



1914

## c 54 Privy Council Appeals Act

Ontario

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## SECTION VII.

### ADMINISTRATION OF JUSTICE.

#### 1. APPEALS TO THE PRIVY COUNCIL.

#### CHAPTER 54.

An Act respecting Appeals to His Majesty in His Privy Council.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Privy Council Appeals Act*. 10 Edw. VII. c. 24, s. 1. Short title.
2. Where the matter in controversy in any case exceeds the sum or value of \$4,000, as well as in any case where the matter in question relates to the taking of any annual or other rent, customary or other duty, or fee, or any like demand of a general and public nature affecting future rights, of what value or amount soever the same may be, an appeal shall lie to His Majesty in His Privy Council; and, except as aforesaid, no appeal shall lie to His Majesty in His Privy Council. 10 Edw. VII. c. 24, s. 2. When appeal may be made.
3. No such appeal shall be allowed until the appellant has given security in \$2,000, to the satisfaction of the Court appealed from, that he will effectually prosecute the appeal, and pay such costs and damages as may be awarded in case the judgment appealed from is confirmed. 10 Edw. VII. c. 24, s. 3. Security.
4. Subject to Rules of Court, upon the perfecting of such security, execution shall be stayed in the original cause except in the following cases: Stay of execution.
  - (a) If the judgment appealed from directs the assignment or delivery of documents or personal property, execution shall not be stayed until the things directed to be assigned or delivered have been brought into Court or placed in the custody

Exceptions: Where assignment or delivery of documents or personal property directed.

Delivery into custody, or security.

of such officer or receiver as that Court or a Judge of it appoints, or until security has been given to the satisfaction of the Supreme Court or a Judge thereof, and in such sum as may be directed, that the appellant will obey the order of the Privy Council;

Where execution of instrument directed.

(b) If the judgment appealed from directs the execution of a conveyance or any other instrument, execution shall not be stayed until the instrument has been executed and deposited with the proper officer, to abide the judgment of the Privy Council;

Where sale of real property, etc., directed.

(c) If the judgment appealed from directs the sale or delivery of possession of real property or chattels real, execution shall not be stayed until security has been entered into to the satisfaction of the Supreme Court, or a Judge thereof, and in such sum as such Court or Judge directs, that during the possession of the property by the appellant he will not commit or suffer to be committed any waste on the property, and if the judgment is confirmed he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession of it, and also in case the judgment is for the sale of property and the payment of a deficiency arising upon the sale, that the appellant will pay the deficiency;

Security not to commit waste.

(d) If the judgment appealed from directs the payment of money, execution shall not be stayed until the appellant has given security to the satisfaction of the Supreme Court or a Judge thereof that if the judgment or any part of it is affirmed the appellant will pay the amount thereby directed to be paid or the part of it as to which the judgment may be affirmed, if it is affirmed only as to part, and all damages awarded against the appellant on the appeal. 2 Geo. V. c. 18, s. 1, *part*.

Where payment of money directed.

Security to pay debt.

Forms, etc., of security. Rev. Stat. c. 190.

5. Subject to the provisions of *The Guarantee Companies Securities Act*, the security shall be by the bond, Form 1, of two sufficient sureties, each of whom shall make affidavits of justification, Form 2. 2 Geo. V. c. 18, s. 1, *part*.

Amount of security where judgment directs payment of money.

6. Where security is to be given for payment of money, directed by the judgment or order appealed from to be paid, either as a debt or for damages or costs, the bond shall be in double the amount by the judgment or order directed to be paid; but where security is to be given in a sum in excess of \$2,000, the Supreme Court or a Judge thereof may allow it to be given by a larger number of sureties, apportioning

the amount among them as may be deemed proper; and where the amount directed to be paid exceeds \$10,000 may allow the security to be given for such amount less than double the amount directed to be paid as may be deemed proper. 2 Geo. V. c. 18, s. 1, *part*.

7. Where the judgment appealed from directs the sale or delivery of possession of real property or chattels real, the bond shall be in double the yearly value of the property. <sup>Where judgment directs sale, etc.</sup> 2 Geo. V. c. 18, s. 1, *part*.

8. The bond, with an affidavit of the due execution of it, and the affidavits of justification, shall be filed in the office in which the action or matter was commenced, and shall be deemed to be perfected and allowed, unless within fourteen days after being served with notice of the filing the respondent moves for its disallowance; but the appellant may, after the filing, make a special application before the expiration of such fourteen days to stay execution. <sup>Filing of bond.</sup> 2 Geo. V. c. 18, s. 1, *part*.

9. Instead of giving a bond the appellant may, without order, pay into Court a sum equal to half the penalty of the bond in cases within section 5 or section 7, or equal to the amount by the judgment or order directed to be paid in cases within section 6, and the money when so paid in shall stand as security in lieu of a bond, but either party may apply to the Court or a Judge to increase or diminish the amount to be paid into Court. <sup>Payment into court in lieu of bond.</sup> 2 Geo. V. c. 18, s. 1, *part*.

10. When the security has been perfected and allowed, Judge of the Supreme Court may issue his fiat to the sheriff to whom any execution upon the judgment has been issued, to stay the execution, and the execution shall be thereby stayed, whether a levy has been made under it or not; but if the grounds of appeal appear to be frivolous, the Supreme Court or a Judge thereof may order execution to issue or to be proceeded with. <sup>Fiat for stay.</sup> <sup>Unless appeal frivolous.</sup> 2 Geo. V. c. 18, s. 1, *part*.

*NOTE.—By 2 Geo. V. c. 18, s. 3 it is provided that that Act shall not apply to cases in which the security has been perfected under the provisions of the sections thereby repealed. The Act 2 Geo. V. c. 18 came into force by proclamation on the 3rd day of March, 1913.*

11. A Judge of the Supreme Court shall have authority to approve of and allow the security to be given by a party who intends to appeal to His Majesty in His Privy Council, whether the application for such allowance be made during the sittings of the Court, or at any other time. <sup>Approval of security.</sup> 10 Edw. VII. c. 24, s. 6.

12. The preceding sections shall not apply to an appeal to His Majesty in His Privy Council from a judgment of any <sup>Exception in Appeals under R.S.O. c. 85.</sup>

court on a reference under *The Constitutional Questions Act*. 10 Edw. VII. c. 24, s. 7.

Costs.

**13.** Costs awarded by His Majesty in His Privy Council upon an appeal shall be recoverable by the same process as costs awarded by the Supreme Court. 10 Edw. VII. c. 24, s. 8.

FORM 1.

Know all men by these presents that we (*naming all the obligors, with their places of residence and additions*), are jointly and severally held and firmly bound unto (*naming the obligees, with their places of residence and additions*), in the penal sum of \_\_\_\_\_ dollars, for which payment, well and truly to be made, we bind ourselves, and each of us and our and each of our heirs, executors and administrators, respectively, firmly, by these presents.

Dated this \_\_\_\_\_

day of \_\_\_\_\_

Whereas (*the appellant*) complains that, in the giving of a certain judgment in a certain suit in His Majesty's Supreme Court of Ontario, between (*naming the parties to the cause*), manifest error hath intervened, wherefore the appellant desires to appeal from such judgment to His Majesty in His Privy Council.

(*Where it is desired also to give security in order to stay execution, insert, And whereas the appellant is desirous of having the execution of the judgment stayed pending the appeal.*)

Now the condition of this obligation is such, that if the appellant do and shall effectually prosecute such appeal, and pay such costs and damages as shall be awarded in case the judgment to be appealed from shall be affirmed or in part affirmed. [*In order to stay execution where the judgment directs the sale or delivery of possession of property, add, and during the possession of the property in question in the action (or otherwise describing it) by the appellant he shall not commit, or suffer to be committed, any waste on the property, and that if the judgment be affirmed, or in part affirmed, he shall pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof*], [*Add, if ordered, in case the judgment is for the sale of the property and payment of any deficiency arising upon the sale, and that in case of any deficiency rising upon a sale as directed by the judgment he shall pay the amount of the deficiency, or the part of it as to which the judgment may be affirmed, if it be affirmed only as to part*], [*Add, if ordered where the judgment directs the payment of money, and shall pay the amount by said judgment directed to be paid, either as a debt or for damages or costs or the part of it as to which the judgment may be affirmed, if it is affirmed only as to part, and all damages and costs awarded against the appellant on such appeal*], [*Where the judgment directs the delivery of documents or personal property, add, and shall obey the order to be made by His Majesty in His Privy Council*] then this obligation shall be void, otherwise to remain in full force.

(*Where the security is given pursuant to any order, the bond will recite the order and the condition will be varied, if necessary, according to the terms of the order.*)

Signed, sealed and delivered, in the presence of

## FORM 2.

## AFFIDAVIT OF JUSTIFICATION.

Between

A. B. (Respondent),

Plaintiff;

v.

C. D. (Appellant),

Defendant.

I, E. F., of \_\_\_\_\_ make oath and say as follows:

1. I am one of the sureties to the annexed bond.
2. I am a resident inhabitant of Ontario, residing at \_\_\_\_\_ and am a householder in (or a freeholder in \_\_\_\_\_).
3. I am worth and own property to the amount of \_\_\_\_\_ (the sum mentioned as the penalty, or such sum as the deponent is bound in) over and above what will pay all my debts (if surety in any other matter, add, And every other sum for which I am liable or for which I am bail or surety).
4. I am not bail or surety for any plaintiff or defendant except in this action (or if bail or surety in any other cause or matter, add, And except for G.H., in an action in the Court in which X.Y. is plaintiff and G.H. is defendant) in the sum of \$ \_\_\_\_\_, (or as the case may be, specifying the several causes or matters with the Court in which each is, and the sums in which the deponent is bail or surety).
5. And I, J.H., of \_\_\_\_\_, make oath and say as follows: (in similar terms as the case may require; or separate affidavits may be made).

The above named deponents, E.F. and J.H., were sworn, etc., the day of \_\_\_\_\_ 19\_\_\_\_, before me,  
 Commissioner, etc.

2 Geo. V. c. 18, Form 2.