ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER E15

EASTERN CARIBBEAN SUPREME COURT (ANGUILLA) ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—

Act 6/2010, in force 1 November 2010
Act 6/2016, in force 27 April 2016
Act 6/2019, in force 15 February 2019
Act 21/2021, in force 16 September 2021

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EASTERN CARIBBEAN SUPREME COURT (ANGUILLA) ACT

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EASTERN CARIBBEAN SUPREME COURT (ANGUILLA) ACT

PRELIMINARY

Interpretation

1. In this Act—

"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;

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

"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 Supreme Court Order;

"Court" or "Supreme Court" means the West Indies Associated States Supreme Court (now re-styled the Eastern Caribbean Supreme Court) established by the Supreme Court Order;

"Court of Appeal" means the Court of Appeal established by the Supreme Court Order;

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

"dollars" means dollars in the currency of the East Caribbean Currency Authority;

"High Court" means the High Court of Justice established by the Supreme Court Order;

"judgment" includes decree;

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

"Master" means the Master of the Supreme Court;

"matrimonial cause" means any action for divorce, nullity of marriage, judicial separation, jactitation of marriage or restitution of conjugal rights;

"matter" includes every proceeding in Court not in a cause;

"order" includes decision and rule;

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

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

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"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, claims, fixed date claim or otherwise;

"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;

"proceeding" includes action, cause or matter;

"puisne judge" means a judge of the High Court, other than the Chief Justice;

"Registrar" means the Registrar of the High Court;

"rules of court" includes forms;

"solicitor" means solicitor of the Supreme Court;

"suit" includes action;

"Supreme Court Order" means the West Indies Associated States Supreme Court Order 1967;

"verdict" includes the findings of a jury and the decision of a judge.

How Supreme Court judges are to be addressed

2. All judges of the Supreme Court shall be addressed in the manner customary in addressing the judges of the former Supreme Court.

Constitution of the Court

3. Subject to the provisions of section 17(3) of the Supreme Court 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 by regulation.

PART 1

THE HIGH COURT

Jurisdiction of High Court

4. (1) There shall be vested in the High Court all jurisdiction which was vested in the former Supreme Court by the Anguilla (Constitution) Order 1976 (now repealed) or the Supreme Court Act (now repealed) or by any law of the Legislature of Anguilla or any other law for the time being in force in Anguilla and such jurisdiction shall include—

(a) the jurisdiction which was vested in or capable of being exercised by all or any one or more of the judges of the former Supreme Court sitting in Court or Chambers or elsewhere when acting as judges or a judge pursuant to any Order in Council, Act or any other law for the time being in force in Anguilla;

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(b) all powers given to the former Supreme Court or to any judge or judges thereof by any Act or any other law for the time being in force in Anguilla; and

(c) all ministerial powers, duties and authorities incidental to any and every part of that jurisdiction.

(2) The High Court shall have and exercise within Anguilla all such jurisdiction (save and except the jurisdiction in Admiralty) and the same powers and authorities incidental to such jurisdiction as on the 1st day of January, 1940, were vested in the High Court of Justice in England.

High Court to be a Colonial Court of Admiralty

5. (1) The High Court is hereby declared, in pursuance of the Colonial Courts of Admiralty Act 1890, (Imperial) (53 & 54 Vict. c. 27) to be a Colonial Court of Admiralty within the meaning of that Act.

(2) The jurisdiction of the High Court in Admiralty shall be exercised in accordance with the Colonial Courts of Admiralty Act 1890, (Imperial) and Part I of the Administration of Justice Act 1956.

Family Court Division

6. The High Court shall be the known as the Family Court Division when it exercises jurisdiction for family matters and matters relating to children under any enactment.

(Act 6/2019, Schedule)

Practice in bankruptcy

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

Practice in criminal proceedings

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

Practice in civil proceedings and in probate, divorce, and matrimonial causes

9. 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 and any other law in operation in Anguilla and 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 law and practice administered for the time being in the High Court of Justice in England.

Jurisdiction of single judge

10. Any judge of the High Court in accordance with the 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.

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Master's authority and jurisdiction

11. (1) A Master shall exercise the authority and jurisdiction of a judge of the High Court sitting in Chambers and any other authority and jurisdiction as may from time to time be assigned by the 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.

Law and equity to be concurrently administered

12. Subject to the express provisions of any other law, in every civil cause or matter commenced in the High Court, law and equity shall be administered by the High Court and the Court of Appeal, as the case may be, according to sections 13 to 19.

Equities of the plaintiff

13. If a plaintiff or petitioner claims to be entitled to any equitable estate or right or to relief on 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.

Equitable defences

14. If a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract or against any right, title or claim asserted by any plaintiff or petitioner in the cause or matter or alleges any ground of equitable defence to any such claim of the plaintiff or petitioner, the Court or judge shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence such and the same effect by way of defence against the claim of the plaintiff or petitioner as the High Court of Justice in England would give if the like matters had been relied on by way of defence in any suit or proceeding instituted in that court for the like purpose.

Counterclaim and third parties

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

(a) all such relief against any plaintiff or petitioner as the defendant has properly claimed by his pleading and as the Court or judge might have granted in any suit instituted for that purpose by that defendant against the same plaintiff or petitioner; and

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

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(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 defence against the claim as if he had been duly sued in the ordinary way by the defendant.

Equities appearing incidentally

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

Defence or stay instead of injunction or prohibition

17. 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, but—

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

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

Common law and statutory rights and duties

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

Determination of matters completely and finally

19. 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 thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim or matter so that as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of these matters avoided.

Rules of equity to prevail

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

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Declaratory order

21. No action or proceeding shall be open to objection on the ground that a merely declaratory judgment, decree or order is sought thereby.

Mode of trial

22. (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, but 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 10 days after the action has been set down for trial apply to have the action tried with a jury, and if the Court or a judge is satisfied that—

(a) a charge of fraud against the party; or

(b) a claim in respect of libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage is in issue;

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

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

Granting of mandamus, etc.

23. (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 a right to do the act sought to be restrained under any colour of title; or

(b) whether the estates claimed by both or by either of the parties are legal or equitable.

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Execution of instruments by order of Court

24. Where any person neglects or refuses to comply with a judgment or order directing him 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 person originally directed to execute or endorse it.

Restrictions on institution of vexatious actions

25. (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 legal proceedings, whether in the Court of Appeal, the High Court, or in the Magistrate's Court, and whether against the same person or against different persons, the High Court may, after hearing the person or giving him an opportunity of being heard, order that no legal proceedings shall without leave of the High Court or a judge thereof be instituted by him in any court, and such leave shall not be given unless the High Court is satisfied that the proceedings are not an abuse of the process of the court and that there is *prima facie* ground for the proceedings.

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

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

PART 2

THE COURT OF APPEAL

Jurisdiction of the Court of Appeal

Jurisdiction vested in Court of Appeal

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

(a) the jurisdiction and powers which on 1st April, 1982 were vested in the Court of Appeal constituted under the provisions of section 4 of the Anguilla (Constitution) Order 1976 before its repeal;

(b) the jurisdiction and powers which were formerly vested in the British Caribbean Court of Appeal before its abolition; and

(c) such other jurisdiction and powers as may be conferred upon it by this Act or any other law.

Practice and procedure in the Court of Appeal

27. 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 the rules of court and, where no special provisions are contained in this Act or the rules of court, such jurisdiction so far as concerns practice and procedure in relation to appeals from the High Court shall

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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); and

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

Appeals from Magistrate's Court

28. (1) Subject to the provisions of the Magistrate's Code of Procedure Act or any other enactment regulating appeals from the Magistrate's Court and to the rules of court, an appeal shall lie to the Court of Appeal from any judgment, decree, sentence or order of the Magistrate in all proceedings.

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

Civil Appeals from High Court

Appeals from High Court in civil matters

29. (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 Anguilla; and

(b) an appeal shall lie to the Court of Appeal, and the Court of Appeal shall have jurisdiction to hear and determine the appeal, from any judgment or order of the High Court and for the purposes of, and incidental to, the hearing and determination of any appeal and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the powers, authority and jurisdiction of the High Court.

(2) No appeal shall lie—

(a) from any order made in any criminal cause or matter except as provided by this Act;

(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; or

(e) from an order absolute for the dissolution or nullity of a marriage by 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.

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(3) No appeal shall lie except by leave of the judge making the order or of the Court of Appeal from—

(a) an order made with the consent of the parties; or

(b) an order as to costs only where such costs are left to the discretion of the Court.

(4) No appeal shall lie without leave of the judge or of the Court of Appeal from any interlocutory order or interlocutory judgment made or given by a judge except in the following cases—

(a) where the liberty of the subject or the custody of infants is concerned;

(b) where an injunction or the appointment of a receiver is granted or refused;

(c) in the case of a decree nisi in a matrimonial cause or a judgment or order in an Admiralty action determining liability;

(d) in such other cases, to be prescribed by the rules of court, as may in the opinion of the authority having power to make such rules of court be of the nature of final decisions.

(5) Where an appeal has been brought under the provisions of this section and is pending in the Court of Appeal, a judge of the High Court may hear and determine such applications incidental to the appeal and not involving the decision thereof as may be prescribed by the rules of court but an order made on any such application may be discharged or varied by the Court of Appeal.

(6) For the purposes of subsections (2), (3) and (4), "judge" means judge of the High Court and, where the context admits, includes a Master.

Powers of Court of Appeal on hearing appeals in civil matters

30. (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 cause may require;

(b) draw inferences of fact; and

(c) direct the High Court to enquire 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 the foregoing provisions of 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 or by any particular party to the proceedings in that Court or that any ground for allowing the appeal or for affirming or varying the decision of that Court is not specified in such a notice, and the Court of Appeal may make any order, on such terms as the Court of Appeal thinks just, to ensure the determination of the merits of the real question in controversy between the parties.

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(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.

Additional powers of Court of Appeal on hearing appeals in civil matters

31. For the purposes of an appeal in any civil cause or matter, the Court of Appeal may, if they think it necessary or expedient in the interest of justice—

(a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case, but no person shall be compelled to produce under any such order any writing or other document which he could not have been compelled to produce at the hearing or trial;

(b) if they think fit, order any witnesses which 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 the 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 at any place, and allow the admission of any deposition so taken as evidence before the Court;

(c) if they think fit, receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not a compellable witness, and, if a party makes application for the purpose of the husband or wife of that party, 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 the 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 so far as they think fit to adopt it;

(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; and

(f) where the case was not tried by the High Court, remit the case to the court of trial for further hearing, with such instructions as regards the taking of further evidence or otherwise as appear to them necessary.

Power of Court of Appeal as to new trials

32. (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 of Appeal that a new trial should be held, have power to set aside the order appealed against and order that a new trial be held.

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

(a) a new trial shall not be ordered on the ground of misdirection, or of the improper admission or rejection of evidence unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned;

(b) a new trial may be ordered on any question without interfering with the finding or decision upon any other question, and, if it appears to the Court of Appeal that any such wrong or miscarriage as is mentioned in paragraph (a) 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 they think fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below;

(b) a new trial shall not be ordered because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless, in the opinion of the Court of Appeal, some substantial wrong or miscarriage has been thereby occasioned;

(c) in any case where the Court has power to order a new trial on the ground that the damages awarded by a jury are excessive or inadequate, the Court may, in lieu of ordering a new trial—

(i) with the consent of all parties concerned, substitute for the sum awarded by the jury such sum as appears to the Court to be proper, or

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

Wrong rulings as to sufficiency of stamps

33. 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 insufficient or that the document does not require a stamp.

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Criminal Appeals from High Court

Interpretation

34. (1) In this section and sections 35 to 57—

"appeal" means an appeal by a person convicted upon indictment;

"appellant" means the person making such appeal;

"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;

"sentence" includes any order of the Court made on conviction with reference to the person convicted or his wife or children, and any recommendation of the convicting court as to the making of a deportation order, or of a restriction order, or of an expulsion order in the case of a person convicted.

(2) In this section and in sections 35, 38, 46, 48, 54, 55(1), 56(2) and 57 references to a person being convicted shall include references to his being the subject of a special verdict under section 53 of the Criminal Procedure Act.

Right of appeal in criminal cases

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

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

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

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

Right of appeal of the Attorney-General

36. (1) The Attorney-General may, without leave of the Court, appeal to the Court of Appeal, or if the Appeal is unsuccessful to 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 the indictment;

(b) a submission upheld by the trial judge that there is no case for the accused to answer.

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(2) Where in proceedings by indictment the decision of the trial court is erroneous in point of law, in that—

(a) material evidence sought to be adduced by the prosecution was improperly excluded at the trial;

(b) there was a substantial misdirection of the jury by the trial judge in the course of his summation—

(i) on the law or facts, or

(ii) on a mixed question of law and fact; or

(c) there was a material irregularity in the course of the trial;

the Attorney General may, with leave of the Court of Appeal or a Judge thereof, appeal to the Court of Appeal.

(3) The Attorney-General may, with leave of the Court of Appeal or a Judge thereof, appeal against any sentence on the ground—

(a) that the sentence is one which the court has no power to pass;

(b) that the sentence is manifestly inadequate; or

(c) that the sentence is wrong in principle.

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

(5) The Attorney-General, after he has notified the Court in accordance with this section, must file with the Court a notice of appeal and the grounds of appeal within 14 days.

(6) An appeal made under this section shall operate as stay of proceedings and shall have the effect of suspending the execution of any 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 attend the appeal proceedings and abide by the results of the proceedings.

(7) The right of appeal conferred on the Attorney-General by subsections (1), (2) and (3) shall be limited to the following offences—

(a) murder;

(b) treason;

(c) manslaughter;

(d) rape and other sexual offences;

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(e) robbery;

(f) drug offences;

(g) burglary;

(h) housebreaking and offences of stealing;

(i) theft;

(j) offences involving dishonesty;

(k) firearms offences;

(l) conspiracies and attempts to commit an offence referred to in paragraphs (a) to (k);

(m) aiding and abetting a person who commits an offence referred to in paragraphs (a) to (k); or

(o) financial crimes and money laundering offences.

(Act 21/2021, s. 2)

Attorney-General's reference

37. (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 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, provided that a point of reference under this subsection shall not affect the trial in relation to which the reference is made or any acquittal in that trial.

(2) The Attorney-General may refer to the Court of Appeal important questions of law or fact concerning—

(a) the interpretation of the Constitution;

(b) the constitutionality or interpretation of any legislation enacted by the House of Assembly as the Legislature for Anguilla; or

(c) any matter, whether or not in the opinion of the Court *ejusdem generis* with the matters contained in paragraphs (a) and (b), submitted by the Attorney-General as an important question;

and any question so referred is deemed to be an important question.

(3) Where a reference is made to the Court of Appeal under this section, the Court of Appeal shall—

(a) hear and consider it;

(b) answer each question so referred; and

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(c) certify to the Attorney-General its opinion on each question, with the reasons for each answer;

and the opinion shall be pronounced in like manner as in the case of a judgment on appeal to the Court.

(4) The Court of Appeal has power to give general directions for the management of the hearing of the Attorney-General's reference to the Court, including power to direct that any person interested or, where there is a class of persons interested, any one or more persons as representatives of that class, shall be notified of the hearing on a reference under this Act, and those persons are entitled to be heard thereon.

(5) The Court of Appeal may, in its discretion, request any counsel to argue the case with respect to any interest that is affected and with respect to which counsel does not appear, and the reasonable expenses thereby occasioned may be paid by the Minister responsible for Finance out of monies appropriated by the Legislature for expenses of litigation.

(Act 21/2021, s. 2)

Determination of appeal in ordinary cases

38. (1) The Court of Appeal on any such appeal against conviction shall, subject as hereinafter provided, allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unsafe or unsatisfactory or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that there was a material irregularity in the course of the trial and in any other case shall dismiss the appeal, but the court may, notwithstanding that they are of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no miscarriage of justice has actually occurred.

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

(3) Where—

(a) an appeal against a special verdict under section 53 of the Criminal Procedure Act 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 they are of the opinion that, but for the insanity of the accused, the proper verdict would have been that he was guilty of an offence other than the offence charged.

(4) 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.

(5) 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.

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(6) On a retrial ordered under this section, section 225 of the Magistrate's Code of Procedure Act (reading of depositions) shall not apply to the depositions of any person who gave evidence at the original trial, but a transcript of the shorthand notes or, where there are no shorthand notes, of the judge's notes, of the evidence given by any witness at the original trial may, with the leave of the judge, be read as evidence—

(a) by agreement between the prosecution and the defence; or

(b) if the judge is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or is absent from Anguilla, 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 the rules of court.

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

Powers of Court in special cases

39. (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 they think 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, and the Court of Appeal considers that a wrong conclusion has been arrived at by the Court before which the appellant has been convicted on the effect of that verdict, the Court of Appeal may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court of Appeal to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.

(4) Where on any appeal it appears to the Court of Appeal that the proper verdict would have been a special verdict under section 53 of the Criminal Procedure Act, the Court may quash the sentence passed at the trial and order the appellant to be kept in custody as a prisoner of unsound mind under the provisions of that Act in the same manner as if a special verdict had been found by the jury under that Act.

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Supplementary provisions where appeal against special verdict allowed

40. (1) Where, in accordance with section 38(1), an appeal against a special verdict under section 53 of the Criminal Procedure Act 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 in punishing or otherwise dealing with the accused and other powers as the Court before which he was tried would have had if the jury had come to the substituted verdict; and

(b) in any other case, the Court of Appeal shall substitute for the verdict of the jury a verdict of acquittal;

but 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 paragraph (1)(a) shall, unless the Court otherwise directs, begin to run from the time it would have begun to run if passed in the proceedings in the Court before which the accused was tried.

Re-vesting and restitution of property on conviction

41. (1) The operation of any order for the restitution of any property to any person made on a conviction on indictment and the operation in case of any such conviction of the provisions of section 286 of the Criminal Code[1] 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 14 days after the date of conviction; and

(b) in cases where notice of appeal or leave to appeal is given within 14 days after the date of conviction, until the determination of the appeal;

and in cases where the operation of any such order, or the operation of these 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 the rules of court for securing the safe custody of any property pending the suspension of the operation of any such order or of those provisions.

(3) The Court of Appeal may by order annul or vary any order made on a trial for the restitution of any property to any person although the conviction is not quashed and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

[1] This section has been corrected to reflect the renumbering of the Criminal Code, R.S.A. c. C140 *(15/12/2014).*

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Supplementary powers of Court of Appeal on hearing criminal appeals

42. For the purposes of an appeal in any criminal cause or matter, the Court of Appeal may, if they think it necessary or expedient in the interest of justice—

(a) exercise any or all of the powers conferred by section 31 on the Court of Appeal (other than those contained in paragraph (f) thereof) but in the application of section 31 to an appeal in any criminal cause or matter, for the words "a party" and "that party" in paragraph (c) thereof, there shall be substituted the words "the appellant";

(b) exercise in relation to the proceedings of the Court any other powers which may for the time being be exercised by the Court of Appeal on appeals in civil matters; and

(c) issue any warrant necessary for enforcing any order or sentence of the Court of Appeal;

but—

(d) 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

(e) whenever the Court of Appeal receives further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.

Duty to admit fresh evidence

43. Without prejudice to the generality of section 42, where evidence is tendered to the Court of Appeal under that section, the Court of Appeal shall, unless they are 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 them 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) they are satisfied that it was not adduced at the trial, but that there is a reasonable explanation for the failure so to adduce it.

Admission of appellant to bail and custody when attending Court

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

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

Computation of sentence

45. (1) The time during which an appellant, pending the determination of his appeal, is admitted to bail, and, subject to any directions which the Court of Appeal may give to the contrary on any appeal, the time during which the appellant, if in custody, is specially treated as an appellant, shall not count as part of any term of imprisonment under his sentence, and, in the case of an appeal under this Act, any imprisonment under the sentence of the appellant, whether it is the sentence passed by the court of trial or the sentence passed by the Court of Appeal, shall, subject to any directions which may be given

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by the Court of Appeal, be deemed to be resumed or to begin to run, as the case requires, if the appellant is in custody, as from the day on which the appeal is determined, and, if he is not in custody, as from the day on which he is received into prison under the sentence.

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

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

Time for appealing

46. (1) Where a person convicted desires to appeal under this Act to the Court of Appeal or to obtain the leave of the Court of Appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by the rules of court within 14 days of the date of conviction.

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

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

Stay of execution

47. In the case of a conviction involving sentence of death—

(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 46; and

(b) if notice is so given, the appeal or application shall be heard and determined with as much expedition as practicable, and the sentence shall not be executed until after the determination of the appeal, or, in cases where an application for leave to appeal is finally refused, of the application.

Judge's notes and report to be furnished on appeal

48. 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 application for leave to appeal under this Act, furnish to the Registrar in accordance with the rules of court his notes of the trial; and shall also furnish to the Registrar in accordance with the rules of court a report giving his opinion upon the case or upon any point arising in the case.

Legal assistance to appellant

49. The Court of Appeal may at any time assign to an appellant who has been sentenced to death a solicitor and counsel, or counsel only, in any appeal or proceedings preliminary or incidental to an

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appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid.

Right of appellant to be present

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

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

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

(4) The reference in subsection (1) to an appellant being in custody shall not include a reference to his being in custody in consequence of a special verdict under section 53 of the Criminal Procedure Act.

Costs of appeal

51. (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 and no appellant shall be required to give security for the costs of his appeal or for the costs of his application for leave to appeal.

(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 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 money 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.

Duties of Attorney General and Registrar

52. (1) It shall be the duty of the Attorney General by himself or by other counsel designated by him to appear for the Crown on every criminal appeal to the Court of Appeal under this Act, except so far as a private prosecutor in the case of a private prosecution undertakes the defence of the appeal.

(2) Provisions shall be made by the rules of court for the transmission to the Attorney General of all such documents, exhibits, and other things connected with the proceedings, as he may require for the purpose of his duties under this section.

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

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(4) 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 they consider that the appeal is frivolous or vexatious, and can be determined without adjourning the same for a full hearing, dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown thereon.

(5) Any documents, exhibits, or other things connected with the proceedings on the trial of any person on indictment, who, if convicted, is entitled or may be authorised to appeal under this Act shall be kept in the custody of the court of trial in accordance with the 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.

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

(7) The Registrar shall report to the Court of Appeal or some judge thereof any case in which it appears to him that, although no application has been made for the purpose, a solicitor and counsel, or counsel only, ought to be assigned to an appellant under the powers given to that Court by this Act.

(8) In this section, "Registrar" includes the Chief Registrar and Deputy Registrar of the Court of Appeal.

Shorthand notes, etc.

53. (1) Such records in such manner, whether in writing by shorthand notes or otherwise, or by recordings on electromagnetic tape or by other means as may be prescribed by the 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 Registrar for the use of the Court of Appeal or any judge thereof.

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

(3) The 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.

(4) In this section, "Registrar" includes the Chief Registrar and Deputy Registrar of the Court of Appeal.

Powers which may be exercised by a judge of the Court

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

(a) to give leave to appeal;

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(b) to extend the time within which notice of appeal or of an application for leave to appeal may be given;

(c) to assign legal aid to an appellant;

(d) to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave; or

(e) to admit an appellant to bail;

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

Case stated or question of law reserved

55. (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 their opinion, shall have power, if they think fit, to cause the case or certificate to be sent back for amendment and thereupon the same shall be amended accordingly.

(3) Where a case is stated or question of law reserved for the consideration of the Court of Appeal, the provisions of sections 44, 45, 47, 49, 50, 51, sections 52(1), (2), (3), (5) and (7) and sections 53 and 54 shall apply to such proceedings in like manner as to an appeal.

Prerogative of mercy

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

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

(a) refer the whole case to the Court of Appeal, and the case shall then be heard and determined by the Court as in the case of an appeal by a person convicted; or

(b) if he desires the assistance of the Court of Appeal on any point arising in the case with a view to the determination of the petition, refer that point to the Court for their opinion thereon, and the Court shall consider the point so referred and furnish the Governor with its opinion thereon accordingly.

Application to conviction on criminal information

57. This Act shall apply in the case of convictions or criminal informations as it applies in the case of convictions on indictments.

Appeals in Contempt Proceedings

Appeals from orders in contempt proceedings

58. (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 the 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 2 days thereafter give notice to the court, judge or Magistrate making the order of his intention to appeal to the Court of Appeal and shall within 2 days after giving such notice enter into a recognizance with 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 $500 to prosecute such appeal, and the giving of such notice and entering into such recognizance shall operate as a stay of such order.

(3) On such person entering into recognizance, the judge or Magistrate making the order shall, within 21 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 4 days thereafter issue a summons, free of cost, calling on the appellant to appear before the Court of Appeal within a reasonable time thereafter and on a day to be named therein and the Court of Appeal shall hear and determine such appeal and either confirm the order or vary or quash such order and the Court of Appeal may from time to time return the proceedings to the judge or Magistrate who made the order for further information.

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

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PART 3

OFFICERS OF THE COURT

Registrar

59. (1) The Chief Registrar shall have and exercise in relation to Anguilla such functions as may be conferred upon him by this Act or any other law or by the 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 in that behalf shall direct. He shall be subject to the general or special directions of the Chief Registrar and shall assist him in the performance of his duties.

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

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

(6) The Registrar shall be *ex officio* Bailiff.

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

Taxation of costs

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

(2) Every taxation of costs shall be subject to the rules of court and be subject to review by a judge in chambers.

Acting Registrar

61. Whenever the Registrar is on leave, or ill or otherwise unable to perform the duties of his office, the Governor (acting after consultation with the Chief Justice) may appoint a fit and proper person to act, during pleasure, for such Registrar; and such person, whilst so acting, shall have all the powers, and be charged with all the duties of the Registrar, but, until any appointment is so made, and also on every occasion when the Registrar is from any cause absent from his office, the duties of the Registrar shall devolve upon and be performed by the clerk next in seniority to the Registrar and officiating in the Registry who shall while so acting have all the powers of the Registrar.

Hours of business

62. (1) The office of the Registrar and Bailiff shall be kept open for transaction of business on every day of the year except Sundays, Christmas Day, Good Friday and public holidays, during such hours of those days as may be appointed by the Governor by order under his hand.

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

Bailiffs

63. (1) There shall be at least one bailiff for the High Court, but the Governor may sanction the appointment of an additional bailiff or bailiffs.

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

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

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

(5) Notwithstanding anything hereinbefore contained, a judge of the High Court may, by writing under his hand and the seal of the High Court, appoint a temporary bailiff to serve or execute such process or processes of the High Court as may be specified in the appointment.

Registrar, clerks and bailiffs not to advise litigants

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

Misconduct of officers of court

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

(a) inquire into the matter in a summary way, on affidavit, or such other evidence as shall appear reasonable to him, and for that purpose, summon and enforce the attendance of all necessary parties and witnesses as may be enforced in any other proceedings; and

(b) thereupon dismiss the charge, or order the officer to pay any money or damages which, in the opinion of the judge, the officer ought under the circumstances to pay, and also impose such fine, if any, as he may think fit, on the officer.

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

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

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

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PART 4

WITNESSES

Disobedience of subpoena

66. If any person served with a subpoena to attend as a witness in any proceeding before a judge of the High Court sitting in court or in chambers or before the Court of Appeal shall refuse or neglect to attend pursuant to such subpoena, such judge or Court may punish such person in a summary way by fine of $1,000, or by commitment to prison for any term of 6 months, but 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.

Witness expenses in criminal proceedings

67. (1) Any judge of the High Court may, in or in respect of any criminal proceeding before him, order allowances not exceeding those prescribed by rules of court to be paid to all persons examined or detained as witnesses for the Crown, whether examined before the Magistrate or not, and also to all persons examined or detained as witnesses for the defence, who shall have been examined before the Magistrate, and who shall have been bound over to appear before the court at the trial, but the judge may, if he shall think fit, order a similar allowance to be paid to any person examined at the trial as a witness for the defence, notwithstanding that such person was not examined before the Magistrate.

(2) If any person except a duly qualified medical practitioner giving professional evidence, whose allowance shall, under this section, be ordered to be paid, shall reside at a greater distance than 1 mile from the Court House at which such trial takes place, the judge may order to be paid to such person for and in respect of his travelling expenses, such further allowance as may be prescribed by rules of court, but 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) disqualified from receiving an allowance for attendance, the judge may notwithstanding, order the payment of an allowance for travelling expenses in accordance with this subsection.

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

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

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

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PART 5

MISCELLANEOUS

Sittings of the courts

69. (1) Subject to this section and section 70P, 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 Anguilla may sit either in Anguilla or in any of the territories to which the Supreme Court Order applies.

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

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

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

Interlocutory applications

70. (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.

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

Expenses in criminal proceedings

71. 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 65, shall be paid out of money provided by the Legislature.

Remission or reduction of fines

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

Rules of court

73. (1) The Chief Justice and any other 2 judges of the Supreme Court may by order provide that any rules of court made under section 17 of the Supreme Court Order shall have effect as part of the law of Anguilla subject to such exceptions, adaptations or modifications as may be specified in the

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order and any such order may include provisions for the amendment or revocation of any rule of court so having effect immediately before 1st April, 1982.

(2) All rules of court in force immediately before 1st April, 1982 shall continue in force until revoked.

Saving of procedure

74. Save as is otherwise provided by this Act or by the rules of court, all forms and methods of procedure which under and by virtue of any law, custom or rule whatsoever were formerly in force in any of the courts the jurisdiction of which is vested in the High Court or the Court of Appeal respectively, and which are not inconsistent with this Act, or with the 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.

Citation

75. This Act may be cited as the Eastern Caribbean Supreme Court (Anguilla) Act, Revised Statutes of Anguilla, Chapter E15.

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