

I assent,

C. C. WOOLLEY,

Governor.

29th September, 1950.

ORDINANCE No. 29 of 1950

AN ORDINANCE to establish a Court of Criminal Appeal and to make provision for appeals in criminal cases.

[7th October, 1950.]

BE IT ENACTED by the Governor of British Guiana, A.D. 1950.
with the advice and consent of the Legislative Council thereof,
as follows:—

1. This Ordinance may be cited as the Criminal Appeal Ordinance, 1950. Short
title

2. In this Ordinance —

“appellant” includes any person who has been convicted and desires to appeal under this Ordinance; or in respect of whose conviction a question of law has been reserved under section twenty-three of this Ordinance; Interpre-
tation

“Law Officer” means the Attorney-General, the Solicitor-General, a Crown Counsel, or such other counsel as may appear for the Crown;

“Puisne Judge” includes —

- (a) any person appointed by the Governor under section eleven of the Supreme Court of Judicature Ordinance, to act as a Judge; and
- (b) any additional Judge appointed as aforesaid;

“sentence” includes any order made on conviction with reference to the person convicted.

Cap. 10.

Constitution of Court of Criminal Appeal.

3. (1) There shall be a Court of the Supreme Court of British Guiana styled the Court of Criminal Appeal of the Supreme Court of British Guiana (hereinafter referred to as “the Court of Criminal Appeal”), and the Chief Justice of British Guiana and the Puisne Judges of British Guiana shall be the Judges of that Court.

(2) For the purpose of hearing and determining appeals under this Ordinance, and for the purpose of any other proceedings under this Ordinance, the Court of Criminal Appeal shall be summoned in accordance with directions given by the Chief Justice and the Court shall be duly constituted if it consists of three Judges.

(3) The Court shall sit in Georgetown unless the Chief Justice otherwise directs, and the Chief Justice, if present, and in his absence the senior member of the Court, shall be president of the Court.

(4) A Judge shall not sit as a Judge of the Court of Criminal Appeal on the hearing of any appeal, or on the hearing of any application for leave to appeal, against a verdict given or sentence passed at a trial at which he presided.

(5) The determination of any question before the Court of Criminal Appeal shall be according to the opinion of the majority of the members of the Court hearing the appeal.

(6) Unless the Court directs to the contrary in cases where, in the opinion of the Court, the question is a question of law on which it would be convenient that separate judgments should be pronounced by the members of the Court, the judgment of the Court shall be pronounced by the president of the Court, or such other member of the Court hearing the case as the president of the Court directs, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of the Court.

(7) The Court of Criminal Appeal shall be a superior court of record, and shall, for the purpose of, and subject to the provisions of this Ordinance, have full power to determine any questions necessary to be determined for the purpose of doing justice on the hearing of any appeal.

(8) The Chief Justice may direct, where he considers it necessary so to do, that the Court of Criminal Appeal shall sit at such times during the vacation as he may appoint.

(9) Any direction which may be given by the Chief

Justice under this section may, in the event of any vacancy in that office, or in the event of the absence of the Chief Justice or his incapacity to act from any cause, be given by the senior Judge of the Court of Criminal Appeal.

4. The Registrar of the Supreme Court shall be the Registrar of the Court of Criminal Appeal (hereinafter referred to as "the Registrar").

Registrar
of the
Court of
Criminal
Appeal.

RIGHT OF APPEAL AND DETERMINATION OF APPEALS.

5. Any person convicted on indictment may appeal to the Court of Criminal Appeal —

Right of
Appeal to
the Court
of Criminal
Appeal.

- (a) against his conviction, on any ground which involves a question of law alone;
- (b) if a female convicted of an offence punishable with death, from the finding of a jury on proceedings under section one hundred and sixty-two A of the Criminal Law (Procedure) Ordinance, as substituted by section twenty-one of the Criminal Justice Ordinance, 1932, that she is not pregnant.
- (c) with the leave of the Court of Criminal Appeal, or upon the certificate of the trial judge 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 to be a sufficient ground of appeal; and
- (d) with the leave of the Court of Criminal Appeal, against sentence, unless the sentence is one fixed by law.

Cap. 18.
No. 21 of
1932.

6. (1) The Court of Criminal Appeal on any appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, 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 on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Deter-
mination
of appeals

Provided that the Court of Criminal Appeal 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 are of the opinion that no substantial miscarriage of justice has actually occurred.

(2) Subject to the provisions of this Ordinance, the Court of Criminal Appeal shall, if they allow an appeal, 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) On any appeal against sentence the Court of Criminal Appeal shall, if they think a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence (whether more or less severe) as they think ought to have been passed.

7. (1) If it appears to the Court of Criminal 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 may either affirm the sentence passed on the appellant at the trial, or substitute therefor such other sentence as they may think proper, having regard to the count or part of the indictment on which the Court 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 Criminal Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence, the Court 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 Criminal Appeal consider 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 Criminal Appeal may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court 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) If, on any appeal it appears to the Court of Criminal Appeal that although the appellant was guilty of the act or omission charged against him he was insane at the time the act was done or omission made so as not to be responsible according to law for his actions, the Court may quash the sentence passed at the trial and order the appellant to be kept in custody as a criminal lunatic under the provisions of section one hundred and seventy-three of the Criminal Law (Procedure) Ordinance in the same manner as if a special verdict had been found by the jury under that Ordinance.

8. (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 subsection (1) of section twenty-six of the Sale of Goods Ordinance, as to the re-vesting of the property in stolen goods on conviction shall (unless the Court before whom the conviction takes place directs to the contrary in any case in which in their opinion, the title to the property is not in dispute) be suspended —

(a) in any case until the expiration of ten days after the date of the conviction; and

(b) in case where notice of appeal or leave to appeal is given within ten 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 the said provisions is suspended until the determination of the appeal, the order or the provisions as the case may be shall not take effect as to the property in question if the conviction is quashed on appeal.

(2) Pending the suspension of the operation of any order of restitution as aforesaid, or the suspension of the provisions of subsection (1) of section twenty-six of the Sale of Goods Ordinance, the Court before whom any person has been convicted on indictment may make such order as it may think fit for securing the safe custody of any property in respect of which such person has been convicted.

(3) The Court of Criminal 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.

9. Where upon conviction of any person of any offence any disqualification, forfeiture or disability attaches to such person by reason of such conviction, such disqualification, forfeiture or disability shall not attach — Suspension of disqualification etc. pending appeal.

(a) for the period of ten days after the date of conviction of such person; and

(b) where notice of appeal or leave to appeal is given within ten days after the date of conviction of such person, until the determination of the appeal.

PROCEDURE.

10. (1) Where a convicted person desires to appeal under this Ordinance to the Court of Criminal Appeal, or to obtain the leave of that Court to appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within ten days of conviction: Time for appealing.

Provided that, except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Court of Criminal Appeal.

(2) In the case of any conviction involving sentence of death or corporal punishment —

(a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under this section; and

(b) if notice is so given, the appeal or application shall be heard and determined with as much expedition as possible, 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.

(3) Any convicted person desiring to appeal or to obtain leave to appeal may present his case and his argument in writing in accordance with rules of court which shall be made for this purpose instead of by oral argument and any case or argument so presented shall be considered by the Court.

Judge's notes and report to be furnished on appeal.

11. The Judge of the Court before whom a person is convicted shall, in the case of an appeal under this Ordinance against the conviction or against the sentence, or in the case of an application for leave to appeal under this Ordinance, furnish the Registrar in accordance with rules of court, with his notes of the trial, together with a report giving his opinion upon the case or upon any point arising in the case.

Supplemental powers of Court of Criminal Appeal.

12. For the purposes of this Ordinance, the Court of Criminal Appeal may, if they think it necessary or expedient in the interests 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; and
- (b) if they think fit order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court before any Judge of the Court or before any officer of the Court, or before any magistrate or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court; and
- (c) if they think fit, receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such application; and
- (d) where any question arising on 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, order the reference of the question in manner provided by 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; and
- (e) appoint any person with special expert knowledge to act as assessor 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 exercise in relation to the proceedings of the Court any other powers which may for the time being be exercised by the Full Court of the Supreme Court of British Guiana on appeals in civil matters, and issue any warrants necessary for enforcing the orders or sentences of the Court:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence which was not given at the trial.

13. The Court of Criminal Appeal may at any time assign to the appellant a solicitor and counsel, or counsel only, in any appeal or proceedings preliminary to or incidental to an 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.

Legal assistance to appellant.

14. (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 to or incidental to an appeal, shall not be entitled to be present except where rules of court provide that he shall have the right to be present, or where the Court gives him leave to be present.

Right of appellant to be present.

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

15. (1) It shall be the duty of a Law Officer to appear for the Crown on every appeal to the Court of Criminal Appeal under this Ordinance.

Duty of Law Officer to appear for the Crown.

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

16. (1) On the hearing and determination of an appeal or any proceedings preliminary or subsequent thereto no costs shall be allowed on either side.

Costs of appeal.

(2) The expenses of —

- (a) any solicitor or counsel assigned to an appellant under this Ordinance;
 - (b) any witness attending on the order of the Court of Criminal Appeal or examined in any proceedings incidental to the appeal;
 - (c) the appearance of an appellant on the hearing of his appeal or on any proceedings preliminary to, or incidental to the appeal;
 - (d) any examination of witnesses conducted by any person appointed by the Court for the purpose, and all expenses incidental thereto;
 - (e) any reference of a question to a special commissioner appointed by the Court;
 - (f) of any person appointed as assessor to the Court; and
 - (g) the appeal, and any matters incidental thereto,
- shall be defrayed, up to an amount allowed by the Court, but subject to any regulations as to rates and scales of payment made by the Governor in Council,

Admission of appellant to bail, and custody, when attending Court.

17. (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 Criminal Appeal may, if it thinks fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.

(3) 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 Criminal Appeal may give to the contrary on any appeal, the time during which the appellant if in custody, is specially treated as an appellant under this section, shall not count as part of any term of imprisonment or penal servitude under his sentence; and, in the case of an appeal under this Ordinance, any term of imprisonment or penal servitude 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 Criminal Appeal, shall, subject to any directions which may be given by the Court as aforesaid, 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.

Duties of Registrar with respect to notices of appeal etc.

18. (1) The Registrar shall take all necessary steps for obtaining a hearing under this Ordinance of any appeals or applications, notice of which is given to him under this Ordinance, and shall obtain and lay before the Court of Criminal 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 to the proper determination of the appeal or application.

(2) 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 for summary determination, and, where the case is so referred, the Court 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.

(3) 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 Ordinance, shall be kept in the custody of the court in accordance with rules of court made for the purpose, for such time as may be provided by the rules, and subject to such power as may be given by the rules for the conditional release of any such documents, exhibits or things from that custody.

(4) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Ordinance to any person who demands the same.

and to officers of courts, the Superintendent of Prisons, and such other 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 Ordinance, and shall cause such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

(5) The Registrar shall report to the Court of Criminal 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 the Court by this Ordinance.

19. (1) Such shorthand notes as may be prescribed by 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 Ordinance and on any appeal or application for leave to appeal, a transcript of the notes or any part thereof shall be made if the Registrar so directs, and furnished to the Registrar for the use of the Court of Criminal Appeal or any Judge thereof.

Shorthand notes.

Provided that a transcript shall be furnished to any party interested upon the payment of such charges as may be fixed by regulations made by the Governor in Council.

(2) The Governor may also, if he thinks fit in any case direct a transcript of the shorthand notes to be made and furnished to him for his use.

(3) Rules of court may also make such provision as is necessary for securing the accuracy of the notes to be taken and for the verification of the transcript.

(4) The cost of taking any shorthand notes or any transcripts thereof for the purposes of this Ordinance shall be defrayed in accordance with rates of payment to be fixed by Regulations made by the Governor in Council.

20. The powers of the Court of Criminal Appeal under this Ordinance—

- (a) to give leave to appeal ;
- (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 in cases where he is not entitled to be present without leave ;
- (e) to admit an appellant to bail,

Powers which may be exercised by a Judge of the court.

may be exercised by any Judge of the Court in the same manner and subject to the same provisions as they may be exercised by the Court; but if the Judge refused 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 Ordinance.

Power to
make rules
of court.

21. (1) The rule committee established by section ninety of the Criminal Law (Procedure) Ordinance may make rules for carrying this Ordinance into effect.

(2) Rules made under this section shall be laid before the Legislative Council in the manner provided by section seventy-nine of the Supreme Court of Judicature Ordinance, and the provisions of that section shall apply to rules made under this section to the same extent as they apply to rules of court made under that Ordinance.

(3) The officers of any court before whom an appellant has been convicted, and the Superintendent of Prisons or officer in charge of any prison or other officer having the custody of an appellant and any other officers or persons, shall comply with any requirement of those rules so far as they affect those officers or persons, and compliance with those rules may be enforced by order of the Court of Criminal Appeal.

SUPPLEMENTAL.

Preroga-
tive of
mercy.

22. Nothing in this Ordinance shall affect the prerogative of mercy, but the Governor on the consideration of any petition for the exercise of His 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, if he thinks fit, at any time either—

- (a) refer the whole case to the Court of Criminal 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 Criminal 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 their opinion thereon accordingly.

Jurisdic-
tion in
Crown
cases re-
served.

23. Where any person is convicted on indictment of any offence, the Judge before whom the case is tried may, in his discretion, reserve any question of law arising on the trial for the consideration of the Court of Criminal Appeal, and thereupon, if he thinks fit, may respite execution of the judgment on such conviction, or postpone the judgment until such question has been considered and determined, and either commit the person convicted to prison, or take a recognisance of bail with one or more sufficient sureties in such sum as he may think fit, conditioned that the person convicted do appear at such times and places as are from time to time appointed by the Judge or the Court of Criminal Appeal, and receive judgment or render himself in execution as the case may be.

Statement
of question
reserved.

24. The Judge reserving the question of law shall state the question in a case signed by him, with the special circumstances upon which the same has arisen, and shall direct such statement to be specially entered upon the record.

25. (1) Where a question of law has been reserved, the Court of Criminal Appeal shall consider and determine such questions, after hearing counsel for the parties if they desire to be heard, and the Court of Criminal Appeal may either—

(a) confirm the judgment given on the indictment; or

(b) order that such judgment be set aside notwithstanding the verdict (which order shall for all purposes have the same effect as if the defendant had been acquitted); or

(c) order that such judgment be set aside, and give instead thereof the judgment which ought to have been given at the trial; or

(d) order judgment to be given on the indictment at the same or some other sitting of the Court before which the trial took place, if no judgment has been previously given; or

(e) make such other order as justice requires.

Power of Court of Criminal Appeal in Crown cases reserved.

(2) The Court of Criminal Appeal may, if they think fit, require the Judge by whom the question is reserved, to amend the statement specially entered on the record.

26. Where in any case a person convicted appeals under this Ordinance against his conviction on any ground of appeal which involves a question of law alone, the Court of Criminal Appeal may, if they think fit, direct that the procedure set out in sections twenty-three and twenty-four of this Ordinance shall be followed, and thereupon the trial Judge shall state a case in the same manner as if a question of law had been reserved.

Power of Court of Criminal Appeal to direct the trial Judge to state a case.

27. This Ordinance shall apply to convictions on criminal information as it applies in the case of convictions on indictment.

Ordinance to apply to conviction on criminal information.

28. This Ordinance shall come into force on such day as the Governor shall by Proclamation published in the Gazette appoint.

Commencement.