section 24.

	£	s.	d.
For drawing case and copy—			
When the case does not exceed five folios of one hundred words each	0	10	0
When the case exceeds five folios, then for every additional folio	0	1	0
For the recognisance to be taken in pursuance under section 24	0	5	0
For every enlargement or renewal thereof	0	2	6