



MONTSERRAT

CHAPTER 2.01

SUPREME COURT ACT

and Related Legislation

Revised Edition
showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

SUPREME COURT ACT

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2 of 1969 .. in force 18 February 1969
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SECTION 6 of West Indies Act 1967 of the United Kingdom

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S.I. (MNI) 1/1991

S.I.s (MNI) 27 & 28/1993

S.I. (MNI) 33/1995

S.I. (MNI) 1996

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CHAPTER 2.01 SUPREME COURT ACT

*(Acts 1 of 1968, 21 of 1968, 2 of 1969, 23 of 1975, 15 of 1981, 21 of 1982,
S.I. 1983 No. 1112 (U.K.), Acts 8 of 1999, 14 of 2000, 13 of 2010,
14 and 17 of 2013 and 8 of 2014)*

AN ACT TO REPEAL AND REPLACE THE SUPREME COURT ACT, AND TO
CONFER JURISDICTION UPON THE EASTERN CARIBBEAN SUPREME COURT AND
FOR OTHER MATTERS CONNECTED THEREWITH.

Commencement

[1 March 1968]

Preliminary

Short title

1. This Act may be cited as the Supreme Court Act.* *(Amended by Act 8 of 1999)*

Interpretation

2. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

“**action**” means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of Court, but does not include a criminal proceeding; *(Amended by Act 21 of 1982)*

“**cause**” includes any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding; *(Amended by Act 21 of 1982)*

“**Chief Justice**” means the Chief Justice of the Eastern Caribbean Supreme Court;

“**Chief Registrar**” means the Chief Registrar of the Eastern Caribbean Supreme Court constituted under the Supreme Court Order;

“**Court**” or “**Supreme Court**” means the Eastern Caribbean Supreme Court established by the Supreme Court Order;

“**Court of Appeal**” means the Court of Appeal constituted under the Supreme Court Order;

“**defendant**” includes any person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings;

* Originally entitled “**West Indies Associated States Supreme Court (Montserrat) Act, 1968**”.

“Deputy Registrar” means the Deputy Registrar of the High Court; (*Inserted by Act 17 of 2013*)

“former British Caribbean Court of Appeal” means the British Caribbean Court of Appeal in existence immediately before the prescribed date;

“former Court of Appeal” means the Court of Appeal of the Windward Islands and Leeward Islands in existence immediately before the prescribed date;

“former Supreme Court” means the Supreme Court of the Windward Islands and Leeward Islands in existence immediately before the prescribed date;

“High Court” means the High Court of Justice established by the Supreme Court Order;

“judgment” includes decree;

“Justice of Appeal” means a Judge of the Court of Appeal other than the Chief Justice;

“Master” means a Master of the Supreme Court; (*Inserted by Act 14 of 2000*)

“matrimonial Cause” means any action for divorce, nullity of marriage, judicial separation, jactitation of marriage or restitution of conjugal rights;

“matter” includes every proceeding in court not in a cause;

“order” includes decision and rule;

“party” includes every person served with notice of or attending any proceeding, although not named on the record;

“petitioner” includes every person making an application to the court, either by petition, motion or summons, otherwise than as against any defendant;

“plaintiff” includes a claimant and every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons or otherwise; (*Amended by Act 14 of 2000*)

“pleading” includes any petition or summons, and also includes the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant;

“prescribed date” means the date prescribed by the Chief Justice under section 1(2) of the Supreme Court Order, namely, 24 April, 1967;

“proceeding” includes action, cause or matter;

“Puisne Judge” means a Judge of the High Court, other than the Chief Justice;

“Registrar” means the Registrar of the High Court;

“rules of court” includes forms;

“solicitor” means solicitor of the Supreme Court;

“**suit**” includes action;

“**Supreme Court Order**” means the Supreme Court Order 1967 (*S.I. 223/1967 U.K.*); (*Renamed - by S.I. 1983 No. 11.08*)

“**verdict**” includes the findings of a jury and the decision of the Judge.

Reference to Supreme Court to be deemed a reference to the High Court

3. (1) Where in any Act or other law in force prior to the prescribed date reference is made to the Supreme Court in the exercise of its jurisdiction and powers, or to a Judge of the Supreme Court, that reference is deemed to be a reference to the High Court or to a Judge of the High Court as the case may be.

(2) Where in any Act or other law in force prior to the prescribed date reference is made to the Court of Appeal that reference is, unless the context otherwise requires, deemed to be a reference to the Court of Appeal constituted under the Supreme Court Order.

(3) Where in any Act or other law in force prior to the prescribed date reference is made to the British Caribbean Court of Appeal that reference is, unless the context otherwise requires, deemed to be a reference to the Court of Appeal.

(4) Any act done or proceedings taken in respect of any cause or matter whatsoever in the former Supreme Court or before a Judge thereof prior to the prescribed date shall have effect after the prescribed date as if it had been done or taken in the High Court or before a Judge thereof.

How Supreme Court Judges are to be addressed

4. All Judges of the Supreme Court shall be addressed in the manner customary in addressing the Judges of the former Supreme Court immediately before the prescribed date.

Constitution of the Court

5. Subject to section 17(3) of the Supreme Court Order and of Rules of Court, the Court of Appeal and the High Court for the exercise of the jurisdiction conferred upon them respectively shall be constituted in such manner as the Chief Justice may direct.

PART 1

THE HIGH COURT

Jurisdiction of former Supreme Court vested in High Court

6. There shall be vested in the High Court all jurisdiction which was vested in the former Supreme Court by the Supreme Court Act or by any law

of the Legislature of Montserrat or any other law for the time being in force in Montserrat and such jurisdiction shall include—

- (a) the jurisdiction which was vested in or capable of being exercised by all or any one or more of the Judges of the former Supreme Court sitting in Court or Chambers or elsewhere when acting as Judges or a Judge pursuant to any Order in Council, Act, Ordinance or any other law for the time being in force in Montserrat;
- (b) all the powers given to the former Supreme Court or to any Judge or Judges thereof by any Act or any other law for the time being in force in Montserrat; and
- (c) all ministerial powers, duties and authorities incidental to any and every part of that jurisdiction.

Jurisdiction of High Court

7. (1) The High Court shall have and exercise within Montserrat all such jurisdiction (save and except the jurisdiction in Admiralty) and the same powers and authorities incidental to such jurisdiction as on the first day of January, 1940 were vested in the High Court of Justice in England. (*Amended by Act 21 of 1982*)

(2) There shall be vested in the High Court all such jurisdiction as is in England exercised by the Lord Chancellor or other officer or officers nominated by him and having judicial authority in the Court of Protection, all such functions as are expressed to be conferred and exercisable by the Lord Chancellor or any such nominated Judge or Judges, for the protection and management, of the property of persons under disability. (*Substituted by Act 21 of 1968*)

(3) Masters shall exercise the authority and jurisdiction of a Judge of the High Court sitting in Chambers and such other authority and jurisdiction as may from time to time be assigned by Rules of Court made under section 17 of the Supreme Court Order. (*Inserted by Act 14 of 2000*)

(4) Where a Master has and exercises jurisdiction in relation to any matter, the Master shall have all the powers, rights, immunities and privileges of a Judge in relation to such matters. (*Inserted by Act 14 of 2000*)

Jurisdiction of High Court in Admiralty

8. The High Court is hereby declared, in pursuance of the Colonial Courts of Admiralty Act, 1890, (Imperial) to be a Colonial Court of Admiralty within the meaning of that Act. (*Amended by Act 21 of 1968*)

Practice in Bankruptcy

9. The jurisdiction of the High Court in Bankruptcy shall be exercised in accordance with the Bankruptcy Act and any rules made thereunder.

Practice in criminal proceedings

10. The jurisdiction of the High Court in all criminal proceedings shall be exercised in accordance with the Criminal Procedure Code and any other law in force in Montserrat.

Practice in Civil Proceedings and in Probate, Divorce and Matrimonial Causes

11. The jurisdiction vested in the High Court in civil proceedings, and in Probate, Divorce and Matrimonial causes, shall be exercised in accordance with this Act and any other law in operation in Montserrat and rules of court, and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice administered for the time being in the High Court of Justice in England.

Jurisdiction of single Judge

12. Any Judge of the High Court may in accordance with rules of court, or so far as such rules shall not provide, in accordance with the practice and procedure which shall for the time being be in force in the High Court of Justice in England, exercise, in Court or in Chambers, all or any of the jurisdiction vested in the High Court.

Law and equity to be concurrently administered

13. Subject to the express provisions of any other law, in every civil cause or matter commenced in the High Court, law and equity shall be administered by the High Court and the Court of Appeal, as the case may be, according to sections 14 to 21.

Equities of the plaintiff

14. If a plaintiff or petitioner claims to be entitled to any equitable estate or rights or to relief on any equitable ground against any deed, instrument or contract or against any rights, title or claim whatsoever asserted by any defendant or respondent in the cause or matter, or to any relief founded upon a legal right which before 1 November, 1875 could in England only have been given by a court of equity, the court or Judge shall give to the plaintiff or petitioner the same relief as would be given by the High Court of Justice in England in a suit or proceeding for the same or a like purpose.

Equitable defences

15. If a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract or against any right, title or claim asserted by any plaintiff or petitioner, in the cause or matter or alleges any ground of equitable defence to any such claim of the plaintiff or petitioner, the court or Judge shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence such and the same effect by way of defence against the claim of the

plaintiff or petitioner as the High Court of Justice in England would give if the like matters had been relied on by way of defence in any suit or proceeding instituted in that court for the like purpose.

Counterclaim and third parties

16. (1) The court or Judge shall have power to grant to any defendant in respect of any equitable estate or right or other matter or equity and also in respect of any legal estate, right or title claimed or asserted by him—

- (a) all such relief against any plaintiff or petitioner as the defendant has property claimed by his pleading, and as the court or Judge might have granted in any suit instituted for that purpose by that defendant against the same plaintiff or petitioner; and
- (b) all such relief relating to or connected with the original subject of the cause or matter, claimed in like manner against any other person, whether already a party to the cause or matter or not, who has been duly served with notice in writing of the claim pursuant to rules of court or any order of the court, as might properly have been granted against that person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose.

(2) Every person served with any such notice as aforesaid is deemed to be a party to the cause or matter with the same rights in respect of his defence against the claim as if he had been duly sued in the ordinary way by the defendant.

Equities appearing incidentally

17. The court or Judge shall take notice of all equitable estates, titles and rights and all equitable duties and liabilities appearing incidentally in the course of any cause or matter in the same manner in which the High Court of Justice in England would recognise and take notice of the same in any suit or proceeding duly instituted therein.

Defence or stay instead of injunction or prohibition

18. No cause or proceeding at any time pending in the High Court or in the Court of Appeal shall be restrained by prohibition or injunction but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might formerly have been obtained whether unconditionally or on any terms or conditions, may be relied on by way of defence thereto:

Provided that—

- (a) nothing in this Act shall disable the High Court or the Court of Appeal, if it thinks fit so to do, from directing a stay of proceedings in any cause or matter pending before it; and

- (b) any person, whether a party or not to any such cause or matter who would formerly have been entitled to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule or order, in contravention of which all or any part of the proceedings in the cause or matter have been taken, may apply to the High Court or to the Court of Appeal, as the case may be, by motion in a summary way, for a stay of proceedings in the cause or matter, either generally, or so far as may be necessary for the purposes of justice, and the court shall thereupon make such order as shall be just.

Common law and statutory rights and duties

19. Subject to the provisions of this Act for giving effect to equitable rights and other matters of equity, the High Court and the Court of Appeal and each Judge thereof shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations and liabilities existing by the common law or by any custom, or created by any statute, in the same manner as these matters have hitherto been recognised and given effect to.

Determination of matters completely and finally

20. The High Court and the Court of Appeal respectively in the exercise of the jurisdiction vested in them by this Act shall in every cause or matter pending before the court grant either absolutely or on such terms and conditions as the court think just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of these matters avoided.

Rules of equity to prevail

21. In all matters in which there was formerly or is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter the rules of equity shall prevail.

Declaratory order

22. No action shall be open to objection on the ground that a merely declaratory decree or order is sought.

Mode of trial

23. (1) Subject as hereinafter provided, any action to be tried before the High Court, may in the discretion of the court or a Judge, be ordered to be tried with or without a jury:

Provided that the mode of trial shall be by a Judge without a jury unless upon the application of any party to the action, a trial with a jury is ordered.

(2) Any party to the action may within ten days after the action has been set down for trial apply to have the action tried with a jury, and if the court or a Judge is satisfied that—

- (a) a charge of fraud against the party; or
- (b) a claim in respect of libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage,

is in issue, the action shall be ordered to be tried with a jury unless the court or a Judge is of opinion that the trial thereof requires any prolonged examination of documents or accounts or any specific or local investigation which cannot conveniently be made with a jury; but, save as aforesaid the granting of a jury shall in every case be discretionary.

(3) The provisions of this section shall be without prejudice to the power of the High Court or a Judge to order, in accordance with rules of court, that different questions of fact arising in any action be tried by different modes of trial, and where any such order is made the provisions of this section requiring trial with a jury in certain cases shall have effect only as respects questions relating to any such charges or claim as aforesaid.

Granting of *mandamus*, etc.

24. (1) A *mandamus* or an injunction may be granted or a receiver appointed by an interlocutory order of the High Court or of a Judge thereof in all cases in which it appears to the court or Judge to be just or convenient that the order should be made and any such order may be made either unconditionally or upon such terms and conditions as the court or Judge thinks just.

(2) If an injunction is prayed for, either before, at, or after the hearing of a cause or matter to prevent a threatened or apprehended waste or trespass, the injunction may be granted if the High Court or a Judge of the High Court thinks fit—

- (a) whether the person against whom the injunction is sought—
 - (i) is or is not in possession under a claim or title or otherwise; or
 - (ii) if out of possession, does or does not claim under any colour of title a right to do the act sought to be restrained; and
- (b) whether the estates claimed by both or by either of the parties are legal or equitable.

Execution of instruments by order of Court

25. Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other documents,

or to endorse any negotiable instrument, the High Court may on such terms and conditions, if any, as may be just, order that the conveyance, contract or other documents shall be executed or that the negotiable instrument shall be endorsed by such person as the High Court may nominate for that purpose and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the persons originally directed to execute or endorse it. (*Amended by Act 21 of 1968*)

Restrictions on institution of vexatious actions

26. (1) If, on an application made by the Attorney General under this section to the High Court, the High Court is satisfied that any person has habitually and persistently and without reasonable ground instituted vexatious legal proceedings, whether in the Court of Appeal, the High Court or in the Magistrate's Court, and whether against the same person or against different persons, the High Court may, after hearing the person or giving him an opportunity of being heard, order that no legal proceedings shall without leave of the High Court or a Judge thereof be instituted by him in any court and such leave shall not be given unless the High Court is satisfied that the proceedings are not an abuse of the process of the court and that there is *prima facie* ground for the proceedings. (*Amended by Act 21 of 1982*)

(2) If the person against whom an order is sought under this section is unable on account of poverty to retain counsel, the High Court shall assign counsel to him.

(3) A copy of any order under this section shall be published in the *Gazette*.

PART 2

COMMISSIONERS OF THE HIGH COURT

Appointment and Powers of Commissioners

27. (1) For the prevention of delay in the administration of justice, the Governor after consultation with the Chief Justice may, by a Commission under his hand and the Public Seal of Montserrat, appoint a fit and proper person to be a Commissioner of the High Court in Montserrat for the trial and determination, in the absence of a Judge from Montserrat, of such causes and matters mentioned in subsection (3) as may be specified in such Commission.

(2) Any appointment made under this section may at any time be cancelled by the Governor by notice published in the *Gazette*.

(3) Subject to any limitations contained in his Commission of Appointment, a Commissioner may, in the absence of a Judge from Montserrat—

- (a) administer oaths and take affidavits, declarations and affirmations;
- (b) admit to bail after committal in cases of felony and misdemeanour;
- (c) take the examination of witnesses or the production of documents in any civil proceeding when authorised in that behalf by any special order of the Court or a Judge.
(Amended by Act 21 of 1968)

(4) A Commissioner when and so far as necessary for performing any duty which he is authorised to perform is deemed to have and may exercise the incidental powers of a Judge.

(5) No action shall be brought against a Commissioner in respect of any act or order *bona fide* done or made by him in the execution or supposed execution of the jurisdiction and powers vested in him, but every such act or order shall be liable to be altered, amended, reversed or set aside upon summary application to a Judge in accordance with rules of Court.

PART 3

THE COURT OF APPEAL

Jurisdiction of Court of Appeal

Jurisdiction vested in Court of Appeal

28. Subject to this Act, there shall be vested in the Court of Appeal—

- (a) the jurisdiction and powers which at the prescribed date were vested in the former Court of Appeal;
- (b) the jurisdiction and powers which at the prescribed date were vested in the British Caribbean Court of Appeal;
- (c) such other jurisdiction and powers as may be conferred upon it by this Act, or any other law.

Practice and procedure in the Court of Appeal

29. The jurisdiction of the Court of Appeal so far as it concerns practice and procedure in relation to appeals from the High Court shall be exercised in accordance with this Act and rules of court and where no special provisions are contained in this Act or rules of court such jurisdiction so far as concerns practice and procedure in relation to appeals from the High Court shall be exercised as nearly as may be in conformity with the law and practice for the time being in force in England—

- (a) in relation to criminal matters, in the Court of Appeal (Criminal Division);

- (b) in relation to civil matters in the Court of Appeal (Civil Division).

Appeals from Magistrate's Courts

30. (1) Subject to the provisions of the Magistrate's Court Act, the Criminal Procedure Code and to rules of Court, an appeal shall lie to the Court of Appeal from any judgment, decree, sentence or order of a magistrate in all proceedings.

(2) The time within which notice of appeal may be given or any bond or security entered into or grounds of appeal filed in relation to appeals under this section may be extended at any time by the Court of Appeal. (*Amended by Act 21 of 1968*)

(3) On the hearing of an appeal under this section, sections 33, 34, 35(1), 35(2), 36, 43 and 44 shall apply. (*Inserted by Act 2 of 1969*)

Civil Appeals of High Court

Appeals from High Court in Civil Matters

31. (1) Subject to the provisions of this Act or any other enactment—

- (a) the Court of Appeal shall have jurisdiction to hear and determine any matter arising in any civil proceedings upon a case stated or upon a question of law reserved by the High Court or by a Judge thereof pursuant to any power conferred in that behalf by a law in operation in Montserrat;
 - (b) an appeal shall lie to the Court of Appeal, and the Court of Appeal shall have jurisdiction to hear and determine the appeal, from any judgment or order of the High Court and for the purposes of and incidental to the hearing and determination of any appeal and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the powers, authority and jurisdiction of the High Court.
- (2)** No appeal shall lie under this section—
- (a) from any order made in any criminal cause or matter;
 - (b) from an order allowing an extension of time for appealing from a judgment or order;
 - (c) from an order of a Judge giving unconditional leave to defend an action;
 - (d) from a decision of the High Court or of any Judge thereof where it is provided by any law that such decision is to be final;
 - (e) from an order absolute for the dissolution or nullity of a 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, except upon some point which would not have been available to such party on such appeal;

- (f) without the leave of the Judge making the order or of the Court of Appeal from an order made with the consent of the parties or as to costs where such costs by law are left to the discretion of the court;
- (g) without the leave of the Judge or of the Court of Appeal from any interlocutory judgment or any interlocutory order given or made by a Judge except—
 - (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 decree *nisi* in a matrimonial cause or a judgment of order in an admiralty action determining liability;
 - (iv) in such other cases to be prescribed, as are in the opinion of the authority having power to make rules of court of the nature of final decisions.

(3) For the purposes of subsection (2) “**Judge**” means a Judge of the High Court and, where the context admits, includes a Master. (*Amended by Act 14 of 2000*)

Jurisdiction in civil appeal

32. Where an appeal has been brought under section 31 and is pending in the Court of Appeal a Judge of the High Court may hear and determine such applications incidental to the appeal and not involving the decision thereof as may be prescribed by rules of court; but an order made on any such application may be discharged or varied by the Court of Appeal. (*Inserted by Act 21 of 1968*)

Powers of Court of Appeal on hearing an appeal

33. (1) On the hearing of an appeal from any order of the High Court in any civil cause or matter, the Court of Appeal shall have power to—

- (a) confirm, vary, amend or set aside the order or make such order as the High Court might have made, or to make any order which ought to have been made, and to make such further or other order as the nature of the case may require;
- (b) draw inferences of fact;

- (c) direct the High Court to enquire into and certify its findings on any questions which the Court of Appeal thinks fit to be determined before final judgment in the appeal.

(2) The powers of the Court of Appeal under this section 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 High Court by any particular party to the proceedings in court or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such notice; and the Court of Appeal may make any order in such terms as the Court of Appeal thinks just to ensure the determination on the merits of the real question in controversy between the parties.

(3) 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.

(4) The Court of Appeal may make such order as to the whole or any part of the costs of an appeal as may be just, and may in special circumstances, order that such security shall be given for the costs of an appeal as may be just.

Supplementary powers of Court of Appeal

34. For the purposes of an appeal in any civil cause or matter, the Court of Appeal may, if it thinks 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 it necessary for the determination of the case;
- (b) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court of Appeal, 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 before any Judge of the Court of Appeal or before any officer of the Court of Appeal or other person appointed by the court for the purpose, and allow the admission of any deposition so taken as evidence before the court;
- (c) receive the evidence, if tendered, of any witness including the appellant who is a competent but not a compellable witness and, if application is made 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;
- (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 of Appeal, 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 commission as far as it thinks fit to adopt it; and

- (e) appoint any person with special expert knowledge to act as assessor in an advisory capacity 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.

Power of Court of Appeal as to new trials

35. (1) Subject to the provisions of this section on the hearing of an appeal in any civil cause or matter the Court of Appeal shall, if it appears to the court that a new trial should be held, have power to set aside the order appealed against and order that a new trial be held.

(2) On the hearing of an appeal in any civil cause or matter, the following provisions shall apply—

- (a) A new trial shall not be ordered on the ground of misdirection, or 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.
- (b) 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 subparagraph (a) of this paragraph 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.

(3) On the hearing of an appeal from an order made in any action tried with a jury the following provisions shall apply—

- (a) 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 a verdict, finding or judgment of the court below.
- (b) A new trial shall not be ordered because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned.
- (c) In any case where the court has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the court may, in lieu of ordering a new trial—

- (i) with the consent of all parties concerned, substitute for the sum awarded by the jury such sum as appears to the court to be proper;
- (ii) with the consent of the party entitled to receive or liable to pay the damages, as the case may be, reduce or increase the sum awarded by the jury by such amount as appears to the court to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded; but except as aforesaid the court of Appeal shall not have power to reduce or increase damages awarded by a jury.

Wrong rulings as to sufficiency of stamps

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

Criminal Appeals from High Court

Criminal Appeals from High Court

37. (1) In sections 37 to 59, unless the context otherwise requires—

“**appeal**” means an appeal by a person convicted upon indictment;

“**appellant**” includes a person who has been convicted and desires to appeal under this Part;

“**sentence**” includes any order of the court made on conviction or in relation to the person convicted or his wife or children and any recommendation of the convicting court as to the making of a deportation order in the case of a person convicted, and “**the power of the Court of Appeal to pass a sentence**” includes a power to make any such order or recommendation as the convicting court might have made and a recommendation so made by the Court of Appeal shall have the same effect for the purposes of any law under which such recommendation is permitted to be made, as the certificate and recommendation of the convicting court.

(2) In this section and in sections 38, 39, 47, 49, 53(2), 54(1), 56(1), 58 and 59 references to a person being convicted shall include, references to his being the subject of a special verdict under section 177 of the Criminal Procedure Code.

Right of appeal in criminal cases

38. A person convicted on indictment may appeal under this Act to the Court of Appeal—

- (a) against his conviction on any ground of appeal which involves a question of law alone; and
- (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.

Determination of appeals in certain cases

39. (1) The Court of Appeal on any such appeal against conviction shall subject as hereinafter provided allow the appeal if it thinks that the verdict of the jury should be set aside on the ground that it is unsafe or unsatisfactory 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 there was a material irregularity in the course of the trial and in any other case shall dismiss the appeal:

Provided that the court may, notwithstanding that it is 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 miscarriage of justice has actually occurred.

(2) Subject to this Act the Court of Appeal shall, if it allows an appeal against conviction, 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 it thinks that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict whether more or less severe, in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal. (*Inserted by Act 21 of 1968*)

(4) Where apart from this subsection—

- (a) an appeal against a special verdict under section 177 of the Criminal Procedure Code would fall to be allowed; and
- (b) none of the grounds for allowing it relates to the question of the insanity of the accused,

the Court of Appeal may dismiss the appeal if of opinion that but for the insanity of the accused the proper verdict would have been that he was guilty of an offence other than the offence charged.

- (5) (i) An appellant who is to be retried for an offence in pursuance of an order under this section shall be tried upon a fresh indictment preferred by the direction of the Court of Appeal.
- (ii) The Court of Appeal may, upon ordering a retrial, make such orders as appear to the court to be necessary or expedient for the custody or admission to bail of the appellant pending the retrial, or for the retention pending the retrial of any property, or money forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.
- (iii) On a retrial ordered under this section, section 93 of the Criminal Procedure Code (*reading of depositions*) shall not apply to the depositions of any person who gave evidence at the original trial, but a transcript of the shorthand notes or where there are no shorthand notes, of the Judge's notes, of the evidence given by any witness at the original trial may, with the leave of the Judge, be read as evidence—
- (a) by agreement between the prosecution and the defence; or
- (b) if the Judge is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or is absent from Montserrat, or that all reasonable efforts to find him or to secure his attendance have been made without success;

and in either case may be so read without further proof if verified in accordance with rules of Court.

Powers of Court in special cases

40. (1) If it appears to the Court of Appeal that an appellant though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the Court of Appeal may either affirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefor as it thinks proper as may be warranted in law by the verdict on the count or part of the indictment on which the Court of Appeal considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Appeal that the jury 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 verdict found by the jury 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.

(3) Where on the conviction of the appellant the jury have found a special verdict, and the Court of Appeal considers that a wrong conclusion has been arrived at by the court before which the appellant has been convicted on the effect of that verdict, the Court of Appeal may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court of Appeal to be in law required by the verdict and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.

(4) Where on any appeal it appears to the Court of Appeal that the proper verdict would have been a special verdict under section 177 of the Criminal Procedure Code the Court may quash the sentence passed at the trial and order the appellant to be kept in custody as a prisoner of unsound mind under the Code in the same manner as if a special verdict had been found by the jury under the Code.

Supplementary provisions where appeal against special verdict allowed

41. (1) Where in accordance with section 39(1) an appeal against a special verdict under section 177 of the Criminal Procedure Code is allowed—

- (a) if the ground, or one of the grounds for allowing the appeal is that the finding of the jury as to the insanity of the accused ought not to stand and the Court of Appeal is of opinion that the proper verdict would have been that he was guilty of an offence (whether the offence charged or any other offence of which the jury could have found him guilty), the court shall substitute for the special verdict a verdict of guilty of that offence, and shall have the like powers of punishing or otherwise dealing with the accused and other powers as the court before which he was tried would have had if the jury had come to the substituted verdict;
- (b) in any other case, the Court of Appeal shall substitute for the verdict of the jury a verdict of acquittal:

Provided that where the offence mentioned in paragraph (a) is one for which the sentence is fixed by law, the sentence shall (whatever the circumstances) be one of imprisonment for life.

(2) The term of any sentence passed by the Court of Appeal in the exercise of the powers conferred by subsection (1)(a) shall, unless the Court otherwise directs, begin to run from the time it would have begun to run if passed in the proceedings in the Court before which the accused was tried.

Re-vesting and restitution of property on conviction

42. (1) The operation of any order for the restitution of any property to any person made on a conviction on indictment and the operation, in case of any such conviction, of section 261 of the Penal Code as to the restitution of the property in goods to the owner thereof, shall, unless the court before

whom the conviction takes place, directs to the contrary in any case in which in its opinion, the title to the property is not in dispute, be suspended—

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

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

(2) Provision may be made by rules of court for securing the safe custody of any property pending the suspension of the operation of any such order or of the said provisions.

(3) The Court of Appeal may by order annul or vary any order made on a trial 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.

Supplementary powers of Court of Appeal

43. For the purposes of an appeal in any criminal cause or matter the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice—

- (a) exercise any or all the powers conferred by section 34 on the Court of Appeal;
- (b) issue any warrant necessary for enforcing any order or sentence of the Court of Appeal:

Provided that—

- (i) in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial; and
- (ii) whenever the Court of Appeal receives further evidence it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.

Duty to admit fresh evidence

44. Without prejudice to the generality of section 43 (*supplementary powers*), where evidence is tendered to the Court of Appeal under that section, the court shall, unless it is satisfied that the evidence if received would not afford any ground for allowing the appeal, exercise its power under that section of receiving it if—

- (a) it appears to it that the evidence is likely to be credible and would have been admissible at the trial on an issue which is the subject of the appeal; and
- (b) it is satisfied that it was not adduced at the trial, but that there is a reasonable explanation for the failure so to adduce it.

Admission of appellant to bail and custody when attending Court

45. (1) An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated in like manner as prisoners awaiting trial.

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

Computation of sentence

46. (1) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of any sentence to which he is for the time being subject, but the court shall not give any such direction where leave to appeal has been granted or a certificate has been given under section 38 or where the case has been referred to it under section 58.

(2) Where the Court of Appeal gives a direction under this section, it shall state its reasons for giving the direction.

(3) Provision shall be made by prison rules for the manner in which an appellant, when in custody, is to be brought to any place at which he is entitled to be present for the purposes of this Act, or to any place to which the Court of Appeal or any Judge thereof may order him to be taken for the purposes of any proceedings of that court, and for the manner in which he is to be kept in custody while absent from prison for such purpose; and an appellant whilst in custody in accordance with those rules is deemed to be in legal custody.

Time for appealing

47. (1) Where a person convicted desires to appeal under this Act to the Court of Appeal or to obtain the leave of the Court of 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 fourteen days of the date of conviction.

(2) Except in the case of a conviction involving sentence of death, the time within which notice of an application for leave to appeal may be given, may be extended at any time by the Court of Appeal.

(3) For the purposes of this section the date of conviction shall, where the Court has adjourned the trial of an indictment after conviction, be the date on which the court sentences or otherwise deals with the offender.

Stay of execution

48. In the case of a conviction involving sentence of death or corporal punishment—

- (a) the sentence shall not in any case be executed until the expiration of the time within which notice of appeal or of an application for leave may be given under the preceding section; and
- (b) if notice is so given, the appeal or application shall be heard and determined with as much expedition as practicable, and 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.

Judge's notes and report to be furnished on appeal

49. The Judge before whom a person is convicted shall, in the case of an appeal under this Act against the conviction or against the sentence or in the case of an application for leave to appeal under this Act 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.

Legal assistance to appellant

50. The Court of Appeal may at any time assign to an appellant a solicitor and counsel, or counsel only, 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

51. (1) An appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it, 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 gives him leave to be present.

(2) An appellant who does not, appear at the hearing of his appeal by counsel, may present his case and argument in writing, and any case or argument so presented shall be considered by the court.

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

(4) The reference in subsection (1) to an appellant being in custody shall not include a reference to his being in custody in consequence of a special verdict under section 177 of the Criminal Procedure Code.

Costs of appeal

52. (1) On the hearing and determination of a criminal appeal from the High Court or any proceedings preliminary or incidental thereto under this Act no costs shall be allowed on either side.

(2) The expenses of a solicitor or counsel assigned to an appellant under this Act, and the expenses of any witnesses 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 on the hearing of his appeal or on any proceedings preliminary or incidental to the appeal, and all expenses of an 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, or of any person appointed as assessor to the court, shall be defrayed out of monies up to an amount allowed by the court, but subject to any rules of court as to rates and scales of payment.

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

53. (1) The Registrar shall take all necessary steps for obtaining a hearing under this Act 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 of Appeal may, if it considers 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 persons 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 on indictment, who, if convicted, is entitled or may be authorised to appeal under this Act 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 powers as may be given by the rules for the conditional re-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 Act to any person who demands the same, and to such officers or persons as he thinks fit, and the Superintendent of Prisons shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Act, 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 of Appeal or some Judge thereof any case in which it appears to him that, although no application has been made for the purpose, a solicitor and counsel, or counsel only, ought to be assigned to an appellant under the powers given to that court by this Act.

(6) In this section and in the next following section the expression “Registrar” includes the Chief Registrar and Deputy Registrar of the Court of Appeal.

Shorthand notes, etc.

54. (1) Such records in such manner, whether in writing by shorthand notes or otherwise, or by recordings in electromagnetic tape or by other means as may be prescribed by rules of Court shall be taken of the proceedings at the trial of any person on indictment who, if convicted, is entitled or may be authorised to appeal under this Act, and on any appeal or application for leave to appeal a transcript of the records or any part thereof shall be made if the Registrar so directs, and furnished to the Chief Registrar for the use of the Court of Appeal or any Judge thereof.

(2) A transcript of the records taken under subsection (1) shall be furnished to any party interested upon payment of such charges as may be fixed by rules of court.

(3) Rules of court may also make such provision as is necessary for securing the accuracy of the records to be taken and for the verification of the transcript.

Powers which may be exercised by a Judge of the Court

55. The powers of the Court of Appeal under this Act—

- (a) to give leave to appeal;
- (b) to extend the time within which notice of appeal or of an application for leave to appeal may be given;
- (c) to assign legal aid to an appellant;
- (d) to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave; or
- (e) to admit an appellant to bail,

may be exercised by any Judge of the Court of Appeal in the same manner as they may be exercised by the Court of Appeal, and subject to the same provisions; but, if the Judge refuses an application on the part of the appellant to exercise any such powers in his favour, the appellant shall be entitled to have the application determined by the court as duly constituted for the hearing and determination of appeals under this Act.

Case stated or questions of law reserved

56. (1) Where any person is convicted on indictment the trial Judge may state a case or reserve a question of law for the consideration of the Court of Appeal and the Court of Appeal shall consider and determine such case stated or question of law reserved and may either—

- (a) confirm the judgment given upon the indictment;
- (b) order that such judgment be set aside and quash the conviction and direct a judgment and verdict of acquittal to be entered;
- (c) order that such judgment be set aside, and give instead thereof the judgment which ought to have been given at the trial;
- (d) require the Judge by whom such case has been stated or question has been reserved to amend such statement or question when specially entered on the record; or
- (e) make such other order as justice requires.

(2) The Court of Appeal, when a case is stated or a question of law reserved for its opinion, shall have power, if it thinks fit, to cause the case or certificate to be sent back for amendment and thereupon the same shall be amended accordingly.

Provisions of this Act applicable to proceedings for case stated

57. Where a case is stated or question of law reserved for the consideration of the Court of Appeal sections 45, 46, 48, 50, 51, 53(1), (3) and (5), 54 and 55 shall apply to such proceedings in like manner as to an appeal.

Prerogative of mercy

58. (1) Nothing in this Act shall affect the prerogative of mercy.

(2) The Governor on the consideration of any petition for the exercise of Her Majesty's mercy having reference to the conviction of a person on indictment or to the sentence, other than sentence of death, passed on a person so convicted, may at any time—

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

Appeals on information

59. This Act shall apply in the case of convictions on criminal information as it applies in the case of conviction on indictment.

Appeals in Contempt Proceedings

Appeals from orders in contempt proceedings

60. (1) An appeal shall lie to the Court of Appeal from any order made by the High Court or by a Judge of the High Court or of the Court of Appeal or by a Magistrate imposing imprisonment or a fine for contempt of court.

(2) Any person ordered by any such Court, Judge or Magistrate to be imprisoned or to pay a fine for contempt of Court, may at the time of such order or within two days thereafter give notice to the Court, Judge or Magistrate making the order of his intention to appeal to the Court of Appeal and may within two days after giving such notice enter into a recognizance with a surety to the satisfaction of the Registrar of the High Court or of the Court of Appeal or clerk of the Court, as the case may be, in a sum of \$100 to prosecute such appeal, and the giving of such notice and entering into such recognizance shall operate as a stay of such order.

(3) On such person entering into recognizance the Judge or Magistrate making the order shall within twenty one days thereafter transmit to the Registrar a statement of the cause of such committal or fine and upon such statement being received the Registrar shall within four days thereafter issue a summons, free of cost, calling on the appellant to appear before the Court of Appeal within a reasonable time thereafter and on a day to be named therein and the Court of Appeal shall hear and determine such appeal and either confirm the order or vary or quash such order and the Court of Appeal may from time to time return the proceedings to the Judge or Magistrate who made the order for further information.

(4) When the Court of Appeal confirms or varies the order the Judge or Magistrate who made the order shall proceed to carry out and enforce his order as confirmed or varied in the same manner as if there had been no appeal against the same.

PART 4

OFFICERS OF THE COURT

Present officers of Court

61. Except as in this Act otherwise expressly provided, every person who at the date of commencement of this Act holds the office of Registrar or Bailiff, shall continue to hold his office on the terms on which he now holds it, and nothing in this Act contained shall affect the validity and effect of any bond heretofore given by any of the said officers.

Registrar

62. (1) The Chief Registrar shall have and exercise in relation to Montserrat such functions as may be conferred upon her or him by this Act or any other law or by rules of court.

(2) Without prejudice to the generality of this section, the Chief Registrar shall take all necessary steps for obtaining a hearing under this Act of any appeals or applications, 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 case, or the appellant or applicant, was tried which appear necessary for the proper determination of the appeal or application.

(3) The Registrar shall have such power and authority and perform such duties as shall be necessary for the due conduct and discharge of the business of the High Court and the Court of Appeal as the Chief Justice or other Judge authorised by him in that behalf shall direct. He shall be subject to the general or special directions of the Chief Registrar and shall assist him in the performance of his duties.

(4) The Registrar shall be *ex officio* a Deputy Registrar of the Court of Appeal.

(5) The Registrar shall be *ex officio* Admiralty Marshal.

(6) The Registrar shall be *ex officio* Provost Marshal.

(7) The Registrar shall have custody of the seals of the High Court and of the Court of Appeal (Montserrat sub-Registry) and of all records, documents and papers thereof.

Deputy Registrar

³63. (1) The Governor, acting after consultation with the Chief Justice, may appoint a Deputy Registrar of the High Court.

(2) The Deputy Registrar shall assist the Registrar in the performance of his duties and is subject to the general and specific directions of the Registrar.

(Inserted by Act 17 of 2013)

Acting Registrar

64. (1) Whenever the Registrar is on leave, ill or otherwise unable to perform the duties of Registrar, the Deputy Registrar shall act as Registrar and while acting, has all the powers and duties of the Registrar.

(2) Whenever both the Registrar and the Deputy Registrar are on leave, ill or otherwise unable to perform the duties of Registrar, the Governor, acting after consultation with the Chief Justice, may appoint a fit

³ Section 63 of the Act deleted by Act 8 of 2014 and section 62A of Act 17 of 2013 renumber as section 63

and proper person to act as Registrar and the person while acting, has all the powers and duties of the Registrar.

(3) Until an appointment is made under subsection (2), and also on every occasion when the Registrar and Deputy Registrar are from any cause absent from office, the duties of the Registrar shall devolve on and be performed by the Clerk next in seniority to the Deputy Registrar and officiating in the Registry, who while acting, has all the powers of the Registrar.

(4) Whenever the Deputy Registrar or any other person, is acting as Registrar, the duties of the Deputy Registrar may, if the exigencies of the office so require, devolve on and be performed by either—

- (a) the Clerk next in seniority to the Deputy Registrar officiating in the Registry; or
- (b) where the Clerk next in seniority to the Deputy Registrar is acting as Registrar, by the next senior Clerk officiating in the Registry.

(Substituted by Act 17 of 2013)

Hours of business

65. (1) The office of the Registrar and Provost Marshall shall be kept open for the transaction of business on every day of the year except Sundays, Christmas Day, Good Friday and Public Holidays, during such hours of the said days as may be appointed by the Governor by order under his hand.

(2) Notwithstanding the provisions of any order made under subsection (1) the Judge, by whom any matter is being heard, may direct any paid officer of the Court to transact at any time any business which, in the opinion of the Judge is necessary or convenient, to facilitate the hearing and determination of the matter in question, or to carry into effect any order made in connection therewith.

Bailiffs

66. (1) There shall be at least one bailiff for the High Court:

Provided that, the Governor may sanction the appointment of an additional bailiff, or of additional bailiffs.

(2) Every bailiff shall be appointed by a Judge by a commission under his hand and the seal of the High Court, and shall receive such salary as may be provided by the Legislature.

(3) Every bailiff shall be under the control of the Registrar and may, on cause shown, be dismissed from his office by a Judge.

(4) Every bailiff shall, in addition to his duties as bailiff, also perform, if required, the duties of Crier of the High Court and of the Court of Appeal.

(5) Notwithstanding anything hereinbefore contained a Judge of the High Court, may by writing under his hand and the seal of the High Court,

appoint a temporary bailiff to serve, or execute such process or processes, of the High Court as may be specified in the appointment.

Registrar, clerks, and bailiffs not to advise litigants

67. No Registrar, clerk to a Registrar, or bailiff shall act as attorney, agent or adviser of any plaintiff, defendant or other suitor, or party in or to any proceeding in any Court in the territory, or give advice in any law matter, or act as conveyancer, or notary public, or accept any gratuity for the performance of any duty in connection with his office.

Misconduct of officers of Court

68. (1) If any officer of the Court shall be charged with extortion, or with not duly paying any money received by him in the execution of his duty, or with any fraud, wrongful act, or neglect in the discharge of duties of his office, any Judge of the High Court may—

- (a) inquire into the matter in a summary way, on affidavit, or such other evidence as shall appear reasonable to him, and for that purpose, summon and enforce the attendance of all necessary parties and witnesses in like manner as the attendance of witnesses may be enforced in any other proceedings; and
- (b) thereupon dismiss the charge, or order the officer to pay any monies or damages which in the opinion of the Judge, the officer ought under the circumstances to pay; and also impose such fine, if any, as he may think fit, on the officer.

(2) The costs of every such inquiry shall be in the discretion of the Judge, and may be ordered to be paid by the officer or by the person laying the charge.

(3) Every order made under this section may be enforced as an order of the High Court.

(4) No proceeding taken, or order made, under this section, shall prevent the officer from being prosecuted criminally for any offence committed by him, or affect any right of action which any person shall have against him, or the power of the Governor to suspend or dismiss the officer.

PART 5

BARRISTERS AND SOLICITORS

Existing practitioners

69. (1) Every person entitled, at the commencement of this Act, to practise in Montserrat as a barrister or as a solicitor, may continue to practise as heretofore, and shall be a barrister or solicitor, as the case may be, of the Supreme Court.

(2) Every person holding the office of Attorney General, and any person qualified to practise as a barrister and appointed in the public service as an assistant to the Attorney General, shall, so long as he continues to hold such office, be *ex officio* a barrister of the court, and is deemed to be enrolled as a barrister in accordance with the provisions of this Act. (*Amended by Act 15 of 1981*)

Admission of Barrister and Solicitor

70. (1) A Judge of the High Court may subject to subsections (2) and (3), admit to practise as a Barrister of the court—

- (i) any member of the English Bar;
- (ii) any member of the Scottish Bar;
- (iii) any member of the Northern Irish Bar; and
- (iv) any person who has obtained a degree from a recognised University and has also obtained a certificate of competence from the Council of Legal Education of the West Indies,

and as a Solicitor of the court, any person who shall have been admitted to practise as a Solicitor by a Superior Court in England, Scotland or Northern Ireland:

Provided that, upon cause being shown, an application to be so admitted may be refused notwithstanding that the applicant has complied with subsections (2) and (3):

And further Provided that, no refusal by a Judge of any such application shall be final but any application so refused by such Judge shall, if the applicant so requires by notice in writing to the Registrar, be laid before and dealt with by the Court of Appeal.

(2) Every person applying to be admitted to practise as a solicitor or barrister under this Act shall—

- (a) pay into the Treasury an application fee of \$100 and an enrolment and certificate of enrolment fee of \$500;
- (b) file in the office of the Registrar an affidavit of his identity and that he has paid the fee aforesaid; and
- (c) deposit with the Registrar for inspection by the court—
 - (i) the receipt for the fee aforesaid; and
 - (ii) in relation to any person being admitted as a barrister of the court, his certificate of Call to the English, Scottish or Northern Irish Bar or his degree certificate from a recognised University and his certificate of Competence from the Council of Legal Education of the West Indies and, in relation to any person being admitted to practise as a Solicitor of the court, his certificate of admission as a

solicitor in England or in Northern Ireland or as Solicitor or Law Agent admitted to practise in Scotland.

(3) Every person applying to be admitted to practise as a barrister by virtue of English, Scottish or Northern Irish qualification shall deposit with the Registrar for inspection by the court, in addition to the documents required to be deposited for inspection under subsection (2)(c) either one of the following documents—

- (i) a certificate issued by the Council of Legal Education of London that he has satisfactorily completed a practical training course provided by the said Council and approved by the Chief Justice for the purposes of this section; and
- (ii) a certificate signed by his pupil master and countersigned on behalf of his Inn of Court that he has either before or after Call, or partly before and partly after Call read as a pupil for an aggregate period of not less than six months in the Chambers of one or more barristers of not less than five years standing practising in England, or Northern Ireland or Advocate of not less than five years standing practising in Scotland or in the chambers of one or more barristers of not less than ten years standing practising in Montserrat.

(4) In a special case the Judge may exempt any such person from depositing or producing any of the certificates referred to in subsection (2)(c)(ii) and in subsection (3) if otherwise satisfied that he has the qualifications required.

(Substituted by Act 23 of 1975 and amended by Act 14 of 2013)

Enrolment of Barristers and Solicitors

71. (1) *(Deleted by Act 8 of 2014)*

(2) A person who is enrolled as a barrister is entitled to practise as a barrister, and a person who is enrolled as a solicitor is entitled to practise as a solicitor, in any court in Montserrat.

Barristers practising as solicitors

72. Subject to section 73, every person enrolled as a barrister shall be entitled to practise also as a solicitor, and to sue for and recover his taxed costs as such, but if he practises as a solicitor, he shall be subject to all the liabilities which attach by law to a solicitor.

Queen's Counsel

73. (1) Subject to subsection (2), no barrister who has the rank of Queen's Counsel shall perform any of the functions which in England are performed by a solicitor and are not performed by a barrister; but a barrister who has the rank of Queen's Counsel shall not be precluded from continuing or

engaging in partnership with another barrister by reason only that such last mentioned barrister performs any functions as aforesaid.

(2) Every person holding the office of Attorney General may perform the functions mentioned in section 72 in relation to the duties of his office as Attorney General.

Solicitors and Commissioners for Oaths are officers of the Court

74. (1) Every person practising as a solicitor and whose name is enrolled as aforesaid either as a barrister or solicitor, is deemed to be an officer of the court.

(2) Every person who is appointed under any Act as a Commissioner to administer oaths in the court, is deemed to be an officer of the court.

Unauthorised persons drawing legal documents

⁴75. Every person who, not being enrolled as a barrister or solicitor, or otherwise lawfully authorised shall, either directly or indirectly for, or in expectation of any fee, gain or reward, draw or prepare any legal document or shall receive any fee, gain or reward for drawing or preparing any such document, shall be liable on summary conviction to a fine not exceeding \$100.

Law relating to solicitors, taxation and recovery of costs

76. Subject to the rules of court, the law and practice relating to solicitors, and the taxation and recovery of costs in force in England shall extend to and be in force in Montserrat and apply to all persons lawfully practising therein as solicitors of the court.

(Inserted by Act 13 of 2010)

PART 6

WITNESSES

Disobedience of subpoena

77. If any person served with a subpoena to attend as a witness in any proceeding before a Judge of the High Court sitting in court or in Chambers or before the Court of Appeal shall refuse or neglect to attend pursuant to such subpoena, such Judge or court may punish such person in a summary way by fine of \$1,000 or by commitment to prison for any term of six months:

Provided that nothing contained in this section shall affect or abridge any right of any party to the proceeding or proceed against such person for

⁴ Section 75 of the Act repealed and sections 76 – 86 renumbered as section 75 – 85 accordingly

the recovery of any special damage such party may have sustained by reason of the disobedience of such person. (*Amended by Act 8 of 1999*)

Witness expenses in criminal proceedings

78. (1) Any Judge of the High Court may, in or in respect of any criminal proceeding before him, order allowances not exceeding those prescribed by rules of court, to be paid to all persons examined or detained as witnesses for the Crown, whether examined before the Magistrate or not, and also to all persons examined or detained as witnesses for the defence who shall have been examined before the Magistrate, and who shall have been bound over to appear before the court at the trial:

Provided that the Judge may, if he shall think fit, order a similar allowance to be paid to any person examined at the trial as a witness for the defence notwithstanding that such person was not examined before the Magistrate.

(2) If any person except a duly qualified medical practitioner giving professional evidence, whose allowance shall, under this section, be ordered to be paid, shall reside at a greater distance than one mile from the Court House at which such trial takes place, the Judge may order to be paid to such person for and in respect of his travelling expenses, such further allowance as may be prescribed by rules of court:

Provided that in the case of a duly qualified medical practitioner, whose whole time is given to the public service, and who is therefore under subsection (3) disqualified from receiving an allowance for attendance, the Judge may notwithstanding, order the payment of an allowance for travelling expenses in accordance with this subsection.

(3) When any person called or detained as aforesaid as a witness either for the Crown or the defence is in receipt of a salary as a public officer, such person shall not, unless his whole time is not at the disposal of the Government, by reason of his enjoying private practice or otherwise, be entitled to be paid any allowance under this Act, for attendance as a witness, beyond the travelling expenses provided for by subsection (2).

Persons present at proceedings in Court may be ordered to give evidence

79. Any Judge may, in any proceeding pending before him, order any person present to give evidence therein, notwithstanding that no payment to which he was entitled, shall have been paid or tendered to him.

PART 7

MISCELLANEOUS

Sittings of the Courts

80. (1) Subject to the provisions of this and section 81, the High Court and the Court of Appeal for the purpose of exercising the jurisdiction and powers conferred on them respectively by this Act and any other law in force in Montserrat may sit either in Montserrat or in any of the States to which the Supreme Court Order applies.

(2) Sittings of the High Court for the trial of civil and criminal causes originating in Montserrat shall be held at such times as may be prescribed by rules of court and shall be held at Plymouth* except in cases where the Chief Justice gives special directions that the court shall sit at some other place.

(3) Sittings of the Court of Appeal shall be held at such times and at such place as the Chief Justice may by general or special directions appoint.

(4) Notice of the times appointed for the sittings of the High Court and of the Court of Appeal shall be published in the *Gazette*.

Interlocutory applications

81. (1) In the absence of a Judge or Master, any interlocutory or other application, which may be made to a Judge in Chambers or a Master, may be reduced to writing and delivered, posted or sent by *facsimilie* or other electronic means by the Registrar, to the Judge or the Master, together with such affidavits and other documents as are required by the Rules of Court. (*Substituted by Act 14 of 2000*)

(2) The written order of the Judge or Master shall be transmitted to the Registrar and is deemed to be the Order of the Court. (*Substituted by Act 14 of 2000*)

(3) No such application shall be made unless the Registrar shall certify that, to the best of his belief all parties, liable to be affected by the order sought, and entitled to be heard against the same have had due notice thereof, and an opportunity of transmitting any counter affidavits or other documents, in opposition thereto.

Expenses in criminal proceedings

82. In every criminal proceeding, all expenses consequent on, or incidental to the transmission of process, the conveyance of prisoners and the trial, determination of or dealing with such proceedings, including all

* By Orders made under the Emergency Powers Regulations, the Court House and Registrar's Office at Brades, in the temporary Government Headquarters, are respectively designated as places for the sitting of the Supreme Court (S.R.O. 8/1999) and for the storage of records and conduct of the registry (S.R.O. 4/1999).

allowances ordered to be paid to witnesses under section 78, shall be paid out of monies provided by the Legislature.

Remission or reduction of fines

83. Any fine or penalty imposed by a Judge may, at any time before it has been paid or satisfied, be reduced or remitted by him.

Rules of Court

84. (1) The Chief Justice and any other two Judges of the Supreme Court may by order provide that any rules of court made under section 17 of the Supreme Court Order shall have effect as part of the law of Montserrat subject to such exceptions, adaptations or modifications as may be specified in the order and any such order may include provision for the amendment or revocation of any rule of court so having effect immediately before the prescribed date.

(2) All rules of court in force immediately before the commencement of this Act shall continue in force until revoked.

Saving of procedure

85. Save as is otherwise provided by this Act or by rules of court, all forms and method of procedure which under and by virtue of any law, custom or rule whatsoever, were formerly in force in any of the Courts the jurisdiction of which is vested in the High Court or the Court of Appeal respectively, and which are not inconsistent with this Act, or with rules of court may continue to be used in the High Court and the Court of Appeal respectively in the like cases and for the like purposes as those in and for which they have been applicable in the former respective courts.

STATUTORY INSTRUMENTS

1967 No. 223

THE SUPREME COURT ORDER 1967

S.I. 1967 No. 223 (U.K.), S.I.s 1 & 2/1975, S.I. 1983 No. 1108(U.K.), S.I. (MNI) 1/1985, S.I. (MNI) 1/1989, S.I. (MNI) 1/1991, S.I.s (MNI) 27 & 28/1993, S.I. (MNI) 33/1995, S.I. (MNI) 1996, S.I. 2000 No. 3060 (U.K.), S.R.O. 100/2000, S.R.O. 7/2001, S.I.s. (MNI) 2 & 3/2008, S.R.O.s 42 and 43/2012 and 1/2016

Made

22nd February 1967

Coming into force

27th February 1967

At the Court at Buckingham Palace, the 22nd day of February 1967

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of Her powers under section 6 of the West Indies Act 1967⁵ is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

PART 1

PRELIMINARY

Citation, commencement and revocation

1. (1) This Order may be cited as the Supreme Court Order.
- (2) This Order shall come into operation on 27th February 1967.

Provided that the provisions of subsection (3) of this section and sections 18 to 23 of this Order shall come into operation on such later date (hereinafter referred to as "**the prescribed date**") as the Chief Justice may by order prescribe.

(3) The Windward Islands and Leeward Islands (Courts) Order in Council 1959⁶, as amended⁷, hereinafter referred to as "**the Order of 1959**") and the British Caribbean Court of Appeal Order in Council 1962⁸, as amended⁹, (hereinafter referred to as "the Order of 1962") are revoked in so far as they have effect as part of the law of each State:

⁵1967 c. 4

⁶S.I. 1959/2197 (1959 I, p. 563).-

⁷The relevant amending Orders are S.I. 1960/1658, 1962/1084, 1967/162 (1960 I, p. 473; 1962 II, p. 1220).

⁸S.I. 1962/1086 (1962 II, 1247).

⁹The relevant amending Orders are S.I. 1962/1245, 1962/1870, 1966/575, 1966/1455 (1962 II, pp. 1367, 2186; 1966 II, p. 1226; III, p. 3858).

Provided that the provisions of sections 21(2) and 22(5) of the Order of 1959 and article 9 of the Order of 1962 shall continue in force as part of the law of each State as if those Orders had not been revoked.

Interpretation

2. (1) In this Order “**State**” means any of the following, that is to say—

Antigua and Barbuda,
Dominica,
Saint Christopher and Nevis,
Saint Lucia, and
Saint Vincent and the Grenadines.

(2) In this Order any reference to a State shall be construed as including a reference to its dependencies (if any).

(3) In this Order, unless the context otherwise requires, any reference to the holder of an office by the term designating his or her office shall be construed as including a reference to any person who, under and to the extent of any authority in that behalf, is for the time being performing the functions of that office.

(4) (a) Where any person has vacated any office established by or under this Order he or she may, if qualified, again be appointed to hold that office from time to time.

(b) A person may be appointed to an office established by or under this Order notwithstanding that some other person may be holding that office when that other person is on leave of absence pending the relinquishment of the office; and where 2 or more persons are holding the same office by reason of an appointment made in pursuance of this paragraph, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

(5) Any act done for the purposes of this Order by the Judicial and Legal Services Commission or the interim Commission established by section 24 of this Order shall be signified in writing under the hand of the Chairman of the Commission.

(6) The Interpretation Act 1889¹⁰ shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament.

Application to Saint Vincent

3. Until such time as Saint Vincent assumes a status of association with the United Kingdom in accordance with the provisions of the West Indies Act, 1967, references in this Order to the Prime Minister of a State shall, in their application to Saint Vincent, be construed as references to the Administrator of Saint Vincent, acting in his or her discretion.

(Amended by S.I. 1983 No. 1108)

¹⁰1889 c. 63.

PART 2

THE SUPREME COURT

Establishment of Supreme Court

4. (1) There shall be a Supreme Court for the States which shall be styled the Eastern Caribbean Supreme Court and shall be a superior court of record.

(2) The Supreme Court shall consist of a Court of Appeal and a High Court of Justice.

(3) Subject to the provisions of subsection (5) of this section, the judges of the Court of Appeal shall be the Chief Justice, who shall be President of the Court, and 6 Justices of Appeal.

(4) Subject to the provisions of subsection (5) of this section, the judges of the High Court shall be the Chief Justice and not more than 19 Puisne Judges.

(5) The number of Justices of Appeal and of Puisne Judges of the High Court may be varied by order of the Chief Justice made with the concurrence of the Prime Ministers of all the States:

Provided that, no office of Justice of Appeal or Puisne Judge shall be abolished while there is a substantive holder thereof without the consent of the holder thereof.

(6) The Court of Appeal and the High Court shall be deemed to be duly constituted notwithstanding a vacancy in the office of any judge of the Court.

(7) The Court of Appeal and the High Court shall each have and use a seal bearing the style of the court and a device approved by the Chief Justice.

*(Amended by S.I. 1/1975, S.I. (U.K.) 1983 No 1108, S.I. (MNI) 1/1991,
S.I. (MNI) 3/2008 and S.R.O. 43/2012)*

Appointment of judges

5. (1) The Chief Justice shall be appointed by Her Majesty by Letters Patent and the Justices of Appeal and the Puisne Judges shall be appointed on behalf of Her Majesty by the Judicial and Legal Services Commission.

(2) A person shall not be qualified to be appointed—

(a) as Chief Justice or a Justice of Appeal unless—

(i) he or she has been for a period or periods amounting in the aggregate to not less than five years a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or

(ii) he or she is qualified to practise as an advocate in such a court, and has so practised, for a period of, or periods amounting in the aggregate to, not less than fifteen years;

(b) as a Puisne Judge unless—

- (i) he or she is or has been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or
- (ii) he or she is qualified to practise as an advocate in such a court, and has so practised, for a period of or periods amounting in the aggregate to not less than ten years.

(3) For the purposes of subsection (2) of this section references in that subsection to a period or periods during which a person has practised as an advocate in any such court as is mentioned in that subsection shall be construed as including a period or periods during which a person—

- (a) has been serving in the office of judge of any such court; or
- (b) after having become qualified to practise as an advocate in any such court, has been serving in a public office in some part of the Commonwealth the functions of which include appearing as an advocate in any such a court or in the office of magistrate, or registrar of a court, in some part of the Commonwealth.

Acting judges

6. (1) The Judicial and Legal Services Commission may designate generally or for a specific occasion one of the Justices of Appeal to act as Chief Justice in the event that the office of the Chief Justice is vacant or that the Chief Justice is for any reason unable to perform the functions of his or her office.

(2) If one of the Justices of Appeal is acting as Chief Justice or if the office of a Justice of Appeal or a Puisne Judge is vacant or if a Justice of Appeal or a Puisne Judge is for any reason unable to perform the functions of his or her office, the Judicial and Legal Services Commission may appoint a person qualified for appointment as a Justice of Appeal or Puisne Judge to act as a Justice of Appeal or Puisne Judge, as the case may be.

(3) A person appointed under this section to act as Chief Justice, a Justice of Appeal or a Puisne Judge shall (unless he or she earlier resigns his or her appointment or is removed therefrom in pursuance of the provisions of section 8 of this Order) continue to act in that office for the period, if any, for which he or she was appointed or until a person has been appointed to and assumed, or has resumed, the functions of that office, as the case may be.

(4) Any person appointed to the office of, or to act as, Chief Justice, Justice of Appeal or Puisne Judge may, notwithstanding the vacation of his or her office or the termination of his or her appointment otherwise than in pursuance of the provisions of section 8 of this Order, sit as a judge for the purpose of giving judgment or otherwise in relation to any proceeding heard by him or her while he or she was holding the office of judge.

Oaths

7. Every person appointed to be a judge of the Court of Appeal or the High Court shall, before entering upon his or her functions as such, take the oaths set out in schedule 1 to this Order.

Tenure of office of judges

8. (1) Subject to the following provisions of this section, a judge of the Court of Appeal shall hold office until he or she attains the age of sixty five years and a Puisne Judge shall hold office until he or she attains the age of sixty two years:

Provided that, the Judicial and Legal Services Commission acting with the concurrence of the Prime Ministers of all the States may permit a judge to continue in his or her office after attaining the age prescribed in this subsection for a period or periods not exceeding in the aggregate three years.

(2) The provisions of subsection (1) of this section shall not apply to a person appointed to act as a judge of the Court of Appeal or the High Court in respect of his or her acting appointment.

(3) A judge may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the following provisions of this section.

(4) The Chief Justice may be removed from office by order of Her Majesty and other judges of the Supreme Court shall be removed from office by order of the Judicial and Legal Services Commission if the question of the removal from office has, in pursuance of the next following subsection, been referred to the Judicial Committee of Her Majesty's Privy Council under any enactment enabling Her Majesty in that behalf and the Judicial Committee has advised Her Majesty that the Chief Justice or the judge, as the case may be, ought to be removed from office for inability as aforesaid or misbehaviour.

(5) If, in the case of the Chief Justice, the Prime Minister of one of the States to which this Order applies represents to the Lord High Chancellor of Great Britain or if, in the case of any other judge of the Supreme Court, the Judicial and Legal Services Commission represents to the Chief Justice that the question of removing the Chief Justice or other judge, as the case may be, for inability as aforesaid or for misbehaviour ought to be investigated then—

- (a)* the Lord Chancellor or the Chief Justice, as the case may be, shall appoint a tribunal which shall consist of a Chairman and not less than 2 other members selected by the Lord Chancellor or the Chief Justice, as the case may be, from among persons who hold or have held office as a judge of a court of unlimited jurisdiction in criminal and civil matters in some part of the Commonwealth or as a judge of a court having jurisdiction in appeals from any such court; and
- (b)* that tribunal shall enquire into the matter and report on the facts thereof to the Lord Chancellor or the Chief Justice, as the case may be, and recommend whether the question of the removal of the Chief Justice or other judge, as the case may be, should be referred by Her Majesty to the Judicial Committee.

(6) The provisions set out in schedule 2 to this Order shall apply in relation to tribunals appointed under the last foregoing subsection or to the members thereof.

(7) If the question of removing the Chief Justice or other judge of the Supreme Court has been referred to a tribunal under subsection (5) of this section the Lord Chancellor, in the case of the Chief Justice, or the Judicial and Legal Services Commission, in the case of any other judge of the court, may suspend the Chief Justice or other judge, as the case may be, from performing the functions of his or her office.

(8) Any such suspension may at any time be revoked by the Lord Chancellor or the Judicial and Legal Services Commission, as the case may be, and shall in any case cease to have effect—

- (a) if the tribunal recommends that the question of the removal of the judge from office should not be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises that the judge ought not to be removed from office.

(9) Any expenses, in connection with proceedings under this section, authorised by the Lord Chancellor or the Chief Justice, as the case may be, shall be regarded as part of the expenses of the Supreme Court.

(Amended by S.I. 1983 No. 1108 (U.K.))

Jurisdiction in the States

9. (1) The High Court shall have, in relation to a State, such jurisdiction and powers as may be conferred on it by the Constitution or any other law of the State.

(2) The Court of Appeal shall have, in relation to a State, of such jurisdiction to hear and determine appeals and to exercise such powers as may be conferred upon it by the Constitution or any other law of the State.

(3) The process of the Supreme Court shall run throughout the States and any judgment of the Court shall have full force and effect and may be executed and enforced in any of the States.

(4) The provisions of subsection (3) of this section shall be without prejudice to the provisions of the constitution of each State relating to fundamental rights and freedoms.

Jurisdiction in other territories

10. The High Court and Court of Appeal may exercise such jurisdiction and powers, and any judge, Master or the Chief Registrar of the Supreme Court may exercise such functions, as may be conferred upon them respectively in relation to Anguilla, Montserrat or the Virgin Islands by or under any law in force in Anguilla, Montserrat or the Virgin Islands, as the case may be.

(Amended by S.I. 1983 No. 1108 (U.K.) and S.I. 2000 No. 3060 (U.K.))

PART 3

GENERAL

Remuneration, etc. of judges

11. (1) The Chief Justice, the Justices of Appeal and the Puisne Judges shall be paid the salaries specified in schedule 3 to this Order, and shall be entitled to such allowances and shall have such terms and conditions of office as may from time to time be determined by the Judicial and Legal Services Commission with the concurrence of the Prime Ministers of all the States:

Provided that—

- (a) the salaries specified in schedule 3 to this Order may be altered by order made by the Judicial and Legal Services Commission with the concurrence of the Prime Ministers of all the States;
- (b) the salary and allowances (other than allowances which are not taken into account in the computation of pensions) of a judge shall not be reduced and the terms and conditions of office applicable to a judge upon his or her appointment shall not be made less favourable to him or her during the currency of that appointment.

(2) Where a judge is entitled to exercise an option in relation to his or her salary or the other matters referred to in proviso (b) to subsection (1) of this section, the option as exercised by him or her shall be deemed for the purposes of that proviso to be in his or her favour.

(Amended by S.I. 1983 No. 1108 (U.K.))

Chief Registrar and other officers

12. (1) There shall be, for all the States, and for Anguilla, Montserrat and the Virgin Islands, an office of Master, an office of Chief Registrar and such other offices of the Supreme Court as the Chief Justice may from time to time prescribe by order made with the concurrence of the Prime Ministers of all the States; and the holders of such offices shall be paid such salaries and allowances and shall have such terms and conditions of office as may from time to time be determined by the Chief Justice with the concurrence of the Prime Ministers of all the States.

(2) Power to make appointments to the office of Chief Registrar, the office of Master, and to the other offices prescribed under this section and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Judicial and Legal Services Commission.

(3) Power to make appointments to offices conferred by the provisions of this section shall be construed as including power to appoint a person to perform the functions of any such office during any period during which it is vacant or the holder thereof is unable for any reason to perform those functions.

(4) The power to constitute offices and make appointments thereto conferred by this section shall be in addition to any power conferred by the Constitution of any State to constitute the offices of and appoint for that State a registrar and other officers of the High Court.

(Amended by S.I.s 1983 No. 1108 (U.K.) and 2000 No. 3060 (U.K.))

Pensions of judges, Chief Registrar and other officers

13. (1) For the purposes of any laws, regulations and other instruments relating to the grant of pensions, gratuities and other like benefits the judges, Master, Chief Registrar and the holders of the other offices of the Supreme Court referred to in section 12(1) of this Order shall be in the service of such State as the Chief Justice may, in each case, from time to time direct; and any such direction given by the Chief Justice shall take effect as from such date as may be specified by the Chief Justice and shall have effect as an appointment to a pensionable office in that service.

(2) Where by virtue of this section any payment is made out of the funds of a State the Governments of the other States shall pay to the Government of that State the proportions of that payment specified by or under section 15 of this Order; and the sums that are required by virtue of this subsection to be paid by the Government of any State are hereby charged on the Consolidated Fund of that State.

(Amended by S.I. 2000 No. 3060 (U.K.))

Resignations

14. (1) Any person who is appointed to any office established by or under this Order may resign from that office by writing under his or her hand addressed, in the case of the Chief Justice, to the Lord Chancellor and, in any other case, to the Chairman of the Judicial and Legal Service Commission.

(2) The resignation of any person from any such office shall take effect when the writing signifying the resignation is received by the Lord Chancellor or the Chairman, as the case may be.

Expenses of the Court

15. The expenses of the Supreme Court (including the remuneration and allowances referred to in section 11 of this Order but less any sums that may be paid towards the expenses by the Governments of Anguilla, Montserrat and the Virgin Islands) shall, except as otherwise provided by agreement between the Governments of all the States, be borne by the Governments of the States in equal proportions; and the sums that are required by virtue of this section or any such agreement to be paid by the Government of any State are hereby charged on the Consolidated Fund of that State.

(Amended by S.I. 1983 No. 1108 (U.K.))

Posting of judges

16. The Chief Justice shall assign a Puisne Judge to each State who shall reside in the State to which he or she is assigned.

Rules of Court

17. (1) Subject to the provisions of this Order and any other law in force in any of the States, the Chief Justice and any other 2 judges of the Supreme Court selected by him or her may make rules of court for regulating the practice and procedure of the Court of Appeal and the High Court in relation to their respective jurisdiction and powers in respect of any of the States.

(2) Without prejudice to the generality of the foregoing subsection such rules may be made for any of the following purposes—

- (a) for regulating the sittings of the Court of Appeal and the High Court, and the selection of judges for any purpose;
- (b) for prescribing forms and fees in respect of proceedings in the Supreme Court and relating to costs of and incidental to any such proceedings;
- (c) for prescribing the times in which any requirement of the rules is to be complied with;
- (d) for prescribing and regulating the powers and duties of the Chief Registrar, registrars and officers of court;
- (e) for providing for summary determination of any appeal which appears to the court to be frivolous or vexatious or to be brought for the purposes of delay;
- (f) for prescribing cases in which, and conditions upon which, an appellant in a criminal appeal shall be entitled to be present at the hearing of the appeal;
- (g) for providing for a reference from a decision of a single judge of the Court of Appeal to the Court of Appeal;
- (h) for regulating the right of practising before the Supreme Court and the representation of persons concerned in any proceedings therein.

(3) Rules made under this section may fix the number of judges of the Court of Appeal who may sit for any purpose;

Provided that—

- (a) an uneven number of judges shall sit, which for the purposes of any final determination by the court other than the summary dismissal of an appeal, shall not be less than three; and
- (b) any determination by the court on any matter (whether final or otherwise) shall, where more than one judge sits, be made according to the opinion of the majority of the judges who sit for the purpose of determining that matter.

(4) Rules made under this section may provide for and regulate the execution and enforcement in any State of the process of the Court of Appeal or the High Court in exercise of any powers and jurisdiction conferred upon it in pursuance of section 9 or 10 of this Order.

(5) No rule of court which may involve an increase in the expenses of the Supreme Court shall be made except with the concurrence of the Prime Ministers of all the States; but the validity of a rule of court shall not in any proceedings in any court be called in question on the ground only that it was a rule to which the concurrence of the Prime Ministers was necessary and that they did not concur or are not expressed to have concurred in the making thereof.

(Amended by S.I. 1983 No. 1108 (U.K.))

PART 4

JUDICIAL AND LEGAL SERVICES COMMISSION

Establishment of Commission

18. (1) There shall be a Judicial and Legal Services Commission (hereinafter referred to as the “**Commission**”) for the States which shall consist of the following persons, that is to say—

- (a) the Chief Justice, who shall be the Chairman;
- (b) such Justice of Appeal or Puisne Judge as may from time to time be designated in that behalf by the Chief Justice;
- (c) a person, appointed by the Chief Justice with the concurrence of the Prime Ministers of not less than four of the States, who has been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court, not being a person who is practising as an advocate before the Supreme Court; and
- (d) two members selected in accordance with the provisions of subsection (2) of this section.

(2) The persons for the time discharging the functions of Chairman of the Public Service Commission of two States, being States for the time being designated in that behalf by the Chief Justice, shall be *ex-officio* members of the Commission:

Provided that—

- (a) except as otherwise provided in any agreement between the Governments of all the States, the Chief Justice shall designate States in such manner that the Chairmen of the Public Service Commission of the States sit as members of the Commission in rotation for periods of three years, the order of rotation among the States to be as follows—
 - (i) Antigua and Barbuda and Dominica,
 - (ii) Saint Christopher and Nevis,
 - (iii) Saint Lucia and Saint Vincent and the Grenadines; and
- (b) where the Chairman of the Public Service Commission of any designated State is in practice as an advocate before the Supreme Court, that Public Service Commission shall nominate another of its members, not being a person so in practice, to sit on the Commission in his or her stead.

(3) The office of the appointed member of the Commission shall become vacant—

- (a) at the expiration of three years from the date of his or her appointment;
- (b) if he or she practises as an advocate before the Supreme Court; or
- (c) if the question of his or her ceasing to be a member of the Commission has been referred by the Chief Justice, acting on the recommendation

of the Prime Ministers of not less than four of the States, to a tribunal consisting of a Chairman and two other persons appointed by the Chief Justice, and that tribunal has recommended that such person should cease to be a member of the Commission.

(4) The Commission shall not be disqualified for the transaction of business by reason of any vacancy amongst its members.

(Amended by S.I. 1983 No. 1108 (U.K.))

Functions and procedure of Commission

19. (1) The Commission shall perform such functions as are conferred on it by this Order or any other law for the time being in force in any State.

(2) The Commission may by regulation or otherwise regulate its own procedure and confer powers and impose duties on any officer or authority of the Government of a State for the purposes of the exercise of its functions:

Provided that, except in the case of an officer of the High Court, no such powers or duties shall be conferred upon any officer in the public service of a State without the consent of the Prime Minister of the State.

(Amended by S.I. 1983 No. 1108 (U.K.))

Staff

20. The Commission may employ such officers as are necessary for the purpose of the exercise of its functions as the Chairman with the concurrence of the Prime Ministers of all the States may appoint.

(Amended by S.I. 1983 No. 1108 (U.K.))

Expenses

21. The members of the Commission other than the Chief Justice and the Justice of Appeal or Puisne Judge, shall be paid such remuneration as the Chief Justice may with the concurrence of the Prime Ministers of all the States prescribe; and the Governments of the States shall, except as otherwise provided by agreement between the Governments of all the States, contribute in equal proportions to the expenses of the Commission; and the sums that are required by virtue of this section to be paid by the Government of any State are hereby charged on the Consolidated Fund of that State.

(Amended by S.I. 1983 No. 1108 (U.K.))

PART V

TRANSITIONAL PROVISIONS

Pending proceedings

22. (1) Any proceedings originating in any of the States and pending immediately before the prescribed date in the British Caribbean Court of Appeal or in the Supreme Court or the Court of Appeal of the Windward Islands and Leeward Islands may be continued and concluded on or after that date—

- (a) in the case of proceedings pending in the British Caribbean Court of Appeal, in the Court of Appeal: and
- (b) in the case of proceedings pending in the Supreme Court or the Court of Appeal of the Windward Islands and Leeward Islands, in the High Court.

(2) An appeal shall lie to the Court of Appeal on and after the prescribed date from any judgment of the Supreme Court of the Windward Islands and Leeward Islands given before the prescribed date in any proceedings originating in any of the States as if it were a judgment of the High Court.

(3) Any judgment of the British Caribbean Court of Appeal that was given but not satisfied before the prescribed date in any proceedings originating in any of the States may be enforced on or after the prescribed date as if it were a judgement of the Court of Appeal and any such judgment of the Court of Appeal or the High Court of the Windward Islands and Leeward Islands may be so enforced as if it were a judgment of the High Court.

(4) Until such time as other provision is made in that behalf by any law in force in a State, an appeal shall lie to the High Court from the decision of a magistrate in that State in any case in which an appeal would have lain to the Court of Appeal of the Windward Islands and Leeward Islands if the Order of 1959 had not been revoked.

Existing laws, etc.

23. (1) Any rule of court made under or kept in force by the Order of 1959 or the Order of 1962 and having effect as part of the law of a State immediately before the prescribed date shall continue in force on and after that date notwithstanding the revocation of those Orders.

(2) Any law (including any rule of court) other than the Order of 1959 and the Order of 1962 having effect as part of the law of a State immediately before the prescribed date shall have effect on and after the prescribed date as if—

- (a) references therein to the British Caribbean Court of Appeal were references to the Court of Appeal; and
- (b) references therein to the Supreme Court or the Court of Appeal of the Windward Islands and Leeward Islands were references to the High Court.

(3) The foregoing provisions of this section shall be without prejudice to any powers conferred by any law in force in a State upon any person or authority to make provision for any matter, including the amendment or revocation of any law (including any rule of court) having effect as part of the law of that State immediately before the prescribed date or the making on or after that date of rules of court so having effect.

Interim Commission

24. (1) Until the prescribed date, the powers conferred on the Judicial and Legal Services Commission by sections 5 and 12 of this Order may be exercised by an interim Commission consisting of—

- (i) the Chief Justice, who shall be the Chairman,

- (ii) one person, appointed by the Chief Justice, who is or has been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court, and
- (iii) three persons appointed by the Chief Justice with the concurrence of the Prime Ministers or, as the case may be, Chief Ministers of not less than 4 of the States, one of whom has been a judge of such a court.

(2) A person who is in practice as an advocate before the Supreme Court established by the Order of 1959 shall not be appointed under subsection (1) of this section.

(Amended by S.I. 1983 No. 1108 (U.K.))

Terms of service of judges

25. Until other provision is made under section 11(1) of this Order, the allowances of the judges of the Court of Appeal and of the High Court and their terms and conditions of service, other than their salaries, shall be those to which the judges of the Supreme Court established by the Order of 1959 were entitled or which were applicable to them immediately before the commencement of this Order.

SCHEDULE 1*(Section 7)**Forms of Oaths and Affirmations***1. Oaths of Allegiance**

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

2. Affirmation of Allegiance

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

3. Oath for due execution of office

I do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of *(here insert the description of the office)*. So help me God.

4. Affirmation for due execution of office

I do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of *(here insert the description of the office)*.

SCHEDULE 2*(Section 8(6))**Provisions applying in relation to tribunals appointed under section 8(5)*

1. The members of a tribunal may make such rules for their own guidance, and the conduct and management of proceedings before them and the hours and times and places for their sittings, as they may, from time to time, think fit, and may, from time to time, adjourn for such time and to such place as they may think fit.
2. The members of a tribunal shall have the powers of a judge of the High Court to summon witnesses, and to call for the production of books and documents, and to examine witnesses on oath, and no member shall be liable to any action or suit for any matter or thing done by him or her as such.
3. Any person whose conduct is the subject of inquiry by a tribunal shall be entitled to, and any other person may by leave of the tribunal, be represented by counsel at the whole of the inquiry.
4. Any witness who shall wilfully give false evidence in any such inquiry, concerning the subject matter of such inquiry, shall be guilty of perjury, and be liable to be prosecuted and punished accordingly.

5. All persons summoned to attend and give evidence or to produce documents or any other matter at any sitting of a tribunal, shall be bound to obey the summons served upon them as fully, in all respects, as witnesses are bound to obey subpoenas issued from the High Court, and shall be entitled to the like expenses as if they had been summoned to attend the High Court on a criminal trial, if the same shall be allowed by the tribunal, but the tribunal may disallow the whole or any part of such expenses in any case, if they think fit. Orders for the payment of such witnesses shall be made, as nearly as may be, as orders are made for the payment of witnesses at the High Court. Every person refusing or omitting, without sufficient cause, to attend at the time and place mentioned in the summons served on him or her, and every person attending, but leaving the enquiry without the permission of the tribunal, or refusing to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief, all questions put to him or her by or with the concurrence of the tribunal, or refusing or omitting, without sufficient cause, to produce any documents or other matters in his or her possession or under his or her control and mentioned or referred to in the summons served on him or her, and every person who shall, at any sitting of a tribunal, wilfully insult any member or servant of the tribunal or wilfully interrupt the proceedings of the tribunal, is liable, on summary conviction, to a penalty of \$200.
6. No statement made by any person who is called as a witness before a tribunal in answer to any question put by or with the concurrence of the tribunal shall, except in cases of indictments for perjury, be admissible in evidence in any civil or criminal proceeding.

SCHEDULE 3

(Section 11)

Salaries of judges of Supreme Court

Chief Justice	\$259,464 per year
Justice of Appeal	\$216,216 per year
High Court Judge	\$180,180 per year

(S.I. 1 & 2/1975, S.I. (U.K.) 1983 No 1108, S.I. (MNI) 1/1985, S.I. (MNI) 1/1989, S.I. (MNI) 33/1995, S.I. (MNI) 1996, S.I. (MNI) 28/1993, S.R.O. 100/2000, S.R.O. 7/2001, and substituted by S.I. (MNI) 3/2008 and amended by S.R.O.s. 42/2012 and 1/2016)

**SUPREME COURT OFFICES (SALARY, ALLOWANCES AND
CONDITIONS OF SERVICE OF JUDGES) ORDER**

ARRANGEMENT OF ORDER

ORDER

1. Short Title
2. Interpretation
3. Amendment of Supreme Court Order
4. Residence
5. Travelling and duty allowance
6. Board and Lodging
7. Subsistence allowance
8. Entertainment allowance
9. Allowances free of Income Tax
10. Leave and leave passages
11. Levy
12. Pensions

SCHEDULE

**SUPREME COURT OFFICES (SALARY, ALLOWANCES AND
CONDITIONS OF SERVICE OF JUDGES) ORDER – SECTION 11**

(S.I.s (MNI) 2/1975, 1/1976, 1983, 1/1985, 1/1989, 27/1993, 28/1993 and 01/2008)

Commencement

[1 January 1974]

Short Title

1. This Order may be cited as the Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order.

Interpretation

2. (1) In this Order—

“**Court Order**” means the Supreme Court Order (S.I. 1967 No. 223)

“**judge**” means any puisne judge appointed under the Supreme Court Order and includes a justice of appeal and the Chief Justice;

(2) References in this Order to the Chief Justice, a justice of appeal, a puisne judge or a judge shall be references to the Chief Justice, a justice of appeal, a puisne judge or a judge, respectively, of the Eastern Caribbean Supreme Court, in Grenada styled the Supreme Court of Grenada and the West Indies Associated States, and shall include references to a person acting in the office of Chief Justice, a justice of appeal, a puisne judge or a judge, respectively, of that Court.

(3) References in this Order to a State shall include references to Grenada.

Amendment of Supreme Court Order

3. (Spent)

Residence

4. (1) Each judge is entitled to be provided with a fully furnished residence free of rent.

(2) The scale of furniture allotted to the judge's furnished residence shall be subject to the approval of the Chief Justice.

Travelling and duty allowance

5. (1) A judge is entitled to reimbursement by Government in respect of the actual cost of travelling on duty between the State in which he or she that judge resides and any place outside that State (including the cost of travelling, within any State, between his or her place of residence and the place of embarkation and disembarkation, as the case may be) by such means as may be approved by the Chief Justice.

(2) A judge shall be paid a travelling allowance at the rate of \$700 a month.
(Amended by S.I. (MNI) 1/1976, 1/1985, S.I. 1/1989⁷, 28/1993)

Board and Lodging

6. A judge shall be reimbursed in respect of the actual cost of board and lodging (including meals) while out of the State in which he or she resides on duty.

Subsistence allowance

7. (1) A judge resident in St. Kitts shall be entitled to a subsistence allowance of \$5 for each day or part of a day spent on duty in Nevis or Anguilla.

(2) The Chief Justice shall be entitled to a subsistence allowance of \$150 and a justice of appeal \$100 for each day or part of a day spent on duty outside the headquarters State.

(3) Subject to the provisions of subsections (4) and (5) of this section a puisne judge shall be entitled to a subsistence allowance of \$100 for each day or part of a day spent on duty outside the State in which he or she resides.

(4) Where a judge is assigned for duty to a State other than the State in which he or she resides for a period exceeding three months he or she shall not be entitled to the subsistence allowance under the last foregoing paragraph unless he or she is maintaining a home for himself or herself or his or her family in the State in which he or she resides.

(5) Where a judge is assigned for duty to a State other than the State in which he or she resides for a period exceeding six months and is entitled to subsistence allowance under the provisions of paragraphs (3) and (4) of this section, the subsistence allowance payable to him or her from the beginning of the seventh month shall be at the reduced rate of \$5 for each day or part of a day.

(Amended by S.I. (MNI) 1/1985 and 1/2008)

⁷ S.I. 1/1989 published in Gazette Notice. 6 of 1989 Notice No. 72

Entertainment allowance

8. The Chief Justice shall be entitled to be paid an entertainment allowance at the rate of \$15,000 per annum, the Justices of Appeal at the rate of \$12,000 per annum and the Puisne Judges at the rate of \$9,000 per annum.

(Amended by S.I.s (MNI, 1/1976, 1/1989, S.R.O. 28/1993 and substituted by S.I. 1/2008)

Allowances free of Income Tax

9. All allowances paid to a judge shall be free of income tax.

Leave and leave passages

10. (1) A judge is not entitled as of right to leave or leave passages.

(2) Leave is granted subject to the exigencies of the public service and the sums payable in respect of leave passages may be modified from time to time according to availability of public funds.

(3) The Chief Justice shall be entitled—

- (a) to forty two days vacation leave annually and such leave may be accumulated up to a maximum of 168 days;
- (b) to twenty four days departmental leave annually; and
- (c) to twenty eight days sick leave annually.

(4) A judge other than the Chief Justice is eligible for forty two days vacation leave annually of which not less than fourteen days must be taken annually either in one period or in a series of periods according to the requirements of the Judicial and Legal Services Commission; and such leave may be accumulated up to a maximum of 126 days.

(5) A judge is eligible for leave passages every four years which may be—

- (a) a return air passage, twice during the period he or she holds the office of a judge, for himself or herself and his or her spouse and $\frac{1}{2}$ the cost of one adult return air passage in respect of his or her children to the United Kingdom or to some other destination provided that the cost of the passages to that destination does not exceed the cost of passages to the United Kingdom; and
- (b) on other occasions an amount to be spent on air passages, equal to $2\frac{1}{2}$ times the cost of a return air passage to any destination in the Caribbean specified for the purposes of this section by the Judicial and Legal Services Commission.

(6) A judge is also eligible for passages on first appointment to the State to which he or she is assigned for duty and for passages on retirement to his or her country of origin or to another place of retirement provided that the cost involved does not exceed the cost of passages to his or her country of origin. Passages on retirement are normally only granted where a judge has completed three years of service since his or her last overseas leave.

(7) Leave passages as prescribed by subsections (5) and (6) are provided for the judge, his or her spouse and children who are under the age of eighteen years, unmarried, and dependent upon him or her, provided that if—

- (i) the cost of passages is limited to the equivalent of first class air travel; and
- (ii) the amount to be granted shall not exceed the cost of 2½ adult return passages, at the rate prescribed in subparagraph (i) above—
 - (a) to the place where the leave is to be taken if the leave is taken within the territories covered by the jurisdiction of the Court, Barbados, Jamaica and Trinidad;
 - (b) to the United Kingdom if the leave is taken outside the territories covered by the jurisdiction of the Court, Barbados, Jamaica and Trinidad.

Levy

11. The salary and pension of a judge, and any gratuity or pension payable to his or her widow, shall not attract or be liable to income tax, levy, or any other charge.

(Amended by S.I. (MNI) 38/1983 and substituted by 27/1993)

Pensions

12. In computing the pension of a judge who on retirement from the service holds one of the offices mentioned in the Schedule to this Order, the years mentioned in the Schedule shall be added to his or her period of service.

Provided that, no addition shall be made which together with the number of years of his or her actual pensionable service amounts to more than 400 months.

SCHEDULE

Chief Justice	ten years
Justice of appeal	seven years
Puisne judge	five years.

**SUPREME COURT OFFICES (SALARY AND ALLOWANCES
OF CHIEF REGISTRAR AND SECRETARY TO THE CHIEF JUSTICE)
ORDER**

ARRANGEMENT OF ORDER

ORDER

1. Short title
2. Interpretation
3. Salary and Allowances of Chief Registrar
4. Salary and Allowances free of Income Tax

**SUPREME COURT OFFICES (SALARY AND ALLOWANCES OF CHIEF REGISTRAR AND
SECRETARY TO THE CHIEF JUSTICE) ORDER – SECTION 12**
(S.R.O. 19/1987)

Commencement

[1 May 1987]

Short title

1. This Order may be cited as the Supreme Court Offices (Salary and Allowances of Chief Registrar and Secretary to the Chief Justice) Order.

Interpretation

2. In this Order—

“**Chief Registrar**” means the person holding the office of Chief Registrar of the Supreme Court established by section 12 of the Supreme Court Order and includes any person performing the functions thereof under section 12(3);

“**Secretary to the Chief Justice**” means the person holding the office of Secretary to the Chief Justice of the Supreme Court established by section 12 of the Supreme Court Order and includes any person performing the functions thereof under section 12(3).

Salary and Allowances of Chief Registrar

3. So long as the office of the Chief Registrar is held by a person who holds the office of a Registrar of the High Court the holder shall be entitled to be paid an allowance as additional salary in respect of his or her services as Chief Registrar at the rate of \$6,600 per year over and above his or her salary as Registrar of the High Court.

Salary and Allowances free of Income Tax

4. The allowance paid to the Chief Registrar under section 3 of this Order and the salary paid to the Secretary to the Chief Justice in respect of his or her services in that office shall be free of income tax or any other charge.

SUPREME COURT (PRESCRIBED OFFICES) ORDER

ARRANGEMENT OF ORDER

ORDER

1. Short title
2. Prescribed Offices

SUPREME COURT (PRESCRIBED OFFICES) ORDER – SECTION 12

(S.R.O. 12/2001 and Gazette Notice 182 No. 11 of 2003)

Commencement

[1 July 2000]

Short title

1. This Order may be cited as the Supreme Court (Prescribed Offices) Order.

Prescribed Offices

2. There shall be the following prescribed offices of the Supreme Court—
 - (a) Court Administrator;
 - (b) Executive Assistant to the Chief Justice;
 - (c) Information Technology Manager;
 - (d) Judiciary Human Resources Administrator;
 - (e) Deputy Chief Registrar¹¹.

(Amended by Gazette Notice 182 No. 11 of 2003)

¹¹ Inserted by Gazette Notice 182 No. 11 of 2003 - in force 1st day of July 2003

SUPREME COURT (MASTERS) ORDER

ARRANGEMENT OF ORDER

ORDER

1. Short title
2. Interpretation
3. Establishment of the office of Master
4. Functions
5. Number of Masters
6. Variation of Number of Masters
7. Abolition of office only with consent of incumbent
8. Appointment of Masters
9. Discipline
10. Qualifications
11. Tenure of Office of Masters
12. Retirement
13. Pensions
14. Status of Acting Masters
15. Posting
16. Assignments
17. Salary
18. Housing Allowance
19. Travel Allowance
20. Accommodation
21. Telephone
22. Relocation Expenses
23. Vacation Leave
24. Medical Leave
25. Medical Fitness
26. Oaths

SCHEDULE 1: Housing Allowance

SCHEDULE 2: Travel Allowance

SUPREME COURT (MASTERS) ORDER – SECTION 12

(S.I. (MNI) 4/2008 and S.R.O.s 44/2012, 38/2014 and 70/2015)

Commencement

[1 July 2008]

Short title

1. This Order may be cited as the Supreme Court (Masters) Order.

Interpretation

2. In this Order—

“**Court Order**” means the Supreme Court Order (S.I. 1967 No. 223);

“**Master**” means the office established by section 3 and, where the context so admits, includes the holder of the office and unless otherwise stated includes a person appointed to act in the office;

“**State**” means—

- (a) Antigua and Barbuda;
- (b) Grenada;
- (c) Saint Christopher and Nevis;
- (d) Saint Lucia;
- (e) Saint Vincent and the Grenadines;
- (f) The Commonwealth of Dominica.

“**Territory**” means—

- (a) Anguilla;
- (b) Montserrat; and
- (c) The British Virgin Islands.

Establishment of the office of Master

3. There is established as an office of the Supreme Court the office of Master of the Supreme Court.

Functions

4. (1) A Master shall perform the duties and exercise the functions conferred upon Masters by the Rules of Court made pursuant to section 17(1) and (2) of the Court Order.

(2) A Master may exercise such functions, as may be conferred upon Masters in relation to any State or Territory, by any law in force in that State or Territory.

Number of Masters

5. There shall be five Masters.

(Amended by S.R.O.s 44/2012 and 38/2014)

Variation of Number of Masters

6. The number of Masters may be varied by Order of the Chief Justice, with the concurrence of the Prime Ministers, Premiers and Chief Minister of all the States and Territories.. *(Substituted by S.R.O. 38/2014)*

Abolition of office only with consent of incumbent

7. No office of Master shall, without the consent of the holder of the office, be abolished while there is a substantive holder of that office.

Appointment of Masters

8. The appointment of Masters is provided for in section 12(2) of the Court Order.

Discipline

9. The discipline of Masters is provided for in section 12(2) of the Court Order.

Qualifications

10. (1) A person shall not be qualified to be appointed as a Master unless that person—

- (a) is qualified to practice as a barrister in a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in a court having jurisdiction in appeals from such court and has so practiced, for a period of or for periods amounting in the aggregate to not less than seven years; or
- (b) has been serving in the office of judge in such court for a period of or for periods amounting in the aggregate to not less than seven years.

(2) For the purpose of subsection (1), a reference to a period or periods during which a person has practiced as an advocate shall be construed as including periods during which a person has served in a public office in some part of the Commonwealth—

- (a) in the office of magistrate;
- (b) in the office of registrar of a court of unlimited civil and criminal jurisdiction in some part of the Commonwealth; or
- (c) as an officer the functions of whose office includes appearing as an advocate in such court.

(3) For the purpose of subsection (1), a reference to a period or periods during which a person has served in a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in a court having jurisdiction in appeals

from such a court shall be construed as including periods during which a person has served—

- (a) as case management master with functions comparable to those of a Master;
- (b) as master with functions comparable to those of a Master.

Tenure of Office of Masters

11. (1) Subject to subsection (2), persons holding the office of Master, other than acting Master, hold office until attaining the age of sixty five years.

(2) The Judicial and Legal Services Commission may remove a Master from office for cause at any time.

(3) In subsection (2), “**cause**” means—

- (a) inability to discharge the functions of the office, whether arising from—
 - (i) infirmity of body or mind,
 - (ii) failure in the due execution of the office,
 - (iii) having been placed, by his or her conduct or otherwise, in a position incompatible with the due execution of the office, or
 - (iv) any other cause,
- (b) misconduct.

Retirement

12. (1) A Master shall retire upon attaining the age of sixty five years.

(2) A Master may retire upon attaining an age that is less than sixty five years where, the Master is eligible for retirement under the pension laws of the State or Territory of which, by direction of the Chief Justice made pursuant to section 13(1) of the Court Order, the Master shall be deemed to be in the service for the purpose of the grant of a pension.

Pensions

13. (1) A Master is entitled to pension in accordance with section 13 of the Court Order.

(2) The pensions of a Master shall not attract or be liable to income tax or any other charge or levy.

Status of Acting Masters

14. (1) A person appointed by the Judicial and Legal Services Commission to act as a Master shall, unless that person earlier resigns from the office or is removed from the office by the Judicial and Legal Services Commission continue to act in that office for the period, if any, for which that person was appointed or until a person has been

appointed to and assumed or has resumed the functions of that office, as the case may be.

(2) Sections 11 and 13 shall not apply to a person appointed to act as a Master in respect of that person's acting appointment.

Posting

15. A Master shall reside in the State or Territory to which the Chief Justice, from time to time, posts the Master.

Assignments

16. A Master shall serve the States or Territories that the Chief Justice, from time to time, assigns to the Master.

Salary

17. (1) A Master shall be paid a salary equivalent to 85 percent of the salary specified for a High Court Judge in Schedule 3 to the Court Order, as amended from time to time.

(2) The salary of a Master shall not attract or be liable to income tax or any other charge or levy.

Housing Allowance

18. A Master shall be paid housing allowance as set out in Schedule 1 to this Order.
(*Substituted by S.R.O 70/2015*)

Travel Allowance

19. (1) A Master who owns a car shall be paid the travel allowance specified in Schedule 2 to this Order.

(2) A Master who does not own a car may, at the discretion of the Chief Justice, be reimbursed transportation costs incurred within the State or Territory to which the Master is posted, up to a maximum amount of the travel allowance specified in Schedule 2 for that State or Territory.

Accommodation

20. (1) Subject to subsections (3), (4) and (5), a Master is entitled to be paid, for duty outside the State or Territory to which the Master is posted, an accommodation and subsistence allowance based on the United Nations Daily Subsistence Allowance.

(2) A Master may, at the discretion of the Chief Justice, be paid a supplementary allowance where, for reasons beyond the control of the Master, the actual costs of accommodation are significantly higher than the average hotel costs used in calculating the daily accommodation component of the United Nations Daily Subsistence Allowance.

(3) Where a Master's travel on duty outside the State or Territory to which the Master is posted does not involve an overnight stay, the Master is entitled to be paid forty percent of the accommodation and subsistence allowance.

(4) Where a Master on duty outside the State or Territory to which the Master is posted elects to stay in private accommodation, the Master is entitled to be paid 50% percent of the accommodation and subsistence allowance.

(5) Where a Master on duty outside the State or Territory to which the Master is posted—

- (a) is accommodated free of charge by the Eastern Caribbean Supreme Court or by the Government of a State or Territory, the Master is entitled to be paid 50% of the accommodation and subsistence allowance;
- (b) is accommodated and provided with meals free of charge by the Eastern Caribbean Supreme Court or by the Government of a State or Territory, the Master is entitled to be paid 20% of the subsistence allowance.

Telephone

21. (1) A Master shall be provided with local residential telephone service at the Master's residence in the State or Territory to which the Master is posted, at no cost to the Master. *(Amended by S.R.O. 38/2014)*

(2) A Master is entitled to be reimbursed for business related long-distance telephone calls.

Relocation Expenses

22. Masters are entitled to have their personal effects and household goods moved, at the expense of the Eastern Caribbean Supreme Court, from the State or Territory of their former posting or their place of residence immediately prior to their appointment, as the case may be, to the State or Territory of current posting, by packers, shippers and freight forwarders selected by the Chief Justice.

Vacation Leave

23. (1) A Master is entitled to forty two calendar days' vacation leave annually of which not less than twelve must be taken annually either in one period or in a series of periods according to the requirements of the Judicial and Legal Services Commission.

(2) Vacation leave may be accumulated up to a maximum of 120 calendar days.

(3) Leave in excess of 100 and 120 calendar days is forfeited.

(4) There is no entitlement to remuneration for leave forfeited.

Medical Leave

24. A Master is entitled to two working days per month of uncertified medical leave and to a reasonable period of certified medical leave annually.

Medical Fitness

25. A Master shall, before appointment, be certified by a medical practitioner, who is duly registered in a State or Territory, as being in good health and free from any

ailment likely to adversely affect the discharge of the functions and duties of the office of Master.

Oaths

26. A Master shall, before entering upon the functions of the office, take the oaths set out in Schedule 1 to the Court Order.

SCHEDULE 1
HOUSING ALLOWANCE

Housing Allowance

\$24,000 per year

SCHEDULE 2
TRAVEL ALLOWANCE

COLUMN 1	COLUMN 2
State or Territory to which Master posted	Allowance
1. St. Lucia	\$6,960 per year

COURT OF APPEAL RULES

ARRANGEMENT OF ORDER

ORDER

1. Short Title
2. Application

Interpretation

3. Interpretation

PART 2

APPEALS GENERALLY

4. Forms in Appendices A and C to be used
5. Times of sittings and vacation
Days on which Central Registry is to be closed
Days on which sub Registries are to be closed
6. Notice of sittings
7. Right of audience
8. Register of appeals brought
9. Enlargement of time and departure from Rules
10. Service of documents

Waiver for non-compliance

11. Waiver for non-compliance with Rules

PART 3

CIVIL APPEALS FROM THE HIGH COURT

Notices of appeal cross-appeal and preliminary objection

12. [Revoked]
13. [Revoked]
14. [Revoked]
15. [Revoked]
16. [Revoked]
17. [Revoked]
18. [Revoked]
19. [Revoked]

Record

20. Evidence
21. Copies of proceedings in court below
22. Printing or typing of record

- 23. Copy of list of exhibits
- 24. [Revoked]
- 25. [Revoked]
- 26. [Revoked]

Applications

- 27. Applications to single Judge
- 28. Applications to Judge of court below
- 29. Mode of application
- 30. Appeal no stay except by order
- 31. Application for security for costs
- 32. Application for leave to appeal in forma pauperis

Hearing and Judgements

- 33. Dismissal of appeal in default of appearance of appellant
- 34. Application to re-enter appeal dismissed under rule 33
- 35. Non- appearance of respondent
- 36. Application to set aside *ex parte* judgement
- 37. Execution of judgement by court below

Fees and Costs

- 38. Court Fees
- 39. Legal practitioner's fees
- 40. Fees of interpreters, commissioners etc.
- 41. [Revoked]

PART 4

APPEALS AGAINST CONVICTION ON INDICTMENT

Institution of Appeals

- 42. Obligation on appellant to fill up forms of appeal notices and answer question thereon
- 43. Judge's certificate under section 38(b) of the Act
- 44. Notices to be signed by appellant
 - Signature on notices of appellant and other notice
 - Service of documents on person in prison
 - Where appellant unable to write
 - Where question of insanity involved
 - Notice etc. on behalf of corporations
- 45. Time for appealing against conviction or sentence to run from sentence
- 46. Notice of application for extension of time for appealing

Copies of proceedings, etc.

- 47. Forwarding of proceedings in court below to Registrar

48. Records of summing-up
Shorthand note to be verified by the writer
Transcript to be furnished on application of Registrar
Verification of transcript for use of court
Party interested may obtain transcript
Party interested may obtain transcript from Registrar
Definition of “party interested”
Transcript of notes not to be supplied free except by order

Judge’s Report

49. Report of Judge of court below
50. Furnishing Judges of court below with materials for report

Copies of documents for use of Appellant or Respondent

51. How appellant or respondent may obtain from Registrar of court below
copies of documents or exhibits
Counsel and solicitor assigned to an appellant may receive copies of
documents and exhibits free on request
Appellant not legally represented may obtain copy of documents or exhibits
free

Conduct of Prosecution and Defence

52. Registrar to notify Director of Public Prosecutions or prosecutor, if a private
person, of receipt of notice of appeal
Prosecutor to afford all information, documents, etc. to Registrar and
Director of Public Prosecutions

Legal Aid to Appellants

53. Lists of counsel and solicitors for the purposed of the Act
Legal aid to be proved for such lists

Proceedings before a single Judge

54. Procedure on decision of application to single Judge
Application not specially provided for, how made
Solicitor’s right of audience
55. Notice of application for leave to appeal deemed to be notice of appeal if
application granted

Suspension of Orders and Admission to Bail

56. When fine imposed on conviction to be retained pending appeal
Person in custody in default of payment of fine deemed to be person
sentenced to imprisonment.
Power of court of trial to impose recognizance
Appellant committing breach of recognizance
Repayment of fine on success of appeal

57. Temporary suspension of orders made on conviction as to money, awards, costs, etc.
 Suspension of disqualifications consequent on conviction
 Judge's directions as to property of convicted person pending appeal
 Judges directions as to securing payment of money by convicted person pending appeal
 Suspension of order of destruction or forfeiture of property
 Suspension of proceedings or claims consequent on conviction
 Person affected may appear
58. Appellant and surety recognizances before whom to be taken
 Appellant and prison officer to receive notice of terms of bail
 Form of recognizances
 Registrar on receiving recognizances in due form to notify officer of prison to release appellant.
 Presence of appellant on bail at hearing of his appeal.
 Warrant for apprehension of appellant on bail. Criminal Form 14
 Varying order for bail
 Power to revoke order for bail
 Provisions for sureties discharging their obligations
 How appellant on bail to be dealt with on arrest at instance of sureties
 Arrest and commitment of appellant to be notified to Registrar by clerk
 Officer in charge of prison on commitment of appellant to notify Registrar

Abandonment of Appeal

59. Abandonment of appeal

Determination of Appeal

60. Varying order of restitution of property
61. Judgement of the Court
62. Notification on final determination of appeals
 Notification of appeals in capital cases
63. Notification of results of appeal
 Entry of decision of Court on records
64. Restrictions on issue of certificate of conviction
65. Return of original depositions, etc.

*Procedure as to Witnesses before Court and
their examination before examiner*

66. Attendance of witness before the Court
 Application to Court to hear witnesses
 Order appointing examiner
 Furnishing examiner with exhibits etc. necessary for examination
 Notification of date of examination
 Evidence to be taken on oath

Deposition of witness - how to be taken
Expenses of witnesses before examiner
Presence of parties at examination of witnesses

67. Proceedings on reference

Case stated or question of law reserved under section 56 of the Act

68. Judge to forward special case to Registrar and copies to be supplied to appellant and respondent

These Rules to apply to convicted persons where case stated under section 56 of the Act

Duties of Registrar

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

Costs in Criminal Appeals

- 70. Expenses payable to solicitor or counsel
- 71. Expenses of witnesses
- 72. Expenses of appearance of appellant
- 73. Expenses of examiner
- 74. Expenses of special commissioner or assessors

PART 5

APPEALS FROM DECISIONS OF COURTS OF SUMMARY JURISDICTION

75. Appeals from Summary Courts. Modifications of Rules

PART 6

CRIMINAL APPEALS FROM MAGISTRATES' DECISIONS

- 76. Copies of notice and grounds of appeal
- 77. Copies of proceedings, etc.

PART 7

APPEALS (OTHER THAN CRIMINAL APPEALS) FROM
MAGISTRATES' DECISIONS

- 78. Preliminary objection by respondent
 - 79. Evidence relating to preliminary objection
 - 80. Amendment of grounds of appeal
 - 81. Copies of notice and grounds of appeal
- Appendices

COURT OF APPEAL RULES – SECTION 17

(S.R.O.s 5/1968, 11/1968, 2/1971 and S.I. (MNI) 3/1972)

Commencement

[1 July 1968]

PART 1

PRELIMINARY

Short title

1. These Rules may be cited as the Court of Appeal Rules.
(Amended by S.R.O. 11/1968)

Application

2. These Rules shall apply to Montserrat.
(Amended by S.R.O. 11/1968)

Interpretation

Interpretation

3. In these Rules unless it is expressly provided to the contrary or the context otherwise requires—

“**appellant**” means the party appealing from a judgment, conviction, sentence or order and includes his legal representative;

“**the Act**” means the Supreme Court Act;

“**Central Registry**” means the Central Registry of the Court situate in St. Lucia;

“**Chief Justice**” means the Chief Justice of the Supreme Court;

“**Court**” means the Court of Appeal;

“**court below**” means the court from which the appeal is brought;

“**Court Order**” means the Supreme Court Order *(S.I. 1967 No. 223)*;

“**Deputy Registrar**” means the Registrar of the High Court in his capacity as Deputy Registrar of the Court of Appeal and includes any person lawfully exercising the function of the office of Deputy Registrar.

“**Director of Public Prosecutions**” means the Director of Public Prosecutions of the State in which the appeal is brought and, where the law of a State does not provide for the office of Director of Public Prosecutions, include the Attorney General of that State.;;

“**file**” means file in a Registry, and “**filed**” and “**filing**” have corresponding meanings;

“Government Gazette” means, in relation to a State the *Gazette* published by the authority of the Government of the State and includes any supplement thereto and any *Gazette* Extraordinary so published;

“High Court” means the High Court established by section 4 of the Court Order;

“Judge” includes the presiding officer of any court from which an appeal lies to the Court;

“legal representative” means any barrister, advocate, solicitor, attorney or legal practitioner admitted to practise as such in any of the States whether or not he has the right of audience in the Court;

“order” includes decree, judgment, sentence or decision of a court below or a Judge thereof;

“party” means any party to the appeal and includes his legal representative;

“Prison Authority” means the head or person in charge of Her Majesty's Prisons in the State in which the appeal is brought and includes his deputy or other officer discharging his duties;

“proper officer of the court below” means the Registrar of the High Court in the State in which the appeal is brought;

“record” means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence and judgments) and required by these Rules to be filed or laid before the Court on the hearing of the appeal;

“Registrar” means the Chief Registrar of the Supreme Court in his capacity of Registrar of the Court and includes a Deputy Registrar or other officer for the time being discharging the duties of the Registrar or Deputy Registrar;

“respondent”—

(a) in a civil appeal means any party (other than the appellant) directly affected by the appeal;

(b) in a criminal appeal where the Crown is not an appellant, means the person who under the provisions of any law of the State in which an appeal is brought has the duty of appearing for the Crown or who undertakes the defence of the appeal;

“State” means any of the following with its dependencies (if any), that is to say—

Antigua,

Dominica,

Montserrat,

¹ Wherever in the Rules reference it is made to “A State”, “the State”, “each State”, “any of the States”, “the State in which the appeal is brought”, “the State in which the appeal arises” or other similar expression, that reference shall, unless the context otherwise requires, be deemed to be a reference to Montserrat. Save as mentioned above, the word “State” shall have the meaning assigned to it in rule 3 of the Rules – S.R.O. 11/1968

Saint Christopher and Nevis,
Saint Lucia, and
Saint Vincent;

“sub-Registry” means a sub-Registry of the Court situate in a State;

“Supreme Court” means the Eastern Caribbean Supreme Court established by section 4 of the Court Order.

(Amended by S.R.O. 11/1968)

PART 2

APPEALS GENERALLY

Forms in Appendices A and C to be used

4. The forms set out in Appendices A and C to these Rules, or forms as near thereto as circumstances permit, shall be used in all cases to which such forms are applicable.

Times of sittings and vacation

5. (1) Sittings of the Court shall be held at such times between the second day of September and the twenty-second day of December and between the tenth day of January and the first day of August in each year as the Chief Justice may direct.

(2) The Court will be in vacation from the twenty-second day of December to the tenth day of January (both days inclusive) and from the first day of August to the second day of September (both days inclusive) and between the Wednesday before and the second Monday after Easter:

Provided that—

- (i) in urgent cases applications may be heard and determined during the vacations by the Court or a single Judge thereof;
- (ii) the Chief Justice may direct any sitting of the Court to be held during the vacations for the purpose of hearing criminal and civil appeals.

(3) The Court will not sit on Sundays and will not sit in any State on days that are public holidays in that State, and on such other days as the Chief Justice may direct.

(Amended by S.I. (MNI) No 3/1972)

Days on which Central Registry is to be closed

(4) The Central Registry of the Court shall be open on every day of the year except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Corpus Christi, Whit Monday, Christmas Day and the next following working day, and all other days appointed to be observed as public holidays in the State of St. Lucia, from the hours of 9 a.m. to 4 p.m. except Saturdays when the offices of the Registry will be closed at 12 noon.

Days on which sub Registries are to be closed

(5) The sub-Registry of the Court shall be open on every day of the year except the days on which the Registry of the High Court is closed.

(Amended by S.R.O. 11/1968)

Notice of sittings

6. (1) Notice of each sitting shall be published by the Registrar of the Court in the Government *Gazette* of the State in which each appeal arose at least one week before the date appointed for the commencement of the sitting.

(2) The Deputy-Registrar shall on the publication of the said notice in the Government *Gazette* post up on the notice board of the Court the cause list of the sitting:

Provided that, the Court may in its discretion hear any appeal and deal with any other matter whether or not the same has been included in such cause list so published.

(3) This rule shall not apply to the hearing of any matter by a single Judge.

Right of audience

7. (1) In all proceedings before the Court, the parties may appear in person or be represented on appeal by any person who is entitled to practise as a barrister in Montserrat or the State in which the appeal is being heard.

(2) In all proceedings before the Registrar or the Registrar of the court below, and in all preliminary and interlocutory proceedings and applications except such as are heard before the Court, the parties thereto may be represented and appear by a barrister or by a solicitor entitled to practise in Montserrat or the State in which the proceedings is being heard.

(Amended by S.R.O. 11/1968)

Register of appeals brought

8. (1) The Registrar and the Deputy Registrar in each State shall keep separate registers of all civil and criminal appeals brought before the Court including in the criminal appeal register notices of applications for leave to appeal.

(2) Each register shall contain particulars of the date on which—

- (a) the notice of appeal or of application for leave to appeal was lodged;
- (b) any interlocutory order was made;
- (c) the record of the appeal was received;
- (d) the appeal was heard;
- (e) judgment was delivered.

Enlargement of time and departure from Rules

9. Subject to the provisions of section 47(2) of the Act (relating to the time within which an appeal may be brought in a capital case), the Court may enlarge or abridge the time appointed by these Rules, or fixed by an order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require,

and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed, or the Court may direct a departure from these Rules in any other way where this is required in the interests of justice.

(Amended by S.R.O. 11/1968)

Service of documents

10. Subject to any provision contained in these Rules relating to the service of any particular document—

(1) Service of the documents mentioned in the first column hereunder shall be executed by leaving a true copy thereof in the manner specified in the second column:-

<i>Column 1</i>	<i>Column 2</i>
(a) All documents required to be served— (i) on parties to an action who have not filed an address for service; and (ii) on a person not a party to the appeal.	by personal service on the party or his authorised agent, or on the person not a party.
(b) All documents required to be served on parties who have an address for service.	by leaving the document at the address for service with a person resident at or belonging to such place; or by registered post to such address, in which case, the time of service thereon shall be the time such document would be delivered in the ordinary course of post.

(2) If it be made to appear to a judge of the court below upon application supported by affidavit that prompt personal service of a document cannot be effected he may make such order for substituted service by advertisement or otherwise as may be just.

*Waiver for non-compliance***Waiver for non-compliance with Rules**

11. Non-compliance on the part of an appellant in any criminal cause or matter with these Rules or with any rule of practice for the time being in force shall not prevent the further prosecution of his appeal if the Court considers that such non-compliance was not wilful, and that it is in the interests of justice that non-compliance be waived. The Court may, in such manner as it thinks right, direct the appellant to remedy such non-compliance, and thereupon the appeal shall proceed. The Registrar shall forthwith notify the appellant of any direction given by the Court under this rule where the appellant was not present at the time when such directions were given.

PART 3**CIVIL APPEALS FROM THE HIGH COURT***Notices of appeal cross-appeal and preliminary objection*

12. Revoked [S.R.O. 2/1971].
13. Revoked [S.R.O. 2/1971].
14. Revoked [S.R.O. 2/1971].
15. Revoked [S.R.O. 2/1971].
16. Substituted by S.R.O. 11/1968 and Revoked [S.R.O. 2/1971].
17. Revoked [S.R.O. 2/1971].
18. Revoked [S.R.O. 2/1971].
19. Revoked [S.R.O. 2/1971].

*Record***Evidence**

20. When any question of fact is involved in an appeal, the evidence taken in the court below bearing on such question shall, subject to any special order of the Court, be brought before the Court as follows:-

- (a) as to any evidence taken by affidavit, by the production of office copies of such affidavit;
- (b) as to evidence taken orally, by the production of a copy of the Judge's notes certified by the Registrar of the court below, or a transcript of the evidence taken by a shorthand writer and certified by him, or such other materials as the Court may deem expedient.

Copies of proceedings in court below

21. (1) Where any notes of proceedings whether in shorthand or longhand have been taken by a person employed by in any court or taken by the Judge of the court below, copies of such parts of these notes as are required for the record of appeal shall be supplied by the Registrar of the court below on payment of the fees prescribed in Appendix B.

(2) If no written decision is given by the Judge at the time of giving judgment such Judge shall communicate his reasons for the judgment in writing to the Registrar of the court below and such reasons shall be included in the record.

(3) On hearing of an appeal the Court shall have power, if the notes of the Judge of the court below or a transcript of the evidence are not produced, or if there are no such notes or transcript, to hear and determine such appeal upon any other evidence or statement of what occurred before such Judge which the Court may deem sufficient.

Printing or typing of record

22. (1) Every document or paper required by these Rules to be filed or left with the Registrar or the Registrar of the court below shall be legibly printed, cyclostyled or typewritten with black ink (excluding carbon copies) upon strong white foolscap paper of good quality with an inner margin of not less than two inches and an outer margin of about half-an inch, and a space of not less than three-eighths of an inch shall be left between every two lines.

(2) There shall be an index to the record and every page thereof shall be numbered consecutively, and every tenth line on a page shall be numbered in the margin. Correspondence and exhibits shall be arranged together at the end of the record.

(3) The Registrar or the Registrar of the court below may refuse to file or receive any document not strictly conforming to the requirements of paragraph (1) of this rule and the Court may disallow the costs of any such document which has been so filed or received.

Copy of list of exhibits

23. (1) Any party may apply for and, on payment of the prescribed fee, obtain an office copy of the exhibits for the purpose of an appeal to the Court or otherwise.

(2) All original documents tendered in evidence to the court below at the trial shall remain in the custody of the court below until the record of appeal has been prepared, and shall then be forwarded with the record to the Deputy Registrar in the State in which the appeal is to be heard and shall remain in the custody of the Court until the determination of the appeal:

Provided that the Deputy Registrar shall permit a party for the purposes of preparing his record to take copies of all such documents and that the Court or Registrar may allow the return of any document to any party pending the hearing of the appeal and subject to such conditions as it or he may impose.

24. Revoked [S.R.O. 2/1971].

25. Revoked [S.R.O. 2/1971].

26. Revoked [S.R.O. 2/1971].

Applications

Applications to single Judge

27. (1) In any cause or matter pending before the Court, a single Judge of the Court may upon application make orders for—

- (a) giving security for costs to be occasioned by any appeal;
- (b) leave to appeal in *forma pauperis*;
- (c) a stay of execution on any judgment appealed from pending the determination of such appeal;
- (d) an injunction restraining the defendant in the action from disposing or parting with the possession of the subject matter of the appeal pending the determination thereof;
- (e) extension of time,

and may hear, determine and make orders on any other interlocutory application.

(2) Every order made by a single Judge of the Court in pursuance of this rule may be discharged or varied by any Judges of the Court having power to hear and determine the appeal.

Applications to Judge of court below

28. (1) Applications referred to in the preceding rule shall ordinarily be made to a Judge of the Court, but, where this may cause undue inconvenience or delay, a Judge of the court below may exercise the powers of a single Judge of the Court under that rule.

(2) The Deputy Registrar or the Registrar of the court below shall send to the Registrar one copy of any application heard by a Judge of the court below and of the order made thereon.

(3) Every order made by a Judge of the court below in the pursuance of this rule may be discharged or varied by the Court.

Mode of application

29. (1) An application for leave to appeal in *forma pauperis* may be made *ex parte* by affidavit containing the grounds of the application, the matters referred to in paragraph (1)(a) of rule 32, and the order asked for.

(2) Any other application under these Rules shall be made by way of summons or motion on notice. Such application shall be supported by affidavit, a copy of which shall be served with the summons or notice of motion

(3) Where an application is made *ex parte* under paragraph (1) of this rule, an order may be made requiring any party affected to be served with notice of the application.

(4) Where an application under these Rules is made by summons, an order may be made adjourning the hearing into open court.

(5) Where an application made by summons is heard by the Court, it shall be treated as if it were a motion, and it shall be heard in open court.

Appeal no stay except by order

30. (1) An appeal shall not operate as a stay of execution or of proceedings under the judgment appealed from, except so far as the court below or the Court may order, and no intermediate act or proceedings shall be invalidated, except so far as the Court may direct.

(2) On an appeal, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court otherwise orders, and the Registrar may compute such interest without any order for that purpose.

Application for security for costs

31. (1) Before an application for security for costs is made, a written demand shall be made by the respondent and if the demand is refused or if an offer of security be made by the appellant and not accepted by the respondent, the Court or the court below shall in dealing with the costs of the application consider which of the parties has made the application necessary.

(2) An application for security for costs may be made at any time after the appeal has been brought and must be made promptly thereafter.

(3) An order for security for costs shall direct that in default of the security being given within the time limited therein, or any extension thereof, the appeal shall stand dismissed with costs.

Bond Civil Form 10

(4) A bond with sureties for securing the costs of an appeal shall be in Civil Form 10.

Application for leave to appeal in *forma pauperis*

32. (1) An application for leave to appeal in *forma pauperis* shall be accompanied by—

- (a) an affidavit stating
 - (i) that the appellant is not worth \$120 excepting his wearing apparel and tools of trade and his interest in the subject matter of the intended appeal;
 - (ii) that his usual income from all sources does not exceed \$10 a week;
- (b) by a certificate of counsel that the appellant has reasonable grounds of appeal.

(2) Where an appellant obtains leave to appeal in *forma pauperis* he shall not be required to lodge security for the costs of the respondent or to pay any registry fees or any fees for copies of the Judge's notes of evidence or the documents required for compiling the record.

*Hearing and Judgements***Dismissal of appeal in default of appearance of appellant**

33. If the appellant fails to appear when his appeal is called on for hearing the appeal may be struck out under rule 33 or dismissed with or without costs.

Application to re-enter appeal dismissed under rule 33

34. When an appeal has been struck out owing to the non-appearance of the appellant the Court may, on application by the appellant by notice to the Court, if it thinks fit, and on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing: Provided that, no application under this rule shall be made after the expiration of twenty one days from the date of the judgment or order sought to be set aside.

Non- appearance of respondent

35. If the respondent fails to appear when the appeal is called on for hearing the Court may proceed to hear the appeal *ex parte*.

Application to set aside *ex parte* judgement

36. (1) Where an appeal has been heard *ex parte* under rule 35 of these Rules and any judgment has been given therein *ex parte* adverse to the respondent he may apply by motion to the Court to set aside such judgment and re-hear the appeal and the Court may, if it thinks fit and on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing.

(2) No application to set aside any judgment or order and re-hear the appeal under this rule shall be made after the expiration of twenty one days from the date of the judgment or order sought to be set aside.

(3) Any such application shall be by motion accompanied by an affidavit setting forth the reasons and grounds for the application and the Court may thereupon in its discretion set aside the judgment or order and order that the appeal be re-heard at such time and upon such conditions as to costs or otherwise as it may think fit.

Execution of judgement by court below

37. A certificate under the seal of the Court and the hand of the Registrar setting forth the judgment of the Court shall be transmitted to the Registrar of the High Court who shall file the same in the Registry of that Court and the judgment shall be enforced by the High Court.

*Fees and Costs***Court Fees**

38. (1) Save as hereinafter provided, the fees prescribed in Appendix B shall be charged in respect of the matters to which they are respectively assigned, and shall be paid in stamps.

(2) Where an appeal is brought by or against a State or any person who sued or was sued on behalf of a State no fees shall be payable by such State or person under Part 1 of Appendix B:

Provided that a judgment in favour of such State or person whether as appellant or respondent for costs to be paid by any other party to the appeal shall, unless the Court otherwise orders, include the amount of any fees which would have been payable if the appeal had been brought by or against a private person.

Legal practitioner's fees

39. (1) Subject to the provisions of this rule, a Taxing Officer when taxing the fees for professional legal services shall—

- (a) unless the Court when awarding costs orders otherwise, allow all such costs, charges and expenses as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Officer to have been incurred or increased through over-caution, negligence or mistake, or by payment of special fees to counsel or special charges or expenses to witnesses or other persons, or by other unusual expenses;
- (b) adhere to the Schedule of Allowances in Part 2 of Appendix B.

(2) In taxing party and party costs, the Taxing Officer shall also, unless the Court when awarding costs orders otherwise, allow—

- (a) the reasonable fees consequent upon the engagement of counsel:

Provided that, he may disallow the fees of more than one counsel in unopposed matters and in matters in which counsel has not appeared on the other side;

- (b) in any matter which does not conclude upon the first day, reasonable refreshers for each day subsequent to the first;
- (c) junior counsel's fee on the basis of two-thirds of the fee allowed to leading counsel (excluding travelling expenses and any special fee allowed to leading counsel) where fees to leading and junior counsel are allowed.

(3) The Taxing Officer may in exceptional cases and for good and sufficient reason depart from any of the provisions of the Schedule of Allowances contained in Part 2 of Appendix B and in particular in the taxation of solicitor and client bills of costs, where strict adherence to such provisions would be inequitable.

Fees of interpreters, commissioners etc

40. The fees and allowances to be charged and allowed for interpreters, witnesses, special commissioners, assessors and examiners shall be those from time to time in force in the High Court in the State in which the appeal arises.

41. Revoked [S.R.O. 2/1971]

PART 4

APPEALS AGAINST CONVICTION ON INDICTMENT

*Institution of Appeals***Obligation on appellant to fill up forms of appeal notices and answer question thereon**

42. A person desiring to appeal to the Court against conviction or sentence 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 notice shall be given, as the case may be, in the form of such notices set forth in Forms I or 2 in Appendix C, and, in the notice or notices so sent, shall answer the questions and comply with the requirements set forth thereon, subject to the provisions of rule 11 of these Rules. The answers to the questions which an appellant is by this rule required to make in support of his request to be present at the hearing of his appeal shall be deemed to be applications to the Court in such matter.

Judge's certificate under section 38(b) of the Act

43. (1) The certificate of the Judge of the court below under section 38(b) of the Act may be in Form 3 in Appendix C.

(2) The Judge of the court below may, in any case in which he considers it desirable so to do, inform the person convicted before or sentenced by him that the case is in his Opinion one fit for an appeal to the Court under section 38(b) of the Act and may give to such person a certificate to that effect in the Form 3 in Appendix C.

(Amended by S.R.O 11/1968)

Notices to be signed by appellant

44. (1) Every notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given shall be signed by the appellant himself, except under the provisions of paragraphs (4) and (5) of this rule.

Signature on notices of appellant and other notice

Any other notice required or authorised to be given by the Act or these Rules shall be in writing and signed by the person giving the same or by his legal representative. All notices required or authorised to be given shall be addressed to the Registrar of the Court.

Service of documents on person in prison

(2) Where an appellant or applicant is a prisoner in prison it shall be sufficient service to deliver the document at the prison to the officer in charge or person appearing to be the officer in charge thereof, who shall cause the same to be served on such prisoner.

Where appellant unable to write

(3) Where an appellant or any other person authorised or required to give or send any notice of appeal or notice of any application is unable to write, he may affix his mark thereto in the presence of a witness who shall attest the same, and thereupon, such notice shall be deemed to be duly signed by such appellant.

Where question of insanity involved

(4) Where, on the trial of a person entitled to appeal, it has been contended that he was not responsible according to law for his actions on the ground that he was insane at the time the act was done or the omission made by him, any notice required, to be given and signed by the appellant himself may be given and signed by his legal representative.

Notice etc. on behalf of corporations

(5) In the case of a body corporate where any notice or other document is required to be signed by the appellant himself, it shall be sufficient compliance therewith if such notice or other document is signed by the secretary, clerk, manager or legal representative of such body corporate.

Time for appealing against conviction or sentence to run from sentence

45. The time within which a person convicted shall give notice of appeal or notice of his application for leave to appeal to the Court against his conviction or his sentence, shall commence to run from the day on which the court of trial shall have passed sentence or pronounced final judgment upon him.

Notice of application for extension of time for appealing

46. An application to the Court for an extension of time within which notices may be given, shall be in Form 2 in Appendix C. 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.

Copies of proceedings, etc.

Forwarding of proceedings in court below to Registrar

47. (1) The Registrar when he has received a notice of appeal or a notice of application for leave to appeal, or a notice of application for extension of the time within which under the Act such notice shall be given, or when the Governor, or the Administrator (as the case may be) shall exercise his powers under the Act to refer a case to the Court of Appeal, shall require the Registrar of the court below to furnish him with four copies of the proceedings in the court below and if any record has been made of the summing up or direction of the Judge of the court below, four copies thereof or if no such record has been made, a statement giving to the best of such Judge's recollection the substance of the summing up or direction. The Registrar of the court

below shall also forward the original exhibits in the case as far as practicable and any original depositions, information, inquisition, plea, or other documents usually kept by him, or forming part of the record of the court below.

(2) One copy of the proceedings and one copy of the summing up shall be sent by the Registrar of the court below to the Director of Public Prosecutions at the same time he complies with paragraph (1) of this rule.

(3) For the purposes of this rule copies of proceedings shall contain—

- (a) the indictment or inquisition and the plea;
- (b) the verdict, any evidence given thereafter, and the sentence;
- (c) notes of any particular part of the evidence or cross-examination relied on as a ground of appeal; and
- (d) such other notes of evidence as the Registrar may direct to be included in the copies of proceedings:

Provided—

- (i) in capital cases copies of the notes of all the evidence shall be supplied; and
- (ii) upon application by either party to an appeal a single Judge of the Court or the Court itself may direct that copies of any particular part, or the whole, of the evidence be supplied to the Court and to the Director of Public Prosecutions.

Records of summing-up

48. (1) Where under any law in force or by direction of the Judge of the court below, notes in longhand or shorthand or typewritten or by any other means have been taken of the summing up or direction of the Judge and of such parts of the proceedings as the Judge of the court below may consider expedient, such record shall be accepted by the Court as accurate unless the Court has reason to doubt its accuracy.

(2) Where no record exists of the summing-up or direction given by the Judge of the court below, his statement giving his recollection of the summing up or direction shall be accepted as accurate unless the Court sees reason to the contrary.

Shorthand note to be verified by the writer

(3) The shorthand writer shall sign the shorthand notes taken by him of any trial or proceedings, or of any part of such trial or proceedings, and certify the same to be a complete and correct shorthand note thereof; and such shorthand note shall be kept in such custody as the Registrar of the court below shall, either specially or generally, direct.

Transcript to be furnished on application of Registrar

(4) The shorthand writer shall, on being directed by the Registrar of the court below, furnish to him for the use of the Court a transcript of the whole, or of any part, of the shorthand note taken by him of any trial or proceedings in reference to which an appellant has appealed under the Act.

Verification of transcript for use of court

(5) A transcript of the whole or any part of the shorthand note relating to the case of any appellant which may be required for the use of the Court shall be typewritten and verified by the person making the same by a statutory declaration in the Form 4 in Appendix C to these Rules that the same is a correct and complete transcript of the whole, or of such part, as the case may be, of the shorthand note purporting to have been taken, signed and certified by the shorthand writer who took the same.

(6) Where no notes in longhand or in shorthand have been taken by direction of the Judge of the court below of any other parts of the proceedings required for the purpose of an appeal, the Judge of the court below shall furnish to the Registrar of the court below his notes of the trial or such part thereof as may be required for such purpose.

Party interested may obtain transcript

(7) On the application of a party interested in a trial or other proceedings in relation to which a person may appeal under the Act, the Registrar of the court below shall direct the shorthand writer to furnish to such party, and to no other person, a transcript of the whole, or of any part of the shorthand notes of any such trial or other proceedings, on payment to the proper officer of the court below of such fees as may be prescribed by rules of court in the State in which the trial or other proceedings have taken place for copies of proceedings required on appeal in any criminal cause or matter.

Party interested may obtain transcript from Registrar

(8) A party interested in an appeal under the Act may obtain from the Registrar of the court below a copy of the transcript of the whole or of any part of such shorthand note as relates to the appeal on payment to the proper officer of the court below of such fees as may be prescribed by rules of court in the State in which the appeal is brought for copies of proceedings required on appeal in any criminal cause or matter.

Definition of “party interested”

(9) For the purposes of this rule, “a party interested” shall mean the prosecutor or the person convicted, or any other person named in, or immediately affected by, any order made by the Judge of the court below, or other person authorised to act on behalf of a party interested, as herein defined, but shall not include the Director of Public Prosecutions, to whom a copy of such transcript shall be furnished free of charge.

Transcript of notes not to be supplied free except by order

(10) A transcript of the shorthand notes taken of the proceedings at the trial (or a copy of the Judge's notes of the trial) of any appellant shall not be supplied free of charge except by an order of the Court or a Judge thereof, upon an application made by an appellant or by his counsel or solicitor assigned to him under the Act.

*Judge's Report***Report of Judge of court below**

49. (1) The Registrar shall, if in relation to any appeal the Court directs him so to do, request the Judge of the court below 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 such Judge shall furnish the same to the Registrar.

(2) The report of the Judge shall be made to the Court, and, the Registrar shall, on request, furnish a copy thereof to the appellant and to the respondent.

Furnishing Judges of court below with materials for report

50. When the Registrar requests the Judge of the court below to furnish a report under these Rules, he shall send to such Judge a copy of the notice of appeal or notice of application for leave to appeal or any other document or information which he shall consider material, or which the Court at any time shall direct him to send or with which such Judge may request to be furnished by the said Registrar, to enable such Judge to deal in his report with the appellant's case generally or with any point arising thereon.

*Copies of documents for use of Appellant or Respondent***How appellant or respondent may obtain from Registrar of court below copies of documents or exhibits**

51. (1) 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 the solicitor or other person representing either of them, may obtain from the Registrar of the court below copies of any documents (other than notes of proceedings) or exhibits in his possession under the said Act or these Rules for the purposes of such appeals. Such copies shall be supplied by the said Registrar on payment to the proper officer of the court below of such fee as may be prescribed by rules of court in the State in which the appeal is brought for copies of proceedings required on appeal in any criminal cause or matter.

Counsel and solicitor assigned to an appellant may receive copies of documents and exhibits free on request

(2) Where solicitor and counsel, or counsel only, are assigned to an appellant under the Act, copies of any such documents or exhibits which they or he may request the said Registrar to supply shall without charge be supplied unless the said Registrar thinks that they are not necessary for the purpose of the appeal.

Appellant not legally represented may obtain copy of documents or exhibits free

(3) Where an appellant who is not legally represented requires from the said Registrar a copy of any such document or exhibit in his custody for the purposes of his appeal, he may obtain it free of charge, if the said Registrar thinks, under all the circumstances, it is desirable or necessary to supply the same to him.

Conduct of Prosecution and Defence

Registrar to notify Director of Public Prosecutions or prosecutor, if a private person, of receipt of notice of appeal

52. (1) When the Registrar has received a notice of appeal or where leave to appeal is granted to any appellant, he shall—

- (a) notify the Director of Public Prosecutions, or
- (b) if the prosecutor is a private person, enquire if he intends to defend the appeal and, if the answer is in the negative, so inform the Director of Public Prosecutions.

Prosecutor to afford all information, documents, etc. to Registrar and Director of Public Prosecutions

(2) It shall be the duty of a prosecutor, who declines to defend an appeal, and of his counsel or solicitor, to furnish to the Registrar and the Director of Public Prosecutions, or either of them, any information, documents, matters and things in his possession or under his control connected with the proceedings against the appellant, which the Registrar or Director of Public Prosecutions may require for the purposes of their duties under the Act.

Legal Aid to Appellants

Lists of counsel and solicitors for the purposes of the Act

53. (1) The Registrar shall cause to be prepared in such form as he thinks most convenient for each State a separate list of counsel who are willing to act as counsel for appellants if and when nominated under the Act.

(2) The Registrar shall also cause to be prepared in such form as he thinks most convenient a list of solicitors who are willing to act as solicitors on behalf of appellants if and when nominated so to do under the Act.

Legal aid to be provided from such lists

(3) When legal aid is assigned to an appellant, the Court may give such directions as to the stage of the appeal at which such legal aid shall commence and whether counsel only, or counsel and solicitor, shall be assigned or otherwise as it may think right.

(4) The Registrar shall thereupon, subject to any special order of the Court, select from such lists or otherwise a counsel and a solicitor or a counsel only for the purpose of affording legal aid to an appellant under the directions of the Court, having regard in so doing to the place at which the appellant was tried and the counsel and solicitor, if any, who represented the appellant at his trial and the nature of the appeal.

*Proceedings before a single Judge***Procedure on decision of application to single Judge**

54. (1) Where any application has been dealt with by a single Judge, the Registrar shall notify to the appellant the decision in Form 5 in Appendix C. 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 6 in Appendix C. If the appellant does not desire to have the said application or applications determined by the Court as duly constituted for the hearing of appeals under the Act or does not return within five days to the Registrar Form 6 duly filled up by him the refusal of his application or applications by such Judge shall be final. If the appellant desires that his said application or applications shall be determined by the Court duly constituted as aforesaid and is not legally represented he may, if the Court give him leave, be present at the hearing and determination by the Court of his said application or applications: provided that an appellant who is legally represented shall not be entitled to be present without special leave of the Court.

(2) When an appellant duly fills up Form 6 and returns it within the prescribed time to the Registrar expressing a desire to be present at the hearing and determination by the Court 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. The Registrar, on receiving the said form, shall take the necessary steps for placing the said application before the Court. If the said application to be present is refused by the Court, 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, as provided by these Rules. For the purpose of constituting a Court the Judge who has refused any such application may sit as a member of such Court, and take part in determining such application.

Application not specially provided for, how made

(3) Except where otherwise provided in these Rules, any application to the Court may be made by the appellant or respondent, or by counsel on their behalf, orally or in writing; but in regard to such applications, if the appellant is unrepresented and is in custody and is not entitled or has not obtained leave to be present before the Court, he shall make any such application by forwarding the same in writing to the Registrar who shall take the proper steps to obtain the decision of the Court thereon.

Solicitor's right of audience

(4) Save as is otherwise provided in sub-paragraph (b) of this paragraph the parties to the following matters may be represented and appear by a solicitor alone

- (a) in all proceedings before a Judge of the Court in the exercise of his jurisdiction—
 - (i) to give leave to appeal;
 - (ii) to extend the time within which notice of appeal or of an application for leave to appeal may be given;
 - (iii) to assign legal aid to an appellant;

- (iv) to allow the appellant to be present at any proceedings where he is not entitled to be present without leave; or
- (v) to admit an appellant to bail;
- (b) in all preliminary and interlocutory proceedings and applications except such as are heard before the Court.

Notice of application for leave to appeal deemed to be notice of appeal if application granted

55. Where the Court has, on a notice of application for leave to appeal duly served and in Form 1 in Appendix C, 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.

Suspension of Orders and Admission to Bail

When fine imposed on conviction to be retained pending appeal

56. (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 deemed to be person sentenced to imprisonment.

(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.

Power of court of trial to impose recognizance

(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 below that he is desirous of appealing to the Court 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, to the Registrar of the court below, or as the Court may then order. The recognizances under this rule shall be in Forms 7 and 8 in Appendix C.

The Registrar of the court below shall forward the recognizances of the appellant and his surety or sureties to the Registrar of the Court.

Appellant committing breach of recognizance

(4) If an appellant to whom paragraph (3) of this rule applies does not serve in accordance with these Rules a notice of appeal or of abandonment of his appeal within fourteen days from the date of his conviction or sentence, the Registrar of the court below shall report such omission to the Court, who may, after notice in Forms 9 and 10

in Appendix C has been given to the appellant and his sureties, if any, order an estreat of the recognizances of the appellant and his sureties, and the manner of such estreat shall be that provided for estreating recognizances under the law of the State in which the appeal is brought, 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 it may think fit.

Repayment of fine on success of appeal

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

Temporary suspension of orders made on conviction as to money, awards, costs, etc.

57. (1) Where, on the conviction of a person, the Judge of the court below makes an order condemning such person to the payment of the whole or of any part of the costs and expenses of the prosecution for the offence of which he shall be convicted out of any moneys taken from such person on his apprehension or otherwise, or where such Judge lawfully makes on the conviction of any person before him any order for the payment of money by such convicted person or by any other person or any order affecting the rights of property of such convicted person, the operation of such orders shall in any of such cases be suspended until the expiration of fourteen days after the day on which any of such orders were made. In cases where notice of appeal or notice of application for leave to appeal is given within fourteen days from and after the date of the pronouncement of sentence against such person such orders shall be further suspended until the determination of the appeal against the conviction in relation to which they were made. The Court may, by order, annul any order to which this rule refers on the determination of any appeal or may vary such order, and such order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

The proper officer of the court below shall keep a record of any orders to which this rule refers.

Suspension of disqualifications consequent on conviction

(2) Where upon the conviction of any person of any offence, the trial court orders that any disqualification, forfeiture or disability attach to such person, and notice of appeal or notice of application for leave to appeal is given in respect of such conviction, sentence or order, the Court may upon application suspend such disqualification, forfeiture or disability until the determination of the proceedings upon appeal.

Judge's directions as to property of convicted person pending appeal

(3) Where the Judge of the court below makes any such order on a person convicted before him as in this rule mentioned, he shall give such directions as he thinks right as to the retention, by any person, of any money or valuable securities belonging to the person so convicted and taken from such person on his apprehension or of any money or valuable securities at the date of his conviction in the possession of the

prosecution for the period of fourteen days, or in the event of an appeal, until the determination thereof by the Court. The proper officer of the court below shall keep a record of any directions given under this rule.

Judges directions as to securing payment of money by convicted person pending appeal

(4) When the Judge of the court below on the conviction of a person before him makes any order for the payment of money by such person or by any other person upon such conviction, and, by reason of this rule, such order would otherwise be suspended, such Judge may, if he thinks right so to do, direct that the operation of such order shall not be suspended unless the person on whom such order has been made shall, in such manner and within such time as the said Judge shall direct, give security by way of undertaking or otherwise for the payment to the person in whose favour such order shall have been made of the amount therein named. Such security may be to the satisfaction of the person in whose favour the order for payment shall have been made or of any other person as such Judge shall direct.

Suspension of order of destruction or forfeiture of property

(5) Where on a conviction any property, matters or things, the subject of the prosecution or connected therewith, are to be or may be ordered to be destroyed or forfeited under the provisions of any rule, regulations, statute, Act or other law, the destruction or forfeiture or order for destruction or forfeiture thereof shall be suspended for the period of fourteen days from and after the date on which the verdict on the indictment was returned, and in the event of an appeal shall be further suspended until the determination thereof by the Court.

Suspension of proceedings or claims consequent on conviction

(6) Where, upon conviction of any person of any offence, any claim may be made or any proceedings may be taken under any rule, regulations, statute or other law against such person or any other person in consequence of such conviction, such proceedings shall not be taken until after the period of fourteen days from the date on which the verdict against such person was returned nor in the event of an appeal to the Court until the determination thereof.

Person affected may appear

(7) Any person affected by any orders which are suspended under the rule may, with the leave of the Court, be heard on the final determination of any appeal, before any such orders are varied or annulled by the Court.

Appellant and surety recognizances before whom to be taken

58. (1) Where the Court admits an appellant to bail pending the determination of his appeal on an application by him duly made, the Court shall specify the amounts in which the appellant and his surety or sureties (unless the Court directs that no surety is required) shall be bound by recognizance, and shall direct if it thinks right so to do, before whom the recognizances of the appellant and his surety or sureties (if any) may be taken.

Appellant and prison officer to receive notice of terms of bail

(2) The Registrar shall notify the appellant and the officer in charge of the prison within which he is confined, of the terms and conditions on which the Court shall admit the appellant to bail under the Act.

(3) In the event of the Court not making any special order or giving any special directions under this rule, the recognizances of the appellant and of his surety or sureties (if any) may be taken before a Magistrate or Justice of the Peace and shall be sent to the Deputy Registrar of the Court.

Form of recognizances

(4) The recognizances provided for in this rule shall be in Forms 11 and 12 in Appendix C.

Registrar on receiving recognizances in due form to notify officer of prison to release appellant.

(5) The Deputy 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 forward the recognizances of the appellant and his surety or sureties to the Registrar and shall send in Form 13 in Appendix C a notice to the officer or the prison in which the appellant shall then be confined. This notice, when received by the said officer, shall be a sufficient authority to him to release the appellant from custody.

Presence of appellant on bail at hearing of his appeal. Warrant for apprehension of appellant on bail. Criminal Form 14

(6) An appellant who has been admitted to bail shall be personally present at each and every hearing of his appeal and at the final determination thereof. The Court may, in the event of such appellant not being present at any hearing of his appeal, if it thinks right so to do, decline to consider the appeal, and may proceed summarily to dismiss the same, and may issue a warrant for the apprehension of the appellant inform Form 14 in Appendix C:

Provided that, the Court may consider the appeal in his absence, or make such other order as it may think fit.

Varying order for bail

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

Power to revoke order for bail

(8) At any time after an appellant has been released on bail, the Court may, if satisfied that it is in the interest of justice so to do, revoke the order admitting to bail,

and issue a warrant in Form 14 in Appendix C for his apprehension, and order him to be committed to prison.

(9) The Court 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, and the manner of such estreat shall be similar to that provided under the law of the State in which the appeal is brought.

Provisions for sureties discharging their obligations

(10) Where the surety or sureties for an appellant upon whose recognizances such appellant has been released on bail by the Court suspects or suspect that the said appellant is about to depart out of the State, 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 acting in and for the judicial district in which the said appellant is, or is by such surety or sureties believed to be, or in which such surety or sureties may then be 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

(11) The said appellant shall, on being apprehended under the said warrant, be brought before the court in and for which the said magistrate acts, before whom the said information was laid or some other magistrate's court specified in the said warrant. The said court shall, on verification of the said information by oath of the informant, by warrant of commitment, commit him to the prison to which persons charged with indictable offences before such court are ordinarily committed. The officer in charge of such prison shall, unless such prison was the prison from which the appellant was released on bail under these Rules notify the Prison Authority of such commitment, as in this rule mentioned.

Where the appellant is by such court committed to a prison which was not the prison from which he was released on bail after his conviction the Prison Authority, subject to any order of the Court, may transfer him to the prison from which he was so released.

Arrest and commitment of appellant to be notified to Registrar by clerk

(12) The clerk of the said 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.

Officer in charge of prison on commitment of appellant to notify Registrar

(13) 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 officer in charge thereof shall forthwith notify the Registrar who shall take steps to inform the Court thereof, and the Court may give to the Registrar such directions as to the appeal or otherwise as it shall think right.

*Abandonment of Appeal***Abandonment of appeal**

59. (1) 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 such notice shall be given, may abandon his appeal by giving notice of abandonment thereof in Form 15 in Appendix C to the Registrar, and upon such notice being given the appeal shall be deemed to have been dismissed by the Court.

(2) Upon receipt of a notice of abandonment duly completed and signed or marked by the appellant or the party authorised to sign notices under rule 44, the Registrar shall give notices thereof in Form 16 in appendix C to the respondent, the Prison Authority and the Registrar of the court below, and in the case of an appeal against a conviction involving a sentence of death, shall in like manner give notice to the Governor, or the Administrator as the case may be, and the Registrar shall also return to the Registrar of the court below any original documents and exhibits received from him.

*Determination of Appeal***Varying order of restitution of property**

60. Where, upon the trial of a person entitled to appeal against his conviction, an order of restitution of any property to any person has been made by the judge of the court below, the person in whose favour or against whom the order of restitution has been made, and, with the leave of the Court, any other person, shall, on the final hearing by the Court of an appeal against the conviction on which such order of restitution was made, be entitled to be heard by the Court before any order annulling or varying such order of restitution is made.

Judgement of the Court

61. Unless the Court direct to the contrary in cases where, in the opinion of the Court, the question for decision is a question of law on which it would be convenient that separate judgments should be pronounced by the Judges of the Court, the judgment of the Court shall be pronounced by the presiding Judge or such other judge of the Court hearing the appeal as he may direct, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of the Court.

Notification on final determination of appeals

62. (1) On the final determination of any appeal or of any application to the Court, the Registrar shall give to the appellant, if he be in custody and has not been present at such final determination, and to the respondent and the Prison Authority notice of such determination in Forms 17 to 20 in Appendix C.

Notification of appeals in capital cases

(2) In any case of an appeal in relation to a conviction involving a sentence of death, the Registrar shall on receiving the notice of appeal or of any application for leave to appeal, send copies thereof to the Governor or the Administrator, as the case

may be, and to the Prison Authority, and on the final determination of any such appeal by the Court shall forthwith notify the appellant, the Governor or the Governor-General, as the case may be, the respondent and the Prison Authority.

Notification of results of appeal

63. (1) The Registrar at the final determination of an appeal shall notify in such manner as he thinks most convenient to the Registrar of the court below the decision of the Court in relation thereto and also any orders or directions made or given by the Court in relation to such appeal or any matter connected therewith.

Entry of decision of Court on records

(2) The Registrar of the court below shall on receiving the notification referred to in this rule enter the particulars thereof on the records of such Court.

Restrictions on issue of certificate of conviction

64. The Registrar of the court below shall not issue, under any law authorising him so to do, a certificate of conviction of any person convicted in the court below if notice of appeal or notice of application for leave to appeal is given, until the determination or abandonment thereof.

Return of original depositions, etc.

65. Upon the final determination of an appeal for the purposes of which the Registrar has obtained from the Registrar of the court below any original depositions, exhibits, information, inquisition, plea, or other documents usually kept by such Registrar, or forming part of the record of the court below, the Registrar shall, where practicable, cause the same to be returned to the Registrar of the court below.

Procedure as to Witnesses before Court and their examination before examiner

Attendance of witness before the Court

66. (1) Where the Court has ordered any witness to attend and be examined before the Court an order in Form 21 in Appendix C 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 in Form 22 in Appendix C.

Order appointing examiner

(3) Where the Court 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.

Furnishing 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 to do so. 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, and when the appellant is in prison, the Prison Authority thereof. The Registrar shall cause to be served on every witness to be examined a notice in Form 23 in Appendix C.

Evidence to be taken on oath

(6) Every witness examined before an examiner under this rule shall give his evidence upon oath or on affirmation to be administered or taken by such examiner, except where any such witness if giving evidence as a witness on a trial on indictment need not be sworn.

Deposition of witness - how to be taken

(7) The examination of every such witness shall be taken in the form of a deposition and unless otherwise ordered shall be taken in private. The caption in Form 24 in Appendix C shall be attached to any such deposition.

Expenses of witnesses before examiner

(8) Where any witness shall receive an order or notice to attend before the Court or an examiner, the Registrar may, if it appears to him necessary so to do, pay to such witness a reasonable sum for his expenses.

Presence of parties at examination of witnesses

(9) The appellant and his legal representative (if any) and the respondent shall be entitled to be present at and take part in any examination of any witness to which this rule relates.

Proceedings on reference

67. When an order of reference is made by the Court to a special commissioner, the question to be referred, and the person to whom as special commissioner the same shall be referred, shall be specified in such order. The Court may in such order, or by giving directions as and when it from time to time shall think right, specify whether the appellant or respondent or any person on their behalf may be present at any examination or investigation or at any stage thereof as may be ordered, and specify any and what powers of the Court may be delegated to such special commissioner, and may require him from time to time to make interim reports to the Court upon the question referred to him, and may, if the appellant is in custody, give leave to him to be present at any stage of such examination or investigation and give the necessary directions to the

Prison Authority accordingly, and may give directions to the Registrar that copies of any report made by such special commissioner shall be furnished to the appellant and respondent.

Case stated or question of law reserved under section 56 of the Act

Judge to forward special case to Registrar and copies to be supplied to appellant and respondent

68. (1) Where in pursuance of section 56 of the Act a Judge of the High Court states a case or reserves a question of law for the consideration of the Court in respect of a person convicted on indictment before him, he shall forward such case to the Registrar who shall on receiving the same send a copy thereof to the appellant and respondent respectively.

These Rules to apply to convicted persons where case stated under section 56 of the Act

(2) Where under the provisions of section 56 of the Act a Judge of the court below states a case for the consideration of the Court the person convicted shall for the purposes of these Rules be deemed to be an appellant who has appealed under the Regulations:

Provided however, that in these circumstances the Registrar shall not be empowered to refer the case stated to the Court for summary determination.

(3) Where a case is stated or a question of law reserved for consideration of the Court under section 56 of the Act and rule 69 (1) of these Rules shall apply.

(Amended by S.R.O. 11/1968)

Duties of Registrar

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

69. (1) Subject to the provisions of rule 68 (1) the Registrar shall take all necessary steps for obtaining a hearing under section 37 to 60 of the Act of any appeal or application, notice of which is given to him under those sections and shall obtain and lay before the Court 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) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under section 37 to 60 of the Act to any person who demands the same, and to officers of courts, the Prison Authority and such other officers or persons as he thinks fit, and the Prison Authority shall cause these forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under section 37 to 60 of the Act and shall cause any such notices given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

(3) Other duties of the Registrar are set out in section 53 of the Act.

(Amended by S.R.O. 11/1968)

*Costs in Criminal Appeals***Expenses payable to solicitor or counsel**

70. The expenses of any solicitor or counsel assigned to an appellant by the Court in criminal appeals shall be allowed as follows:

In respect of:

- (a) a notice of appeal or application for leave to appeal; or
- (b) a notice of application for extension of time within which to appeal

A fee not exceeding \$15.12 for a solicitor and \$25.20 for counsel.

In respect of any appeal—

A fee not exceeding \$50.40 for a solicitor and a fee for counsel not exceeding \$75.60:

Provided that the Court, after the conclusion of the appeal, may, if it thinks fit, certify that the case was one of exceptional length or difficulty and thereupon the fee may be increased to such sum as the Court, having regard to the length and difficulty of the case, may direct, but not exceeding \$100.80 for a solicitor and \$151.20 for counsel.

In addition to such fee as aforesaid, counsel and solicitor may be allowed, subject to taxation, such travelling expenses as have been actually and reasonably incurred.

Expenses of witnesses

71. The expenses of any witnesses attending on the order of the Court or examined in any proceedings incidental to the appeal shall be allowed at the same rate as those of a witness in a case of felony tried at the Criminal Sessions of the State where the Court is sitting.

Expenses of appearance of appellant

72. The expenses of the appearance of an appellant not in custody on the hearing of his appeal or on any proceeding preliminary or incidental to the appeal may be allowed at the same rate as those of an ordinary witness in a case of felony tried at the Criminal Sessions of the State where the Court is sitting.

Expenses of examiner

73. Where any examination of witnesses is conducted by a person appointed by the Court for the purpose, the person so appointed shall be allowed if he be a Magistrate or other person in the service of a State, the actual expenses of travelling, the actual cost of hiring a room for the examination, if no court or public room is available, and such other incidental expenses as in the opinion of the Court are necessarily and reasonably incurred. If the person appointed is not a Magistrate or other such person he shall be allowed such expenses as aforesaid, and in addition such fee, not exceeding \$50.40 a day, as the Court may allow.

Expenses of special commissioner or assessors

74. Where any question is referred to a special Commissioner or appointed by the Court, or where any person is appointed as assessor to the Court, he shall be allowed such fee as the Court, having regard to his qualifications and ordinary professional remuneration, may think reasonable, not exceeding \$50.40 a day.

PART 5

APPEALS FROM DECISIONS OF COURTS OF SUMMARY JURISDICTION

Appeals from Summary Courts. Modifications of Rules

75. (1) The provisions of Parts I, II and III of these Rules shall apply *mutatis mutandis* to appeals from decisions of the Court of Summary Jurisdiction established by the laws of the States of Antigua, Dominica and St. Christopher-Nevis respectively subject to the following modifications.

(2) References to the Registrar of the High Court shall include the Registrar of the High Court in his capacity of clerk of the Court of Summary Jurisdiction.

(3) In Order 64, rule 5 of the Rules of the Supreme Court (time limits for appealing) the words “**four weeks**” shall be substituted for the words “**six weeks**”.

(4) Rule 19 (settling the record) shall not apply.

(5) Omitted

(6) In taxing party and party costs the Taxing Officer shall not, unless the Court when awarding costs orders otherwise, allow more than \$120 in respect of counsel.

(7) In sub-rule (1) of rule 38 (Court fees) the words “Appendix D” shall be substituted for the words “Appendix B”; and in sub-rule (2) thereof the words “Appendix D” shall be substituted for the words “Part 1 of Appendix B”.

(8) The provisions of this Part shall not apply to a State where it is provided by the law of that State that the Court of Summary Jurisdiction shall be presided over by a Magistrate.

PART 6

CRIMINAL APPEALS FROM MAGISTRATES’ DECISIONS

Copies of notice and grounds of appeal

76. (1) Where the appellant under any law regulating appeals from magistrates gives a written notice of his intention to appeal, five copies thereof shall also be filed by him for the use of the Judges of the Court and the Director of Public Prosecutions or other respondent.

(2) Together with the grounds of appeal required to be filed by such law, four copies thereof shall also be filed by the appellant for the use of the Judges of the Court and the Director of Public Prosecutions or other respondent.

Copies of proceedings, etc,

77. Five copies of the proceedings and of the notes of evidence for the use of the Judges of the Court and the Director of Public Prosecutions or other respondent, shall be provided by the clerk of the Magistrate' s Court from which the appeal is taken, and shall be forwarded by him together with the copies of the notice of appeal if any, and of the grounds of appeal, to the Registrar with the record.

PART 7**APPEALS (OTHER THAN CRIMINAL APPEALS) FROM MAGISTRATES' DECISIONS****Preliminary objection by respondent**

78. Upon receiving the documents directed to be transmitted by law regulating appeals from magistrates, the Registrar shall forthwith, by notice in writing, require the respondent to draw up and lodge with him for the information of the Court and the appellant, a written statement of any preliminary objections he may propose to take to the hearing of the appeal. A copy of the said statement shall be sent by the respondent to the appellant not later than 3 clear days before the day of hearing of the appeal. Any failure on the part of the respondent to comply with this rule may render him liable to be deprived of his costs or part thereof.

Evidence relating to preliminary objection

79. Evidence relating to a preliminary objection shall ordinarily be by affidavit, but the Court may in its discretion hear oral evidence *in lieu* of or in addition to written evidence.

Amendment of grounds of appeal

80. Grounds of appeal may be amended at any time upon such terms as the Court shall think just.

Copies of notice and grounds of appeal

81. (1) Where the appellant under any law regulating appeals from magistrates gives a written notice of appeal, four copies thereof shall also be filed by him for the use of the Judges of the Court.

(2) Together with the grounds of appeal required to be filed by such law 4 copies thereof shall also be filed by the appellant for the use of the Judges of the Court.

Made this 15th day of February, 1968.

ALLEN LEWIS
Chief Justice.

K. L. GORDON
Justice of Appeal.

P. CECIL LEWIS
Justice of Appeal.

APPENDIX A

(Rule 4)

CIVIL FORMS

INDEX TO FORMS

FORM NO	APPEAL RULES NO.	DESCRIPTION OF FORMS
1		Notice of Appeal.
2		Notice of Motion for special leave to appeal.
3		Application by Respondent for leave to appeal.
4		Notice by Respondent of intention to contend that decision of Court below be varied.
5		Notice by Respondent of intention to rely upon preliminary objection.
6		Summons to Parties by Registrar to settle Record.
7		Affidavit of Service of Notice of Appeal.
8		Notice to the parties of filing of record and of selling down of Appeal for hearing.
9		Notice of Withdrawal of Appeal.
10	31(4)	Bond for Costs on Appeal.
11	37	Certificate of the Order of the Court.
12		Notice of Taxation.

CIVIL FORM 1

IN THE COURT OF APPEAL

Notice of Appeal

MONTSERRAT

Civil Appeal No. of 20

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

TAKE NOTICE that the (Plaintiff/Defendant) Appellant being dissatisfied with the decision/that part of the decision* more particularly stated in paragraph 2 hereof of the (Court) contained in the judgment/order* of dated the day of 20 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellant further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

2. (Insert here whole or part of decision complained of)
3. Grounds of Appeal.
 - (1)
 - (2)
 - (3), etc.
4. (Insert here the relief sought from the Court of Appeal)
5. Persons directly affected by the appeal:

Name

Address

(1)

(2)

(3), etc.

DATED this day of 20..... ..

.....,

Appellant(s)

or Solicitor for the Appellant(s).

*Strike out words inapplicable.

If appealing against the whole decision insert "Whole decision".

CIVIL FORM 2

IN THE COURT OF APPEAL

Notice of Motion for Special Leave to Appeal

MONTERRAT

Civil Appeal No. of 20

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

TAKE NOTICE that the Court of Appeal atwill be moved on the day of 20..... at o'clock in the forenoon or as soon thereafter as counsel can be heard on the hearing of an application for special leave to appeal against the decision of the (Court) given on the day of 20..... ..

AND further take notice that the grounds of this application are:'

DATED this day of 20.....

.....
Applicant or his Solicitor.

To

*The Registrar
Court of Appeal.*

And #.....

*Strike out words inapplicable.

Insert name of respondent.

CIVIL FORM 3

IN THE COURT OF APPEAL

Application by Respondent for Leave to Appeal

MONTSERRAT

Civil Appeal No. of 20

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

TAKE NOTICE that upon the hearing of the application for leave to appeal the Respondent herein intends to apply for leave to appeal and to contend that the decision of the (Court below) dated the day of 20..... should be varied as follows:

#

AND TAKE NOTICE that the grounds on which the Respondent intends to rely are as follows:

- 1.
- 2.
- 3, etc.

DATED this day of 20..... .

.....
(Respondent(s))

To (Appellant)
and to the Registrar.

*Strike out words inapplicable

#State the variation which will be asked for.

CIVIL FORM 4

IN THE COURT OF APPEAL

Notice by Respondent of Intention to Contend that Decision of Court Below be Varied

MONTSERRAT

Civil Appeal No. of 20

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

TAKE NOTICE that upon the hearing of the above appeal the Respondent herein intends to contend that the decision of the (Court below) dated the day of 20..... should be varied as follows:

#

AND TAKE NOTICE that the grounds on which the Respondent intends to rely are as follows:

- 1.
- 2.
- 3, etc.

DATED this day of 20..... .

.....
(Respondent(s))

To (Appellant)
and to the Registrar.

*Strike out words inapplicable.

#State the variation which will be asked for.

CIVIL FORM 5

IN THE COURT OF APPEAL

Notice by Respondent of Intention to Rely upon Preliminary Objection

MONTSERRAT

Civil Appeal No. of 20

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

TAKE NOTICE that the Respondent herein named intends, at the hearing of this appeal, to rely upon the following preliminary objection notice whereof is hereby given to you, viz:

AND TAKE NOTICE that the grounds of the said objection are as follows:

- 1.
- 2.
- 3, etc.

DATED this day of 20..... .

.....
(Plaintiff/Defendant)* Respondent(s).

To the above-named (Plaintiff/Defendant)* Appellant(s).

*Strike out words inapplicable.

CIVIL FORM 6

IN THE COURT OF APPEAL

Summons to Parties by Registrar to Settle Record

MONTSERRAT

Civil Appeal No. of 20

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

TAKE NOTICE that all parties concerned are required to attend before me at the Registry of the Supreme Court on the day of 20..... at the hour of.....in thenoon to settle the record of the appeal herein.

DATED this day of 20.....

.....

Registrar

TO:

*Strike out words inapplicable.

CIVIL FORM 7

IN THE COURT OF APPEAL

Affidavit of Service of Notice of Appeal

MONTSERRAT

Civil Appeal No. of 20

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

I,
 of (occupation) do
 make oath and say:-

That notice of appeal in the above appeal filed herein on the
day of 20.....
 was duly served upon the Respondent herein
 ,(here state mode of service) on the
 day of 20..... in
 accordance with the Court of Appeal Rules.

Sworn to at the
 (address)

on the
 day of

}

Before me

.....
 Commissioner of Affidavits.

This affidavit is filed on behalf of

*Strike out words inapplicable.

CIVIL FORM 8

IN THE COURT OF APPEAL

*Notice to the Respondent of Filing of Record and of
Setting Down of Appeal for Hearing*

MONTSERRAT

Civil Appeal No. of 20

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

TAKE NOTICE that the above named Appellant has duly filed the record and documents required to be filed pursuant to the Court of Appeal Rules, and that I have set down the appeal for hearing before the Court of Appeal.

DATED this day of 20.....

.....
Registrar.

To the Appellant, Respondent, etc.

*Strike out words inapplicable.

CIVIL FORM 9

IN THE COURT OF APPEAL

Notice of Withdrawal of Appeal

MONTSERRAT

Civil Appeal No. of 20

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

TAKE NOTICE that the Appellant(s) herein intend(s) and doth hereby wholly withdraw his/their appeal against (all) the Respondent(s) in the above-mentioned appeal.

DATED this day of 20.....

.....
Appellant(s)

.....
The Registrar,
Court of Appeal.

And to Respondent(s)
and the Registrar of the Court below.

*Strike out words inapplicable.

CIVIL FORM 10

(Rule 31(4))

IN THE COURT OF APPEAL

Bond for Costs on Appeal

MONTSERRAT

Civil Appeal No. _____ of 20

Know all men, by these presents, that we
.....of and
.....of.....
andof..... are
jointly and severally held and firmly bound to.....
.....of..... in the sum of
..... dollars of lawful money to be paid to the
said his
executors, administrators, or assigns, for which payment well and truly to be made, we
bind ourselves, and each of us for himself, in the whole our and every of our heirs,
executors and administrators, firmly by these presents.

(Signed)(Appellant)

..... (Surety)

..... (Surety)

DATED the day of in the
year of Our Lord, 20.....

WHEREAS a suit is now pending in the Court at
 wherein the above-bounden is
and the said is

AND WHEREAS a judgment was given by the Court below therein, on the
..... day of for the
said and the said
..... has filed Notice of Appeal
from the said judgment:

CIVIL FORM 10 -(Continued)

AND WHEREAS it is by law provided that the party appealing shall give security to the satisfaction of the Registrar of the Court below for the due prosecution of the appeal and for the payment of any costs which may be ordered to be paid by the appellant.

AND WHEREAS the above-named and at the request of the said have agreed to enter into this obligation for the purposes aforesaid:

Now the condition of this obligation is such, that if the said shall duly prosecute the appeal and if the above-bounden and any or either of them shall pay any costs which may be ordered to be paid by the appellant this obligation shall be void, otherwise remain in full force.

Signed, sealed and delivered
in the presence of

}

(L.S.)
(L.S.)
(L.S.)

CIVIL FORM 11

(Rule 37)

IN THE COURT OF APPEAL

Certificate of the Order of the Court

MONTSERRAT

Civil Appeal No. of 20

Appeal from the in the
State of dated the
day of 20.....

..... Motion
..... Appeal No.

..... (Plaintiff/Defendant)* Appellant(s)

v.

..... (Plaintiff/Defendant)* Respondent(s)

.....

This appeal coming on for hearing on the day of
..... 20..... before in the presence of
..... for the Appellant(s) and
..... for the Respondent(s).

I HEREBY CERTIFY that an Order was made as follows:

Given under my hand and the Seal of the Court this
..... day of 20.....

.....

Registrar.

*Strike out words inapplicable.

CIVIL FORM 12

IN THE COURT OF APPEAL

Notice of Taxation

MONTSERRAT

Civil Appeal No. of 20

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

TAKE NOTICE that the Bill of Costs of the
 herein, will be taxed on the
 day of 20....., at the hour of
 o'clock in the noon.

Your absence notwithstanding.

DATED at this day of
 20.....

.....
 Solicitor for

To the above-named Appellant/Respondent of

 *Strike out words inapplicable.

APPENDIX B

(Rule 38)

PART 1

COURT FEES IN CIVIL APPEALS FROM THE HIGH COURT

		\$
1.	On filing notice of appeal against a final judgment or decision, entering the appeal for hearing and on judgment thereunder an inclusive fee of	12.00
2.	On filing respondent's notice of intention to contend that decision of court below be varied	5.00
3.	For entering a special case, case stated, point of law or demurrer for argument, entering same for hearing and on judgment thereunder an inclusive fee of	7.00
4.	On filing notice of appeal against an interlocutory order or decision, entering the appeal for hearing and on judgment thereunder an inclusive fee of	7.00
5.	On making any application not otherwise specifically provided for and for filing judgment or order thereunder an inclusive fee of	5.00
6.	On filing bond to secure costs of appeal	2.50
7.	On filing motion for leave to appeal to the Judicial Committee of the Privy Council	2.50
8.	On filing every bond where the appeal is to the Judicial Committee of the Privy Council	2.50
9.	On filing order for leave to appeal to the Judicial Committee of the Privy Council	2.50
10.	On appointment to settle record on appeal to the Judicial Committee of the Privy Council	1.25
11.	On sealing record on appeal to the Judicial Committee of the Privy Council	2.50
12.	On filing every document or exhibit for which no special fee is provided	.60
13.	On taxation of bill of costs including certificate	2.50
14.	On certifying any document as an office copy	1.25
15.	If in a foreign language, the actual cost of making and examining the copy, and, in addition, for marking and sealing the copy as an office copy	1.25
16.	For an office copy of a plan, map, section, drawing, photograph or diagram the actual cost of making and examining the copy, and, in addition, for marking and sealing the copy as an office copy	1.25
17.	For a copy of reasons for judgment per folio of 100 words But with a minimum fee, for one set of reasons, of And with a maximum fee, for one set of reasons, of	15 1.25 25.00
18.	For a copy of a report of the Registrar per folio of 100 words	.15

19.	On perusing and allowing by a Judge or Registrar of any bond	1.25
20.	On sealing a writ of subpoena not exceeding three persons	1.25
21.	For a certificate of the Registrar for which no special fee is provided	1.25
22.	On obtaining appointment for examination of a witness before an officer of the Court or other person	1.25
23.	In respect of every witness examined by an officer or other person in his office, for each hour or part of an hour	1.25
24.	For an examination of witnesses away from the office of the examiner, the reasonable travelling and other expenses in addition to the fee chargeable under Item 23.	
25.	For making every search	1.00
26.	For an office copy of any document filed in the Registry, per folio of 100 words, for the first folio	.25
	For every other folio or part thereof	.15
27.	On office copies of any document to be included in record-including judges' notes of evidence, for the first folio to consist of 100 words	.25
	For every other folio or part thereof	.15
28.	On certifying any document as an office copy	1.25

The fees to be taken in the offices of the Sheriff or Bailiff are the same as those which are required to be taken by the Sheriff or Bailiff of the State in which the appeal arises in respect of a like proceeding or act in a cause pending in the High Court.

APPENDIX B

PART 2

(RULE 39)

SCHEDULE OF ALLOWANCES FOR FEES OF LEGAL PRACTITIONERS FEES IN CIVIL APPEALS

(Save in respect of item 19, a folio shall consist of one hundred words (or figures) or part thereof; four figures to count as a word.)

INSTRUCTIONS

		\$
1.	Instructions to file notice of appeal (including grounds of appeal)	12.00
2.	Instructions to file notice of cross appeal (including grounds of appeal)	12.00
3.	Instructions to file any application relative to an appeal	7.00
4.	Instructions to appear for the respondent to any application to an appeal	7.00
5.	Instructions to file case stated or special case having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings and all other relevant circumstances	12.00
6.	Instructions for affidavit and for any other interlocutory matter, the charge for which is not specified in these scales	3.00
7.	Instructions for brief to counsel to advise or to settle pleadings. This will be allowed where justifiable under the circumstances of the particular case	7.00
8.	Drawing notice of appeal including grounds of appeal	 First 10 folios, \$1; per folio for the first 10 folios; \$1 per folio for the next 10 folios 75c, and thereafter per folio 36c. (The minimum charge under these items shall be \$7.00 save that the minimum shall not apply in the case of verifying
9.	Drawing notice of motion	
10.	Drawing a case stated	
11.	Drawing notice of cross appeal, including grounds of appeal	
12.	Drawing any order	
13.	Drawing any petition, affidavit, any notice except a formal notice, summons,	

	further particulars or request for further particulars		affidavit of service and other formal affidavits
14.	Drawing any writs of execution, arrest or attachment and any other important document not otherwise provided for		
15.	Drawing index of record or any index to brief	}	. 75 per folio
16.	Drafting instructions to Counsel with brief on any matter		
17.	Drawing any subpoena or any formal notice – each document		1.50
18.	Drafting a letter or telegram		2.00
	If more than one folio, for each additional folio		.40
	Copy to keep, where necessary, per folio		.15
19.	Drawing Bill of Costs, per folio		.75
NOTE: A folio is to comprise 72 words, every figure comprised in a column or authorised to be used being counted as one word.			
COPYING			
20.	Copies of the record on appeal, if prepared by the appellant's attorney or solicitor, such fee for the first copy and such fee for additional copies as the Registrar may consider reasonable.		
	(If not prepared by the appellant's attorney or solicitor the reasonable cost of the record as a disbursement).		
21.	Copies of any matter required for the Court, for counsel, for the attorney or for service or for any other necessary purpose for the first copy per folio		.25
	For each additional copy per folio		.15

ATTENDANCES

22.	At the Registry (clerk's attendance)	2.00
23.	On the Registrar in chambers at the rate per hour or part thereof (to be increased at the discretion of the Taxing Officer)	5.50
24.	On an opposite party, if necessary and proper, the like as under the preceding items	
25.	On a Judge in chambers, at the rate per hour or part thereof (to be increased at the discretion of the Taxing Officer)	8.50
26.	In Court where matter listed but not reached, on any day for each hour or part thereof necessarily and justifiably spent	5.50

27.	Attendance on receipt of letter or telegram	1.50
28.	Attendance on receipt of formal acknowledgement	1.00
29.	Other merely formal attendances including attendances to file, to swear affidavits or to bespeak copies	2.00
30.	Attendances not purely formal and including attendances on witnesses and others to obtain statements and other materials for brief on trial or for use at trial but not including attendances to represent parties at hearing in Court or chambers; such fee as may be reasonable according to circumstances with a minimum fee of in respect of each hour or part thereof	7.00
31.	Attendance to inspect or produce pursuant to notice per hour or part thereof	5.50
32.	Attendance before a Registrar in chambers on taxation matters for each hour or part thereof	5.50
33.	Attending at hearing as solicitor of an appeal or any other matter in Court for each day as may be necessary such sum as may, in the opinion of the Taxing Officer be reasonable not being less than	17.00
34.	Attending Court to hear reserved judgment per hour	5.50
35.	Attendance upon a shorthand writer to obtain copy of transcript for appellate purposes	3.00
36.	Attending to issue writ of execution	3.00
37.	Any attendance not specifically provided for	2.00
38.	Journeys necessarily undertaken. An allowance for the time necessarily occupied on the journey and, in the case of a journey to attend the trial, to include an allowance for the time which, in the opinion of the Taxing Officer, a legal representative is necessarily detained at the place of trial. Such sum per day, including Sundays as the Taxing Officer may think reasonable, not to exceed. Disbursements for fares, hotel and transport expenses are also to be allowed, but not for normal out of pocket expenses other than board and lodging. The disbursement allowed for travelling by motor car shall be at the rate of 25c per mile provided the total distance travelled exceeds three miles. For journeys under 3 miles no	28.00

	allowance shall be made for travelling by motor car.	
39.	Agency correspondence if shown to the satisfaction of the Taxing Officer that such correspondence has been necessary and reasonable. Such sums as would be allowed under items 18 or 40.	
40.	Letters, messages, etc. Such fee including letters not otherwise allowed between party and party as the Taxing Officer may consider reasonable not exceeding	3.00
PERUSALS		
41.	Perusals of any necessary documents for the first 10 folios-per folio	.50
	For each subsequent folio	.15
DISBURSEMENTS		
42.	All Court fees, counsel's fees and other fees and payments which, in the opinion of the Taxing Officer have been properly paid, shall be allowed.	

PART 2 - (Concluded)**ATTENDANCES****MAPS, PLANS AND MODELS**

43. The Taxing Officer may allow such fees for maps, plans and models for use at the trial or hearing as he considers reasonable.

MARSHAL, SHERIFF AND BAILIFF'S FEES

44. There shall be paid to Sheriffs, Marshals and Bailiffs, such fees and travelling and subsistence allowances as are by rules of Court or other law prescribed for the service or execution of any summons, warrant, writ, or other process of the High Court in the State in which the execution or service is sought to be levied or effected.

APPENDIX C

(Rule 4)

CRIMINAL FORMS

INDEX TO FORMS

FORM	APPEAL RULES	DESCRIPTION OF FORMS
1	Rule 42	Notice of appeal or application for leave to appeal against conviction or sentence.
2	" 42	Notice of application for extension of time within which to appeal.
3	" 43	Judge's certificate.
4	" 48(5)	Declaration verifying transcript of shorthand notes.
5	" 54	Notification to appellant of a single Judge's decision.
6	" 54	Notice of appeal by appellant from refusal of a single Judge.
7	" 56(3)	Recognizance of appellant sentenced to payment of a fine.
8	" 56(3)	Recognizance of sureties for appellant sentenced to a fine.
9	" 56(4)	Notice of breach of his recognizances to appellant sentenced to a fine.
10	" 56(4)	Notice to surety for appellant of estreat of recognizances.
11	"58(43)	Recognizances of bail of appellant convicted on indictment.
12	" 58(4)	Recognizance of appellant's sureties.
13	" 58(5)	Notice to Officer in Charge of Prisons to release appellant on bail.
14	Rule 58(6) & (8)	Warrant for arrest of appellant on bail.
15	" 59(1)	Notice of abandonment.
16	" 59(2)	Notification of abandonment of appeal.
17	" 62(1)	Notification to appellant of result of application.
18	" 62(1)	Notice to authorities of result of application.
19	" 62(1)	Notification to appellant of the result of his appeal.
20	" 62(1) & 63(1)	Notice to authorities of result of appeal.
21	" 66 (1)	Order to witness to attend court for examination.
22	" 66 (2)	Appellant's application for further witness.
23	" 66 (5)	Notice to witness to attend before an examiner.
24	" 66 (7)	Caption for deposition of witness examined before examiner.

CRIMINAL FORM 1*(Rule 42)*

IN THE COURT OF APPEAL

*Notice of Appeal or Application for leave to Appeal against Conviction
or Sentence*

MONTSERRAT

Criminal Appeal No. of 20

TO THE REGISTRAR OF THE COURT OF APPEAL.

Name of Appellant

Convicted at the Assizes held at

.....

(1) Larceny Forgery	Offence of which convicted
(2) Set out the actual date upon which the appellant was convicted and sentenced	Sentence Date when convicted Date when sentence passed
(3) If not in custody here set out appellant's address in full	Name of Prison
(4) If the appellant wishes to appeal against conviction he must write the word "conviction". If he wishes to appeal against "sentence" he must write the word "sentence". If he wishes to appeal against both conviction and sentence he must write the words "conviction" and "sentence"	I, the above-named appellant, hereby give you notice that I desire to appeal to the Court of Appeal against my (4) on the grounds hereinafter set forth on page 2 of this notice.
(5) This notice must be signed by the appellant. If he cannot write he must affix his	(Signed) (5) <i>Appellant.</i>

mark in the presence of a witness	
-----------------------------------	--

(5) The name and address of such attesting witness must be given	
(6) If this notice is signed more than fourteen days after sentence the appellant must also fill in Form 2 and send with this notice	Dated this (6) day of..... 20
(7) The appellant must answer each of these questions.	QUESTIONS(7) 1. Did the judge before whom you were tried grant you a certificate that it was a fit case for appeal? 2. Do you desire the Court of Appeal to assign you legal aid? If your answer to this question is "Yes" then answer the following Questions:- (a) What was your occupation and what wages, salary or income were you receiving before your conviction? (b) Have you any means to enable you to obtain legal aid for yourself? 3. Is any solicitor now acting for you? If so, give his name and address
(8) An appellant is not entitled to be present on the hearing of an application for leave to appeal	4. Do you desire to be present when the Court considers your appeal? (8) 5. Do you desire to apply for leave to call any witnesses on your

	appeal? If your answer to this question is “Yes”, you must also fill in Form 22 and send it with this notice.
(9) These must be filled in before the notice is sent to the Registrar. The appellant must here set out the grounds or reasons he alleges why his conviction shall be quashed or his sentence reduced.	Grounds of Appeal or application (9) N.B. If one of the grounds set out is “misdirection” by the judge, particulars of such alleged misdirection must be set out in this notice. The appellant can also, if he wishes, set out, in addition to his above reasons, his case and argument fully.

CRIMINAL FORM 2*(Rule 42)***IN THE COURT OF APPEAL***Notice of Application for Extension of the time within which to Appeal*

MONTSERRAT

Criminal Appeal No. of 20

TO THE REGISTRAR OF THE COURT OF APPEAL

Here state the
offence e.g
larceny, murder,
forgery, etc

I.

having been convicted of the offence of
in the High Court of Justice, Criminal Assizes, held at
..... on the
day of..... 20.... and being
now a prisoner in Her Majesty’s Prison at
.....*(or now living at
.....), give
you notice that I hereby apply to the Court 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:-

*When applicant
for any reason not
in custody.

Here set out
clearly and
concisely the
reasons for the
delay in giving
such notice and
the grounds on
which you submit

the Court should
extend the time.

(Signed)
(or mark) *Applicant.*

Signature and address
of witness attesting
mark

DATED this day of..... 20.....

You are required to send to the Registrar of the Court, duly
filled up Form 1 together with this Notice.

CRIMINAL FORM 3*(Rule 43)*

IN THE COURT OF APPEAL

Judge's Certificate

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

In the High Court of Justice, Criminal Assizes holden at

.....

WHEREAS the said

was tried and convicted before me, the undersigned in the said
 Court on the day of
 on a charge of

State shortly the
 offence eg. larceny,
 murder, forgery, etc.

I DO HEREBY CERTIFY that the case is a fit case for
 an appeal by the said
 to the Court upon the following grounds:-

Here specify in general
 terms the grounds on
 which certificate
 granted .

(Signed)*Judge.*

DATED this day of 20.....

CRIMINAL FORM 4

(Rule 48(5))

IN THE COURT OF APPEAL

Declaration Verifying Transcript of Shorthand Notes

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

I, of
..... do
solemnly and sincerely declare that, having been required by the Registrar of the High
Court to furnish him a transcript of the shorthand note relating to the trial (or other
proceeding) in relation of which
shorthand note is now produced and shown to me marked and
purporting to have been signed and certified by me. I have made a correct and complete
transcript thereof to the best of my skill and ability in pursuance of the said requirement,
which said transcript is now shown to me marked “B” and I make this declaration
conscientiously believing the same to be true and I am aware that if there is any
statement in this declaration which is false in fact, which I know or believe to be false
or do not believe to be true, I am liable to fine and imprisonment.

DATED this date of..... 20.....

(Signed)

CRIMINAL FORM 5*(Rule 54)*

IN THE COURT OF APPEAL

Notification to Appellant of a single Judge's Decision

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

I hereby give you notice that a Judge of the Court of Appeal having considered your application(s) for—

- (a) Leave to appeal;
- (b) Extension of time within which notice of appeal or of application for leave to appeal may be given;
- (c) Permission to be present during the hearing of any proceedings in your appeal;
- (d) Admission to bail;

has refused the application(s) marked..... (and
has granted your application(s) marked

If you desire to have the above-mentioned application(s) which have been refused, determined by the Court you are required to fill up the enclosed form and return it to me forthwith.

DATED this day of 20

(Signed)

.....

Registrar.
Court of Appeal.

To the above-named.

CRIMINAL FORM 6

(Rule 54)

IN THE COURT OF APPEAL

Notice of Appeal by Appellant from Refusal of a single Judge

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

TO THE REGISTRAR OF THE COURT OF APPEAL

I, having received
your notification that my application(s) for—

- (a) Leave to appeal;
- (b) Extension of the time within which notice of appeal or application for
leave to appeal may be given;
- (c) Permission to me to be present during the hearing of any proceedings in
my appeal;
- (d) Admission to bail;

has/have been refused;

DO HEREBY GIVE YOU NOTICE that I desire that the said application(s) shall be
considered and determined by the Court (and that as I am not legally represented I
desire to be present at the determination of my said application(s)*)

(Signed)

(or mark)

Appellant.

Signature and address of
witness attesting mark.

DATED this day of 20.....

If you desire to state any reasons in addition to those set out by you in your
original notice upon which you submit that the Court shall grant your said
application(s) you may do so in the space below.

*Strike out if you do not desire to be present.

CRIMINAL FORM 7*(Rule 56(3))***IN THE COURT OF APPEAL***Recognizance of Appellant Sentenced to Payment of a Fine*

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

TO WIT: Be it remembered that whereas.....
 of was
 on the day of 20..... convicted of
 and was thereupon sentenced to pay the
 sum of \$..... as a fine for his
 said offence by the High Court (Criminal Jurisdiction) at

 and has intimated to the said Court that he desires to appeal against his said conviction
 on a question of law alone (or upon a certificate of the Judge of the said Court that his
 is a fit case for appeal). And whereas the said Court considers that the said Appellant
 may, in lieu of payment at and upon his said conviction of the said sum, be ordered to
 enter into recognizance of bail himself in the sum of \$..... and with
 sureties, each in the sum of \$to prosecute his said appeal
 before the Court of Appeal.

This said doth hereby
 acknowledge himself to owe to Our Lady the Queen the said sum of \$..... of
 good and lawful money, to be made and levied of his goods and chattels, land and
 tenements, to the use of Our said Lady the Queen, her heirs and successors, if he the
 said fail in the condition endorsed.

Taken and acknowledged this day of 20 , at the said Court.

Before me

(Signed)
Registrar of the High Court.

CRIMINAL FORM 7-(Continued)
CONDITION

The condition of the within written recognizance is such that if the saidof shall personally appear and be present 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 then and there prosecute his said appeal and abide by the judgment of such Court, and not depart or be absent from such Court at any such hearing without leave of such Court, and pay the said sum of \$..... or such sum as such Court may order to the Registrar thereof, then this recognizance shall be void otherwise of full force and effect.

(Signed)
Appellant.

CRIMINAL FORM 8*(Rule 56(3))***IN THE COURT OF APPEAL***Recognizance of Sureties for Appellant Sentenced to a Fine*

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

TO WIT: Be it remembered that on the day of
 20..... of
 and personally came before
 the High Court (Criminal Jurisdiction) at and
 severally acknowledged themselves to owe to Our Lady 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, to be made and levied of their
 goods and chattels, lands and tenements, respectively, to the use of Our said Lady the
 Queen her heirs and successors if now before the said Court fail
 in the condition hereon endorsed.

Taken and acknowledged before the said Court on the day and year first
 above-mentioned.

(Signed)
Registrar of the High Court.

CRIMINAL FORM 8-(Continued)

CONDITION

The condition of the within written recognizance is such that whereas the said having been convicted of and having been sentenced to pay a fine of \$..... for his said offence, and having now intimated his desire to appeal on a question of law alone (or with the certificate of the Judge of this Court) to the Court of Appeal against the said conviction, and having, in lieu of payment at and upon his said conviction of the said sum of \$..... been ordered to enter into recognizance of bail himself in the sum of \$ and with sureties in the sum of \$..... if the said shall personally appear and be present 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 then and there prosecute his said appeal and abide by the judgment of such Court, and not depart or be absent from such Court at any such hearing without the leave of such Court, than this recognizance shall be void, otherwise of full force and effect.

(Signed).....

Surety.

(Signed)

Surety.

CRIMINAL FORM 9*(Rule 56(4))*

IN THE COURT OF APPEAL

*Notice of Breach of His Recognizances to
Appellant Sentenced to a Fine*

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

TO THE ABOVE-NAMED APPELLANT

WHEREAS you were convicted on the day of
 20....., of the offence of
 and were sentenced to the payment of \$..... and in default
 of such payment to imprisonment, and you entered into recognizances in the sum of
 with..... sureties in the
 sum of each, to prosecute
 your appeal, and whereas fourteen days have elapsed since your said conviction, and no
 notice of appeal has been served by you, NOW I HEREBY GIVE you notice that unless
 you attend at the sitting of the Court to be holden on the day of
 20... 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.

(Signed)

*Registrar.
 Court of Appeal.*

CRIMINAL FORM 10

(Rule 56(4))

IN THE COURT OF APPEAL

Notice to Surety for Appellant of Estreat of Recognizances

MONTSERRAT

Criminal Appeal No. of 20

TO
of

WHEREAS you the above-named, became duly bound in 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 the said conviction before the Court, and whereas the said has not so prosecuted his appeal, now I hereby give you notice that at the sitting of the Court on next your recognizances may be ordered to be estreated, unless you then show good cause to the contrary.

(Signed)

*Registrar.
Court of Appeal.*

CRIMINAL FORM 11*(Rule 58(4))*

IN THE COURT OF APPEAL

Recognizances of Bail of Appellant Convicted on Indictment

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

BE IT REMEMBERED THAT WHEREAS
 was convicted of
 on the day of 20..... (and
 was thereupon sentenced to)
 and now is in lawful custody in Her Majesty's Prison at
 and has duly appealed against his conviction (and sentence) to the Court, and has applied
 for bail pending the determination of his appeal, and has been granted bail on entering
 into his own recognizances in the sum of
with sureties, each in the sum
 ofthe said
 personally cometh before me the undersigned, being the
 and acknowledges himself to owe to Our Lady the Queen the said sum of
 of good and lawful money, to be made and levied of his goods
 and chattels, lands and tenements to the use of Our said Lady the Queen, her heirs and
 successors, if he the said fail in the
 condition endorsed.

Taken and acknowledged this day of 20.....
 at , before me.

(Signed)
 Office: *Magistrate. etc.*

CRIMINAL FORM 11-(Continued)

CONDITION

The condition of the within written recognizance is such that if 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 then and there abide by the judgment of such Court and not depart or be absent from such Court at any such hearing without the leave of such Court, and in the meantime not depart from his usual place of abode without the leave of such Court. then this recognizance shall be void otherwise of full force and effect.

The following to be filled up by the Appellant and signed by him:

(Signed).....
Appellant.

CRIMINAL FORM 12*(Rule 58(4))*

IN THE COURT OF APPEAL

Recognizance of Appellant's Sureties

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

BE IT REMEMBERED that on this day of
 20..... and
 of
 personally came before me the undersigned being the
 of and severally acknowledged
 themselves to owe to Our Lady 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, to be made and levied of their goods and chattels, lands and
 tenements respectively to the use of Our said Lady the Queen, her heirs and successors,
 if now in lawful
 custody in Her Majesty's Prison at
fail in the condition hereon endorsed.

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

(Signed)

Magistrate, etc.

CRIMINAL FORM 12 - (CONTINUED)

CONDITION

The condition of the within written recognizance is such that whereas 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 such Court for bail, pending the determination of his said appeal, has been granted bail on his entering into recognizances in the sum of \$..... if the saidshall personally appear and surrender himself at and before such Court at each and every hearing of his said appeal to such Court and at the final determination thereof, and then and there abide by the judgment of such Court, and not depart or be absent from such Court at any such hearing without the leave of such Court, and in the meantime not depart from his usual place of abode without the leave of such Court, then this recognizance shall be void, otherwise of full force and effect.

(Signed)
Surety.

(Signed)
Surety.

CRIMINAL FORM 13*(Rule 58(5))*

IN THE COURT OF APPEAL

*Notice to Officer in Charge of Prisons to
Release Appellant on Bail*

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

TO THE OFFICER IN CHARGE OF PRISONS

WHEREAS was convicted of
 on the
 day of 20..... (and was
 thereupon sentenced to) and now is in lawful
 custody in Her Majesty's Prison at

AND WHEREAS having duly
 appealed to the Court of Appeal against such conviction (and/or sentence) and having
 duly applied to that Court, has been granted bail by the said Court pending the
 determination of his said appeal on entering into recognizances himself in the sum of \$
, (and with sureties each in the sum of
 \$.....), in the forms provided under the Court of
 Appeal Rules.

AND WHEREAS I, the Deputy Registrar of the said Court of Appeal, have
 been given to understand that the said is
 now in your lawful custody in the said prison under the said conviction and sentence.

AND WHEREAS I have received a recognizance of the said
and recognizances from
 sureties for the said
 and the said
 recognizances are in due form and in compliance with the order of the said Court of
 Appeal admitting the said to bail.

CRIMINAL FORM 13-(Continued)

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 20.....

(Signed)

*Deputy Registrar,
Court of Appeal.*

CRIMINAL FORM 14*(Rule 58(6) & (8))*

IN THE COURT OF APPEAL

Warrant for Arrest of Appellant on Bail

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

(a)
State Office.
Head of
Prisons

TO THE CONSTABLES OF THE POLICE FORCE,
AND TO THE (a)
OF HER MAJESTY'S PRISON AT

WHEREAS an
Appellant in the Court has been released on bail, and it has now been
ordered by the said Court that a Warrant be issued for the apprehension of
the said

(a) State
Office Head
of Prisons

These are therefore to command you the said Constables forthwith
to apprehend the said
and to bring him to the (a)
of the said prison and there deliver him with this warrant into the custody
of the said (a)
and you the said (a)
are hereby required to receive the said into your
custody in the said prison and there safely to keep him until further order of
the said Court.

(Signed)

Presiding Judge.

DATED this day of 20.....

CRIMINAL FORM 15

(Rule 59(1))

IN THE COURT OF APPEAL

Notice of Abandonment

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

TO THE REGISTRAR OF THE COURT OF APPEAL.

I having been
convicted of in the High
Court (Criminal Jurisdiction) at and
having been desirous of appealing to the Court against my said conviction (or the
sentence of
passed upon me on my said conviction) do hereby give you notice that I do not intend
further to prosecute my appeal, but that I hereby abandon all further proceedings in
regard thereto as from the date hereof.

(Signed)
(or mark)

Signature and address of
witness attesting mark.

DATED this day of 20....

CRIMINAL FORM 16*(Rule 59(2))*

IN THE COURT OF APPEAL

Notification of Abandonment of Appeal

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

TO THE DIRECTOR OF PUBLIC PROSECUTIONS.

*This is to give you notice that I have this day received from the above-named..... a notice of abandonment of all proceedings in regard to his appeal to the Court.

The said notice is dated the day of 20.....

By Rule 59(1) of the Court of Appeal Rules, upon the notice of abandonment being given the appeal shall be deemed to have been dismissed by the Court.

(Signed)
Registrar of the Court of Appeal.

DATED this day of20..... ..

*Send copies addressed to:-

- (a) The Governor or the Governor-General, if the conviction involved a sentence of death,.
- (b) Any other respondent,
- (c) The Prison Authority, and
- (d) The Registrar of the court below.

CRIMINAL FORM 17

(Rule 62(1))

IN THE COURT OF APPEAL

Notification to Appellant of Result of Application

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

TO THE ABOVE-NAMED APPELLANT.

This is to give you notice that the Court has considered the matter of your application for—

- (a) leave to appeal to the said Court;
- (b) leave to extend the time within which you may give notice of appeal or of application for leave to appeal;
- (c) permission to be present during the proceedings in your appeal;
- (d) admission to bail;
- (e) insert here nature of any other application that may have been made,

and has finally determined the same and has this day given judgment to the effect following:-

(Signed)
Registrar of the Court of Appeal.

DATED this day of20.....

CRIMINAL FORM 18*(Rule 62(1))***IN THE COURT OF APPEAL***Notice to Authorities of Result of Application*

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

TO THE REGISTRAR OF THE HIGH COURT*

To

This is to give you notice that the above-mentioned having applied
for—

- (a) leave to appeal to the said Court;
- (b) leave to extend the time within which he may give notice of appeal
or of application for leave to appeal;
- (c) permission to be present during the proceedings in his appeal;
- (d) admission to bail;
- (e) insert here nature of any other application that may have been
made,

the Court has this day finally determined his said applications and has given
judgment to the effect following:-

Here set out the
Decision of the
Court

(Signed)
Registrar of the Court of Appeal.

DATED this day of20..... ..

*Send copies addressed to:-

- (a) The Governor or the Governor-General, if sentence of death has been passed,
- (b) The Director of Public Prosecutions or other respondent, and
- (c) The Prison Authority.

CRIMINAL FORM 19

(Rule 62(1))

IN THE COURT OF APPEAL

Notification to Appellant of the Result of his Appeal

MONTSERRAT

Criminal Appeal No. _____ of 20

THE QUEEN v.

TO THE ABOVE-NAMED APPELLANT.

This is to give you notice that the Court, having considered the matter of your appeal, has finally determined the same and has this day given judgment to the effect following:-

(Signed)
Registrar of the Court of Appeal.

DATED this day of20.....

CRIMINAL FORM 20*(Rules 62(1) and 63(1))***IN THE COURT OF APPEAL***Notice to Authorities of Result of Appeal*

MONTSERRAT

Criminal Appeal No. _____ of 20

THE QUEEN v.

TO THE REGISTRAR OF THE HIGH COURT*

To

This is to give you notice that the above-named having appealed against his conviction of the offence of before the Court, and/or the sentence of passed upon him for the offence of..... by the High Court (Criminal Jurisdiction) at the Court has finally determined the said appeal, and has this day given judgment therein to the effect following:-

Here set out the
Decision of the
Court

(Signed)
Registrar of the Court of Appeal.

DATED this day of20..... ..

*Send copies addressed to:-

- (a) The Governor or Governor-General, if sentence of death is involved.
- (b) The Director of Public Prosecutions or other respondent, and
- (e) The Prison Authority.

CRIMINAL FORM 21

(Rule 66(1))

IN THE COURT OF APPEAL

Order to Witness to Attend Court for Examination

MONTSERRAT

Criminal Appeal No. of 20.....

THE QUEEN v.

Name, etc. of To
witness of.....

WHEREAS on good cause shown to the Court you have been ordered to attend and be examined as a witness before such Court upon the appeal of the above-named.

This is to give you notice to attend before the said Court at on
the day of 20..... 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 relating to the said appeal of which you may have had notice so to produce.

(Signed)
Registrar of the Court of Appeal.

DATED this day of 20.....

CRIMINAL FORM 22*(Rule 66(2))***IN THE COURT OF APPEAL***Appellant's Application for further witness*

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

I,
 having appealed to the Court, hereby request you to take notice that I desire that the said Court shall order the witnesses hereinafter specified to attend the Court and be examined on my behalf.

(Signed)
 (or mark) *Appellant.*

Signature and address of
 witness attesting mark.

DATED this day of 20.....

You are required to fill up the following and sign the same:

1. Names and addresses of witnesses.
2. Whether such witnesses have been examined at trial.
3. If not, state the reason why they were not so examined.
4. On what matters do you wish them to be examined on the appeal.

State shortly the evidence you think they can give.

CRIMINAL FORM 23

(Rule 66(5))

IN THE COURT OF APPEAL

Notice to Witness to Attend Before an Examiner

MONTSERRAT

Criminal Appeal No. of 20

THE QUEEN v.

To

of

WHEREAS on good cause shown to the Court you have been ordered to be examined as witness upon the appeal of the above-named, and your deposition to be taken for the use of the said Court.

(a) Specify place
of examina-
tion

(b) Fill in exam-
iner's name

This is to give you notice to attend at (a)
.....
on the day of
20 before (b)
at o'clock in thenoon.

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 in any manner relating to the said appeal of which you may have had notice so to produce.

(Signed)
Registrar of the Court of Appeal.

DATED this day of20.....

CRIMINAL FORM 24*(Rule 66(7))*

IN THE COURT OF APPEAL

Caption for Deposition of Witness Examined before Examiner

MONTSERRAT

Criminal Appeal No. of 20.....

THE QUEEN v.

The deposition (on oath) taken before me the undersigned, being an examiner duly appointed by the Court in that behalf of and of witnesses, examined before me under an order of the said Court dated the day of 20..... in the presence of the said Appellant (or of his professional representative) and the Respondent at on the day of 20..... which said Appellant (or his professional representative) and Respondent had full opportunity of asking questions of the said witnesses, to whom the depositions following were read by me before being signed by them the said witnesses respectively.

The deposition of..... of who
(upon oath duly administered by me) said as follows:-

APPENDIX D

(RULE 75)

COURT FEES IN CIVIL APPEALS FROM
COURTS OF SUMMARY JURISDICTION

	\$ c
On entering an appeal	5.00
On filing every document or exhibit	.25
On every judgment	5.00
On amending or adding to grounds of appeal by leave or direction of Court at the hearing	1.00
<i>Provided that the Court shall have power to reduce or waive the fee .</i>	
On inspection of any document or judgment	.25
On filing motion for re-entering appeal struck out	10.00
On office copies of any documents for the first folio of 100 words	.25
For every other folio or part of a folio	.15
Every taxation of bill of costs including certificate	2.50

SUPREME COURT (QUEEN'S COUNSEL) RULES

ARRANGEMENT OF RULES

RULES

1. Short title
2. Application
3. Interpretation
4. Right of audience of Queen's Counsel

SUPREME COURT (QUEEN'S COUNSEL) RULES – SECTION 17

(S.R.O.s 14/1968 and 10/1968)

Commencement

[27 May 1968]

Short title

1. These Rules may be cited as the Supreme Court (Queen's Counsel) Rules.

Application

2. These Rules shall apply to the States as defined in rule 3.

Interpretation

3. In these Rules unless it is expressly provided to the contrary or the context otherwise requires—

“**Court Order**” means the Supreme Court Order (S.I. 1967 No. 223);

“**State**” means any of the following with its dependencies (if any), that is to say—

Antigua,

Dominica,

Grenada,

Saint Christopher, Nevis and Anguilla,

St. Lucia, and

St. Vincent;

“**Supreme Court**” means the Eastern Caribbean Supreme Court established by section 4 of the Court Order.

Right of audience of Queen's Counsel

4. Queen's Counsel appointed in any of the States, in Montserrat or in the Virgin Islands, by letters patent issued on or after 24 April, 1967 shall have the right to practise as such and the customary right of pre-audience before the Supreme Court in Montserrat.

(Amended by S.R.O. 10/1968)

**EASTERN CARIBBEAN SUPREME COURT
(SITTINGS OF THE COURT) RULES**

ARRANGEMENT OF RULES

RULES

1. Short title
2. Interpretation
3. Establishment of the office of Master
4. Criminal Sittings of the High Court
5. Sittings of the High Court in Anguilla, Montserrat and Nevis
6. Sittings of the Court of Appeal
7. Vacations of the Court
8. Hearings in vacations

**EASTERN CARIBBEAN SUPREME COURT
(SITTINGS OF THE COURT) RULES— SECTION 17**

(S.R.O.s 77/2014 and 17/2017)

Commencement

[15 September 2014]

Short title

1. These Rules may be cited as the Eastern Caribbean Supreme Court (Sittings of the Court) Rules.

Interpretation

2. In these Rules—

“law year” means the period from 16 September to 31 July of the following year; and

“Territories” means Anguilla, Montserrat and the British Virgin Islands.

General Sittings of the High Court in non-criminal matters

3. Except as otherwise provided for in these Rules or any other enactment, during the law year, the High Court shall sit continuously in the States and Territories for the trial of civil and other non-criminal matters and the disposal of the regular business of the Court.

Criminal Sittings of the High Court

4. (1) Except as otherwise provided for in these Rules or any other enactment, the High Court shall sit continuously in its criminal jurisdiction in the States and Territories from the first Tuesday immediately following the end of any vacation, until the commencement of the next vacation.

(2) Subrule (1) does not apply to Anguilla, Montserrat and the Nevis circuit of Saint Christopher and Nevis. (*Amended by S.R.O. 17/2017*)

Sittings of the High Court in Anguilla, Montserrat and Nevis

5. (1) The High Court shall commence the trial of criminal matters—

- (a) in Anguilla, on the first Tuesday of March and October;
- (b) in Montserrat, on the first Tuesday of March, July and November; and
- (c) in Nevis, on the first Tuesday of April and November.

(*Amended by S.R.O. 17/2017*)

(2) Despite subrule (1), if the first Tuesday in a month specified under subrule (1) falls within the Court's vacation or on a public holiday, the trial of criminal matters shall commence on the first Tuesday following the end of the vacation or the next working day.

(3) The Judge of the High Court may, with the concurrence of the Chief Justice, fix an alternative date for the commencement of criminal trials.

(4) Notice of the date fixed shall be published in the *Gazette* not less than seven days before the commencement of the sitting.

Sittings of the Court of Appeal

6. Except as otherwise provided for in these Rules or any other enactment, the Court of Appeal shall sit continuously in the States and Territories for the determination of appeals and applications in accordance with the schedule of sittings as the Chief Justice may direct.

Vacations of the Court

7. (1) There shall be three vacations observed by the High Court and Court of Appeal in each year, namely—

- (a) Christmas vacation, from 23 December to 10 January;
- (b) Easter vacation which begins on the Thursday before and ends on the Saturday after Easter Sunday; and
- (c) Long vacation, from 1 August to 15 September.

(2) The days of commencement and termination of each vacation shall be included in the vacation.

Hearings in vacations

8. (1) During vacations, the—

- (a) Court of Appeal may sit to hear and determine appeals and applications as the Court of Appeal may direct; and
- (b) High Court may sit to hear and determine trials and applications as a judge or master may direct.

(2) A party to a claim or matter may at any time apply to the High Court for an order that a trial or application be heard during the vacation and if the Court is satisfied that the matter should be heard immediately or promptly, it may make an order accordingly and fix a date for the hearing.

(3) A party to an appeal may apply to the Court of Appeal for an order that an appeal or application relating to an appeal be heard during the vacation and if the Court is satisfied that the matter should be heard immediately or promptly, it may make an order accordingly and fix a date for the hearing.

(4) An application made under subrule (2) may be determined on paper by a judge or master.

(5) An application made under subrule (3) may be determined on paper by a single judge of the Court of Appeal.

**EASTERN CARIBBEAN SUPREME COURT
(COURT PROCEEDINGS FEES) RULES – SECTION 17**

ARRANGEMENT OF RULES

RULES

1. Short title
2. Definitions
3. Application of the CPR 2000
4. Forms
5. To whom and where applications are to be made
6. Who can make an application
7. Hearing of applications
8. How to apply for a grant of probate
9. How to apply for letters of administration with will annexed
10. Order of priority for grant where deceased left a will
11. How to apply for a grant of probate of a notarial will in Saint Lucia
12. How to apply for letters of administration in case of a minority or a life interest where person dies intestate
13. How to apply for a grant of letters of administration
14. Order of priority in case of intestacy
15. Advertisement of application for a grant of probate or letters of administration
16. How to apply for small estate grants
17. Evidence as to due execution of will
18. Marking and exhibiting of wills
19. Rectification of wills
20. Engrossments of wills
21. Will in custody of foreign court or official
22. Affidavits
23. Renunciation of probate and administration
24. Retraction of renunciation of probate and administration
25. Notices and consents
26. Joinder of administrator
27. Grants to a corporation
28. Grants where deceased died domiciled outside the jurisdiction of the relevant Member State
29. How to apply for a grant in respect of the estate of a person who died domiciled outside the jurisdiction of a Member State
30. How to apply for resealing of grants
31. Amendment and revocation of a grant
32. Application for fresh grant after revocation
33. Limited and special grants

34. How to apply for a grant to an attorney
35. Grant of letters of administration to consular officer
36. How to apply for a grant of letters of administration to a consular officer
37. Grant on behalf of a minor
38. Grant where minor is a co-executor
39. How to apply for a grant on behalf of a minor
40. Grant of letters of administration where person entitled is mentally incapable
41. How to apply for a grant for use and benefit of a mentally incapable person
42. How to apply for a grant for a physically incapable person
43. Lost will or oral will grants
44. How to apply for a lost will grant
45. Grant of letters of administration under the discretionary powers of the court
46. How to apply for a grant of letters of administration under the discretionary powers of the court
47. Emergency grants
48. How to apply for an emergency grant
49. Grants pending suit
50. How to apply for a grant of letters of administration pending suit
51. Determination of probate action
52. How to apply for a grant limited to part of an estate
53. How to apply for a grant durante absentia
54. How to apply for leave to swear death grant
55. Second and subsequent grants
56. How to apply for a grant de bonis non administratus
57. How to apply for a cessate grant
58. How to apply for a double probate grant
59. Duty of the court on receiving an application for a grant of probate or letters of administration
60. Action after grant is made
61. Entry, duration and renewal of caveat
62. Warning to caveat
63. Expiry of caveat
64. Probate Actions
65. Citations
66. Citation to accept or refuse or to take a grant
67. Acknowledgment of citation to accept or refuse or take a grant, then default
68. Default of acknowledgment of service of citation to accept or refuse or take a grant
69. Citation to propound a will
70. Acknowledgment of service of citation to propound a will, then default
71. Default of acknowledgment of service of citation to propound a will
72. Affidavit of service to citation

- 73. Application for an order to attend for examination or for summons to bring in will
 - 74. Fees
- SCHEDULE
-

**EASTERN CARIBBEAN SUPREME COURT (NON-CONTENTIOUS PROBATE AND
ADMINISTRATION OF ESTATES) RULES – SECTION 17**

(S.R.O. 2/2018)

Commencement

[1 February 2018]

Short title

1. These Rules may be cited as the Eastern Caribbean Supreme Court (Non-Contentious Probate and Administration of Estates) Rules.

Definitions

2. In these Rules—

“**administration**” means a grant of letters of administration with or without will annexed;

“**attorney-at-law**” means solicitor or barrister called to the bar of a Member State;

“**authorised officer**” means an officer of the registry who is for the time being authorised to administer an oath or take an affidavit required for any purpose connected with his or her duties and includes where the context so admits, the resealing of grants and, in the case of Saint Lucia, includes an *ex officio* commissioner as provided for by section 85 of the Supreme Court Order, Cap 2.01;

“**citee**” means a person who receives a citation;

“**citor**” means a person who issues a citation;

“**court**” means the Eastern Caribbean Supreme Court;

“**CPR 2000**” means the Eastern Caribbean Supreme Court Civil Procedure Rules 2000;

“**grant**” means a grant of probate or letters of administration with or without will annexed;

“**gross value**” means the value, or valuation range in the case of the Territory of the Virgin Islands, of the estate without deduction for debts, encumbrances, funeral expenses or death duties;

“**judge**” means a judge of the Eastern Caribbean Supreme Court;

“**Member State**” means—

- (a) Antigua and Barbuda;
- (b) Anguilla;
- (c) Commonwealth of Dominica;
- (d) Grenada;
- (e) Montserrat;
- (f) Saint Christopher and Nevis;

- (g) Saint Lucia;
- (h) Saint Vincent and The Grenadines; or
- (i) Territory of the Virgin Islands;

“registrar” means the registrar of the High Court in a Member State;

“registry” means the registry of the Eastern Caribbean Supreme Court of the respective Member State;

“standard will” means a will other than a holograph, privileged, notarial or statutory will and in the case of Saint Lucia, a standard will shall include an English will as defined under the Civil Code of Saint Lucia, Chap 4:01, Article 789 of the Revised Laws of Saint Lucia;

“Trust Corporation” shall have the meaning assigned under the Trust Corporation (Probate and Administration) Act or similar enactment in a Member State; and

“value” means the market value of the property comprising the estate.

Application of the CPR 2000

3. Subject to the provisions of these Rules and to any enactment, the CPR 2000 shall apply to non-contentious probate matters, except that nothing in Part 3 of the CPR 2000 shall prevent time from running in the Long Vacation.

Forms

4. A form referred to by number means a form similarly numbered in the Schedule, with variations as in a particular case the court may direct or approve.

To whom and where applications are to be made

5. An application for a grant of probate or letters of administration shall be made to the registrar of the court and shall be filed at the registry where all caveats, warnings, citations, acknowledgements of service and notices of application under these Rules shall be filed.

Who can make an application

6. (1) An application for a grant of probate or letters of administration may be made—

- (a) through an attorney-at-law;
- (b) by the propounder of a will; or
- (c) by a proposed administrator in person.

(2) An application or a notice of application for a grant of probate or letters of administration shall—

- (a) bear the signature of the attorney-at-law, propounder or proposed administrator in person; and

- (b) contain an address for service for the attorney-at-law, propounder or administrator in person, including an email address and contact numbers.

Hearing of applications

7. (1) An application under these Rules shall be made in the first instance to the court in Form P1 or Form P2, as the case may be.

(2) Except where an enactment, rule or practice direction provides otherwise, the functions of the court may be exercised in accordance with these Rules and any direction made by—

- (a) the Chief Justice;
- (b) a single judge;
- (c) a master; or
- (d) the registrar.

How to apply for a grant of probate

8. (1) Except in the case of a notarial will in Saint Lucia which is subject to rule 11, an executor who applies for a grant of probate shall file at the registry—

- (a) an application for a grant of probate in Form P1;
- (b) a certificate of search confirming that—
 - (i) no other grant of probate has been issued;
 - (ii) no other application for a grant of probate has been made; and
 - (iii) no caveats have been filed;
- (c) an oath in Form P3;
- (d) the will marked in accordance with rule 18(1);
- (e) a certified copy of the death certificate or in the absence of the death certificate, an affidavit together with the burial certificate or other relevant document to the satisfaction of the court;
- (f) an affidavit of due execution of the will in the form and manner prescribed by rule 17(2), or if the circumstances so require an affidavit in the form prescribed by rule 17 (3) to (7), as the case may be;
- (g) a declaration and account of the estate of the deceased in Form P6, and in the case of the Territory of the Virgin Islands, Form P6A;
- (h) the appropriate affidavit under rule 22, if required; and
- (i) a certificate from the Commissioner of Inland Revenue or relevant authority that the duty has been paid or a letter stating that satisfactory arrangements have been made for the payment of duty, if an enactment in a Member State requires payment of stamp duty, estate duty or succession duty.

(2) If, on an application for a grant of probate, power to apply for a like grant is to be reserved to such other of the executors as have not renounced probate, the oath shall state that notice of the application has been given to the executor or executors to whom power is to be reserved.

(3) If an application is made for a grant of probate by one or more, but not all executors named in a will, and power is not reserved to the other executors, the applicant must account for the absence of the other named executors by exhibiting in his or her oath—

- (a) evidence of the death of the executor;
- (b) a certified copy of renunciation made by that executor; and
- (c) the citation to the executor, accompanied by the affidavit of service of the citation.

How to apply for letters of administration with will annexed

9. (1) Except in the case of a notarial will in Saint Lucia which is governed by the Civil Code, Chap 4:01, Article 794 of the Revised Laws of Saint Lucia, and subject to rule 11, a person who seeks a grant of letters of administration with will annexed, shall file at the registry—

- (a) an application for a grant of letters of administration with will annexed in Form P1 except in the case of St Lucia which shall be done in accordance with the Code of Civil Procedure, Ch. 243, Part 6th, Article 1015, St Lucia Revised Ordinances 1957;
- (b) certificate of search confirming that—
 - (i) no other grant has been issued;
 - (ii) no other application for a grant has been made; and
 - (iii) no caveats have been filed;
- (c) an oath in Form P4;
- (d) the will marked in accordance with rule 18 (1);
- (e) a certified copy of the death certificate or in the absence of the death certificate, an affidavit together with the burial certificate or other relevant document to the satisfaction of the court;
- (f) an affidavit of due execution of the will of the deceased in the form and manner prescribed by rule 17(2), or if the circumstances so require an affidavit in the form prescribed by rule 17(3) to (7), as appropriate;
- (g) a declaration and account of the estate of the deceased in Form P6 and in the case of the Territory of the Virgin Islands Form P6A;
- (h) the appropriate affidavit under rule 22, if required;
- (i) a certificate from the Commissioner of Inland Revenue or relevant authority that the duty has been paid or a letter stating that satisfactory arrangements have been made for the payment of duty, if an enactment

in the Member State requires payment of stamp duty, estate duty or succession duty; and

- (j) a certified copy of the birth certificate and marriage certificate of the applicant.

(2) A person applying for a grant of letters of administration with will annexed—

- (a) shall in his or her oath, account for all persons entitled to a grant in priority to him or her, and file with the application, the consent of all those persons so entitled, unless good reasons are shown for dispensing with such consent; and
- (b) need not obtain the consent of any person in the same degree of priority, subject to rule 25.

Order of priority for grant where deceased left a will

10. The person or persons entitled to apply for a grant, if a deceased left a will, is to be determined in accordance with the following order of priority—

- (a) the executor;
- (b) any residuary devisee or legatee holding in trust for any person;
- (c) any other residuary devisee or legatee;
- (d) any devisee or legatee holding in trust for any other person;
- (e) any devisee or legatee;
- (f) any person entitled to share in the undisposed residuary estate; and
- (g) such other person as the court may direct.

How to apply for a grant of probate of a notarial will in Saint Lucia

11. A person who seeks a grant of probate or letters of administration with will annexed of a notarial will in Saint Lucia, shall comply with the requirements in respect of an application for a grant of probate under rule 8 or a grant of letters of administration with will annexed under rule 9 except that the applicant—

- (a) is not required to—
 - (i) mark the will;
 - (ii) file an affidavit of due execution; and
- (b) is required to file a certified copy of the notarial will with the application.

How to apply for letters of administration in case of a minority or a life interest where person dies intestate

12. Subject to rule 16, if a person dies intestate and the estate gives rise to a minority or a life interest, a grant of letters of administration shall not be issued to less than two administrators, unless the court permits.

How to apply for a grant of letters of administration

13. (1) A person who seeks a grant of letters of administration must file at the registry—

- (a) an application for a grant of letters of administration in Form P1;
- (b) a certificate of search confirming that—
 - (i) no other grant has been issued;
 - (ii) no other application for a grant has been made; or
 - (iii) no caveats have been filed;
- (c) an oath in Form P5;
- (d) a certified copy of the death certificate or in the absence of the death certificate, an affidavit together with the burial certificate or other relevant document to the satisfaction of the court for non- production thereof;
- (e) a declaration and account of the estate of the deceased in Form P6 and in the case of the Territory of the Virgin Islands Form P6A;
- (f) if required, the appropriate affidavit or affidavits under rule 22;
- (g) a certificate from the Commissioner of Inland Revenue or relevant authority that the duty has been paid or a letter stating that satisfactory arrangements have been made for the payment of duty, if an enactment in the Member State requires payment of stamp duty, estate duty or succession duty; and
- (h) a certified copy of the birth certificate and marriage certificate of the applicant.

(2) A person applying for a grant of letters of administration—

- (a) must set out his or her entitlement to the grant;
- (b) must in his or her oath account for all persons entitled to a grant in priority to him or her;
- (c) must file with the application the consent of all persons so entitled, unless a good reason is shown for dispensing with such consent; and
- (d) need not obtain the consent of any person in the same degree of priority, subject to rule 25.

Order of priority in case of intestacy

14.(1) With the exception of Saint Lucia, if a person dies intestate, the right to a grant of letters of administration is to be determined in accordance with the following order of priority—

- (a) the surviving spouse of the deceased;
- (b) the children of the deceased, and the issue of any child who died before the deceased;

- (c) the father and mother of the deceased;
 - (d) brothers and sisters of the whole blood and the issue of any deceased brother or sister of the whole blood who died before the deceased;
 - (e) brothers and sisters of the half-blood and the issue of any deceased brother or sister of the half-blood who died before the deceased;
 - (f) grandparents;
 - (g) uncles and aunts of the whole blood and the issue of any deceased uncle or aunt of the whole blood who died before the deceased; and
 - (h) uncles and aunts of the half blood and the issue of any deceased uncle or aunt of the half-blood who died before the deceased.
- (2) With the exception of Saint Lucia, in default of any person having a beneficial interest in the estate, a person shall be entitled to a grant of letters of administration if he claims *bona vacantia* on behalf of the Crown.
- (3) In the case of Saint Lucia, a grant for letters of administration shall be made under the Code of Civil Procedure Ch. 243, Article 1016, St Lucia Revised Ordinances 1957, to the persons entitled in the following order of priority—
- (a) to the persons within the heritable degree in order of their right to succeed the deceased;
 - (b) failing such persons in paragraph (a), to the surviving wife or husband of the deceased, as the case may be; or
 - (c) failing such persons in paragraph (b) to the person nominated by the Crown to apply for the grant of letters of administration.
- (4) If none of the persons entitled to a grant under this rule are capable of, or prepared to apply for the grant, it may be made to—
- (a) a creditor or person interested in the succession of the deceased, except in the case of Saint Lucia which shall be in accordance with the Civil Code, Chap 4:01, Article 589 of the Revised Laws of Saint Lucia;
 - (b) a person who has no immediate beneficial interest in the estate, but who may have such an interest in the event of an addition to the estate; or
 - (c) such other person as the court may direct.

Advertisement of application for a grant of probate or letters of administration

15. An application for a grant of probate or letters of administration shall be advertised in Form P7 after the application has been filed and shall be advertised once a week for not less than two weeks in a newspaper of general circulation in the relevant Member State.

How to apply for small estate grants

16. If a person dies possessed of, or entitled to an estate, the value of which does not exceed the sum specified in the respective Administration of Small Estates Act of the

relevant Member State¹², and an application has been made for a grant of probate or letters of administration by the person or persons entitled in accordance with the order of priority provided for under rule 10 or 14, as the case may be, the following provisions shall apply—

- (a) on receipt of the application, the court shall make such inquiries into the facts stated as it thinks fit;
- (b) the papers required in respect of an application for a grant of probate or letters of administration, as the case may be, shall be filed in accordance with rule 8, 10 or 13 as the case may be, but the applicant is not required—
 - (i) to pay any filing fee; and
 - (ii) to file a declaration and account of the estate, but the applicant shall set out the information required in the declaration and account of the estate in his or her oath; and
- (c) unless the court otherwise directs, there shall be no advertisement of the application in accordance with rule 15, but the court shall cause notice of the application to be screened in a conspicuous place in the registry for a period of two weeks before the grant issues.

Evidence as to due execution of will

17. (1) Evidence on affidavit as to due execution of the following types of wills shall be given to the court—

- (a) standard wills or in the case of Saint Lucia English Wills;
- (b) wills of blind or illiterate testator;
- (c) wills of soldiers and sailors;
- (d) holograph wills;
- (e) a will made on behalf of a mental patient; and
- (f) notarial wills.

(2) If the will of the deceased is a will other than to which paragraphs (4), (5), (6) or (7) apply—

- (a) an affidavit of due execution shall be filed by—
 - (i) one or more of the attesting witnesses in Form P8; or

¹² Antigua & Barbuda - Administration of Small Estates Act Cap. 8
 The Virgin Islands - Administration of Small Estates Act Cap. 4.
 Dominica - Administration of Small Estates Act Ch. 9:06
 Grenada - Probate Act Cap. 255.
 Montserrat - Administration of Small Estates Act (Cap. 3:06)
 St Christopher & Nevis - Administration of Small Estates Act Cap. 4
 St Lucia - Administration of Small Successions Act Cap 4.12
 St Vincent & the Grenadines - Administration of Small Estates Act Cap. 488

- (ii) any other person who was present when the will was made if no attesting witness is conveniently available; or
- (b) if no evidence can be obtained under paragraph (a), the court may accept—
 - (i) evidence on affidavit in Form P9, showing that the will is in the handwriting of the deceased; or
 - (ii) evidence on affidavit of any matter which may raise a presumption in favour of due execution of the will;

and may require that notice of the application be given to any person who may be prejudiced by the will.

(3) Before admitting to proof a will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason raises doubt as to the testator having had knowledge of the contents of the will at the time of its execution, the court shall satisfy itself by evidence on affidavit that the testator had such knowledge.

(4) If the deceased died domiciled in a Member State, except Grenada, and it appears to the court that there is *prima facie* evidence that the will is one to which the laws governing the wills of soldiers and sailors of the respective Member State applies¹³, the will may be admitted to prove without an affidavit of due execution if—

- (a) the court is satisfied on evidence, that—
 - (i) it was signed by the testator;
 - (ii) if unsigned, it is in the testator's handwriting; or
- (b) the will is oral, the laws governing the wills of sailors and soldiers in the respective Member State are complied with.

(5) If the deceased died domiciled in Saint Lucia and it appears to the court that there is *prima facie* evidence that a will is one to which the Civil Code, Chap 4:01, Article 788 of the Revised Laws of Saint Lucia applies, the will may be admitted to proof if the court is satisfied by evidence on affidavit, by a person or persons who were well acquainted with the character of the deceased's handwriting and that it was signed by the testator.

(6) If a will was authorised to be made by the court on behalf of a mental patient in exercise of its special powers under the Mental Health Act, Ch. 294, section 22(1)(e) of Saint Vincent and the Grenadines and The Mental Health Act, Cap. 131 of the Territory of the Virgin Islands, rule 17(2) applies with such modifications and adaptations as may be necessary for the purpose of indicating that—

¹³ Antigua & Barbuda - Wills Act Cap 473, s.7 and Wills (Soldiers and Sailors) Act Cap. 88, s.5
Territory of the Virgin Islands - Wills Act Cap. 81, s.11
Dominica - Wills Act Ch. 9:01, s.12
Montserrat - Wills Act (Cap 3.08), s.11 and Wills (Soldiers and Sailors) Act (Cap. 85), s.5
St Christopher & Nevis, - Wills Act Cap. 495, s.13
St Lucia - Civil Code of Saint Lucia, Chap 4:01, Art 787 of the Revised Laws of Saint Lucia
St Vincent & The Grenadines - Wills Act Cap. 384, s.13

- (a) the will was made under the direction of the court; and
- (b) the provisions of the mental health laws of Saint Vincent and The Grenadines and the Territory of the Virgin Islands and the court's directions were duly complied with.

(7) If the deceased died domiciled in Saint Lucia, and it appears to the court that there is *prima facie* evidence that a will is a notarial will, the will may be admitted to proof without an affidavit of due execution, if the court is satisfied that the will is one which complies with the formal requirements in respect of such wills.

Marking and exhibiting of wills

18. (1) Subject to paragraph (2), every will in respect of which an application for a grant of probate or letters of administration is made, other than a notarial will under rule 11 shall be—

- (a) marked by the signatures of the applicant and the person before whom the executor's oath is sworn in Form P10; and
- (b) exhibited to any affidavit required as to the validity, terms, conditions or date of execution of the will.

(2) The court may allow a copy of a will to be marked or exhibited instead of the original will.

Rectification of wills

19. (1) Except in the case of Saint Lucia, an application for an order that a will be rectified may be made to the court, unless a probate action has been commenced.

(2) The application shall be supported by an affidavit, setting out the grounds of the application, together with such evidence as can be adduced as to the testator's intentions and as to which of the following matters is in issue—

- (a) in what respects the testator's intentions were not understood; or
- (b) the nature of any alleged clerical error.

(3) Unless otherwise directed by the court, notice of the application shall be given to every person having an interest under the will whose interest might be prejudiced by the rectification applied for and any comments in writing by any such person shall be exhibited to the affidavit in support of the application.

(4) If the court is satisfied that, subject to any direction to the contrary, notice has been given to every person mentioned in paragraph (3) and that the application is unopposed, it may order that the will be rectified accordingly.

Engrossments of wills

20. (1) If the court considers that in any particular case, a copy of the original will would not be satisfactory for purposes of record, it may require an engrossment suitable for reproduction to be lodged.

(2) If a will contains alterations which are not to be admitted to proof, an engrossment of the will in the form in which it is to be proved shall be filed.

(3) An engrossment filed in accordance with this rule must reproduce the punctuation, spacing and division into paragraphs of the will, and must follow continuously from page to page on both sides of the paper.

Will in custody of foreign court or official

21. If a will is not available because it is retained in the custody of a foreign court or official, a duly authenticated copy of the will may be admitted to proof.

Affidavits

22. (1) The following affidavits shall be filed with an application for a grant of probate or letters of administration, as appropriate—

- (a) affidavit of alterations;
- (b) affidavit of plight and condition and finding of will;
- (c) affidavit of incorporation of documents;
- (d) affidavit of date of execution of will;
- (e) affidavit of alias;
- (f) affidavit of delay;
- (g) affidavit of foreign law.

(2) If a will or codicil contains obliterations, interlineations or other alterations, the applicant shall file evidence showing that the alterations were present when the will or codicil was executed, unless—

- (a) the alterations are trivial and of no practical importance;
- (b) the alterations are evidenced by the signatures of the attesting witnesses; or
- (c) the alterations have been confirmed by the re-execution of the will or by the execution of a codicil,

and the court shall give directions as to the form in which the will or codicil is to be proved.

(3) If a will or codicil contains or has any appearance of an attempted revocation, it must be accounted for by evidence on affidavit in Form P11 to the satisfaction of the court to displace any presumption of revocation.

(4) If a will or codicil contains any reference to another document in such terms as suggest that the document ought to be incorporated into the will, the court shall require such document to be produced and may call for such evidence by affidavit with regard to the incorporation of the document as seems fit.

(5) If a will or codicil is undated or there is doubt as to the date on which a will or codicil was executed, the court shall require evidence on affidavit to be supplied as it thinks necessary to establish the date.

(6) If a grant is sought in a name in addition to the true name of the deceased, the applicant shall give evidence on affidavit—

- (a) stating the true name of the deceased;
- (b) defining any part of the estate which was held in a name other than the deceased's true name; and
- (c) stating any other reason for the inclusion of the other name in the grant.

(7) If an application for a grant is made for the first time more than three years after the death of the deceased, the applicant shall file an affidavit explaining the delay.

(8) If evidence of foreign law is required on an application for a grant, the court may accept an affidavit from an attorney-at-law in the country concerned, whom, having regard to the particulars of the deponent's knowledge or experience given in the affidavit, the court regards as suitably qualified to give expert evidence of the law in question.

(Revised in 2019 Law Revision)

Renunciation of probate and administration

23. (1) An executor who wishes to renounce his or her right to apply for a grant of probate shall do so in Form P12.

(2) An executor who renounces his or her right to apply for a grant of probate does not thereby renounce his or her right to apply for a grant of letters of administration unless he or she expressly renounces that right.

(3) A person entitled to apply for a grant of letters of administration and who wishes to renounce his or her right shall do so in Form P13 or Form P14, as the case may be.

(4) A person who has renounced his or her right to apply for letters of administration in one capacity may not obtain a grant of letters administration in another capacity without the permission of the court.

(5) If probate or administration has been renounced, a person who subsequently applies for a grant shall exhibit to his or her oath a certified copy of the renunciation.

(6) The right of a minor executor to probate on attaining the age of eighteen years may not be renounced by any person on his or her behalf.

Retraction of renunciation of probate and administration

24. (1) Subject to paragraph (2), a renunciation may be retracted with the permission of the court.

(2) The court may not give permission to retract a renunciation after a grant of probate or letters of administration has been made to some other person unless exceptional circumstances are shown.

Notices and consents

25. (1) Subject to paragraph (2), a grant of letters of administration may be made to a person entitled to it without the consent of any other person entitled in the same degree.

(2) If a person equally entitled to a grant of letters of administration has not consented to the grant being made to the person equally entitled thereto, the applicant for the grant shall give not less than fourteen days' notice to each other person entitled in the same degree before applying for the grant unless the court dispenses with the need for such notice.

(3) The notice required to be given by an applicant under paragraph (2) shall be in Form P15.

(4) In making an application for a grant of letters of administration—

- (a)** the court shall require the applicant to file an affidavit of service of the notice or notices under paragraph (2);
- (b)** any person challenging the right of a person in the same degree to a grant of letters of administration may apply to the court for directions or file a caveat, except in the case of Saint Lucia where the Code of Civil Procedure, Ch. 243, Article 1026, St Lucia Revised Ordinances 1957 will apply; and
- (c)** no grant of letters of administration may be issued until the application referred to in paragraph (b) is finally disposed of.

(5) If, on application for a grant of probate, power to apply for a like grant is reserved to such other executors who have not renounced their right to apply for a grant of probate—

- (a)** the proving executor shall give fourteen days' notice in writing to the other executors who have not renounced their right to a grant of probate before applying for the grant; and
- (b)** the court may dispense with giving notice if it is satisfied that giving the notice would—
 - (i)** be impracticable; or
 - (ii)** cause unreasonable delay or expense.

(6) If the Crown is or may be beneficially interested in the estate of a deceased, notice of an intended application for a grant shall be given by the applicant to the person authorised to apply for a grant on behalf of the Crown, and no grant may be made until twenty-eight days' after the notice has been given.

Joinder of administrator

26. (1) A person entitled in priority to a grant of letters of administration may, without leave, apply for a grant with a person entitled in a lower degree, provided that there is no other person entitled in a higher degree to the person to be joined, unless every such person has renounced his or her right or gives consent or has consented.

(2) If paragraph (1) does not apply, an application to join another person shall be made to the court.

(3) An application under paragraph (2) may be made without notice but must be supported by evidence on affidavit and the consent of the person proposed to be joined as administrator.

Grants to a corporation

27. Except in the case of Saint Lucia, if an application is made for a grant of probate or letters of administration by a corporation, including a Trust Corporation other than the Public Trustee, the officer appointed by the corporation for this purpose shall—

- (a) in every case file in the registry a sealed copy of the resolution appointing him or her; and
- (b) depose, in the oath to lead to the grant, that the charter or memorandum of association of the corporation empowers the corporation to make such application.

Grants where deceased died domiciled outside the jurisdiction of the relevant Member State

28. (1) This rule applies where the deceased died domiciled outside of the jurisdiction of the relevant Member State except Saint Lucia where the Civil Code Act, Chap 4:01, Article 545 of the Revised Laws of Saint Lucia applies.

(2) If the deceased left a will in the English language which is admissible to proof, a grant of probate may be made to the person named as executor therein.

(3) If the will describes the duties of a named person, in terms sufficient to constitute him or her executor, according to the tenor of the will, a grant of probate may be made to that person.

(4) If the whole or substantially the whole of the estate in the relevant Member State consists of immovable property, a grant of probate may be made to the person who would have been entitled to a grant had the deceased died domiciled in that Member State.

(5) In any other case, the court may order that the grant be issued to any of the following persons—

- (a) to the person entrusted with or entitled to the administration of the estate by the court having jurisdiction at the place where the deceased died domiciled;
- (b) if there is no person so entrusted, to the person beneficially entitled to the estate by the law of the place where the deceased died domiciled or if there is more than one person so entitled, to such of them as the court may direct; or
- (c) if in the opinion of the court the circumstances so require, to such person as the court may direct.

How to apply for a grant in respect of the estate of a person who died domiciled outside the jurisdiction of a Member State

29. A person who is authorised to apply for a grant of probate or letters of administration in respect of the estate of a person who died domiciled outside the jurisdiction of the relevant Member State shall file at the registry—

- (a) an oath including the following recitals—
 - (i) the authority of the applicant to obtain the grant, whether by order of the court or otherwise;
 - (ii) the domicile of the deceased; and
 - (iii) the gross value of the estate to be covered by the grant;
- (b) the grant decree or order of authority or official copy under the seal of the court of issue;
- (c) an official copy of the will of the deceased, if any;
- (d) the certified copy of the power of attorney if the applicant for the grant is the attorney of the person so entitled;
- (e) the affidavit as to foreign law made under rule 22(8);
- (f) if the will is required to be proved, a filed copy of the affidavit of the facts relied upon under rule 30(3)(g) and (h); and
- (g) if the grant or authority is in a foreign language, a filed copy of a notarised translation.

How to apply for resealing of grants

30. (1) An application for the resealing of a grant of probate or letters of administration made under the resealing laws in force in the relevant Member State¹⁴ may be made by the person to whom the grant was made or the attorney of that person and shall be—

- (a) authorised by a duly notarised and authenticated power of attorney first recorded in the registry; and
- (b) the power of attorney shall expressly contain authority to make such application.

(2) The applicant shall advertise the application in Form P16 in a newspaper circulating in the relevant Member State announcing his or her intention to reseat, and

¹⁴ Anguilla, St. Christopher &

Nevis

Antigua & Barbuda

Territory of the Virgin Islands

Dominica

Grenada

Montserrat

St. Lucia

St Vincent & the Grenadines

- Probates (Resealing) Act Cap. 62

- Probates (Resealing) Act Cap. 344

- Probates (Resealing) Act Cap. 60

- Probates (Resealing) Act Ch. 9:02

- Probate Act Cap. 255

- Probates (Resealing) Act (Cap. 3.09)

- Civil Code, Chap 4:01, Art 1152, 1152A and 1152B

- Probates (Resealing) Act Cap. 492

this advertisement must appear at least seven days prior to the filing of the application for resealing.

- (3) An application for resealing is made by filing at the registry—
- (a) an application on oath in Form P17;
 - (b) the original grant, or a duplicate certified copy thereof under the seal of the court of issue;
 - (c) an official copy of any will to which it relates;
 - (d) a copy of the advertisement under paragraph (2);
 - (e) if the application to reseal a grant is made more than three years after the death of the deceased, an affidavit explaining the delay;
 - (f) a declaration and account of the estate of the deceased in Form P6 and in the case the Territory of the Virgin Islands Form P6A, limited to the property within the Member State in which the application for resealing is made;
 - (g) an affidavit of facts setting out the place of execution of the will; and
 - (h) if required by an enactment in the respective Member State—
 - (i) the domicile of the testator at the time of execution of the will or at his or her death as appropriate; and
 - (ii) the habitual residence of the testator at the time of his or her death.

(4) An application to reseal a grant of letters of administration shall be made in accordance with the provisions of these rules.

(5) Special limited or temporary grants are not to be resealed without an order of the court.

(6) Notice of the resealing of a grant shall be sent by the registrar to the court which issued the grant and the prescribed fee shall be paid by the applicant.

(7) Except in the case of Saint Lucia, if it appears that the deceased was not at the time of his or her death domiciled within the jurisdiction of the court which issued the grant, the grant may not be resealed unless it is such as would have been made by the court.

(8) If the court which issued the grant receives notice of the resealing of a grant, notice of any amendment or revocation of the grant shall be sent to the court by which it was resealed.

Amendment and revocation of a grant

31. (1) The court may make an order amending or revoking a grant if it is satisfied that it is appropriate to do so.

(2) An application for an order for amendment of a grant shall be in Form P18 and filed at the registry together with—

- (a) an affidavit setting out—

- (i) the date and issue of the grant;
 - (ii) the nature of the error discovered;
 - (iii) the circumstances in which the error arose;
 - (iv) the necessity for the amendment;
 - (v) the nature of the amendment required; and
- (b) the grant.

(3) If the amendment sought is an alteration of the gross value of the estate, an application for an order for an amendment shall be made in Form P18 and filed at the registry together with—

- (a) an affidavit setting out—
 - (i) the gross value of the estate as stated in the grant;
 - (ii) the discovery of an error in the gross value of the estate subsequent to the issue of the grant;
 - (iii) the revised gross value of the estate;
- (b) the grant;
- (c) an amended declaration and account of the estate setting out the gross value of the estate already returned, and the gross value now returned; and
- (d) if required, an amended estate or stamp duty certificate as the case may be.

(4) An application for revocation of a grant shall be in Form P19 and filed at the registry together with—

- (a) an affidavit setting out—
 - (i) details of the first grant;
 - (ii) the grounds on which the revocation is sought; and
 - (iii) the entitlement of the applicant to a new grant;
- (b) if the original grantee has become incapacitated or died, a medical certificate or other evidence of incapacity or the death certificate of the original grantee, as the case may be; and
- (c) the grant.

(5) The court may require that a person who applies for an amendment or for revocation of a grant give notice to any person who may be affected.

Application for fresh grant after revocation

32. (1) Except for Saint Lucia where the Civil Code Act, Chap 4:01, Article 586(4) of Revised Laws of Saint Lucia applies, if an application is made for a grant of probate

or letters of administration following the revocation of the original grant, the fresh grant shall recite the making of the first grant and revocation thereof.

(2) A certified copy of the order of revocation of the original grant shall be filed with the application for the fresh grant.

Limited and special grants

33. (1) A limited grant shall not be made unless every person entitled to the general grant has consented, renounced or has been cited and failed to appear, except under the direction of the court.

(2) A person entitled to a general grant in respect of the estate of a deceased person will not be permitted to take a limited grant except under the direction of the court.

(3) A limited grant may be limited as regards time or portion of the estate or otherwise as the court thinks fit.

How to apply for a grant to an attorney

34. (1) If a person is entitled to apply for a grant of administration for the use and benefit of that person, the grant may be issued to his or her attorney acting under a duly registered power of attorney.

(2) If the donor of the power is an executor, notice of the application shall be given to any other executor unless the court otherwise directs.

(3) A grant to an attorney may be limited until a further grant is made or in such other way as the court may direct.

(4) A person who seeks the grant to an attorney shall file at the registry the usual papers for a grant of letters of administration under rule 9 or under rule 13 as appropriate, subject to the following—

(a) the oath shall include the following recitals—

- (i) the entitlement of the donor to the grant;
- (ii) the appointment of the applicant as attorney of the donor;
- (iii) that the applicant will collect, get in and administer according to law the real and personal estate of the deceased, and in the case of Saint Lucia movables and immovables, limited until a further grant is made or in such other way as the court may direct; and

(b) a copy of the registered power of attorney.

Grant of letters of administration to consular officer

35. (1) An application for a grant of letters of administration to a consular officer may be made if a person who is a citizen or subject of a foreign country to which the laws governing consular conventions of the respective Member State¹⁵ applies and—

¹⁵ Antigua & Barbuda

- Administration of Estates by Consular Officers Act Cap. 6 Consular Conventions Act Cap. 95

- (a) dies leaving property within that Member State; and
 - (b) there is no person present within that Member State at the time of his or her death who is entitled to administer his or her estate.
- (2) A grant to a consular officer may be made provided that—
- (a) no consular officer of the foreign country in respect of which the deceased is a citizen or subject is entitled to apply for a grant of the estate of the deceased; or
 - (b) no other person is authorised by power of attorney to apply for a grant on behalf of the deceased.
- (3) The grant to a consular officer shall be made to him or her in his or her official capacity and is limited in such manner and for such time as the court deems it fit.

How to apply for a grant of letters of administration to a consular officer

36. A consular officer who seeks a grant under rule 35 shall file at the registry the usual papers for a grant of letters of administration under rule 9 or under rule 13, as the case may be, except that the oath shall include the following recitals—

- (a) that the applicant is a consular officer of a state to which the Consular Convention laws of the respective Member State applies;
- (b) that the person entitled to take out a grant of the deceased national's estate is outside the jurisdiction of the relevant Member State;
- (c) that neither the consular officer nor any other person has been appointed attorney by the person entitled to take out the grant; and
- (d) that the applicant will collect, get in and administer according to law, the real and personal estate of the deceased for the use and benefit of the national until further representation be granted or in such other way as the court may direct.

Grant on behalf of a minor

37. (1) If a person to whom a grant would otherwise be made is a minor, letters of administration for his or her use and benefit shall be limited until he or she attains the age of eighteen years, and, shall unless otherwise directed, and subject to paragraph (2) be granted in the following order of priority—

Territory of the Virgin Islands	- Administration of Estates by Consular Officers Act Cap. 107
Dominica	- Administration of Estates by Consular Officers Act Ch. 9:08
Grenada	- Consular Conventions Act Cap. 63
Montserrat	- Administration of Estates by Consular Officers Act (Cap. 3.06) Consular Conventions Act Ch. 17:51
St Christopher & Nevis, Anguilla)	- Administration of Estates by Consular Officers Act Cap. 136
St Lucia	- Administration of Estates by Consular Officers Act Cap. 4.13 Consular Conventions Act Cap. 10.10
St Vincent & The Grenadines	- Administration of Estates by Consular Officers Act Cap. 487

- (a) to the parents or parent of the minor jointly or severally;
- (b) to the statutory or testamentary guardian; or
- (c) to a guardian appointed by a court of competent jurisdiction.

(2) The court may by order, assign a person as guardian of the minor and the assigned guardian may obtain a limited grant for the use and benefit of the minor in accordance with paragraph (1), in default of, or jointly with or to the exclusion of, any person mentioned in paragraph (1), and the intended guardian shall file an affidavit in support of his or her application to be assigned.

(3) If there is only one person competent and willing to take a grant under paragraphs (1) and (2), that person may, unless the court otherwise directs, nominate a fit and proper person to act jointly with him or her in taking the grant.

(4) If the minor is a sole executor and has no interest in the residuary estate of the deceased, a grant of letters of administration for the use and benefit of the minor shall be limited until he or she attains the age of eighteen years and shall be granted to the person entitled to the residuary estate unless the court otherwise directs.

Grant where minor is a co-executor

38. (1) If one or more minors has been appointed as executor jointly with other executors, a grant of probate may be made to the executors who are not minors with power reserved to the minor executor or executors who shall be entitled to apply for a grant of probate on attaining the age of eighteen years.

(2) If the executor or executors who are not minors renounce or, on being cited to accept or refuse a grant fail to make an effective application for a grant, an appointment may be made under rule 37.

How to apply for a grant on behalf of a minor

39. (1) A person who seeks a grant of letters of administration for the use and benefit of a minor shall file at the registry the usual papers for a grant of letters of administration under rule 9 or under rule 13, as the case may be, including—

- (a) if relevant, a filed copy of the order of appointment or assignment, as appropriate;
- (b) a certified copy of the birth certificate of the minor; and
- (c) the nomination of a co-administrator, if required.

(2) The oath shall include the following recitals—

- (a) that the person entitled to the grant is a minor;
- (b) the capacity in which the applicant is applying for the grant, whether as the parents jointly, or as the statutory or testamentary guardian, or lawfully appointed or assigned guardian; and
- (c) that the applicant will collect, get in and administer according to law the real and personal estate of the deceased for the use and benefit of the minor named during his or her minority, or in such other way as the court may direct.

Grant of letters of administration where person entitled is mentally incapable

40. (1) This rule applies if the court is satisfied that a person who would otherwise have been entitled to apply for a grant of letters of administration is by reason of mental incapacity incapable of managing his or her own affairs.

(2) A grant may only be made under this rule if—

the absence of all persons entitled to apply for a grant in the same degree as the mentally incapable person have been accounted for; or

the court otherwise directs.

(3) A grant of letters of administration for the use and benefit of a mentally incapable person shall be limited until a further grant is made or in such other way as the court may direct, may be granted in the following order of priority—

(a) to a person authorised under the Mental Health Act or any other relevant statutory authority of the relevant Member State¹⁶;

(b) to the person entitled to the residuary estate of the deceased; or

(c) to such person or persons as the court may by order direct.

How to apply for a grant for use and benefit of a mentally incapable person

41. (1) A person who seeks a grant of letters of administration for the use and benefit of a mentally incapable person shall file at the registry the usual papers for a grant of letters of administration under rule 9 or under rule 13, as the case may be, including—

(a) if relevant, a certified copy of the court order or certificate of incapacity or order of the court, as appropriate; and

(b) if applicable, the nomination of a co-administrator.

(2) The oath shall include the following recitals—

(a) the entitlement of the incapable person to the grant;

(b) that the person so entitled is by reason of his or her mental incapacity incapable of managing his or her affairs and property;

(c) the authority or entitlement of the applicant to apply for the grant on behalf of the incapable person; and

(d) that the applicant will collect, get in and administer according to law the real and personal estate of the deceased for the use and benefit of

¹⁶

Eastern Caribbean Territories (except Dominica, St. Lucia, St. Vincent & The Grenadines and the Territory of the Virgin Islands)	-	Supreme Court Act, s.7(2)
Territory of the Virgin Islands	-	Mental Health Act Cap. 294
Dominica	-	Mental Health Act Ch. 40:62
St. Lucia	-	Civil Code Chap 4:01, Art 285-296, Revised Laws of Saint Lucia.
St Vincent & The Grenadines	-	Mental Health Act Cap. 228

the incapable person until further representation be granted, or in such other way as the court may direct.

How to apply for a grant for a physically incapable person

42. A grant of letters of administration on behalf of a physically incapable person may be made to an attorney duly constituted in the manner and form prescribed by rule 34 and the power of attorney shall be duly recorded in the registry.

Lost will or oral will grants

43. (1) An application for an order admitting to proof—

- (a) an oral will, except in the case of the Territory of the Virgin Islands;
- (b) a will contained in a copy; or
- (c) a reconstruction of a will,

shall, if the original will is not available, be supported by evidence on affidavit as the applicant can adduce as to—

- (i) the will's existence after the date of the testator's death or, if there is no such evidence, the facts on which the applicant relies to rebut the presumption that the will has been revoked by destruction;
- (ii) in the case of an oral will, the contents of that will; and
- (iii) in respect of a reconstruction of a will, the accuracy of that reconstruction.

(2) The court may—

- (a) require additional affidavit evidence as to—
 - (i) due execution of the will; or
 - (ii) the accuracy of the copy; and
- (b) direct that notice of the application be given to any person who might be prejudiced by the application.

How to apply for a lost will grant

44. A person who seeks a lost will grant of probate or letters of administration shall, upon obtaining an order under rule 43, file at the registry the usual papers for a grant of probate under rule 8 or a grant of letters of administration with will annexed under rule 9, as the case may be, subject to the following—

- (a) the oath shall include the following recitals—
 - (i) particulars of the order, made pursuant to rule 43, admitting to proof a copy or draft or reconstruction of the will of the deceased, as appropriate;
 - (ii) the entitlement of the applicant to the grant;

- (iii) the belief of the applicant that the paper writings now produced to and marked by him or her contain a copy, draft, reconstruction or contents of the will, as appropriate; and
 - (iv) that the applicant will collect, get in and administer, according to law, the real and personal estate of the deceased limited until the original will or a more authentic copy be proved or in such other way as the court may direct; and
- (b) a copy of the order made pursuant to rule 43 shall be filed.

Grant of letters of administration under the discretionary powers of the court

45. (1) An application for an order for a grant of letters of administration under the discretionary powers conferred on the court under the relevant statutory provision of the respective Member State¹⁷ shall be made to the court in the first instance, and such application shall be supported by affidavit evidence setting out the grounds of the application.

(2) The application for an order under paragraph (1) shall include in its title the statutory provision and Act under which the application is made.

How to apply for a grant of letters of administration under the discretionary powers of the court

46. A person who seeks a grant of letters of administration under the discretionary powers of the court shall, upon obtaining an order under rule 45, file at the registry the usual papers for a grant of letters of administration under rule 9 or under rule 13, as the case may be, subject to the following—

- (a) the oath shall include the following recitals—
 - (i) the date and effect of the order of the court including the relevant statutory provision and Act under which the order was made and;
 - (ii) the limitations, if any, imposed by the court; and
- (b) a copy of the order of the court directing that the grant be made to the applicant pursuant to the discretionary powers of the court shall be filed.

Emergency grants

47. (1) An application for an emergency grant may be made if—

¹⁷ Anguilla,)
Territory of the Virgin Islands,)
St. Christopher & Nevis,)
Dominica, Antigua & Barbuda,) - Supreme Court Act
Montserrat)
Grenada - Probate Act Cap. 255, s.7
St Lucia - Civil Code Chap 4:01, Article 586(6)(b) of the Revised Laws of St Lucia
St Vincent & the Grenadines - Administration of Estates Act Cap. 486, s.16

- (a) it is shown that the estate of a deceased person is in danger of spoliation or for any other reasons urgent steps are required to be taken for the custody or preservation of any property forming part of the estate of the deceased; and
- (a) owing to the circumstances, it is not possible to constitute a general personal representative in sufficient time to meet the needs of the estate.

(2) The grant shall be limited for the purpose of collecting, getting in and receiving the estate and doing such acts as may be necessary for the preservation of the estate and until further representation be made, or in such other way as the court may direct.

How to apply for an emergency grant

48. (1) An application for an order for an emergency grant shall be made under the discretionary powers of the court and the application shall include in its title, the statutory provision and Act of the relevant Member State under which the application is made.

(2) An application for an order for an emergency grant shall be made to the court and shall be supported by evidence on affidavit stating—

- (a) the reason why the grant is urgently required;
- (b) that the person entitled to the grant cannot be located or is abroad or incapacitated; and
- (c) that the applicant for the emergency grant is a fit and proper person.

(3) The consent of the applicant to apply for an emergency grant shall be filed with the application.

(4) A person who seeks an emergency grant shall, upon obtaining an order under paragraph (2), file at the registry the usual papers for a grant of letters of administration under rule 13 subject to the following—

- (a) the oath shall include the following recitals—
 - (i) that an order was granted by the court for an emergency grant to be made to the applicant;
 - (ii) that the applicant will collect, get in and administer according to law, the real and personal estate of the deceased limited to collecting, getting in and receiving the estate of the deceased and doing such acts as may be necessary for the preservation of the estate and until further representation be granted or in such other way as the court may direct; and
 - (iii) the gross value of the estate to be covered by the grant; and
- (b) a copy of the order for the emergency grant shall be filed.

Grants pending suit

49. If legal proceedings are pending concerning the validity of a will or the granting, recalling or revocation of letters of administration, an application may be made to the High Court for an order for a grant of letters of administration limited to the continuance of the litigation.

How to apply for a grant of letters of administration pending suit

50. (1) An application for an order for a grant of letters of administration pending suit is made under the discretionary powers of the court and the application shall include in its title the statutory provision and Act of the respective Member State under which the application for the grant is made.

(2) The application for an order for a grant of letters of administration pending suit shall be made to the court and shall be supported by evidence on affidavit stating—

- (a)* the reason why the grant is required;
- (b)* the value of the property which is likely to come into the hands of the applicant; and
- (c)* the fitness to act of the proposed grantee, except where the applicant is a person duly appointed on behalf of the Crown.

(3) The consent of the proposed grantee to act shall be filed except where the applicant is a person appointed by the Crown.

(4) The person who seeks a grant of letters of administration pending suit shall, upon obtaining an order under paragraph (2), file at the registry the usual papers for a grant of letters of administration under rule 13 subject to the following—

- (a)* the oath of the administrator pending suit shall include the following recitals—
 - (i)* that there is a pending action touching and concerning the validity of the will of the deceased or the estate of the deceased, as appropriate;
 - (ii)* the granting of the order for a grant of letters of administration pending suit to the applicant; and
 - (iii)* that the administrator will collect, get in and administer according to law, the real and personal estate of the deceased pending the action, under the directions and control of the court except distributing the residue or in such other way as the court may direct; and
- (b)* file a copy of the emergency order.

Determination of probate action

51. (1) Upon the determination of the probate action in respect of which a grant pending suit was made under rule 49, a general grant may be applied for in the usual way under rule 8.

(2) The oath to lead to the general grant under paragraph (1) shall include details of the order under rule 49 and of the previous grant pending suit.

(3) A filed copy of the final order under rule 49 in respect of the action shall also be filed with the papers to lead the grant.

How to apply for a grant limited to part of an estate

52. (1) An application for a grant of part of an estate may be made—

- (a) if the applicant is entitled to a grant in respect of part only of an estate; or
- (b) if a person entitled to the grant of a whole estate applies for a grant of part only of the estate.

(2) An application for an order for a grant under paragraph (1)(b) shall be made to the court supported by evidence on affidavit—

- (a) setting out the grounds for the application;
- (b) stating whether the estate of the deceased is known to be insolvent; and
- (c) showing if applicable, how a person entitled to a grant of the whole estate in priority to the applicant has been cleared off.

(3) No order is required for a grant limited to property under paragraph (1)(a).

(4) The person who seeks a grant limited to property shall file at the registry the usual papers for a grant of probate under rule 8 or a grant of letters of administration under rule 9 or under rule 13 as the case may be, including—

- (a) the declaration and account of the estate in Form P6 and in the case of the Territory of the Virgin Islands Form P6A, limited to a description and the value of the property covered by the grant; and
- (b) the copy of the order made under paragraph (2) if applicable.

(5) The oath shall include the following recitals—

- (a) particulars of the order if the application for the grant is made under paragraph (1)(b);
- (b) if applicable, the terms of the will limiting the grant to the property to be covered by the grant;
- (c) that the applicant will collect, get in and administer according to law the real and personal estate of the deceased limited in any way as the court may direct.

How to apply for a grant *durante absentia*

53. (1) An application for an order for a grant *durante absentia* may be made to the court, and shall be supported by evidence on affidavit stating—

- (a) details of the date and place of death of the deceased;

- (b) that the person to whom the grant was made is to the knowledge and information of the applicant residing out of the jurisdiction of the court and has to date failed or neglected to administer the deceased's estate;
 - (c) that a notice in writing of the intended application was posted, if that is the case, to the postal address of the grantee and that such grantee has failed or neglected to reply, or advertised in a newspaper of general circulation in the state;
 - (d) if applicable, that notice in writing of the application was sent to the person or persons having a prior entitlement to the grant; and
 - (e) that the applicant is entitled to apply for the grant, and if the applicant is a creditor, particulars and evidence of the deceased's indebtedness.
- (2) If a person seeks a grant *durante absentia*, he or she shall upon obtaining an order pursuant to paragraph (1), file at the registry the usual papers for a grant of letters of administration, under rule 9 or under rule 13, as the case may be, including—
 - (a) the grant; and
 - (b) a copy of the order made under paragraph (1).
- (3) The oath shall include the following recitals—
 - (a) details of the order made under paragraph (1); and
 - (b) that the applicant will collect, get in and administer, according to law, the real and personal estate of the deceased limited until the original grantee shall return to the jurisdiction of the High Court or in such other way as the court may direct.

How to apply for leave to swear death grant

54. (1) Subject to paragraph (4), in the case of St. Vincent and The Grenadines, an application for an order for leave to swear death shall be made to the court and shall be supported by evidence on affidavit—

- (a) giving details of any policies of insurance effected on the life of the presumed deceased; and
 - (b) the grounds for supposing the presumed deceased to be dead.
- (2) An order granting leave to swear death shall specify that on an application for the grant of the deceased's estate, that death may be sworn to have occurred on or since the date specified therein, being the date that the presumed deceased was last seen alive.

(3) A person who seeks leave to swear death grant shall upon obtaining an order pursuant to paragraph (1) file at the registry the usual papers for a grant of probate under rule 8 or a grant of letters of administration under rule 9 or under rule 13, as appropriate, except that the oath shall include the following recitals—

- (a) that the deceased died on or since the date set out in the order;
 - (b) that the applicant is unable to depose to the place of death if that is the case; and

(c) particulars of the order of the court made under paragraph (2).

(4) In the case of disaster-related deaths for St. Vincent & The Grenadines, under section 32 of the Registration of Births and Deaths Act, Cap. 242, Revised Laws of St. Vincent & The Grenadines, no order is required for leave to swear death provided that the court issues a death certificate under that section.

Second and subsequent grants

55. The following constitute second or subsequent grants of an estate—

- (a) a grant *de bonis non administratus*;
- (b) a cessate grant; and
- (c) a double probate grant.

How to apply for a grant *de bonis non administratus*

56. (1) An application for a grant *de bonis non administratus* is made following a grant of letters of administration to the person or persons entitled thereto but who for some reason fail to complete the administration of the estate in respect of which the grant was made.

(2) Subject to subrule (4), a person who seeks a grant *de bonis non administratus* shall file at the registry the usual papers for a grant of letters of administration under rule 9 or rule 13, as the case may be, including—

- (a) the original grant or if the original grant is not available, a filed copy of the grant;
- (b) a filed copy of the original will marked by the second grantee and the person before whom the oath is sworn; and
- (c) a declaration and account of the estate limited to a description and value of the property to be administered by the second grantee in accordance with Form P6 and in the case of the Territory of the Virgin Islands Form P6A;

(3) The oath shall include the following recitals—

- (a) if the deceased died testate, the appointment of the executor, if any, and the producing and marking of an official copy of the testator's will by the second grantee and authorised person, and the belief of the second grantee that it is a true copy of the original will of the deceased testator;
- (b) a description of the applicant and his or her entitlement to the grant;
- (c) if there are other persons with a prior right to the grant, including an executor by representation, the appropriate clearing off;
- (d) the reason or reasons for the failure of the original grantee to complete the administration of the estate;
- (e) if there is no estate left to be administered but a grant is nevertheless required for the purposes of constituting a personal representative, the reason for the application;

- (f) that the second grantee will collect, get in and administer, according to law, the unadministered real and personal estate of the deceased;
 - (g) the gross value of the unadministered estate to be covered by the grant; and
 - (h) if there are assets left to be administered that the original grantee failed to complete the administration of the estate.
- (4) If an application is made for a grant *de bonis non administratus*—
 - (a) if the deceased died testate, an affidavit of due execution is not required to be filed with the application; and
 - (b) the death certificate of the deceased in respect of whose estate the application is made is not required to be filed.

How to apply for a cessate grant

57. (1) An application for a cessate grant is made in circumstances if a previous grant has ceased to be effective.

(2) Subject to paragraph (4), a person who seeks a cessate grant shall file at the registry the usual papers for a grant of probate under rule 8 or a grant of letters of administration under rule 9 or rule 13, as the case may be, including—

- (a) the original grant or if the original grant is not available, a filed copy of the grant;
 - (b) an official copy of the original will marked by the second grantee and the person before whom the oath is sworn; and
 - (c) a declaration and account of the estate limited to a description and value of the property to be administered by the second grantee set out in Form P6 and in the case of the Territory of the Virgin Islands set out in Form P6A.
- (3)** The oath shall include the following recitals—
 - (a) a description of the second grantee and his or her entitlement to the grant;
 - (b) details of the former grant, that is, to whom it was made and its place and date of issue;
 - (c) if the deceased died testate, the producing and marking by the second grantee, of an official copy of the last will and testament of the deceased;
 - (d) the circumstances relevant to the ceasing to operate of the former grant;
 - (e) that the second grantee will collect, get in and administer according to law the real and personal estate of the deceased; and
 - (f) the gross value of the unadministered estate to be covered by the grant.
- (4)** If an application is made for a cessate grant—

- (a) if the deceased died testate, an affidavit of due execution is not required to be filed with the application; and
- (b) the death certificate of the deceased in respect of whose estate the application is made is not required to be filed.

How to apply for a double probate grant

58. (1) Subject to paragraph (3), an executor with power reserved who seeks a double probate grant shall file at the registry the usual papers for a grant of probate under rule 8 including—

- (a) a filed copy of the original grant;
 - (b) an official copy of the original will marked by the executor to whom power was reserved and an authorised officer; and
 - (c) a copy of the original Declaration and Account of the Estate in Form P6 and in the case of the Territory of the Virgin Islands Form P6A.
- (2)** The oath shall include the following recitals—
- (a) details of the grant of probate to one or some of the executors; and
 - (b) the belief of the executor that the filed copy of the will, which is now produced to and marked by him or her, is an official copy.
- (3)** If an application is made for a double probate grant—
- (a) an affidavit of due execution is not required to be filed with the application; and
 - (b) the death certificate of the deceased in respect of whose estate the application is made is not required to be filed.

Duty of the court on receiving an application for a grant of probate or letters of administration

59. (1) A grant of probate or letters of administration shall not be made until the application has been published for two successive weeks in a newspaper circulating in the relevant Member State, and thereafter, not until the expiration of a further seven days from the date of the last publication, unless the court otherwise directs.

(2) The court shall not issue a grant until all inquiries which it may see fit to make have been satisfactorily answered.

(3) The court may require the person applying for a grant to issue a witness summons to any person who may be able to assist the court carrying out its duty under paragraph (2).

(4) If an affidavit of due execution is not available from one of the attesting witnesses as required by rule 17, the court may require notice of the application to be given to any person who may be prejudiced by the grant.

(5) Except in the case of a notarial will, if the court after considering the evidence, is satisfied that a will was not duly executed, it shall refuse a grant of probate and mark the will accordingly.

Action after grant is made

60. (1) Immediately upon the grant of probate or letters of administration with will annexed the court shall—

- (a) record the will and any codicil in the registry; and
 - (b) transmit the original will and any codicil to the registry.
- (2)** The court shall—
- (a) maintain a register and record all grants of probate and letters of administration which it has issued;
 - (b) allow public inspection of the register at all reasonable hours; and
 - (c) permit the taking of copies on payment of the prescribed fee.

Entry, duration and renewal of caveat

61. (1) A person who wishes to show cause against the sealing of a grant may enter a caveat in Form P20 at the registry, giving an address for service¹⁸ and the court shall not allow any grant to be sealed (other than an emergency grant) if it has knowledge of an effective caveat provided that—

- (a) no caveat shall prevent the sealing of a grant on the day on which the caveat is entered; and
- (b) the sealing of the grant was first in time.

(2) The court shall maintain a register of caveats and a search of the index shall be made whenever an application for a grant is made.

(3) A caveat remains in force for six months only.

(4) A caveat—

- (a) may be renewed for a further period of six months by filing a written request at the registry for an extension and the caveat shall, subject to rule 63, be effective for an additional period of six months from the date on which it was due to expire except that any application for renewal shall be made prior to the expiry of the six-month period; and
- (b) which has been extended may be further extended by the filing of a further request in writing for an extension, subject to the same conditions as set out in paragraph (a).

Warning to caveat

62. (1) A person claiming to have an interest in the estate may cause to be issued to the caveator a warning in Form P21 which shall—

- (a) state his or her interest in the estate;

¹⁸In Saint Lucia, Articles 1027(1) and 1029(3)(b), Code of Civil Procedure, Ch. 243, Part 6th, St. Lucia Revised Ordinances, 1957 which require an address within one mile of the Registry shall not apply.

- (b) if, claiming under a will or a codicil, state the date of that will or codicil; and
- (c) require the caveator to file an acknowledgment of service and give particulars of any contrary interest in the estate, whether under a will or on an intestacy.

(2) A caveator having an interest contrary to that of the person warning, may within fourteen days of service of the warning, inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under rule 63(3), file an acknowledgement of service in Form P22 and the caveator shall serve immediately on the person warning, a copy of Form P22 sealed with the seal of the court.

(3) A caveator having no interest contrary to that of the person warning, but who wishes to show cause against the sealing of a grant to that person, may within fourteen days of service of the warning upon him or her, inclusive of the day of service, or any time thereafter if no affidavit has been filed under rule 63(3), issue and serve a notice of application for directions in Form P2.

Expiry of caveat

63. (1) On the hearing of an application for directions, under rule 62(3), the court may give a direction for the caveat to cease to have effect, but any caveat in force when the application for directions is issued shall remain in force until the application has been disposed of unless a direction has been given under rule 62(3).

(2) A caveator who has not filed an acknowledgment of service to a warning may at any time withdraw his or her caveat by giving notice to the registry and the caveat shall cease to have effect, and notice of the withdrawal shall be given by the caveator to the person warning the caveat.

(3) If no acknowledgment of service is filed by the caveator or no notice of application for directions has been issued by him or her under rule 62(3), the person warning may at any time after fourteen days of service of the warning upon the caveator, inclusive of the day of service, file an affidavit as to such service and the caveat shall thereupon cease to have effect provided that there is no pending application for directions under rule 62(3).

(4) Unless the court otherwise by order directs, a caveat in respect of which an acknowledgment of service has been filed, shall remain in force until the commencement of a probate action.

(5) Except with leave of the court, no further caveat may be entered by or on behalf of any caveator whose caveat is either in force or has ceased to have effect under paragraph (1) or (3) or under rule 64(2) or 65(11).

Probate Actions

64. (1) If a probate action is commenced—

- (a) the claimant shall give notice of the claim—
 - (i) to every caveator, other than the claimant in that claim whose caveat remains in force; and

- (ii) to any subsequent caveator;
 - (b) the cost of filing a caveat and warning that caveat are costs in the claim; and
 - (c) no grant of probate may be sealed until an application is made by a person shown to be entitled by the decision of the court in that claim unless the court by order made on application otherwise directs.
- (2) Upon an application for a grant of probate being made by the person shown to be entitled by the decision of the court in the claim, any caveat—
- (a) entered by the claimant; or
 - (b) in respect of which notice of the claim has been given under paragraph (a),
- shall cease to have effect.

(Revised in 2019 Law Revision)

Citations

65. (1) Before issuing a citation, the citor shall enter a caveat.
- (2) Every averment in a citation shall be verified by an affidavit sworn by the citor provided that the court may in special circumstances accept an affidavit sworn by the citor's attorney.
- (3) The citation shall be settled by the court before being issued.
- (4) Every citation shall be served personally on the citee unless the court directs some other form of service.
- (5) If the court directs some other mode of service an application for service of the citation need not be on notice, but shall be supported by evidence on affidavit.
- (6) A citation against all persons in general is served by the insertion of the citation in a newspaper circulating in the relevant Member State.
- (7) The citor shall lodge with the citation every will referred to in the citation unless—
- (a) it is not in the citor's possession; and
 - (b) the court is satisfied that it is impractical for it to be lodged.
- (8) A citee shall file at the registry an acknowledgment of service in Form P22 and shall serve a copy of the acknowledgment of service on the citor.
- (9) An acknowledgment of service shall be filed and served within fourteen days from the date of service or publication of the citation.
- (10) A caveat in force at the commencement of citation proceedings remains in force until an application for a grant is made by the person shown to be entitled by the decision of the court in such proceedings unless—
- (a) it is withdrawn in accordance with rule 64(2); or
 - (b) following an application on notice the court otherwise orders.

(11) Upon an application being made under paragraph (10) a caveat entered by a person who had notice of the proceedings ceases to have effect.

Citation to accept or refuse or to take a grant

66. (1) A person who would be entitled to a grant in the event of the citee renouncing his or her rights to a grant may issue a citation to accept or refuse a grant in Form P23 or Form P24, as the case may be.

(2) If power to make a grant to an executor has been reserved, a citation in Form P25, calling on him or her to accept or refuse a grant may be issued by—

- (a) the executors who have proved the will;
- (b) the survivor of such executors; or
- (c) the executors of the last surviving executor who has proved the will.

(3) If an executor has started to administer the estate of the deceased prior to obtaining probate, a citation in Form P26 calling on him or her to show cause why he or she should not be ordered to take a grant may be issued by any person interested in the estate.

(4) A citation under paragraph (3) may not be issued—

- (a) until six months have expired from the death of the deceased; or
- (b) while any proceedings as to the validity of the will are pending.

(5) A person served with a citation shall file an acknowledgment of service in Form P22 and shall serve a copy of such acknowledgment on the citor.

(6) The time for filing and serving an acknowledgment of service is twenty-eight days after service of the citation.

(7) After filing an acknowledgment of service, a citee may apply to the court for an order for a grant to himself or herself.

(8) An application under paragraph (7) may be made without notice, but must be supported by affidavit evidence.

Acknowledgment of citation to accept or refuse or take a grant, then default

67. (1) If a person makes a citation under rule 66(1) and the citee has filed an acknowledgment of service but—

- (a) has not applied for a grant under rule 66(7); or
- (b) has failed to proceed with his or her application with reasonable diligence,

the citor may apply to the court on notice to the citee for a grant to himself or herself.

(2) If the person makes a citation under rule 66(2) and the citee has filed an acknowledgment of service but—

- (a) has not applied for a grant under rule 66(7); or

- (b) has failed to proceed with his or her application with reasonable diligence,

the citor may apply to the court on notice to the citee for an order striking out the acknowledgment of service and that a note be made on the grant that—

- (i) the executor in respect of whom power was reserved has been duly cited;
- (ii) that executor has not filed an acknowledgment of service; and
- (iii) his or her rights in respect of the executorship have wholly ceased.

(3) If the person makes a citation under rule 66(3) and the citee has filed an acknowledgment of service but—

- (a) has not applied for a grant under rule 66(7); or
- (b) has failed to proceed with his or her application with reasonable diligence,

the citor may apply to the court on notice to the citee for an order requiring the citee to take a grant within a specified time or for a grant to the citee or to some other person specified in the application.

Default of acknowledgment of service of citation to accept or refuse or take a grant

68. If no acknowledgment of service has been filed in accordance with rule 66(5), the citor may—

- (a) in the case of a citation under rule 66(1) apply to the court for a grant to himself or herself;
- (b) in the case of a citation under rule 66(2) apply to the court for an order that a note be made on the grant that—
 - (i) the executor in respect of whom power was reserved has been duly cited;
 - (ii) the executor has not filed an acknowledgment of service; and
 - (iii) his or her rights in respect of the executorship have wholly ceased; and
- (c) in the case of a citation under rule 66(3), apply to the court on notice for an order requiring the person cited to take a grant within a specified time or for a grant to the person cited or to some other person specified in the application.

Citation to propound a will

69. (1) A citation to propound a will in Form P27 may be issued at the request of any person having an interest contrary to that will.

(2) The citation shall be directed to and served on the executors named in the will and to all persons interested under the will.

(3) A person served with a citation shall file an acknowledgment of service in Form P22 and shall serve a copy of such acknowledgment on the citor.

(4) The time for filing and serving an acknowledgment of service is fourteen days from service of the citation.

Acknowledgment of service of citation to propound a will, then default

70. If the citee has filed an acknowledgment of service but has failed to propound the will with reasonable diligence, the citor may apply to the court on notice to every person cited who has acknowledged service for an order for a grant as if the will were invalid.

Default of acknowledgment of service of citation to propound a will

71. If—

(a) no acknowledgment of service has been filed in accordance with rule 69(3); and

(b) the time limited for service under rule 69(4) has expired,

the citor may apply to the court for an order for a grant of probate as if the will were invalid.

Affidavit of service to citation

72. Any application under rule 66 and under rule 69 shall be supported by an affidavit showing due service of the citation on each person who has not acknowledged service.

Application for an order to attend for examination or for summons to bring in will

73. (1) An application requiring a person to attend for examination may be made to the court on notice to such person.

(2) An application for a witness summons to bring in the will may be made without notice but shall be supported by evidence on affidavit setting out the grounds of the application.

(3) The witness summons shall be in Form P28.

(4) A person served with a witness summons, who denies that the will is in his or her possession or control, may file an affidavit to that effect.

Fees

74. The fees payable in the High Court in respect of non-contentious probate proceedings and administration of estates proceedings filed under these Rules shall be in accordance with the fees specified in Schedule 4 of the Eastern Caribbean Supreme Court (Court Proceedings Fees) Rules, 2017.

SCHEDULE

(Rule 4)

FORM P1: APPLICATION FOR GRANT

(Rules 7(1), 8(1)(a), 9(1)(a) and 13(1)(a))

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased

Application is hereby made to the Registrar by
(full names of applicant) of *(address)* *(occupation)* in *(state/territory)* -

- (a) For a Grant of Probate of the Will of the above named deceased who died on the day of _____, 19__ or 20__ without revoking a will bearing the date of _____ day of 19/20 wherein the applicant(s) is/are named sole executor/executors.

OR

- (b) For a Grant of Letters of Administration with the Will Annexed of the above named deceased who died on the _____ day of _____, 19__ or 20__ without revoking a will bearing the date of _____ day of _____, 19__ or 20__ wherein the applicant is *(show applicant's entitlement to grant)*.

OR

- (c) For a Grant of Letters of Administration to the applicant who is *(state capacity of applicant)* of the deceased, the deceased having died intestate on the _____ day of 19__ or 20__.

Dated this _____ day of _____ 20__.

Filed by _____ Attorney-at-Law/Propounder/Administrator

The Registry is at *(address)*, telephone number _____, fax _____.
The office is open between 8:00 a.m. and 3:30 p.m. Monday to Friday, except Public Holidays.

FORM P2: NOTICE OF APPLICATION

(Rules 7(1) and 62(3))

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased.

TAKE NOTICE that I/we intend to apply to the (registrar)(judge) at the High Court,
(address) on the day of , 20 , at a.m./p.m.
for –

- (a) Directions
- (b) An order that *(set out terms of order sought)*

The grounds of this application are –
(set out grounds of application)

A draft of the order sought is attached.

AND FURTHER TAKE NOTICE that if you do not attend at the time and place stated above
the court may make such order as it thinks fit in your absence.

Dated

Signed

Attorney-at-Law/Propounder/Administrator

The applicant's address for service is:

The Registry is at *(address)*, telephone number , fax .
The office is open between 8:00 a.m. and 3:30 p.m. Monday to Friday, except Public Holidays.

FORM P3: OATH OF EXECUTORS

(Rule 8(1)(c))

The Eastern Caribbean Supreme Court IN THE HIGH COURT OF JUSTICE

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased.

I/We

1. *(full names of executor)* of *(address)* *(occupation)*
2. *(full names of executor)* of *(address)* *(occupation)*
3. *(full names of executor)* of *(address)* *(occupation)* make oath and say [do solemnly and sincerely affirm] that -

(1) I/We believe the annexed paper writing marked “A” to contain the true and original last Will and Testament [and codicil] of the deceased *(name of deceased)* who died on day of _____, 19__ or 20__ at *(address)* domiciled in *(state/territory)*

(2) The annexed document marked “B” is a certified copy of the death certificate of the deceased.

(3) I am/We are the executor(s) [one/some of the executors] therein named.

(4) Notice was given to the executors to whom power has been reserved namely *(names)* on _____ day of _____, 19__ or 20__.

(5) The [certified copy of the death certificate of] [renunciation of probate made by] *(name of executor who has died or renounced probate)* is annexed and marked “C”.

(6) I/We will faithfully collect, get in and administer according to law all the real and personal estate of the deceased.

(7) I/We will render a just and true account of my/our executorship whenever required by law to do so.

(8) To the best of my/our knowledge, information and belief, the said estate amounts in gross value to the sum of (\$ amount/ \$ valuation range) and no more.

(9) The annexed document marked “D” is a true Declaration and Account of the Estate of the deceased.

Sworn/Affirmed at
on the day
of 20
Before me,

(signed)

Commissioner for Oaths/Notary Public/Notary Royal

Filed by: Attorneys-at-Law/Propounder whose address for
service is

FORM P4: OATH OF ADMINISTRATORS WITH THE WILL ANNEXED

(Rule 9(1)(c))

**The Eastern Caribbean Supreme Court
IN THE HIGH COURT OF JUSTICE**

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased.

I/We

1. *(full names of administrator)* of *(address)* *(occupation)*
2. *(full names of administrator)* of *(address)* *(occupation)*
3. *(full names of administrator)* of *(address)* *(occupation)* make oath and say [do solemnly and sincerely affirm] that -

(1) I/We believe the annexed paper writing marked “A” to contain the true and original last Will and Testament [and codicil] of the deceased *(name of deceased)* who died on day , 19_ or 20_ at *(address)* domiciled in *(state/territory)*.

(2) The annexed document marked “B” is a certified copy of the death certificate of the deceased.

(3) There is [a] [no] minority and [a] [no] life interest in the estate of the deceased.

(4) The executor(s) named in the will [died without having taken probate of the will and the certified copy of his/her/their death certificates are] [renounced probate of the will and a certified copy of the renunciation is] annexed and marked “C”.*

(5) I am/We are the *(show entitlement to grant, e.g. the residuary legatees and devisees named in the will)* of the deceased and, to the best of my/our knowledge information and belief, there is no other person entitled in priority to a grant of letters of administration with the will annexed.

(6) I/We will faithfully collect, get in and administer according to law all the real and personal estate of the deceased.

(7) I/We will render a just and true account of my/our administration whenever required by law to do so.

(8) To the best of my/our knowledge, information and belief, the said estate amounts in gross value to the sum of (\$ amount/\$valuation range) and no more.

(9) The annexed document marked “D” is a true Declaration and Account of the Estate of the deceased.

Sworn/Affirmed at
on the day
of 20
Before me,

(signed)

Commissioner for Oaths/ Notary Public / Notary Royal

Filed by
address for service is []

Attorney-at-Law / Administrator whose

**Where the executor has been cleared off by citation to accept or refuse a grant, the following paragraphs should be substituted for paragraph (4) and the succeeding paragraphs sequentially renumbered –*

(4) (full names of executor), the executor named in the will, has been duly cited to accept or refuse a grant of probate of the estate of the deceased.

(5) In default of acknowledgment of service of (name of executor) to the citation, it was ordered by Mr. Registrar (name) on the day of 20 , that letters of administration with will annexed of the deceased's estate be granted to me/us and a certified copy of the said Order is annexed and marked "C".

Where the executor has been cleared off by citation to take probate, the following paragraphs should be substituted for paragraph (4) and the succeeding paragraphs sequentially renumbered)-

(4) (full names of executor) named in the will has been duly cited to take a grant of probate of the estate of the deceased.

(5) In default of acknowledgment of service of (name of executor) to the citation, it was ordered by Mr. Registrar (name) on the day of 20 , that letters of administration with will annexed of the deceased's estate be granted to me/us and a certified copy of the said Order is annexed and marked "C".

FORM P5: OATH OF ADMINISTRATORS

(Rule 13(1)(c))

**The Eastern Caribbean Supreme Court
IN THE HIGH COURT OF JUSTICE**

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased.

I/We

(full names of administrator) of *(address)* *(occupation)*

(full names of administrator) of *(address)* *(occupation)*

(full names of administrator) of *(address)* *(occupation)* make oath and say [do solemnly and sincerely affirm] that -

- (1) *(full name of deceased)*, late of *(address)*, deceased died intestate on the day of 20 , domiciled in *(state/territory)* a *(state status of deceased, e.g. spinster, widower and where necessary, account for any class entitled in priority to the applicant(s), .e.g. "without issue or parent".)*
- (2) The annexed document marked A" is a certified copy of the death certificate of the deceased.
- (3) There is [a] [no] minority and [a] [no] life interest in the estate of the deceased.
- (4) I am/We are the *(state relationship to deceased showing entitlement to grant)* of the deceased and to the best of my/our knowledge information and belief there is no other person entitled in priority to share in his or her estate by virtue of any enactment.
- (5) I/We will faithfully collect, get in and administer according to law the real and personal estate of the deceased.
- (6) I/We will render a just and true account of my/our administration whenever required by law to do so.
- (7) To the best of my/our knowledge, information and belief, the said estate amounts in gross value to the sum of *(\$ amount/ \$valuation range)* and no more.
- (8) The annexed document marked "D" is a true Declaration and Account of the Estate of the deceased

Sworn/Affirmed at

on the day
of 20
Before me,

(signed)

Commissioner for Oaths/ Notary Public/ Notary Royal

Filed by
whose address for service is

Attorney-at-Law / Administrator

FORM P6: DECLARATION AND ACCOUNT OF ESTATE

(Rules 8(1)(g), 9(1)(g), 13(1)(e), 30(3)(f), 52(4)(a), 56(2)(c), 57(2)(c) and 58(1)(c))

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased.

A true Declaration and Account of all the Estate which by Law devolves to and vests in the personal representative(s) of *(full names of deceased)* who died on the day of 19_ or 20_ at *(state/territory)* which has since his or her death come into the hands possession or knowledge of the personal representative(s) of *(name of deceased)* made and exhibited upon by virtue of the oath of the same *(full name(s) of personal representative(s))*.

Description of Property	Value
Cash in hand	
Cash in bank (name of bank or banks and amount in each)	
Shares <i>(name of company or companies and number in each)</i>	
Household goods, furniture, plate, linen, china, jewellery, etc.	
Policies of Insurance <i>(name of company or companies and amount in each)</i>	
Land at (SEE VALUATION(S) ATTACHED)	
Other Personal property not comprised under foregoing heads <i>(description)</i>	
Deduction, namely:	
(a) Funeral expenses	\$
(b) Bona fide debts	\$
Total Value	\$

This Declarant further declares that no Estate devolving to or vesting as aforesaid in the personal representative(s) of the deceased has at any time since his or her death come into the hands, possession or knowledge of this/these Declarant(s), save as herein before set forth.

On the day of 20 the said *(full name(s) of personal representative(s))* to the truth of the above Declaration at *(address)* was duly sworn/affirmed in *(state/territory)*

Before me,

.....

.....

Commissioner for Oaths/
Notary Public / Notary Royal

Declarant(s)

FORM P6A: DECLARATION AND ACCOUNT OF ESTATE

(Rules 8(1)(g), 9(1)(g), 13(1)(e), 30(3)(f), 52(4)(a), 56(2)(c), 57(2)(c) and 58(1)(c))

The Eastern Caribbean Supreme Court**IN THE HIGH COURT OF JUSTICE**

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased.

A true Declaration and Account of all the Estate which by Law devolves to and vests in the personal representative(s) of *(full names of deceased)* who died on the day of 20 at *(state/territory)* which has since his or her death come into the hands possession or knowledge of the personal representative(s) of *(name of deceased)* made and exhibited upon by virtue of the oath of the same *(full name(s) of personal representative(s))*.

- (a) Below \$50,000
- (b) \$50,001 - \$250,000
- (c) \$250,001 - \$500,000
- (d) \$500,001 - \$1,000,000
- (e) \$1,000,001 - \$5,000,000
- (f) Over \$5,000,000

This Declarant further declares that no Estate devolving to or vesting as aforesaid in the personal representative(s) of the deceased has at any time since his or her death come into the hands, possession or knowledge of this/these Declarant(s), save as herein before set forth.

On the day of 20 the said *(full name(s) of personal representative(s))* to the truth of the above Declaration at *(address)* was duly sworn/affirmed in *(state/territory)*

Before me,

.....
Commissioner for Oaths/
Notary Public/Notary Royal

.....
Declarant(s)

FORM P7: ADVERTISEMENT OF APPLICATION FOR GRANT

(Rule 15)

**The Eastern Caribbean Supreme Court
IN THE HIGH COURT OF JUSTICE**

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased

TAKE NOTICE that an application has been filed by *[Name]*
of *[address]* for a Grant of

- (a) Probate of the Will of the above named deceased who died on the day of
19_ or 20_ without revoking a will bearing the date of day of 20
wherein the applicant(s) is/are named sole executor/executors.

OR

- (b) Letters of Administration with the Will Annexed of the above named
deceased who died on the day of , 19_ or 20_ without revoking
a will bearing the date of day of , 19_ or 20_ wherein the
applicant is *(show applicant's entitlement to grant)*.

OR

- (c) Letters of Administration to the applicant who is *(state capacity of applicant)*
of the deceased, the deceased having died intestate on the day of
19_ or 20_.

Any person having an objection to the grant of Probate /Letters of Administration to
the application shall file an objection within 14 days of the publication of this Notice.

Dated this day of 20 .

Filed by
for service is

Attorney-at Law/Propounder/Administrator whose address

[FIRST / SECOND PUBLICATION]

FORM P8: AFFIDAVIT OF DUE EXECUTION

(Rule 17(2)(a)(i))

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased.

I *(full names of attesting witness)* of *(address)* make oath and say [do solemnly and sincerely affirm] that –

(1) I am one of the attesting witnesses to the [last Will and Testament] [and codicil] of the deceased, *(full names)* deceased. The said [will] [codicil] is hereto exhibited and marked “A”.

(2) The deceased executed the said [will] [codicil] on the day of the date thereof by [signing his or her name (at the foot or end thereof) (in the attestation clause thereof) as it now appears]

OR

[acknowledging his or her signature by referring to it and pointing to it at the foot or the end of it as it now appears *(or state other position)*]

OR

[by making his or her mark at the foot or at the end of it as now appears *(or state other position)*]

OR

By *(name of subscribing witness)* signing the testator’s name [or his or her own name] at the foot or end thereof as it now appears,

meaning and intending the same to be his or her final signature of the [will] [codicil] in the presence of *(name of other witness)* and me, both of us being present at the same time and we therefore attested and subscribed the said [will][codicil] in the presence of the deceased [and in the presence of each other].*

Sworn/Affirmed at
on the day
of 20
Before me,

(signed)

Commissioner for Oaths

Filed by
whose address for service is

Attorney-at-Law/Propounder

**This additional recital must be included in the case of St. Lucia*

FORM P9: AFFIDAVIT AS TO HANDWRITING*(Rule 17(2)(b)(i))***The Eastern Caribbean Supreme Court****IN THE HIGH COURT OF JUSTICE***[State/Territory]*

In the Estate of *(full names)* late of *(address)*, deceased.

I *(full names)* of *(address)* *(occupation)* make oath and say [do solemnly and sincerely affirm] that –

- (1) I knew and was well acquainted with the deceased *(full names)* late of *(address)*, deceased who died on the day of 20 , for *(state period)* prior to his or her death.
- (2) During the period I have frequently seen him or her write and also sign his or her name so that I am well acquainted with the manner and character of his or her handwriting and signature.
- (3) I have carefully perused and inspected the paper writing produced to me marked “A”, purporting to be and contain the [last Will and Testament] [codicil] of the said deceased dated the day of , 19_ or 20_.
- (4) I verily believe the signature (set out mode of signature) to the said [will] [codicil] to be the true and proper handwriting and signature of the said deceased.

Sworn/Affirmed
on the day
of 20
Before me,

(signed)

Commissioner for Oaths

Filed by
is

Attorneys-at-Law/Propounder whose address for service

FORM P10: MARKING OF WILL

(Rule 18(1)(a))

(a) Executor or Administrator's Oath

“A”

This is the paper writing referred to in the Oath of *(full names of executor(s)/administrator(s))* [sworn] [affirmed] the day of _____ 20 as containing the true and original last Will and Testament [and codicil] of *(names of deceased)* late of *(address)* *(occupation of deceased)* bearing date the _____ day of _____, 19__ or 20__ and marked “A” for identification.

Signed: (executor(s)/administrator(s)) Signed: Notary Royal /Notary Public
/Commissioner for Oaths

(b) Affidavit by attesting witness etc.

“A”

This is the paper writing referred to in the [affidavit] [affirmation] of *(full names of executor(s) or attesting witness)* [sworn] [affirmed] the day of _____ 20 as containing the true and original last Will and Testament [and codicil] of *(name of deceased)* late of *(address)* *(occupation of deceased)* bearing date the _____ day of _____, 19__ or 20__ and marked “A” for identification.

Signed (deponent)

Signed
Notary Royal /Notary Public /Commissioner for
Oaths

FORM P11: AFFIDAVIT OF PLIGHT AND CONDITION AND FINDING*(Rule 22(3))***The Eastern Caribbean Supreme Court****IN THE HIGH COURT OF JUSTICE****(Probate)***[State/Territory]*In the Estate of *(full names)* late of *(address)*, deceased.I *(full names of executor/administrator)* of *(address)*, make oath and say [do solemnly and sincerely affirm] that -

- (1) I am the/one of the *(state whether executor(s)/administrator(s))* of the estate of *(full names)*, late of *(address)*, deceased.
- (2) The annexed paper writing marked “A” to the best of my information and belief contains the [last Will and Testament] [and codicil] of *(name of deceased)* late of *(address)* deceased, the said Will being dated the day of 19_ or 20_.
- (3) I have viewed and perused the said [will] [and codicil] and particularly observed *[here recite the various obliterations, interlineations, erasures, and alterations (if any), or describe the plight and condition of the will, or any other matters requiring to be accounted for, and set forth the finding of the will in its present state, and, if possible, trace the will from the possession of the deceased in his or her lifetime up to the time of making the affidavit].*
- (4) The [will] [and codicil] is now in all respects in the same state, plight and condition as when found [or as the case may be] by me as stated above.

Sworn/Affirmed at
on the day
of 20
Before me,

(signed)

Commissioner for Oaths/Notary Public / Notary Royal

Filed by
address for service is

Attorney-at-Law / Propounder / Administrator whose

FORM P12: RENUNCIATION OF PROBATE

(Rule 23(1))

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased.

WHEREAS *(full names)*, late of *(address)*, deceased, died on the day of ,
19_ or 20_ and,

WHEREAS by his or her last Will and Testament [and codicil] dated the day of
19_ or 20_ he appointed me/us *(full names of appointed executor(s))* of *(address)*
executor(s) [and residuary legatee(s) and devisee(s)]*

NOW I/We hereby DECLARE that I/We:

- (a) have not intermeddled in the estate of the said deceased; and
- (b) will not hereafter do so with intent to defraud creditors;

and I/We hereby renounce all my/our right and title to the probate and execution of the
said will [and to letters of administration with the said will annexed of the estate of the
said deceased].*

IN WITNESS WHEREOF I/We have set my/our hand(s) and seal(s) this day of
20 .

Signed, sealed and delivered
by the said *(full names)*
in the presence of

(signed)

(witness)

Filed by Attorney-at-Law/Propounder whose address for service is

**These words must be included in the form where the executor is also entitled in a
lower character under rule 23(2) and has to be cleared off in that character by the
applicant for the grant.*

**FORM P13: RENUNCIATION OF ADMINISTRATION WITH WILL
ANNEXED***(Rule 23(3))***The Eastern Caribbean Supreme Court****IN THE HIGH COURT OF JUSTICE***[State/Territory]*

In the Estate of *(full names)* late of *(address)*, deceased.

WHEREAS *(full name)* late of *(address)*, deceased, died on the day of ,
19_ or 20_ , and

WHEREAS by his or her last Will and Testament [and codicil] dated the day of
19_ or 20_ he appointed me/us *(full names)* as residuary legatee(s) and devisee(s) *(or
as the case may be)*.

NOW I/We the said *(full names)* of *(address)* hereby DECLARE that I/We hereby
renounce all my/our right and title to a grant of letters of administration with the will
annexed of the estate of the deceased.

IN WITNESS WHEREOF I/We have set my/our hand(s) and seal(s) this day of
20 .

Signed, sealed and delivered
by the said *(full names)*
in the presence of

*(signed)**(witness)*

Filed by
is

Attorney-at-Law/Administrator whose address for service

FORM P14: RENUNCIATION OF ADMINISTRATION

(Rule 23(3))

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased.

WHEREAS *(full names)* late of *(address)*, deceased, died on the day of 20
intestate, and

WHEREAS I/We *(full names of renunciant(s))* of *(address)* am/are *(state relationship to the deceased and capacity in which entitled to administration)* of the deceased,

NOW I/We hereby renounce all my/our right and title to a grant of letters of
administration of the estate of the said deceased,

IN WITNESS WHEREOF I/We have set my/our hand(s) and seal(s) this day of
20 .

Signed, sealed and delivered
by the said *(full names)*
in the presence of
(witness)

(signed)

Filed by
is

Attorney-at-Law/Administrator whose address for service

FORM P15: NOTICE OF INTENTION TO MAKE APPLICATION FOR GRANT

(Rule 25(3))

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

(Probate)

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased

Notice is given that after the expiration of 14 days application will be made to the Registrar of the Supreme Court for a Grant of

- (a) Probate of the Will of the above named deceased of *[address]* who died on the day of _____, 19__ or 20__ without revoking a will bearing the date of day of _____, 19__ or 20__ wherein the applicant(s) is/are named sole executor/executors.

OR

- (b) Letters of Administration with the Will Annexed of the above named deceased of *[address]* who died on the day of _____, 19__ or 20__ without revoking a will bearing the date of day of _____, 19__ or 20__ wherein the applicant is *(show applicant's entitlement to grant)*.

OR

- (c) Letters of Administration to the applicant who is *(state capacity of applicant)* of the deceased, of *[address]* having died intestate on the day of 19__ or 20__.

Dated this day of 20 .

Filed by
address for service is

Attorney-at Law/Propounder/Administrator whose

FORM P16: ADVERTISEMENT (RESEALING)

(Rule 30(2))

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

[State/Territory]

In the Estate of *(full names)* late of *address*), deceased.

Notice is given that after the expiration of 8 days application will be made to the Registrar of the Supreme Court for the resealing of the [probate] [grant of letters of administration of the estate] of *(full names of deceased)* late of *(address)* granted by the Court at *(address)* on the day of 20 .

Signed:

Attorney-at-Law for/Propounder/Administrator

FORM P17: APPLICATION TO RESEAL GRANT*(Rule 30(3)(a))***The Eastern Caribbean Supreme Court****IN THE HIGH COURT OF JUSTICE***[State/Territory]*

In the Estate of *(full names)* late of *(address)*, deceased.

I/We *(full names of applicant(s))* of *(address)* make oath and say [do solemnly and sincerely affirm] that –

- (1) A grant of probate of the last Will and Testament [grant of letters of administration of the estate] of *(full names of deceased)* late of *(address)*, deceased was granted to me *(or full names of executor(s) or administrator(s) where application made by agent)* by the Court at on the day of , 19_ or 20_.
- (2) A copy of the will to which the grant relates is annexed and marked “A”.
- (3) A certified copy of the said grant is annexed and marked “B”.
- (4) At the date of his or her death the deceased was domiciled in *(state place)*
- (5) The annexed notice marked “B” was inserted in the *(name of newspaper)* on the day of 20 .
- (6) [I am the agent lawfully appointed by the said *(full names of executor(s)/administrator(s))* and am authorised to apply to this Court to reseal the said grant]
- (7) To the best of my/our knowledge information and belief, the value of the estate amounts in value in the sum of *(\$ amount/\$valuation range)* and no more.

Sworn/Affirmed at
on the day
of , 20
Before me,

(signed)

Commissioner for Oaths/ Notary Public /Notary Royal /

Filed by Attorney-at-Law/Propounder/Administrator whose address for service is

**FORM P18: APPLICATION FOR AN ORDER FOR AMENDMENT OF A
GRANT**

(Rule 31(2) and (3))

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased

Application is hereby made to the Registrar by *(full names of applicant)* of *(address)*
(occupation) in *(state/territory)* for an order amending a grant issued on the day
of for

- (a) Probate of the Will of the above named deceased who died on the day of ,
19_ or 20_ without revoking a will bearing the date of day of , 19_
or 20_ wherein the applicant(s) is/are named sole executor/executors

OR

- (b) Letters of Administration with the Will Annexed of the above named deceased
who died on the day of , 19_ or 20_ without revoking a will
bearing the date of day of , 19_ or 20_ wherein the applicant
is *(show applicant's entitlement to grant)*

OR

- (c) Letters of Administration to the applicant who is *(state capacity of applicant)* of
the deceased, the deceased having died intestate on the day of , 19_
or 20_.

The nature of the application for amendment is -

Dated this day of 20 .

Filed by [] Attorney-at-Law/Propounder/Administrator whose address for service
is []

FORM P19: APPLICATION FOR REVOCATION OF A GRANT*(Rule 31(4))***The Eastern Caribbean Supreme Court****IN THE HIGH COURT OF JUSTICE***[State/Territory]*

In the Estate of *(full names)* late of *(address)*, deceased

Application is hereby made to the Registrar by *(full names of applicant)* of *(address)*
(occupation) in *(state/territory)* for revocation of a grant issued on the day of
for

- (a) Probate of the Will of the above named deceased who died on the day of
20 (without revoking a will bearing the date of) day of 20 wherein
the applicant(s) is/are named sole executor/executors

OR

- (b) Letters of Administration with the Will Annexed of the above named deceased
who died on the day of 20 (without revoking a will bearing the
date of) day of 20 wherein the applicant is *(show*
applicant's entitlement to grant)

OR

- (c) Letters of Administration to the applicant who is *(state capacity of applicant)* of
the deceased, the deceased having died intestate on the day of
20

Dated this day of 20 .

Filed by
whose address for service is

Attorneys-at Law/Propounder/Administrator

FORM P20: CAVEAT

*(Rule 61(1))**

**The Eastern Caribbean Supreme Court
IN THE HIGH COURT OF JUSTICE**

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased.

Let no grant be sealed in the Estate of *(full names)*, late of *(address)*, deceased who died on the day of , 19_ or 20_ without notice to *(name of person on whose behalf caveat entered)*.

Dated this day of 20 .

(Signed)

(to be signed by the caveator or his or her Attorney-at-Law)

whose address for service is

[Attorney-at-Law for the said *(name of caveator)*] [in person]

**In Saint Lucia, Articles 1027(1) and 1029(3)(b), Code of Civil Procedure, Ch. 243, Part 6th, St. Lucia Revised Ordinances, 1957 which require an address within one mile of the Registry shall not apply.*

FORM P21: WARNING TO CAVEATOR*(Rule 62(1))***The Eastern Caribbean Supreme Court****IN THE HIGH COURT OF JUSTICE***[State/Territory]*

In the Estate of *(full names)* late of *(address)*, deceased.

To *(full names of caveator)* of *(address)* a party who has entered a caveat in the estate of the above named deceased.

You have 14 days (starting on the day on which this warning was served on you)

- (a) to file an acknowledgment of service either in person or by your Attorney-at-law at the registry setting out what interest you have in the estate of the above-named deceased contrary to the party at whose instance this warning is issued; or
- (b) if you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a notice of application for directions by the registrar.

If you fail to do either of these, the court may proceed to issue a grant of probate or letters of administration in the said estate notwithstanding your caveat.

Dated the day of 19/ 20 .

Issued at the instance of

[here set out the name and interest (including the date of the will or codicil, if any, under which the interest arises) of the party warning, the name of his or her Attorney-at-law and the address for service, if the party warning is acting in person this must be stated.]

Registrar

The Registry is at *(address)* telephone number , fax

The office is open between 8:00 a.m. and 3:30 p.m. Monday to Friday, except Public Holidays.

FORM P22: ACKNOWLEDGMENT OF SERVICE

(Rules 62(2), 65(8), 66(5) and 69(3))

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

[State/Territory]

In the Estate of *(full names)*, late of *(address)* , deceased.

[Caveat no. _____ dated the _____ day of _____, 20____]

[Citation dated the day of 20]

Full names and address of person warning [or citor]

(here set out the interest of the person warning or citing as shown in the warning or citation)

Full names and address of caveator [or person cited]

(here set out the interest of the caveator or person cited, stating the date of the will (if any) under which such interest arises)

The above-named [caveator] [or person cited] acknowledges service of the [warning]
[citation] dated on the day of 20 .

(signed)

[Attorney-at-Law for the] [the caveator] [person cited] [in person]
whose address for service is

This acknowledgement of service must be filed at the registry and a copy served on the person warning or citor.

The Registry is at (address) telephone number _____, fax _____ The office is open between 8:00 a.m. and 3:30 p.m. Monday to Friday, except Public Holidays.

FORM P23: CITATION TO ACCEPT OR REFUSE PROBATE*(Rule 66(1))***The Eastern Caribbean Supreme Court****IN THE HIGH COURT OF JUSTICE***[State/Territory]*

In the Estate of *(full names)* late of *(address)*, deceased.

To *(full names of citee)*, of *(address)*

WHEREAS it appears by the [affidavit] [affirmation] of *(full names of citor)* [sworn] [affirmed] the day of 20, that *(full names of deceased)* of *(address)* died on the day of 19_ or 20_ domiciled in *(state/territory)*, having made and duly executed his or her last will and testament [and codicil] dated the day of 19_ or 20_, and thereof appointed you *(name of citee)*, executor, and

WHEREAS it appears by the said [affidavit] [affirmation] that *(name of citor)* is the *(state status of citor e.g. residuary legatee and devisee)*.

Now this is to command you *(name of citee)* that within 14 days after service hereof on you, inclusive of the day of such service, you file an acknowledgement of service in the registry and accept or refuse probate of the said will or show cause why letters of administration with will annexed of all the estate which by law devolves to and vests in the personal representative of the said deceased should not be granted to *(name of citor.)* And take notice that in default of your failing to acknowledge service of the citation and accepting and extracting probate of the will of the deceased, our Court will proceed to grant letters of administration with the will annexed of the estate to *(name of citor)*, your absence notwithstanding.

Dated at *(address)* this day of 20 .

Issued at the instance

of

Registrar

(name of citor)

The Registry is at *(address)* telephone number , fax The office is open between 8:00 a.m. and 3:30 p.m. Monday to Friday, except Public Holidays.

FORM P24: CITATION TO ACCEPT OR REFUSE ADMINISTRATION

(Rule 66(1))

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

[State/Territory]

In the Estate of *(full names)*, late of *(address)*, deceased.

To *(full names of citee)* of *(address)*

WHEREAS it appears by an [affidavit] [affirmation] of *(full names of citor)* [sworn] [affirmed] the day of 20 , that *(full names of deceased)*, of *(address)* died on the day of , 19_ or 20_ domiciled in *(state/territory)*, intestate, leaving you *(relationship of citee to deceased)* and one of the persons entitled to share in his or her estate, and

WHEREAS it further appears by the said [affidavit] [affirmation] that *(name of citor)* is the *(state relationship of citor to the deceased)* and one of the persons entitled to share in the estate of the deceased.

Now this is to command you *(name of citee)* that within 14 days after service hereof on you, inclusive of the day of such service, you file an acknowledgement of service at the registry and accept or refuse letters of administration of all the estate which by law devolves to and vests in the personal representative of the deceased. And take notice that in default of your failing to acknowledge service of the citation and accepting and extracting letters of administration in the estate of *(name of deceased)* our Court will proceed to grant letters of administration of the estate to *(name of citor)*, your absence notwithstanding.

Dated at *(address)* this day of 20 .

Issued at the instance

of

Registrar

(name of citor)

The Registry is at *(address)* telephone number , fax The office is open between 8:00 a.m. and 3:30 p.m. Monday to Friday, except Public Holidays.

**FORM P25: CITATION, BY EXECUTOR OF EXECUTOR, AGAINST
EXECUTOR TO WHOM POWER WAS RESERVED, TO ACCEPT OR
REFUSE PROBATE**

(Rule 66(2))

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

[State/Territory]

In the Estate of *(full names)*, late of *(address)*, deceased.

To *(full names of citee)*, of *(address)*

WHEREAS it appears by the [affidavit] [affirmation] of *(full names of citor)* [sworn] [affirmed] the day of 20, that probate of the will of *(full names)*, late of *(address)*, deceased, was on the day of 19_ or 20_, granted by our High Court of Justice at the registry to *(full names of proving executor)*, one of the executors named therein, power being reserved of making a like grant to *(name of citee)* the other executor named therein, and

WHEREAS it further appears by the said [affidavit] [affirmation] that the said *(name of proving executor)* died on the day of 19_ or 20_, leaving part of the estate of the said deceased unadministered and that on the day of 19_ or 20_, probate of the will of the said *(full name of proving executor)*; deceased was granted by our Court at the registry to the said *(full name of citor)*, the sole executor thereof:

Now this is to command you the said *(full name of citee)* that within 14 days after service hereof on you, inclusive of the day of such service, you do file an acknowledgment of service at the registry and accept or refuse probate of the will of the said *(full names)*, deceased. And take notice that, in default of your failing to acknowledge service of the citation and accepting and extracting probate of the said will, your rights as such executor will wholly cease, and the representation to the said *(full names)*, deceased, will devolve as if you had not been appointed executor.

Dated at *(address)* this day of 20,

Issued at the instance
of

Registrar

(name of citor)

The Registry is at *(address)* telephone number , fax

The office is open between 8:00 a.m. and 3:30 p.m. Monday to Friday, except Public Holidays.

**FORM P26: CITATION TO TAKE PROBATE AGAINST AN EXECUTOR
WHO HAS INTERMEDDLED**

(Rule 66(3))

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased.

To *(full names of citee)*, of *(address)*

WHEREAS it appears by the [affidavit] [affirmation] of *(full names of citor)* [sworn] [affirmed] the day of , 20 , that *(full names of deceased)*, late of *(address)* died on the day of , 19_ or 20_ domiciled in *(state territory)* having made and duly executed his or her last will and testament [and codicil] dated the day of , 19_ or 20_ , and thereof appointed you *(name of citee)*, sole executor *(or last surviving executor as the case may be)*. And that *(name of citor)* is interested in the estate of the deceased under the said will [and codicil] and

WHEREAS it is alleged in the [affidavit] [affirmation] of *(name of citor)* that you *(name of citee)* have intermeddled in the estate of the deceased.

Now this is to command you *(name of citee)* that within 14 days after service hereof on you, inclusive of the day of such service, you file an acknowledgement of service to the citation in the Registry and show cause why you should not be ordered to take probate of the will.

Dated at *(address)* this day of , 19_ or 20_.

Issued at the instance

of

Registrar

(name of citor)

The Registry is at *(address)* telephone number , fax The office is open between 8:00 a.m. and 3:30 p.m. Monday to Friday, except Public Holidays.

FORM P27: CITATION TO PROPOUND WILL*(Rule 69(1))***The Eastern Caribbean Supreme Court****IN THE HIGH COURT OF JUSTICE***[State/Territory]*

In the Estate of *(full names)* late of *(address)*, deceased.

To *(full names of citee)*, of *(address)*

WHEREAS it appears by the [affidavit] [affirmation] of *(full names of citor)* [sworn] [affirmed] the day of 20, that *(full names)*, deceased, late of *(address)*, died on the day of , 19_ or 20_ domiciled in *(state/territory)*, leaving *(state the name of the citor and his or her entitlement to the grant, e.g. his or her residuary legatee and devisee)* and the person entitled to his or her estate, and

WHEREAS it appears by the said [affidavit] [affirmation] that the deceased left a certain paper writing purporting to be a will whereby he appointed you the said *(name of citee, and state status of citor e.g. executor or residuary, legatee and devisee, as the case may be)*.

Now this is to command you *(name of citee)* that within 14 days after service hereof on you, inclusive of the day of such service, you file an acknowledgement of service in the registry and propound the said paper writing should you think it for your interest so to do, or show cause why letters of administration of all the estate which by law devolves to and vests in the personal representative of the deceased should not be granted to *(name of citor)*. And take notice that in default of your failing to acknowledge service of the citation and doing as aforesaid our Court will proceed to grant letters of administration of the estate to *(name of citor)*, your absence notwithstanding.

Dated at *(address)* this day of 20 .

Issued at the instance

of

Registrar

(name of citor)

The Registry is at *(address)* telephone number , fax

The office is open between 8:00 a.m. and 3:30 p.m. Monday to Friday, except Public Holidays.

FORM P28: WITNESS SUMMONS TO BRING IN WILL

(Rule 73(3))

**The Eastern Caribbean Supreme Court
IN THE HIGH COURT OF JUSTICE**

[State/Territory]

In the Estate of *(full names)* late of *(address)*, deceased.

WITNESS SUMMONS

To
full names)

(Witness'

of
address)

(Witness'

WHEREAS it appears from the affidavit of *(full names)* of *(address)* that you have in your possession, power or control a document being or purporting to be the [will] [codicil] *(specify other testamentary document)* of *(full names of deceased)* *(state, if known, the date of the will etc.)*

You are summoned to attend at the Registry at the High Court at *(address)* within 8 days after the service of this summons and bring in and leave at the registry the said original document.

If the document is not in your possession, power or control you must within 8 days after service of this summons file at the registry an affidavit to that effect stating what knowledge you have of the document and of in whose possession, power or control it may now be.

**IF YOU DO NOT COMPLY WITH THIS SUMMONS YOU WILL BE GUILTY
OF CONTEMPT OF COURT AND MAY BE IMPRISONED**

(SEAL)

DATED

This summons was issued on the application of (*full names*) whose Attorney-at-Law is of

Tel.

Fax.

The Registry is at (*address*) telephone number , fax The
office is open between 8:00 a.m. and 3:30 p.m. Monday to Friday, except Public Holidays.

**EASTERN CARIBBEAN SUPREME COURT (COURT PROCEEDINGS FEES) RULES—
SECTION 17**

ARRANGEMENT OF RULES

RULES

1. Short title
2. High Court civil proceedings fees
3. High Court family proceedings fees
4. High Court Admiralty and bankruptcy proceedings fees
5. Non-contentious probate and administration of estates proceedings fees
6. Court of Appeal fees
7. Transcript of Court proceedings fees

SCHEDULE 1: High Court Civil Proceedings Fees

SCHEDULE 2: High Court Family Proceedings Fees

SCHEDULE 3: High Court Admiralty and Bankruptcy Proceedings Fees

SCHEDULE 4: Non-Contentious Probate and Administration Of Estates
Proceedings Fees

SCHEDULE 5: Civil and Criminal Proceedings) Fees

SCHEDULE 6: Transcript of Court Proceedings
(Civil Proceedings) Fees

SCHEDULE 7: Transcript of Court Proceedings
(Criminal Proceedings) Fees

**EASTERN CARIBBEAN SUPREME COURT (COURT PROCEEDINGS FEES) RULES—
SECTION 17**

(S.R.O. 3/2018)

Commencement

[1 February 2018]

Short title

1. These Rules may be cited as the Eastern Caribbean Supreme Court (Court Proceedings Fees) Rules.

High Court civil proceedings fees

2. The fees payable in the High Court in respect of civil proceedings, other than family proceedings, Admiralty proceedings and bankruptcy proceedings, are set out in Schedule 1.

High Court family proceedings fees

3. The fees payable in the High Court in respect of family proceedings are set out in Schedule 2.

High Court Admiralty and bankruptcy proceedings fees

4. The fees payable in the High Court in respect of—

(a) Admiralty proceedings; or

(b) bankruptcy proceedings in the High Court under the Bankruptcy Act, (Cap. 3.03),

are set out in Schedule 3.

Non-contentious probate and administration of estates proceedings fees

5. The fees payable in the High Court in respect of non-contentious probate proceedings and administration of estate proceedings are set out in Schedule 4.

Court of Appeal fees

6. The fees payable in the Court of Appeal in respect of criminal and civil proceedings are set out in Schedule 5.

Transcript of Court proceedings fees

7.(1) The fees payable in the High Court in respect of the preparation of transcripts of Court proceedings in civil proceedings are set out in Schedule 6.

(2) The fees payable in the High Court in respect of the preparation of transcripts of Court proceedings in criminal proceedings are set out in Schedule 7.

SCHEDULE 1*(Rule 2)***HIGH COURT CIVIL PROCEEDINGS FEES**

Document/Process	Fees
Acknowledgement of Service	\$20.00
Affidavit/Statutory Declaration	\$20.00
Amended Statement of Case	\$40.00
Application/Notice of Application	\$40.00
Articles of Sale	\$20.00
Bundle including core and trial bundle	\$30.00
Copy (per page)	\$1.00
Certified copy (per document)	\$10.00
Certificates	\$15.00
Change of Legal Practitioner	\$10.00
Entry of default judgment or judgment on admission	\$20.00
Joinder of issue	\$15.00
Judgment Summons	\$40.00
Liquidators Report	\$50.00
List of Documents	\$25.00
List of Witnesses	\$10.00
Listing questionnaire	\$10.00
Notice (except notice of application or application)	\$10.00
Order (up to three copies)	\$25.00
Order (each additional copy)	\$5.00
Request for entry of default judgment or judgment on admission	\$10.00
Search (per file)	\$5.00
Skeleton Argument/Submission (up to the first ten pages)	\$10.00
Skeleton Argument/Submission (each additional page after first 10)	\$1.00
Statement of account	\$15.00
Statement of Case *Includes defence, claim form, statement of claim, reply	\$50.00
Undertaking	\$20.00
Witness Statement/Summary	\$10.00
Witness Summons	\$20.00
Writ	\$50.00
For filing any other document or matter not herein specified	\$20.00

SCHEDULE 2

(Rule 3)

HIGH COURT FAMILY PROCEEDINGS FEES

Document/Process	Fees
Acknowledgement of Service	\$20.00
Affidavit Declarations	\$20.00
Answer	\$20.00
Applications/Summons	\$25.00
Application for Registrar's certificate	\$10.00
Application to make decree absolute	\$10.00
Bill of costs	\$15.00
Certificate of search	\$5.00
Certificate with regard to reconciliation	\$5.00
Consent to Act as Guardian Ad litem	\$5.00
Consent of Parents (if needed)	\$5.00
Copy of document (per page)	\$1.00
Certificate of dissolution of marriage (divorce, annulment, presumption of death)	\$15.00
Grant of dissolution of marriage	\$10.00
Entry of Appearance	\$5.00
Exhibits/Certificate of Exhibits	\$10.00
Notice	\$10.00
Order	\$20.00
Originating Summons	\$20.00
Petition/Counter/Cross Petition	\$20.00
Registrar's Certificate	\$10.00
Report of Guardian Ad Litem	\$5.00
Request for Directions/Hearing/Particulars etc.	\$10.00
Search (per file)	\$5.00
Legal Practitioner's Certificate	\$10.00
Statement as to arrangements for children	\$10.00
Undertaking	\$20.00
Warrant to Act	\$10.00
Writ	\$50.00
For filing any other document or matter not herein specified	\$20.00

SCHEDULE 3*(Rule 4)***HIGH COURT ADMIRALTY AND BANKRUPTCY PROCEEDINGS FEES**

Document/Process	Fees
Acknowledgement of Service	\$20.00
Affidavit	\$20.00
Application	\$40.00
Appraisement	\$30.00
Bond	\$50.00
Caveat against release	\$15.00
Claim form in rem/in personam	\$100.00
Consent to release	\$15.00
Judgment in Default	\$20.00
Limitation Claim	\$100.00
Notices	\$20.00
Praecipe for caveat/release	\$30.00
Preliminary Act	\$50.00
Release	\$100.00
Request	\$10.00
Search (per file)	\$5.00
Undertaking	\$20.00
Warrant of Arrest	\$150.00
Warrant (other)	\$10.00
For filing any other document or matter not herein specified	\$20.00

SCHEDULE 4

(Rule 5)

NON-CONTENTIOUS PROBATE AND ADMINISTRATION OF ESTATES PROCEEDINGS FEES

Document	Fees
Application for grant of Probate	\$ 100.00
Application for grant of Letters of Administration	\$ 100.00
Every Affidavit filed	\$ 100.00
Declaration as to Value of the Estate: (Except in the case of the Virgin Islands)	
If the value is \$5,000 and under	\$ 100.00
If the value exceeds \$5,000	\$1,000.00
Declaration as to Value of the Estate: In the case of the Virgin Islands	
\$10,000 and under	\$ 200.00
\$10,001 - \$50,000	\$ 500.00
\$ 50,001 - \$250,000	\$ 750.00
\$250,001- \$500,000	\$1,000.00
\$500,001- \$1,000,000	\$1,200.00
\$1,000,001 - \$5,000,000	\$2,000.00
\$5,000,000 and above	\$5,000.00
Order	\$ 100.00
Grant of Probate or Letters of Administration	\$ 100.00
Certificates (Birth, Death, Marriage per certificate)	\$ 10.00
Newspaper Advertisements on filing	\$ 10.00
Renunciation	\$ 100.00
Reason for Delay	\$ 100.00
Last Will and Testament	\$ 25.00
Entry of a Caveat	\$ 200.00
Renewal of Caveat	\$ 100.00
Issue of Warning for Caveat	\$ 100.00
Issue of Citation	\$ 200.00
Appearance to Warning or Citation	\$ 20.00
Search	\$ 10.00
Application for Resealing Grant	\$ 200.00
Oath	\$ 20.00

Marking of Will at Registry	\$20.00
Exhibits (deed, paper, memorandum etc.)	\$20.00`
Witness Summons	\$20.00
Acknowledgment of Service	\$20.00
On filing, production or copy of any document for which no fee is specifically provided	\$50.00

SCHEDULE 5

(Rule 6)

COURT OF APPEAL

CIVIL AND CRIMINAL PROCEEDINGS) FEES

Court of Appeal	
Civil	
Document/Process	Fees
Notice of Appeal:	
Value of claim up to \$100,000	\$200.00
Value of claim \$100,001 - \$500,000	\$300.00
Value of claim more than \$500,000	\$600.00
Where no value of claim is ascertained	\$200.00
Counter Notice/Cross Appeal	\$150.00
Amended Notice of Appeal	\$50.00
Core Bundle	\$100.00
Record of Appeal (up to 100 pages)	\$100.00
Record of Appeal (from 101-200 pages)	\$150.00
Record of Appeal (exceeding 200 pages)	\$200.00
Case stated on question of law	\$100.00
Affidavit	\$20.00
Application	\$40.00
Motion for leave to appeal to the Judicial Committee of the Privy Council/Her Majesty in Council	\$150.00
Motion for final leave to appeal to the Judicial Committee of the Privy Council/Her Majesty in Council	\$50.00
Settling the Record of Appeal for the Privy Council	\$100.00
Certifying any document	\$25.00
Copy of Judgment, Order, or Certificate of result or another document filed	\$1.00
Search (per file)	\$10.00
Skeleton Arguments/Submission not exceeding 15 pages	\$50.00
Skeleton Arguments/Submissions exceeding 15 pages	\$50.00 Plus \$1 per additional page
Notice of Opposition	\$15.00
Certificate of Exhibits	\$15.00
On filing every document or exhibit for which no special fee is provided	\$20.00
Orders	\$25.00

Criminal	
Document/Process	Fees
Notice of Appeal	\$5.00
Skeleton Arguments (not exceeding 10 pages)	\$20.00
Skeleton Arguments (exceeding 10 pages)	\$30.00
Application	\$10.00
On filing every document or exhibit for which no special fee is provided	\$10.00

SCHEDULE 6

(Rule 7(1))

TRANSCRIPT OF COURT PROCEEDINGS

(CIVIL PROCEEDINGS) FEES

Transcript Type	Original Per page	First Copy to Each Party Per page	Each Additional Copy to the Same Party Per page
30 Day Transcript A transcript to be delivered within thirty (30) calendar days after receipt of an order.	\$6	\$5	\$3
14 Day Transcript A transcript to be delivered within fourteen (14) calendar days after receipt of an order.	\$8	\$6	\$3
7 Day Transcript A transcript to be delivered within seven (7) calendar days after receipt of an order.	\$10	\$8	\$5
Daily Transcript A transcript to be delivered following adjournment and prior to the normal opening hour of the court on the following morning whether or not it is a business day.	\$12	\$10	\$7

Hourly Transcript A transcript of proceedings ordered under unusual circumstances to be delivered within two (2) hours.	\$15	\$12	\$9
Real time Transcript A draft unedited transcript produced by a certified real time reporter as a by product of real time to be delivered electronically during proceedings or immediately following adjournment.	One feed, \$3.00 per page; two-to-four feeds, an additional \$2.00 per page; five or more feeds, an additional \$1.50 per page		

SCHEDULE 7

(Rule 7(2))

**TRANSCRIPT OF COURT PROCEEDINGS
(CRIMINAL PROCEEDINGS) FEES**

Transcript Type	Original Per page	First Copy to Each Party Per page	Each Additional Copy to the Same Party Per page
30 Day Transcript A transcript to be delivered within thirty (30) calendar days after receipt of an order.	\$2	\$1	\$1
14 Day Transcript A transcript to be delivered within fourteen (14) calendar days after receipt of an order.	\$4	\$2	\$1
7 Day Transcript A transcript to be delivered within seven (7) calendar days after receipt of an order.	\$5	\$3	\$2
Daily Transcript A transcript to be delivered following adjournment and prior to the normal opening hour of the court on the following morning whether or not it is a business day.	\$6	\$4	\$3

Hourly Transcript A transcript of proceedings ordered under unusual circumstances to be delivered within two (2) hours.	\$8	\$6	\$4
Real time Transcript A draft unedited transcript produced by a certified real time reporter as a by product of real time to be delivered electronically during proceedings or immediately following adjournment.	One feed, \$3.00 per page; two-to-four feeds, an additional \$2.00 per page; five or more feeds, an additional \$1.50 per page		