

ACT 89

H. B. NO. 2041-72

A Bill for an Act Relating to Court Proceedings, Amending Chapters 632, 634, 635, 636, 641, and 655, and Repealing Chapters 631, 637, and 642 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 632 of the Hawaii Revised Statutes is amended as follows:

(a) Section 632-1 is amended by changing the period in the sixth line to a semicolon and adding: “provided, that declaratory relief may not be obtained in any district court, or in any controversy with respect to taxes, or in any case where a divorce or annulment of marriage is sought.”

(b) Section 632-1 is further amended by deleting from the first, tenth, and eighteenth lines of the second paragraph the words “or decree”, by deleting from the first line of the second paragraph the word “all” and by deleting from the fifteenth line the words “an equitable remedy” and inserting in lieu thereof the words “a remedy equitable in nature”.

(c) Section 632-1 is further amended by deleting the last sentence.

(d) Section 632-2 is amended to read as follows:

“Sec. 632-2. Appeals. Declaratory judgments may be reviewed as other judgments.”

(e) Section 632-3 is amended to read as follows:

“Sec. 632-3. Further relief upon judgment. Further relief based on a declaratory judgment may be granted whenever necessary or proper, after reasonable notice and hearing, against any adverse party whose rights have been adjudicated by the judgment.”

(f) Sections 632-4 and 632-5 are deleted.

SECTION 2A. Chapter 634 of the Hawaii Revised Statutes is amended as follows:

(a) Section 634-31 is amended by changing the period at the end thereof to a comma and adding the following: “except as otherwise provided.”

(b) Section 634-33 is amended to read as follows:

“Sec. 634-33. Joint contractual obligations. In an action on a contract on which two or more persons are jointly, jointly and severally, or severally liable, the court in which the action is pending has jurisdiction to proceed against such of the obligors as can be served as if they were the only obligors.”

(c) Section 634-34 is amended by changing the caption to read “Actions against persons by firm name”, and by deleting the semicolon in the fifth line and adding the following: “or as otherwise provided by rule of court;”.

(d) Section 634-56 is amended to read as follows:

“Sec. 634-56. Service of process, by whom. Except as otherwise provided, service of all process and orders shall be made by the sheriff or his deputy, the chief of police of the county in which the service is made or his duly authorized subordinate, or some other person specially appointed by the court for the purpose.”

(e) Section 634-58 is amended to read as follows:

“Sec. 634-58. Return. In all cases where any process or order of a court is served by any officer of the court or of the police force or the sheriff or his deputies, a record thereof shall be endorsed upon the back of the process, complaint, order, or citation. The record shall state the name of the person served and the time and place of service and shall be signed by the officer making the service. If the officer fails to make service he shall, in like manner, endorse the reason for his failure and sign this record. When service is made by a person specially appointed by the court, he shall make affidavit of such service.

The record or the affidavit shall be prima facie evidence of all it contains, and no further proof thereof shall be required unless either party desires to examine the officer or person making service, in which case he shall be notified to appear for examination.”

(f) Section 634-59 is amended to read as follows:

“Sec. 634-59. Joinder of unknown persons; service when defendant unknown or absent. Where an action or proceeding involves or concerns any property, tangible or intangible, within the jurisdiction of a circuit court, or

any legal or equitable estate, right or interest, vested or contingent, in any such property, or any status or res within the jurisdiction of a circuit court:

- (1) Any person having a claim, interest or concern so as to be a necessary or proper party, who cannot be identified or whose name is unknown to the plaintiff, may be made party to the action or proceeding as provided by the rules of court.
 - (2) If a defendant is unknown or does not reside within the State or cannot for any reason be served with process within the State, and the facts shall appear by affidavit or otherwise to the satisfaction of the court, it may order that service be made as provided by Section 634-60 or by publication, as may be appropriate; provided, that service by publication shall not be valid unless, it is shown to the satisfaction of the court that service cannot be made as provided by Section 634-60.
 - (3) Service by publication shall be made in at least one newspaper published in the State and having a general circulation in the circuit in which the action or proceeding has been instituted, in such manner and for such time as the court may order, but not less than once in each of four successive weeks, the last publication to be not less than twenty-one days prior to the return date stated therein unless a different time is prescribed by order of the court. If the action or proceeding concerns real property the court shall order additional notice by posting upon the property.
 - (4) Any adjudication shall, as regards a defendant served by publication pursuant to this section, or served as provided by Section 634-60, affect only the property, status or res which is the subject of the action, unless (A) the defendant appears in the action and defends on the merits, in which case he shall be liable to a personal judgment with respect to the claim so defended, including in the case of a foreclosure action a deficiency judgment, or (B) the service is authorized by Section 634-60.5 or other provision of law, in which case he shall be liable to any judgment authorized by such law.
 - (5) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law or rule of court.”
- (g) Section 634-60 is amended to read as follows:

“Sec. 634-60. Service outside the State or by registered mail. In any case in which, under section 634-59, provision is made for service of summons as provided by this section, personal service shall be made upon the defendant wherever found or he shall be served by registered or certified mail with request for a return receipt, as ordered by the court. A certified copy of the order, the summons and the complaint shall be served, and the service shall be evidenced by an affidavit showing that the required papers were sent by registered or certified mail as aforesaid, and by the receipt signed by the defendant and filed with the affidavit, or in the case of personal service by the return of the serving officer or the affidavit of any other person authorized

to serve process in the place where the defendant is found or appointed by the court to make the service.”

(h) A new section 634-60.5 is added, to read as follows:

“Sec. 634-60.5. Personal service on resident outside the State. Whenever a defendant, being a resident of the State, cannot be served within the State personal service may be made upon him outside the State by any person authorized to serve process in the place in which he may be found or specially appointed by the court to make the service which service shall be evidenced by the return of the serving officer or by affidavit and shall be of the same legal force and validity as if made within the State.”

(i) Section 634-63 is amended to read as follows:

“Sec. 634-63. Form of published notice. The published notice provided for by section 634-59 shall be in the form of a summons, without a caption but referring to the complaint or petition, stating briefly the object of the action or proceeding with a brief description of the property involved, and calling upon the persons to whom it is addressed to plead on or before a return day stated in the notice.”

(j) Section 634-66 is amended by changing the period at the end of the ninth line to a comma and adding the following: “or as otherwise provided by rule of court.”

(k) Section 634-67 is amended by deleting from the fourteenth line, after the word “which”, the word “if” and inserting in lieu thereof the word “is”, and by adding thereto a new sentence to read as follows: “The filing shall be deemed service upon the association twenty days after the filing.”

(l) Section 634-69 is amended to read as follows:

“Sec. 634-69. Service in cases of operation of motor vehicles. The use and operation by any person, whether a resident or a nonresident of the State, of any motor vehicle upon a public highway in this State is deemed equivalent to an appointment by such person of the director of regulatory agencies of the State to be his true and lawful attorney upon whom may be served the summons in any action or proceeding against him growing out of any accident or collision in which the person and the motor vehicle so used and operated may be involved. The use and operation of the motor vehicle is deemed a signification of his agreement that any such summons against him which is so served is of the same legal force and validity as if served upon him personally within this State, whether the person is a nonresident of this State or at the time a cause of action arises is a resident of this State but subsequently becomes a nonresident of this State. Service of such summons is to be made as provided by section 634-72, if the defendant cannot be found in the State.

This section shall not be construed as repealing or amending any other provision of law relating to the service of process nor as establishing an exclusive method of service of process in cases to which this section may apply.”

(m) Section 634-70 is amended to read as follows:

“Sec. 634-70. Service on boat operators. The operation, navigation, use, or maintenance by any person, whether a resident or nonresident of the State, of any boat, ship, barge, or other watercraft in the navigable waters of the

State of Hawaii is deemed equivalent to an appointment by such person of the director of regulatory agencies to be his true and lawful attorney upon whom may be served the summons in any action or proceeding against him growing out of any accident, collision, or claim for damages in which the person and the boat, ship, barge, or other watercraft may be involved in the navigable waters. The operation, navigation, use, or maintenance is deemed a signification of his agreement that any such summons against him which is so served is of the same legal force and validity as if served upon him personally within this State, whether the person is a nonresident of this State or at the time a cause of action arises is a resident of this State but subsequently becomes a nonresident of this State. Services of the summons is to be made as provided by section 634-72, if the defendant cannot be found in the State.

This section shall not be construed as repealing or amending any other provision of law relating to the service of process nor as establishing an exclusive method of service of process in cases to which this section may apply."

(n) Section 634-71 is amended by deleting the word "his" at the end of the third line and inserting in lieu thereof the word "such", and by deleting from the next to the last line the word "rights" and inserting in lieu thereof the word "right".

Section 634-71 is further amended by amending subsection (b) thereof to read as follows: "(b) Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this section, may be made as provided by section 634-72, if he cannot be found in the State, with the same force and effect as though summons had been personally served within this state."

(o) A new section 634-72 is added, to read as follows:

"Sec. 634-72. Manner of service under sections 634-69 to 71. When service of summons is provided for by sections 634-69, 634-70, or 634-71, service shall be made by leaving a certified copy thereof with the director of regulatory agencies or his deputy, who shall keep a record of each such summons and the day and hour of service, provided that notice of the service and a certified copy of the summons and of the complaint are served upon the defendant personally by any person authorized to serve process in the place in which he may be found or appointed by the court for the purpose, or sent by certified or registered mail, postage prepaid, with return receipt requested, by the plaintiff or his attorney to the defendant. The plaintiff or his attorney shall file the return of the serving officer or an affidavit showing that the notice and the copy of summons and complaint were served as aforesaid or sent by certified or registered mail as aforesaid, and in the latter case the return receipt signed by the defendant shall be filed with the affidavit. The service shall be deemed complete upon delivery of the required papers to the defendant outside the State, personally or by mail as provided.

After service on the director or his deputy, if the defendant cannot be found to serve or mail the summons and the facts shall appear by affidavit or otherwise to the satisfaction of the court, it may order that service be made by publication of summons in at least one newspaper published in the State and having a general circulation in the circuit in which the action has been

instituted, in such manner and for such time as the court may order, but not less than once each week in four successive weeks, the last publication to be not less than twenty-one days prior to the return date stated therein unless a different time is prescribed by order of the court.”

(p) Section 634-76 is amended to read as follows:

“Sec. 634-76. Recording notice of pendency of action. In any action concerning real property or affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and any other party at the time of filing a pleading in which affirmative relief is claimed, or at any time afterwards, may record in the bureau of conveyances a notice of the pendency of the action, containing the names or designations of the parties, as set out in the summons or pleading, the object of the action or claim for affirmative relief, and a description of the property affected thereby. From and after the time of recording the notice, a person who becomes a purchaser or incumbrancer of the property affected shall be deemed to have constructive notice of the pendency of the action and be bound by any judgment entered therein if he claims through a party to the action; provided, that in the case of registered land, section 501-151 shall govern.

This section authorizes the recording of a notice of the pendency of an action in a United States District Court, as well as a state court.”

(q) Section 634-82 is amended to read as follows:

“Sec. 634-82. Death or dissolution of plaintiff or defendant. The death of a plaintiff or defendant or the dissolution of a corporate plaintiff or defendant shall not cause an action to abate, but it may be continued upon substitution of the proper parties as provided by the rules of court, or if the claim is one which survives to or against the surviving parties the action shall proceed in favor of or against the surviving parties as provided by the rules of court.”

(r) Sections 634-1 to 20, inclusive, 634-26, 634-27, 634-32, 634-41 to 48, inclusive, 634-51, 634-57, 634-61, 634-62, 634-64, 634-65, 634-81, 634-83 to 86, inclusive, and 634-91 to 98, inclusive, are deleted.

(s) The chapter heading is changed to read “Civil actions and proceedings, generally”.

(t) Part headings I, II, IV, V and IX are deleted, and remaining part headings are renumbered accordingly.

SECTION 2B. Chapter 635 of the Hawaii Revised Statutes is amended as follows:

(a) Section 635-3 is amended to read as follows:

“Section 635-3. Dismissal for Want of Prosecution. The court may dismiss any action for want of prosecution after due notice to the claimants whenever claimants have failed to bring such action to trial within a period established by rule of court. Prior to dismissal of any action for want of prosecution, a court shall have adopted, promulgated, and published a rule or rules of court providing circumstances in which a claimant may seek relief from the judgment or order and such other safeguards as may be necessary.”

(b) Section 635-12 is amended to read as follows:

“Sec. 635-12. No jury, when. (a) When there is no right of trial by jury, or the right has been waived, the issues shall be determined by the judge without the intervention of a jury.

(b) Whenever provision is made by statute for trial without the intervention of a jury, the same shall not be deemed to preclude trial of an issue with an advisory jury, or trial by jury by consent of the parties.

(c) Whenever provision is made by statute for waiver of a jury, the same shall not be deemed to preclude trial by jury when, in accordance with the rules of court, (1) an order of the court relieves a party from his waiver, or (2) approval of or consent to the waiver is required in a criminal case and has not been given.”

(c) Section 635-13 is amended to read as follows:

“Sec. 635-13. Jury, when of right. When the right of trial by jury is given by the Constitution or a statute of the United States or this State and the right has not been waived, the case shall be tried with a jury.”

(d) Section 635-14 is amended to read as follows:

“Sec. 635-14. Reference. In matters within the jurisdiction of circuit courts as set forth in sections 603-21.6 and 603-21.7, and in civil actions not within such jurisdiction if so provided by statute or rule of court, a reference to a master may be ordered.”

(e) Section 635-15 is amended to read as follows:

“Sec. 635-15. Functions of court and jury. In jury trials all questions of law shall be decided by the court and all questions of fact by the jury. The court may, however, charge the jury whether there is or is not evidence, indicating the evidence, if any, tending to establish or rebut any specific fact involved in the case.”

(f) Section 635-26 is amended by inserting the subsection designation “(a)” preceding the first sentence, and by adding to subsection (a) a new sentence to read: “If so directed by the court, additional jurors shall be drawn and impaneled to sit as alternate jurors.”

(g) Section 635-26 is further amended by adding a new subsection (b) to read as follows: “(b) Upon the stipulation of the parties, the jury may consist of a number less than twelve.”

(h) Section 635-27 is amended to read as follows:

“Sec. 635-27. Examination for cause. Each party shall have the right, under the direction of the court, to examine a proposed juror as to his qualifications, interest, or bias that would affect the trial of the cause and as to any matter that might tend to affect his verdict. Each party may introduce competent evidence to show the disqualification, interest, or bias of any juror.”

(i) Section 635-28 is amended to read as follows:

“Sec. 635-28. Challenging for cause. In all cases, any party may challenge for cause any juror drawn for the trial. The court shall determine the validity of the objection urged.”

(j) Section 635-29 is amended to read as follows:

“Sec. 635-29. Challenging peremptorily. (a) In addition to the challenges of jurors allowed in section 635-28, the State and defendant in criminal cases shall be allowed peremptory challenges as provided by section 635-30.

(b) In civil cases each party shall be allowed to challenge peremptorily three jurors, without assigning any reason therefor. Where there are two or more plaintiffs or two or more defendants, they may be considered as a single party for the purposes of making peremptory challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly. If additional peremptory challenges are allowed to the parties on one side, the opposing party or parties may be allowed additional peremptory challenges.

(c) If an alternate juror or alternate jurors are to be impaneled, one or more additional peremptory challenges shall be allowed as provided by the rules of court.”

(k) Section 635-30 is amended to read as follows:

“Sec. 635-30. Peremptory challenges, criminal cases. In criminal cases, if the offense charged is punishable by life imprisonment, each side is entitled to twelve peremptory challenges. If there are two or more defendants jointly put on trial for such an offense, each of the defendants shall be allowed six challenges. In all other criminal trials by jury each side is entitled to three peremptory challenges. If there are two or more defendants jointly put on trial for such an offense, each of the defendants shall be allowed two challenges. In all cases the State shall be allowed as many challenges as are allowed to all defendants.”

(l) Section 635-32 is amended by deleting from the second and sixth lines, from each such line, the words and punctuation “, whether civil or criminal.”

(m) Section 635-52 is amended by deleting from the second and third lines the parenthetical phrase “(unless the court directs a non-suit, or orders a verdict)”, and inserting in lieu thereof the following: “(unless the court directs a verdict, or orders entry of a judgment of acquittal)”

(n) Sections 635-1, 635-2, 635-4, 635-11, 635-16, 635-18, 635-19, 635-31, 635-41, 635-42, 635-43, 635-44, 635-51, and 635-57 are deleted.

(o) The headings of Parts I and IV, preceding sections 635-1 and 635-41, are deleted in total. The words “Part II” are deleted from the heading preceding section 635-11; the words “Part III” are deleted from the heading preceding section 635-26; the words “Part V” are deleted from the heading preceding section 635-51 and the heading is changed to read “Argument”; and the words “Part VI” are deleted from the heading preceding section 635-56.

SECTION 3. Chapter 636 of the Hawaii Revised Statutes is amended as follows:

(a) Section 636-3 is amended by changing the caption and first sentence to read as follows:

“Sec. 636-3. Judgment, lien when. Any money judgment or decree of a state court or the United States District Court for the District of Hawaii shall

be a lien upon real property when a copy thereof, certified as correct by a clerk of the court where it is entered, is recorded in the bureau of conveyances.”

Section 636-3 is further amended by adding a paragraph to read as follows: “In the case of registered land, section 501-102 shall govern.”

(b) Section 636-4 is amended to read as follows:

“Sec. 636-4. Examination of judgment debtors and others. Any creditor who has obtained a judgment in any court, or his successor in interest when that interest appears of record, may apply to the court for the issuance of orders, summons, or subpoenas, in order that the judgment debtor, and any other person having any knowledge about the affairs or property of the judgment debtor, may be examined orally before, or as directed by, a judge of the court as to any and what property the debtor owns or has an interest in and what debts are owing to him, and the court may issue such orders, summons, or subpoenas, for the examination of the judgment debtor and any other person having any knowledge about the affairs or property of the judgment debtor, and for the production of any books or documents. The examination shall be conducted in the same manner as in the case of an oral examination of witnesses. If the court finds that the judgment debtor subsequent to the entry of judgment has wilfully concealed any of his property or any interest therein the court shall tax all costs of the examination against the defendant, which shall be paid when the judgment is satisfied, in whole or in part, as a cost of execution.”

(c) A new section 636-5 is added, to read as follows:

“Sec. 636-5. Action on judgment; penalty for failure to credit payments. Whenever in any action brought on a prior judgment, the complaint fails to credit prior payments on the judgment, the defendant shall be entitled to offset against the true balance due on the judgment an amount double the amount of any such credit in addition to any other penalties by law prescribed in such circumstances unless the plaintiff shall show that the existence or amount of the credit was in bona fide dispute or that the failure to set forth the credit was inadvertent or the result of an honest mistake.”

(d) A new section 636-15 is added, to read as follows:

“Sec. 636-15. Default judgments. Upon application for a judgment by default:

- (1) If the taking of evidence is required or ordered and the matter is one which would have been tried before a jury had there been no default, the court shall accord a right of trial by jury unless the court in its discretion upon motion orders trial without jury on any or all issues.
- (2) If a defendant served by publication has not appeared in the action, the court shall require proof to be made of the allegations of the complaint.”

(e) Sections 636-1, 636-2, 636-11, 636-12, 636-13, 636-14, and all part headings are deleted.

SECTION 4. A judgment entered in a district court on or after January 1, 1972, but no earlier district court judgment, may become a lien as provided by section 636-3.

A judgment entered in a district court on or after January 1, 1972 which, prior to the repeal of section 636-2, was docketed and recorded under section 636-2, upon the taking effect of the amendments of section 636-3 shall be deemed to have been recorded under section 636-3.

A judgment entered in a district court before January 1, 1972, may be docketed and recorded as provided in section 636-2 prior to its repeal. A lien for a judgment entered in a district court prior to January 1, 1972 may be enforced in the same manner and subject to the same requirements and limitations as if section 636-2 had not been repealed.

SECTION 5. Chapter 641 of the Hawaii Revised Statutes is amended to read as follows:

"CHAPTER 641 APPEALS

PART I. APPEALS IN CIVIL ACTIONS AND PROCEEDINGS

Sec. 641-2. Appeals as of right or interlocutory, civil matters.

(a) Appeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts and the land court, to the supreme court, except as otherwise provided.

(b) Upon application made within the time provided by the rules of court, an appeal in a civil matter may be allowed by a circuit court in its discretion from an order denying a motion to dismiss or from any interlocutory judgment, order, or decree whenever the circuit court may think the same advisable for the speedy termination of litigation before it. The refusal of the circuit court to allow an appeal from an interlocutory judgment, order, or decree shall not be reviewable by any other court.

(c) An appeal shall be taken in the manner and within the time provided by the rules of court.

Sec. 641-4. Review on and disposition of appeal. In case of appeal to the supreme court from a judgment, order, or decree of a circuit or district court, or the land court, in a civil matter, the supreme court shall have power to review, reverse, affirm, amend, or modify such judgment, order, or decree in whole or in part, and as to any or all of the parties. It may enter an amended or modified judgment, order, or decree, or may remand the case to the trial court for the entry of the same or for other or further proceedings, as in its opinion the facts and law warrant. Any judgment, order or decree entered by the supreme court may be enforced by it or remitted for enforcement by the trial court.

Every appeal shall be taken on the record and no new evidence shall be introduced in the supreme court. The supreme court may correct any error appearing on the record, but need not consider a point which was not presented in the trial court in an appropriate manner. No judgment, order or decree shall be reversed, amended or modified for any error or defect unless the court is

of the opinion that it has injuriously affected the substantial rights of the appellant.

Sec. 641-5. Stay of proceedings to enforce a judgment.

(a) This section applies to civil cases in which the rules of court as to stay of proceedings to enforce a judgment do not apply, unless otherwise provided by statute.

(b) No execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten days after its entry. The court, upon good cause shown, may allow execution to issue or other appropriate action to be taken for the enforcement of the judgment within the ten-day period unless, within such time as shall be allowed by the court, a stay is obtained under subsection (c) or (d).

(c) In its discretion and on such conditions as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or other motion, or when justice so requires in other cases until such time as the court may fix.

(d) When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Notwithstanding the foregoing, there shall be no stay of an appealable order for counsel fee, suit money, temporary alimony, or other provisional order of a like nature made before final judgment in the cause, if the appellee shall give a bond in such amount and with such sureties as the court requires, conditioned for indemnification of the appellant for all damages that he may sustain by reason of the payment or performance of the order, in case the appeal shall be sustained.

(f) Within the meaning of this section "judgment" includes a decree and any order from which an appeal lies.

PART II. APPEALS IN CRIMINAL PROCEEDINGS

Sec. 641-11. From circuit courts. Any party deeming himself aggrieved by the judgment of a circuit court in a criminal matter, may appeal to the supreme court in the manner and within the time provided by the Hawaii Rules of Criminal Procedure. The sentence of the court in a criminal case shall be the judgment.

Sec. 641-11.5. From district courts. Appeals upon the record shall be allowed from all final decisions and final judgments of district courts in all criminal matters. Such appeals may be made to the supreme court, whenever the party appealing shall file notice of his appeal within thirty days, or such other time as may be provided by the rules of court.

Within a reasonable time after an appeal has been perfected from a decision of a district court to the supreme court in a criminal matter, it shall be incumbent upon the district court to make a return thereof, together with all papers and exhibits filed in such case.

It shall be the duty of the clerk of the supreme court to which an appeal has been made from the decision of any district court, within a reasonable time after the case shall have been disposed of by the court, to transmit to the district court from whose decision the appeal was made, a statement showing the disposition of the case by the supreme court.

Sec. 641-12. By State in criminal cases. An appeal may be taken by and on behalf of the State from the district or circuit courts direct to the supreme court in all criminal cases, in the following instances:

- (1) From an order or judgment quashing, setting aside, or sustaining a motion to dismiss, any indictment or information or any count thereof;
- (2) From an order or judgment, sustaining a special plea in bar, or motion of that nature, where the defendant has not been put in jeopardy;
- (3) From an order granting a new trial;
- (4) From an order arresting judgment;
- (5) From a ruling on a question of law adverse to the State where the defendant was convicted and appeals from the judgment;
- (6) From the sentence, on the ground that it is illegal; provided that no appeal shall be taken by or allowed the State in any case where there has been a verdict in favor of the defendant.

Sec. 641-16. Stay in criminal cases.

(a) The filing of a notice of appeal shall operate as a stay of execution, and shall suspend the operation of any sentence or order of probation; if, however, the defendant is not admitted to bail, he may elect to commence service of sentence as provided by law. The giving of oral notice in open court at the time of sentence by the defendant or his counsel of intention to take an appeal shall likewise operate as a stay of execution of any sentence or order of probation, but such stay shall not be operative beyond the time within which an appeal may be taken.

(b) Admission to bail after the giving of oral notice in open court of intention to take an appeal or upon an appeal shall be as provided in the rules of court.

Sec. 641-18. Service. Service of a copy of the notice of appeal shall be made upon the adverse party or his attorney of record as provided by the rules of court.

Sec. 641-24. Judgment; no reversal when. The supreme court may affirm, reverse, or modify the order, judgment, or sentence of the trial court in a criminal matter. It may enter such order, judgment, or sentence, or may remand the case to the trial court for the entry of the same or for such other or further proceedings, as in its opinion the facts and law warrant. It may correct any error appearing on the record.

In case of a conviction and sentence in a criminal case, if in its opinion the sentence is illegal or excessive it may correct the sentence to correspond with the verdict or finding or reduce the same, as the case may be. In case of a sentence to imprisonment for life not subject to parole, the court shall review the evidence to determine if the interests of justice require a new trial, whether the insufficiency of the evidence is alleged as error or not. Any order,

judgment, or sentence entered by the court may be enforced by it or remitted for enforcement by the trial court.

No order, judgment, or sentence shall be reversed or modified unless the court is of the opinion that error was committed which injuriously affected the substantial rights of the appellant. Nor shall there be a reversal in any criminal case for any defect of form merely in any indictment or information or for any matter held for the benefit of the appellant or for any finding depending on the credibility of witnesses or the weight of the evidence. Except as otherwise provided by the rules of court, there shall be no reversal for any alleged error in the admission or rejection of evidence or the giving of or refusing to give an instruction to the jury unless such alleged error was made the subject of an objection noted at the time it was committed or brought to the attention of the court in another appropriate manner.

Sec. 641-31. Interlocutory appeals from circuit courts, criminal matters. Upon application made within the time provided by the rules of court, an appeal in a criminal matter may be allowed to a defendant from the circuit court to the supreme court from a decision denying a motion to dismiss or from other interlocutory orders, decisions, or judgments, whenever the judge in his discretion may think the same advisable for a more speedy termination of the case. The refusal of the judge to allow an interlocutory appeal to the supreme court shall not be reviewable by any other court.

Sec. 641-41. Time for appeal in case of suspended sentence. Whenever in any criminal cause an order suspending the imposition or execution of the sentence is entered by a district or circuit court, the order shall for the purposes of appeal be deemed a final judgment and the time within which to perfect any appeal in any such cause shall commence to run from the entry thereof.

PART III. GENERAL PROVISIONS

Sec. 641-43. Bonds, costs, failure to file or pay, defects. Failure of an appellant to file a bond or to pay costs, or informality or insufficiency of a bond or payment of costs, does not affect the validity of the appeal, but is ground only for such remedies as are specified by the rules of court or, when no remedy is specified, for such action as the court having jurisdiction deems appropriate, which may include dismissal of the appeal.

Sec. 641-45. Liability on bond, how enforced. By entering into a bond for costs or to stay the execution of or any proceedings to enforce a judgment, the surety submits himself to the jurisdiction of the court, irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond may be served, and agrees that his liability may be enforced on motion without the necessity of an independent action.

The papers served on the clerk as statutory agent for the surety shall be mailed by him to the surety if his address is known."

SECTION 6. Chapter 655 of the Hawaii Revised Statutes is amended as follows:

(a) The caption of section 655-1 is changed by deleting the word "deliver" and inserting in lieu thereof "delivery".

(b) Section 655-3 is amended to read as follows:

"Sec. 655-3. Money in court, deposit as ordered by the court. Whenever any money is paid into, or deposited in any court to abide the ascertainment of the right to the money, or the termination of the action, the court shall have power, upon the application of any party interested, or without such application, to order the money to be deposited in the treasury of the State or as otherwise ordered, subject to the further order of the court."

(c) Sections 655-4 and 655-5 are deleted.

SECTION 7. Chapter 631 of the Hawaii Revised Statutes is repealed.

SECTION 8. Chapter 637 of the Hawaii Revised Statutes is repealed.

SECTION 9. Chapter 642 of the Hawaii Revised Statutes is repealed.

SECTION 10. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 11. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 19, 1972.)