

APPEALS FROM THE PETTY SESSIONS COURT IN JAMAICA

Governed by the Justices of the Peace (Appeals) Act, Jamaica.

INTRODUCTION

The Petty Sessions Court is a Court presided over by a Justice of the peace or Justices of the Peace (usually at least two). This includes a Resident Magistrate exercising his jurisdiction in Petty Sessions e.g. , some traffic offences in rural parishes. In this Court, petty offences such as Indecent language, loitering and common assaults are mainly tried.

Right of Appeal- This arises by virtue of Section 3 of the Justices of the Peace (Appeals) Act and entitles any person aggrieved or affected by any judgment of any Justice exercising summary jurisdiction to appeal to the Circuit Court of the parish in the Judgment is pronounced or to a Judge of the Supreme Court.

A person who has assented to or admitted to a Judgment or decision or who has pleaded guilty has no right of appeal against the judgment or conviction. (Provided there is no irregularity).

NOTE: Persons who appear ignorant of their right of appeal must be told of their right of appeal by the Justices and the Clerk of the Courts shall if required furnish the appellant with the necessary notice and recognizance of appeal. (Section 5)

Persons who have a right of appeal

Any person aggrieved or affected by any judgment of any Justice of the Peace may appeal (Section 3) . Persons aggrieved include the accused and the complainant or prosecutor.

In Aubrey Graham vs George Plunkett 3 JLR 252 the Jamaican Court of Appeal held that the complainant was a person aggrieved who could appeal from a dismissal of the information by the Resident Magistrate sitting in Petty Sessions.

In R v Lyn Gin Clarks reports page 168 the Court held that the Appellant was a person aggrieved because he would have been entitled to a moiety of the penalty recovered. The Court went on to say that in each case it was a question of fact for the Appellate Court to decide as to whether the Appellant is a person aggrieved.

PROCEDURE FOR APPEALING

- (1) Notice of appeal to be given by the Appellant either verbally during the sitting of the court or in writing within 14 days after the judgment or decision is delivered to the adjudicating Justice (Section 6) and to the respondent or the Attorney-at-law who represented him.
- (2) Grounds of appeal These are to be delivered by the Appellant to the Clerk of the Courts and to the respondent within 14 days after the judgment or decision- (Section 6).

NOTE By Section 12- it is not necessary for the Appellant to serve grounds of appeal in respect of objects apparent on the face of the proceedings or on the evidence.

- (3) Appellant must enter into recognizance within the said 14 days (Section 13).
This recognizance must be with a surety in a sum sufficient to cover any penalty or sum awarded and costs or in the case of a dismissal or refusal to adjudicate in a sum sufficient to cover the costs of dismissal (if any). In either case the recognizance penalty or sum awarded and costs or in the case of a dismissal or refusal to adjudicate in a sum sufficient to cover the costs of dismissal (if any).

In either case the recognizance must cover an additional sum of six dollars for costs of

appeal. The appellant must give to the respondent notice of the names of his intended sureties and of the time and place of entering into the recognizance. The respondent may object to the sufficiency of the surety or sureties and such objection may be determined by the Justices (Section 16).

After the foregoing procedure (1-3) the appeal is said to be perfected but if the foregoing procedure is not followed then by virtue of Section 24 the appeal shall not be heard.

Furthermore the right of appeal will be lost and the judgment may be enforced (Section 25).

STAY OF EXECUTION

After the appeal is perfected by compliance with the procedure outlined above the execution of the judgment or decision being appealed from is automatically stayed and if the Appellant is in custody he is liberated until the judgement of the Circuit Court or Judge is given.

(Section 17)

PROCEDURE AFTER PERFECTION OF APPEAL AND BEFORE HEARING OF APPEAL

- (1) The Appellant and every party should apply to the Clerk of the Courts for certified copies of the notes of evidence and the Clerk of the Courts has a duty to supply same- (Section 18).
- (2) The Clerk of the Courts is to prepare for the Judge of the Circuit Court certified copies of the notes of evidence, the original and copy documents²¹¹ in the case and the decision made, not later than 14 days from the date of the judgment. (Section 19)
- (3) On the first day of the Circuit Court, the Clerk of the Courts delivers to the Judge a list of all

appeals for hearing as well as certified copies of the notes of evidence and documents-
(Section 20).

PROCEDURE UPON THE HEARING OF THE APPEAL

(Set out in Section 29)

1. Only the Appellant or Respondent or their respective Attorneys-at-Law may address the Court.
2. The Appellant begins by proving that he has perfected the appeal as outlined above in relation to Notice and grounds of appeal and recognizance. The appellant may prove service of the notice and grounds by affidavit and by a written admission of service by the Justices unless the Judge of the Court requires viva voce evidence (Section 30).
3. Where there are issues of fact the party who asserts the affirmative of the facts in issue begins and calls the same witnesses or produces the same evidence as in the proceedings below and the other party then calls witnesses or produces evidence. The evidence certified by the Clerk of the Courts is received as evidence unless either party had within 14 days after the perfection of the judgment indicated his dissatisfaction with same, in which case the Court may hear viva voce evidence (Section 34).
4. Where only a question of Law is raised by the appeal the Appellant after proving that he has perfected his appeal shall state his objections and thereafter the Respondent will reply.

POWER OF THE APPELLATE JUDGE UPON HEARING THE APPEAL

Upon the hearing of the appeal the Appellate Judge is empowered to do the following:-

1. to refer the case back to the Justices for further investigation or evidence on any part in respect of which he considers that the evidence is defective (Section 28);
2. to amend the following:-
 - (i) defects in form in any part of proceedings or the record;
 - (ii) any variance between any matter in writing or in print produced in evidence and the recital or setting forth thereof. (Section 31)
3. to administer oath or affirmation; (Section 35)
4. to reduce the sentence of Petty Sessions Court by quashing same and substituting another sentence; (Section 36).
5. to dismiss the appeal even if there is merit in a point of law raised provided that there is no miscarriage of justice; (Section 37)
6. to award costs of appeal not exceeding six dollars; (Section 38).
7. to affirm the judgment or decision; (Section 40)
8. to adjourn the appeal as often as the Justice of the case may require; (Section 39).
9. to reverse the judgment of Court below ; (Section 44)
10. to punish for contempt by taking the person into custody and committing him to prison. (Section 46)

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