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[1959.]

SUPREME COURT ACT, 1935-1957.

Crown Law Department,
Perth, 25th May, 1959.

THE following amendments of the Rules of the Supreme Court, 1909, are published for general information.

R. C. GREEN,
Under Secretary for Law.

SUPREME COURT ACT, 1935-1957.

Amendment of the Rules of the Supreme Court, 1909.

WE, the Honourable Albert Asher Wolff, Chief Justice, the Honourable Lawrence Walter Jackson, Senior Puisne Judge, and the Honourable John Evenden Virtue, the Honourable Roy Vivian Nevile and the Honourable Gordon Bede D'Arcy, Puisne Judges of the Supreme Court of Western Australia, acting in pursuance of the powers conferred by the Supreme Court Act, 1935-1957, and of every other power enabling us in this behalf, do amend the Rules of the Supreme Court, 1909, in the manner hereinafter mentioned, and declare that such amendments shall come into operation upon publication thereof in the *Government Gazette*.

1.—Order XXXIV.

Rules 2 to 7, both inclusive, are rescinded and in lieu thereof the following Rules to stand as Rules 2 and 3 are inserted:—

2. The application for an order for the trial by a jury of any cause or matter, or of any question or issue of fact, shall be made within seven days after notice of trial has been given.

3. In every cause or matter, unless a trial with a jury is ordered, the mode of trial shall be by a Judge without a jury: Provided that in any such case, the Court or a Judge may at any time order any cause, matter, or question or issue of fact to be tried by a Judge with a jury or by a Judge sitting with assessors, or by a referee with or without assessors.

Rule 8 is amended by deleting the passage "Subject to the provisions of the preceding Rules of this Order" at the commencement of the Rule.

2.—Order LVIII.

Order LVIII is rescinded and the following substituted:—

Order LVIII.

(O. 58.)

Appeals to the Full Court from a Judge.

1. (1) All appeals to the Full Court from the judgment or order of a Judge, whether in Court or in Chambers, shall be by way of re-hearing, and shall be instituted by notice of motion, which shall be served and filed as hereinafter provided.

(2) The appellant may, by notice of motion, appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part. It shall also state briefly, but specifically, the grounds relied upon in support of the appeal, and what judgment the appellant seeks in lieu of that appealed from.

2. The notice of motion by way of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Full Court may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of motion may be amended at any time as the Full Court may think fit.

3. The notice of motion by way of appeal must be served within the times following, respectively, that is to say:—

- (1) If the appeal is from a final judgment, whether in Court or Chambers, within twenty-one days from the date of the judgment;
- (2) in any other case within eight days from the date of the judgment or order;
- (3) in either case within such extended times as the Full Court or a Judge may allow.

Provided that where a summons to vary a certificate and the further consideration of an action are heard together, the time for appealing against the order made on the summons to vary the certificate shall be the same as the time for appealing against the order made on further consideration.

In this Rule the term "final judgment" includes any judgment or order by which the rights of the parties are finally concluded with respect to the matters in question in the cause or matter, or any of them, not being a decision upon a mere matter of procedure.

4. The respective periods mentioned in the last preceding Rule shall be calculated from the date when such judgment or order was pronounced or made, or in the case of a refusal of an application, from the date of the refusal.

5. The appellant shall, within the time prescribed by Rule 3 for serving the notice of appeal, file in the Central Office a copy of the notice. Upon such service and filing the appeal shall be deemed to be duly instituted.

6. Notice of motion by way of appeal shall be for the first sitting of the Full Court for which the appeal can be entered held after the expiration of fourteen days from the institution of the appeal.

7. (1) Every appeal not being an application by way of renewal of an *ex parte* application which has been refused, shall be set down for hearing ten days at least before the day appointed for the commencement of the sittings for which it is to be entered.

(2) If the appellant does not set down the appeal for hearing as prescribed by this Rule, any respondent may apply to the Full Court, by motion upon notice, for an order dismissing the appeal for want of prosecution.

8. Where an *ex parte* application has been refused by a Judge, an application for a similar purpose may be made to the Full Court *ex parte* within four days from the date of such refusal, or within such enlarged time as a Judge or the Full Court may allow.

9. (1) The Full Court on any appeal shall have all the powers and duties as to amendment and otherwise of the Court or Judge appealed from together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court.

(2) The Full Court shall have power to draw inferences of fact and to give any judgment, and make any order which ought to have been made, and to make such further or other order as the case may require.

(3) The powers aforesaid may be exercised by the Full Court notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision.

(4) The Full Court shall have power to make such order as to the whole or any part of the costs of the appeal as may be just.

10. If, upon hearing of an appeal, it shall appear to the Full Court that a new trial ought to be had, it shall be lawful for the said Court, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.

11. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall within the time specified in the next Rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers of the Full Court upon an appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

12. Subject to any special order which may be made, notice by a respondent under the last preceding Rule shall in the case of any appeal from a final judgment be an eight days notice, and in the case of an appeal from an interlocutory order a two days notice.

13. (1) On any appeal or on any application to be heard before the Full Court, the party having the conduct of the appeal or application, shall not later than the Wednesday in the week preceding that in which the sittings for which the appeal has been entered will commence, lodge at the Central Office at least four copies of the appeal book and such (if any) other copies as the Registrar may require, for the use of the Judges upon the hearing of the appeal and serve upon each of the respondents separately represented two copies of the appeal book. The costs of the appeal book shall be costs in the cause unless the Full Court shall otherwise order.

(2) The appeal book shall be prepared and produced in a manner satisfactory to the Registrar and shall contain a copy of the judgment or order in the Court below and the reasons therefor, and of the record or Judge's notes of evidence, if any, and also a copy of the pleadings, if any, and such other documents and materials as may be necessary for the purposes of the appeal.

(3) The appeal book shall contain an index, and the pages shall be numbered; and where the book contains a copy of oral evidence, there shall appear at the bottom of each page of such evidence the name of the witness and whether he is examined, cross-examined, re-examined, or re-called.

(4) Where the exhibits are numerous or lengthy, only such documents or portions of such documents as are relevant or necessary shall be included in the appeal book. The costs of copies of unnecessary documents or of documents copied at unnecessary length will not be allowed.

(5) The copies of the appeal book required to be lodged in the Registry shall be accompanied by a certificate by the solicitor for the party having the conduct of the appeal, that the appeal book contains all material necessary for the hearing of the appeal and that all documents copied have been examined with the original documents and are correct.

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

(a) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed.

(b) As to any evidence given orally, by the production of a copy of the Judge's notes, or such other materials as the Court may deem expedient.

15. Where evidence has not been printed in the Court below, the Full Court, or a Judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Full Court, or a Judge thereof, shall otherwise order.

16. If, upon the hearing of an appeal, a question arises as to the ruling or direction of the Judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

17. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Full Court from giving such decision upon the appeal as may be just.

18. Such deposit or other security for costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Full Court.

19. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from except so far as the Court appealed from or any Judge thereof, or the Full Court, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from or the Full Court may direct.

20. Wherever under these Rules an application may be made either to the Court below, or to the Full Court, or to a Judge of the Court below, or of the Full Court, it shall be made in the first instance to the Court or Judge below.

21. Every application to a Judge under the last preceding Rule shall be by motion, and the provisions of Order LI shall apply thereto.

22. On an appeal from the Supreme Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court or a Judge otherwise orders, and the taxing officer may compute such interest without any order for that purpose.

3.—Order LIX.

Rule 4 is amended by deleting the word "Judge" in lines 2 and 5 of the Rule and substituting in each instance the word "magistrate."

Rule 5 is amended by inserting after the word "Office" in line 2 the words "for hearing at the first sitting of the Full Court to be held after the expiration of fourteen days from the date of entering the appeal."

Rule 6 is rescinded and the following substituted:—

6. (1) Forthwith after the appellant has given security or made deposit in accordance with the Local Court Rules, the Clerk of the Local Court from which the appeal is brought shall transmit to the Master a certified copy of the proceedings in the action or matter, and of the notes of evidence, and a statement of the judgment or order complained of, and of the Magistrate's reasons and (so far as is practicable) the original exhibits in the case. The Magistrate shall make available to the Clerk such notes, statement and reasons.

(2) When security has been given as aforesaid, either party shall be entitled, on payment of the proper fee to obtain from the Clerk of the Local Court, or (if the documents have been received by the Master) from the Master, an office copy of such proceedings, notes or statement, or any part thereof.

Rule 7 is rescinded and the following substituted:—

7. On the day on which an appeal is entered for hearing, a copy of the statement of the grounds of appeal shall be filed and served by the appellant on the respondent, and there shall be endorsed thereon notice of the setting down and hearing of the appeal.

Dated this 21st day of May, 1959.

A. A. WOLFF,
Chief Justice.
L. W. JACKSON,
Senior Puisne Judge.
J. E. VIRTUE,
Puisne Judge.
R. V. NEVILE,
Puisne Judge.
GORDON B. D'ARCY,
Puisne Judge.

HEALTH EDUCATION COUNCIL ACT, 1958.

Regulations.

P.H.D. 440/59, Ex. Co. No. 810.

WHEREAS under the provisions of section 17 of the Health Education Council Act, 1958, the Council may, with the approval of the Governor, make regulations in regard to the matters specified in the section: Now, therefore, the Council doth hereby make the following regulations:—

Health Education Council Common Seal.

1. These regulations shall operate and have effect on and from the date on which the Health Education Council Act, 1958, is proclaimed to come into operation.
2. The form of the Common Seal of the Council shall be—



3. The Common Seal shall be kept in safe custody by the Executive Officer appointed by the Council.
4. The seal shall not be applied to any document unless—
 - (a) the Council has directed by a resolution at a regular meeting that the Common Seal be affixed to the document, and
 - (b) the seal is affixed by the Executive Officer in the presence of the Chairman or his deputy and another councillor or his deputy.

Passed at a meeting of the Health Education Council of Western Australia this 11th day of March, 1959.

W. J. LUCAS,
Chairman.

J. T. CARR,
Executive Officer.

Approved by His Excellency the Governor in Executive Council this 14th day of May, 1959.

(Sgd.) R. H. DOIG,
Clerk of the Council.

HEALTH ACT, 1911-1957.

Dalwallinu Road Board.

P.H.D. 403/57, Ex. Co. No. 309.

WHEREAS under the provisions of the Health Act, 1911-1957, a local authority may make or adopt by-laws and may alter, amend or repeal any by-laws so made or adopted: Now, therefore, the Dalwallinu Road Board, being a local authority within the meaning of the Act, and having adopted the Model By-laws described as Series "A" and published in the *Gazette* on the 9th day of August, 1956, doth hereby amend the said adopted by-laws as follows:—

Part 1.—General Sanitary Provisions.

After By-law 1B insert new By-law 1C, as follows:—

1C.—Provision of Apparatus for the Bacteriological Treatment of Sewage.

1. (a) This by-law shall apply to the Townsite of Buntine as constituted under the Land Act, 1933.

(b) The owner of every house existing in the district prescribed in paragraph (a) of this by-law at the time of coming into operation of this by-law shall provide on the premises an apparatus for the bacteriolytic treatment of sewage and liquid wastes produced on the premises. All sanitary fixtures shall be connected to the apparatus before the 1st day of July, 1960.

(c) Notwithstanding the requirements of paragraph (b), the Board may grant exemptions from the provisions of this by-law in any case where premises are adequately provided for by drains and apparatus in accordance with by-laws and regulations other than as prescribed in paragraph (b) of this by-law.

Passed at a meeting of the Dalwallinu Road Board, this 9th day of March, 1959.

W. E. OWENS,
Chairman.

R. A. L. BROOMHALL,
Secretary.

Approved by His Excellency the Governor in Executive Council, this 14th day of May, 1959.

(Sgd.) R. H. DOIG,
Clerk of the Council.