

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Court of Alderney (Appeals) Law, 1969

(Registered on the Records of the Island of Guernsey
on the 30th day of September, 1969.)



1969.

XVI

1969

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 30th day of September, 1969, before John Henry Loveridge, Esquire, C.B.E., Deputy Bailiff; present :—Stanley Walter Gavey, Esquire, Gilbert Carey de Jersey, Esquire, C.B., Carl Edward Blad, Albert Victor Dorey, Esquires, Laurence Francis de Vic Carey, Esquire, C.B., C.B.E., William Burton Fox, Esquire, Edward James Lainé, Esquire, C.B.E., D.F.C., Edward Martel and Jean Le Pelley, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 28th day of August, 1969, ratifying a *Projet de Loi* entitled “The Court of Alderney (Appeals) Law, 1969”, the Court, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ordered that the said Order in Council be registered on the records of this Island and that an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney for registration on the records of that Island, of which Order in Council the tenor followeth :—

At the Court at Balmoral

The 28th day of August 1969

PRESENT,

The Queen's Most Excellent Majesty

LORD PRESIDENT

LORD WILSON OF LANGSIDE

MR. SECRETARY ROSS

MR. SECRETARY SHORT

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 and Jersey, dated the 7th day of August 1969, in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

‘1. That, in pursuance of their Resolution of the 26th day of February 1969, the States of Deliberation at a meeting held on the 26th day of March 1969, approved a Bill or “Projet de Loi” entitled “The Court of Alderney (Appeals) Law, 1969” which Bill is designed to apply to the Islands of Guernsey and Alderney and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 14th day of May 1969, considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Alderney. 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 might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Court of Alderney (Appeals) Law, 1969" and to order that the same shall have force of law in the Islands of Guernsey and Alderney.'

"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."

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her 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 force of Law within the Islands of Guernsey and Alderney.

AND HER 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 and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her 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.

N. E. Leigh.

PROJET DE LOI

ENTITLED

The Court of Alderney (Appeals) Law, 1969

THE STATES, in pursuance of their Resolution of the twenty-sixth day of February, nineteen hundred and sixty-nine, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey and of Alderney.

PART I

Interpretation

1. (1) In this Law, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:— Interpretation.

“the appointed day” means the day appointed by an Ordinance of the States of Guernsey made under subsection (2) of section sixteen of this Law;

“the Court” means the Court of Alderney;

“Her Majesty’s Greffier” includes any Deputy appointed by Her Majesty’s Greffier;

“Her Majesty’s Procureur” includes Her Majesty’s Comptroller;

“the Island” means the Island of Alderney;

“the Ordinary Court” means the Royal Court sitting as an Ordinary Court;

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

(2) The Interpretation (Guernsey) Law, 1948(a), shall apply to the interpretation of this Law in its application to the Island.

PART II

Appeals in civil matters

Appeals in
civil
matters.

2. (1) Subject to the provisions of subsection (2) of this section, there shall be a right of appeal to the Ordinary Court from any decision of the Court made on or after the appointed day in relation to any civil matter.

(2) An appeal shall not lie to the Ordinary Court under this Part of this Law—

- (a) from any decision which it is provided, under any enactment, is to be final;
- (b) without the leave of the Court, from any order made with the consent of the parties or as to costs;
- (c) without the leave of the Court or of the Ordinary Court, where the value of the matter in dispute does not exceed the sum of twenty-five pounds unless there was in contest a question of law.

Rules of
Court.

3. The Royal Court may from time to time make rules of court—

- (a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Ordinary Court in all appeals under this Part of this

(a) Ordres en Conseil Vol. XIII, p. 355.

Law and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing provisions) the manner in which, and the time within which, any appeal under this Part of this Law may be made;

- (b) for regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given in any proceedings or on any application in connection with or at any stage of any proceedings; and
- (c) for regulating or making provision with respect to any other matters which may require to be regulated or with respect to which provision may require to be made under this Part of this Law.

PART III

Appeals in criminal matters

4. Subject to the provisions of this Part of this Law, after the hearing and determination by the Court, on or after the appointed day, of any criminal matter which the Court has power to hear and determine, there shall be a right of appeal to the Royal Court—

- (a) as respects the conviction of any person, at the instance of the person convicted—
 - (i) against such conviction; or
 - (ii) against such conviction and the sentence passed on conviction; or
 - (iii) against such sentence only;

- (b) as respects the acquittal of any person, at the instance of Her Majesty's Procureur, against such acquittal.

Limitation
on right
of appeal.

5. An appeal shall not lie to the Royal Court under this Part of this Law—

- (a) from any decision which it is provided under any enactment, is to be final;
- (b) against the conviction of any person for an offence to which that person has pleaded guilty.

Notice of
appeal.

6. (1) Notice of appeal shall be given to the Court at the sitting at which the conviction or acquittal or sentence appealed from occurred or was pronounced or at any sitting occurring within twenty-one days thereafter.

(2) On the giving of any such notice, the person giving the same shall make a statement in writing setting out the grounds on which the notice is given and such statement shall be inserted in the record concerning such notice.

(3) The giving of notice of appeal shall not be effectual or be recorded unless and until the person giving notice of appeal has—

- (i) if so required by the Court, elected and named an address in the Island at which summonses and notices respecting such appeal may be validly served on him;
- (ii) if so required by the Court, furnished an address where he will be residing in the Island of Guernsey during the hearing of the appeal;

(iii) given or found, within such period following the date of the giving of notice of appeal, not exceeding fifteen days, as the Court may direct, such security payable in ready money to the Clerk of the Court as to the Court may seem proper and, in addition to or in substitution for such security, bound himself by oath thereupon to be administered to him that he will not leave the Island otherwise than to stay in the Island of Guernsey, if so required by the Court, until the appeal has been disposed of and that he will attend before the Royal Court at the hearing of the appeal;

(iv) taken such oath, given such undertaking or given or found such security payable in ready money to the Clerk of the Court as the Court may require that he will not consort with or molest any designated person or persons pending the disposal of the appeal;

so, however, that such conditions shall not be required to be fulfilled in any case where Her Majesty's Procureur is the appellant.

(4) 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, and shall, on conviction, be liable to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment and to pay the costs of the prosecution.

(5) Upon the conviction of any person of an offence under the last preceding subsection or, if a

person liable to prosecution under that 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 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 of Alderney 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.

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

Effect of
notice of
appeal.

7. Upon notice of appeal being given by a convicted person and upon compliance by that person with the conditions contained in the last preceding section, the sentence pronounced upon that person shall be suspended until the disposal of the appeal and, if that sentence be a sentence of imprisonment, without the option of a fine, that person shall be set at liberty unless the 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 the Clerk of the Court by the convicted person for safe keeping pending the disposal of the appeal and, as respects 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.

8. (1) Where a person—

Provisions
as to legal
aid.

(a) has been convicted of an offence by the Court; or

(b) has been acquitted of a charge by the Court and such acquittal has been appealed against by Her Majesty's Procureur;

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 Court for free legal aid.

(2) If, on an application made to the Court under the preceding subsection, it appears to the 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 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 Court under this section, the Court has refused to grant an appeal aid certificate, the applicant may make an application for the same purpose—

(a) by letter addressed to Her Majesty's Greffier and setting out the facts of the case and the grounds of the application; or

(b) 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 Court.

(4) 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 Part of 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 Her Majesty's Procureur:

Provided that such amount shall not, save in cases involving exceptional services, exceed ten pounds and shall not in any case exceed twenty-five pounds.

(5) 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.

(6) The remuneration of an Advocate under this section shall be paid by the Treasurer of the States of Alderney.

(7) As soon as may be after the amount of an Advocate's remuneration has been determined in accordance with the provisions of this section, Her Majesty's Procureur shall transmit to that Advocate a certificate as to the amount thereof and that certificate shall entitle that Advocate to recover from the States of Alderney the amount stated therein.

(8) 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, the States of Alderney 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 the Treasurer of the States of Alderney by reason of that appeal aid certificate.

9. (1) Subject to the provisions of subsection (3) of this section, upon notice of appeal in any case being recorded, the Clerk of the Court shall, as soon as may be, procure fifteen copies of the transcript of the shorthand report or mechanical recording, as the case may be, of the proceedings in that case, certified as correct by the person who has transcribed such report or recording and shall deliver two of such copies to Her Majesty's Procureur together with two certified copies of the Act of the 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 Royal Court.

Proceedings
upon notice
of appeal.

(2) Subject to the provisions of subsection (3) of this section, upon the receipt of copies of the transcript and of the Act of the Court, Her Majesty's Procureur 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, Her Majesty's Procureur shall—

- (i) forthwith cite the appellant or, if the prosecution be the appellant, the respondent to appear before the Royal 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 Court and a copy of the transcript;
- (ii) appear before the Royal 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.

(3) Where as regards any case in respect of which notice of appeal has been recorded there exists no shorthand report or mechanical recording of the proceedings therein, or, although such report or recording 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 Chairman of the Court shall, as soon as may be, furnish to the Clerk of the Court a copy of his notes of the trial and the Clerk of the Court shall thereupon—

- (a) make three copies of the same and shall transmit one such copy to the Bailiff's Secretary for the use of the Royal Court and the remaining two such copies to Her Majesty's Procureur 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 Her Majesty's Procureur;

- (b) supply Her Majesty's Procureur with a statement setting out the names and addresses of the witnesses who gave evidence in the Court on behalf of the accused person.

(4) Where a transcript of the proceedings in any case is not available and it appears to Her Majesty's Procureur that the notes of the Chairman of the Court are not sufficiently ample to inform the Royal Court of the evidence given in the case, Her Majesty's Procureur may cause summonses to be served on such of the witnesses, whether for the prosecution or for the defence, with respect to whose evidence given in the Court no note or an insufficiently ample note was taken by the Chairman of the Court, to appear before the Royal Court on the date and time appointed for the hearing of the appeal.

10. (1) In the case of an appeal to which this Part of 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 Her Majesty's Greffier and, if such notice is given, Her Majesty's Greffier shall forthwith so inform Her Majesty's Procureur and the Bailiff's Secretary. Abandonment of appeal.

(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 Court may, on the application of the other party to the appeal, order the appellant or, if the appeal was instituted by Her Majesty's Procureur against the acquittal of

a person, the States of Alderney, to pay to such other party such costs, not exceeding the sum of fifteen pounds, as appear to the 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 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 not leave the Island otherwise than to stay in the Island of Guernsey until the appeal has been disposed of and that he will attend before the Royal Court at the hearing of the appeal shall be deemed to have been fulfilled if the appellant remains in the Island or in the Island of Guernsey until the abandonment of the appeal and then duly surrenders himself to the Clerk of the Court or to Her 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.

Proceedings
in the Royal
Court.

11. (1) After the reading of the cause before the Royal Court, the appellant or his counsel shall be heard as to the grounds on which the appeal is made and may address the Royal 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, Her Majesty's Procureur shall

be entitled to the right of reply to the speech made by or on behalf of the respondent.

(2) In the Royal 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 Court.

(3) If it shall appear to the Royal Court that—

- (a) some material error exists in the transcript of the proceedings in the case before the 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 Court should be heard by the Royal Court; or
- (c) further material evidence not available to one or other of the parties at the time of the proceedings in the Court is obtainable;

the Royal 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 Chairman of the 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 Royal Court.

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

(5) It shall be competent to the Royal 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 Court or not.

(6) If at any stage of the proceedings before the Royal 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 Royal Court finds that the appellant was wrongly convicted as respects any charge the appeal against the conviction on that charge shall be allowed and the conviction as respects that charge shall be quashed.

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

(9) If on any appeal at the instance of the prosecution, the Royal Court finds that the respondent was wrongly acquitted, the Royal Court may remit the case to the Court together with a direction that the Court shall record a conviction against the respondent and thereupon the Clerk of the Court shall summon the respondent to attend at the next convenient sitting of the Court and the Court shall record such conviction accordingly and shall pronounce such sentence in regard thereto as to the Court shall deem just.

(10) The provisions of this Part of this Law with regard to the right of appeal against sentence shall apply to such sentence.

(11) In any other case the Royal Court shall dismiss the appeal and thereupon the sentence of the Court shall stand and shall take effect as from such day as the Royal Court shall appoint.

12. (1) On the hearing and determination of an Costs. appeal under this Part of 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 Royal Court may direct that such amount of costs 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 of Alderney;

(b) if the appeal was brought against conviction and sentence or against sentence only, then—

(i) if the appeal is successful, the Royal Court may direct that such amount of costs 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 of Alderney; or

(ii) if the appeal is unsuccessful, the Royal Court may direct that such amount of costs as may appear reasonably sufficient to cover the costs of the services rendered by the Clerk of the Court in relation to that appeal, shall be paid by the appellant to the States of Alderney.

(2) Costs ordered by the Royal Court to be paid on any appeal under this Part of this Law may be

recovered as a civil debt by the party to whom they are ordered to be paid.

Rules of
Court.

13. The Royal Court may from time to time make rules dealing generally with all matters of procedure and incidental matters arising under this Part of this Law and for carrying out this Part of this Law into effect.

PART IV

Miscellaneous

Savings.

14. Nothing in this Law contained shall derogate from the provisions of paragraph (1) of Article 2 of the Matrimonial Causes Law (Guernsey), 1939(b), or from the provisions of section twenty-eight of the Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964(c).

Repeals.

15. The Order in Council relating to appeals from the Court of Alderney to the Royal Court registered on the second day of August, eighteen hundred and fifty-one(d), and section twenty-one of the Government of Alderney Law, 1948(e) are hereby repealed:

Provided that the provisions of that section shall continue to apply in relation to any decision of the Court made before the appointed day in all respects as if this Law had not been enacted.

Citation and
commence-
ment.

16. (1) This Law may be cited as the Court of Alderney (Appeals) Law, 1969.

(2) This Law shall come into force on such day as shall be appointed in that behalf by Ordinance of the States of Guernsey.

R. H. VIDELO,

Her Majesty's Greffier.

(b) Ordres en Conseil Vol. XI, p. 318.
 (c) Ordres en Conseil Vol. XIX, p. 241.
 (d) Ordres en Conseil Vol. I, p. 192.
 (e) Ordres en Conseil Vol. XIII, p. 416.