

TRINIDAD AND TOBAGO.

No. 31—1931.

I ASSENT,

[L.S.]

A. C. HOLLIS,
Governor.

2nd December, 1931.

AN ORDINANCE to establish a Court of Criminal Appeal and to amend the Law relating to Appeals in Criminal Cases.

[On Proclamation.]

BE it enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof as follows:—

Short title.

1. This Ordinance may be cited as the Criminal Appeal Ordinance, 1931.

Interpretation.

2. In this Ordinance,

“Appellant” includes a person who has been convicted and desires to appeal under this Ordinance;

“Sentence” includes any order of the Court made on conviction with reference to the person convicted;

“Law Officer” includes the Attorney-General, the Solicitor-General, or such other Counsel as may appear for the Crown.

COURT OF CRIMINAL APPEAL.

3.—(1) There shall be a Court of Criminal Appeal in the Colony, and the Chief Justice of Trinidad and Tobago and the Puisne Judges of Trinidad and Tobago shall be Judges of that Court. Constitution of Court of Criminal Appeal.

(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.

The Court shall sit in Port-of-Spain except in cases where the Chief Justice gives special directions that it shall sit at some other place.

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

(4) A judge of the Court of Criminal Appeal shall not sit as a judge 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, or on the consideration of any point reserved by him under the provisions of the Criminal Procedure Ordinance, Cap. 5.

(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 case.

(6) Unless the Court direct 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 purposes of and subject to the provisions of this Ordinance, have full power to determine, in accordance with this Ordinance, any questions necessary to be determined for the purpose of doing justice in the case before the Court.

(8) 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 incapacity of the Chief Justice to act from any reason, be given by the senior Judge of the Court of Criminal Appeal.

Registrar of
the Court of
Criminal
Appeal.

4. The Registrar of the Supreme Court shall be Registrar of the Court of Criminal Appeal (in this Ordinance referred to as the Registrar).

RIGHT OF APPEAL AND DETERMINATION OF APPEALS.

Right of
appeal in
criminal cases.

5. A person convicted on indictment may appeal under this Ordinance to the Court of Criminal Appeal—

- (a) against his conviction on any ground of appeal which involves a question of law alone ; and
- (b) with the leave of the Court of Criminal Appeal or upon the certificate of the judge who tried him 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
- (c) with the leave of the Court of Criminal Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law.

Determination
of appeals in
ordinary cases.

6.—(1) The Court of Criminal Appeal on any such 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.

Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

(2) Subject to the special provisions of this Ordinance, the Court of Criminal Appeal shall, if they allow an appeal against conviction, 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 an appeal against sentence the Court of Criminal Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as they think ought to have been passed, and in any other case shall dismiss the appeal.

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 pass such sentence in substitution therefor as they think proper, and as may be warranted in law by the verdict on the count or part of the indictment on which the court consider that the appellant has been properly convicted.

Powers of
Court in
special cases.

(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 Criminal Procedure Ordinance, Cap. 5, in the same manner as if a special verdict had been found by the jury under that ordinance.

Re-vesting
and restitution
of property on
conviction.

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 sub-section (1) of section 25 of the Sale of Goods Ordinance, Cap. 187, as to the re-vesting of the property in stolen goods on conviction, shall (unless the court before whom the conviction takes place direct 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 cases 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 provisions, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal. Provision may be made by rules of Court for securing the safe custody of any property, pending the suspension of the operation of any such order or of the said provisions.

(2) 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.

PROCEDURE.

9.—(1) Where a person convicted 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 the date of conviction : Such rules shall enable any convicted person to present his case and his argument in writing instead of by oral argument if he so desires. Any case or argument so presented shall be considered by the court.

Time for
appealing.

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 a 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 practicable, 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.

10. The judge 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 to the Registrar, in accordance with rules of court, his notes of the trial ; and shall also furnish to the Registrar in accordance with rules of court a report giving his opinion upon the case or upon any point arising in the case.

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

Supplemental
powers of
court.

11. For the purposes of this Ordinance, the Court of Criminal Appeal may, if they think it necessary or expedient in the interest 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 magistrate or justice 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 an 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 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 that was not given at the trial.

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

13.—(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 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 to pass any sentence under this Ordinance may be exercised notwithstanding that the appellant is for any reason not present.

14.—(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, except so far as a private prosecutor in the case of a private prosecution, undertakes the defence of the appeal.

Duty of Law Officers.

(2) Provision shall be made by rules of court for the transmission to the Law Officer undertaking the defence of the appeal of all such documents, exhibits, and other things connected with the proceedings as he may require for the purpose of his duties under this section.

Costs of
appeal.

15.—(1) On the hearing and determination of an appeal or any proceedings preliminary or incidental thereto under this Ordinance no costs shall be allowed on either side.

(2) The expenses of any solicitor or counsel assigned to an appellant under this Ordinance, and the expenses of any witnesses attending on the order of the court or examined in any proceedings incidental to the appeal, and of the appearance of an appellant on the hearing of his appeal or on any proceedings preliminary or incidental to the appeal, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the court for the purpose, or any reference of a question to a special commissioner appointed by the court, or of any person appointed as assessor to the court, 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 Chief Justice with the concurrence of a Puisne Judge.

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

16.—(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 seems 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 under his sentence, and, in the case of an appeal under this Ordinance, any imprisonment 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.

(4) Where a case is stated under section 66 of the Criminal Procedure Ordinance, Cap. 5, this section shall apply to the person in relation to whose conviction the case is stated as it applies to an appellant.

(5) Provision shall be made by rules under the Act for the better Government of Prisons in the West Indies (1 and 2 Vic. c. 67) for the manner in which an appellant, when in custody, is to be brought to any place at which he is entitled to be present for the purposes of this Ordinance, or to any place to which the Court of Criminal Appeal or any judge thereof may order him to be taken for the purpose of any proceedings of that court; and for the manner in which he is to be kept in custody while absent from prison for the purpose; and an appellant whilst in custody in accordance with those rules shall be deemed to be in legal custody.

17.—(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 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 for the proper determination of the appeal or application.

Duties of Registrar with respect to notices of appeal, &c.

(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 of trial 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 any 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 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.

Shorthand
notes.

18.—(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 authorized 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: Provided that a transcript shall be furnished to any party interested upon the payment of such charges as may be fixed by rules made hereunder.

(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.

19. The powers of the Court of Criminal Appeal under this Ordinance to give leave to appeal, to extend the time within which notice of appeal or of an application for leave to appeal may be given, to assign legal aid to an appellant, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to admit an appellant to bail, may be exercised by any judge of the Court of Criminal Appeal in the same manner as they may be exercised by the Court, and subject to the same provisions; but, if the judge refuses 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 of Criminal Appeal as duly constituted for the hearing and determining of appeals under this Ordinance.

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

20.—(1) The Chief Justice, with the concurrence of a Puisne Judge, may make rules for carrying this Ordinance into effect, and in particular for all or any of the following matters, that is to say:—

Power to make Rules of Court.

- (a) for securing sittings of the Court of Criminal Appeal at such times as may be required and, if necessary, during vacation.
- (b) for regulating generally the practice and procedure under this Ordinance.

(2) 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 requirements 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.

21.—(1) Subject to the provisions of this Ordinance, Rules of Court made under this Ordinance shall not have any force or effect until they have been approved by the Governor and the Legislative Council, and when so approved shall have the same force and effect as if they were contained in an Ordinance, and may be disallowed by His Majesty in the same manner and with the same consequences as in the

Approval of Rules of Court by Legislative Council.

case of an Ordinance. Any such Rules approved as aforesaid shall, subject to disallowance by His Majesty, come into operation on the day appointed in such Rules in this behalf, or, if no day is so appointed, on such day as the Governor by proclamation appoints.

(2) All such rules when approved by the Governor in Legislative Council shall be published in the *Royal Gazette*.

(3) Disallowance by His Majesty under this section shall take effect upon and from the day on which the proclamation notifying the same is published in the *Royal Gazette*, and shall not affect any proceedings taken before such publication.

SUPPLEMENTAL.

Prerogative
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 of Criminal Appeal 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 of Criminal Appeal for their opinion thereon, and the Court shall consider the point so referred and furnish the Governor with their opinion thereon accordingly.

Writs of
error, &c.

23.—(1) Writs of error, and the powers and practice now existing in respect of motions for new trials or the granting thereof in criminal cases, are hereby abolished.

(2) This Ordinance shall apply in the case of convictions on criminal informations as it applies in the case of convictions on indictments.

(3) All jurisdiction and authority under sections 65, 66, 67 and 68 of the Criminal Procedure Ordinance, Cap. 5, in relation to questions of law arising on a trial on indictment shall be vested in the Court of Criminal Appeal under this Ordinance, and in any case where 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, decide that the procedure under the Criminal Procedure Ordinance, Cap. 5, as to the statement of a case should be followed, and require a case to be stated accordingly under that Ordinance in the same manner as if a question of law had been reserved.

(4) The term "Full Court" in sections 65 and 67 of the Criminal Procedure Ordinance, Cap. 5, shall mean the Court of Criminal Appeal constituted under this Ordinance.

24. This Ordinance shall commence on such day as the Governor may fix by proclamation. Commence-
ment.

Passed in Council this thirteenth day of November, in the year of Our Lord one thousand nine hundred and thirty-one.

J. O'CONNOR,
Acting Clerk of the Council.