

ORDER IN COUNCIL

XVIII

1949

~~Retifying a Projet de Loi~~ entitled

"The Court of Appeal (Channel Islands) Order, 1949".

(Registered on the Records of the Island of Guernsey on
the 18th day of June, 1949.)



PRINTED BY THE
GUERNSEY STAR AND GAZETTE LTD.,

BORDAGE STREET.

1949.

ORDER IN COUNCIL.



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 18th day of June, 1949, before Ambrose James Sherwill, Esquire, C.B.E., M.C., Bailiff ; present : Osmond Priaulx Gallienne, Esquire, Ernest de Garis, Esquire, O.B.E., James Frederick Carey, Arthur Falla, Pierre de Putron, Quartier Le Pelley, Walter John Sarre, Esquires, Richard Henry Johns, Esquire, O.B.E., William Robert Freake Clark and Ernest Francis Lainé, Esquires, Jurats.

THE BAILIFF having this day placed before the Court an Order of His Majesty in Council dated the 31st day of May, 1949, entitled "The Court of Appeal (Channel Islands) Order, 1949",—the Court, after the reading of the said Order in Council and after having heard His 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 His Majesty's Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace,

The 31st day of May, 1949.

Present,

The King's Most Excellent Majesty.

LORD PRESIDENT.
MR. SECRETARY NOEL-BAKER.
MR. CAITSKELL.
SIR FRANK SOSKICE.
SIR DAVID JENKINS.
SIR CYRIL RADCLIFFE.

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 Jersey and Guernsey, dated the 2nd day of March, 1949, 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,

(A) a letter from the Greffier of the States of the Island of Jersey, transmitting a Scheme for Establishing the Channel Islands Court of Appeal, approved by the States of that Island on the 5th day of October, 1948, and

(B) the humble Petition of the States of the Island of Guernsey, setting forth :—

‘1. That by an Order of Your Majesty in Council dated the 4th day of June, 1946, Your Majesty did appoint a Committee of Your Majesty’s Privy Council to inquire (*inter alia*) into proposals in relation to Judicial Reform which has been under review by the Royal Court and the States both in Jersey and in Guernsey. 2. That the States of Deliberation, by Resolution dated the 26th day of June, 1946, approved of certain recommendations of the Royal Court of Guernsey relating to the establishment of a Channel Islands Court of Appeal. 3. That the Committee of Your Majesty’s Privy Council visited Guernsey from the 21st September, 1946, to the 29th September, 1946, and reported to Your Majesty in March, 1947, which report included recommendations regarding the constitution of a joint Court of Appeal for the whole of the Channel Islands. 4. That the States of Deliberation, at a meeting held on the 22nd day of September, 1948, acquiesced in the provisions of a Scheme for Establishing the Channel Islands Court of Appeal laid before them that day and authorised the President to present

a most humble Petition to Your Majesty in Council praying that Your Majesty may be pleased to direct that the said Scheme shall have force of Law in the Bailiwick of Guernsey.

5. That the said Scheme 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 direct that the said Scheme for Establishing the Channel Islands Court of Appeal shall have force of Law in the Bailiwick of Guernsey.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Scheme and the said Petition 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 make provision for a Court of Appeal in the Channel Islands in accordance with the said Scheme."

HIS MAJESTY, having taken the said Report into consideration was pleased, by and with the advice of His Privy Council, to approve thereof, and to order, as it is hereby ordered, as follows :—

PART I.

Constitution of the Court of Appeal.

1. There shall be a Court of Appeal in the Channel Islands (in this Order referred to as "the Court of Appeal") with such jurisdiction as is conferred upon the Court by this Order.

2.—(1) The Court of Appeal shall be constituted of ex-officio judges and of ordinary judges.

(2) The ex-officio judges of the Court of Appeal shall be the Bailiff of Jersey and the Bailiff of Guernsey.

(3) The ordinary judges of the Court of Appeal shall be such person or persons as may be appointed to that office by His Majesty for any particular case or cases, or class of cases, or generally.

(4) The ordinary judges of the Court of Appeal shall be styled "Judges of Appeal" and shall, subject to the provisions of this Order, stand, as to rank and other privileges, in the same position as the Bailiffs of Jersey and of Guernsey.

3. Any person—

(a) who has held high judicial office in the British Commonwealth; or

(b) who has been at least ten years in practice at the Bar in Jersey or in Guernsey, whether as a Law Officer of the Crown or otherwise; or

(c) who has been at least ten years in practice at the Bar in England, Scotland or Northern Ireland;

shall be qualified for appointment as an ordinary judge of the Court of Appeal:

PROVIDED that preference shall, wherever practicable, be given to a person having knowledge of the laws and customs of the Channel Islands.

4.—(1) An ordinary judge of the Court of

Appeal shall hold office during good behaviour and subject to the terms and conditions of the instrument whereby His Majesty was pleased to appoint him to his office.

(2) No ordinary judge of the Court of Appeal shall during his continuance in office practise at the Bar in any of the Channel Islands or be concerned directly or indirectly as a solicitor or arbitrator or referee in any matter arising within the Channel Islands.

5. Every judge of the Court of Appeal, whether ex-officio or ordinary, shall, upon taking office in the Court of Appeal, subscribe to the oath set out in the Schedule to this Order.

6.—(1) There shall be paid to the ordinary judges of the Court of Appeal such salaries and other emoluments as may be prescribed by Acts passed by the States of Jersey and of Guernsey and confirmed by Order of His Majesty in Council.

(2) There shall be paid to the judges of the Court of Appeal, whether ex-officio or ordinary, travelling expenses and other expenses incidental to their attendance at the sittings of the Court of Appeal in accordance with such scale or scales as may be prescribed by rules of Court.

(3) The salaries, emoluments and expenses payable to the judges of the Court of Appeal under this Article shall be paid out of the Joint Court Fund.

7. The Court of Appeal shall hear an appeal in the Bailiwick in which such appeal arises :

PROVIDED that where, under this Order, the powers of the Court of Appeal may be exercised by a single judge of the Court, such powers may be exercised in any place whether within or without the Channel Islands.

8. The Court of Appeal shall be convened by the Bailiff of the Island in which the appeal does not arise or, failing him, by the person for the time being exercising the functions of Bailiff in that

Island and shall be duly constituted if it consists of an uneven number of judges, but not less than three :

PROVIDED that no judge of the Court of Appeal shall sit as a judge on the hearing of an appeal from a judgment, order, conviction or sentence, made or pronounced by any Court of which he was a member, or on the hearing of any proceedings preliminary or incidental to any such appeal.

9.—(1) Subject to the provisions of this and of the foregoing Article of this Order, at every sitting of the Court of Appeal in the Bailiwick of Jersey the Bailiff of Jersey or, if he is unable to do so, the Bailiff of Guernsey shall act as President of the Court ; and at every sitting thereof in the Bailiwick of Guernsey the Bailiff of Guernsey or, if he is unable to do so, the Bailiff of Jersey shall act as President thereof.

(2) If at any sitting of the said Court neither the Bailiff of Jersey nor the Bailiff of Guernsey is able to act as President thereof, the members of the Court (including, if possible, the aforesaid Bailiffs) shall select another member thereof to act as President at that sitting, and the member selected shall act accordingly.

(3) The Bailiff of Jersey or the Bailiff of Guernsey may decline to act as President of the said Court in accordance with the provisions of this Article in any case in which he thinks it undesirable or inconvenient that he should so act, and in any such case the provisions of this Article shall have effect as if he were unable so to act.

10.—(1) Subject to rules of court, His Majesty's Viscount of the Island of Jersey and His Majesty's Sheriff and His Majesty's Sergeant of the Island of Guernsey shall, for all purposes of and incidental to the hearing of all appeals arising within the Bailiwick of Jersey and the Bailiwick of Guernsey respectively and the execution and enforcement of

any judgment or order made thereon, discharge duties analogous to those discharged by them respectively in relation to proceedings in the Royal Court of Jersey and the Royal Court of Guernsey.

(2) Subject to rules of court, the Judicial Greffier of the Royal Court of Jersey and His Majesty's Greffier of the Royal Court of Guernsey, for all purposes of and incidental to the hearing of all appeals arising within the Bailiwick of Jersey and the Bailiwick of Guernsey respectively, shall act as Registrars of the Court of Appeal.

(3) His Majesty's Viscount of the Island of Jersey and the Judicial Greffier of the Royal Court of Jersey shall be assisted in the discharge of their duties under this Article by the members of their respective departments.

(4) His Majesty's Greffier, His Majesty's Sheriff and His Majesty's Sergeant of the Island of Guernsey shall be assisted in the discharge of their duties under this Article by the members of their respective departments, and, if need be, by His Majesty's Sheriff and His Majesty's Sergeant of the Island of Alderney or by the Prévôt of the Island of Sark.

II.—(1) Subject to the provisions of paragraph (3) of this Article, as respects any appeal arising in the Bailiwick of Jersey or in the Bailiwick of Guernsey and any proceedings preliminary or incidental thereto, and irrespective of the Bailiwick in which such appeal or such preliminary or incidental proceedings arise, the following persons—

His Majesty's Attorney General for Jersey ;
 His Majesty's Attorney General for Guernsey ;
 His Majesty's Solicitor General for Jersey ;
 His Majesty's Solicitor General for Guernsey ;
 an Advocate of the Royal Court of Jersey ;
 an Advocate of the Royal Court of Guernsey ;
 a Solicitor of the Royal Court of Jersey ;

shall alone have the right to practise in the Court of Appeal :

PROVIDED that a Solicitor of the Royal Court of Jersey shall not have any right of audience either before the Court of Appeal or before any single judge of the Court of Appeal upon any such appeal or proceedings.

(2) For the purposes of this Article, the word "practise" shall include the doing in any office which is connected with the Court of Appeal or in which any business connected with the Court of Appeal is conducted and the transacting with any officer who is attached to the Court of Appeal or with any judge of the Court of Appeal of any act or thing required or necessary to be done in connexion with any such appeal or proceedings.

(3) Notwithstanding the foregoing provisions of this Article, it shall be lawful for a party to an appeal under Part II of this Order or for an appellant under Part III of this Order to address the Court of Appeal or any single judge thereof both on the hearing of the appeal or upon any proceedings preliminary or incidental to the appeal and to do in any such office or to transact with any such officer as is mentioned in paragraph (2) of this Article any act or thing required or necessary to be done in connexion with any such appeal or proceedings.

(4) Nothing in this Article shall be deemed to modify or remove any restriction on the right to practise imposed by any enactment or otherwise upon any Law Officer of the Crown or upon any Advocate or Solicitor who holds any official appointment in the Royal Court or States of Jersey or in the Royal Court or States of Guernsey.

PART II.

Appeals in Civil Causes and Matters.

12. As from the coming into force of this Order, there shall be vested in the Court of Appeal all jurisdiction and powers then hitherto vested in—

- (a) the Superior Number ("Nombre Supérieur") of the Royal Court of Jersey; and
- (b) the Royal Court of Guernsey, sitting as a Full Court;

when exercising appellate jurisdiction in any civil cause or matter:

PROVIDED that the Royal Court of Guernsey, sitting as a Full Court, shall continue to have the same jurisdiction as hitherto to hear and determine appeals from—

- (i) any judgment or order of the Guernsey Petty Debts Court; and
- (ii) any decision of any Board, Council, Committee or Authority of the States of Guernsey susceptible of appeal to the Royal Court, sitting as a Full Court.

13.—(1) Subject as otherwise provided in this Order and to rules of court, the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of—

- (a) the Inferior Number ("Nombre Inférieur") of the Royal Court of Jersey;
- (b) the Royal Court of Guernsey, sitting as an Ordinary Court, which expression shall include the Court of "Plaids d'Héritage" and the Matrimonial Causes Division of that Royal Court;
- (c) the Superior Number ("Nombre Supérieur") of the Royal Court of Jersey when exercising original jurisdiction; and
- (d) the Royal Court of Guernsey, sitting as a Full Court, when exercising original jurisdiction;

and for all the purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the power, authority and jurisdiction of the Royal Court of Jersey or of the Royal Court of Guernsey, as the case may be,

and shall have power, if it appears to the Court of Appeal that a new trial ought to be had, to order, if it thinks fit, that the verdict and judgment be set aside and that a new trial shall be had.

(2) The Court of Appeal shall exercise such additional appellate jurisdiction as may be conferred upon the Court by any enactment passed by the States of Jersey or of Guernsey and confirmed by Order of His Majesty in Council.

14.—(1) No appeal shall lie under this Part of this Order

- (a) from any decision which it is provided, under any enactment, is to be final ;
- (b) from a final order for the dissolution or nullity of marriage, by any party who, having had time and opportunity to appeal from the decree on which the final order was founded, has not appealed from that decree ;
- (c) without the leave of the Court making the order, from any order made with the consent of the parties or as to costs only which by law are left to the discretion of the Court ;
- (d) without the leave of the Royal Court of Jersey or the Royal Court of Guernsey, as the case may be, or of the Court of Appeal where the matter in dispute, being a sum of money or something whereof the value is determinable, does not exceed in value the sum of fifty pounds sterling, unless there was in contest in the suit a question of law or of mixed law and fact ;
- (e) without the leave of the Royal Court of Jersey or of the Royal Court of Guernsey, as the case may be, or of the Court of Appeal, from any interlocutory order or interlocutory judgment, except in the following cases :—
 - (i) where the liberty of the subject or the custody of infants is concerned ;
 - (ii) in the case of a decree in a matrimonial

- cause or a judgment or order in an admiralty action determining liability ;
- (iii) in such other cases, to be prescribed by Rules of Court, as are in the opinion of the Court of Appeal, of the nature of final decisions.

(2) This Part of this Order shall apply to "causes mixtes" as it applies to civil causes and matters.

15. No appeal shall lie from a decision of the Court of Appeal under this Part of this Order without the special leave of His Majesty in Council or without the leave of the Court of Appeal.

16. The jurisdiction vested in the Court of Appeal under this Part of this Order shall, so far as regards procedure and practice, be exercised in the manner provided by this Order or by rules of court, and, where no special provision is contained in this Order or in rules of court with reference thereto, any such jurisdiction shall be exercised as nearly as may be in the same manner as that in which it might have been exercised by the court to which it formerly appertained.

17. The costs of and incidental to all proceedings in the Court of Appeal under this Part of this Order shall be in the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid.

18.—(1) Subject to rules of court, the Court of Appeal may refer to any person or persons selected by the Court for inquiry and report any question arising in any appeal under this Part of this Order.

(2) In all cases of reference under paragraph (1) of this Article, the person or persons selected by the Court as aforesaid shall be deemed to be an officer or officers of the Court, and, subject to rules of court, shall have such authority and conduct the reference in such manner as the Court may direct.

(3) The remuneration to be paid to any

person or persons to whom any matter is referred under an order of the Court shall be determined by the Court and be recoverable costs of the proceedings.

19.—(1) In any appeal pending before the Court of Appeal under this Part of this Order, any matter incidental thereto not involving the decision of the appeal may be decided by a single judge of the Court, and a single judge may at any time make any interim order to prevent prejudice to the claims of any parties pending an appeal, as he may think fit.

(2) Every order made by a single judge of the Court of Appeal in pursuance of this Article may be discharged or varied by any judges of that Court having power to hear and determine the appeal.

20.—(1) Under this Part of this Order, rules of court may be made by the Court of Appeal—

- (a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Court of Appeal in all appeals whatsoever in or with respect to which the Court has for the time being jurisdiction (including the procedure and practice to be followed in the offices of the Registrars of the Court) and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing provision) the manner in which, and the time within which, any applications which under this Part of this Order or any enactment are to be made to the Court of Appeal shall be made;
- (b) for regulating and prescribing the procedure on appeals from any court to the Court of Appeal;
- (c) for regulating the sittings of the Court of Appeal and of the judges thereof, whether sitting in court or elsewhere;

- (d) for regulating any matters relating to the costs of proceedings in the Court of Appeal ;
- (e) for repealing any enactments which relate to matters with respect to which rules are made under this Article ;
- (f) 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 connexion with or at any stage of any proceedings ;
- (g) for taxing costs on any appeal or upon any proceedings preliminary or incidental to any such appeal ;
- (h) 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 Order.

(2) Rules of court under this Article shall apply to all proceedings by or against the Crown.

21.--(1) All fees and percentages to be taken under this Part of this Order in the Court of Appeal or in any office which is connected with the Court of Appeal or in which any business connected with the Court of Appeal is conducted or by any officer paid wholly or partly out of public funds who is attached to the Court of Appeal or to any judge of the Court of Appeal shall be paid into the Joint Court Fund.

(2) The Court of Appeal shall by Rules of Court fix the fees and percentages to which reference is made in paragraph (1) of this Article and determine the manner of their collection and may from time to time by rules of court increase, reduce or abolish, all or any of such fees and percentages and appoint new fees and percentages to be taken in the Court of Appeal or in any of the said offices or by any of the said officers, and may from time to time by rules of court modify or amend

the manner of the collection of all or any of such fees and percentages.

22.—(1) In any proceedings in the Royal Court of Jersey or in the Royal Court of Guernsey in which an appeal lies to the Court of Appeal under this Part of this Order, a shorthand note of the proceedings shall be taken, and on any appeal a transcript of the note or of so much thereof as the Royal Court concerned or the Court of Appeal shall direct shall be made for the use of the Court of Appeal.

(2) The cost of the transcript of such shorthand note, in accordance with scales of payment fixed for the time being by rules of court, shall be included in the recoverable costs of the proceedings.

(3) In any case in which an appeal lies to His Majesty in Council, the depositions of the witnesses in the Royal Court of Jersey shall be transcribed from the shorthand note of the proceedings taken in pursuance of this Article, and shall not be taken down in the manner prescribed by the "Loi modifiant la procédure en rédaction de dépositions en matières civiles et mixtes", passed by the States of Jersey on the fifth day of February, 1885, and confirmed by Order of Her Majesty in Council of the twenty-sixth day of March, 1885.

(4) A transcript of the shorthand note taken in pursuance of this Article shall be furnished to any party to the proceedings upon payment of such charges as are fixed for the time being by rules of court.

(5) Rules of court as respects Jersey shall be made under this Article by the Superior Number of the Royal Court of Jersey, sitting whether in public or in private, and such rules shall be laid before the States of Jersey as soon as possible after they are made, and, if the Assembly of the States, within the period of twenty-one days beginning with the day on which any such rules are laid before it, resolves that they be annulled, they shall cease to have effect, but without pre-

judice to anything previously done thereunder or to the making of any new rules.

(6) Until rules of court are made superseding any enactment operative in Guernsey concerning the taking of a shorthand note of proceedings in the Royal Court of Guernsey and the making and provision of transcripts thereof in the event of an appeal, such enactment shall have effect as regards appeals to the Court of Appeal.

PART III.

Appeals in Criminal and Quasi-Criminal Matters.

23. A person convicted on indictment by the Royal Court of Jersey or by the Royal Court of Guernsey may appeal under this Part of this Order to the Court of 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 Appeal or upon the certificate of the judge who presided at his trial 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 on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal ; and
- (c) with the leave of the Court of Appeal, against the sentence passed on his conviction, unless the sentence is one fixed by law.

24.—(1) The Court of Appeal on any such appeal against conviction shall allow the appeal if it thinks that the verdict 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 of Appeal may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) Subject to the special provisions of this Part of this Order, the Court of Appeal shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered.

(3) On an appeal against sentence, the Court of Appeal shall, if it thinks 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 it thinks ought to have been passed, and in any other case shall dismiss the appeal.

25.—(1) If it appears to the Court of 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 it thinks proper or may be warranted in law by the verdict on 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 Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal 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) In the application of paragraph (2) of this Article to appeals from conviction by a court sitting without a jury, the word "court" shall be substituted for the word "jury" wherever the word "jury" appears.

(4) If on any appeal it appears to the Court of 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 the 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 detained during His Majesty's pleasure.

26.—(1) The determination of any question before the Court of Appeal under this Part of this Order shall be according to the opinion of the majority of the members of the Court hearing the case.

(2) 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 under this Part of this Order 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.

(3) The Court of Appeal shall for the purposes of and subject to the provisions of this Part of this Order, have full power to determine, in accordance with this Part of this Order, any questions necessary to be determined for the purpose of doing justice in the case before the Court.

27.--(1) The operation of any order as to the disposal of any property on a conviction on indictment shall (unless the court before which the conviction takes place directs to the contrary in any case in which, in its 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 the conviction, until the determination of the appeal ;

and, in cases where the operation of any such order is suspended until the determination of the appeal, the order 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.

(2) The Court of Appeal may by order annul or vary any order made on a trial for the disposal of any property although the conviction is not quashed ; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

28.—(1) Where a person convicted desires to appeal under this Part of this Order to the Court of 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—

- (a) in the case of a conviction involving sentence of death, within twenty-one days of the date of conviction ; and
- (b) in every other case, within ten days of the date of conviction.

Such rules shall enable any convicted person to present his case and his arguments in writing instead of by oral argument if he so desires. Any case or argument so presented shall be considered

by the Court. 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 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 Article ; 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.

29. The President of the court before which a person is convicted shall, in the case of an appeal under this Part of this Order against the conviction or against the sentence, or in the case of an application for leave to appeal under this Part of this Order, furnish to the Court of Appeal, in accordance with rules of court, his notes of the trial, and shall also furnish to the Court of Appeal in accordance with rules of court a Report giving his opinion upon the case or upon any point arising in the case.

30. For the purposes of this Part of this Order, the Court of Appeal may, if it thinks 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 it necessary for the determination of the case ; and
- (b) if it thinks 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 any 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 it thinks fit, receive any 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 it thinks fit to adopt it ; and
- (e) appoint any person with special expert knowledge to act as assessor to the Court in any case in which it appears to the Court that such 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 Court of Appeal on appeals in civil matters under this Order, 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 consequence of any evidence which was not given at the trial.

31. Subject to the provisions of paragraph (1) of Article 11 of this Order, the Court of Appeal may at any time assign to an appellant an advocate and solicitor, or an advocate only, in any appeal under this Part of this Order or in 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.

32.—(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 under this Part of this Order, 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.

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

33.—(1) It shall be the duty of His Majesty's Attorney General for the Bailiwick in which proceedings under this Part of this Order arise to appear for the Crown on the hearing of every appeal to the Court of Appeal and on any application for leave to appeal and on any proceedings preliminary or incidental to an appeal, and provision shall be made by rules of court for the transmission to the Attorney General concerned of all such documents, exhibits and other things connected with the proceedings as he may require for the purposes of his duties under this Article.

(2) It shall be the duty of the Registrar of the Court of Appeal in the Bailiwick concerned to give to the Attorney General concerned notice of the day and hour upon which the Court of Appeal will sit for the purpose of hearing and determining any such appeal, application or proceedings.

(3) His Majesty's Attorney General for Jersey may in any proceedings under this Part of this Order delegate his duty under paragraph (1) of this Article to His Majesty's Attorney General for Guernsey, or to His Majesty's Solicitor General for Jersey, or to His Majesty's Solicitor General for Guernsey.

(4) His Majesty's Attorney General for Guernsey may in any proceedings under this Part of this Order delegate his duty under paragraph (1) of this Article to His Majesty's Attorney General for Jersey, or to His Majesty's Solicitor General for Guernsey, or to His Majesty's Solicitor General for Jersey.

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

(2) The expenses of any legal aid assigned to an appellant under this Part of this Order, and the expenses of any witnesses attending on the order of the Court or examined in any proceedings 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 out of the Joint Court Fund, up to an amount allowed by the Court, but subject to any rules of court as to rates and scales of payment made by the Court of Appeal.

35.—(1) An appellant who is not admitted to bail shall, pending the determination of his appeal,

be treated in such manner as may be directed by the rules of the prison in which he is detained.

(2) The Court of Appeal may, if it sees 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 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 Article, shall not count as part of his sentence, and, in the case of an appeal under this Part of this Order, any sentence, whether it be a sentence passed by the court of trial or the sentence passed by the Court of 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 dismissed, and, if he is not in custody, as from the day on which he is received into prison under the sentence.

(4) Provision shall be made by prison rules 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 Part of this Order, or to any place to which the Court of 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 whilst 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.

36.—(1) The Registrar of the Court of Appeal in the Bailiwick concerned shall take all necessary steps for obtaining a hearing under this Part of this Order of any appeals or applications, notice of which is given to him under this Part of this Order,

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.

(2) 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 Part of this Order, 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.

(3) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Part of this Order to any persons who demand the same, to the Governor of His Majesty's Prison in the Bailiwick concerned and such other officers and persons as he thinks fit, and the Governor of His Majesty's Prison shall cause such forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part of this Order and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar concerned.

(4) The Registrar concerned shall report to the Court of Appeal, or a judge thereof, any case in which it appears to him that, although no application has been made for the purpose, legal aid should be assigned to an appellant under the powers given to the Court of Appeal under this Part of this Order.

37.—(1) Rules of court for the purposes of this Part of this Order shall be made, subject, so far as the rules affect the governor or any other officer

of a prison in the Channel Islands, to the approval of the competent authority, by the Court of Appeal. Rules so made may make provision for regulating the sittings of the Court of Appeal and of a judge of the Court of Appeal, whether sitting in court or elsewhere, and with respect to any matter for which provision is to be made under this Part of this Order by rules of court, and may regulate generally the practice and procedure under this Part of this Order, and the officers of any court before which an appellant has been convicted, and the governor or other officers of any prison in the Channel Islands, 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 such rules may be enforced by order of the Court of Appeal.

(2) The expression "competent authority" in paragraph (1) of this Article means—

- (a) in relation to the Bailiwick of Jersey, the Jersey Prison Board ; and
- (b) in relation to the Bailiwick of Guernsey, the Guernsey Prison Board, or, until that Board be constituted, the States Board of Administration.

38. The powers of the Court of Appeal under this Part of this Order 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 the appellant to bail, may be exercised by any single judge of the Court of 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 Appeal

as duly constituted for the hearing and determining of appeals under this Order.

39.—(1) A shorthand note shall be taken of the proceedings at the trial of any person on indictment who has pleaded not guilty and who, if convicted, is entitled or may be authorised to appeal under this Part of this Order, and, on any appeal or application for leave to appeal, a transcript of the note or any part thereof shall be made if the Registrar concerned so directs, and furnished to such Registrar for the use of the Court of Appeal or any judge thereof, of the Attorney General concerned and of the appellant :

PROVIDED that a transcript shall be furnished to any party interested, upon the payment of such charges as may be fixed by rules of court.

(2) The Bailiff of the Bailiwick concerned, if so requested by the Secretary of State, shall direct a transcript of the shorthand note to be made and furnished to him for the use of the Secretary of State.

(3) The cost of the transcript of any such shorthand note shall be defrayed, in accordance with scales of payment fixed for the time being by rules of court, out of the Joint Court Fund, and rules of court may make such provision as is necessary for securing the accuracy of the note to be taken and for the verification of the transcript.

(4) Any money received from an interested party under the proviso to paragraph (1) of this Article shall be paid into the Joint Court Fund.

(5) In relation to the criminal and quasi-criminal proceedings to which reference is made in Article 41 of this Order, a shorthand note shall only be taken in cases in which there has been a denial of the facts alleged by the Crown.

40. Nothing in this Part of this Order shall affect the prerogative of mercy, but the Secretary of State, on the consideration of any petition for the exercise of His Majesty's mercy, having refer-

ence 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 Appeal, and the case shall then be heard and determined by the Court of Appeal as in the case of an appeal by a person convicted ; or
- (b) if he desires the assistance of the Court of Appeal on any point arising in the case with a view to the determination of the petition, refer that point to the Court of Appeal for its opinion thereon, and the Court shall consider the point so referred and furnish the Secretary of State with its opinion thereon accordingly.

41.—(1) This Part of this Order shall apply in the case of conviction by the Royal Court of Jersey or by the Royal Court of Guernsey in any criminal or quasi-criminal proceedings, otherwise than by way of indictment, as it applies in the case of convictions on indictment.

(2) The Court of Appeal shall exercise such further and additional appellate jurisdiction in criminal or quasi-criminal cases or matters arising within the Channel Islands as may be conferred upon the Court by any enactment which, having been passed by the States of Jersey or the States of Guernsey after the making of this order, has been confirmed by Order of His Majesty in Council.

42. In this Part of this Order, unless the context otherwise requires—

the expression “appellant” includes a person who has been convicted and desires to appeal under this Part of this Order ;

the expression “sentence” includes any order of the Court (including an order of banishment) made on conviction with reference to the person convicted or his wife or children, and the power

of the Court of Appeal to pass a sentence includes a power to make any such order (including an order of banishment).

PART IV.

General.

43. Rules of court made by the Court of Appeal under this Order may be amended or revoked by subsequent rules and shall be laid before the States of Jersey and the States of Guernsey as soon as possible after they are made, and, if either or both of those Assemblies, within the period of twenty-one days beginning with the day on which any such rules are laid before them, resolve that they be annulled, they shall cease to have effect, but without prejudice to anything previously done thereunder or to the making of any new rules.

44. Nothing in this Order shall effect the Prerogative of His Majesty or the jurisdiction of His Majesty in Council.

45. In this Order, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—
 “ Joint Court Fund ” means the Fund which the States of Jersey and the States of Guernsey have resolved to create for the purposes of this Order ;

“ judgment ” includes decree ;

“ matter ” includes “ ex parte ” proceedings ;

“ party ” includes every person served with notice of or attending any proceedings ;

“ prescribed ” means prescribed by rules of court ;

“ rules of court ” includes forms ;

“ solicitor ” means Solicitor of the Royal Court of Jersey.

46.—(1) The following provisions of this Order, namely, Part I, in Part II Articles 20 (1), 21 (2) and

22 (5), in Part III Articles 35 (4) and 37, and in Part IV Articles 43, 44, 45 and this Article, shall come into force upon the registration of this Order by the Royal Courts of Jersey and of Guernsey.

(2) The other provisions of this Order shall come into force at such time or times as his Majesty may by Order in Council prescribe and different times may be prescribed for the coming into force of different provisions of this Order.

47. This Order may be cited as the Court of Appeal (Channel Islands) Order, 1949.

AND HIS MAJESTY doth hereby further direct that this Order be entered upon the Registers of the Islands of Jersey and Guernsey, and observed accordingly.

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

E. C. E. Leadbitter.

SCHEDULE.

“ Je jure et promets sur la foi et serment que je dois à Dieu que j'exercerai bien et fidèlement la charge de Juge dans la Cour d'Appel des Bailliages de Jersey et de Guernesey ; que je maintiendrai l'avancement de la gloire de Dieu, et l'honneur de Sa Majesté notre Souverain Sire Georges VI par la Grâce de Dieu Roi de la Grande Bretagne et d'Irlande et de toutes les Possessions Britanniques au delà des Mers, Défenseur de la Foi ; et qu'à Sa

dite Majesté je serai vrai et loyal sujet ; que je garderai et maintiendrai bien et loyalement et de tout mon pouvoir tous les lois, libertés, usages et anciennes coutumes des dits Bailliages, m'opposant à quiconque les voudrait enfreindre ; et que j'administrerai bonne et brève justice à un chacun, sans acception de personne. Je promets ainsi. Ainsi Dieu m'aide.

DIEU SAUVE LE ROI."

JAMES E. LE PAGE,
H.M. Greffier.

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