

XII
1939

ORDRE EN CONSEIL

Ratifiant un Projet de Loi intitulé

Loi par rapport aux Appels des sentences rendues en Police Correc- tionnelle (1939).

(Enregistré sur les Records de l'Île de Guernesey le
16 décembre 1939.)



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1939.

ORDRE EN CONSEIL.



A LA COUR ROYALE DE L'ILE DE GUERNESEY.

Le seize décembre mil neuf cent trente-neuf, pardevant Victor Gosselin Carey, écuyer, Baillif ; présents : Jean Allès Simon, John Roussel, Osmond Priaulx Gallienne, Arthur Dorey, Ernest de Garis, Jean Nicolas Robin, Cyril de Putron, Aylmer Mackworth Drake, John Leale, James Frederick Carey, écuyers, Messire Abraham James Lainé, K.C.I.E., et Dan Alfred Aubert, écuyer, Jurés.

Monsieur le Baillif ayant ce jour communiqué à la Cour un Ordre de Sa Majesté en Conseil en date du vingt-trois novembre mil neuf cent trente-neuf ratifiant un Projet de Loi intitulé "Loi par rapport aux Appels des sentences rendues en Police Correctionnelle (1939)",—La Cour, après avoir eu lecture du dit Ordre, ouïes les conclusions des Officiers du Roi, a ordonné que le dit Ordre en Conseil sera enregistré sur les Records de cette Ile, duquel Ordre la teneur suit :—

At the Court at Buckingham Palace,

The 23rd day of November, 1939.

Present,

The King's Most Excellent Majesty

LORD PRESIDENT
EARL OF ONSLOW

CAPTAIN MARGESSON
CAPTAIN CROOKSFANK

Whereas there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey

LE 16 DECEMBRE 1939

and Jersey, dated the 20th day of November, 1939, in the words following, viz. :—

“**Your Majesty** having been pleased by Your General Order of Reference of the 18th day of December, 1936, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth :—

1. That on the 24th day of June, 1939, the Royal Court adopted a Bill or Projet de Loi intituled “Loi par rapport aux Appels des sentences rendues en Police Correctionnelle (1939),” and requested the Bailiff to submit the same to the States of Deliberation for approval : 2. That on the 25th day of October, 1939, the said Bill or Projet de Loi was duly considered by the States, when a resolution was passed approving the same with slight modifications and authorizing the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto : 3. That the said Bill or Projet de Loi is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty would be graciously pleased to grant Your Royal Sanction to the Bill or Projet de Loi of the States of Guernsey intituled “Loi par rapport aux Appels des sentences rendues en Police Correctionnelle (1939),” and to order and direct that the same shall have the force of Law within the Island of Guernsey.’

“**The Lords of the Committee**, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

His Majesty having taken the said Report into consideration is pleased, by and with the advice of His Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Island of Guernsey.

And His Majesty doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed) be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant-Governor or Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other His Majesty's Officers, for the time being, in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

RUPERT B. HOWORTH.

PROJET DE LOI

INTITULÉ

LOI PAR RAPPORT AUX APPELS DES
SENTENCES RENDUES EN POLICE
CORRECTIONNELLE (1939).

LES ETATS ont approuvé les dispositions suivantes rédigées en anglais lesquelles, moyennant la Sanction de Sa Très Excellente Majesté en Conseil, auront force de Loi en cette Ile.

1.—*DEFINITIONS.*—In this Law, where the context permits, the following expressions shall have the meanings hereinafter respectively assigned to them, viz. :—

“ Appellate Court ” means the Royal Court sitting as a Full Court ;

“ Police Court ” means the Ordinary Court or the Magistrate or Acting Magistrate sitting as a Police Court ;

“ Sentence ” means an order of the Police Court whereby punishment is awarded on conviction of a criminal or quasi-criminal offence ;

“ the Greffier ” means His Majesty’s Greffier and includes any Deputy appointed by him ;

“ the Law Officer ” means His Majesty’s Procureur, His Majesty’s Comptroller, or either of them.

Words importing the singular shall include the plural and vice versa.

Words importing the masculine gender shall include females.

2.—RIGHT OF APPEAL.—Subject to the provisions of this Law, after the hearing and determination by the Police Court on or after the date on which this Law comes into operation of any case which the Police Court, by any Law or Ordinance now in force or hereafter to be made, has power to hear and determine, there shall be a right of appeal to the Appellate Court—

- (a) if such case results in the conviction of any person, at the instance of the person convicted—
 - (i) against such conviction ; or
 - (ii) against such conviction and the sentence pronounced in the case ; or
 - (iii) against such sentence only ;
- (b) if such case results in the acquittal of any person, at the instance of the prosecution, against such acquittal.

3.—LIMITATIONS ON RIGHT OF APPEAL.—(1) No right of appeal shall arise under this Law—

- (a) in any case where it is expressly provided by any other Law or by any Ordinance that the decision of the Police Court shall be final and conclusive : or
- (b) against the conviction of any person for an offence to which that person has pleaded guilty : or
- (c) against the sentence pronounced against any person, where the punishment awarded does

not exceed one or more of the following penalties :—

- (i) imprisonment, with or without hard labour, for a term of seven days ; or
- (ii) a fine of £2, with or without costs ; or
- (iii) payment of damages in an amount of £2, with or without costs ; or
- (iv) confiscation of goods of the value of £2, with or without costs ; or
- (v) suspension for seven days of any licence or permit, with or without costs ;

or (d) against the conviction of any person, if the punishment awarded in respect of such conviction does not exceed one or more of the penalties mentioned in clause (c) of this Section unless, upon the application of the person convicted, the Police Court gives a direction that there be made in the record of the case an entry to the effect that there was in contest in the case a question of law or of mixed law and fact which it would be proper and desirable to have decided by the Appellate Court : or

(e) against the acquittal of any person, unless upon the application of the prosecution, the Police Court gives a direction for the making of such an entry as is mentioned in clause (d) of this Section.

(2) Upon the Police Court giving a direction for the making of such an entry as is hereinbefore mentioned, notice of appeal shall be deemed to have been given by the person making application for the giving of such direction and a record shall be made accordingly.

4.—NOTICE OF APPEAL.—(1) Notice of appeal shall be given and application for the giving of such direction as is mentioned in Section 3 of this Law

shall be made to the Police Court at the sitting at which the conviction or acquittal or sentence appealed from occurred or was pronounced or at any sitting occurring within seven days thereafter. On the giving of any such notice or the making of any such application, the person giving or making the same shall make a statement (in writing, if so required by the Police Court,) of the general grounds on which the notice is given or the application is made and such statement shall be inserted in the record made concerning such notice or application.

(2) The Police Court shall not give such a direction as is mentioned in Section 3 of this Law nor shall the giving of notice of appeal be effectual or be recorded unless and until the person applying for the giving of such a direction or giving notice of appeal has—

- (i) if so required by the Police Court, elected and named an address in this Island at which summonses and notices respecting such appeal may be validly served on him :
- (ii) given or found, within such period following the date of the application for the giving of such a direction as aforesaid or of the giving of notice of appeal, not exceeding seven days, as the Police Court may prescribe, such security payable in ready money to the Greffier as to the Police Court may seem proper and, in addition or in substitution for such security, bound himself by oath thereupon to be administered to him, that he will remain in this Island, if so required by the Police Court, until the appeal has been disposed of and that he will attend before the Appellate Court at the hearing of the appeal ;
- (iii) taken such oath, given such undertaking or given or found such security payable in ready money to the Greffier as the Police

Court may require that he will not consort with or molest any designated person or persons pending the disposal of the appeal.

Provided that the above conditions shall not be required to be fulfilled in any case where the prosecution is the appellant.

(3) If any person shall act wilfully in contravention of any oath or undertaking taken or given under the provisions of this Section, he shall be guilty of an offence and may be prosecuted summarily before the Royal Court sitting as a Full Court and shall on conviction be liable to a fine not exceeding Twenty-five Pounds or to imprisonment, with or without hard labour, for a term not exceeding three months or to both such fine and such imprisonment and to pay the costs of the prosecution. Upon any such conviction or, if the person liable to prosecution under this subsection cannot be apprehended, within the three months next following the contravention rendering him so liable to prosecution, upon an application made at any time after the expiration of such last mentioned period, the Royal Court sitting as a Full Court may direct that the security in connection with the oath or undertaking contravened given by or found for the person convicted or so liable to prosecution shall be forfeited to the States or may, if such security was found by some person other than the person convicted or so liable to prosecution and that Court thinks it proper in the circumstances so to do, direct that the security given or some part thereof shall be returned to the person by whom the same was given.

(4) Upon any such conviction as aforesaid the Appellate Court may dismiss any appeal under this Law pending at the instance of the person convicted without proceeding with the hearing thereof and, in case of such dismissal, the sentence appealed from shall stand to take effect as from such date as may be appointed by the Appellate Court.

5.—EFFECT OF NOTICE OF APPEAL.—Upon notice of appeal being given or being deemed to have been given by a convicted person and upon compliance by that person with the conditions contained in Section 4 of this Law, the sentence pronounced upon that person shall be suspended until the disposal of the appeal and, if that sentence be a sentence of imprisonment with or without hard labour, without the option of a fine, that person shall be set at liberty unless the Police Court directs that he be retained in custody.

Provided that where the sentence or part of the sentence is an order for the confiscation of goods or the suspension or withdrawal of a driving permit, delivery of the goods or of the permit in question shall be made to His Majesty's Sheriff by the convicted person for safe keeping pending the disposal of the appeal and, as regards any driving permit in respect of which an order of suspension or withdrawal has been made, such order shall remain in operation pending the disposal of the appeal.

6.—PROVISIONS AS TO LEGAL AID.—(1) Where a person—

- (a) has been convicted of an offence by the Police Court; or
- (b) has been acquitted of a charge by the Police Court and such acquittal has been appealed against by the prosecution;

and that person desires to appeal against the conviction or the sentence or to contest the appeal against the acquittal, as the case may be, but has not sufficient means to enable him to obtain legal aid for the purpose, he may make an application to the Police Court for free legal aid.

(2) If, on an application made to the Police Court under the preceding subsection, it appears to the Police Court that the means of the applicant are insufficient to enable him to obtain legal aid, and that, by reason of the nature of the offence of which

the applicant was convicted or of the charge of which the applicant was acquitted, or by reason of the sentence imposed upon the applicant or of other circumstances, it is desirable in the interests of justice that the applicant should have free legal aid in the preparation and conduct of his appeal or, as the case may be, in resisting the appeal, the Police Court may grant in respect of him a certificate (in this section referred to as "an appeal aid certificate").

(3) Where, on an application made to the Police Court under this section, the Police Court has refused to grant an appeal aid certificate, the applicant may make an application for the same purpose—

(i) by letter addressed to the Greffier and setting out the facts of the case and the grounds of the application; or

(ii) in person to the Ordinary Court;

and the Ordinary Court shall have the like power, exercisable on the like grounds, of granting an appeal aid certificate as the Police Court.

(4).—(a) The Advocate chosen by a person in respect of whom an appeal aid certificate has been granted to represent that person in an appeal under this Law shall be entitled to remuneration in respect of his services in connection with that appeal in an amount which shall be determined by the Law Officer.

Provided that such amount shall not, save in cases involving exceptional services, exceed £3 3s. 0d. and shall not in any case exceed £5 5s. 0d.

(b) Where a person in respect of whom an appeal aid certificate has been granted is unable to secure the services of an Advocate in connection with an appeal under this Law, the Ordinary Court may, on the application of that person, assign to him an Advocate for the purpose and thereupon the Advocate assigned to that person shall represent that

person accordingly and shall be entitled to the same remuneration in respect of his services as if he had been chosen by that person.

(5) The remuneration of an Advocate under this section shall be paid in the first instance by His Majesty's Receiver General out of moneys belonging to the Crown and His Majesty's Receiver General shall be entitled to be reimbursed in respect of one half of any amounts so paid by the Treasurer of the States.

(6) So soon as the amount of an Advocate's remuneration has been determined in accordance with the provisions of this section, the Law Officer shall transmit to that Advocate a certificate as to the amount thereof and that certificate shall entitle that Advocate to recover from His Majesty's Receiver General (subject to reimbursement as aforesaid) the amount stated therein.

(7) Where an order for the payment of costs has been made in favour of a person in respect of whom an appeal aid certificate has been granted, His Majesty's Receiver General shall be entitled to the benefit of such order and to enforce the same, to the extent to which the costs payable thereunder do not exceed the amount paid by His Majesty's Receiver General by reason of that appeal aid certificate, and the amount of the costs so recovered by His Majesty's Receiver General shall be credited by the latter to the Crown and the States in equal proportions.

7.—PROCEEDINGS UPON NOTICE OF APPEAL.—(1) Upon notice of appeal in any case being recorded, the Greffier shall, as soon as may be, procure from the Court Shorthand Reporter nine copies, certified as correct by the latter, of the transcript of the shorthand report of the proceedings in that case and shall deliver two of such copies to the Law Officer together with two certified copies of the Act of the Police Court concerning that case and shall

deliver a certified copy of that Act and the remaining copies of such transcript to the Bailiff's Secretary for the use of the Appellate Court.

(2) Upon the receipt of copies of the transcript and of the Act of the Police Court, the Law Officer shall forthwith apply to the Bailiff for the appointment of a date and time for the hearing of the appeal and, upon such date and time being appointed, the Law Officer shall—

(i) Forthwith cite the appellant or, if the prosecution be the appellant, the respondent to appear before the Appellate Court on the date and at the time appointed for the hearing of the appeal by summons served upon such appellant or respondent, to which summons there shall be annexed a copy of the Act of the Police Court and a copy of the transcript of the shorthand report :

(ii) appear before the Appellate Court on the date and at the time appointed for the hearing of the appeal and there table a cause against the appellant or respondent, as the case may be, in such appeal and represent the prosecution therein.

Provided that where, as regards any case in respect of which notice of appeal has been recorded, there exists no shorthand report of the proceedings therein, or, although such shorthand report is in existence, it is not possible to procure an accurate transcript thereof then, in substitution for the delivery and service as aforesaid of copies of the transcript of the proceedings, the Greffier shall apply to the Police Court for a copy of the notes taken by the Police Court concerning the case and, upon receiving the same, shall make three copies thereof and shall deliver one such copy to the Bailiff's Secretary for the use of the Appellate Court and two such copies to the Law Officer and one of such copies shall be

annexed to the summons served upon the appellant or the respondent, as the case may be, at the instance of the Law Officer. In any such case as is mentioned in this proviso the Greffier shall also supply to the Law Officer the names and addresses of the witnesses who gave evidence in the Police Court on behalf of the accused person.

(3) Where a transcript of the proceedings in any case is not available and it appears to the Law Officer that the notes of the Police Court are not sufficiently ample to inform the Appellate Court of the evidence given in the case, the Law Officer may cause summonses to be served on such of the witnesses, whether for the prosecution or for the defence, with regard to whose evidence given in the Police Court no note or an insufficiently ample note was taken by the Police Court, to appear before the Appellate Court on the date and time appointed for the hearing of the appeal.

8.—ABANDONMENT OF APPEAL.—(1) In the case of an appeal to which this Law applies, the appellant may at any time, not less than two clear days before the date fixed for the hearing of such appeal, abandon the appeal by giving notice in writing to the Greffier and, if such notice is given, the Greffier shall forthwith so inform the Law Officer and the Bailiff's Secretary.

(2) Where an appeal has been so abandoned then—

- (a) subject to anything already suffered or done by the appellant under the decision appealed from, such decision shall be enforceable forthwith by due process of law ; and
- (b) the Police Court may, on the application of the other party to the appeal, order the appellant (and, if the appeal was instituted by the prosecution against the acquittal of a person, the expression "appellant" shall, for the purposes of this paragraph, mean the States) to pay to such other party

such costs, not exceeding the sum of £5, as appear to the Police Court to be just and reasonable in respect of expenses properly incurred by such other party in connection with the appeal before notice of the abandonment was given ; and

- (c) the Police Court may, if it appears proper so to do, release any security given or found in connection with such appeal, and any oath taken by the appellant to the effect that he will remain in the Island until the appeal has been disposed of and that he will attend before the Appellate Court at the hearing of the appeal shall be deemed to have been fulfilled if the appellant remains in the Island until the abandonment of the appeal and then duly surrenders himself to His Majesty's Sheriff.

(3) Costs ordered to be paid under the last preceding subsection may be recovered as a civil debt by the party to whom they are ordered to be paid and shall not be recoverable in any other manner.

9.—PROCEEDINGS IN THE APPELLATE COURT.—(1) After the reading of the cause before the Appellate Court, the appellant (or his counsel) shall be heard as to the grounds on which the appeal is made and may address the Court on the evidence and generally on the subject matter of the appeal and thereafter the respondent (or his counsel) shall be entitled to show cause why the appeal should not be allowed.

Provided that in any case where the prosecution is not the respondent, the Law Officers of the Crown shall be entitled to the right of reply to the speech made by or on behalf of the respondent.

(2) In the Appellate Court the burden of proof of any fact, matter, point or thing shall rest on the party on whom such burden rested or ought to have rested in the Police Court.

(3) If it shall appear to the Appellate Court that--

- (a) some material error exists in the transcript of the proceedings in the case before the Police Court and the parties to the appeal are not in agreement as to the accurate rendering of the matter as regards which such error exists : or
- (b) there being no transcript of such proceedings available, it is desirable that one or more of the witnesses who gave evidence in the Police Court should be heard by the Appellate Court : or
- (c) further material evidence not available to one or other of the parties at the time of the Police Court proceedings is obtainable :

the Appellate Court may direct that witnesses shall be heard before it in relation to any such error or for the amplification of the notes of the Police Court or in respect of such further material evidence and may adjourn the appeal proceedings for so long as may be necessary to enable any of such witnesses as have not been cited to attend to be served with a citation to attend before the Appellate Court.

(4) The Appellate Court may order the production of any document, exhibit or other thing the production of which may appear to the Appellate Court to be necessary for the determination of the case.

(5) It shall be competent to the Appellate Court on any appeal to adjudicate in regard to the admissibility of any evidence and to hear or to exclude any evidence whether the question of the admissibility of such evidence was raised in the Police Court or not.

(6) If at any stage of the proceedings before the Appellate Court, that Court is of opinion that the appeal is frivolous or vexatious, it may forthwith dismiss the appeal.

(7) If on any appeal against conviction, the

Appellate Court finds that the appellant was wrongly convicted on any count or head the appeal shall be allowed and the conviction on such count or head shall be quashed, and the sentence pronounced by the Police Court in respect thereof shall be revoked or amended as justice may require.

(8) On an appeal against conviction or sentence, the Appellate Court shall have power, in substitution for the punishment awarded by the Police Court, to award any punishment, whether more or less severe than that awarded by the Police Court, which the Police Court might have awarded.

(9) If on any appeal at the instance of the prosecution, the Appellate Court finds that the acquittal of an accused person arose out of the erroneous determination by the Police Court of the question of law or of mixed law and fact with regard to which the appeal has been brought, the Appellate Court may remit the case to the Police Court together with a direction that the Police Court shall record a conviction against such accused person and thereupon the Law Officer shall summon such accused person to attend at the next convenient sitting of the Police Court and the Police Court shall record such conviction accordingly and shall pronounce such sentence in regard thereto as to the Police Court shall seem just. The provisions of this Law with regard to the right of appeal against sentence shall apply to such sentence.

(10) In any other case the Appellate Court shall dismiss the appeal and thereupon the sentence of the Police Court shall stand and shall take effect as from such date as the Appellate Court shall appoint.

10.—Costs. (1) On the hearing and determination of an appeal under this Law—

(a) if the appeal was brought against the acquittal of any person, then, whether such appeal is successful or unsuccessful, no costs in relation to the appeal shall be awarded

against that person but the Appellate Court may direct that such amount of costs, not exceeding £5, as may appear reasonably sufficient to cover the out-of-pocket expenses of that person in relation to such appeal, shall be paid to that person by the States.

- (b) if the appeal was brought against conviction and sentence or against sentence only, then—
- (i) if the appeal is successful, the Appellate Court may direct that such amount of costs, not exceeding £5, as may appear reasonably sufficient to cover the out-of-pocket expenses of that person in relation to such appeal, shall be paid to the appellant by the States : or
 - (ii) if the appeal is unsuccessful, the Appellate Court may direct that such amount of costs, not exceeding £5, as may appear reasonably sufficient to cover the cost of the services rendered by Officers of the Court in relation to that appeal, shall be paid by the appellant to the States.

(2) Costs ordered by the Appellate Court to be paid on any such appeal as aforesaid may be recovered as a civil debt by the party to whom they are ordered to be paid and shall not be recoverable in any other manner.

11.—ORDINANCES.—The Royal Court is hereby empowered from time to time by Ordinance to provide such rules and regulations as it may deem requisite or expedient for the purpose of giving effect to this Law.

12.—RESERVATION.—This Law shall not affect the provisions of Article 10 of the Law intituled “ Loi relative à l’Entretien des Enfants Illégitimes, 1927 ”.

13.—COMMENCEMENT.—This Law shall come into operation as from the commencement of the day

next following the date on which the Order of His Majesty in Council sanctioning this Law is registered on the Records of this Island.

14.—This Law may be cited as the Police Court Appeals Law, 1939.

A. J. ROUSSEL,
Greffier du Roi.