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Revision Date: 31 Dec 2002



# **ST CHRISTOPHER AND NEVIS**

## **CHAPTER 3.11**

# **EASTERN CARIBBEAN SUPREME COURT (SAINT CHRISTOPHER AND NEVIS) ACT**

### **Revised Edition**

showing the law as at 31 December 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, Cap. 1.03

This edition contains a consolidation of the following laws

### **Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act**

**Act 17 of 1975 in force 31<sup>st</sup> July, 1975**

**Amended by Act 10 of 1981**

**Act 18 of 1982**

**Act 11 of 1983**

**Act 6 of 1992**

**Act 10 of 1998**

**Act 19 of 2000**

**SRO 14 of 1988**

**Act 6 of 2009**



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## CHAPTER 3.11

### **EASTERN CARIBBEAN SUPREME COURT (SAINT CHRISTOPHER AND NEVIS) ACT**

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## CHAPTER 3.11

### EASTERN CARIBBEAN SUPREME COURT (SAINT CHRISTOPHER AND NEVIS) ACT

**AN ACT to confer jurisdiction upon the Eastern Caribbean Supreme Court and to provide for related or incidental matters.**

#### PART I – PRELIMINARY

1. **Short title.**

This Act may be cited as the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act.

*[Amended by Paragraph 7 of Schedule 2 to the Constitution of 1983]*

2. **Interpretation.**

In this Act, unless the context otherwise requires,

“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 by the Crown;

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

“cause” includes any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding by the Crown or by an individual;

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

“Chief Registrar” means the Chief Registrar of the Supreme Court constituted under the Courts Order;

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

“Court of Appeal” means the Court of Appeal constituted under the Courts Order;

“Courts Order” means the Eastern Caribbean Supreme Court Order, 1967 (S.I. 1967 No. 223);

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

“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 Courts 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 19/2000]*

“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;

“national” means a person who

- (a) is a citizen of any participating territory; or
- (b) is regarded as belonging to any participating territory under any law in force in such territory;

“order” includes decision and rule;

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

“participating territory” means a territory the Government of which with other participating Governments, is responsible for providing advanced courses in arts and science to students at the University of the West Indies at Jamaica or elsewhere in the West Indies;

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

“plaintiff” includes claimant and every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons, claim, fixed date claim or otherwise;

*[Substituted by Act 19/2000]*

“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 counterclaim of a defendant;

“prescribed date” means the date prescribed by the Chief Justice under subsection (2) of section 1 of the Courts Order, namely, the 24th day of April, 1967;



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“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 a solicitor of the Supreme Court;

“suit” includes action;

“State” means the State of Saint Christopher and Nevis;

*[Amended by Act 1/1981]*

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

### **3. Reference to Supreme Court to be deemed a reference to the High Court.**

(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 or a Judge of the Supreme Court, that reference shall be 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 shall, unless the context otherwise requires, be deemed to be a reference to the Court of Appeal constituted under the Courts 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 shall, unless the context otherwise requires, be 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.

### **4. How Supreme Court Judges are to be addressed.**

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.

### **5. Constitution of the Court.**

Subject to the provisions of subsection (3) of section 17 of the Courts Order and of the 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 II – THE HIGH COURT****6. Jurisdiction of former Supreme Court vested in High Court, and law in force in the Court.**

(1) There shall be vested in the High Court all jurisdiction which was vested in the former Supreme Court by the Supreme Court Act, Cap. 79 or by any law of the Legislature of the State or by any other law applicable to this State or adopted or applied to and in force in this State, save and except as otherwise provided for in this Act and any other jurisdiction conferred by this or any other Act.

(2) Such jurisdiction shall include

- (a) the jurisdiction, and also all the ministerial powers, duties and authority incidental to such jurisdiction, which were 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, in Chambers or elsewhere when acting as Judges, or as a Judge, pursuant to any Order in Council, Act, or any other law for the time being in force in the State;
- (b) all the powers given to the former Supreme Court or to any Judge or Judges thereof by any Act, law for the time being in force in the State.

(3) The jurisdiction of this Act vested in the High Court shall be exercised (so far as regards practice and procedure) in the manner provided by this Act, the enactments of the legislature of the State and Rules of Court or in default of the foregoing by the Statutes, Orders and Rules governing the practice and procedure of the High Court in England.

(4) Subject to the terms of this or any other Act, the common law of England and the doctrines of equity shall be in force within the jurisdiction of the Court.

**7. Jurisdiction of High Court.**

(1) The High Court shall have and exercise within the State the same jurisdiction and the same powers and authorities incidental to such jurisdiction as may from time to time be vested in the High Court of Justice in England.

(2) The High Court shall have and may exercise, in relation to the custody of the persons and estates of idiots, lunatics and persons of unsound mind in the State, all such jurisdiction as is vested in England in the Lord Chancellor or other person or persons entrusted by Her Majesty with the care and commitment of such persons and estates.

**8. Jurisdiction of High Court in Admiralty.**

(1) The High Court is hereby declared to be a Court of Admiralty.

(2) The High Court shall, in relation to Admiralty matters, have and exercise within the State such jurisdiction in like manner, and to as full an extent as is exercised by the High Court of England and shall have the same regard as that Court to international law and the comity of nations.

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**9. Practice in Bankruptcy.**

The jurisdiction of the High Court in Bankruptcy shall be exercised in accordance with the provisions of the Bankruptcy Act, Cap. 5.04 and any rules made thereunder.

**10. Practice in Criminal proceedings.**

The jurisdiction of the High Court in all criminal proceedings shall be exercised in accordance with the Criminal Procedure Act, Cap. 4.06 and any other law in force in the State.

**11. Practice in civil proceedings and in Probate, Divorce and Matrimonial causes.**

(1) The jurisdiction vested in the High Court in civil proceedings, and in Probate, Divorce and Matrimonial causes, shall be exercised in accordance with the provisions of this Act, or any other law in operation in the State and of the 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 procedure law and practice for the time being in force in the High Court of Justice in England.

(2) In the case of any petition for divorce or nullity of marriage

- (a) the High Court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Attorney-General who may instruct counsel to argue before the High Court any question in relation to the matter which the High Court deems to be necessary or expedient to have fully argued, and the Attorney-General shall be entitled to be paid from the general revenue all reasonable costs and expenses incurred in the matter;
- (b) any person may at any time during the progress of the proceedings or before the decree *nisi* is made absolute give information to the Attorney-General of any matter material to the due decision of the case, and the Attorney-General may thereupon take such steps as he or she may consider necessary or expedient;
- (c) if in consequence of any such information or otherwise the Attorney-General suspects that any parties to the petition are or have been acting in collusion for the purpose of obtaining a decree contrary to the justice of the case, he or she may, after obtaining the leave of the High Court, intervene and retain counsel and subpoena witnesses to prove the alleged collusion;
- (d) the High Court may order the costs of counsel and witnesses and costs otherwise arising from such intervention to be paid by the parties, or such of them as it shall see fit, including a wife if she has separate property; but the High Court shall not order any costs arising from such intervention to be paid by the Attorney-General to the parties or any of them;
- (e) the Attorney-General shall be entitled to be paid from the general revenue all reasonable costs which he or she may have incurred arising from any such intervention after deducting any costs which may have been paid to him or her by either of the parties to the petition;

- (f) any rules and regulations for the time being of the High Court of Justice in England with respect to the Queen's Proctor shall, subject to the rules of court, apply to the Attorney-General.

**12. Jurisdiction of single Judge.**

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.

**13. Powers and duties of Master.**

(1) 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.

(2) 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 matter.

*[Inserted by Act 19/2000 as section 12A]*

**14. Interlocutory and other application in absence of Master or Judge.**

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

(2) The written order of the Judge or Master shall be transmitted to the Registrar and shall be deemed to be the order of the Court.

*[Inserted by Act 19/2000 as section 12B]*

*[Note: Sections 13 to 37 inclusive have been renumbered accordingly]*

**15. Law and equity to be concurrently administered.**

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 the provisions of the eight sections next following.

**16. Equities of the plaintiff.**

If a plaintiff or petitioner claims to be entitled to any equitable estate or rights, or to relief upon any equitable ground against any deed, instrument or contract or against any right, 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 the 1st day of 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.

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**17. Equitable defences.**

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.

**18. Counterclaim and third parties.**

(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 or her

- (a) all such relief against any plaintiff or petitioner as the defendant has properly claimed by his or her 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 or she 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 shall thenceforth be deemed a party to the cause or matter with the same rights in respect of his or her defence against the claim as if he or she had been duly sued in the ordinary way by the defendant.

**19. Equities appearing incidentally.**

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.

**20. Defence or stay instead of injunction or prohibition.**

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.

**21. Common law and statutory rights and duties.**

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.

**22. Determination of matters completely and finally.**

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.

**23. Rules of equity to prevail.**

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

**24. Declaratory order.**

No action or proceeding shall be open to objection on the ground that merely declaratory judgment, decree or order is sought thereby and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.

**25. Mode of trial.**

(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:

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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 scientific 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 charge or claim as aforesaid.

(4) For the purposes of this section, the expression "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 by the Crown.

## **26. Granting of mandamus, etc.**

(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 or 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 parties are legal or equitable.

## **27. Execution of Instrument by order of court.**

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

**28. Restrictions on Institution of vexatious actions.**

(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, the Court of Summary Jurisdiction or in a Magistrate's Court, and, whether against the same person or against different persons, the High Court may, after hearing the person or giving him or her 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 or her 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.

(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 or her.

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

**29. Power of Court to include award of interest in judgment.**

In any proceedings for the recovery of any debt or damages, in the High Court or Court of Appeal, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it

as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment, but nothing in this section

- (a) shall authorise the giving of interest upon interest;
- (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
- (c) shall affect the damages recoverable for the dishonour of a bill of exchange.

**PART III – THE COURT OF APPEAL JURISDICTION OF COURT OF APPEAL**

**30. Jurisdiction vested in Court of Appeal.**

Subject to the provisions of 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.



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**31. Practice and procedure in the Court of Appeal.**

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 the provisions of this Act and of the 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).

**32. Appeal from Magistrates' Courts.**

(1) Subject to the provisions of the Magistrate's Code of Procedure Act, Cap. 3.17 or any other enactment regulating appeals from Magistrates' Courts and to the 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) Notwithstanding anything to the contrary, the time within which such notice of appeal may be given or served or any bond or security entered into or grounds of appeal filed or served in relation to appeals under this section may, upon application made in such manner as may be prescribed by rules of court, be extended by the Court at any time.

(3) The provisions of sections 34, 36 and 48 of this Act shall apply in the hearing of appeals from Magistrates as they apply in the hearing of appeals from the High Court.

**PART IV – CIVIL APPEALS FROM HIGH COURT**

**33. Appeals from High Court in civil matters.**

- (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 the State;
  - (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, and the Court of Appeal shall have all the powers, authority and jurisdiction of the High Court.

(2) Judgments of the High Court in exercise of its jurisdiction in Admiralty shall be subject to the like appeal to the Court of Appeal in exercise of its civil jurisdiction, and the Court of Appeal shall for the purpose thereof possess all the jurisdiction in Admiralty conferred upon the High Court.

- (3) 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 or 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.

(4) For the purposes of subsection (3), “Judge” means Judge of the High Court and where the context admits, includes a Master.

*[Substituted by Act 19/2000]*

#### 34. **Judge of High Court may hear and determine applications.**

Where an appeal has been brought under the provisions of the preceding section and is pending before 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 under any such application may be discharged or varied by the Court of Appeal.

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**35. Powers of Court of Appeal on hearing an appeal.**

(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 inquire into and certify its findings on any question 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.

**36. Supplementary powers of Court of Appeal.**

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 the 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 the rules of court for inquiry and report to a special commissioner appointed by the Court, and act upon the report of any such commissioner as far as 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.

### 37. **Power of Court of Appeal as to new trials.**

(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 of Justice 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 of justice as is mentioned in sub-paragraph (a) of this subsection 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 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 of justice 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,

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- (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.

**38. Wrong rulings as to sufficiency of stamps.**

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

**39. Criminal Appeals from High Court.**

(1) In sections 38, 39, 41, 44 to 63 of this Act, unless the context otherwise requires,

“appeal” means an appeal by a person convicted upon indictment or an appeal by the Director Public Prosecutions;

*[Substituted by Act 10/1998]*

“appellant” includes the Director of Public Prosecutions;

*[Substituted by Act 10/1998]*

“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 sections 41, 51, 53, 57(2), 58(1), 60(1), 62 and 63 references to a person being convicted shall include references to his or her being the subject of a special verdict under section 64 of the Criminal Procedure Act, Cap. 4.06.

**40. Judge’s Verdict.**

In any proceedings where the jury fails to agree and there is a second trial in the same case and no verdict is delivered by the jury within four hours after the conclusion of the summing-up of the presiding judge at the second trial then the judge, if he or she is

satisfied that there is no prospect for the jury agreeing, shall enter a verdict, except that he or she shall give reasons for the verdict entered by him or her.

*[Inserted by Act 1/1998 as section 37A. Consequently section 38 has been renumbered as section 41.]*

**41. Right of appeal in criminal cases.**

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

- (a) against the conviction on any ground of appeal which involves a question of law alone;
- (b) with the leave of the Court of Appeal or upon the certificate of the Judge of the High Court before whom he or she was tried that it is a fit case for appeal against his or her conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Judge of Court aforesaid to be a sufficient ground of appeal; and
- (c) with the leave of the Court of Appeal against the sentence passed on his or her conviction, unless the sentence is one fixed by law.

**42. Right of appeal of Director of Public Prosecutions.**

(1) The Director of Public Prosecutions may, without leave of Court appeal to the Court of Appeal or the Privy Council against the acquittal of an accused person, where the accused has been acquitted by reason of

- (a) a submission upheld by the trial judge that there is a defect in depositions, the committal of the accused for trial, or indictment;
- (b) a submission upheld by the trial judge that there is no case for the accused to answer;
- (c) material evidence sought to be adduced by the prosecution having been excluded at the trial;
- (d) there having been a substantial misdirection of the jury
  - (i) on the law or facts,
  - (ii) on a mixed question of law and fact,by the trial judge in the course of his or her summation;
- (e) a material irregularity in the course of the trial.

(2) The Director of Public Prosecutions may also appeal against any sentence on the ground

- (a) that the sentence is one which the court had no power to pass;
- (b) that the sentence is manifestly inadequate; or
- (c) that the sentence is wrong in principle.

(3) Where the Director of Public Prosecutions elects to exercise the right conferred upon him or her under this section he or she shall, before the trial judge discharges the accused or orders otherwise, serve on the Court notice, of his or her intention to appeal and inform the Court orally that he or she intends to appeal against the verdict of the Court.

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(4) The Director of Public Prosecutions, after he or she has notified the Court in accordance with the provisions of subsection (3) of this section, must file with the Court a notice of appeal and the grounds of appeal within fourteen days.

(5) An appeal made under this section shall have the effect of suspending the execution of the decision, judgment, or other order appealed from until the final determination by the appeal proceedings, except that the court may, having regard to the gravity of the offence, release the accused on bail upon conditions that shall ensure that he or she attends the appeal proceedings and abide by the results of the proceedings.

(6) The right of appeal conferred on the Director of Public Prosecutions by subsections (1) and (2) of this section shall be limited to the following offences, that is to say,

- (a) murder;
- (b) treason;
- (c) manslaughter;
- (d) rape, defilement and other sexual offences;
- (e) robbery;
- (f) drug offences;
- (g) burglary;
- (h) housebreaking;
- (i) theft;
- (j) offences involving dishonesty;
- (k) firearms offences;
- (l) conspiracies and attempts to commit the offences referred to in paragraphs (a) to (k);
- (m) aiding and abetting a person who commits the offences referred to in paragraphs (a) to (k).

*[Inserted by Act 10/1998 as section 38A]*

#### **43. Attorney General's Reference.**

(1) Where a person tried on indictment has been acquitted (whether in respect of the whole or part of the indictment) the Attorney-General may, if he or she desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to the Court, and the court shall, in accordance with this section, consider the point and give their opinion on it.

(2) For the purpose of their consideration of a point referred to them under this section the Court of Appeal shall hear argument

- (a) by, or by counsel on behalf of, the Attorney-General; and
- (b) if the acquitted person desires to present any argument to the Court, by counsel on his or her behalf or, with the leave of the Court, by the acquitted person himself or herself.

(3) Where the Court of Appeal have given their opinion on a point referred to them under this section, the Court may, of their own motion or in pursuance of an application in that behalf, refer the point to the Privy Council if it appears to the Court that the point ought to be considered by the Privy Council

(4) If a point is referred to the Privy Council under subsection (3) of this section, the Privy Council shall consider the point and give their opinion on it accordingly.

(5) A reference under this section shall not affect the trial in relation to which the reference is made or any acquittal in that trial.

*[Inserted by Act 10/1998 as section 38B]*

*[Note: As a result of renumbering sections 38A and 38B as sections 42 and 43, sections 39 to 86 inclusive have been renumbered accordingly.]*

#### **44. Determination of appeals in certain cases.**

(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 under all the circumstances of the case 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 substantial miscarriage of justice has actually occurred.

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

(3) Where, apart from this subsection,

- (a) an appeal against a special verdict of not guilty by reason of insanity 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 or she was guilty of an offence other than the offence charged.

(4) 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.

(5) 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.



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(6) 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.

(7) On a retrial ordered under this section, section 193 of the Magistrate's Code of Procedure Act, Cap. 3.17 which deals with the 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 not 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 the State, 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.

#### **45. Powers of Court in special cases.**

(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, and 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 of not guilty by reason of insanity, 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 of not guilty by reason of insanity 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 in the same manner as if such special verdict had been found by the jury.

**46. Supplementary provisions where appeal against special verdict allowed.**

(1) Where, in accordance with subsection (1) of section 44, an appeal against a special verdict of not guilty by reason of insanity 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 or she 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) of this section 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.

**47. Revesting and restitution of property on conviction.**

(1) The operation of any order for the restitution of any property to any person made on a conviction on indictment or otherwise and the operation in any such case of the provisions of section 47 of the Larceny Act, Cap. 4.16 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 or of application for leave to appeal is given, within fourteen days after the date of conviction, until the determination of the appeal, or where an application for leave to appeal is finally refused, until the determination of the application;

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.

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

**48. Supplementary powers of Court of Appeal.**

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 interest of justice,

- (a) exercise any or all the powers conferred by section 36 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.

**49. Duty to admit fresh evidence.**

Without prejudice to the generality of the section 48 of this Act which deals with 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.

**50. Admission of appellant to bail and custody when attending Court.**

(1) An appellant who is not admitted to bail shall, pending the determination of his or her 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 or her appeal.

**51. Computation of sentence.**

(1) The time during which an appellant is in custody pending the determination of his or her 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 or she 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 41 of this Act or where the case has been referred to it under section 63 of this Act (references by the Chairperson of the Advisory Committee on the Prerogative of Mercy).

(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, shall be brought to any place at which he or she 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 or her to be taken for the purposes of any proceedings of the Court, and for the manner in which he or she is to be kept in custody while absent from prison for such purpose, and an appellant whilst in custody in accordance with those rules shall be deemed to be in legal custody.

**52. Time for appealing.**

(1) Where a person who is convicted desires to appeal under this Act to the Court of Appeal or to obtain the leave of the Court of Appeal, he or she shall give notice of appeal or notice of his or her 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 appeal or 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.

**53. Stay of execution.**

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 section 52; 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.

**54. Judge's notes and report to be furnished on appeal.**

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 or her notes of the trial; and shall also furnish to the Registrar in accordance with rules of court a report giving his or her opinion upon the case or upon any point arising in the case.

**55. Legal assistance to appellant.**

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

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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 or she has not sufficient means to enable him or her to obtain that aid.

**56. Right of appellant to be present.**

(1) An appellant, notwithstanding that he or she is in custody, shall be entitled to be present, if he or she desires it, on the hearing of his or her 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 the rules of court provide that he or she shall have the right to be present, or where the Court gives him or her leave to be present.

(2) An appellant who does not appear at the hearing of his or her appeal by counsel, may present his or her 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) of this section to an appellant being in custody shall not include a reference to his or her being in custody in consequence of a special verdict of not guilty by reason of insanity.

**57. Costs of appeal.**

(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 any 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 or her appeal or on any proceedings preliminary or incidental to the appeal, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the Court for the purpose, or any reference of a question to a special commissioner appointed by the Court, or of any person appointed as assessor to the Court, shall be defrayed out of monies provided by the Legislature up to an amount allowed by the Court, but subject to any rules of court as to rates and scales of payment.

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

(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 or her 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 person to attend the hearing or to appear for the Crown thereon.

(3) Any documents, exhibits, or other things connected with the proceedings on the trial of any person on indictment, who, if convicted, is entitled or may be authorised to appeal under this Act shall be kept in 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 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 officers of the Court of Appeal and of the High Court, the Superintendent of Prisons and such other officers and persons as he or she 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 or her 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 or her 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 section 59 the expression “Registrar” includes the Chief Registrar and Deputy Registrar of the Court of Appeal.

#### **59. Shorthand notes, etc.**

(1) Such records in such manner, whether in writing by shorthand notes or otherwise, or by recordings on electro magnetic 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) of this section 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.

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**60. Powers which may be exercised by a Judge of the Court.**

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 or she is not entitled to be 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 or her favour, the appellant shall be entitled to have the application determined by the Court as fully constituted for the hearing and determination of appeals under this Act.

**61. Case stated or questions of law reserved.**

(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.

**62. Provisions of this Act applicable to proceedings under section 56.**

Where a case is stated or question of law reserved for the consideration of the Court of Appeal the provisions of sections 50, 51, 53, 55, 56, 57, of subsections (1), (3) and (5) of section 58 and of sections 59 and 60 of this Act shall apply to such proceedings in like manner as to an appeal

**63. Prerogative of mercy.**

(1) Nothing in this Act shall be deemed to affect the prerogative of mercy.

(2) The Chairperson of the Advisory Committee on the prerogative of mercy may, 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, 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 the assistance of the Court of Appeal is desired 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 chairman with its opinion thereon accordingly.

**64. Criminal information.**

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****65. Appeals from orders in contempt proceedings.**

(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 or her intention to appeal to the Court of Appeal and may within two days after giving such notice enter into a recognisance 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 not exceeding one hundred dollars to prosecute such appeal, and the giving of such notice and entering into such recognisance shall operate as a stay of such order.

(3) On such person entering into recognisance, 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 or her order as confirmed or varied in the same manner as if there had been no appeal against the same.



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## **PART V – PUBLICATION OF JUDGMENT GIVEN BY THE COURT OF APPEAL**

### **66. Publication of Judgments.**

The Registrar shall, as soon as possible after the giving of a judgment by the Court of Appeal in any cause or matter heard and determined in the State, obtain copies of such judgments, as well as of any judgment of the High Court which is reduced into writing, and shall cause such judgments to be published in the *Official Gazette*.

## **PART VI – OFFICERS OF THE COURT**

### **67. Present officers of Court.**

Except as in this Act otherwise expressly provided, every person who at the date of commencement of this Act holds the office of Registrar, Deputy Registrar or bailiff, shall continue to hold his or her office on the terms on which he or she 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.

### **68. Registrar.**

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

(2) Without prejudice to the generality of the provisions 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 or her in that behalf shall direct, and the Registrar shall be subject to the general or special directions of the Chief Registrar and shall assist him in the performance of his or her duties.

(4) The Registrar shall be Registrar for each of the Saint Christopher and Nevis Circuits and shall be styled the Registrar for the Saint Christopher Circuit when acting as the Registrar for the Saint Christopher Circuit and the Registrar for the Nevis Circuit, when acting as Registrar for the Nevis Circuit.

(5) The Registrar for each Circuit shall be *ex officio* a Deputy Registrar of the Court of Appeal.

(6) The Registrar for each Circuit shall be *ex officio* Admiralty Marshal and Provost Marshal of that Circuit.

(7) The Registrar shall have the custody of the seals of the High Court and of the Court of Appeal (Saint Christopher and Nevis sub-registration) and all records, documents, papers and other things thereof.

(8) The Registrar shall have power to administer oaths, and to take solemn declarations and affirmations in lieu of oaths.

**69. Taxation of costs.**

(1) The Chief Registrar, and in his or her absence the Registrar, shall be the Taxing Master for the Court, and shall tax all bills of costs in accordance with any scales for the time being in force.

(2) Every taxation of costs shall be subject to rules of court and be subject to review by a Judge in Chambers.

**70. Acting Registrar.**

Whenever the Registrar is on leave, or ill or otherwise unable to perform the duties of his or her office, the Governor General may appoint a fit and proper person to act, during pleasure, for the Registrar; and such person whilst so acting, shall have all the powers, and be charged with all the duties of the Registrar:

Provided that until any appointment is so made, and also on every occasion when the Registrar is from any cause absent from his or her office, the duties of the Registrar shall devolve upon and be performed by the Deputy Registrar, or, if there be no Deputy Registrar, then the Chief Clerk, by whatever name called.

**71. Hours of business.**

(1) The office of the Registrar and Provost Marshal shall be kept open for the transaction of business on every day of the year except Saturdays, Sundays, Christmas Day, Good Friday and Public Holidays, from the hour of eight thirty in the morning until the hour of three thirty in the afternoon, unless the court shall direct that the office hours shall be otherwise than as aforesaid.

(2) Notwithstanding the provisions of subsection (1) of this section, 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.

*[Amended by Act 6/2009]*

**72. Bailiffs.**

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

Provided that additional bailiffs may be appointed from time to time.

(2) Every bailiff shall be under the control of the Registrar.

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

(4) Any person who disturbs, hinders or assaults any bailiff in the execution of his or her duty, or aids, abets, or assists therein commits an offence and shall be liable to a fine not exceeding five hundred dollars.

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**73. Registrar Clerks and bailiffs not to advise litigants.**

No Registrar, Deputy Registrar, or bailiff shall act as attorney, agent or advisor of any plaintiff, defendant or other suitor, or party in or to any proceeding in any court in the State, 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 or her office.

**74. Misconduct of Officers of Court.**

(1) If any officer of the Court shall be charged with extortion, or with not duly paying any money received by him or her in the execution of his or her duty, or with any fraud, wrongful act, or neglect in the discharge of duties of his or her 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 or her, 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) either 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 or she may think fit, on the officer;
- (c) inform the Public Service Commission of the results of the inquiry.

(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 her, or affect any right of action which any person shall have against him or her, or the power of the Governor to suspend or dismiss the officer.

## **PART VII – BARRISTERS AND SOLICITORS**

**75. Existing practitioners.**

(1) Every person entitled, at the commencement of this Act, to practise in the State 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, Director of Public Prosecutions, Crown Counsel or Legal Draftsman shall, so long as he or she continues to hold such office and is qualified for admission under the provisions of section 76 of this Act, be *ex officio* barrister of the Court, and shall be deemed to be enrolled as a barrister in accordance with the provisions of this Act.

**76. Admission of barristers and solicitors.**

(1) The High Court may, subject to the provisions of subsection (2) of this section, admit as a barrister or solicitor of the Court any national who is the holder of a legal education certificate awarded to him or her by the Council of Legal Education of the West Indies:

Provided that, upon cause shown, any application to be so admitted may be refused notwithstanding that the applicant has complied with the provisions of the said subsection:

Provided further that no refusal by a Judge of any such application shall be final, but any application so refused by a 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 as a barrister or solicitor, under the provisions of this Act shall

- (a) pay into the Treasury the sum of one hundred dollars as an enrolment fee;
- (b) file in the office of the Registrar an affidavit of his or her identity, and that he or she 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) his or her legal education certificate:

Provided that in a special case the High Court may exempt any national from depositing the said certificate if satisfied otherwise that he or she has the qualification required.

(3) The High Court may, subject to the provisions of subsection (2), admit to practise any national who

- (a) was on 1st October, 1972 qualified to be admitted to practise as a barrister or solicitor in Saint Christopher and Nevis;
- (b) prior to 1st January, 1985, had undergone, was undergoing or had been accepted for, a course of legal training leading to a qualification which, had it been obtained prior to 1st October, 1972, would have been recognised by the Government of Saint Christopher and Nevis as a qualification to be admitted to practise as a barrister or solicitor in Saint Christopher and Nevis and obtains that qualification.

*[Substituted by Act 6/1992]*

(4) Every application for admission as a barrister or solicitor under the provisions of subsection (3) shall be subject to the provisions in subsections (1) and (2) of this section except that an applicant shall deposit with the Registrar his or her certificate of call to the English, Scottish or Northern Ireland Bar; or his or her certificate of admission as a solicitor in England, or in Northern Ireland or law agent admitted to practise in Scotland instead of a legal education certificate.

(5) A barrister or solicitor of a superior court in any territory to which this subsection for the time being applies who has been in practice before that court for not less than five years may, with the consent of the Chief Justice

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- (a) after giving due notice, and proof of his or her qualifications and good character; and
- (b) on payment of the fees prescribed by subsection (2) of this section;

be admitted as a barrister or solicitor of the Court.

(6) Where, as respects a superior court in any territory which is part of the Commonwealth outside any participating territory, the Chief Justice is satisfied

- (a) that the regulations respecting the admission of barristers or solicitors of that court are such as to secure that those barristers or solicitors possess proper qualifications and competency; and
- (b) that by the law of that territory barristers or solicitors of the Court will be admitted as barristers or solicitors of the Superior Court in that territory on terms as favourable as those on which it is proposed to admit a barrister or solicitor of that superior court in pursuance of the foregoing subsection as a barrister or solicitor of the Court;

the Chief Justice may, by order, apply the foregoing subsection to that superior court and that territory subject to any exceptions, conditions and modifications specified in the Order, and by the same or any subsequent order may as respects that Court and territory provide for all matters appearing to him or her to be necessary or proper for giving effect to the Order and to this section.

*[Amended by Act 6/1992]*

(7) The Chief Justice may likewise by order revoke or vary any Order previously made under this section.

*[Amended by Act 6/1992]*

(8) In subsections (5) and (6), the expressions “superior court” and “barrister or solicitor” mean respectively, as respects any territory, such court in that territory and such barrister, solicitor, attorney, legal practitioner or other person entitled to practise in a court of law in that territory.

*[Amended by Act 6/1992]*

#### **77. Enrolment of barristers and solicitors.**

(1) Every person admitted as a barrister or solicitor of the Court shall cause his or her name to be enrolled in a book to be kept for the purpose by the Registrar and to be called the Court Roll, and, upon his or her name being so enrolled, shall be entitled to a certificate of enrolment under the seal of the High Court.

(2) Every person, whose name is so enrolled, shall if enrolled as a barrister, be entitled to practise as a barrister, and, if enrolled as a solicitor, be entitled to practise as a solicitor in every Court in the State.

(3) No person, whose name is not so enrolled, shall be entitled to practise in any of the Courts of the State.

#### **78. Barristers practising as solicitors.**

Subject to the provisions of section 79 of this Act, every person enrolled as a barrister shall be entitled to practise also as a solicitor, and to sue for and recover his or her

taxed costs as such, but if he or she practises as a solicitor he or she shall be subject to all the liabilities which attach by law to a solicitor.

**79. Queen's Counsel.**

(1) Except as otherwise provided in subsection (2) of this section, no barrister who has the rank of Queen's Counsel whether in this State or elsewhere, 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, notwithstanding that he or she has the rank of Queen's Counsel, perform the functions mentioned in section 73 of this Act in relation to the duties of his or her office as Attorney-General.

**80. Solicitors and Commissioners for Oaths are officers of the Court.**

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

(2) Every person who, under the provisions of any enactment for the time being in force is, or shall be appointed a Commissioner to administer oaths in the Court shall be deemed to be an officer of the Court.

**81. Barristers and solicitors may be suspended or struck off roll.**

Any two Judges of the High Court may, for reasonable cause, suspend any barrister or solicitor from practising in the State during any specified period, or may order his or her name to be struck off the Court Roll.

**82. Unauthorised persons drawing legal documents.**

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 one hundred dollars.

**83. Law relating to solicitors taxation and recovery of costs.**

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 the State and apply to all persons lawfully practising therein as solicitors of the Court.

**PART VIII – WITNESSES**

**84. Disobedience of subpoena.**

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

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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 not exceeding one hundred and fifty dollars, or by commitment to prison for any term not exceeding six months:

Provided that nothing contained in this section shall affect or abridge any right of any party to the proceeding to proceed against such person for the recovery of any special damage such party may have sustained by reason of the disobedience of such person.

**85. Witnesses' expenses in criminal proceedings.**

(1) Any Judge of the High Court may, in or in respect of any criminal proceedings before him or her, 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 bound over to appear before the Court at the trial:

Provided that the Judge may, if he or she 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 or her travelling expenses, such further allowance as may be prescribed by rules of court:

Provided that in the case of duly qualified medical practitioners, whose whole time is given to the public service, and who are therefore under the provisions of subsection (3) of this section 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 or her whole time is not at the disposal of the Government, by reason of his or her enjoying private practice or otherwise, be entitled to be paid an allowance under this Act, for attendance as a witness, beyond the travelling expenses provided for by subsection (2) of this section.

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

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

**PART IX – MISCELLANEOUS**

**87. Sittings of the High Court and Court of Appeal.**

(1) Subject to the provisions of this section and section 88, 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 the State may sit either in this State or in any of the States to which the Courts Order applies.

(2) Sittings of the High Court for the trial of civil and criminal causes originating in the State shall be held at such times as may be prescribed by rules of court and, subject to the provisions of section 11 of the Criminal Procedure Act, Cap. 4.06 shall be held in the Circuit in which such cause originated 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*.

#### **88. Interlocutory applications.**

(1) In the absence of a Judge, any interlocutory or other application, which may be made to a Judge in Chambers, may be reduced to writing, and transmitted under the Court seal by the Registrar, to the Judge to whom it shall be directed, together with such affidavits and documents as the applicant shall think necessary.

(2) The Judge's order in writing thereon shall be transmitted to the Registrar, and shall be deemed to be the order of the Court.

(3) No such application shall be made unless the Registrar shall certify that, to the best of his or her 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.

#### **89. Expenses in criminal proceedings.**

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 allowances ordered to be paid to witnesses under section 85 of this Act, shall be paid out of monies provided by the Legislature.

#### **90. Remission or reduction of fines.**

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 or her.

#### **91. Saving of procedure and rules of court.**

Save as is otherwise provided by this Act or by rules of court, all forms and methods of procedure which under and by virtue of any law, custom or rules 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.



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## **SCHEDULE**

(Section 5)

Eastern Caribbean Supreme Court  
(Constitution of the Court of Appeal)  
Notice

WHEREAS it is provided by Section 5 of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act 1975 (No. 17 of 1975) that subject to the provisions of section 17(3) of the Courts Order and of the 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.

AND WHEREAS it is deemed expedient that a directive be given by the Chief Justice with regard to the constitution of the Court of Appeal.

NOW THEREFORE it is hereby directed that the Court of Appeal shall be properly constituted when a sitting of that Court is presided over by the Chief Justice or in his absence the Senior Sitting Justice of Appeal.