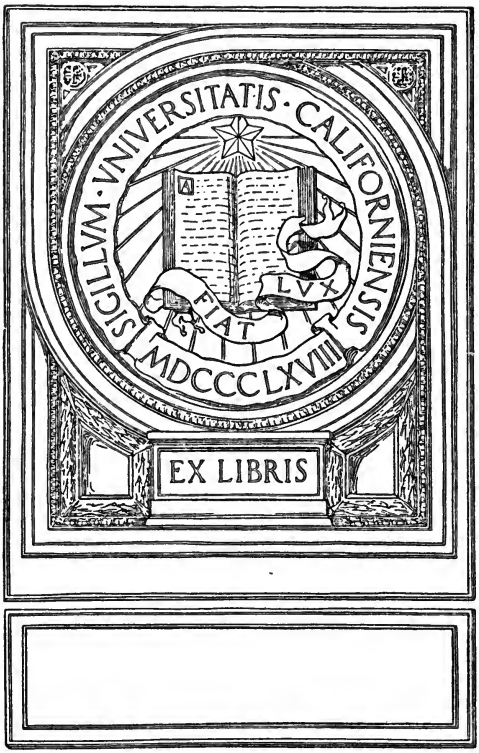
SIGILLVM · VNIVERSITATIS · CALIFORNIENSIS
LVX
FIAT
MDCCCLXVIII
EX LIBRIS

THE COURT OF CRIMINAL APPEAL.

THE COURT OF CRIMINAL APPEAL

BY

R. E. ROSS, LL.B. (LOND.)

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.
PRINCIPAL CLERK IN THE CRIMINAL APPEAL OFFICE.

LONDON:
BUTTERWORTH & CO., 11 & 12, BELL YARD, TEMPLE BAR.
Law Publishers.

SYDNEY:
BUTTERWORTH & Co. (Australia), Ltd.,
76, Elizabeth Street.

CALCUTTA:
BUTTERWORTH & Co. (India), Ltd.,
8/2, Hastings Street.

1911.

Printed by Ballantyne, Hanson & Co.
At the Ballantyne Press, Edinburgh

TO

THE RIGHT HONOURABLE

RICHARD EVERARD, BARON ALVERSTONE,

G.C.M.G.

LORD CHIEF-JUSTICE OF ENGLAND,

THIS BOOK

IS, BY KIND PERMISSION,

DEDICATED

PREFACE.

THE Court of Criminal Appeal has now been in existence for nearly three and a half years—a sufficient time for the determination of most of the main principles which govern its action, and therefore, perhaps, to permit the appearance of a book which seeks to show, in some measure, the Court in actual being.

As is perhaps inevitable in the introduction of any great change, the expression of many fears as to the evil results of the establishment of a Court of Criminal Appeal marked the moment of its birth. It was said that the number of appeals would be so large and the work so great as to almost cripple the trial of civil disputes; that the cost entailed would be enormous; that there would be an interference with vital principles which would be fraught with far-reaching consequences the reverse of good, and that all this would be the outcome of a development in our system of criminal jurisprudence which was quite unnecessary, since the administration of the criminal law was so near perfection as to call for no supervision. It is easy to be wise after the event, and few people will now say that these fears have been realised.

Leaving out the incomplete year 1908, the number of applications for leave to appeal and appeals was 627 in 1909 and 712 in 1910. For the nine months of this year the number is 474, as compared with 520 last year, so that the years do not reveal any steady increase. When it is borne in mind that, roughly speaking, some 11,000 persons are convicted each year who may appeal to the Court, the number of actual appellants is seen to be remarkably small.

Again, the total cost to the country during each of the years 1909 and 1910 (apart only from the salaries of the

two additional judges appointed in 1909, which can hardly with justice be included, since the demand for more judges was urgent before the Act was passed) was well under £15,000—not a very extravagant price to pay even for an experiment in reformation. Nor can it now be said that the principle of trial by jury has been in any way undermined by the action of the Court. On the contrary, the Court, as these pages may show, has ever treated the principle with the highest deference its most ardent admirers could wish for. And, lastly, that there were matters in the administration of the criminal law which called for the existence of some legal appellate tribunal to correct them; and that many have already been corrected, will hardly be denied by any one in close touch with the working of the Court.

The Court has now become a firmly established part of our legal system, and the question of to-day is not how its powers can be limited, but rather how they can be amended and increased so that more good may be accomplished.

On the whole, it may safely be said that the machinery of the Court has worked extremely well. The result is largely due to the excellent rules framed under the Criminal Appeal Act and to the hearty co-operation which exists between the Registrar of the Court and the numerous persons on whom the Act has necessarily imposed duties, in order that the work of the Court may be performed, not only as well but as expeditiously as possible. Time has done little more than reveal slight defects in matters of detail of no great importance.

The following pages, it is hoped, will show, to some extent, not only the working of the machinery of the Court, but, what is of far greater importance, the principles which have been laid down by the Court itself as to when and how it may exercise the powers given to it by the Act. In attempting to collect these principles, I have not been unmindful of the fact that most of the cases, especially those relating to sentence, decide no principle and estab-

lish no precedent, since the decision rests upon the particular circumstances of the case; though I am conscious that in my effort to extract principles from the numerous (perhaps too numerous) cases reported, I may possibly not have applied this fact as stringently as others might have done.

In preparing this little work I have had the great privilege of being able to discuss many points of difficulty with the Registrar of the Court, Sir James Mellor, and with Mr. Leonard Kershaw, the Assistant-Registrar. The mistakes and imperfections which may exist in the work are mine alone; but much of any merit there may also be is due to the assistance so kindly given to me by them.

R. E. R.

Criminal Appeal Office,
30*th September* 1911.

TABLE OF CONTENTS.

	PAGE
Preface	vii
Table of Cases	xv

CHAPTER I.

CONSTITUTION AND JURISDICTION OF THE COURT.

Establishment	1
Dignity and Jurisdiction	3
Finality of Decision	3
Power to order New Trial	4
Prerogative of Mercy not affected	5
Power to make Rules of Court	7
Sittings of the Court	8

CHAPTER II.

THE RIGHT OF APPEAL TO THE COURT.

The Nature of the Right given	10
Who may appeal	10
What may be appealed against	12
Appeal against Conviction on Grounds involving Questions of Law	14
Case stated by the Judge of the Court of Trial	16
Appeal with the Certificate of the Judge of the Court of Trial ...	18
Reference by the Home Secretary	19
Appeal against Sentence under the Prevention of Crimes Act ...	21
Application for leave to appeal against Conviction or Sentence ...	22
Appeal or Application for leave to Appeal under the Children Act, 1908	23
Time for Appealing	24
Mode of Appealing	27

CHAPTER III.

EFFECT OF AN APPEAL ON ORDERS MADE BY THE COURT OF TRIAL.

On Orders for Restitution	32
On Orders for Compensation, &c.	32
On Disqualifications, &c.	34

CHAPTER IV.

THE COURT IN RELATION TO OTHER PERSONS.

PAGE
The Judge of the Court of Trial 35
The Officer of the Court of Trial 39
The Prosecutor 45
Shorthand Writers 48
The Prison Commissioners and Prison Governors 52
The Police 55

CHAPTER V.

CONSIDERATION OF APPLICATIONS BY THE COURT.

Consideration by one of the Judges of the Court 58
Consideration by the full Court 61
Extension of Time 62
Leave to Appeal 65
Legal Aid 67
Presence at Proceedings in the Appeal 70
Bail 72
Leave to call Witnesses 77

CHAPTER VI.

CONSIDERATION OF APPEALS AGAINST CONVICTION.

Power to refer a Question arising in the Appeal to a Commissioner 84
Power to appoint an Assessor 84
Power to require a Case to be stated 85
Summary Determination of Appeals on Questions of Law 85
Grounds in general on which Appeals can be allowed 86
Verdict unreasonable or insupportable having Regard to the Evidence 88
Verdict wrong on some part of the Indictment 92
Substitution of Verdict of Guilty of some other Offence 94
Power to find an Appellant Insane 96
Wrong Decision of a Question of Law 99
Indictment bad in Law 100
No Evidence to go to the Jury 100
Wrongful Admission or Rejection of Evidence 103
Corroboration Cases 105
Usurpation by the Judge of the Functions of the Jury 106
Wrong Judgment entered upon the Findings of the Jury 107
Misdirection 108
"Any ground" causing a Miscarriage of Justice 117
The Proviso to Section 4 of the Criminal Appeal Act 121

CHAPTER VII.

APPEALS AGAINST SENTENCE.

PAGE
Power of the Court 125
Principles on which the Court acts 126

CHAPTER VIII.

MATTERS SUBSEQUENT TO THE CONSIDERATION OF THE APPEAL.

Where other Indictments against the Appellant are on the File ... 138
Time the Appellant has been specially treated in Custody ... 139
Restitution of Property 139
Notification of Result of the Appeal 141
Enforcement of Orders 142
Costs 142
Appeal to the House of Lords 143
Appeal by some only of the Persons convicted 145

APPENDIX A.

Criminal Appeal Act, 1907, and other Statutes 147

APPENDIX B.

Criminal Appeal Rules, 1908, and other Rules 164

APPENDIX C.

Forms 189

APPENDIX D.

Instructions issued by the Home Secretary and the Registrar of the Court of Criminal Appeal, &c. 219

APPENDIX E.

Orders relating to Costs, and Scales of Allowances to Witnesses and Shorthand Writers 224

TABLE OF CASES.*

A.

	PAGE
Albrecht, 4 Cr. App. R. 231	65
Aleron, 2 Cr. App. R. 152	133
Allen, Arthur, 4 Cr. App. R. 181, 188	78
Allen, Charles, 1 Cr. App. R. 18...	66
Allen, Joseph, 5 Cr. App. R. 225	6, 21, 91
Anthony, 1 Cr. App. R. 82 ; *Times News*, July 24, 1908	6
Armitage, 74 J. P. 48 ; 3 Cr. App. R. 81	96
Ashford, 1 Cr. App. R. 185 ; *Times News*, Nov. 21, 1908 ...	66, 89, 119
Ashworth, 6 Cr. App. R. 112	115
Atherton, 5 Cr. App. R. 233	111
Atkins, 1 Cr. App. R. 45, 69 ; 24 T. L. R. 807	6, 68, 79

B.

Baggott, 74 J. P. 213 ; 26 T. L. R. 266 ; 4 Cr. App. R. 67 ...	99
Baker, 4 Cr. App. R. 152	83, 96, 102
Baldwin, 2 Cr. App. R. 117	135
Ball, [1911] A. C. 47 ; 75 J. P. 180 ; 104 L. T. 47 ; 5 Cr. App. R. 238 ; 6 Cr. App. R. 49	126, 142, 144, 145
Banks, 55 Sol. Jo. 727	8, 13, 122
Barker, 5 Cr. App. R. 283 ; *Times News*, Nov. 15, 1910 ...	83, 96, 102
Bates, [1911] 1 K. B. 964 ; 75 J. P. 271 ; 27 T. L. R. 314 ; 55 Sol. Jo. 410 ; 6 Cr. App. R. 153	123
Beauchamp, 2 Cr. App. R. 20, 40 ; 73 J. P. 223 ; 25 T. L. R. 330	78, 105, 112, 115
Beeby, 6 Cr. App. R. 138	107
Bendon, 6 Cr. App. R. 178	110
Bennett, 25 T. L. R. 528 ; 2 Cr. App. R. 152, 182	51
Bennett and Holloman, 6 Cr. App. R. 203	128
Benson, 3 Cr. App. R. 120	104
Betridge, 73 J. P. 71 ; 1 Cr. App. R. 236	4, 80, 91
Bickley, 73 J. P. 239 ; 2 Cr. App. R. 53	106
Biddulph, 4 Cr. App. R. 221	119
Birkett, 6 Cr. App. R. 122	132
Bloom, 74 J. P. 183 ; 4 Cr. App. R. 30	4, 15, 112, 119
Boucher, 2 Cr. App. R. 177	128
Boughton, 6 Cr. App. R. 8	104
Bowler, 2 Cr. App. R. 168	111
Bradley, John, 1 Cr. App. R. 146	115
Bradley, John Alfred, 74 J. P. 247 ; 4 Cr. App. R. 228	88
Bradley, William, 2 Cr. App. R. 124	79
Bradshaw, 4 Cr. App. R. 280	112, 115
Bradshaw, Beacham, and Williams, 6 Cr. App. R. 221	135
Brann, 1 Cr. App. R. 256	110

* The Appellant only is given in each case, the Respondent, of course, being the Crown.

G.

	PAGE
Garland, [1910] 1 K. B. 154; 102 L. T. 254; 74 J. P. 135; 261 T. L. R. 130; 3 Cr. App. R. 199	100
Garnham, 4 Cr. App. R. 150	73, 80
Garrett, 4 Cr. App. R. 21	135
Gay, 2 Cr. App. R. 328	101, 105
George, Abraham, 73 J. P. 11; 26 T. L. R. 66; 1 Cr. App. R. 168	94, 101, 119
George, James, 2 Cr. App. R. 282, 318	4, 61, 62, 80
Golding, 4 Cr. App. R. 83	116
Goodwin, 6 Cr. App. R. 85; *Times News*, Dec. 21, 1910	102
Gorman, 2 Cr. App. R. 187	127
Gowlett, 1 Cr. App. R. 204, 238	79, 91
Grant, 74 J. P. 30; 3 Cr. App. R. 64	103, 120
Gray, James Adam, 1 Cr. App. R. 154, 225	66, 79, 91
Gray, John, 6 Cr. App. R. 242	103, 115
Green, 1 Cr. App. R. 124	103
Gylee, 73 J. P. 72; 1 Cr. App. R. 242	139

H.

Haden, 2 Cr. App. R. 148; *Times News*, May 1909	128
Haertsch, *Times News*, July 29, 1911	91
Halikiopulo, 3 Cr. App. R. 272	103, 138
Hamilton, Charles, 1 Cr. App. R. 87; *Times News*, July 25, 1908	6, 134
Hamilton, Frederick, [1901] 1 K. B. 740	17
Hampshire, 1 Cr. App. R. 212; *Times News*, Nov. 30, 1908 ...	4
Hampton, 2 Cr. App. R. 274	109, 110
Harding, Charles, 3 Cr. App. R. 10; *Times News*, Aug. 21, 1909 ...	136
Harding, Ethel, 1 Cr. App. R. 219; *Times News*, Dec. 5, 1908 ...	107
Hargreaves, 6 Cr. App. R. 97	119
Harris, 5 Cr. App. R. 285	100
Harrison, 2 Cr. App. R. 142	127, 129
Hausman, 73 J. P. 516; 26 T. L. R. 33; 3 Cr. App. R. 3	11
Hawes, 1 Cr. App. R. 42; *Times News*, July 4, 1908 ...	115, 132
Hawkins, 5 Cr. App. R. 237; *Times News*, Nov. 1, 1910 ...	128, 136
Hayes, 2 Cr. App. R. 70	136
Heap, 6 Cr. App. R. 100	136
Heaps, 1 Cr. App. R. 106	126
Henderson, 5 Cr. App. R. 97	89, 136
Hendry, 25 T. L. R. 635	91
Hepworth, 4 Cr. App. R. 128	107
Heuser, 6 Cr. App. R. 76	106
Hewson, 1 Cr. App. R. 47, 70; *Times News*, July 18, 1908	68, 80, 91
Hickey, 27 T. L. R. 441; 6 Cr. App. R. 200	103, 111
Higginson, 6 Cr. App. R. 64, 174	43
Higson, 5 Cr. App. R. 167	132
Hill, Edward, *Times News*, Sept. 29, 1911	119
Hill, John, 2 Cr. App. R. 74	128
Hillier, Louisa, 6 Cr. App. R. 215	133
Hillier, William, 2 Cr. App. R. 142	126
Hillman, 1 Cr. App. R. 49	62
Hopkins, 2 Cr. App. R. 288	134
Horn, [1883] 15 Cox C. C. 205	17
Horner, 4 Cr. App. R. 189	74
Hudson, 5 Cr. App. R. 278; *Times News*, Nov. 8, 1910	136
Hunting, 1 Cr. App. R. 177	100

I.

PAGE
Ireland, [1910] 1 K. B. 654; 75 J. P. 206; 26 T. L. R. 267; 4 Cr. App. R. 74 ... ... 13, 98
Islip, 3 Cr. App. R. 96; *Times News*, Nov. 20, 1909 131

J.

Jackson, Albert Asquith, 3 Cr. App. R. 168, 192 ... ... 65, 134
Jackson, Frederick, 74 J. P. 352; 5 Cr. App. R. 22 101
Jackson, Peter, 4 Cr. App. R. 93 ... ... 4, 79, 89, 91, 137
Jefferson, 72 J. P. 467; 24 T. L. R. 877; 1 Cr. App. R. 95 ... 13
Jenkins, 2 Cr. App. R. 247 89
Jenner, 6 Cr. App. R. 63; *Times News*, Dec. 14, 1910 130
Jennings, 74 J. P. 245; 4 Cr. App. R. 120 ... ... 98, 117
Jesshope, 5 Cr. App. R. 1 97
Johnson, Richard, 75 J. P. 464; 6 Cr. App. R. 218 111
Johnson, William, [1909] 1 K. B. 439; 25 T. L. R. 229; 73 J. P. 135; 100 L. T. 464; 2 Cr. App. R. 13 ... ... 11, 20, 21
Johnson, William, 6 Cr. App. R. 82; *Times News*, Dec. 20, 1910 102, 114
Joiner, 26 T. L. R. 265; 74 J. P. 200; 4 Cr. App. R. 64 101
Jones, Alfred, 74 J. P. 168; 26 T. L. R. 226; 4 Cr. App. R. 17 ... 102
Jones, Edwin, 5 Cr. App. R. 29 78
Jones, Harry, 1 Cr. App. R. 27 17
Jones, John, 1 Cr. App. R. 196; *Times News*, Nov. 23, 1908 131, 133
Jones, John, 6 Cr. App. R. 1; 27 T. L. R. 108 137
Jones, John Edwin, 2 Cr. App. R. 88 80
Jones, Richard, 26 T. L. R. 59; 3 Cr. App. R. 67 120
Jones, Sarah, Aug. 1911 (unreported) 17
Jones, Victor, 4 Cr. App. R. 207 116
Joyce, George, 1 Cr. App. R. 82 119
Joyce, Henry, 72 J. P. 483; 25 T. L. R. 8; 1 Cr. App. R. 143 4, 15, 114, 119

K.

Kams, 4 Cr. App. R. 8 ... ... 105, 110, 115
Keating, 74 J. P. 452; 103 L. T. 322; 26 T. L. R. 686; 5 Cr. App. R. 181 12
Kelly, 74 J. P. 167; 26 T. L. R. 196; 3 Cr. App. R. 248 117
Kendrick, 6 Cr. App. R. 117 129
Key, 1 Cr. App. R. 135 101
Kirkham, 73 J. P. 406; 25 T. L. R. 656; 2 Cr. App. R. 253 ... 106
Kirkpatrick, 73 J. P. 29; 25 T. L. R. 66; 1 Cr. App. R. 170 ... 135
Knight, 73 J. P. 14; 25 T. L. R. 87; 1 Cr. App. R. 186 ... 16, 107

L.

Laitwood, 4 Cr. App. R. 248 134
Larkins, 75 J. P. 320; 27 T. L. R. 438; 55 Sol. Jo. 501; 6 Cr. App. R. 194 13
Laws, 72 J. P. 271; 24 T. L. R. 630; 1 Cr. App. R. 6, 8 79, 80, 91, 139
Leach, 2 Cr. App. R. 72; *Times News*, March 8, 1909 ... 16, 101
Lee, 72 J. P. 253; 24 T. L. R. 627; 1 Cr. App. R. 5 119
Lewis, Annie, 4 Cr. App. R. 96 ... ... 15, 102
Lewis, Richard, 2 Cr. App. R. 180; *Times News*, May 19, 1909 16, 99, 121
Loates, 5 Cr. App. R. 193 103

PAGE
Lord, 1 Cr. App. R. 110 ... ... 6, 12
Lovett and Hipperson, 1 Cr. App. R. 94 15
Lucas, 1 Cr. App. R. 61, 234 ... ... 13, 103

M.

M'Creese, 4 Cr. App. R. 72 130
Macdonald, 1 Cr. App. R. 262 ... ... 6, 97
M'Dowell, 2 Cr. App. R. 161 126
Machardy, 55 Sol. Jo. 754 ... ... 8, 9, 13, 98
M'Kerlynchie, 2 Cr. App. R. 183 78
M'Lean, [1911] 1 K. B. 332; 27 T. L. R. 138; 6 Cr. App. R. 26 ... 133
M'Nair, 25 T. L. R. 228; 2 Cr. App. R. 24 89
Mack, James, 2 Cr. App. R. 114 ... ... 79, 89
Mack, John, 1 Cr. App. R. 132; *Times News*, Sept. 19, 1908 ... ... 66, 113, 114, 119
Mallon, 5 Cr. App. R. 216 134
Malvisi, 73 J. P. 392; 2 Cr. App. R. 192, 251 ... ... 66, 80, 91
Markham, 2 Cr. App. R. 160; *Times*, May 4, 1909 132
Marshall, 74 J. P. 380; 5 Cr. App. R. 25 ... ... 29, 98, 116
Martin, George, 5 Cr. App. R. 31 98
Martin, Henry, 1 Cr. App. R. 33, 52 ... ... 79, 89
Martin, Max Albert, 1 Cr. App. R. 210 131
Martin, Richard, 2 Cr. App. R. 98 ... ... 62, 66
Mason, Frank Albert, 2 Cr. App. R. 59; 73 J. P. 250 109, 114, 115
Mason, William, 5 Cr. App. R. 171; *Times News*, July 29, 1910 ... 105
Mason and Soper, 1 Cr. App. R. 73; *Times News*, July 24, 1908 109, 110
Maurice, 1 Cr. App. R. 176 126
Maxwell, 2 Cr. App. R. 28 126
Meade, 73 J. P. 192; 2 Cr. App. R. 47 65
Melville, 2 Cr. App. R. 173 107
Meyer, 99 L. T. 204; 24 T. L. R. 621; 1 Cr. App. R. 10 15, 73, 110, 111, 112
Milbarr, 2 Cr. App. R. 153 30
Miller, 2 Cr. App. R. 213 78
Moran, James, 5 Cr. App. R. 219; 75 J. P. 110 ... ... 57, 116, 130
Moran, Patrick, 3 Cr. App. R. 25 78
Morgan, 5 Cr. App. R. 157 103
Morrison, 6 Cr. App. R. 159 120
Mortimer, Bernard, [1911] 1 K. B. 70; 75 J. P. 37; 5 Cr. App. R. 199 103
Mortimer, Bertram, 72 J. P. 349; 99 L. T. 204; 24 T. L. R. 745; 1 Cr. App. R. 20, 78, 110, 126
Morton, George, 2 Cr. App. R. 145 ... ... 6, 130
Morton, Percy, 1 Cr. App. R. 255; *Times*, Dec. 19, 1908 128
Moss, 74 J. P. 214; 4 Cr. App. R. 112 ... ... 112, 115
Mountford, 4 Cr. App. R. 224; *Times News*, April 9, 1910 ... 136
Muirhead, 73 J. P. 31; 25 T. L. R. 88; 1 Cr. App. R. 187 16, 107
Mullins, 5 Cr. App. R. 13 103
Munns, 1 Cr. App. R. 4 61
Murtrie, 6 Cr. App. R. 128 ... ... 103, 111
Myland, 27 T. L. R. 256; 6 Cr. App. R. 135 128

N.

Naylor, 74 J. P. 460; 5 Cr. App. R. 19 112
Newson, 2 Cr. App. R. 44 89

PAGE

Nicholls, 1 Cr. App. R. 167; 25 T. L. R. 65; 73 J. P. 11 ... 15, 29, 62, 113
Nicholson, 2 Cr. App. R. 195 91
Norton (No. 1), [1910] 2 K. B. 496; 74 J. P. 375; 26 T. L. R. 535; 102 L. T. 922; 5 Cr. App. R. 65 ... ... 103, 104, 111, 138
Norton (No. 2), 5 Cr. App. R. 197 13
Nuttall, 73 J. P. 30; 25 T. L. R. 76; 1 Cr. App. R. 180 ... 127, 128

O.

O'Brien, 2 Cr. App. R. 193 11
O'Connell, 33 J. P. 118; 2 Cr. App. R. 11 ... ... 126, 127
O'Sullivan, 1 Cr. App. R. 75; *Times News*, July 4, 1908 111
Orris, 73 J. P. 15; 1 Cr. App. R. 199 ... ... 16, 101
Osborne, James, 1 Cr. App. R. 134 66
Osborne, Leonard, 1 Cr. App. R. 144; 72 J. P. 473 ... 91, 140

P.

Parker, Charles, 2 Cr. App. R. 118 113
Parker, John Reuben, *Times News*, July 31, 1911 88
Pavitt, 75 J. P. 432; 6 Cr. App. R. 182 92
Payne, 3 Cr. App. R. 259 104
Pearson, Benjamin (No. 1), 72 J. P. 449; 1 Cr. App. R. 77 16, 101
Pearson, William David, 74 J. P. 175; 4 Cr. App. R. 40 102
Perry & Harvey, 2 Cr. App. R. 88, 92 ... ... 79, 81
Petch, 25 T. L. R. 401; 2 Cr. App. R. 71 ... ... 16, 107
Pitchforth, 1 Cr. App. R. 249 80
Pope, Harry, 4 Cr. App. R. 123 ... ... 107, 110
Pope, Walter, 2 Cr. App. R. 22 ... ... 65, 89
Preston, [1909] 1 K. B. 568; 73 J. P. 173; 25 T. L. R. 280; 2 Cr. App. R. 24 ... ... 15, 103
Prince, 25 T. L. R. 197; 1 Cr. App. R. 252 136

R.

Randles, 1 Cr. App. R. 194 ... ... 66, 107
Rawlings, 3 Cr. App. R. 5 107
Ray, 6 Cr. App. R. 114 128
Ray and Carter, 3 Cr. App. R. 189 128
Raybould, 73 J. P. 334; 25 T. L. R. 581; 2 Cr. App. R. 184 128, 129
Reen and Lintott, 2 Cr. App. R. 310 ... ... 80, 91
Rendle, 2 Cr. App. R. 33 100
Reynolds, 6 Cr. App. R. 26 86
Rhodes, 74 J. P. 380; 5 Cr. App. R. 35 64
Richards, 4 Cr. App. R. 161 ... ... 15, 115, 138
Richardson, 5 Cr. App. R. 278 132
Richman, 4 Cr. App. R. 233 ... ... 89, 103, 115, 116
Richmond, 6 Cr. App. R. 204 136
Ridley, 100 L. T. 944; 25 L. T. R. 508; 1 Cr. App. R. 113 ... 74
Roberts, 6 Cr. App. R. 3 136
Rodda, 74 J. P. 412; 26 T. L. R. 539; 5 Cr. App. R. 85, 90 21, 114
Rose, 2 Cr. App. R. 265 ... ... 66, 95
Ross, 3 Cr. App. R. 198 136
Rouse, 2 Cr. App. R. 74 136
Rowan, 5 Cr. App. R. 279; *Times News*, Nov. 15, 1910 62, 109, 115

PAGE
Rowland, 26 T. L. R. 202; 3 Cr. App. R. 277 ... 122, 124, 138
Rubens, 2 Cr. App. R. 167 99
Russell, 6 Cr. App. R. 78 123
Rutter, 73 J. P. 12; 25 T. L. R. 73; 1 Cr. App. R. 174 ... 165, 137
Rye, 2 Cr. App. R. 155 109

S.

Schmidt, *Times News*, Aug. 19, 1911 91
Schraeger, July 19, 1911 (unreported) 88
Seagrove, 4 Cr. App. R. 156 101
Seigley, 6 Cr. App. R. 106 120
Shapcote, 3 Cr. App. R. 58 133
Shaw, 75 J. P. 191; 6 Cr. App. R. 103 102
Sidlow, 72 J. P. 391; 24 T. L. R. 751; 1 Cr. App. R. 28 126
Simpson, Thomas William, 2 Cr. App. R. 128 89
Simpson, William, 75 J. P. 56; 5 Cr. App. R. 217 126
Simmonds, 6 Cr. App. R. 246 128
Smith, Benjamin, 4 Cr. App. R. 48 128
Smith, Charles, 74 J. P. 13; 3 Cr. App. R. 40 137
Smith, Charles, and Weston, [1910] 1 K. B. 17; 74 J. P. 13; 3 Cr. App. R. 40 22
Smith, Daniel, 2 Cr. App. R. 214 116
Smith, John, and Evans, 1 Cr. App. R. 203 ... ... 66, 120
Smith, John, and Wilson, [1909] 2 K. B. 956; 73 J. P. 407; 2 Cr. App. R. 271 ... ... 21, 134
Smith, John William, 5 Cr. App. R. 123 112
Smith, Thomas, 74 J. P. 54; 3 Cr. App. R. 90 ... ... 90, 112
Smith, William, 2 Cr. App. R. 86 65
Smith, William, 6 Cr. App. R. 20 133
Solomon, 2 Cr. App. R. 80; *Times News*, March 15, 1909 103
Soper and Mason, 1 Cr. App. R. 63, 73 ... ... 78, 109
Sovosky, 1 Cr. App. R. 98; 72 J. P. 435 ... ... 114, 138
Spratling, [1911] 1 K. B. 77; 75 J. P. 39; 27 T. L. R. 31; 5 Cr. App. R. 206 17
Standing, 2 Cr. App. R. 5 126
Stanley, 5 Cr. App. R. 16 106
Steel, 5 Cr. App. R. 289 ... ... 4, 115
Stewart, 74 J. P. 246; 4 Cr. App. R. 175 117
Stoddart, 73 J. P. 348; 25 T. L. R. 612; 2 Cr. App. R. 217 4, 8, 15
Stone, 6 Cr. App. R. 89 ... ... 4, 106
Stratton, 3 Cr. App. R. 255; *Times News*, Dec. 18, 1909 103
Street, 4 Cr. App. R. 88; *Times News*, Feb. 12, 1910 128
Stutter, 5 Cr. App. R 64 ... ... 79, 135
Sullivan, 6 Cr. App. R. 4 132
Sweeney, 4 Cr. App. R. 72 137
Syers, 4 Cr. App. R. 42 ... ... 112, 115
Syme, 55 Sol. Jo. 704 107
Syres, 73 J. P. 13; 25 T. L. R. 71; 1 Cr. App. R. 172 ... 132, 133

T.

Tanner, Bertie, 6 Cr. App. R. 62 136
Tanner, Joseph, Aug. 18, 1911 (unreported) 21, 62
Tate, [1908] 2 K. B. 680; 99 L. T. 620; 72 J. P. 391; 1 Cr. App. R. 39 ... ... 15, 105

PAGE

Taylor, Edward, and Coney, 5 Cr. App. R. 168; *Times News*, July 19, 1910 137
Taylor, Joseph, 2 Cr. App. R. 158; *Times*, May 4, 1909 132
Taylor, William, [1911] 1 K. B. 674; 27 T. L. R. 108; 6 Cr. App. R. 12 ... ... 95, 96
Thompson, Harry, 5 Cr. App. R. 9 110
Thompson, Robert, 2 Cr. App. R. 112 130
Thornton, 2 Cr. App. R. 284; *Times News*, July 17, 1909 ... 128
Tomey, 2 Cr. App. R. 329; *Times News*, July 31, 1909 103
Totterdell, 5 Cr. App. R. 274 ... ... 104, 111
Turner, [1910] 1 K. B. 346; 74 J. P. 81; 102 L. T. 367; 26 T. L. R. 112; 3 Cr. App. 103 ... ... 17, 116

V.

Vassileva, 6 Cr. App. R. 288; *Times News*, June 21, 1911 115, 128
Vaughan, 1 Cr. App. R. 25 110
Verney, 73 J. P. 288; 2 Cr. App. R. 107 13
Virgin, 3 Cr. App. R. 175; *Times News*, Dec. 3, 1909 ... 99, 117

W.

Walker, Alfred, 27 T. L. R. 51; 5 Cr. App. R. 231 137
Walker and Malyon, 5 Cr. App. R. 296 ... ... 80, 91
Warner, 73 J. P. 53; 25 T. L. R. 142; 1 Cr. App. R. 227 ... 115, 119
Warren, 73 J. P. 359; 25 T. L. R. 633; 2 Cr. App. R. 194 ... 105
Warrilow, 5 Cr. App. R. 230 128
Watkins, John, 1 Cr. App. R. 183 ... ... 78, 79
Watkins, Samuel George, 2 Cr. App. R. 119 119
Watkins, Smallwood, and Jones, 74 J. P. 382; 26 T. L. R. 581; 5 Cr. App. R. 93 135
Weaver, 1 Cr. App. R. 12 86
Webb, 5 Cr. App. R. 112 ... ... 135, 136
Wells, Edwin, 73 J. P. 415; 2 Cr. App. R. 259 129
Wells, George, 5 Cr. App. R. 33 99
Wells, William Richard, 3 Cr. App. R. 197 133
West, 4 Cr. App. R. 179; *Times News*, March 21, 1909 107
Westacott, 25 T. L. R. 192; 1 Cr. App. R. 246 ... ... 15, 65
Weston, 3 Cr. App. R. 53 116
Whiteman, 73 J. P. 102; 2 Cr. App. R. 10 135
Wilkinson, 6 Cr. App. R. 85; *Times News*, Dec. 21, 1910 128
Williams, George, 3 Cr. App. R. 2 12
Williams, John Charles, 2 Cr. App. R. 156; *Times*, March 4, 1909 135
Williamson, 24 T. L. R. 619 89
Wilson, Alfred John, 6 Cr. App. R. 207 103
Wilson, Charles, 3 Cr. App. R. 8 126
Wilson, Joseph, 5 Cr. App. R. 8 130
Wilson, Lewis, and Harvard, 6 Cr. App. R. 125 105
Wilson, Matthew, [1909] 2 K. B. 756; 73 J. P. 407; 2 Cr. App. R. 271 134
Winkworth (No. 1), 1 Cr. App. R. 129, 130 78
Winkworth (No. 2), 6 Cr. App. R. 179 ... ... 4, 92
Witton, 6 Cr. App. R. 149 91
Wong Chey, 6 Cr. App. R. 59; *Times News*, Dec. 14, 1910 ... 94
Woodbridge, 2 Cr. App. R. 321 111
Woodman, 73 J. P. 286; 2 Cr. App. R. 67 127
Wright, Brassington, and Marsh, 4 Cr. App. R. 284 ... ... 4, 80

CHAPTER I.

CONSTITUTION AND JURISDICTION OF THE COURT.

Establishment.

NUMEROUS attempts were made during the past sixty years to give some right of appeal in criminal as in civil cases (*a*). The right proposed to be given differed widely in nature and extent, but all efforts, from one cause or another, were alike fruitless till 1907, when the Criminal Appeal Act (*b*) was passed, establishing a Court of Criminal Appeal for England and Wales.

Judges.—This enactment ordained that the Lord Chief Justice of England and eight other judges of the King's Bench Division of the High Court, appointed for the purpose by the Lord Chief Justice, with the consent of the Lord Chancellor, for such period as the Lord Chief Justice thought desirable in each case, should be the judges of the Court (*c*). With so limited a number of judges difficulties in forming a court for the purpose of hearing appeals soon arose owing to the absence of judges on circuit, and necessitated an amending Act in the following year (*d*), passed at the instance of the Lord Chief Justice, which enacted that notwithstanding anything in the first section of the Criminal Appeal Act, 1907, all the judges of the King's Bench Division should be judges of the Court of Criminal Appeal (*e*).

Registrar.—The Act of 1907 further created the office of Registrar of the Court (*f*), and appointed the Senior Master of

(*a*) See Return to an address to the House of Lords, dated 3rd May 1906; and see the introduction by Sir H. Poland, K.C., to *The Criminal Appeal Act*, by Herman Cohen.

(*b*) 7 Edw. VII. c. 23. The Act is dated the 28th August 1907, but applied to all persons convicted after the 18th April 1908.

(*c*) Section 1, *post*, p. 148.

(*d*) Criminal Appeal (Amendment) Act, 1908. 8 Edw. VII. c. 46.

(*e*) *Ib.* Section 1, *post*, p. 157.

(*f*) Section 2, *post*, p. 149..

the Supreme Court (*a*) the first Registrar. It ordained that future appointments should be made by the Lord Chief Justice from among the Masters of the Supreme Court acting in the King's Bench Division (*b*). In this respect also the Act has been amended by the Criminal Appeal (Amendment) Act 1908 (*c*), which enacts that, notwithstanding anything in section 2 of the Criminal Appeal Act, 1907, from and after the passing of this Act the Master of the Crown Office (*d*) shall be the Registrar of the Court of Criminal Appeal. The Act also provided that the Registrar should be entitled to such additional salary (if any), and be provided with such additional staff (if any), in respect of the office of Registrar, as the Lord Chancellor, with the concurrence of the Treasury, might determine (*e*). This provision has also been altered by the Criminal Appeal (Amendment) Act, 1908 (*f*), which enacts that the power to provide additional staff for the Registrar includes power to appoint an Assistant Registrar, but that any Assistant Registrar so appointed shall be either a Master of the Supreme Court acting in the King's Bench Division, or a practising barrister of not less than seven years' standing, and shall be appointed by the Lord Chief Justice of England (*g*). No provision is made by the Act for the incapacity of the Registrar to act from any reason; but by rules made under the Act the term "Registrar" is defined as including any person temporarily appointed by the Lord Chief Justice from among the Masters of the Supreme Court acting in the King's Bench Division, to act during the absence of the Registrar through sickness or other unavoidable cause (*h*).

(*a*) Sir James R. Mellor, Master of the Crown Office, King's Remembrancer, and King's Coroner.

(*b*) Section 2, *post*, p. 149.

(*c*) 8 Edw. VII. c. 46, sec. 2 (1), *post*, p. 157.

(*d*) The Master of the Crown Office is appointed by the Lord Chief Justice of England.

(*e*) Section 2, *post*, p. 149.

(*f*) 8 Edw. VII. c. 46, sec. 2 (2), *post*, p. 157.

(*g*) Under this Act the appointment by the Lord Chancellor in May 1908 of Mr. L. W. Kershaw as assistant Registrar was confirmed by the Lord Chief Justice, Jan. 1909. The other staff consists of a principal clerk and six assistant clerks.

(*h*) Rule 2, *post*, p. 168. Notwithstanding this rule the Assistant Registrar would probably be empowered to act as Registrar in such an event.

Dignity and Jurisdiction.

The Court thus established was declared to be a superior court of record with full power, for the purposes of and subject to the provisions of the Act, to determine, in accordance with the Act, any questions necessary to be determined for the purpose of doing justice in any case before it (*a*). As a statutory superior Court of Record it ranks with the House of Lords, the Judicial Committee of the Privy Council, and the Supreme Court of Judicature; it possesses the power to fine and imprison, whether for contempt of itself or for other substantial offences; the records of its proceedings are conclusive evidence of that which is recorded therein, and it has all the other advantages of a superior Court of Record (*b*).

The Act (*c*) vests in the Court all the jurisdiction and authority under the Crown Cases Act, 1848 (*d*), which was transferred to the judges of the High Court by section 47 of the Supreme Court of Judicature Act, 1873 (*e*); and repeals (*f*) sections 3 and 5 of the Crown Cases Act, 1848, the reference to crown cases reserved contained in section 19 of the Judicature Act, 1875 (*g*), and section 15 of the Judicature Act, 1881 (*h*), which provided for the constitution of the Court to hear Crown Cases reserved. It also abolishes (*i*) writs of error and the powers and practice formerly existing in the High Court in respect of motions for new trials in criminal cases. The Court may 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 in civil matters and issue any warrants necessary for enforcing its orders and sentences (*k*).

Finality of Decision.

The determination by the Court of any Appeal or other matter which it has power to determine is declared (*l*) to be

(*a*) Section 1 (7), *post*, p. 148.
(*b*) See *Laws of England*, article "Courts," vol. ix. pp. 9-12, and as to committal for contempt see Short and Mellor's *Crown Office Practice*, 2nd ed., p. 341.
(*c*) Section 20 (4), *post*, p. 156.
(*d*) 11 & 12 Vict. c. 78.
(*e*) 36 & 37 Vict. c. 66.
(*f*) Section 22 and schedule, *post*, pp. 156, 157.
(*g*) 38 & 39 Vict. c. 77.
(*h*) 44 & 45 Vict. c. 68.
(*i*) Section 20 (1), *post*, p. 156.
(*k*) Section 9, *post*, p. 152.
(*l*) Section 1 (6), *post*, p. 148.

final and not appealable to any other Court, save that provision is made for an appeal to the House of Lords, where in any case the Director of Public Prosecutions, or other prosecutor, or the appellant, obtains the certificate of the Attorney-General that the decision of the Court involves a point of law of exceptional public importance and that it is desirable that a further appeal should be brought (*a*).

Power to order new Trial.

The extent of the jurisdiction and the power of the Court with regard to appeals are considered in the following chapters.

One matter alone calls for special mention here. The Court does not possess the power of ordering a new trial. On the one hand, therefore, though in a particular case there may be evidence which seems to show that the appellant was guilty of the offence charged, and might properly have been convicted of it but for something which constrains the Court to quash the conviction, the Court has no alternative but to allow the appellant to go free unless they come to the conclusion upon the evidence that the facts proved are so consistent only with guilt and inconsistent with innocence that the jury would have found the same verdict had not the event occurred (*b*). On the other hand, where some event has happened which is not sufficient to cause the Court to quash the conviction, but the case is one which gives rise to some doubt as to the guilt or innocence of the appellant, and seems to call for further investigation before a jury, the Court may have no option but to dismiss the appeal (*c*).

(*a*) *Ib.* See further, *post*, p. 143, where this subsection is considered.

(*b*) See R. *v.* Dyson [1908], 2 K.B. 454; 72 J.P. 303; 24 T.L.R. 653; 1 Cr. App. R. 13, 15; R. *v.* Henry Joyce, 72 J.P. 483, 484; 25 T.L.R. 8; 1 Cr. App. R. 143; R. *v.* Dibble, 72 J.P. 498, 499; 1 Cr. App. R. 155, 157; R. *v.* Betridge, 73 J.P. 71; 1 Cr. App. R. 236, 238; R. *v.* Stoddart, 73 J.P. 348; 25 T.L.R. 612; 2 Cr. App. R. 217, 245; R. *v.* James George, 2 Cr. App. R. 318; R. *v.* Bloom, 74 J.P. 183; 4 Cr. App. R. 30, 35; R. *v.* George Wright, 4 Cr. App. R. 284, 291; R. *v.* Steel, 5 Cr. App. R. 289, 294; R. *v.* Stone, 6 Cr. App. R. 89, 95; R. *v.* Winkworth, 6 Cr. App. R. 179, 181; R. *v.* Ellsom, *Times* News. September 29/11.

(*c*) See R. *v.* Hampshire, 1 Cr. App. R. 212; *Times* News. Nov. 30/08; R. *v.* Colclough, 2 Cr. App. R. 84; *Times* News. Mar. 19, 1909; R. *v.* Kams, 4 Cr. App. R. 8, 13; R. *v.* Peter Jackson, 4 Cr. App. R. 93, 95; R. *v.* Graham, 74 J.P. 246; 4 Cr. App. R. 218, 221.

Venire de novo.—Though the Court has no general power of ordering a new trial it probably has the power to grant a writ of venire de novo where the trial is a nullity.

In an appeal brought before the Court (*a*) it was contended that an event which had happened in the course of a trial had caused a mistrial, or made the trial a nullity (*b*), and that the Court had the power, which it ought to exercise, of granting a writ of venire de novo for a new trial. The Court held that, under the circumstances, the event had not made the trial a mistrial, since its effect, if any, was counteracted before verdict, and did not, therefore, determine the question as to its power, though expression was given to an opinion that the Court would have the power if a mistrial were established (*c*).

Prerogative of Mercy not affected.

The Act expressly provides that the Crown's prerogative of mercy is not affected by it. The Act in no way alters, qualifies, or diminishes the powers or duties of the Home Secretary in advising His Majesty as to the exercise of the prerogative. The two jurisdictions are quite distinct. This is necessarily so since the Court must be bound by legal considerations while the Home Secretary may rightfully take into his consideration, and act upon, many circumstances which the Court cannot regard at all, or regard as being sufficient to justify any action on its part. Exceptional cases, therefore, may from time to time arise in which, though the Court is prevented, by the circumstances of the case, or by the limitations imposed

(*a*) R. *v.* Dickman, 74 J.P. 449, 451; 26 T.L.R. 640, 642; 5 Cr. App. R. 135, 141, 147.

(*b*) The event was the comment by the prosecuting counsel on the failure of the wife of the accused to give evidence on his behalf. In R. *v.* Crippen [1911], 1 K.B. 149; 75 J.P. 141; 27 T.L.R. 69, 70; 5 Cr. App. R. 255, 257, it was contended that the temporary absence, through illness, of a juryman did not amount to a mistrial and that, therefore, the remedy by venire de novo, if it existed, did not apply, but that permitting the trial to proceed afterwards was a wrong decision by the Judge of a question of law within the Criminal Appeal Act, sec. 4, and therefore ground for quashing the conviction. The Court held that what had been done was not contrary to law and that had it been so it would have come within the Act. See the report in the *Times Law Reports* at p. 70.

(*c*) R. *v.* Dickman, *supra*, as reported in 74 J.P. at p. 451, per Lord Alverstone, L.C.J.

upon it by the Act or by the necessity of paying regard only to legal considerations, from interfering with a verdict, or a sentence, the Home Secretary may still advise the exercise of the prerogative of mercy with the result that the prisoner may be released altogether, or the form of his sentence varied or the length reduced. This power of the Home Secretary has frequently been referred to in cases coming before the Court (*a*), especially in murder cases where the state of the prisoner's mind is a matter for consideration but there is not sufficient evidence to establish insanity in law. So also the Court has occasionally referred to the power given to the Home Secretary, by other Acts of Parliament, of altering or modifying sentences in cases where it seemed to the Court that if any alteration ought to be made in the sentence, the case was one rather for the consideration of the Home Secretary than for them (*b*).

The Home Secretary need not wait till an appeal has been lodged and disposed of before advising the exercise of the prerogative of mercy (*c*).

Again, the Act has provided a means by which the Home Secretary, if he desires the assistance of the Court in his consideration of a petition for the exercise of His Majesty's mercy, may obtain it (*d*). This power is considered later (*e*).

(*a*) *e.g.* R. *v.* Atkins, 1 Cr. App. R. 69, 70 (state of mind of appellant); and R. *v.* Macdonald, 1 Cr. App. R. 262, 266; *Times* News. Dec. 23/08 (murder, state of mind of appellant); R. *v.* Anthony, 1 Cr. App. R. 82; *Times* News. July 24/08 (corporal punishment); R. *v.* Charles Hamilton, 1 Cr. App. R. 87, 88; *Times* News. July 25/08 (sentence wrong in law; wrong part struck out having the effect of increasing the sentence passed; left to Home Secretary to act as he thought fit); R. *v.* Fairbrother, 1 Cr. App. R. 234, and R. *v.* Burke, 1 Cr. App. R. 245 (murder cases where jury recommended to mercy); R. *v.* Castagna, 2 Cr. App. R. 67, 69 (murder, prisoner young); R. *v.* Edmunds, 2 Cr. App. R. 257, 258; *Times* News. June 19/09; and R. *v.* Victor Jones, 4 Cr. App. R. 207, 216; *Times* News. April 9/10 (where the distinction between the legal and non-legal tribunal is clearly pointed out); R. *v.* Jesshope, 5 Cr. App. R. 1, 3 (murder, state of mind of appellant); R. *v.* Joseph Allen, 5 Cr. App. R. 225, 226 (a case referred to the Court by the Home Secretary); R. *v.* Caldwell, 6 Cr. App. R. 149.

(*b*) R. *v.* Thompson, 2 Cr. App. R. 112 and R. *v.* Morton, 2 Cr. App. R. 145 (powers of Home Secretary under Prevention of Crime Act, 1908).

(*c*) R. *v.* Lord, 1 Cr. App. R. 110 (child murder, commutation of sentence).

(*d*) Section 19, *post*, p. 155.

(*e*) See *post*, p. 19.

Power to make Rules of Court.

To carry out its purposes the Act provides (*a*) for rules of Court to be made. The rules may make provision (1) with respect to any matter for which the Act specially directs provision to be made by rules of Court, and (2) for regulating generally the practice and procedure under the Act. These rules are to be made by the Lord Chief Justice and the Judges of the Court of Criminal Appeal, or any three of such judges, with the advice and assistance of a committee, consisting of a chairman of Quarter Sessions appointed by a Secretary of State, the permanent Under Secretary of State for the time being for the Home Department, the Director of Public Prosecutions for the time being, the Registrar of the Court of Criminal Appeal, a clerk of assize and a clerk of the peace appointed by the Lord Chief Justice, a solicitor appointed by the President of the Law Society for the time being, and a barrister appointed by the General Council of the Bar (*b*). The term of office of any person who is a member of the Committee by virtue of appointment is such as may be specified in the appointment (*c*).

Rules made by this body are subject to the approval of the Lord Chancellor, and so far as they affect the governor or any other officer of a prison, or any officer having the custody of an appellant, they are subject also to the approval of the Secretary of State (*d*). Every rule made under the Act must be laid before each House of Parliament forthwith, and if an address is presented to His Majesty by either House within the next subsequent thirty days on which the House has sat next after any such rule is laid before it, praying that the rule may be annulled, His Majesty in Council may annul the rule and it thenceforth becomes void, but

(*a*) Section 18 (1), *post*, p. 155.

(*b*) The advisory committee, apart from the *ex-officio* members, consisted of Mr. Andrew Johnston, then Chairman of the Essex Quarter Sessions; the late Mr. J. Read, Clerk of Assize of the Western Circuit; Mr. Merrifield, Clerk of the Peace for the County of Sussex; Mr. Tindal Atkinson, K.C., nominated by the General Council of the Bar, and Mr. Longmore, nominated by the President of the Law Society.

(*c*) Section 18 (2), *post*, p. 155.

(*d*) Section 18 (1), *post*, p. 155.

without prejudice to the validity of anything previously done under it (*a*).

Under this section a large number of rules has been framed, and forms, to be followed as nearly as may be when occasion requires, drawn up (*b*). These are considered hereafter under their appropriate headings.

Sittings of the Court.

The Act directs that, for the purpose of hearing and determining appeals under it, and for the purpose of any other proceedings under it, the Court shall be summoned in accordance with directions given by the Lord Chief Justice of England with the consent of the Lord Chancellor, and that the Court shall be duly constituted if it consists of not less than three judges and of an uneven number of judges (*c*). The Act further provides for the Court sitting in two or more divisions, that the sittings shall always be in London, except where special directions are given by the Lord Chief Justice that it shall sit at some other place (*d*), and that rules of Court shall provide for securing sittings of the Court, if necessary, during vacation (*e*). In practice it has been found sufficient for the Court to sit about once a week, and in one division only. The Court usually sits once or twice during the Long Vacation, but not during any of the other vacations (*f*). Up to the present no necessity has arisen for the sittings being held elsewhere than in London. The Court is usually composed of the minimum number of judges, though occasionally a special Court of five has been constituted (*g*).

(*a*) Section 18 (3), *post*, p. 155.

(*b*) Rule 3, *post*, p. 169 and for Forms see *post*, pp. 189 *et seq.*

(*c*) Section 1 (2), *post*, p. 148.

(*d*) *Ib.* The Act provides that directions may be given by the senior judge of the Court in the event of a vacancy in the office of Lord Chief Justice or in the event of the incapacity of the Lord Chief Justice to act from any reason. Section 1 (9), *post*, p. 149.

(*e*) Section 1 (8), *post*, p. 149, and Rule 50, *post*, p. 187.

(*f*) In the first year of its existence two sittings were held in the Long Vacation. In 1909 and 1910 one was found sufficient. This year two sittings have been necessary.

(*g*) R. *v.* Stoddart, 73 J.P. 384. R. *v.* Machardy, 55 Sol. Jo. 754; R. *v.* Banks, 55 Sol. Jo. 727.

The Lord Chief Justice, if present, and in his absence the senior member of the Court, is President of the Court (*a*). The determination of any question before the Court is to be according to the opinion of the majority of the members hearing the case, and only one judgment is to be pronounced, by the president or such other member of the Court as he directs, 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 (*b*).

(*a*) Section 1 (3), *post*, p. 148.

(*b*) Section 1 (4) and (5), *post*, p. 148. Up to the present only one judgment has been given. The judgment has occasionally been the judgment of a majority of the members hearing the case, *e.g.* R. *v.* Machardy, 55 Sol. Jo. 754; *Times* News. Aug. 19/11.

CHAPTER II.

THE RIGHT OF APPEAL TO THE COURT.

Nature of the Right given.

THE Act in some cases gives an absolute right of appeal to the Court, while in others it is first necessary to obtain leave to appeal, the application for leave to appeal becoming automatically an appeal on its being granted, without the necessity of any other notice being given (*a*), or never reaching the stage of a final appeal at all if leave is refused by the full Court. Other Acts, passed since the Criminal Appeal Act, also give the right of appealing or applying for leave to appeal to the Court under certain circumstances. The distinction between an appeal and an application for leave to appeal is important in some respects, as appears hereafter. It is necessary first to consider who may appeal and what may be appealed against, and in considering these matters the term appeal is used to denote both an appeal proper and an application for leave to appeal.

Who may appeal.

By virtue of the provisions of the Criminal Appeal Act all persons who have been convicted on indictment, criminal information, or coroner's inquisition subsequent to the 18th day of April 1908 may appeal except

(1) Peers or peeresses or other persons claiming the privilege of peerage, who have been convicted on indictment or inquisition charging them with any offence not lawfully triable by a Court of Assize (*b*). A peer who is indicted and

(*a*) Rule 22, *post*, p. 176.

(*b*) Section 20 (2), *post*, p. 156. This section in words denies the right of appeal to any person "claiming the privilege of peerage."

The intention of the section is, doubtless, to negative the right of appeal against a conviction by the House of Lords or the Court of the Lord High Steward of Great Britain, and therefore it would probably not exclude cases (which it is possible to imagine) where the claim has been made but not established and the trial has taken place at Assizes or Quarter Sessions.

tried for misdemeanour at Assizes or Quarter Sessions may appeal, but where the indictment is for treason or felony, or misprision of treason or felony, the rights given to other persons by the Act are taken away from peers and peeresses by the Act since these offences, when committed by peers or peeresses, are not triable by a Court of Assize (*a*).

(2) Persons convicted on an indictment at common law in relation to the non-repair or obstruction of any highway, public bridge, or navigable river (*b*). This exception only applies where the conviction is on indictment at common law, and, therefore, apparently does not exclude an appeal by persons convicted of non-repair or obstruction on a statutory indictment (*c*), or of common law offences in relation to highways other than non-repair or obstruction (*d*).

Incorrigible Rogues.—The Criminal Appeal Act makes one exception to its limitation of the right of appealing to persons convicted on indictment, criminal information, or coroner's inquisition. It gives a right of appeal to persons convicted at petty sessions of being incorrigible rogues and sent to Quarter Sessions for sentence (*e*). But this right has been held to be limited to applying for leave to appeal against the sentence (*f*).

Information on Revenue Side.—An information by the Attorney-General on the Revenue side of the King's Bench Division is not a criminal information within the Criminal Appeal Act (*g*).

(*a*) See Archbold's *Pleading, Evidence, and Practice in Criminal Cases*, 24th edition, p. 190.

(*b*) Section 20 (3), *post*, p. 156. The appeal in these cases is to the civil Court of Appeal, and the procedure is regulated by Crown Office Rule 17 *a*. See rule set out in Appendix, *post*, p. 187.

(*c*) See Archbold's *Criminal Pleading, Evidence, and Practice*, 24th edition, pp. 1340 *et seq.*

(*d*) See *ib.* p. 1311.

(*e*) Section 20 (2), *post*, p. 156.

(*f*) R. *v.* Walter John Brown 72 J.P. 427; 1 Cr. App. R. 85; R. *v.* William Johnson [1909], 1 K.B. 439; 25 T.L.R. 229; 73 J.P. 135; 100 L.T. 464; 2 Cr. App. R. 13; R. *v.* O'Brien, 2 Cr. App. R. 193. In these cases the persons convicted had not exercised their right of appealing against the conviction to Quarter Sessions, but no appeal, semble, lies to the Court of Criminal Appeal, where there has been an appeal to Quarter Sessions which has been dismissed, although in a sense the appellant has been "dealt with as an incorrigible rogue by a Court of Quarter Sessions." Section 20 (2), *post*, p. 156.

(*g*) R. *v.* Hausman, 73 J.P. 516; 26 T.L.R. 33; 3 Cr. App. R. 3.

Prevention of Crime Act.—Later Acts than the Criminal Appeal Act have provided for an appeal in certain cases. Under the Prevention of Crime Act, 1908, persons who have been convicted of being habitual criminals and sentenced to a term of penal servitude, to be followed by a term of preventive detention, may appeal against the sentence (*a*). An appeal lies also against the conviction (*b*).

Children Act, 1908.—Under the Children Act, 1908 (*c*), a parent or guardian of a child or young person who is ordered by a Court of Quarter Sessions or Assize to pay a fine, damages, or costs, or to give security for the good behaviour of the child, in respect of the commission of any offence by the child, may appeal to the Court of Criminal Appeal, in accordance with the Criminal Appeal Act, as if he had been convicted on indictment and the order were a sentence passed upon the conviction.

What may be appealed against.

A person may appeal to the Court against his conviction or sentence, or both, except that (1) no appeal lies against a sentence fixed by law (*d*), that is, a sentence as to which the Court of trial has no discretion, but is bound to impose the specific sentence ordered to be passed for that offence, *e.g.* a sentence of death by hanging, which must be passed upon a conviction for murder; a sentence of detention as a criminal lunatic during His Majesty's pleasure where a special verdict under the Trial of Lunatics Act, 1883, is returned; (2) no appeal lies against a conviction of being an incorrigible rogue (*e*); (3) no appeal lies against the commutation of a sentence by the Home Secretary, since it is not a sentence passed at the trial (*f*); and (4) no appeal lies against the remanet of a sentence of penal servitude which a convict on licence has to serve if convicted of another offence before his licence has expired (*g*).

(*a*) 8 Edw. VII. c. 59, sec. 11, set out, *post*, p. 159.

(*b*) See cases cited, *post*, p. 98.

(*c*) 8 Edw. VII. c. 67, sec. 99 (6) (*b*), set out, *post*, p. 159.

(*d*) Section 3 (*c*), *post*, p. 149.

(*e*) See *ante*, p. 11.

(*f*) R. *v.* Lord, 1 Cr. App. R. 110; R. *v.* Keating, 74 J.P. 452; 103 L.T. 322; 26 T.L.R. 686; 5 Cr. App. R. 181.

(*g*) R. *v.* George Williams, 3 Cr. App. R. 2.

Meaning of "Conviction."—The term "Conviction" includes a plea of guilty (*a*); a conviction under the Prevention of Crime Act, 1908, of being a habitual criminal (*b*); but not the finding of a jury that the person arraigned is or is not fit to plead (*c*), nor, presumably, the finding of a jury of matrons that a woman sentenced to death is not pregnant, as such a finding relates to a sentence which cannot be appealed against.

Where a special verdict has been found by the jury under the Trial of Lunatics Act, 1883 (*d*), an appeal lies to the Court of Appeal against the finding that the appellant was guilty of the act or omission charged against him in the indictment (*e*), but not against the part of the finding that the appellant was insane at the time the act was done or omission made so as not to be responsible according to law for his actions (*f*). The finding is divisible, and though the first part amounts to a conviction within the meaning of the Criminal Appeal Act, the second is in the nature of an excuse and for the benefit of the appellant, and is therefore not part of the conviction (*g*).

Where upon arraignment a person pleads auterfois acquit or convict, but the jury find against him on the plea, and he is subsequently convicted of the charge on the indictment, and appeals to the Court against the conviction, the Court can consider, as part of the appeal against conviction, the question of auterfois acquit or convict (*h*).

Meaning of Sentence.—The term "Sentence" includes any order of the Court of trial, made on conviction, with reference to the person convicted, or his wife or children, and

(*a*) R. *v.* Verney, 73 J.P. 288; 2 Cr. App. R. 107 (conviction quashed). It is manifest, however, that exceptional circumstances must exist before the Court will consider an appeal against the conviction where there has been such a plea. See R. *v.* Lucas, 1 Cr. App. R. 61, and R. *v.* Chadwick, Dec. 1910 (unreported).

(*b*) See cases cited, *post*, p. 98.

(*c*) R. *v.* Jefferson, 72 J.P. 467; 24 T.L.R. 877; 1 Cr. App. R. 95, 96; R. *v.* Larkins, 75 J.P. 320; 27 T.L.R. 438; 55 Sol. Jo. 501; 6 Cr. App. R. 194.

(*d*) 46 & 47 Vict. cap. 38, s. 2.

(*e*) R. *v.* Machardy, 55 Sol. Jo. 754; *Times* News. Aug. 19/11, following R. *v.* Ireland [1910], 1 K.B. 654; 75 J.P. 206; 26 T.L.R. 267; 4 Cr. App. R. 74.

(*f*) R. *v.* Machardy, *supra*, not following on this point, R. *v.* Ireland *supra*.

(*g*) R. *v.* Machardy, *supra*.

(*h*) R. *v.* Norton, 5 Cr. App. R. 197; R. *v.* Banks, 55 Sol. Jo. 727; *Times* News. July 31/11.

any recommendation of the Court as to the making by the Home Secretary of an expulsion order in the case of a person convicted (*a*). Where a person has been convicted of an offence and ordered to be discharged from custody on his entering into recognizance to be of good behaviour and to come up for judgment if called upon he may appeal against the sentence imposed subsequently for a breach of his recognizance (*b*).

Under the Costs in Criminal Cases Act, 1908 (*c*), a Court by or before which any person is convicted of an indictable offence may, if they think fit, in addition to any other lawful punishment, order the person convicted to pay the whole or any part of the costs incurred in or about the prosecution. Where such an order is made it is part of the sentence, and therefore appealable to the Court of Criminal Appeal (*d*).

The Children Act, 1908, expressly gives a right of appeal against an order made under Section 99 of the Act as though the order were a sentence (*e*).

Appeal against conviction on Grounds involving Questions of Law.

A right of appeal against the conviction exists when the ground or grounds raised in the appeal involves or involve a question or questions of law alone (*f*). No right of appeal against the sentence on a similar ground is given by the Act; but if questions of law are involved the Court will, as a rule, give leave to appeal (*g*). It is not easy to draw a precise line between grounds involving questions of law alone and grounds which involve questions of fact, or mixed law and fact. Nor, for this purpose (*h*), do the reported decisions on the cases coming before the Court give much assistance. In practice it may be said that most of the grounds which relate to the

(*a*) Sect. 21, *post*, p. 156.

(*b*) R. *v.* Davies [1909], 1 K.B. 892; 25 T.L.R. 279; 73 J.P. 151.

(*c*) 8 Edw. VII. c. 15, sec. 6, *post*, p. 160.

(*d*) The Act does not expressly give the right, as in the case of the Children Act, 1908. In R. *v.* Howard, 6 Cr. App. R. 17, leave to appeal against an order to pay the costs of the prosecution was given, and subsequently the order was quashed.

(*e*) See *ante*, p. 12, and *post*, p. 23

(*f*) Sect. 3 (*a*), *post*, p. 149.

(*g*) See cases cited, *post*, p. 134.

(*h*) For the purpose of deciding the application of the proviso to section 4, a clearer distinction has been drawn. See R. *v.* Cohen and Bateman, 73 J.P. 352; 2 Cr. App. R. 197, 207.

duties or functions of the judge are considered to involve questions of law, although in the strict sense, perhaps, some of these grounds hardly come within that category, while grounds which relate to the duties or functions of the jury are treated as involving questions of fact. But this rule is nothing more than a rough working guide.

Instances.—The following grounds are treated in practice as giving an appeal as of right against the conviction:—

(1) That the judge misdirected the jury:—Where the alleged misdirection consists of a wrong direction as to the law in general which obtains in the class of cases to which the particular case belongs (*a*), or as to the law which is applicable to the special facts of the case (*b*), the complaint clearly involves a question of law. There are, however, decisions which seem to extend the right of appeal so as to include misdirection as to the facts, such as a material misstatement of the evidence prejudicial to the accused (*c*), or a failure to put the defendant's case to the jury (*d*), or to direct them as to one of the essential elements constituting the offence charged in the indictment (*e*), or to direct them in other respects as fully as he ought to have done under the circumstances of the case (*f*); but in practice, unless the misdirection alleged is clearly misdirection as to the law, leave to appeal is considered to be necessary.

(2) That the judge wrongfully rejected or admitted evidence (*g*).

(3) That the judge improperly allowed the accused to be cross-examined as to his character (*h*).

(*a*) *e.g.* failure to distinguish between larceny as a bailee and larceny by a trick, R. *v.* Meyer, 1 Cr. App. R. 10; 99 L.T. 204; as to the onus of proof, R. *v.* Stoddart, 73 J.P. 348; R. *v.* Lovett and Hipperson, 1 Cr. App. R. 94, 95; failure to warn the jury properly as to the evidence of an accomplice, R. *v.* Tate [1908], 2 K.B. 680; 72 J.P. 391; 1 Cr. App. R. 39, 41.

(*b*) *e.g.* R. *v.* Dyson [1908], 2 K.B. 454.

(*c*) *e.g.* R. *v.* Henry Joyce, 72 J.P. 483; 25 T.L.R. 8; 1 Cr. App. R. 131, 132, 142.

(*d*) *e.g.* R. *v.* Dinnick, 3 Cr. App. R. 78; R. *v.* Richards, 4 Cr. App. R. 161; R. *v.* Annie Lewis, 4 Cr. App. R. 96; but see R. *v.* Nicholls, 73 J.P. 11; 1 Cr. App. R. 168.

(*e*) *e.g.* R. *v.* Bloom, 74 J.P. 183; 4 Cr. App. R. 30, 35.

(*f*) *e.g.* R. *v.* Bloom, *supra.*

(*g*) *e.g.* R. *v.* Westacott, 25 T.L.R. 192; 1 Cr. App. R. 246.

(*h*) *e.g.* R. *v.* Preston [1909], 1 K.B. 568, 2 Cr. App. R. 24; R. *v.* Ellis, [1910], 2 K.B. 746.

(4) That the evidence for the prosecution did not make any *prima facie* case which the defendant ought to be called upon to answer, and that the judge failed to stop the case at the close of the evidence for the prosecution; or, as this ground is often put in practice, that there was no evidence on the part of the prosecution to go to the jury (*a*). This ground must be carefully distinguished from the ground, frequently met with in practice, that the verdict is against the weight of evidence, or as it should be put, having regard to the powers of the Court, that the verdict is so against the weight of evidence as to be unreasonable and uncapable of support.

(5) That the finding of the jury amounted in law to a verdict of not guilty (*b*).

Discretion of Judge.—Where the matter alleged is one entirely within the discretion of the Judge of the Court of Trial it is apparently not a ground involving a question of law within the meaning of the Criminal Appeal Act (*c*).

Case stated by Judge of Court of Trial.

Where the Judge of the Court of Trial states a case for the consideration of the Court, the person convicted, and on whose behalf the case is stated, is deemed to be an appellant who has appealed under section 3 (*a*) of the Criminal Appeal Act against his conviction on a ground involving a question of law (*d*). The Criminal Appeal Act repeals sections 3 and 5 of the Crown Cases Act 1848 only (*e*), and, therefore, it is still open to the Judge of the Court of Trial, under section 1, to reserve a question of law, which

(*a*) *e.g.* R. *v.* Benjamin Pearson, 72 J.P. 449; 1 Cr. App. R. 77, 79; R. *v.* Orris, 73 J.P. 15; 1 Cr. App. R. 199; R. *v.* Leach, 2 Cr. App. R. 72.

(*b*) R. *v.* Rutter, 73 J.P. 12; 25 T.L.R. 73; 1 Cr. App. R. 174; R. *v.* Fairbrother, 1 Cr. App. R. 234; *Times* News. Dec. 12/08; R. *v.* Knight, 73 J.P. 14; 25 T.L.R. 87; 1 Cr. App. R. 186; R. *v.* Muirhead, 73 J.P. 31; 25 T.L.R. 88; 1 Cr. App. R. 187; R. *v.* Petch, 25 T.L.R. 401; 2 Cr. App. R. 71.

(*c*) R. *v.* Richard Lewis, 2 Cr. App. R. 180; *Times* News. May 19/09; R. *v.* Crippen [1911], 1 K.B. 149, 156; 27 T.L.R. 69, 72; 5 Cr. App. R. 255, 267; 75 J.P. 141, 143.

(*d*) Rule 26 (*d*), *post*, p. 178.

(*e*) Schedule to Act, set out, *post*, p. 157.

has arisen in the trial, for the consideration of the Court of Criminal Appeal (*a*), in which Court the jurisdiction and authority under the Crown Cases Act is now vested by the Criminal Appeal Act (*b*).

From the language of section 1 of the Crown Cases Act 1848, it may be open to doubt whether, strictly speaking, the Judge of the Court of Trial can reserve a question of law which relates to the power of the Court to sentence the person convicted (*c*), and, so far as the consideration of the case by the Court of Criminal Appeal is concerned, this doubt is somewhat increased by the wording of Rule 26 (*d*) of the rules made under the Criminal Appeal Act, which directs that the person with regard to whose conviction a case is stated is to be deemed, for the purposes of the rules, to be an appellant who has appealed under section 3 (*a*) of the Act, which relates only to an appeal against the conviction. It may be, therefore, that if the words be strictly construed the Court of Appeal cannot consider a case stated which relates only to the question of sentence, but it is more probable that the wide powers given to the Court under section 1 (7) of the Act are sufficient to meet the difficulty, and in practice it has been assumed that the power exists (*d*).

Procedure.—The power to state a case has been rarely resorted to since the Criminal Appeal Act came into operation (*e*), because the Act now affords a simpler mode of bringing

(*a*) There appears to be a mistake in the wording of Rule 26 (*d*). The case is now stated for the consideration of the Court of Criminal Appeal, not for the Court for Crown Cases reserved which has now no jurisdiction or authority.

(*b*) Section 20 (4), set out, *post*, p. 156, and see *ante*, p. 3.

(*c*) Such cases have, however, occurred in practice. See R. *v.* Horn [1883], 15 Cox, C.C. 205, and R. *v.* Fredk. Hamilton [1901], 1 K.B. 740 (cases as to the power of the Court of Trial to pass certain sentences considered by the Court for Crown Cases reserved), and R. *v.* Spratling [1911], 1 K.B. 77; 27 T.L.R. 31; 5 Cr. App. R. 206; 75 J.P. 39 (a case as to the power in a Court of Quarter Sessions to sentence a convicted person who on conviction had entered into recognizances under the Probation of Offenders' Act 1907, but on breach of one of the terms of the recognizance was brought up for sentence, considered by the Court of Criminal Appeal).

(*d*) See R. *v.* Spratling, *supra*.

(*e*) There are four instances only: R. *v.* Turner [1910], 1 K.B. 346; 3 Cr. App. R., 103; R. *v.* Garland, [1910], 1K. B. 154; 3 Cr. App. R., 199; R. *v.* Spratling, *supra*; R. *v.* Sarah Jones, Aug. 1911.

the questions raised at the trial before the Court. It is, however, still useful, and if the person convicted does not intend to avail himself of his right to appeal, resort must necessarily be had to it where it is desired by the Court of Trial to have the points raised settled. When the case has been drawn up and signed it is sent by the Judge, or Officer of the Court of Trial, to the Registrar of the Court of Criminal Appeal (*a*), and the person on whose behalf it is stated becomes an appellant. The Registrar notifies the Governor of the Prison of the receipt of the case, if the person is in custody, and that he is now an appellant under the Act; with the result that if in custody he must be specially treated as an appellant pending the determination of the case, and the further result that in cases where he has already been sentenced, if the case goes against him and the Court of Criminal Appeal does not order to the contrary, the time he has been so specially treated does not count as part of the sentence (*b*).

Appeal upon the Certificate of the Judge of the Court of Trial.

Between cases where an appeal lies as of right and cases where it is necessary first to obtain leave to appeal, the Act puts a right of appeal against conviction where the Judge of the Court of Trial gives the appellant a certificate that his case is a fit one for an appeal to the Court of Criminal Appeal against the conviction. The certificate does away with the necessity of obtaining leave from the Court of Criminal Appeal. In a sense the Judge of the Court of Trial gives the leave. This certificate may be given where the

(*a*) No rules have been made to this effect, though they exist with regard to the statement of a case on an appeal upon an order of the Court of Criminal Appeal. See *post*, p. 85. Rules were made under the Crown Cases Act in June 1850, but are now practically obsolete. They are cited in Archbold's *Criminal Pleading, Evidence, and Practice*, 23rd edition (1905), p. 277, but are omitted from the 24th edition (1910).

(*b*) Section 14 (4), set out *post*, p. 153. This result is hardly likely to happen, as the Court would in all probability make an order that the time he has been specially treated shall count as part of the sentence.

Judge thinks it a fit case for appeal upon any ground of appeal which involves a question of fact alone, or a question of mixed law or fact or (probably), any other ground which appears to him to be a sufficient ground of appeal (*a*).

Use of Power.—This power was probably not intended to be used where a question of law alone is involved, since this ground of appeal is amply provided for by the existence of a right of appeal without any certificate and by the power to state a case under the Crown Cases Act, though in practice a certificate is sometimes given in such cases, and by the adoption of this course the Court has the advantage of a clear statement of the points raised. The power to grant a certificate was probably given to meet cases where the judge thinks the verdict an unreasonable one upon the evidence, or where for some other reason he thinks that there may possibly be a miscarriage of justice if the verdict stands, or the case is one which requires further consideration.

Form of Certificate.—The Rules made under the Act provide for the form of the certificate (*b*), and that the judge may, if he thinks it desirable, inform the person convicted before, or sentenced by him that he thinks his case is a fit one for an appeal, and may give him the certificate (*c*).

Reference by Home Secretary.

Power to Refer.—The Criminal Appeal Act gives the Home Secretary the power of coming to the Court for assistance when he is considering a petition for the exercise of His Majesty's mercy (*d*). In this it follows the precedent of

(*a*) Section 3 (*b*), *post*, p. 149. The language of this subsection leaves it open to doubt whether the Judge of the Court of Trial can give a certificate on this last general ground. In words this part of the subsection seems limited to the Court of Criminal Appeal, but on the other hand Rule 7 (*c*) *post*, p. 171, seems to imply that all the grounds mentioned in section 3 (*b*) apply to the Judge of the Court of Trial. Cf. Rule 6 (*b*), *post*, p. 171.

(*b*) Form I., *post*, p. 189.

(*c*) Rule 6 (*b*), *post*, p. 171. It is difficult to know what is the meaning or use of the words "or sentenced by him." A certificate can only be granted with regard to the conviction.

(*d*) See *ante*, p. 5.

former bills presented to Parliament, and adopts the Resolutions of the Judges as to the establishment of a Court of Criminal Appeal (*a*) though it differs somewhat from them all in the extent of the power. Under this Act the Home Secretary, on the consideration of a petition which has reference to the conviction of a person on indictment, or to the sentence (other than the sentence of death) passed on a person so convicted, may, at any time, either (1) refer the whole case to the Court, which then must hear and determine it as in the case of an appeal by a person convicted (*b*), or (2) refer a point arising in the case to the Court, for their opinion, for the purpose of getting the assistance of the Court in the determination of the petition by himself, and the Court must then consider the point so referred and furnish the Home Secretary with their opinion thereon (*c*).

The Home Secretary's powers are limited by the section conferring the power of reference to cases where a person has been convicted on indictment. But the next section (*d*) extends his power to the cases of convictions on criminal informations and coroner's inquisitions, and to cases where a person is dealt with by a Court of Quarter Sessions as an incorrigible rogue under the Vagrancy Act, 1824. As the Court has held that there can be no appeal against the conviction by an incorrigible rogue (*e*) it would seem to follow that the Home Secretary cannot, strictly speaking, refer to the Court a petition by such a person which relates only to the conviction (*f*). He cannot, of course, refer any other case where the petitioner has been convicted at petty sessions. The Home Secretary has availed himself of the power of

(*a*) Return to House of Lords, May 24, 1894, No. 127; and see Introduction by Sir H. Poland to Criminal Appeal Act, 1907, by Herman Cohen.

(*b*) Section 19 (*a*), *post*, p. 155.

(*c*) Section 19 (*b*), *post*, p. 155.

(*d*) Section 20 (2), *post*, p. 156.

(*e*) See *ante*, p. 11.

(*f*) In R. *v.* William Johnson [1909], 1 K.B. 439, the Court treated the reference as an appeal against sentence, though the real question involved was whether the conviction was right. The difficulty was got over owing to the fact that error appeared on the face of the record, and the Court therefore simply quashed the whole sentence, without substituting any other.

reference of the whole case on several occasions (*a*), and of the power of reference for the opinion of the Court on two occasions.

Effect of Reference.—When the Home Secretary adopts the former of the two courses open to him, the petitioner whose case is so referred, is to be deemed, for all the purposes of the Act and rules, a person who has obtained from the Court leave to appeal, and the Court may proceed to deal with his case accordingly (*b*). Where the Home Secretary adopts the latter course the petitioner in no wise becomes an appellant, and the Court, unless they otherwise determine, must consider the point referred to them in private (*c*).

The case referred by the Home Secretary may, by the reference, become either an appeal against the conviction or against the sentence according to the terms of the reference (*d*). It is therefore important that the nature of the reference be clearly set out. The appeal is then treated upon the same considerations as those which apply in the case of other appeals. It cannot be treated upon different considerations (*e*).

Appeals against Sentence.

A right of appeal against a sentence of preventive detention, preceded by a sentence of penal servitude, is given by the Prevention of Crimes Act, 1908 (*f*), to persons who have been convicted of the crime charged in the indictment, and of the charge of being habitual criminals contained in the indict-

(*a*) R. *v.* John Smith and Matthew Wilson [1909], 2 K.B. 756; 2 Cr. App. R. 271, 273 (irregular sentence, sentence reduced); R. *v.* William Johnson [1909], 1 K.B. 439 (sentence quashed though conviction really wrong); R. *v.* Rodda, 5 Cr. App. R. 85; (conviction quashed after petitioner had served considerable part of sentence); R. *v.* Dickman, 74 J.P. 449; 5 Cr. App. R. 135 (conviction affirmed); R. *v.* Allen, 5 Cr. App. R. 225, 227 (conviction affirmed); R. *v.* Joseph Tanner, Aug. 18, 1911, conviction quashed (not reported).

(*b*) Rule 48, *post*, p. 187.

(*c*) Rule 51, *post*, p. 187.

(*d*) The wording of subsection (*a*) of sec. 19 is somewhat curious, but the earlier part of the section clearly gives a power of reference as to the conviction or sentence. The wording of Rule 48 might be interpreted as giving the Court power to increase the sentence on a reference as to the sentence, but the question is not likely to arise.

(*e*) R. *v.* Joseph Allen and others, 5 Cr. App. R. 225, 227.

(*f*) 8 Edw. VII., c. 59, sec. 11.

ment. But the Act does not give a right of appeal against the conviction of being a habitual criminal. Leave to appeal is necessary. The section giving the right of appeal against the sentence seems to limit the right to appealing against the sentence of preventive detention only; but since that sentence depends upon a prior sentence of penal servitude, and it is difficult in actual practice to consider the two sentences apart from each other, the Court, without definitely deciding the meaning of the section, has determined that in practice a person who appeals against the sentence of preventive detention is to be considered as having also a right of appeal against the sentence of penal servitude (*a*).

Application for leave to appeal against Conviction or Sentence or both.

In all cases other than those already mentioned a convicted person has the right only of applying to the Court of Criminal Appeal (*b*) for leave to appeal (1) against the conviction upon any ground 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 (*c*), and (2) against the sentence passed on conviction, unless the sentence is one fixed by law (*d*).

Mixed Law and Fact.—It is not easy to say what is a question of mixed law and fact, or what grounds there can be other than those involving questions of law, or of fact, or of mixed law or fact. But it is safe to assume that the subsection giving the right to apply for leave to appeal was framed with

(*a*) R. *v.* Charles Smith and R. *v.* Weston [1910], 1 K.B. 17, 21; 3 Cr. App. R. 40, 42; 74 J.P. 13.

(*b*) The Judge of the Court of Trial cannot give him leave unless he be a judge of the High Court, and acts by virtue of his office as a judge of the Court of Criminal Appeal. The proper course in such a case is to give a certificate. In practice application is often made to the Judge of the Court of Trial for leave to appeal. This is, strictly speaking, the wrong application to make, though the grounds on which the Judge of the Court of Trial may give a certificate are (apparently with one exception) the same as those on which the Court of Criminal Appeal may give leave to appeal. See *ante*, p. 18.

(*c*) Section 3 (*b*), *post*, p. 149.

(*d*) Section 3 (*c*), *post*, p. 149; and see *ante*, p. 12.

the view of making the grounds on which leave could be granted as wide as possible. The appellant may, therefore, come to the Court for leave where it is doubtful whether the question involved is strictly one of law or fact, and is not shut out because it is neither, but both, or either, and he may come on any other ground which he thinks he can persuade the Court is a sufficient ground. It may be that the ground of "mixed law and fact" was intended to apply to cases where the appellant has a ground involving a question of law and another involving a question of fact; but this does not seem probable, and it is not the interpretation acted upon by the Court in practice. It is more likely that it applies to cases where misdirection is alleged, which may involve questions of law as well as of fact, or to cases, frequently met with, where it is alleged that there was no evidence to go to the jury. But in practice no difficulty arises, since the Court, so far as the question of appeal or leave to appeal is concerned, generally treats these grounds as involving questions of law, and, therefore, as giving a right of appeal.

Appeal or Application for leave to Appeal under the Children Act, 1908.

Under the Children Act, 1908, a parent or guardian of a child or young person who is ordered by a Court of Assize or Quarter Sessions to pay a fine, damages, or costs, or to give security for the good behaviour of the child, in respect of the commission of any offence by the child, may appeal against the order to the Court of Criminal Appeal, in accordance with the Criminal Appeal Act, as if he had been convicted on indictment and the order were a sentence passed on his conviction (*a*).

It is open to doubt whether this enactment gives an appeal as of right in all cases; but it seems probable that it does not, and that it means that the person against whom the order is made has the same rights under the Criminal Appeal Act as if he had been convicted on indictment and the order

(*a*) 8 Edw. VII., c. 67, sec. 99 (*b*), *post*, p. 159.

were a sentence passed upon the conviction. An appeal as of right against a sentence has been given by the Prevention of Crime Act, 1908 (*a*), but this enactment contains express words negativing the necessity of first applying for leave to appeal. It would seem, therefore, that the parent or guardian may appeal as of right against the making of the order if the grounds involve questions of law or [possibly] the judge gives him a certificate, but that otherwise he must apply for leave to appeal in the first place, either against the making of the order or the extent. On the other hand, the section is open to the construction that leave is necessary in all cases, since there is no such thing under the Criminal Appeal Act as an appeal against the sentence as of right, and the section gives him a right of appealing against the order as though it were a sentence passed on his conviction on indictment.

Time for Appealing or applying for leave to Appeal.

Time under the Act.—The time fixed by the Criminal Appeal Act for appealing or applying for leave to appeal is "within ten days of the date of conviction" (*b*). The act made no provision for applications for leave to appeal against sentence in cases where sentence is pronounced upon a day later than that upon which the conviction took place, but this omission has been rectified by the rules made under the Act.

Time under the Rules.—The rules provide that the time for appealing or applying for leave to appeal against the conviction shall commence to run from the day on which the verdict of the jury was returned, whether the Judge of the Court of Trial passed sentence or pronounced final judgment on that day or not (*c*), and that the time for appealing or applying for leave to appeal against sentence shall commence

(*a*) 8 Edw. VII., c. 59, sec. 11, *post*, p. 159.

(*b*) Section 7 (1), *post*, p. 151.

(*c*) Rule 18, *post*, p. 176. The rule does not specifically mention a conviction where there has been a plea of guilty. In such a case the time would run from the date of the plea. As to when the Court will entertain an appeal in such a case see *ante*, p. 12.

to run from the day on which the sentence was passed by the Judge of the Court of Trial (*a*).

When Certificate given.—No provision is made as to from when the time runs where the Judge of the Court of Trial gives a certificate that the case is a fit one for an appeal against the conviction. It is presumed that the time runs from the date of the conviction by virtue of section 7 (1) of the Act, though that section does not mention an appeal upon a certificate (*b*). In practice, the certificate, when completed, is often sent to the Registrar by the Judge or Officer of the Court of Trial, instead of being given to the person convicted. The latter should send in his appeal within the ten days from the date of the conviction, even if he has not received the certificate, and not wait beyond that time for its receipt.

Where Case stated.—Where a case is stated by the Judge of the Court of Trial no time limit exists under Criminal Appeal Act or Rules (*c*).

Reference by Home Secretary.—The Criminal Appeal Act expressly provides that the Home Secretary may refer a petition to the Court at any time (*d*).

Under Children Act, 1908.—In appeals under the Children Act, 1908, by a parent or guardian (*e*), the time presumably begins to run from the day the order was made. No provision is made by the Act itself, and therefore the rules under the Criminal Appeal Act would seem to apply.

Prevention of Crime Act.—In appeals against sentence under the Prevention of Crime Act, the time probably begins

(*a*) Rule 19, *post*, p. 176. This rule implies that a right of appeal against the sentence exists. This is probably a printer's error. Section 3 of the Act does not give any greater right as to the sentence than one of applying for leave to appeal. See *ante*, p. 22.

(*b*) The point is not without importance as in the case of a conviction for murder the Court has no power to extend the time.

(*c*) Under Rule 26 (*d*), where the judge states a case, the person convicted is deemed to be an appellant who has appealed against his conviction on grounds involving questions of law. In practice where he is in custody he is specially treated as an appellant from the time a notification from the Registrar to the governor of the prison of the receipt of the case reaches the governor's hands.

(*d*) Section 19, *post*, p. 155.

(*e*) See *ante*, p. 23.

to run from the date of the sentence of preventive detention, not from the date the prior sentence of penal servitude was passed. Up to the present the question has not arisen. The trial of the crime charged and of the charge of being a habitual criminal generally takes place on the same day, and the sentences are usually, and ought to be, passed at the same time. There is no power apparently to postpone the trial of the charge of being a habitual criminal (*a*).

Computation of Time.—There is no provision in the Act or Rules for the method of computation of the time fixed for appealing or applying for leave to appeal; but as the appeal or application must be commenced by sending the proper notice to the Registrar (*b*) within ten days from the date of the conviction or the passing of the sentence, according as the appeal is against the conviction or the sentence, it would seem that the ordinary rule as to computation of time applies, and that the notice must be sent not later than the tenth day after the day of the conviction or sentence, the last-mentioned day being excluded. It is possible, however, that the notice must be given in such time as to reach the Registrar in the ordinary course of post on the tenth day after conviction; but having regard to the provisions of section 15 (4) of the Act (*c*), which directs governors of prisons to cause any notice given by prisoners in their custody to be forwarded on behalf of the prisoner to the Registrar, and to Rule 4 (*b*) (*d*) which provides generally that any notice or other document required or authorised by the Act or Rules to be given or sent shall be deemed to be duly given or sent if forwarded by registered post addressed to the person to whom the notice or document is required to be given or sent, the more correct view would seem to be that an appellant in prison is in time if he gives the notice, completed, to the governor, to be forwarded to the Registrar by the governor, not later than the tenth day after the day on which the conviction took place or

(*a*) R. *v.* Jennings, 4 Cr. App. R. 120.

(*b*) Rule 17, *post*, p. 176.

(*c*) *Post*, p. 154.

(*d*) *Post*, p. 169. This rule may have been intended to apply only to notices sent *by* the Registrar, not *to* the Registrar, but probably includes both.

the sentence was passed, as the case may be. It is important, therefore, that the notice should be given to the governor to forward and not to the appellant's solicitor, if he has one. An appellant not in custody, if this view is correct, is in time if he sends the notice by post not later than the tenth day after conviction, or sentence as the case may be. This is the view adopted in actual practice, though the point has not hitherto come before the full Court for decision (*a*).

Extension of Time.—Except in the case of a conviction involving sentence of death, the time within which notice of appeal or application for leave to appeal must be given may be extended at any time by the Court of Criminal Appeal (*b*).

Mode of Appealing or applying for Leave to Appeal.

Forms to be filled up.—A person in custody who desires to appeal against the conviction or sentence must apply to the Governor of the Prison where he is in custody for the appropriate forms on which to make his appeal or application. Separate forms have been provided in the Schedule to the Rules to meet the different cases (*c*). In practice these different forms have been found to be somewhat unnecessary, and a simpler form has been drawn up by the Registrar, and approved by the Court, which embodies the material parts of all the other forms except an application for extension of time (*d*). An appellant may, therefore on the same form now appeal against the conviction on grounds involving questions of law, or with the certificate of the Judge; apply for leave

(*a*) As already stated the question may be one of the utmost importance in the case of an appeal against a conviction for murder, as the Court has no power in such cases to extend the time. See *post*, p. 63.

(*b*) Section 7 (1), *post*, p. 151. As to principles and practice relating to extension of time, see *post*, p. 63.

(*c*) See Rules 17, 24, and 25 (*a*). The forms on the Schedule are appeal against conviction on grounds involving questions of law, Form IV.; appeal against conviction upon a certificate of the Judge of the Court of Trial, Form V.; application for leave to appeal against conviction on grounds involving questions of fact or mixed law or fact, Form VI.; application for leave to appeal against sentence on all, Form VII.; application for extension of time, Form IX.

(*d*) Form XXXIV., *post*, p. 210.

to appeal against conviction on grounds involving questions of fact or mixed law and fact; and appeal or apply for leave to appeal against the sentence. It is only necessary to fill up other forms when the appellant is out of time (*a*), or desires to apply for bail (*b*), or for leave to call witnesses (*c*). In these cases additional forms are supplied to the appellant by the Governor, and should be sent, where possible, with the form of appeal (*d*). An application for extension of time must be sent with the notice of appeal. The new form has also the advantage that it gives the Registrar the information it has been found necessary to obtain from the appellant. The form must be filled up as accurately as possible.

Duty of Governor of Prison.—It is the duty of the Governor to supply the appellant with the proper forms and instructions, and to see that the formal parts of the documents are properly filled up (*e*). When completed and signed it is his duty to forward them to the Registrar in a registered envelope. Giving the form or forms to the Governor marks the commencement of the appeal or application (*f*).

Grounds for the Appeal.—The grounds in support of the appeal or application should be stated as clearly as possible, and in all cases must be stated in writing (*g*). The appellant may also set out on the same form his whole case and argument in writing instead of presenting it to the Court orally (*h*); and where he is in custody and is unrepresented, and is not entitled or has not obtained leave to be present at the consideration of his case by the Court, he must set it out in writing (*i*).

It is important that all the grounds should be stated in the notice of appeal, as on the hearing of the appeal the Court, in a proper case, may refuse to give effect to grounds not

(*a*) Form IX., *post*, p. 195.
(*b*) Form XXXV., *post*, p. 211.
(*c*) Form XXVI., *post*, p. 206.
(*d*) Rule 24, *post*, p. 177.
(*e*) Section 15 (4) and instructions to Governors issued by the Registrar with the sanction of the Prison Commissioners, *post*, pp. 154, 221.
(*f*) Rule 17, *post*, p. 176. So far as special treatment as an appellant is concerned the person convicted becomes an appellant when he signs his notice of appeal.
(*g*) See Form XXXIV., *post*, p. 210.
(*h*) Section 7 (1), *post*, p. 151.
(*i*) Rule 43 (*a*), *post*, p. 186.

raised in the notice, but raised by counsel at the hearing (*a*). The Court may take into consideration against the appellant the statements made by him on his notice in determining whether or not there has been a miscarriage of justice (*b*).

Where misdirection, or wrongful reception or rejection of evidence, is alleged as a ground, the Court requires particulars of the alleged misdirection to be furnished to the Registrar, on the notice of appeal or as soon after as is possible. The particulars must indicate the nature of the misdirection or the evidence wrongfully received or rejected, and should give references to the passages in the summing up complained of or the name of the witness referred to where this is possible (*c*).

Signature of Notice.—The notice of appeal or application for leave to appeal or of extension of time must be signed by the appellant himself (*d*) except that (1) where he is unable to write he may affix his mark, instead of his signature, in the presence of a witness who must attest the mark (*e*); (2) where a plea of insanity has been set up at the trial the notice may be drawn up and signed by his solicitor or other person authorised to act on his behalf (*f*); (3) if the appellant be a corporate body the notice may be signed by its secretary, clerk, manager, or solicitor (*g*). Any other notice required or authorised to be given for the purpose of the Act or Rules may be signed by the appellant's solicitor (*h*).

Forwarding Notice to Registrar.—Any notices required or authorised to be given by the Act or Rules are deemed to be duly given or sent if forwarded by registered post addressed to the persons to whom the notice or other document is required, or authorised to be given or sent (*i*). All notices

(*a*) See R. *v.* Marshall, 74 J.P. 380; 5 Cr. App. R. 25, 28. But where the appellant is without means to procure legal aid and has drawn his own notice, the Court does not, as a rule, confine him to the grounds stated in his notice. Many of the successful appeals have succeeded on grounds of which the appellant was ignorant, but which were raised by the Court or Counsel for him.

(*b*) See R. *v.* Nicholls, 73 J.P. 11; 25 T.L.R. 657; 1 Cr. App. R. 167, 168.

(*c*) Direction given Nov. 28, 1910, see 6 Cr. App. R. 1.

(*d*) Rule 4 (*a*), *post*, p. 169.

(*e*) Rule 4 (*c*), *post*, p. 170.

(*f*) Rule 4 (*d*), *post*, p. 170.

(*g*) Rule 4 (*e*), *post*, p. 170.

(*h*) Rule 4 (*a*), *post*, p. 169.

(*i*) Rule 4 (*b*), *post*, p. 169.

required or authorised to be given to the Court must be addressed to the Registrar of the Court of Criminal Appeal, London (*a*).

Non-compliance with Rules.—Where non-compliance, on the part of the appellant with the rules or practice is not, in the opinion of the Court or a Judge thereof, wilful, and is capable of waiver or remedy by amendment or in some other way the Court or Judge may, through the Registrar, direct the appellant to remedy the non-compliance (*b*). Nor will the Court be over strict as to the formal parts of the notice, but will have regard to the grounds as well as the formal parts in determining what the appellant desires (*c*).

Where Leave granted.—Where an application for leave to appeal is granted it is not necessary for the appellant to fill up any other notice, as his notice of application is deemed to be a notice of appeal (*d*).

Special Requirements where Fine imposed.—There are special provisions with regard to appeals where a person has been sentenced to the payment of a fine, and on default of payment to imprisonment, instead of being sentenced to imprisonment simply. The Rules made under the Act provide that where the convicted person remains in custody in default of payment, he is to be deemed for all the purposes of the Act and Rules to be a person sentenced to imprisonment (*e*). If he intimates to the Judge of the Court of Trial that he intends to appeal to the Court of Criminal Appeal against the conviction on grounds involving questions of law alone (*f*), or the Judge gives him a certificate that his case is, in his opinion, a fit one for an appeal (*g*) (but not apparently where the person convicted intimates his intention of applying to the Court of Criminal Appeal for leave to appeal on grounds involving questions of fact), the Judge of the Court of Trial may, if he thinks right so to do, order the person convicted to enter into recognizances, in such amount and with or without sureties in each amount as the Judge may think right, to prosecute the appeal. He may further order, as a condition

(*a*) Rule 4 (*a*), p. 169.
(*b*) Rule 45, *post*, p. 186.
(*c*) R. *v.* Milbarr, 2 Cr. App. R. 153, 154.
(*d*) Rule 22, *post*, p. 176.
(*e*) Rule 7 (*b*), p. 171.
(*f*) See *ante*, p. 14.
(*g*) See *ante*, p. 18.

of the recognizance, that if the appeal is dismissed, payment of the fine, or such other sum as the Court orders, shall be made, at the final determination of the appeal, to the Registrar or as the Court of Criminal Appeal then orders (*a*). Proper forms of recognizances are provided, and must be used (*b*). Where the Judge of the Court of Trial adopts this course the proper officer of the Court of Trial must forward the recognizances to the Registrar (*c*). If the appellant does not serve, in accordance with the Rules, his notice of appeal within ten days from the date of his conviction (*d*), the Registrar must report the omission to the Court of Criminal Appeal who may, after notice in the forms provided (*e*) has been given to the appellant and his sureties (if any), order an estreat of the recognizances (*f*) and issue a warrant for the apprehension of the appellant, or commit him to prison in default of payment of the fine, or make such other order as they think right (*g*).

If, before appealing, the person convicted has paid the fine to the person lawfully authorised to receive it, the latter must retain it until the determination of the appeal (*h*), and in the event of the appeal being successful the appellant is entitled, subject to any order of the Court of Criminal Appeal, to the return of the sum paid by him or any part thereof (*i*).

(*a*) Rule 7 (*c*), p. 171, and Form XX., p. 202.

(*b*) Rule 7 (*c*), p. 171; Form XX. (for the appellant), Form XXI. (for sureties), *post*, pp. 202, 203.

(*c*) Rule 7 (*c*), p. 171.

(*d*) Rule 7 (*e*), *post* p. 172. The actual words are "within ten days from the date of his conviction and sentence." The words "and sentence" seem to have been accidentally left in. The appeal is against the conviction only and time will, therefore, run from the date of the conviction.

(*e*) Forms XXII. and XXIII., *post*, p. 204.

(*f*) See *post*, p. 77, as to manner of estreating recognizances.

(*g*) Rule 7 (*e*), p. 172.

(*h*) Rule 7 (*a*), *post*, p. 171.

(*i*) Rule 7 (*d*), *post*, p. 171.

CHAPTER III.

EFFECT OF GIVING NOTICE OF APPEAL ON ORDERS MADE BY COURT OF TRIAL.

On Orders for Restitution.

The Act provides (*a*) for the suspension (1) of the operation of any order for the restitution of property to any person, made by the Judge of the Court of Trial, on a conviction on indictment, and (2) of the operation of the provisions of section 24 (1) of the Sale of Goods Act 1893 (*b*) as to the revesting of the property in stolen goods. The suspension lasts in any case until the expiration of ten days after the date of the conviction. Where notice of appeal or application for leave to appeal is given within ten days after the date of conviction the suspension continues till the final determination of the appeal or application (*c*), and if the conviction is quashed the order ceases to have any effect at all (*d*).

It seems clear that these provisions only apply where the appeal or application for leave relates to the conviction and that they do not apply in the case of appeals or applications for leave to appeal against the sentence (*e*). The suspension is in all cases subject to a power in the Court of Trial to direct to the contrary in any case in which in their opinion the title to the property is not in dispute (*f*).

Payments out of the moneys of the person convicted.

Where the Judge of the Court of Trial, on the conviction of a person, makes an order condemning that person to the

(*a*) Section 6, *post*, p. 150.
(*b*) 56 Vict. c. 71.
(*c*) Section 6, *post*, p. 150.
(*d*) *Ibid.*
(*e*) The Act does not in terms limit its effect to cases where the appeal or application is against the conviction, but the times referred to clearly relate to appeals against the conviction only, and not to appeal against the sentence.
(*f*) Section 6, *post*, p. 150.

payment of the whole or any part of the costs and expenses of the prosecution, for the offence of which he has been convicted, out of moneys taken from him on his apprehension or otherwise; or where the judge lawfully orders a reward to any person who appears to have been active in the apprehension of the convicted person; or where the judge makes any order under section 30 of the Criminal Law Act, 1826 (*a*); or under section 74 of the Offences against the Person Act, 1861 (*b*); or under section 9 of the Criminal Law Amendment Act, 1867 (*c*); or where the judge makes any order awarding to any person aggrieved any sum of money to be paid by the convicted person under the Forfeiture Act, 1870 (*d*); or where the judge lawfully makes any order for the payment of money by the convicted person or by any other person or any order affecting the rights or property of the convicted person, the operation of these orders is in all cases suspended till the expiration of ten days after the day on which the order was made, and where notice of appeal or application for leave to appeal against the conviction is given within ten days of the conviction (*e*), the operation of the orders is further suspended until the determination of the appeal against the conviction (*f*). But the suspension is in all these cases subject to the power of the judge making the order, to direct that its operation shall not be suspended unless the person on whom the order has been made shall, in the way and within the time the judge directs, give security, by way of undertaking or otherwise, for the payment of the amount named in the order to the person in whose favour the order has been made. The security may be to the satisfaction of this person or any other person as the judge directs (*g*).

(*a*) 7 Geo. IV., c. 64.

(*b*) 24 & 25 Vict., c. 100, *post*, p. 161.

(*c*) 30 & 31 Vict., c. 35, *post*, p. 161.

(*d*) 33 & 34 Vict., c. 23, *post*, p. 162.

(*e*) The words used in the rule are, "After the date of the verdict," instead of "conviction," but the rule would probably apply to a case where the defendant has pleaded guilty, and afterwards appeals against conviction on the ground of misunderstanding or mistake.

(*f*) Rule 11 (*a*), *post*, p. 173.

(*g*) Rule 11 (*d*), *post*, p. 174.

Disqualifications and other Proceedings or Claims.

So also where any disqualification, forfeiture, or disability attaches to a person convicted, by reason of the conviction, it is not to attach in any case for ten days after the conviction, nor in the event of an appeal against the conviction till the appeal is determined (*a*). But this does not affect the provisions of section 8 of the Forfeiture Act, 1870 (*b*). So also where any property, matters or things, the subject of the prosecution or connected with it, are to be, or may be ordered to be, destroyed or forfeited under the provisions of any statute, the destruction or forfeiture, or order for destruction or forfeiture, is suspended for a like period (*c*).

So also where any claim may be made or any proceedings may be taken under any statute against the person convicted or against any other person in consequence of the conviction, the proceedings are to be suspended for the like period (*d*).

Computation of the Time of Suspension.

The time during which the operation of these orders, or the effect of these statutes, is suspended commences to run from the day on which the conviction took place, and in cases where notice of appeal or application for leave to appeal against the conviction is given within ten days after the date of the day of conviction, the period of suspension continues till the determination of the appeal (*e*).

(*a*) Rule 11 (*c*), *post*, p. 173. The rule evidently uses the expression "appeal," as including an application for leave to appeal.

(*b*) Rule 11 (*c*), *supra*: for sec. 8 of the Forfeiture Act, see *post*, p. 162.

(*c*) Rule 11 (*e*), *post*, p. 174.

(*d*) Rule 11 (*f*), *post*, p. 174.

(*e*) Rule 12, *post*, p. 174. The rule in terms refers only to orders of restitution and to section 24 of the Sale of Goods Act, but it obviously applies to all the other orders and statutes mentioned above.

CHAPTER IV.

THE COURT IN RELATION TO OTHER PERSONS.

After the appellant has sent in his notice of appeal or of application for leave to appeal, as the case may be, he has little more to do. But it is obvious that there is much to be done in order that the court may have before it all it requires for the proper consideration and determination of the case. The Act and Rules have, therefore, imposed duties on the Registrar, Judges and Officers of the Court of Trial, short-hand writers, the person responsible for the prosecution or the Director of Public Prosecutions, the Prison Commissioners, and Governors of Prison and the Police. It is convenient to consider these duties under the heads of the persons, other than the Registrar, upon whom they are imposed.

The Judge of the Court of Trial:—Notes and Report.

The expression "Judge of the Court of Trial" means the judge or chairman of any court from the conviction before or the sentence of which a person desires to appeal under the Act (*a*).

The Act makes it obligatory for the Judge of the Court of Trial to furnish to the Registrar, in accordance with the rules made under the Act (1) his notes of the trial of any person convicted before or sentenced by him if notice of appeal or of application for leave to appeal against the conviction or sentence has been received by the Registrar, and (2) a report giving his opinion upon the case or upon any point arising in the case (*b*). The Rules applicable to this section of the Act make it incumbent upon the Registrar to ask the Judge of

(*a*) Rule 2 (*a*), *post*, p. 168. (*b*) Section 8, *post*, p. 151.

the Court of Trial for his notes of the trial when he has received a notice of appeal or a notice of application for leave to appeal, or a notice of application for extension of time, or when the Secretary of State exercises his power of referring to the Court a petition for the exercise of His Majesty's mercy (*a*), but direct that he *may* ask for a report under the same circumstances or whenever he deems it necessary for the proper determination of an appeal or application or for the due performance of the duties of the Court of Criminal Appeal, and that he *shall* ask for the report on any appeal when the Court or a judge thereof directs him so to do. The report must be in writing, and must give the opinion of the Judge of the Court of Trial upon the case tried before him generally, or upon any point arising in the case made by the appellant on appeal (*b*). The rule makes it incumbent upon the judge to furnish a report to the Registrar, when he asks for it. If the Registrar does ask for a report, he must send to the judge a copy of the notice or notices received by him, or any other document or information he considers material or which he is directed by the Court of Appeal to send or with which the Judge of the Court of Trial may request to be furnished by the Registrar in order to enable the judge to deal in his report with the case generally or any point arising thereon (*d*). The report is made to the Court, and may not be furnished by the Registrar to any person without leave of the Court or a judge thereof (*e*).

In practice, where a transcript of the shorthand notes of the trial is ordered by the Registrar, the judges' notes of the trial are rarely referred to by the Court of Appeal, but where the transcript is not obtained the judge's notes are essential. The judge, as soon as the notice is received by the Registrar, is invited to make a report if he desires to do so. A copy of the notice is sent with the request, for the report and any other document or information in the Registrar's possession is furnished to the judge upon his request. The report is often of great assistance to the Court, especially when it gives the

(*a*) Rule 14, *post*, p. 175.
(*b*) Rule 15 (*a*), p. 175.
(*c*) Rule 16, p. 175.
(*d*) Rule 15 (*b*), p. 175.

Court information which cannot be gathered from the transcript, *e.g.* the demeanour of the witnesses, etc.

Certificate of Judge.

When the judge desires to give a certificate in the case of any person convicted before him that, in his opinion, the case is a fit one for an appeal to the Court of Appeal (*a*), the rules provide that the judge may so inform the person convicted and may give the certificate to him (*b*). In practice the certificate is often forwarded by the judge or officer of the Court of Trial to the Registrar, and this is perhaps the better course to adopt.

Request by Court of Appeal to state a Case.

In the case of an appeal against conviction on grounds involving questions of law alone, which the Registrar does not think unsubstantial, the Court of Appeal may, upon the application of the appellant or respondent, or upon the report of the Registrar, order that the points of law raised in the appeal be dealt with by way of a case stated under the Crown Cases Act (*c*). If such an order is made, the Registrar must notify the Judge of the Court of Trial of it, and to enable him to state the case must send him a copy of the notice of appeal and any other information or material which the Registrar thinks necessary or the judge requires (*d*).

When the case has been stated the Judge of the Court of Trial must send it to the Registrar, and return with it the documents or other material received from the Registrar (*e*).

Duties as to Orders of Restitution and Compensation.

As has already been pointed out, the Act and Rules provide for the suspension of the operation of orders made by the Judge of the Court of Trial for the restitution of

(*a*) See *ante*, p. 18, and for Form see Form I., *post*, p. 189.
(*b*) Rule 6 (*b*) *post*, p. 171.
(*c*) Rule 26 (*a*), *post*, p. 178. See also *post*, p. 85.
(*d*) Rule 26 (*b*), *post*, p. 178.
(*e*) Rule 26 (*c*), p. 178. As to the statement of a case on the judge's own initiative, see *ante*, p. 16.

property, the payment of costs or rewards out of the moneys of the person convicted before him and similar orders (*a*). In the cases where he makes a restitution order, or the Sale of Goods Act operates to that effect, the judge has power, in cases where he thinks the title to the property is not in dispute, to direct that the order or Act shall operate immediately, or at any time shorter than the time specified as the duration of the suspension (*b*). Where he exercises this power, but thinks that the property or a sample or portion or facsimile representation of it is reasonably necessary to be produced for use at the hearing of an appeal, he must give such directions to or impose such terms upon the person in whose favour the restitution order is made, or the Sale of Goods Act operates, as he thinks right in order to secure the production of the sample portion or facsimile representation for use at the hearing of the appeal, if there should be one (*c*).

So also where the judge makes any order for payment to be made out of the moneys of the convicted person (*d*), he must give such directions as he thinks right as to the retention by any person of any money or valuable securities belonging to the person so convicted, and taken from him on his apprehension, or of any money or valuable securities at the date of the conviction in the possession of the prosecution for the period of suspension ordained by the Act and Rules (*e*). As has already been stated, the judge has power to direct that the suspension of these orders shall not take place unless security be given (*f*).

Duties as to Exhibits.

The judge may make any order he thinks fit for the custody, disposal, or production of any exhibits in the case; but unless he does make any such order, exhibits must be returned to the custody of the person producing them, or of the solicitor for the prosecution or defence respectively.

(*a*) *Ante*, p. 32.
(*b*) *Ante*, p. 32.
(*c*) Rule 10, p. 173.
(*d*) *Ante*, p. 32.
(*e*) Rule 11 (*b*), *post*, p. 173, and see *ante*, p. 32.
(*f*) Rule 11 (*d*), *post*, p. 174, and see *ante*, p. 33.

The person to whom they are returned must keep them, pending an appeal, and produce or forward them on notice from the Registrar or Director of Public Prosecutions, as and when required to do so (*a*).

The Officer of the Court of Trial:—Particulars of the Trial.

The efficient working of the Criminal Appeal Act depends to a considerable extent upon the Proper Officer of the Court of Trial, because it is to him that the Registrar has to look for a large part of the information necessary to be laid before the Court. The Rules provide that this information shall be furnished (*b*). The term "Proper Officer of the Court of Trial" means the Clerk of Assize or Clerk of the Peace, or other person for the time being acting as such in any Court of Assize or Court of Quarter Sessions, or as officer for the time being of any Court held under the Central Criminal Court Acts, 1834 to 1881, from the conviction before or the sentence of which a person desires to appeal under the Act (*c*).

The Act requires that the Registrar shall furnish Officers of the Court of Trial, amongst other persons, with the necessary forms and instructions (*d*). As soon as the notice of appeal, or application for leave to appeal, or for extension of time, is received, the Registrar, in accordance with the Rules (*e*), applies to the Officer of the Court of Trial for particulars of the trial. The form scheduled to the Rules on which particulars are to be given has been found in practice to be incomplete, and it has been amended and amplified. The new form, if properly filled up, gives the Court all the information it requires, and it is not now necessary to send with it the Judges' Calendar, as the previous convictions should be set out on the form. It is of the utmost importance that it be filled up correctly. At the same time as the request for particulars of the trial is sent, the Registrar invariably requests that the original depositions in the charges

(*a*) Rule 8 (*a*), p. 172. (*b*) *e.g.* Rules 20 & 21, p. 176. (*c*) Rule 2, p. 168.
(*d*) Sec. 15 (4), p. 154. (*e*) Rule 20 (*a*), p. 176.

upon which the appellant has been convicted be also sent (*a*), and all the indictments found against him at that Court.

Duties as to Exhibits.

Another important duty of the Officer of the Court of Trial has relation to the exhibits in the case. The Court has general power to 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 before them (*b*); and the Registrar is ordered by the Act to 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 (*c*). The Act further provides that these things 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 the Rules provide, and subject to such power as the Rules give for the conditional release of any of them from that custody (*d*).

The Rules provide that the Registrar *may*, on an application to him made by the appellant or respondent, or where he considers it necessary for the proper determination of any appeal or application, and *must*, if the Court of Appeal order him to do so, obtain and keep available for use by the Court of Appeal any documents, exhibits, or other things relating to the proceedings before the Court (*e*); and further, that the Court may at any stage of an appeal, whenever they think it necessary or expedient in the interest of justice so to do, on the application of an appellant or respondent, order any document, exhibit, or other thing connected with the proceedings to be produced to the Registrar, or before them, by any person having the custody or control thereof (*f*):

(*a*) Rule 20 (*b*), p. 167.
(*b*) Section 9 (*a*), *post*, p. 151.
(*c*) Section 15 (1), *post*, p. 153.
(*d*) Section 15 (3), *post*, p. 154.
(*e*) Rule 32 (*a*), *post*, p. 181.
(*f*) Rule 32 (*b*), *post*, p. 182.

Definition of Exhibits.—The term "exhibits" is defined by the Rules as including all books, papers, and documents, and all other property, matters and things whatsoever connected with the proceedings against any person who is entitled or may be authorised to appeal under the Act, if the same have been forwarded to the Court of Trial on the person accused being committed for trial or have been produced and used in evidence during the trial of, or other proceedings in relation to a person entitled or authorised under the Act to appeal, and any written statement handed in to the Judge of the Court of Trial by such person, but as excluding the original depositions and any indictment or inquisition against such person and any plea filed in the Court of Trial (*a*). This wide definition is not always borne in mind in actual practice, and it frequently happens that considerable difficulty occurs with regard, more especially, to statements of accused persons handed to the Judge of the Court of Trial.

In actual practice it very frequently happens that exhibits and other documents not actually made exhibits are required by the Court of Appeal, and it is therefore important that the provisions of the Act and Rules with regard to exhibits, as defined by the Rules, should be carried out so that the Court of Appeal may have available the material it needs in their consideration of appeals.

Lists of Exhibits.—It is the duty of the Coroner or Clerk to the Justice committing a person for trial to make and forward to the Court before which the person is to be tried a complete list of such exhibits as have been produced and used in evidence before the Coroner or Justice, together with the depositions (*b*). The list must be in the form provided in the schedule to the rules, subject to the necessary modifications, and must be signed by the Coroner or Clerk (*c*). The exhibits appearing on the list must be marked with consecutive numbers, so that they may be readily identified (*d*). If any

(*a*) Rule 2, *post*, p. 169.

(*b*) Rule 8 (*c*), *post*, p. 172.

(*c*) *Ib.* Form XXXIII., *post*, p. 209. This form originally given in the Schedule to the Rules has been slightly altered.

(*d*) Rule 8 (*c*), *post*, p. 172.

exhibits are put in for the first time at the trial they must be added to the list by the proper officer of the Court of Trial and marked in the same manner (*a*). When on an appeal or application having been received, the Registrar demands from the proper officer particulars of the trial it is necessary that a copy of the list of exhibits should be sent with the form on which the particulars are set out, and it is of great importance that this list should give the name and address of the person in whose custody any exhibit appearing on the list is, and what, if any, orders or directions have been made or given by the Judge with regard to it (*b*). The Judge of the Court of Trial may make any order he thinks fit for the custody, disposal, or production of any exhibits in the case (*c*), and it is the duty of the proper officer to keep a record of any such order or direction given by the judge (*d*) and to give the substance of the order on the form containing the list of exhibits (*e*).

Again, where the judge makes any order or gives any directions as to restitution of property (*f*) or for payment of costs or rewards or any other payments out of the moneys of any person convicted before him (*g*), the officer must record the order or direction, and furnish particulars of it to the Registrar on the exhibit list on his demanding particulars of the trial (*h*).

Return of Exhibits.—When the application or appeal has been finally determined the Registrar must return to the proper officer any original depositions, exhibits, indictment, inquisition, plea, or other documents usually kept by the officer or forming part of the Record of the Court of Trial, which he has obtained from him for the purposes of the application or appeal (*i*). This is, however, subject to the power of the Court to make any order as to their detention by them or any

(*a*) Rule 8 (*c*), *post*, p. 172.
(*b*) Form XXXIII. *post*, p. 209. The form originally given in the schedule to the Rules has been slightly altered.
(*c*) See *ante*, p. 38.
(*d*) Rule 8 (*b*), *post*, p. 172.
(*e*) Form XXXIII. *post*, p. 209.
(*f*) See *ante*, p. 32.
(*g*) See *ante*, p. 32.
(*h*) Rule 11 (*a*), (*b*), and Form II., *post*, pp. 173 and 189.
(*i*) Rule 36, p. 183.

other person (*a*). It is further provided that exhibits other than such documents as are usually kept by the proper officer of the Court of Trial shall, subject to any order which the Court of Appeal may make, be returned to the person who originally produced them, provided that any exhibit which is the subject-matter of any restitution order made by the Judge of the Court of Trial, or which is affected by the provisions of the Sale of Goods Act as to the re-vesting of the property in stolen goods on conviction, may not be so returned except under the direction of the Court of Appeal (*b*).

Notification of Results of Appeal.—On the final determination of an application or appeal the Registrar notifies to the proper officer of the Court of Trial the decision of the Court of Appeal in relation to the appeal or application and also any orders or directions made by the Court under the Act or Rules in relation to the application, or appeal or to any other matter connected with it, such as any orders or directions with reference to exhibits or restitution orders made by the Judge of the Court of Trial (*c*). The proper officer on receiving the notification must enter the particulars of it in the records of the Court of which he is the officer (*d*).

Certificates of Conviction.

By virtue of Rules made under the Act, the issuing of certificates of conviction by the Clerk of the Court of Trial or other officer thereof having the custody of the Records of

(*a*) R. *v.* Davis & Ridley, 2 Cr. App. R. 133. In this case deeds were ordered to be impounded, and were only given up to the parties some considerable time afterwards, on application being made by motion to the Court. In R. *v.* Higginson, 6 Cr. App. R. 64, 74, some of the exhibits were ordered to be destroyed.

(*b*) Rule 33 (*a*), *post*, p. 182. It is not quite clear what exhibits this rule refers to. It may be that it refers to exhibits kept by the proper officer pending an appeal where an order has been made to that effect, and provides for their return to the person producing them, but subject to any order of the Court of Appeal. Rule 8 (*a*), (*post*, p. 172), provides for their return to the custody by the person producing them, where no order has been made by the Court of Trial to the contrary. Any direction of the Court of Appeal, with regard to exhibits, is communicated to the proper officer when the appeal or application has been finally determined. See *post*, p. 141.

(*c*) Rule 35 (*a*), *post*, p. 182.

(*d*) Rule 35 (*b*), *post*, p. 182.

such court, or by the deputy of such clerk or other officer, is suspended in all cases for the period of ten days after the actual day on which the conviction (*a*) took place or sentence was pronounced, and, in the event of the clerk, officer, or deputy receiving information from the Registrar of the Court of Appeal within the ten days that a notice of appeal or of application for leave to appeal has been given under the Act, the issuing of the certificate is suspended until the final determination of the appeal or application (*b*). If an application is made to the clerk, officer, or deputy after the expiration of the ten days to issue a certificate, he must be satisfied, before issuing it, that no appeal against the conviction or sentence (*c*) is pending in the Court of Appeal, and, in order that he may be so satisfied, he may require from the person applying for the certificate of conviction a certificate, which that person may obtain from the Registrar to the effect that no appeal or application for leave to appeal against the conviction or sentence is then pending (*d*). After the expiration of two months from the date of conviction or sentence, a certificate may be issued by the clerk, officer, or deputy without a certificate from the Registrar being required, except in cases where the clerk has had notice from the Registrar of an appeal or application which is still undetermined (*e*).

List of Counsel and Solicitors wishing to act for Appellants.

In order to assist the Registrar in the assignment of Counsel and Solicitor to an appellant to whom legal aid may have been granted by the Court, the Clerk of Assize on each circuit in England and Wales (including, for this purpose, the Clerks of the Peace for the counties of London and Middlesex, and the Clerk of the Court of the Central Criminal Court) must cause to be prepared, in the form he thinks most con-

(*a*) "Conviction" for the purpose of this rule means the verdict of the jury or the plea of guilty, and any final judgment passed thereon (Rule 13 (*b*)). If, therefore, sentence is not pronounced on the same day as the conviction, the time of suspension must be for ten days after sentence was pronounced.

(*b*) Rule 13 (*a*), *post*, p. 174.

(*c*) See note (*a*), *supra*, as to meaning of conviction in this rule.

(*d*) Rule 13 (*b*), p. 174.

(*e*) *Ib.*

venient, a list of Counsel usually attending Courts of Assize and County and Borough Quarter Sessions held in the counties on his circuit, who are willing to act as Counsel for appellants if and when nominated, under the Act. The list must, as far as possible, show the towns or places in his circuit at which the Counsel named in it usually practice (*a*). The Clerk of Assize must also cause to be prepared a list of solicitors practising at places within the counties comprising his circuit who are willing to act as solicitors on behalf of appellants if and when nominated so to do by the Registrar, and, for this purpose, the Clerk of Assize may consult with the President of the Law Society or the President or Chairman of any Local Law Society within the counties comprising his circuit (*b*). The lists already prepared by the Clerks of Assize and furnished to the Registrar must be revised by them before the conclusion of the Winter Assize, and, when revised, forwarded to the Registrar (*c*).

Compliance with Rules.

The Act provides that officers of any court before whom an appellant has been convicted shall comply with any requirement of the rules so far as they are affected by them, and that compliance with the rules may be enforced by order of the Court (*d*). And it is provided by a rule made under the Act that the performance of any duty imposed upon any person under the Act or Rules may be enforced by order of the Court (*e*).

The Prosecutor: Defence of Appeal.

It is the duty of the proper officer of the Court of Trial to ascertain and record in every trial on indictment in his Court the name and address of the person, whether a private prosecutor (*f*) or not, who is responsible for and is carrying on

(*a*) Rule 38 (*a*), *post*, p. 183.
(*b*) *Ib.*
(*c*) *Ib.*
(*d*) Section 18 (1), *post*, p. 155.
(*e*) Rule 46, *post*, p. 187.
(*f*) A private prosecutor in this rule would appear to mean any body other than the solicitor to a Government Department or the Director of Public Prosecution. See the wording of sec. 12 of the Act, *post*, p. 152.

a prosecution in such Court, and the name and address of the solicitor, if any, for the prosecution (*a*), and to furnish this information to the Registrar on being requested for particulars of the trial (*b*).

When the notice received by the Registrar is a notice of appeal either against the conviction or the sentence as distinct from an application for leave to appeal, or when leave to appeal, either against conviction or sentence, has been given by the Court of Appeal, the Registrar must, except in certain cases, ascertain from the person specified as the person responsible for the prosecution in the particulars furnished by the proper officer of the Court of Trial, or from his solicitor, whether he intends to undertake the defence of the appeal (*c*). The Registrar need not do this where the prosecutor is the Director of Public Prosecutions or a Government Department (*d*) (including the Commissioners of Police of the Metropolis (*e*)), but instead must give them notice when an appeal has been received or when leave to appeal has been granted (*f*).

It is important that an answer shall be given by the prosecutor or his solicitor to the Registrar's question without delay, as appeals are brought on for hearing with as much expedition as possible (*g*). There is no obligation on the part of a private prosecutor (*h*) to answer in the affirmative, and even when he does undertake the defence of the appeal, the Court of Appeal has power at any stage of the proceedings in the appeal to direct that the Director of Public Prosecutions or the Solicitor of a Government Department shall take over the defence, and be responsible on behalf of the Crown for the further proceedings in the case (*i*).

(*a*) Rule 21, *post*, p. 176.

(*b*) Form II., *post*, p. 189.

(*c*) Rule 27 (*a*), *post*, p. 178.

(*d*) *Ib.*

(*e*) Rule 2 (*a*), p. 168.

(*f*) Rule 27 (*a*), p. 178. In terms this part of the rule applies only to the Director of Public Prosecutions, but it is treated in practice as applying also to the case of any other Government Department, *e.g.* the Post Office.

(*g*) In practice it not infrequently happens that delay is caused through failure to answer promptly.

(*h*) This evidently means any prosecutor other than the Director of Public Prosecutions or a Government Department.

(*i*) Rule 28, *post*, p. 179. This rule has not, up to the present, been acted upon.

Duty to supply Documents or Information.

Where the prosecutor declines to undertake the defence of the appeal he and his solicitor must, on request, furnish to the Registrar and the Director of Public Prosecutions, or to either of them, any information, documents, matters, and things in his possession or under his control connected with the proceedings against the appellant, which the Registrar or Director of Public Prosecutions may require for the purposes of their duties under the Act (*a*).

The wording of section 12 of the Act seems to imply that it is open to a Government Department other than the Director of Public Prosecutions to decline to undertake the defence of an appeal, but this is probably not the intention of the Act (*b*). No such case has occurred in practice (*c*).

Director of Public Prosecutions.

Where the prosecutor declines to undertake the defence of the appeal the Registrar must communicate that fact to the Director of Public Prosecutions (*d*). It is the latter's duty to appear for the Crown on every appeal except so far as the solicitor of a Government Department or a private prosecutor in the case of a private prosecution undertakes the defence of the appeal (*e*), and even when the defence is undertaken by a private prosecutor it is the duty of the Director to take over the defence and be responsible for the further proceedings in it if ordered by the Court of Appeal so to do (*f*).

The Act ordained that provision should be made by rules of Court for the transmission to the Director of Public Prosecutions of all such documents, exhibits, and other things

(*a*) Rule 27 (*b*), p. 179.

(*b*) Section 12, *post*, p. 152. But Rule 28, *post*, p. 179, seems to put the Government Department in the same position as the Director of Public Prosecutions.

(*c*) If it does the Government Department will presumably be under the same obligations to supply the Registrar or Director with information as a private prosecutor is. Rule 27 (*b*) probably only refers to a private prosecutor.

(*d*) Rule 27 (*a*), p. 178.

(*e*) Section 12, *post*, p. 152.

(*f*) Rule 28, p. 179.

connected with the proceedings as he may require for the purpose of his duties under the Act (*a*). No provision has been made by the rules other than that the prosecutor who declines to undertake the defence of an appeal must, on request, give the Director any information, documents, matters, and things in his possession or under his control connected with the proceedings against the appellant (*b*). Nor is any provision at all made for the case of some other Government Department conducting the defence of an appeal. In practice the Registrar furnishes the Director or the solicitor to any other Government Department with copies of all the documents in his possession in the cases where the Director or the Solicitor appear on behalf of the Crown (*c*).

Shorthand Writers.

It is perhaps not any exaggeration to say that in many of the cases coming before the Court of Appeal a verbatim account of the proceedings at the trial is indispensable. The Act, therefore, provides that a shorthand note shall be taken of the proceedings at the trial of any person (*d*), who, if convicted, is entitled or may be authorised to appeal, and that a transcript of the note or any part of it shall be made and furnished to the Registrar for the use of the Court when the Registrar directs it (*e*), or to any party interested in the trial (*f*) or to the Home Secretary (*g*). It further provides that rules of Court may be made to secure the accuracy of the notes taken and for the verification of the transcript (*h*).

Shorthand writers are appointed from time to time, as is required for the purposes of the Act, by the Lord Chancellor

(*a*) Sec. 12, *post*, p. 152.

(*b*) Rule 27 (*b*), *post*, p. 179.

(*c*) Under the rules it would seem that the shorthand writers may not supply the Director of Public Prosecutions with a transcript of the shorthand note. See Rule 5 (*f*), p. 170.

(*d*) Shorthand notes are not taken of the proceedings at the trial at petty sessions of an incorrigible rogue, as there is no appeal against the conviction; but they are of the proceedings at Quarter Sessions when such a person is sent there to be sentenced.

(*e*) Section 16 (1), *post*, p. 154.

(*f*) Section 16 (1), p. 154. As to whom it may be supplied, see *post*, p. 49.

(*g*) Section 16 (2), *post*, p. 154.

(*h*) Section 16 (3), *post*, p. 154.

and the Lord Chief Justice, for such period and on such conditions as they think fit (*a*). Applications for the appointments are made in duplicate to the Lord Chancellor and to the Lord Chief Justice.

They are allowed remuneration for taking the note and making the transcript in accordance with the scale set out in the Appendix (*b*). The account for taking the note must be made out on the form supplied by the Assistant Paymaster General and certified by the Clerk of Assize or Clerk of the Peace, as the case may be, and sent to the Assistant Paymaster General, Royal Courts of Justice, London. The account for the transcript must be sent to the Registrar of the Court of Criminal Appeal, with the transcript.

Of what Note must be taken.

A verbatim note must be taken of the charge; the plea; any application for postponement, legal aid, etc.; objections to any of the jury; the name of each witness, and every question asked him by the Judge, Counsel, Prisoner, or Jury with the answer made; any statements relating to the trial made by Counsel to the Judge or by the Judge, or by a witness or other person or by the Jury or the accused, including his address to the Jury; any objections as to the evidence adduced or proposed to be adduced; the contents of any written document read in the hearing of the Judge and Jury or a sufficient note to identify it if an exhibit; the summing up; the verdict, giving the actual replies of the Foreman; any evidence given or anything said by counsel, witnesses, judge, or the convicted person after conviction—in short all that occurs during the trial from arraignment to sentence except the speeches of counsel addressed to the jury, which need not be taken unless the Judge of the Court of Trial orders otherwise. But a note of the arguments of counsel addressed to the judge must be taken, and where any objection is taken during counsel's speeches the part of the speech objected to and the objection must be noted (*c*).

(*a*) Rule 5 (*a*), *post*, p. 170.
(*b*) *Post*, p. 233.
(*c*) Rule 52 (Additional rule 27th March 1908), *post*, p. 188, and Instructions issued by Registrar, *post*, p. 219.

Certification.—After the note has been taken it must be signed by the shorthand writer who has taken it, and certified by him to be a complete and correct note of the proceedings (*a*).

Custody.—The shorthand writer must keep the note unless and until directed by the Registrar to forward it to him (*b*). It must not be destroyed, as the Court of Appeal may, at any time, extend the time limited for appealing. Cases have already occurred in which transcripts have been required after the lapse of more than a year from the date of the trial (*c*).

The Transcript.

The transcript of the shorthand note need not necessarily be made by the shorthand writer who has taken the note, but may be made by any other competent person subject to the Registrar's directions (*d*). It may only be furnished to the Registrar; to the prosecutor (not being the Director of Public Prosecutions); to the person convicted; to any other person named in or immediately affected by any order made by the Judge of the Court of Trial; to any person authorised to act on behalf of any of these persons (*e.g.* the solicitor to any party) (*e*); and to the Home Secretary (*f*). The shorthand writer must furnish to any of these persons a transcript of the whole or any part of the note when requested to do so, on payment to the shorthand writer of his charges on the scale set out in the Appendix (*g*). The exclusion of the Director of Public Prosecutions is possibly accounted for by the provisions of section 12 of the Act, which provides that Rules of Court for the transmission (presumably by the Registrar) to the Director of Public Prosecutions of all documents, exhibits, and other things connected with the proceedings as he may require for the purpose of his duties (*h*).

(*a*) Rule 5 (*b*), *post*, p. 170. No form of certificate has been provided by the rules.

(*b*) Rule 5 (*b*), *post*, p. 170.

(*c*) In one of these cases, R. *v.* Moran, 5 Cr. App. R. 219, 222 the note had been destroyed, with the result that the Court were placed in a position of great difficulty.

(*d*) Rule 5 (*g*) and (*h*), *post*, p. 170, 171.

(*e*) Section 16 (1), *post*, p. 154, and Rule 5 (*d*), (*f*), *post*, p. 170.

(*f*) Section 16 (2), *post*, p. 154.

(*g*) Section 16 (1), *post*, p. 154. Rule 5 (*d*), *post*, p. 170, and Appendix, *post*, p. 233.

(*h*) Section 12, *post*, p. 152.

When the Registrar orders a transcript of the whole or any part of the note the transcript must be typewritten, and must be verified by the person making the transcript by a statutory declaration (*a*) that it is a correct and complete transcript of the whole (or of the part ordered) of the shorthand note purporting to have been taken, signed, and certified by the shorthand writer who took the note (*b*). The transcript must contain (*c*) the name of the prisoner; when, where, and before whom he was convicted and sentenced; and the whole of the note taken or that part of it ordered by the Registrar. The transcript must carefully distinguish between the question and answer; the questions must be numbered consecutively; and it must be made clear by whom the question was asked. When completed an index must be made. Shorthand writers are allowed remuneration for making the transcript in accordance with the scale of charges set out in the Appendix (*d*). The account must be sent to the Registrar on the form enclosed by him with the demand for the transcript. Where the Registrar has obtained the transcript, parties interested in the appeal may obtain a copy of the whole or part of it on payment to the Registrar of the charges set out in the Appendix (*e*).

Effect of Incomplete or no Note taken.—If a complete shorthand note of the proceedings at the trial has not been taken or no note at all has been taken, the trial is not thereby rendered bad so as to entitle the appellant to have the conviction quashed. The section of the Criminal Appeal Act directing that a shorthand note shall be taken is directory only (*f*). But where there is reason to suspect that there is something wrong in connection with the hearing of a case the total absence or insufficiency of a shorthand note may be very material (*g*), and the Court may be placed in a position of great difficulty.

(*a*) Form VIII., *post*, p. 195.

(*b*) Rule 5 (*b*), p. 170.

(*c*) See Instructions issued by Registrar, *post*, p. 220.

(*d*) *Post*, p. 233.

(*e*) Rule 5 (*e*), *post*, p. 170, and Appendix, *post*, p. 234.

(*f*) R. *v.* Rutter, 73 J.P. 12; 25 T.L.R. 73; 1 Cr. App. R. 174; R. *v.* James Elliott, 25 T.L.R. 572; 2 Cr. App. R. 171.

(*g*) R. *v.* James Elliott, *supra*. See also R. *v.* James Moran, 75 J.P. 110; 5 Cr. App. R. 219, 222, where the note had been destroyed, and R. *v.* Bennett, 25 T.L.R. 528; 2 Cr. App. R. 152, 182.

Prison Commissioners and Governors of Prison.

In several ways duties have been imposed upon the Prison Commissioners and Governors of Prisons by the establishment of the Court of Criminal Appeal. Where a sentence of death or corporal punishment has been passed, the sentence must 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 (*a*). In the case of a death sentence the time is within ten days of the date of the conviction, as there is no appeal against the sentence (*b*); but in the case of a sentence involving corporal punishment the time is within ten days of the sentence if passed on a later day than the conviction (*c*). Where notice of appeal or of application for leave to appeal is given, the sentence cannot be executed till the appeal is finally dismissed or the application for leave finally refused (*d*).

Duties as to Notices of Appeal.

Governors of prisons must cause the forms of notice of appeal and other documents, and the instructions issued by the Registrar with regard to them, to be placed at the disposal of persons in their custody desiring to appeal or to apply for leave to appeal (*e*). Where the appellant is unable to write, the notice of appeal and other forms may be filled up by an officer of the prison or some other person. The forms, when completed, should be carefully examined by the prison officials for the purpose of seeing that the name of the appellant and the prison, the court of trial, the nature of the offence, the sentence passed, and the date of the conviction and sentence are all correctly set out, and should then be forwarded forthwith to the Registrar by the Governor, and should not be handed to appellant's solicitors or to any other person (*f*).

(*a*) Section 7 (2) (*a*), *post*, p. 151.
(*b*) *Ante*, p. 12.
(*c*) *Ante*, p. 24.
(*d*) Section 7 (2), (*b*), *post*, p. 151.
(*e*) Section 15 (4), *post*, p. 154.
(*f*) See Instructions set out in Appendix, *post*, p. 221.

Special Treatment of Appellants.

When an appellant in custody has signed his notice of appeal or of application for leave to appeal, he becomes an appellant, and is entitled to be treated in the manner directed by the prison rules issued for the purpose under the Prison Act, 1908 (*a*). This also applies to a convicted person in custody, with reference to whose conviction a case has been stated by the Judge of the Court of Trial, and received by the Registrar (*b*), and to a convicted person whose petition for the exercise of His Majesty's mercy has been referred to the Court of Appeal for their decision (*c*). In these two last cases the Governor is informed by the Registrar of the receipt of the case or reference.

The time an appellant is specially treated in custody as an appellant does not count as part of the sentence passed upon him by the Court of Trial or the Court of Appeal, unless the Court of Appeal orders otherwise upon the determination of the appeal or application; and where no such order is made the sentence is resumed, or begins to run, if no part of it has been served, from the day on which the appeal or application is determined (*d*). In the case of an appellant admitted to bail pending the determination of the appeal, the time he is out on bail cannot be counted as part of his sentence, as there is no power in the Court of Appeal to so order. Where the appeal is dismissed, his sentence is deemed to commence or recommence, as the case may be, as from the day he is received into custody under the sentence (*e*).

Duties when Appellant admitted to Bail.

Where the Court of Appeal admits an appellant in custody to bail the Registrar notifies to the appellant, and to the Governor of the prison where he is confined, the terms and conditions of

(*a*) Section 14 (1), *post*, p. 153. See Rules set out, *post*, p. 222.

(*b*) Section 14 (4), *post*, p. 153. Rule 26 (*d*), *post*, p. 178, and see *ante*, p. 16.

(*c*) Rule 48, *post*, p. 187, and see *ante*, p. 19.

(*d*) Section 14 (3), *post*, p. 153.

(*e*) Section 14 (3), *post*, p. 153.

the order (*a*). Unless the Court makes a special order or gives special directions the appellant may enter into his recognizance before a Justice of the Peace, being a member of the Visiting Committee of and at the prison in which he is confined, or before the Governor (*b*). A form of recognizance is provided by the Rules (*c*). The Governor must forward the recognizance to the Registrar as soon as it has been taken (*d*). Even where the appellant is to be admitted to bail upon entering into his own recognizance alone, the Governor cannot release him till he receives a notice from the Registrar to that effect (*e*). The notice is alone a sufficient authority to the Governor to release the appellant (*f*).

Where an appellant on bail has been apprehended under a warrant of a Justice of the Peace and has been committed to prison by a Petty Sessional Court (*g*), the Governor of the prison to which he is committed must, unless the prison to which the appellant is committed is the same as that from which he was released on bail, notify the Prison Commissioners of the commitment, and the Prison Commissioners, subject to any order of the Court of Appeal, may then transfer the appellant to the prison from which he was released (*h*). The Governor of the prison where the appellant is in prison must also forthwith notify the Registrar of the fact (*i*).

Duties in Connection with Presence of Appellants at Proceedings before the Court.

The Criminal Appeal Act enacted that provision should be made by prison rules within the meaning of the Prison Act, 1898, 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 the Act, or to any place to which the Court of Appeal or any judge thereof may order

(*a*) Rule 29 (*c*), *post*, p. 179.
(*b*) Rule 29 (*b*), *post*, p. 179.
(*c*) Rule 29 (*g*), *post*, p. 180. Form X., *post*, p. 196.
(*d*) Rule 29 (*e*), *post*, p. 179.
(*e*) Rule 29 (*f*), p. 180.
(*f*) *Ib.*, Form No. XII., *post*, p. 197.
(*g*) See *post*, p. 76.
(*h*) Rule 29 (*k*), p. 180.
(*i*) Rule 29 (*a*), p. 179.

him to be taken for the purpose of any proceedings of the Court, and for the manner in which he is to be kept in custody while absent from prison for the purpose, and that an appellant, while in custody, in accordance with the rules made, should be deemed to be in legal custody (*a*).

The Rules made under the Act are set out in the Appendix (*b*).

Where an appellant who desires to be present at the hearing of his appeal or application is entitled or has obtained leave to be present, the Registrar must notify the Governor of the Prison where the appellant then is of the probable day on which his case will be heard, and thereupon the Prison Commissioners must take steps to transfer the appellant to a prison convenient for his appearance before the Court of Appeal at such a reasonable time before the hearing as will enable him to consult his legal adviser, if any (*c*). In practice it is rarely necessary to transfer an appellant to a special prison so that his legal adviser may see him, as facilities are given for interviews at the Royal Courts of Justice.

Notification is given by the Registrar to the Prison Commissioners and to Governors of Prisons of the cases which will come before the Court at its next sitting, and as to the appellants who are to be brought up to the Court (*d*), and it is then the duty of the Prison Commissioners to cause a sufficient number of male and female warders to attend the sitting (*e*).

The Police: Enquiries as to Means of Appellant.

The assistance of the police is needed by the Court in several ways, and the rules have, therefore, imposed certain duties upon them. When an appellant applies for legal aid on the ground that he has not sufficient means to enable him to obtain it, and the Registrar thinks it advisable that some enquiries as to his position and circumstances should be made

(*a*) Section 14 (5), *post*, p. 153.

(*b*) *Post*, p. 221.

(*c*) Rule 42 (*c*), *post*, p. 186.

(*d*) *Ib.*

(*e*) Rule 31 (*a*), *post*, p. 181.

before laying the application before the Court or judge, or when the Court or judge direct such enquiries to be made, the Registrar is empowered to ask for a report on these matters from the Chief Officer of Police of the district in which the appellant resided before conviction, or of the district from which he was committed (*a*).

Duties with regard to Witnesses.

Other important duties arise in connection with witnesses ordered to attend before the Court to give evidence (*b*), or to produce documents or exhibits in their custody or under their control (*c*). Any orders or notices required to be given to such persons are to be served personally, unless the court orders otherwise; and for the purpose of effecting due service of the orders or notices the Registrar is empowered to call in aid the assistance of the Metropolitan Police, or he may forward the order or notice to the Chief Officer of Police of the county or borough in which the person is or is believed to be, with instructions to effect personal service of it upon the person to whom it is addressed (*d*). In practice a duplicate order is sent with the original order. The duplicate is served and the original order is returned to the Registrar by the police when service has been effected, endorsed with a note as to the manner and time of service made by the person who actually effected the service.

To meet cases where the person so summoned has not the means of travelling to the place at which he is required to attend, it is provided that the police officer serving the order or notice may, if it appears to him necessary so to do, pay to the witness a sum, not exceeding the amount sanctioned by the Secretary of State (*e*), for his travelling expenses from his place of residence to the place named in the order or

(*a*) Rule 30, *post*, p. 181.

(*b*) Section 9 (*b*), *post*, p. 151. Rule 40 (*a*), (*b*), (*h*), *post*, pp. 184, 185.

(*c*) Section 9 (*a*), *post*, p. 151. Rule 32 (*b*), *post*, p. 182.

(*d*) Rule 32 (*c*), p. 182, as to service on person required to attend the Court to produce any exhibit, document, etc.; Rule 40 (*i*), p. 185, as to service on persons required to attend to give oral evidence.

(*e*) See *post*, p. 230.

notice (*a*). Where this is done the police officer must certify to the Registrar the amount so paid (*b*), and after the case has been disposed of an order is drawn upon the proper authority for its repayment (*c*).

As neither the Act nor Rules make any provision for immediate payment to the person summoned to attend of the amount of his travelling expenses for the return journey or of any sum for subsistence, it has been often found necessary in practice for the Registrar to request the police (where they think some provision is necessary) to provide the witness with a return third-class railway ticket and a sum of money for subsistence allowance, not exceeding the amount to which he is entitled under the scale (*d*).

In addition to the cases specially provided for in the Act and Rules, which are mentioned above, the Registrar frequently finds it necessary to obtain from the police information with regard to matters connected with appeals.

A representative from the Metropolitan Police attends the sittings of the Court.

(*a*) Rule 40 (*h*), *post* 185.
(*b*) *Ib.*
(*c*) See *post*, p. 141.
(*d*) See *post*, p. 230.

CHAPTER V.

CONSIDERATION OF APPLICATIONS BY THE COURT.

Applications considered by one of the Judges of the Court.

WHEN the Registrar has obtained all the documents and information relating to the case which appear necessary for the proper determination of any application or appeal that he has received, his next duty is to take the necessary steps to obtain a hearing of the matter (*a*).

Some of the powers of the Court may be exercised by any one judge of the Court in the same manner as they may be exercised by the Court itself, and subject to the same provisions (*b*), except that where the judge refuses to grant the application the appellant has the right of having the application determined by the full Court (*c*), consisting of at least three judges of the Court (*d*). In practice, applications which come within the powers of the single judge are first considered by him. The powers given to the single judge by the Act relate to applications for an extension of the time within which notice of appeal or application for leave to appeal may be given, applications for legal aid, for permission to be present at any proceedings in connection with the appeal or application at which the appellant is not entitled under the Act to be present, applications to be admitted to bail and for leave to appeal either against the conviction or the sentence (*e*). Further powers are given to one of the judges of the Court by the rules (1) to allow the non-compliance on the part of an appellant with the rules made under the Act, or with any rule of practice for the time being in force, to be remedied by amendment or otherwise in

(*a*) Section 15 (1), *post*, p. 153.
(*b*) Section 17, *post*, p. 154.
(*c*) *Ib.*
(*d*) See *ante*, p. 8.
(*e*) Section 17, *post*, p. 155, and see *post*, pp. 63 *et seq.*

cases where the judge considers the non-compliance was not wilful (*a*), and (2) to allow a transcript of the shorthand notes to be furnished free of charge to an appellant or his counsel or solicitor assigned to him under the Act (*b*).

This list of applications is almost exhaustive of the applications which an appellant can make. An important one has, however, been omitted. The single judge cannot grant or refuse an application for leave to call witnesses to be examined before the Court or a special examiner (*c*). Another application of less importance, also outside the powers of the single judge, is the application by the appellant or respondent that the questions of law raised on an appeal should be decided by the Court in accordance with the procedure under the Crown Cases Act (*d*).

Power to sit where Convenient.—It is expressly provided that the single judge exercising the powers of the Court given to him by the Act may sit and act wherever convenient (*e*). As a rule, all applications coming before him are considered in his room at the Royal Courts of Justice, not in open Court, and no list is published (*f*).

Practice.—The parties or their legal representatives are, as a rule, not present, but the judge has the power of allowing them or their legal representatives to be present if he thinks it necessary (*g*). The legal representative may be a solicitor. It is not the practice for the prosecution to be represented at the consideration of the applications of appellants by the single judge. The only cases in which the prosecution has been heard are applications for bail which the prosecution desire to oppose (*h*). The documents and other matter necessary for the proper consideration of the applications are laid before the judge by the Registrar. Where the judge grants the application his decision is final, as he is

(*a*) Rule 45, *post*, p. 186.
(*b*) Rule 39 (*c*). See *post*, p. 69.
(*c*) See *post*, p. 77.
(*d*) See *post*, p. 85.
(*e*) Rule 25 (*c*), *post*, p. 178.
(*f*) The obligation to publish lists of cases is confined to those coming before the full Court. Rule 42 (*b*), (*c*), *post*, p. 186.
(*g*) Section 11 (1), *post*, p. 152, and section 17, *post*, p. 154, and Rule 43 (*b*), *post*, p. 186.
(*h*) See *post*, p. 73.

exercising the powers of the full Court, but where he refuses it the appellant may have the application brought before the full Court (*a*).

The Registrar must notify the decision of the judge to the appellant, and in the cases where the judge has refused the application the Registrar must also send to the appellant a form for the appellant to fill up if he desires the full Court to consider the matter (*b*). Where he does so desire, the form must be returned to the Registrar duly filled up within five days from the receipt of the notification (*c*). No method of calculation of this period of time is provided. In practice the days are reckoned exclusive of Sundays and other days on which the office of the Registrar is closed, and of the day on which the notification ought to have been received in the ordinary course of post. Handing the form to the Governor to be forwarded by him to the Registrar is treated as equivalent to returning it to the Registrar (*d*).

If the appellant has any ground or matter other than that contained in the notices already sent to the Registrar by him, he must set it out on the Form in the place provided, but he should not repeat matter he has already set out. Where the appellant does not return the Form within the prescribed time the refusal of his applications by the single judge is final (*e*). No power of extension of time is given by the Act or Rules, but it may be that an accidental non-compliance with the rule comes within the powers of the Court as to waiver and amendment (*f*). Where the application is for leave to appeal, an appellant who does not desire to proceed further with it should fill up a notice of abandonment

(*a*) Section 17, *post*, p. 154.

(*b*) Rule 25 (*b*), *post*, p. 177. The Form is No. XIII. in Appendix, *post*, p. 198.

(*c*) Rule 25 (*b*), *post*, p. 177. The rule does not contain the words "from the receipt of the notification," but it is submitted that it must intend them.

(*d*) This is in analogy to the rule which prevails in civil matters in the Supreme Court. See R.S.C., O. 64, R. 2, and *Yearly Supreme Court Practice*, 1912.

(*e*) Rule 25 (*b*), (*c*), *post*, pp. 177, 178. The powers to grant extension are limited to granting extension for appealing or applying for leave to appeal.

(*f*) Rule 45, p. 186.

and give it to the Governor, to be forwarded by him to the Registrar as soon as possible (*a*).

Power to refer an Application.—In considering any application made by an appellant the single judge may take a middle course between granting or refusing it. He may think it an application which ought to come before the full Court for fuller argument, as it raises some degree of doubt, but not sufficient to justify him in giving leave to appeal. In such a case, instead of exercising his power to grant or refuse, he may refer the matter to the full Court for their consideration (*b*). This course is frequently resorted to not only in cases which cause some feeling of doubt (*c*) but also in cases where, joined with the application for leave to appeal on the facts, there is also an appeal as of right which appears to be substantial and which must come before the full Court.

Power to sit as a member of the full Court.—It is expressly provided that the judge who has refused an application may be a member of the Court constituted to hear, among other applications and appeals, any application refused by him which the appellant desires shall be submitted to the Court, and that the judge may take part in finally determining the application (*d*).

Consideration of Applications by the full Court.

The Registrar must prepare, from time to time, a list of final appeals and applications refused by the single judge which appellants desire to have submitted to the full Court, and publish it when and where (subject to the approval of the Court) he thinks convenient for giving due notice to parties interested of the hearing by the Court of the cases included in it (*e*). From this general list he must also prepare and publish in like manner a list of the appeals and applications which the Court may consider on the next day fixed for the

(*a*) Form III., p. 191. See Instructions, *post*, p. 221.

(*b*) See also *post*, p. 62.

(*c*) See R. *v.* Munns, 1 Cr. App. R. 4; R. *v.* James George, 2 Cr. App. R. 282, 284; *Times* News. July 17/09.

(*d*) Rule 25 (*b*), *post*, p. 178.

(*e*) Rule 42 (*b*), p. 186.

sitting of the Court (*a*). In practice the general list is published by being open to inspection at the Registrar's office to the parties interested, while the list for the next sitting of the Court is published several days before the sitting, by being posted up on notice boards at the Royal Courts of Justice. A notification is also sent to every appellant whose case is in the list, and copies of the list sent to the Governors of the Prison in whose custody any of the appellants are, to the Prison Commissioners, the Home Office, the Director of Public Prosecutions, and the Metropolitan Police.

In the list of cases coming before the full Court an application refused by the single judge appears as an appeal from his decision, but it is only nominally, not really, an appeal in the sense in which the word is ordinarily used (*b*). It is a further consideration by the full Court. The applications are taken before the final appeals. All the proceedings before the full Court take place in open Court, except in incest cases where evidence is given before the Court (*c*). Solicitors have no right of audience (*d*). In their consideration of cases the Court of Appeal is not confined to looking at what appears in the transcripts of the shorthand note of the proceedings at the trial, but will, in a proper case, have regard to the depositions and the statements in the notice of appeal both in favour of and against the appellant (*e*).

Extension of Time.

Power to Extend.—Except in the case of a conviction involving sentence of death the time within which notice of

(*a*) Rule 42 (*c*), p. 186.

(*b*) R. *v.* James George, *Times* News. July 17/09; 2 Cr. App. R. 282 at p. 284 per Lord Alverstone, L.C.J. In R. *v.* Martin, 2 Cr. App. R. 99, Jelf J. said that applications for leave to appeal were in the nature of applications for a rule *nisi*.

(*c*) R. *v.* Joseph Tanner, 18th August 1911 (not reported).

(*d*) Rule 43 (*b*), *post*, p. 186.

(*e*) *e.g.* R. *v.* Hillman, 1 Cr. App. R. 49; R. *v.* Rowan, 5 Cr. App. R. 279, 282 (depositions); R. *v.* Nicholls, 25 T.L.R. 65; 1 Cr. App. R. 167, 168 (notice of appeal).

appeal or of application for leave to appeal against conviction or sentence or both must be given (*a*) may be extended at any time by the Court of Appeal (*b*) or one of the judges of the Court (*c*). There is no power to extend the time in the case of a conviction involving sentence of death, and the Registrar cannot receive an appeal or application for leave to appeal in such a case (*d*). As there is no appeal against the sentence of death, the time for appealing would be taken as running from the date of the conviction in a case where sentence was pronounced on a date subsequent to the date of the plea of guilty or verdict of the jury, as the case may be (*e*).

Practice.—The application for extension must be on the form provided (*f*), and must be accompanied by a notice of appeal or application for leave to appeal against conviction or sentence, as the case may be (*g*). The reasons why the appellant did not apply to the Court before must, alone, be stated on the form on which the application for extension is made (*h*). These reasons must be substantial before the Court will grant the application. At the commencement of the operation of the Criminal Appeal Act greater leniency was shown on the ground of the newness of the Act, but the Court now requires some satisfactory explanation of the delay, and does not readily accept the excuse of ignorance of the provisions of the Act, as information as to the rights under the Act is given to prisoners when they are first received into custody, and notices placed in their cells.

In considering the application the Court now has regard to (1) the length of time that has elapsed; (2) the reason given for not applying before; and, nearly always, (3) the merits of the application for leave to appeal or of the appeal, as the case may be. Where the appellant is only a short time out of time, the application for extension is rarely considered

(*a*) See *ante*, p. 24.
(*b*) Section 7 (1), *post*, p. 151.
(*c*) Section 17, *post*, p. 154.
(*d*) See *ante*, p. 25, as to computation of time.
(*e*) The Secretary of State cannot refer a petition relating to the sentence to the Court. See section 19, *post*, p. 155.
(*f*) Form IX., *post*, p. 195.
(*g*) Rule 24, *post*, p. 177.
(*h*) See Form IX., *post*, p. 195.

without reference to the merits of the appeal or application for leave to appeal, but where the period is substantial, *e.g.* exceeds a month, the Court may regard the application for extension upon its own merits, and if no substantial reason is given, may refuse it, though in actual practice, even in these cases, regard is nearly always had also to the merits of the application for leave to appeal or appeal, as the case may be (*a*). It is impossible to lay down what are and what are not substantial reasons, as the cases vary in their circumstances. The discovery of material evidence or the receipt of material information after the trial would probably be a sufficient reason at any time for appealing or applying for leave to appeal against the conviction. Where a very substantial period of time had elapsed before applying to the Court, the excuse that the appellant thought his friends were taking up his case and doing what was necessary has been held to be quite insufficient explanation to justify extension being granted (*b*). It may be that the Court will not regard the lapse of time as being so strongly against the appellant in the case of appeals or applications for leave to appeal against sentence as in the case of appeals or applications for leave to appeal against conviction. Appellants in such cases frequently consider that their proper remedy is to petition the Crown to exercise its prerogative of mercy, and for this there is no limit of time, but in practice, though the prerogative is not interfered with by the Criminal Appeal Act, the proper course is to apply to the Court of Appeal within the time limited, and, in general, where a petition is sent to the Home Secretary soon after the conviction or sentence, the petitioner is referred by the Home Secretary to his rights under the Criminal Appeal Act.

Where an application for leave to appeal on grounds involving questions of fact has been lodged in time and subsequently, when the time has elapsed, it is desired to appeal on grounds involving questions of law or *vice versa*, the Court may, in a proper case, either extend the time for filing

(*a*) See R. *v.* Rhodes, 74 J.P. 380; 5 Cr. App. R. 35.

(*b*) R. *v.* Henry Williams, 6 Cr. App. R. 158.

another notice or amending the notice already filed (*a*), or may allow an amendment of the notice where the time cannot be extended (*b*).

Where an appellant has been refused leave to appeal by a judge of the Court of Appeal and has not returned to the Registrar within five days the form sent to him on which to signify his desire to have the application determined by the Court, the refusal of the judge is final (*c*). Possibly the special powers given to the Court by the Act and Rules to allow an extension of time do not apply to such a case, but where the non-compliance with the rule is accidental or not the appellant's fault, *e.g.* when it is given to his solicitor who omits to deliver it to the Registrar in time, it may be that the matter comes within the power of the Court to allow a remedy by waiver (*d*), or within the general power the Court has to determine, in accordance with the Criminal Appeal Act, any questions necessary to be determined for the purpose of doing justice in the case before the Court (*e*), and to exercise in relation to the proceedings of the Court any powers which may from time to time be exercised by the Court of Appeal on appeals in civil matters (*f*).

Applications for Leave to Appeal.

General Principles.—The principles which guide the single judge in granting or refusing applications for leave to appeal which come before him are practically the same as those which govern the full Court in their consideration of the applications, though some slight difference, perhaps, exists in the way the applications are regarded. In applications coming

(*a*) See R. *v.* Westacott, 1 Cr. App. R. 216; R. *v.* Walter Pope, 2 Cr. App. R. 22; R. *v.* Wm. Smith, 2 Cr. App. R. 86; R. *v.* Albert Asquith Jackson, 3 Cr. App. R. 168; R. *v.* Albrecht, 4 Cr. App. R. 231; R. *v.* Curley, 2 Cr. App. R. 96.

(*b*) R. *v.* Meade, 73 J.P. 192; 2 Cr. App. R. 47. The powers of amendment under Rule 45, *post*, p. 186, probably do not apply to such a case, though perhaps the powers of allowing amendment which are innate in the Court do.

(*c*) Rule 25 (*b*), *post*, p. 177, and see *ante*, p. 60.

(*d*) Rule 45, *post*, p. 186.

(*e*) Section 1 (7), *post*, p. 147.

(*f*) Section 9, *post*, p. 152.

before the full Court the appellants may be represented by counsel, and there is then little difference between the hearing of an application for leave to appeal and an appeal, so far as the appellant's case is concerned. As a rule, the single judge considers the papers in the case alone, and looks at them from the point of view of whether or not they disclose any sufficiently strong *prima facie* case which ought to be brought before the full Court, either by way of an application for leave to appeal or by way of an appeal (*a*). In the former case he refers the application to the full Court, in the latter he gives leave to appeal. He has not to decide whether the appeal ought or ought not to be allowed. If the papers, in his judgment, show no case he refuses leave to appeal, leaving it open to the appellant to appeal to the full Court against his decision if he thinks fit. The refusal by the full Court of leave to appeal is final, and they consider the applications rather from the point of view of whether there is a sufficiently strong *prima facie* case for the conviction being quashed, or sentence reduced, to make it desirable to have fuller argument at which the prosecution will be represented.

Leave to Appeal against Conviction.—In applications for leave to appeal against conviction both the single judge and the full Court have to be satisfied that the *prima facie* case disclosed is one which, if established and not sufficiently explained away or counterbalanced on fuller consideration, may come within the terms of the Criminal Appeal Act defining the circumstances under which appeals must be allowed or dismissed (*b*), though, perhaps, for the reasons already stated, the single judge may be satisfied with a slighter case than the full Court require (*c*).

(*a*) See R. *v.* Rose, 2 Cr. App. R. 265.

(*b*) Section 4, see *post*, p. 87.

(*c*) For illustrations compare R. *v.* Charles Allen, 1 Cr. App. R. 18; R. *v.* John Mack, 1 Cr. App. R. 132; R. *v.* James Osborne, 1 Cr. App. R. 134; R. *v.* Ashford, 1 Cr. App. R. 185; R. *v.* Randles, 1 Cr. App. R. 194; R. *v.* John Smith, 1 Cr. App. R. 203; R. *v.* Fairbrother, 1 Cr. App. R. 233; R. *v.* Martin, 2 Cr. App. R. 98 (in all of which application for leave to appeal was refused) with R. *v.* East, 1 Cr. App. R. 183; R. *v.* Dunton, 1 Cr. App. R. 165; R. *v.* James Adam Gray, 1 Cr. App. R. 154; R. *v.* Malvisi, 2 Cr. App. R. 192 (in all of which the application was granted).

Leave to Appeal against Sentence.—Applications for leave to appeal against sentence will not as a general rule be granted unless the judge or Court, as the case may be, thinks that the sentence imposed is, *prima facie*, open to objection as being wrong in law, or contrary to some principle or rule which ought generally to be followed or is substantially in excess of what the judge or Court thinks the sentence ought to have been under the circumstances of the case, so far as they are disclosed in the information then to hand (*a*).

If these conditions obtain, leave is granted in order that the matter may be further considered and additional information or matter (if any) relevant to the case may be brought to the notice of the Court by the Registrar, or by counsel for the appellant, when one is assigned, or by counsel for the prosecution, whose duty it is to be present at the hearing of the appeal (*b*).

Legal Aid.

Power to Grant.—The single judge or full Court 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 judge or Court, it appears desirable in the interests of justice that the appellant should have legal aid, and it also appears that he has not sufficient means to enable him to obtain that aid (*c*).

In order that the Court may be satisfied as to the insufficiency of the appellant's means the rules provide that, where any such question arises, the Registrar may obtain, from the Chief Officer of Police of the district in which the appellant lived before conviction or of the district from which he was committed, a report upon the appellant's means and circumstances (*d*).

Practice.—The application by an appellant for legal aid is made on the form on which he appeals or applies for leave to

(*a*) See *post*, p. 126, where the cases are examined.
(*b*) Section 12, *post*, p. 152.
(*c*) Section 10, *post*, p. 152.
(*d*) Rule 30, p. 181; and see *ante*, p. 56, as to duties of police.

appeal as the case may be. Where he does apply for legal aid he has to set out what his occupation and wages or salary or income was before the conviction, and whether he has any means to enable him to obtain legal aid for himself (*a*). Where the appellant is applying for leave to appeal the application for legal aid is considered at the same time as the application for leave to appeal, and is, to some extent, governed by the result of that application. Where leave to appeal against the conviction is granted or the application for leave is referred to the full Court or where there is an appeal as of right against the conviction and the judge or Court is satisfied as to the appellant's want of means counsel is generally assigned to the appellant. But where the application or appeal relates to the sentence alone counsel is, as a rule, only assigned in cases where there may be a question as to the legality of the sentence, or some special question of principle arises which ought to be argued on his behalf (*b*).

The Court rarely assigns a solicitor, as it generally has before it all that it needs for the purpose of arriving at its determination; but where the single judge or full Court thinks that enquiries should be made from witnesses whom the appellant seeks to call or the Court has ordered to be called, or that other enquiries should be made and information obtained of a nature not easily to be made or obtained by the Registrar, a solicitor as well as Counsel will be assigned (*c*). In such cases the solicitor acts in accordance with instructions given him by the Registrar.

Report by Registrar.—Legal aid may be assigned to an appellant who has not applied for it in any case in which it appears to the Registrar that a solicitor and counsel or counsel only ought to be assigned (*d*). In such a case the Registrar reports to that effect to the judge taking the applications

(*a*) See Form XXXIV., *post*, p. 210.

(*b*) See R. *v.* Crawley, 72 J.P. 270; 24 T.L.R. 620; 1 Cr. App. R. 4 (ordinary Rule); and R. *v.* Davies, 2 Cr. App. R. 31; and R. *v.* Davidson, 100 L.T. 623; 2 Cr. App. R. 3, 51 (instances of appeals against sentence where counsel was assigned to the appellant).

(*c*) See for instances, R. *v.* Atkins, 1 Cr. App. R. 45; R. *v.* Hewson, 1 Cr. App. R. 47; R. *v.* Donovan and Hurley, 2 Cr. App. R. 1.

(*d*) Section 15 (5), *post*, p. 154.

for the time being, and his decision upon the report is final (*a*).

Selection of Counsel and Solicitor.—Where legal aid is assigned the Court may give directions as to the stage of the appeal at which the legal aid shall commence. Subject to any special order of the Court the Registrar selects from the lists supplied to him by the Clerks of Assize (*b*) a counsel (and solicitor, if one has been assigned). In making his selection he must have regard to the place at which the appellant was tried, to the counsel and solicitor, if any, who represented the appellant at the trial, and to the nature of the appeal.

In practice, where the appellant has been represented at the trial, the counsel who appeared there for him is given the opportunity of appearing for him on the hearing of the application or appeal. The Court prefers to have before them the counsel who were at the trial, whenever possible, as questions from time to time arise as to the conduct of the case or as to matters about which the transcript of the shorthand note affords no guidance.

Documents for Counsel.—Where legal aid is assigned to an appellant copies of all necessary documents are furnished free of charge by the Registrar (*c*). The rules provide that the transcript of the shorthand notes is not to be supplied free of charge except by an order of the Court or a Judge (*d*). In practice a copy of the transcript has been found to be essential, and, with the sanction of the Court, it is always furnished by the Registrar to the counsel assigned to the appellant.

Documents for Appellants not legally represented.—Where an appellant who is not legally represented requires from the Registrar a copy of any document or exhibit in his custody for the purposes of his appeal or application, it may be supplied to him free of charge if the Registrar thinks, under all the circumstances, it is desirable or necessary that it should be supplied (*e*). The transcript of the shorthand note

(*a*) Rule 37, p. 183.
(*b*) See *ante*, p. 44.
(*d*) Rule 39 (*c*), p. 184.

of the proceedings at the trial cannot be supplied by the Registrar free of charge without an order of the Court or a judge made upon the application of the appellant (*a*).

Documents for Appellants represented by their own Solicitor and Counsel.—If the appellant is privately represented by solicitor and counsel, he or his legal representative may obtain from the Registrar copies of documents or exhibits in his possession for the purposes of the appeal, upon payment of the charges set out in the Appendix (*b*).

Application to be present at the Proceedings before the Court.

When Right to be present Exists.—An appellant in custody is entitled (if he so desires) to be present at the consideration by the Court of his appeal against conviction or sentence, except where the grounds of his appeal against conviction involve questions of law alone. Whether represented by counsel or not he is thus entitled (if he has expressed his desire) to be present when the Court considers his appeal against sentence, after leave granted, or under the Prevention of Crime Act without leave, or his appeal against conviction on grounds involving questions of fact, after leave granted; when the Home Secretary refers his petition to the Court for their decision; when the Judge of the Court of Trial gives a certificate that his case is a fit one for an appeal to the Court of Appeal, except, possibly, where the grounds set out in the certificate involve questions of law alone (*c*). He is further entitled to be present at the examination of any witnesses before the Court itself or an examiner, unless he is represented by counsel or solicitor (*d*). He is not entitled to be present on the consideration of an appeal against conviction alone, in which the grounds involve questions of law alone; or of a case stated by the Judge of the Court of Trial under the Crown Cases Act; or of applications for leave to appeal, or any

(*a*) Rule 39 (*c*), p. 184.
(*b*) Rule 39 (*a*), p. 184 and Appendix, p. 234.
(*c*) Section 11 (1), p. 152.
(*d*) Rule 40 (*j*), p. 185.

of the other minor applications arising in the application for leave to appeal or the appeal such as for legal aid, or bail (*a*); or of proceedings before a special Commissioner, to whom the Court has referred some question arising on an appeal (*b*).

Where the right to be present exists, and the desire to be present has been expressed on the notice of appeal, the Court cannot hear an appeal against conviction or sentence in the absence of the appellant unless the right to be present is waived by the appellant himself. Counsel for the appellant cannot waive the right on his behalf (*c*). But the Court has power to pass any sentence under the Act, although the appellant is not present (*d*), where the appellant is not entitled to be present, or, if entitled, has not expressed his wish to be present on his notice of appeal.

Where the right does not exist, leave may be given by the single judge (*e*) or the full Court (*f*), except that where leave to appeal and to be present at the hearing of the application for leave to appeal has been refused by the single judge and the appellant desires the determination of his applications by the full Court and to be present at the consideration by the Court, the application to be present must be considered by the full Court, and where he is legally represented special leave is necessary (*g*).

Arrangements for Appearance before the Court.—Where the right to be present exists, or leave has been given, the Registrar must notify the appellant and the Governor of the prison in which the appellant is, and the Prison Commissioners, of the probable day on which the appeal or application will be heard, and the commissioners must arrange

(*a*) Section 11 (1), *post*, p. 152. This Section seems to have anticipated that rules might be made giving an appellant the right to be present in other cases than those mentioned above, but no rule gives an absolute right to be present, though Rule 40 (*j*), p. 185, does give a right to be present when witnesses are examined, unless the appellant is represented by counsel or solicitor.

(*b*) Rule 41, *post*, p. 185, and see further, *post*, p. 84.

(*c*) R. *v.* Dunleavey [1909], 1 K.B. 200; 1 Cr. App. R. 212.

(*d*) Section 11 (2), p. 152.

(*e*) Section 17, *post*, p. 154.

(*f*) Section 11 (1), *post*, p. 152, and Rule 41, p. 185.

(*g*) Rule 25 (*b*), *post*, p. 177.

for his appearance before the Court of Appeal (*a*), or examiner (*b*), or commissioner (*c*), as the case may be.

Practice.—In practice an appellant is not allowed to be present at any of the proceedings before the single judge, and only rarely at the consideration by the full Court of applications for leave to appeal, whether against conviction or sentence, and of appeals against conviction on grounds involving questions of law alone. Up to the present no order for the examination of witnesses before an examiner, or for reference of a question arising in the appeal to a special commissioner, has been made. Where witnesses are to be called on the hearing of the appeal, the appellant is generally allowed to be present even though represented by counsel.

Appellant on Bail.—Where an appellant has been admitted to bail by one of the judges or the full Court, he must be present at each and every hearing of his appeal, and at its final determination (*d*). It is further provided that when the case is called on he must surrender himself to such persons as the Court from time to time directs, and thereupon must be searched by them, and is deemed to be in their lawful custody until further released on bail or otherwise dealt with as the Court directs (*e*). Where for any reason he is not present, the Court may, if they think it right so to do, decline to consider the appeal at all, and summarily dismiss it and issue a warrant for his apprehension; or they may consider the appeal in his absence or make any other order they think right (*f*). Notice is given by the Registrar to the appellant as to when and where he is to surrender (*g*).

Application for Bail.

Power to admit to Bail.—The single judge or the Court may admit an appellant to bail pending the determination of

(*a*) Rule 42 (*c*), p. 186.
(*b*) Rule 40 (*e*), (*j*), p. 185.
(*c*) Rule 41, p. 185.
(*d*) Rule 29 (*h*), p. 180, and Rule 31 (*b*), p. 181. See also Forms of Recognizance X. and XI., pp. 196, 197.
(*e*) Rule 31 (*b*), p. 181. In practice the appellant is made to surrender, before his case is called on, to the chief warder in attendance at the Court.
(*f*) Rule 29 (*h*), p. 180.
(*g*) Form, *post*, p. 212.

his appeal if he or they think it fitting so to do (*a*). It is necessary for an appellant to apply to the Court of Appeal for bail in all cases except where a case has been stated under the Crown Cases Act by the Judge of the Court of Trial. In such a case the provisions of that Act still apply, and the person concerning whose conviction the case is stated may be admitted to bail by the Judge of the Court of Trial. There does not appear to be any other power to admit an appellant to bail. This has been sometimes forgotten in practice, and appellants have been admitted to bail by Courts of Quarter Sessions, although no case was stated by them. A Judge of the High Court trying a case on Assize or at the Central Criminal Court may admit an appellant to bail, acting as a Judge of the Court of Criminal Appeal. In such a case the Clerk of Assize or Clerk of the Court should notify to the Registrar the terms on which the appellant has been admitted to bail, and forward to him the written recognizances, if any, entered into.

Practice.—The application for bail is usually made on a special form which may be obtained from the Governor of the prison where the appellant is in custody (*b*), but is sometimes made in Court by appellant or his legal representative (*c*).

The Court leans against granting bail, and special circumstances are required before the application will be granted (*d*). As a rule, it is only granted where there is an appeal against the conviction, either after leave granted or as of right. Where the sentence imposed is a short one and there is likely to be some unusual delay before the appeal is heard, and there is no objection or sufficient objection on the part of the prosecution, the Court sometimes grants the application. So also, apart from these considerations, if the appellant can show exceptionally strong reasons in support of his application.

The rules make no provision for the prosecutor being present at the hearing of any application, but the Court has

(*a*) Section 14 (2), *post*, p. 153. Section 17, *post*, p. 154.

(*b*) Form XXXV., *post*, p. 211.

(*c*) See Rule 29 (*i*), p. 180, which gives the full Court power to make an order admitting the appellant to bail when the appellant is before it. R. *v.* Meyer, 99 L.T. 204; 1 Cr. App. R. 4; 24 T.L.R. 620 cannot be taken as deciding the contrary.

(*d*) See R. *v.* Garnham, 4 Cr. App. R. 150.

expressed an opinion that where an application for bail is made the prosecution should, whenever possible, be informed, and if they desire to oppose it the fact should be brought to the knowledge of the judge or Court hearing the application (*a*). The judge or full Court may then allow them to be heard if he or they think fit (*b*). Where the application is granted, the judge or full Court, as the case may be, must specify the amounts in which the appellant and his surety or sureties (if any be required) are to be bound by recognizance, and must direct, where it is thought right so to do, before whom the recognizances are to be entered into (*c*). Where the recognizance is not entered into before the Court, the Registrar must notify the appellant and the Governor of the prison where he is confined the terms and conditions under which the appellant is to be admitted to bail (*d*). If an appellant who is present before the full Court is admitted by them to bail without sureties, his recognizance is usually ordered to be entered into before the Court, and he is released as soon as his recognizance has been taken by the Registrar. Failing any special direction to the contrary, the appellant may enter into his recognizance before the Governor of the prison where he is confined, or before a Justice of the Peace who is a member of the Visiting Committee of the prison, and the sureties may enter into theirs before any Petty Sessional Court (*e*). The recognizances must be in the forms scheduled to the rules (*f*). The Petty Sessional Court is entitled to have, where necessary, the assistance of the police for the purpose of enquiries as to the sufficiency of the person coming before it to enter into a recognizance as surety for the appellant (*g*). No provision has been made for notifying to such Petty Sessional Court the terms of the order of the Court of Appeal admitting the appellant to

(*a*) R. *v.* Ridley, 100 L.T. 944; 25 T.L.R. 508; 1 Cr. App. R. 113.

(*b*) Counsel for the prosecution were heard in opposition to the application by the full Court in R. *v.* Ridley, *supra*; and in R. *v.* Horner, 4 Cr. App. R. 189; *Times* News. March 23/10. In the latter case and in one other case the prosecution were also represented in the application made to the single judge.

(*c*) Rule 29 (*a*), *post*, p. 179.

(*d*) Rule 29 (*c*), *post*, p. 179.

(*e*) Rule 29 (*b*), *post*, p. 179.

(*f*) Rule 29 (*g*), *post*, p. 180. Forms X. and XI., *post*, pp. 196, 197.

(*g*) Rule 29 (*d*), *post*, p. 179.

bail, but a sealed copy of the order may be obtained from the Registrar if necessary. The Clerk must give the surety a certificate that he has been accepted by his Court as a surety for the appellant, which the surety must sign and keep (*a*). The Clerk of the Petty Sessional Court and the Governor of the prison must forward the recognizances to the Registrar as soon as they are entered into (*b*), and if the Registrar is satisfied that they are in due form and comply with the order of the Court he issues a notice (*c*) to the Governor to release the appellant. The notice is a sufficient authority for the Governor to act upon (*d*).

Failure to Surrender.—An appellant admitted to bail by the Court of Appeal must be present at the hearing of the appeal (*e*), and the Court has power, in the event of his not being present, to dismiss the appeal summarily, and issue a warrant for his apprehension, or they may consider the appeal in his absence (*f*).

Revocation or Modification of Bail.—The rules give the Court ample power to revoke or modify its order. If at any time the Court is satisfied that it is in the interests of justice so to do, the Court may revoke the order admitting the appellant to bail and issue a warrant for his apprehension and commit him to prison (*g*). Any such warrant is deemed to be, for all purposes, a warrant issued by a Justice of the Peace for the apprehension of a person charged with any indictable offence under the provisions of the Indictable Offences Act (*h*) or any Act amending it (*i*). So also where the appellant is present before the Court they may, on an application made by any person or upon their own initiative, revoke or vary the order admitting to bail or enlarge from time to time the recognizances of the appellant or his sureties or substitute other sureties for those previously bound (*j*).

Arrest by Surety.—Provision is also made for enabling

(*a*) Rule 29 (*e*), *post*, p. 179. Form XV., *post*, p. 199.
(*b*) Rule 29 (*e*), *post*, p. 179.
(*c*) Form XII., *post*, p. 197.
(*d*) Rule 29 (*f*), *post*, p. 180.
(*e*) Rule 29 (*h*), *post*, p. 180, and

(*f*) Rule 29 (*h*), *supra*. The Form of Warrant is No. XIX., *post*, p. 202.
(*g*) Rule 29 (*m*), *post*, p. 181.
(*h*) 11 & 12 Vict. c. 42.
(*i*) Rule 47, *post*, p. 187.

the surety or sureties for an appellant to take steps to secure the arrest of the appellant where they have reason to suspect that he is about to depart out of England or Wales, or in any manner fail to observe the conditions of his recognizance (*a*). In such cases they may lay an information (*b*) before a Justice of the Peace of the Petty Sessional Division in which the appellant then is or the sureties think him to be or the sureties themselves are, and the Justice of the Peace must thereupon issue a warrant (*c*) for the appellant's apprehension (*d*). When apprehended under the warrant the appellant must be brought before the Petty Sessional Court in and for which the Justice acts, or before whom the information was laid or any other Petty Sessional Court specified in the warrant; and thereupon the Court must, on verification of the information by the oath of the informant, commit the appellant to the prison to which persons charged with indictable offences before that Court are ordinarily committed (*e*). The Clerk of the Court committing him to gaol must forthwith notify the Registrar to that effect, and forward to him the information and deposition in verification, together with a copy of the Commitment (*f*). The Governor of the prison to which he is committed must also notify the Registrar that he is in his custody. The Registrar thereupon must inform the Court who may give him such directions as to the appeal or otherwise as they think fit (*g*). If the prison to which the appellant is committed is not the prison from which he was released on bail, the Governor must notify the Prison Commissioners of the commitment and, subject to any order of the Court of Appeal, they may then transfer him to the prison from which he was so released (*h*).

The Rules made under the Act are supplementary to any other rights sureties have of apprehending and surrendering into custody the person for whose appearance they have become bound and so discharging themselves of their suretyship (*i*).

(*a*) Rules 29 (*j*), (*k*), and (*o*), pp. 180, 181. See Form X., *post*, p. 196.
(*b*) Form XVI., *post*, p. 200.
(*c*) Form XVII., *post*, p. 200.
(*d*) Rule 29 (*j*), *post*, p. 180.
(*e*) Rule 29 (*k*), *post*, p. 180.
(*f*) Rule 29 (*l*), p. 181.
(*g*) Rule 29 (*n*), p. 181.
(*h*) Rule 29 (*k*), p. 180.
(*i*) Rule 29 (*o*), p. 181.

Estreat of Recognizance.—Where the appellant commits any breach of his recognizances the Court may, if they think right so to do, order the recognizances of the appellant and his surety or sureties to be estreated in the manner provided for estreating recognizances under the Crown Office Rules (*a*), that is, into the King's Remembrancer's Department of the King's Bench Division.

Leave to call Witnesses.

Power to allow Evidence.—Wide powers of calling witnesses before the Court of Appeal have been given by the Act to the Court (*b*), but not to any one judge of the Court (*c*). The Court may, 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 they may order the examination of any such witnesses to be conducted in the manner provided by the rules before any judge of the Court or before any officer of the Court or Justice of the Peace or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court (*d*).

They may also, 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 applies to that effect, they may also receive the evidence of the husband or wife (as the case may be) of the appellant in cases where such evidence could not have been given at the trial except on such an application (*e*). The Court may, therefore, order the attendance of any person who would have been a compellable witness at the trial, whether the appellant applies or not, and the attendance of the husband or wife of the appellant if the appellant applies, and he or she would have been compellable on the application of the appellant made at

(*a*) Rule 29, *post*, p. 181. See Rule 115 of Crown Office Rules, 1906, set out in Appendix, p. 188; and see Short and Mellor's *Practice of the Crown Office*, 2nd edition, p. 290.

(*b*) Section 9, *post*, p. 151.

(*c*) Section 17, *post*, p. 154, does not include this power.

(*d*) Section 9 (*b*), *post*, p. 151.

(*e*) Section 9 (*c*), p. 151.

the trial, but cannot order, though it can receive, evidence of other competent but not compellable witnesses.

There is a limitation on the power of the Court with regard to the effect of new evidence allowed to be called. It is expressly provided that in no case (*a*) shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

Practice.—Application for leave to call any witness before the full Court may be made at any time to the full Court, by the appellant or respondent or counsel on behalf of either, except that where the appellant is in custody and not legally represented the application must be made by the appellant in writing upon the form provided in the Schedule to the Rule (*b*). In practice, a written application filled up by the appellant or his legal representative is nearly always required, as in addition to the name and address, particulars must be given of the evidence the proposed witness can give and whether he was examined at the trial, and if not the reason for not calling him.

When Leave will be granted.—Appellants very frequently apply for leave to call witnesses before the Court, but the application is rarely granted. The Court leans strongly against allowing witnesses to be called before them whom it was possible to call at the trial and who were not called there, or allowing witnesses to be called before them, for further examination, who were called at the trial.

The power given to the Court was not meant to be exercised in order to supplement or support the case made at the trial or which ought to have been made there (*c*), or to set up a new case altogether (*d*). Where counsel have

(*a*) Section 9, p. 151.

(*b*) Rule 40 (*b*), *post*, p. 184. Form No. XXVI., *post*, p. 206.

(*c*) R. *v.* Bertram Mortimer, 72 J.P. 349, 352; 99 L.T. 204; 24 T.L.R. 745, 746; 1 Cr. App. R. 20, 22; R. *v.* Harry Jones, 1 Cr. App. R. 27; R. *v.* Soper, 1 Cr. App. R. 63; R. *v.* Winkworth, 1 Cr. App. R. 129, 130; R. *v.* John Watkins, 1 Cr. App. R. 183; R. *v.* McGerlynchie, 2 Cr. App. R. 183; R. *v.* Miller, 2 Cr. App. R. 213; R. *v.* Jenkins, 2 Cr. App. R. 247; R. *v.* Patrick Moran, 3 Cr. App. R. 25; R. *v.* John Brown, 4 Cr. App. R. 104, 108; R. *v.* Arthur Allen, 4 Cr. App. R. 181, 188.

(*d*) R. *v.* Donovan and Hurley, 2 Cr. App. R. 17, 18; R. *v.* Beauchamp, 2 Cr. App. R. 20.

refrained from calling witnesses at the trial, a very strong case indeed must be made out before the Court will allow them to be called on the hearing of the appeal, though it is perhaps going too far to say that in such a case the Court would under no circumstances allow them to be called (*a*). In an extraordinary case justice might require that the Court should interfere to protect an appellant from the result of bad management or misconduct of the case at the trial (*b*). In all cases some satisfactory reason why the witnesses were not called at the trial must be given (*c*), and the Court has to be convinced that the evidence it is suggested can be given is material (*d*), and if given at the trial might have affected the result (*e*). In order to satisfy themselves as to what the suggested evidence really is, the Court requires proofs to be taken from the witnesses where possible, sometimes directing them to be taken on oath, and may appoint a solicitor for the purpose where the appellant has no means (*f*). In other cases they may direct enquiries to be made and reports obtained by the Registrar (*g*) or the Director of Public Prosecutions (*h*). The mere statement of an appellant as to what evidence the suggested witnesses can give is often not reliable (*i*).

As a general rule witnesses whose presence at the trial was desired and whose suggested evidence appears to the Court to be material will be allowed to be called before the Court upon the application of the appellant, where their absence at the trial arose through some mistake (*j*) or failure

(*a*) R. *v.* John Watkins, 1 Cr. App. R. 183; R. *v.* Perry and Harvey, 2 Cr. App. R. 88, 92.

(*b*) R. *v.* Perry and Harvey *supra*, per Walton J. at p. 93.

(*c*) R. *v.* Henry Martin, 1 Cr. App. R. 33, and see cases cited in (*c*) p. 78.

(*d*) R. *v.* Bunton, 1 Cr. App. R. 165, 166; R. *v.* James Mack, 2 Cr. App. R. 114, 116; R. *v.* William Bradley, 2 Cr. App. R. 124, 128.

(*e*) R. *v.* Brinsley, 4 Cr. App. R. 102; R. *v.* Caldwell, 6 Cr. App. R. 149, 151.

(*f*) See R. *v.* Atkins, 24 T.L.R. 807; 1 Cr. App. R. 45, 46.

(*g*) See R. *v.* John Brown, 4 Cr. App. R. 104.

(*h*) See R. *v.* Laws, 24 T.L.R. 630, 631; 1 Cr. App. R. 6, 8; 72 J.P. 271.

(*i*) See R. *v.* Stutter, 5 Cr. App. R. 64.

(*j*) R. *v.* James Adam Gray, 1 Cr. App. R. 154; R. *v.* Gowlett, 1 Cr. App. R. 204, 238; R. *v.* Peter Jackson, 4 Cr. App. R. 93, 94, 95.

of proper opportunity to call them (*a*), or neglect on the part of the prosecution to call them (*b*), or a refusal to come (*c*), or other good cause (*d*).

So also where the evidence was only obtainable or has only come to light since the trial (*e*), and where, under all the circumstances of the case (*f*), especially where the appellant was not defended at the trial (*g*), the Court thinks further investigations ought to be made. In a special case where an appellant had been tried with others, and there was ground for supposing injustice might have been done through a mistake as to the appellant being defended, and the witnesses for the prosecution not having been cross-examined on her behalf, the Court allowed the material witnesses to be called before the Court for cross-examination (*h*). And where there was strong ground for thinking that a miscarriage of justice might have occurred, the Court allowed a person indicted with the appellant who declined at the trial to give evidence, but subsequently was willing to do so, to be called before them, as well as the solicitor for both, on his also expressing his willingness to give evidence (*i*).

Where an appellant has not given evidence at the trial, there must be very exceptionable circumstances before the Court of Appeal will allow him to be called before them (*j*). No witness can be called before the Court unless leave has first been obtained to call him (*k*), but in practice persons whom it is desired to call as witnesses are occasionally, in a proper case, summoned by the Registrar to attend the Court at the hearing of the Appeal to give evidence if then called upon by the Court so to do. In this way the necessity for

(*a*) R. *v.* Malvisi, 73 J.P. 392 ; 2 Cr. App. R. 192, 251.

(*b*) R. *v.* Garnham, 4 Cr. App. R. 150.

(*c*) R. *v.* Wright, Brassington and Marsh, 4 Cr. App. R. 285, 286.

(*d*) See R. *v.* Hewson, 1 Cr. App. R. 47, where letters from the witnesses were produced at the trial.

(*e*) R. *v.* Betridge, 73 J.P. 71 ; 1 Cr. App. R. 236, 238 ; R. *v.* Pitchforth, 1 Cr. App. R. 249, 251 ; R. *v.* John Edwin Jones, 2 Cr. App. R. 88, 89.

(*f*) R. *v.* Donovan and Hurley, 2 Cr. App. R. 1 ; R. *v.* Wright, Brassington, and Marsh, 4 C. 285, 286 ; R. *v.* Walker and Malyon, 5 Cr. App. R. 296.

(*g*) R. *v.* James George, 2 Cr. App. R. 282, 284.

(*h*) R. *v.* East, 1 Cr. App. R. 183, 185.

(*i*) R. *v.* Reen and Lintott, 2 Cr. App. R. 310.

(*j*) R. *v.* Malvisi, 73 J.P. 392 ; 2 Cr. App. R. 192, 251 ; R. *v.* Rubens, 2 Cr. App. R. 167 ; *Times* News. March 5/09 ; R. *v.* Caldwell, 6 Cr. App. R. 149.

(*k*) R. *v.* Laws, 24 L.T.R. 630 ; 72 J.P. 271 ; 1 Cr. App. R. 6, 8.

an adjournment of the hearing of the appeal is obviated. If the appellant is represented by his own solicitor and counsel he should have the persons he desires leave to call available to give evidence if leave be given. Witnesses are not allowed to be in Court during the hearing of the appeal before giving their evidence.

Application by Prosecution.—Applications by the prosecution to be allowed to call witnesses are rare in practice, and, as a rule, only occur where leave having been given to the appellant to call certain witnesses the prosecution consider that the Court ought also to be in possession of other evidence which may affect the new evidence to be given by the witnesses to be called on behalf of the appellant. But the Court, without any application from the prosecution, in such cases not infrequently orders such other witnesses to attend as they think ought to be before them.

The Court has power to hear all the witnesses who have given evidence at the trial, but were this course adopted it would be practically substituting trial by three judges for trial by jury, and it would have to be very clearly made out that justice required it before it would be done (*a*).

Bringing Witnesses before the Court.—Where the Court has ordered witnesses to attend to give evidence before them an order in the prescribed form (*b*) must be served upon each witness specifying the time and place at which he must attend for the purpose (*c*). This order is served by the police (*d*), and the officer serving it may, if it appears necessary so to do, provide the witness with the amount of his travelling expenses (*e*). When he does this he must certify the amount of the expenditure to the Registrar (*f*), who, at the conclusion of the appeal, draws an order upon the county or borough treasurer for its repayment (*g*). In practice, where any payment is necessary, the Registrar generally requests the police

(*a*) See remarks in R. *v.* Perry and Harvey, 2 Cr. App. R. 89, 93, and R. *v.* Colclough, *Times* News. March 19/09 ; 2 Cr. App. R. 84.
(*b*) Form XXV., *post*, p. 205.
(*c*) Rule 40 (*a*), p. 184.
(*d*) Rules 40 (*i*), p. 185, and 32 (*c*), p. 182.
(*e*) Rule 40 (*h*), p. 185.
(*f*) *Ibid.*
(*g*) Section 13 (2), *post*, p. 153, and Rule 49, *post*, p. 187.

to furnish the witness with a third-class return railway ticket and a sum for subsistence not exceeding the amount allowed under the scale of costs set out in the Appendix (*a*).

The appellant and respondent or counsel on their behalf are entitled to be present and take part in any examination of the witnesses (*b*).

Examination before Special Examiner.—Instead of ordering witnesses to be examined before themselves, the Court, as has already been noticed, may order the examination before any judge of the Court or any officer of the Court, or Justice of the Peace, or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court (*c*). Where such an order is made, the person appointed as examiner and the place where the examination is to take place must be specified, as well as the names of the witnesses (*d*). The examiner thereupon appoints the day and time for the examination, and informs the Registrar, who must then notify the appellant and respondent and their legal representatives, if any, and if the appellant is in prison, the Governor of the Prison (*e*). The Registrar must also cause to be served upon each witness the prescribed notice (*f*), which is deemed to be an order of the Court (*g*), to attend at the time and place specified. The same provisions as to mode of service and payment of travelling expenses apply as in the case of witnesses ordered to attend before the Court itself (*h*).

The appellant and respondent or counsel or solicitor on their behalf are entitled to be present at and take part in any examination of any witness ordered to give evidence before the special examiner (*i*). No special provisions have been made for bringing an appellant in custody, who has obtained leave or who is entitled to be present before the examiner, but presumably the same rules apply as in the case of appellants who are to be brought before the Court (*j*).

(*a*) *Post*, p. 229.
(*b*) Rule 40 (*j*), *post*, p. 185.
(*c*) Section 9 (*b*), *post*, p. 151.
(*d*) Rule 40 (*c*), *post*, p. 184.
(*e*) Rule 40 (*e*), p. 185. The word "or" in the rule is evidently a misprint. It ought to be "and."
(*f*) *Ib.* Form XXVII. p. 206.
(*g*) Rule 40 (*i*), p. 185.
(*h*) Rule 40 (*h*), (*i*), p. 185 and *ante*, p. 81.
(*i*) Rule 40 (*j*), *post*, p. 185.
(*j*) See *ante*, p. 71.

Witnesses examined before an examiner must give their evidence on oath, to be administered by the examiner, except where they need not be sworn if giving evidence as witnesses on a trial on indictment (*a*). The examination must be taken in the form of a deposition in the same manner as is prescribed by section 17 of the Indictable Offences Act, 1848 (*b*), and unless otherwise ordered must be taken in private. The caption in the prescribed form must be attached to the deposition (*c*).

The Registrar must furnish to the examiner any documents or exhibits, and any other material relating to the appeal the examiner requires. These must be returned to the Registrar, together with the depositions taken, at the conclusion of the examination (*d*).

Abandonment of Appeal.

An appellant at any time after he has duly given notice of appeal or of application for leave to appeal may abandon his appeal or application by giving notice of abandonment, on the form provided (*e*), to the Registrar, and upon the notice being given the appeal is deemed to have been dismissed, or the application finally refused by the Court of Appeal (*f*). Where the appellant, whose application for leave to appeal has been refused by a judge of the Court, does not desire his application considered by the full Court, he should at once give notice of abandonment (*g*). Where the notice of abandonment has been given under a misapprehension and the appellant applies to withdraw it on that ground, the Court has power to consider the appeal or application for leave to appeal as the case may be (*h*).

(*a*) Rule 40 (*f*), p. 185.
(*b*) 11 & 12 Vict. c. 42.
(*c*) Rule 40 (*g*), *post*, p. 185. Form of Caption, Form XXIV., *post*, 205.
(*d*) Rule 40 (*d*), p. 184.
(*e*) Form III., *post*, p. 191.
(*f*) Rule 23, p. 177.
(*g*) See Instructions to appellants, *post*, p. 221.
(*h*) R. *v.* Barker, 5 Cr. App. R. 283. In this case the appellant abandoned his application on the same day as, but before he had been informed that leave to appeal had been given and at once applied to withdraw the abandonment. The Court considered the appeal and quashed the conviction.

CHAPTER VI.

CONSIDERATION OF APPEALS AGAINST CONVICTION.

Power of Court to refer a question arising on an Appeal.

WHERE any question arising on an 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, the Court may order the reference of the question for inquiry and report to a special commissioner appointed by the Court, and act upon the report of the commissioner so far as they think fit to adopt it (*a*). Where such an order is made, the question to be referred and the name of the special commissioner must be specified in it. The Court may also specify in the order, or direct when they think right, whether the appellant or respondent or any person on their behalf may be present at the examination or investigation or any stage of it, and if the appellant is in custody give leave to him to be present and give the necessary directions to the governor of the prison where he is confined. They may also specify any and what powers of the Court of Appeal may be delegated to the commissioner, and may require him from time to time to make interim reports to the Court of Appeal upon the question referred to him. They may also give directions to the Registrar that copies of any report made by the commissioner shall be furnished to the appellant and respondent or to counsel or solicitor on their behalf (*b*).

At present the need for resorting to this power has not arisen.

Power to Appoint an Assessor.

The Court of Appeal may 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.

(*a*) Section 9 (*d*), *post*, p. 153. (*b*) Rule 41, *post*, p. 185.

No case rendering it necessary to use this power has yet occurred.

Power of Court to require a Case to be stated by the Judge of the Court of Trial.

Where a notice of appeal on grounds involving questions of law alone has been given, and the Registrar does not intend to act upon his power of referring the appeal to the Court for summary determination on the ground that the point raised has no substance (*a*), the appellant or respondent may at any time apply to the Court (*b*) that the questions of law raised in the appeal should be decided by the Court in accordance with the Crown Cases Act as amended by the Criminal Appeal Act; and the Court may, on such an application, or on a report made to them by the Registrar that in his opinion this procedure would be a more convenient method of dealing with the points raised on the appeal, make an order that this course be adopted (*c*).

Where the order is made the Registrar must notify the Judge of the Court of Trial of it, and forward to him, to assist him in stating the case, a copy of the notice of appeal and any other statement furnished by the appellant to the Registrar and any other information or material the Registrar thinks necessary or the judge requires (*d*). When the case has been stated the judge must forward it to the Registrar and return the documents sent to him by the Registrar. A copy of the case must be supplied by the Registrar to the appellant and respondent (*e*).

Summary Determination of Appeals involving Questions of Law.

Special powers are given by the Act with regard to appeals against conviction purporting to be on grounds

(*a*) See *infra*.

(*b*) One judge of the Court has no power to make the order. See Section 17, *post*, 154.

(*c*) Rule 26 (*a*), *post*, p. 178.

(*d*) Rule 26 (*b*), *post*, p. 178.

(*e*) Rule 26 (*c*), *post*, p. 178.

involving questions of law alone. Wherever it appears to the Registrar that any such notice of appeal does not show any substantial ground of appeal he may refer the appeal to the Court for summary determination, and if this power is exercised the Court may, if they consider the appeal is frivolous or vexatious and can be determined without adjourning it for a full hearing, dismiss it summarily without the prosecution or Director of Public Prosecutions being called upon to appear at the hearing (*a*).

The grounds of the appeal must be so lacking in substance as to be frivolous or vexatious before the Registrar has resort to this power. No notice is given to the prosecution, but counsel may appear for the appellant. If the Court does not agree with the view of the Registrar the consideration of the case is postponed to enable the prosecution to be present.

References by the Registrar are considered with other appeals coming before the Court on any day when the Court sits for the final determination of applications or appeals. Where a case is stated by the Judge of the Court of Trial under the provisions of the Crown Cases Act for the consideration of the Court of Appeal, the Registrar cannot refer it for summary determination, even if he be of opinion that the point raised by the case is unsubstantial (*b*).

Number of Counsel heard in Appeals.

In considering appeals whether against conviction (*c*) or sentence (*d*) the Court will only hear one counsel on each side.

Grounds in general on which Appeals must be allowed.

The Act has laid down specific grounds on which alone the Court can allow an appeal against conviction, and if the case before the Court cannot be brought within one or more of these grounds the Court must dismiss the appeal. Further,

(*a*) Section 15 (2), *post*, p. 154.

(*b*) Rule 26 (*d*), *post*, p. 178.

(*c*) R. *v.* Reynolds, 6 Cr. App. R. 28.

(*d*) R. *v.* Weaver, 1 Cr. App. R. 12.

even though the case may be brought within one or more of these grounds, the Court has been specially given the power to dismiss the appeal where they think no substantial miscarriage of justice has actually occurred; and where they think the appellant, though not properly convicted of the offence found against him by the jury ought to have been convicted of some other offence, they have, subject to certain conditions, the power to substitute a verdict of guilty of the other offence for the verdict found by the jury.

Leaving for the moment these special powers out of consideration the Court must quash the conviction if they think that (1) the verdict of the jury should be set aside on the ground that it is unreasonable and cannot be supported, having regard to the evidence, or that (2) 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 (3) on any ground there has been a miscarriage of justice (*a*).

The first of these grounds relates to a conclusion arrived at by the jury upon evidence proper to be given and with a proper direction by the judge; the second relates to the way the judge has dealt with any question of law which has occurred during the trial, while the third is an ill-defined, wide ground which may have relation to the conduct of the case by the judge or the jury, the prosecution or the defence, and is intended to embrace anything not coming within either of the two other grounds, which may have brought about a miscarriage of justice. But though in one sense these grounds are distinct, it is obvious that in practice they may be interdependent, and that all three may contribute to a conviction being quashed. The division is, therefore, a convenient one only, not an absolute one. Still, if this is borne in mind, it is better to consider them separately.

Subject to the special provisions of the Act the Court must, if they allow an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered (*b*).

(*a*) Section 4 (1), *post*, p. 149. (*b*) Section 4 (2), *post*, p. 149. See as to the special provisions, pp. 92-98, 107.

Verdict unreasonable or insupportable having Regard to the Evidence.

First, then, the Court must allow the appeal where 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.

This assumes that the verdict is based upon evidence proper to be given, and upon a proper direction by the judge, and the members of the Court, as three or more reasonable men have then to determine whether the verdict arrived at by the twelve jurymen was reasonably capable of being arrived at upon the evidence, or whether the evidence points so overwhelmingly the other way that all reasonable men must consider the verdict unreasonable and incapable of support. There is probably no real difference between "unreasonable" and "cannot be supported," and certainly none has been drawn in the cases which have come before the Court.

The power given to the Court under this head was capable of large application, and if so used would have made serious inroads upon the principle of "trial by jury," since, in words the Act gives power to three or more judges to call in question a verdict given by twelve jurymen on questions of fact, though the judges have not had the same opportunities of arriving at a correct judgment as the jurymen. But in practice so great has been the regard paid by the Court to "trial by jury" that cases are extremely rare in which the conviction has been quashed solely on the ground that upon the evidence properly given at the trial the verdict was unreasonable or insupportable (*a*).

It is not sufficient to establish that if the evidence for the prosecution and defence, or the matters which tell for and against the appellant, be carefully and minutely examined and

(*a*) It may perhaps be said that the conviction was quashed on this ground alone in R. *v.* John Alfred Bradley, 74 J.P. 247; 4 Cr. App. R. 228 (a case of rape); in R. *v.* John Reuben Parker, *Times* News. July 31/11 (also a case of rape), and in R. *v.* Schrager, July 17/11 (where the Judge of the Court of Trial gave a certificate that the case was a fit one for appeal).

set one against the other, it may be said that there is some balance in favour of the appellant. In this sense the ground frequently met with in notices of appeal—that the verdict was against the weight of evidence—is not a sufficient ground. It does not go far enough to justify the interference of the Court. The verdict must be so against the weight of evidence as to be unreasonable or insupportable (*a*). Nor, where there is evidence to go to the jury, is it enough in itself that the judges, after reading the evidence and hearing arguments upon it, consider the case for the prosecution an extraordinary one (*b*) or not a strong one (*c*); or that the evidence as a whole presents some points of difficulty (*d*) or the members of the Court feel some doubt whether, had they constituted the jury, they would have returned the same verdict or think that the jury might rightly have been dissatisfied with the evidence and might properly have found the other way (*e*). The jury are pre-eminently judges of the facts to be deduced from evidence properly presented to them, and it was not intended by the Criminal Appeal Act, nor is it within the functions of a Court composed as the Court of Appeal is that such cases should practically be retried before the Court (*f*). This would lead to the substitution of the opinion of a Court of three judges for the verdict of the jury. But, as will be seen later, in considering appeals based upon a wrong decision by the judge of a question of law, where the Court hold that there has been such a wrong decision, the Court have frequently to put themselves in the position of the jury, and

(*a*) R. *v.* Richman, 4 Cr. App. R. 233, 246, 247, and R. *v.* Williamson, 24 T.L.R. 619.

(*b*) R. *v.* McNair, 25 T.L.R. 228; 2 Cr. App. R. 2, 4; R. *v.* Ashford, 1 Cr. App. R. 185, *Times* News. Nov. 21/08.

(*c*) R. *v.* Newson, 2 Cr. App. R. 44; R. *v.* Thomas Wm. Simpson, 2 Cr. App. R. 128.

(*d*) R. *v.* Crook, 4 Cr. App. R. 60.

(*e*) R. *v.* Thomas Wm. Simpson, *supra*; R. *v.* Crook, *supra*; R. *v.* Graham, 74 J.P. 246; 4 Cr. App. R. 218, 221; R. *v.* Henderson, 5 Cr. App. R. 97, 98; R. *v.* Richman, 4 Cr. App. R. 233, 246, 247.

(*f*) This principle was enunciated at the first sitting of the Court, and has been referred to constantly since. See R. *v.* Williamson, 24 T.L.R. 619; R. *v.* Henry Martin, 1 Cr. App. R. 52; R. *v.* Ellwood, 1 Cr. App. R. 182; R. *v.* McNair, 2 Cr. App. R. 2; R. *v.* Walter Pope, 2 Cr. App. R. 22; R. *v.* James Mack, 2 Cr. App. R. 116; R. *v.* Jenkins, 2 Cr. App. R. 247; R. *v.* Peter Jackson, 4 Cr. App. R. 93, 95; R. *v.* Graham, 74 J.P. 246; 4 Cr. App. R. 218, 221.

further decide as a question of fact what effect upon the jury the subject matter of the wrong decision of the question of law has or would have had (*a*). So also, where new evidence is allowed, the Court have to determine what would have been its effect upon the jury.

Where Court in as good a Position as Jury.

Where the reasonableness or otherwise of the verdict depends largely on questions upon which the Court are in as good a position to form an opinion as the jury (and *a fortiori* where the Court is in a better one), and they come to an opposite conclusion upon these questions, very little if any more is required to enable the Court to quash the conviction. Thus where the question of handwriting was a very material element in a case, and the other evidence taken by itself left the question of the guilt of the appellant in doubt and the Court had the same materials before it as were before the jury, with the addition of other writing of the accused which could not well have been disguised, the Court quashed the conviction principally upon their conclusion that the writings were dissimilar, though they also held that the differences in handwriting had not been adequately and clearly dealt with in the summing up (*b*).

Where fresh Evidence allowed.

Again there may be cases, which, though they are *prima facie* proper to be determined by the jury, yet possess some elements (apart entirely from any matters within the province of the judge as opposed to the jury) which may cause the Court to think that, if the verdict stands, there may possibly be a miscarriage of justice, and which therefore call for further investigation in the way of allowing witnesses to be called and examined before the Court, or in other ways. Where new evidence is allowed and given, the Court has then to consider what would have been its effect upon the jury had it been before them, and if they come to the conclusion that there is a very strong probability that the jury would have

(*a*) See *post*, p. 103, *et seq.*
(*b*) R. *v.* Thomas Smith, 74 J.P. 54; 3 Cr. App. R. 90.

believed it and that it probably would have caused them to return an opposite verdict they will quash the conviction, but not unless (*a*). The cases in which fresh evidence will be allowed have already been considered (*b*).

Reference by Home Secretary.—Where a petition is referred to the Court of Appeal by the Home Secretary and, with the petition, reports from the police or other persons made to the Home Secretary are sent for the information of the Court, the Court will not treat the reports as evidence, but will, where it sees fit, summon the persons making them to appear before them to give oral evidence (*c*). A petition when referred to the Court becomes an appeal against conviction or sentence as the case may be (*d*) and cannot be treated by the Court upon considerations different from those applicable in the case of ordinary appeals (*e*).

Where Evidence insufficient to establish case against Defendant.

Another class of cases in which, in a sense, the verdict may be said to be unreasonable or insupportable having regard to the evidence is that in which the evidence given for the prosecution is not sufficient to establish a *prima facie* case against the accused of the commission by him of the offence charged, or, as the ground is often put, cases in which "there was no evidence to go to the jury." If in such a case the jury have returned a verdict of guilty, the verdict may be unreasonable or insupportable. But these cases in practice

(*a*) See on the one hand R. *v.* Hendry, 25 T.L.R. 635; R. *v.* Reen and R. *v.* Lintott, 2 Cr. App. R. 310; *Times* News. July 30/09; R. *v.* Walker and Malyon, 5 Cr. App. R. 296; R. *v.* Laws, 72 J.P. 271; 1 Cr. App. R. 6; R. *v.* Betridge, 73 J.P. 71; 1 Cr. App. R. 236; R. *v.* Leonard Osborne, 72 J.P. 473; 1 Cr. App. R. 144; R. *v.* Malvisi, 73 J.P. 392; 2 Cr. App. R. 251; R. *v.* Nicholson, 2 Cr. App. R. 195; R. *v.* Witton, 6 Cr. App. R. 149; R. *v.* Haertsch, *Times* News. July 29/11; R. *v.* Schmidt, *Times* News. Aug. 19/11, in all of which the conviction was quashed as a result of the fresh evidence adduced before the Court. And see, on the other hand, R. *v.* Hewson, *Times* News. July 18/08, 1 Cr. App. R. 70; R. *v.* James Adam Gray, 1 Cr. App. R. 225; R. *v.* Gowlett, 1 Cr. App. R. 238; R. *v.* Peter Jackson, 4 Cr. App. R. 93; R. *v.* Colclough, 2 Cr. App. R. 84, in all of which the conviction was upheld.

(*b*) *Ante*, p. 78.

(*c*) R. *v.* Dickman, 74 J.P. 449, 451; 26 T.L.R., 640, 642; 5 Cr. App. R. 135, 137, 139, 142.

(*d*) See *ante*, p. 21.

(*e*) R. *v.* Joseph Allen and others, 5 Cr. App. R. 225, 227.

rather belong to the head of wrong decision on a question of law, and are dealt with there (*a*) inasmuch as it is the duty of the judge, upon a proper submission being made to him at the close of the case for the prosecution, to direct the jury to return a verdict of not guilty, and his refusal to do so is a wrong decision on a question of law.

If the evidence given does not amount to more than establishing a case of suspicion, and the Court think that the offence charged is one which required strict proof, they may quash the conviction (*b*).

Where the case made against the appellant at the trial is proved at the hearing of the appeal to have failed, a fresh case cannot be set up by the prosecution on the appeal, just as the appellant is not entitled to set up an entirely different defence (*c*).

Application of the Proviso to Section 4 (1) *of the Act.*

The power given to the Court of dismissing an appeal against conviction where they think no substantial miscarriage of justice has actually occurred can hardly apply to cases where they come to the conclusion that the verdict is unreasonable or insupportable, having regard to the evidence. If the verdict is unreasonable there must have been a miscarriage of justice, so far as the trial on that indictment is concerned. But the Court has other powers which may apply in some of these cases, and prevent the appellant being acquitted altogether.

Where Verdict wrong on one Count or part of the Indictment.

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 it, the Court may (not, as one would have expected,

(*a*) See *post*, p. 100.

(*b*) R. *v.* Pavitt, 6 Cr. App. R. 182 (case under the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112) sec. 7 (3)).

(*c*) R. *v.* Winkworth, 6 Cr. App. R. 179.

substitute a verdict of guilty on the other counts or part of the indictment, but) 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 (*a*). The wording of this sub-section of the Act is not free from difficulties. It is not easy to understand why the Court was not given the power of altering the verdict, as is done in the next sub-section (*b*). Again, nothing is said as to whether the condition that on the finding of the jury it must appear to the Court that the jury must have been satisfied of facts which proved the appellant guilty on the other count or counts, obtains or not before the Court can use the power given to them. Nor is there any restriction in words upon the Court's power to increase the sentence. The sub-section was probably intended to meet cases where the indictment alleged in one count a graver offence and in another a minor offence of the same character, or where the indictment charged in different counts the same offence, *e.g.* conspiracy as having been committed by the appellant in conjunction with different persons, or where several different criminal acts, *e.g.* obtaining different goods by the same false pretences, were alleged against the appellant in different counts of the indictment, or where the indictment in the same count charges two offences, *e.g.* housebreaking with intent to steal and larceny in the house, and the Court, on consideration of the appeal, came to the conclusion that the real offence committed was the offence or conspiracy with A B and not with C D, or some of the obtainings, but not all, or the larceny and not the housebreaking. Instead of allowing the appeal in such cases, the Court is to dismiss the appeal against conviction, but reduce the sentence where justice seems to demand it. Thus where the indictment contains counts for assault occasioning actual bodily harm and for common assault, and a general verdict of guilty has been found, but the Court think the evidence proved the common assault only, the Court under this sub-section

(*a*) Section 5 (1), *post*, p. 150. (*b*) Section 5 (2), *post*, p. 150.

can dismiss the appeal against conviction and either affirm the sentence, if it does not exceed the maximum for a common assault, or reduce it as the facts of the case seem to them to require. It seems clear that the Court cannot increase the sentence.

It is doubtful whether this sub-section has been acted upon at all in any case which has come before the Court up to the present. Cases have occurred where a conviction for larceny was considered insupportable, the proper conviction being for receiving the stolen property, knowing it to have been stolen; but in these cases the order made by the Court was one of substitution of a verdict of guilty of receiving, for the verdict of guilty of the larceny apparently under the next sub-section (*a*). So also where the Court has thought the evidence showed a common assault only in a case where the indictment also charged in another count riot (*b*). It may be of great importance in some cases, apart from questions of sentence, that the right verdict should be recorded in the records of the Court of Trial, and therefore it would seem that recourse should be had by the Court to the latter rather than to the former sub-section.

Substitution of Verdict of guilty of another Offence.

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 that the jury must have been satisfied of facts which prove 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

(*a*) R. *v.* Cooper, Shea, and Stocks, 24 T.L.R. 867, 868; 1 Cr. App. R. 88, 91. It is difficult to know from the reports under which of the sub-sections the Court intended to act, but the order actually made was under sub-section (2). (The sentence was affirmed.) R. *v.* Abraham George, 73 J.P. 11, 25 T.L.R. 66; 1 Cr. App. R. 168, 170. (In this case the sentence was reduced.)

(*b*) R. *v.* Wong Chey and others, 6 Cr. App. R. 59; *Times* News. Dec. 14/10. (Sentence reduced.)

passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity (*a*).

In order that the Court may use this power they must be satisfied on the actual finding of the jury that the jury must have been satisfied of facts which prove him guilty of that other offence. That is to say, the verdict of the jury must, in a sense, include a verdict of guilty of the other offence. Where, for instance, the jury have found a verdict of guilty of the full offence charged and the Court think that upon the facts proved that verdict is unreasonable, but that the evidence justifies a verdict of guilty of the attempt to commit the offence, they may substitute a verdict of guilty of the latter for the verdict actually found.

In like manner, a verdict of guilty of manslaughter could be substituted for one of guilty of murder, larceny by a bailee for larceny (*b*), simple larceny for larceny from the person (*c*). Whether the power of substitution is confined to substituting a verdict of guilty of a lesser crime for the verdict of guilty of a greater crime, or substituting a verdict of guilty of another variety of the same kind of crime is perhaps doubtful, but it is probable that this was the intention of the framers of the Act, and that the restriction upon the Court's power to pass a severer sentence than that passed at the trial was intended to meet cases where the sentence passed for the commission of the graver offence was in the opinion of the Court inadequate even for the offence substituted. Where the jury find false pretences, but the Court thinks this verdict unreasonable in that the facts prove larceny and that the jury must have been satisfied upon the facts of the appellant's guilt of that crime had their minds been directed to that issue the appellant is not entitled to be acquitted of the false pretences though the Court possibly cannot substitute a verdict of guilty of larceny for the verdict of the jury (*d*). It is clear that the Court cannot substitute a verdict of guilty of obtaining by false pretences where larceny is charged, however

(*a*) Section 5 (2), *post*, p. 150.

(*b*) R. *v.* Rose; 2 Cr. App. R. 265.

(*c*) R. *v.* Wm. Taylor [1911], 1 K.B. 674, 27 T.L.R. 108; 6 Cr. App. R. 12 (same sentence passed as at trial).

(*d*) R. *v.* Edward Fisher, 74 J.P. 427; 103 L.T. 320; 26 T.L.R. 589; 5 Cr. App. R. 102.

clearly the facts proved show the appellant's guilt of the former crime, since the jury could not on the indictment have found him guilty of it (*a*).

Where Misdirection is Alleged.—The power of substitution applies where there has been misdirection as to what is necessary to constitute the offence of which the appellant has been convicted (*b*). Whether it would apply where the misdirection extended to the other offence, the commission of which the Court think the jury must have been satisfied of, is perhaps doubtful. The principles which apply to cases where misdirection is established would have then to be considered and applied. If the Court held that the misdirection could not have caused any miscarriage of justice, there seems to be no reason why they could not use their powers of substitution.

Application of the Proviso to Section 4 (1) of the Act.—Although this power of substitution of a verdict of guilty of some other offence does not obtain where the jury could not have convicted of that offence, there is some authority for saying that the Court, notwithstanding that they think the facts proved point to the commission of some other offence which it was not open to the jury to convict of upon the indictment, may use their power of dismissing the appeal on the ground that no substantial miscarriage of justice has actually occurred (*c*). How far this applies is, however, very doubtful.

Power to find Appellant Insane.

A still further special power is given to the Court where a verdict of guilty has been recorded, but, on an appeal against

(*a*) R. *v.* Edward Fisher, 74 J.P. 427; 183 L.T. 320; 26 T.L.R. 589; 5 Cr. App. R. 102.

(*b*) R. *v.* Wm. Taylor [1911], 1 K.B. 674; 27 T.L.R. 108.

(*c*) See R. *v.* Armitage, 74 J.P. 48; 3 Cr. App. R. 81, where a conviction for obtaining credit by fraud was upheld, though the evidence pointed rather to larceny. The point does not appear to have been fully argued, nor was it considered in R. *v.* Edward Fisher, 74 J.P. 427; 103 L.T. 320; 26 T.L.R. 589; 5 Cr. App. R. 102, where a conviction of larceny was quashed although the facts seemed clearly to show an obtaining by false pretences or a conspiracy to defraud. See also R. *v.* Barker, 5 Cr. App. R. 283, 285; *Times* News. November 15/10, where the appeal was allowed and the conviction quashed on the ground that there was no evidence to prove the false pretences laid in the indictment, though the Court thought he was guilty of obtaining money, etc. by other false pretences.

that verdict, it appears to the Court that the appellant, though guilty of the act or omission charged against him, 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 in such a case can quash the sentence passed at the trial and order the appellant to be kept in custody as a criminal lunatic under the Trial of Lunatics Act, 1883 (*a*), in the same manner as if the jury at the trial had found a special verdict under that Act (*b*). But apparently the Court may not order a special verdict to be substituted for the verdict of guilty (*c*). In cases where the Court act upon the power given by this section they are, where the defence of insanity was raised at the trial, substituting their opinion for the verdict of the jury. It does not appear from the section that the Court must be satisfied that the verdict is unreasonable and incapable of support upon the evidence before they can interfere with it, though in practice it is probable that the Court would be guided by the same considerations as apply in appeals based upon that ground (*d*). The Court must be satisfied that the evidence established insanity in law, and cannot interfere because there was evidence which, though it did not establish the legal defence of insanity, might justify the Home Secretary in advising the exercise of the prerogative of mercy (*e*). The Court will rarely, if ever, interfere where the defence of insanity was not raised at the trial (*f*).

In the interests of the appellant the Court leans against acting upon the powers given them under the section in cases where the sentence which must be substituted may possibly be more severe than that actually passed at the trial (*g*).

No appeal to the Court lies against that part of the special verdict of a jury found under the Trial of Lunatics

(*a*) 46 & 47 Vict. c. 38.

(*b*) Section 5 (4) Criminal Appeal Act, *post*, p. 150.

(*c*) *Ib.*, but see R. *v.* Victor Jones, 4 Cr. App. R. 207, 217.

(*d*) See R. *v.* Jefferson, 72 J.P. 467; 1 Cr. App. R. 95 (where the sentence was quashed), and R. *v.* Victor Jones, 4 Cr. App. R. 207, 208, 209, 217 (where this point is discussed though not decided).

(*e*) R. *v.* Macdonald, 1 Cr. App. R. 262; R. *v.* Victor Jones, 4 Cr App. R. 207, 216; R. *v.* Jesshope, 5 Cr. App. R. 4.

(*f*) R. *v.* de Vere, 2 Cr. App. R. 19.

(*g*) R. *v.* de Vere, 2 Cr. App. R. 19 R. *v.* Cecil Dench, 2 Cr. App. R. 281.

Act, which finds the appellant insane at the time the act was done or omission made, though an appeal does lie against the finding of the jury that the appellant did the act or made the omission charged (*a*).

Conviction of being a Habitual Criminal.

The same principles obtain in the consideration of appeals against convictions under the Prevention of Crime Act, 1908, of being a habitual criminal, as in other convictions, though their application necessarily depends upon the special requirements of the Act before a person can be so convicted.

As in other appeals the Court will not interfere with the verdict of a jury finding a person to be a habitual criminal where there is evidence proper to be submitted to them upon which they may reasonably come to such a verdict, and where there has been a proper direction by the judge (*b*). This holds good even though the interval of time between the last release from custody and the commission of the offence alleged in the indictment, which also charges the appellant with being a habitual criminal, is of considerable length, and there is some evidence of honest work done by the appellant during that interval (*c*). The relative strength of the evidence to show persistence in crime or dishonesty, and the evidence to the

(*a*) R. *v.* Machardy, 55 Sol. Jo. 754, overruling on this point R. *v.* Ireland [1910], 1 K.B. 654; 74 J.P. 206; 26 T.L.R. 267; 4 Cr. App. R. 74. Before R. *v.* Machardy, *supra*, was decided the Court had decided that they would hardly listen to an appeal against a finding of insanity where that was the defence raised at the trial. See R. *v.* Carroll, 4 Cr. App. R. 192.

(*b*) R. *v.* Brummett, 4 Cr. App. R. 192.

(*c*) R. *v.* Marshall, 74 J.P. 380; 5 Cr. App. R. 25, 28 (interval of about ten months); R. *v.* George Martin, 5 Cr. App. R. 31 (interval of about fourteen months); R. *v.* Jennings, 74 J.P. 245; 4 Cr. App. R. 120 (interval of six months). It would seem from R. *v.* Marshall, *supra*, that the evidence to show persistence may be entirely derived from the fact that the appellant has committed several crimes within a short time of each other, though after a considerable lapse of time from his last release from prison, during which time he was living honestly. Where the interval is a much shorter one, evidence of the commission of more than one crime of a similar nature, which show premeditation, is clearly sufficient. See R. *v.* Condon, 4 Cr. App. R. 109.

contrary must be such as to compel the Court of Appeal to come to the conclusion that the verdict is unreasonable before the Court can interfere.

Where, however, the Court consider that some evidence in addition to previous convictions and the commission of the offence charged in the indictment upon which he has been found to be a habitual criminal is necessary in order to establish persistence in crime or dishonesty, and that there is no such evidence, they may quash the conviction (*a*).

Wrong Decision on a Question of Law.

The second case in which (subject to a certain other power discussed hereafter) the Court must quash the conviction is where they think 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 (*b*).

It is perhaps impossible to exactly define what are and what are not questions of law for the purpose of this section.

The cases coming within the words "wrong decision of any question of law" which occur most frequently in practice, are (1) where a submission that the indictment as laid is bad in law is overruled, (2) where a submission that there was no evidence to go to the jury is overruled, (3) where evidence is wrongfully admitted or rejected, (4) where the judge has misdirected the jury, (5) where a wrong judgment is entered upon the findings of the jury.

Where the matter is one entirely within discretion of the Judge of the Court of Trial it is not apparently a ground involving a question of law within the section (*c*).

(*a*) R. *v.* Baggott, 74 J.P. 213; 26 T.L.R. 266; 4 Cr. App. R. 67, 70; R. *v.* George Wells, 5 Cr. App. R. 33. It is submitted that R. *v.* Rowland, 26 T.L.R. 202; 3 Cr. App. R. 277, 280, does not establish that the proviso to sec. 4 (1) of the Criminal Appeal Act applies to such a case. It was decided upon the ground that, under the circumstances, what the appellant was doing in the interval was not material, and that there was some evidence given by himself to go to the jury. The reference to the proviso was occasioned by the suggestion of defects in the notice served upon the appellant.

(*b*) Section 4 (1), *post*, p. 149.

(*c*) R. *v.* Richard Lewis, 2 Cr. App. R. 180; *Times* News. May 19/09 (discharge of jury); R. *v.* Crippen [1911], 1 K.B. 149, 156; 27 T.L.R. 69, 72; 5 Cr. App. R. 265, 267 (rebuttal evidence).

Indictment bad in Law.

A decision upon an objection taken to the indictment is clearly a decision on a question of law. Appeals where the ground alleged is that the decision upon the objection was wrong not infrequently occur, but the Court leans strongly against allowing appeals on this ground alone (*a*). It will rarely entertain an objection to the indictment raised for the first time upon appeal, no objection having been taken at the trial, and the judge, therefore, not having had the opportunity of meeting the objection by amendment or otherwise (*b*). Where the objection is to an immaterial part of the indictment, or where it was taken at the trial and wrongly met by amendment, the Court may apply their power of dismissing the appeal on the ground that no substantial miscarriage of justice has actually occurred (*c*). So also if the indictment as framed is bad on account of the accidental omission of some element necessary to constitute the offence charged, the Court may uphold the conviction as being good as a conviction for some other offence (*d*).

No Evidence to go to the Jury at Close of Case for Prosecution.

Where at the end of the case for the prosecution it is submitted on behalf of the defendant that there is no evidence against him of the commission of the offence charged in the indictment, or of any offence of which he might lawfully be convicted upon the indictment as framed, and the Judge of the Court of Trial improperly rules against the submission and leaves the case to the jury, and thereupon the defendant is convicted, the defendant is entitled to have the conviction

(*a*) See R. *v.* Henry Elliott, 1 Cr. App. R. 15; R. *v.* Hunting, 1 Cr. App. R. 177; R. *v.* Rendle, 2 Cr. App. R. 33; R. *v.* Rye, 2 Cr. App. R. 155.

(*b*) R. *v.* Rawlings, 3 Cr. App. R. 5, 8; R. *v.* Stoddart, 73 J.P. 348; 25 T.L.R. 612; 2 Cr. App. R. 217, 237.

(*c*) R. *v.* Morris or Maurice Cohen, 3 Cr. App. R. 180; R. *v.* Harris, 5 Cr. App. R. 285.

(*d*) R. *v.* Wm. Garland [1910], 1 K.B. 154; 102 L.T. 254; 74 J.P. 135; 26 T.L.R. 130; 3 Cr. App. R. 199.

set aside, even though, after the close of the case for the prosecution, he may have given or called evidence which made a case proper to be left to the jury (*a*). But where there is no such submission, the Court, for the purposes of deciding an appeal, may have regard to all the evidence given at the trial, and will not quash the conviction if satisfied that the evidence given at the trial by or on behalf of the appellant supplied that which was lacking in the evidence adduced for the prosecution in that it made a case proper to be left to the jury (*b*). This, *a fortiori*, holds good where the Judge of the Court of Trial properly rules against a submission made on behalf of the defendant and the evidence for the defendant strengthens that for the prosecution (*c*). The Judge of the Court of Trial is not bound in law to withdraw the case from the jury at the close of the case for the prosecution unless a submission to that effect is made to him, although he might have done so on his own initiative and the Court of Appeal think they would probably have done so. A failure to act upon his own initiative, even in a plain case, is apparently not a wrong decision on a question of law within the meaning of the section (*d*) or, if it be where the evidence for the defence supplies what was wanting on the evidence for the prosecution, the Court may have regard to the proviso as to a

(*a*) R. *v.* Leach, 2 Cr. App. R. 72; *Times* Newspaper, March 8/09; R. *v.* Joiner, 26 T.L.R. 265; 74 J.P. 200; 4 Cr. App. R. 64. In R. *v.* Benjamin Pearson (No. 1), 72 J.P. 449, 451; 1 Cr. App. R. 77 (where there was a submission) the Court seems to have said that if admissions by the defendant had supplied the evidence which was wanting they would not have interfered with the verdict. This dictum is contrary to the decisions in R. *v.* Leach and R. *v.* Joiner, *supra*. In R. *v.* Gay, 2 Cr. App. R. 328, where there also was a submission, the Court held that the conviction could be upheld owing to the unsatisfactory evidence of the defendant, but in this case the submission was that there was no evidence to support the evidence of accomplices, and the Court thought there was. This case is, therefore, clearly distinguishable from R. *v.* Leach and R. *v.* Joiner, *supra*.

(*b*) R. *v.* Abraham George, 73 J.P. 11; 25 T.L.R. 66; 1 Cr. App. R. 168; followed in R. *v.* Frederick Jackson, 74 J.P. 352; 5 Cr. App. R. 22. See also R. *v.* Dunleavey, 73 J.P. 56; 1 Cr. App. R. 240; R. *v.* Orris, 73 J.P. 15; 1 Cr. App. R. 199, 201; R. *v.* Carr. 73 J.P. 508; R. *v.* Seagrave, 4 Cr. App. R. 156, 157.

(*c*) R. *v.* Key, 1 Cr. App. R. 135, 139.

(*d*) See cases cited in note (*a*), *supra*.

substantial miscarriage of justice (*a*) though they cannot do so where there has been a submission (*b*).

But where the evidence given in the case does not prove the offence charged in the indictment or any other offence of which the defendant might have been convicted on that indictment, in that there is no evidence to prove the existence of an essential element in the offence charged, or the evidence shows the contrary, the defendant is entitled to have the conviction quashed, apart from any considerations of submission made to the judge on his behalf, or misdirection or any other question. In such cases it is presumably the duty of the judge, upon his own initiative, to direct the jury to return a verdict of not guilty (*c*).

Where there has been no submission at the close of the case for the prosecution, but the evidence given by the accused does not supply the material necessary to support the conviction, and there is therefore no evidence of the commission by the appellant of the offence charged, the conviction will be quashed (*d*).

Where the evidence does not disclose any offence known to the law the appellant is entitled to have the conviction quashed, though the point was not taken at the trial (*e*).

Where an indictment under section 1 of the Betting Act, 1853 (*f*), charged the appellant with having used premises for the purpose of money being received for the purpose of illegal betting, and the evidence showed that postal orders only were received, the Court held that even if they decided that postal orders were not money they would still hold that the

(*a*) See R. *v.* Frederick Jackson, 74 J.P. 352, 5 Cr. App. R. 22, at p. 23, per Lord Alverstone, L.C.J.

(*b*) R. *v.* Leach and R. *v.* Joiner, cited in note (*a*) p. 101. This appears to give a distinct advantage to an appellant defended by counsel, as most undefended prisoners probably do not know of their right to make a submission.

(*c*) R. *v.* Annie Lewis, 4 Cr. App. R. 96, 100; R. *v.* Clay, 74 J.P. 55; 3 Cr. App. R. 92; R. *v.* Alfred Jones, 74 J.P. 168; 26 T.L.R. 226; 4 Cr. App. R. 17; R. *v.* Wm. David Pearson, 74 J.P. 175; 4 Cr. App. R. 40; R. *v.* Edward Fisher, 74 J.P. 427; 5 Cr. App. R. 102; R. *v.* Barker, 5 Cr. App. R. 283.

(*d*) R. *v.* Wm. Johnson, 6 Cr. App. R. 82; *Times* News. Dec. 20/10; R. *v.* Goodwin, 6 Cr. App. R. 85; *Times* News. Dec. 21/10.

(*e*) R. *v.* Shaw, 75 J.P. 191; 6 Cr. App. R. 103, 105.

(*f*) 16 & 17 Vict. c. 119.

case in this point came within the proviso to section 4 of the Criminal Appeal Act (*a*).

Wrongful Admission of Evidence.

If the Judge of the Court of Trial has wrongfully admitted or rejected evidence, his action is clearly a wrong decision of a question of law. Where evidence is wrongly admitted the appellant is entitled to have the conviction quashed if the Court of Appeal, looking at all the circumstances of the case, comes to the conclusion that the evidence wrongfully admitted may reasonably (not must) have affected the minds of the jury in arriving at the verdict (*b*), even though in the opinion of the Court there is sufficient other evidence to justify the conviction (*c*). But if the Court hold that the evidence has not in fact (*d*) or has not in all probability (*e*) or could not reasonably (*f*) have affected their minds, or that the

(*a*) R. *v.* Bernard Mortimer [1911], 1 K.B. 70, 76; 75 J.P. 37, 39; 5 Cr. App. R. 199, 205.

(*b*) R. *v.* Dibble (improper evidence in chief), 72 J.P. 498; 1 Cr. App. R. 155; R. *v.* Evison (improper cross-examination of appellant), 3 Cr. App. R. 75; R. *v.* Morgan (improper cross-examination of appellant); 5 Cr. App. R. 157, 161. See also R. *v.* Preston [1909], 1 K.B. 568, 577 (improper cross-examination of appellant); 73 J.P. 173; 2 Cr. App. R. 24; 25 T.L.R. 280; R. *v.* Halikiopulo (evidence in chief of another offence), 3 Cr. App. R. 272, 274; R. *v.* Coulter (evidence in chief of other offences), 5 Cr. App. R. 147; R. *v.* Grant (improper cross-examination) 74 J.P. 30; 3 Cr. App. R. 64.

(*c*) R. *v.* William Fisher (evidence in chief of other frauds) [1910], 1 K.B. 149, 153; 79 L.J. K.B. 187; 102 L.T. 111; 74 J.P. 104; 26 T.L.R. 122; 3 Cr. App. R. 176; R. *v.* Ellis (improper cross-examination of appellant to show other frauds) [1910], 2 K.B. 746, 764; 102 L.T. 922; 26 T.L.R. 535; 74 J.P. 388; 5 Cr. App. R. 41, 62, 63. In these cases the jury were told that they might take the evidence wrongfully admitted into consideration. See also R. *v.* Norton [1910], 2 K.B. 496, 501; 74 J.P. 375, followed in R. *v.* Murtrie, 6 Cr. App. R. 128, and in R. *v.* Hickey, 27 T.L.R. 441; 6 Cr. App. R. 200, and R. *v.* John Gray, 6 Cr. App. R. 242, 245.

(*d*) R. *v.* Isaac Green, 1 Cr. App. R. 124; R. *v.* Stratton, 3 Cr. App. R. 255; *Times* News. Dec. 18/09. (Evidence that jury had in fact not acted upon the evidence improperly admitted).

(*e*) R. *v.* Solomon, *Times* News. March 15/09; 2 Cr. App. R. 80 (Court held it improbable that jury had acted upon the evidence); R. *v.* Richman, 4 Cr. App. R. 233, 248 (jury warned by judge not to act upon it, and their verdict showed discrimination between the counts of the indictment); R. *v.* Lucas, 1 Cr. App. R. 234; and R. *v.* Loates, 5 Cr. App. R. 193 (jury warned by judge not to act upon it); R. *v.* Alfred John Wilson, 6 Cr. App. R. 207.

(*f*) R. *v.* Westacott, 25 T.L.R. 192; 1 Cr. App. R. 246; R. *v.* Cutting, 2 Cr. App. R. 150; R. *v.* Tomey, *Times* News. July 31/09; 2Cr. App. R. 329; R. *v.* Mullins, 5 Cr. App. R. 13.

evidence was wrongly admitted only because of the failure to comply with certain formalities, and that the objection is therefore a technical one (*a*), the appeal will or may be dismissed on the ground that, though the evidence ought not to have been admitted, no substantial miscarriage of justice has actually occurred on account of its admission.

In arriving at their conclusion the Court naturally attaches great importance to what has been said in the summing up with regard to the evidence wrongfully admitted. Where the jury have been directed that they may take it into consideration, it is only in rare instances that the conviction can be upheld, but where the jury have been told to disregard it the contrary is the case (*b*).

The nature of the evidence wrongfully admitted, and the relative strength of the case against the appellant with and without it, and the way in which the evidence has been dealt with by the judge in the summing up, are all matters which necessarily affect the determination of the Court.

Objection at the Trial.—Objection should be taken at the trial, at the earliest possible moment, to evidence about to be wrongly admitted, and where no objection has in fact been taken in cases where the appellant was defended by counsel the Court will be slow to interfere with the conviction on the ground of improper admission of evidence alone (*c*). But, since, apparently, it is the duty of the judge, apart from any objection on the part of the defendant's counsel, to stop improper evidence himself, the mere omission to object is not in itself necessarily fatal to the appeal succeeding (*d*).

(*a*) R. *v.* Totterdell, 5 Cr. App. R. 274.

(*b*) See cases cited in notes (*c*) and (*d*), p. 103.

(*c*) R. *v.* Farrington, 1 Cr. App. R. 113, 119. See also R. *v.* Benson, 3 Cr. App. R. 70; R. *v.* Payne, 3 Cr. App. R. 259, 262, which seem to imply that the Court will not entertain an appeal on the grounds of wrongful admission of evidence where no objection was taken at the trial. It is submitted that no such hard and fast rule has been established, but that the real rule is as stated above. See cases in note (*d*).

(*d*) R. *v.* Ellis [1910], 2 K.B. 746, 763; 26 T.L.R. 535; 5 Cr. App. R. 41, 62; 102 L.T. 922. See also R. *v.* Norton [1910], 2 K.B. 496, 499; 74 J.P. 375; R. *v.* Charlesworth, 4 Cr. App. R. 167, 169; *Times* News. March 19, 1910. In R. *v.* Boughton, 6 Cr. App. R. 8 a conviction was quashed on the ground of wrongful reception of evidence, though the point did not occur to any one at the trial.

Wrongful Rejection of Evidence.

Where evidence has been wrongly rejected, the Court has to consider what effect the evidence may have had on the minds of the jury in arriving at their verdict if it had been before them, and if the Court come to the conclusion that it may reasonably have caused them to return a verdict of not guilty the conviction will be quashed, but not otherwise, since it then could not have occasioned a substantial miscarriage of justice.

Where Corroboration is Required.

Where a conviction depends mainly upon the evidence of an accomplice, it is a well-settled practice, almost (if not quite) amounting now to a rule of law that it is the duty of the judge to direct the jury that they ought not to convict the accused upon such evidence unless it is corroborated by other independent credible evidence in material matters which affect the guilt of the accused. On appeal, a conviction may be quashed where there has been no such direction and the Court consider that the evidence does not disclose any substantial corroboration (*a*). Where there has been some such direction, though not as full as ought to have been given, and the Court consider there is no proper corroboration, the cases on the whole seem to show that the conviction may be quashed (*b*), but this is not clearly established (*c*). Where the direction is ample, though there be no proper corroboration, the Court will not, as a rule, interfere, as there is no power in such a case to withdraw the case from the jury (*d*). But where there is substantial corroboration though no proper

(*a*) R. *v.* Tate [1908], 2 K.B. 680, 683; 99 L.T. 620; 72 J.P. 391; 1 Cr. App. R. 39, 41; R. *v.* William Mason, 5 Cr. App. R. 171; *Times*, July 29, 1910.

(*b*) R. *v.* Everest, 73 J.P. 269; 2 Cr. App. R. 130; R. *v.* Warren, 73 J.P. 359; 25 T.L.R. 633; 2 Cr. App. 194; R. *v.* Graham, 74 J.P. 246; 4 Cr. App. R. 221. See also R. *v.* Kams, 4 Cr. App. R. 8, 14.

(*c*) Doubt has been thrown upon the decisions in the cases cited in note (*b*) by dicta in the later cases of R. *v.* Wilson, Lewis, and Havard, 6 Cr. App. R. 125, at p. 128, and R. *v.* Benjamin Brown (No. 2), 6 Cr. App. R. 147.

(*d*) R. *v.* Tate, *supra*. R. *v.* Beauchamp, 73 J.P. 223; 2 Cr. App. R. 40; R. *v.* Gay, 2 Cr. App. R. 327; R. *v.* Wilson, Lewis, and Havard, *supra*, and R. *v.* Benjamin Brown (No. 2), *supra*, R. Aug. 18/11.

direction, the Court may use their power of dismissing the appeal on the ground that no substantial miscarriage of justice has actually occurred (*a*).

In cases of rape, and in such cases of incest or carnal knowledge of a girl as do not require that there should be corroboration of the evidence of the woman or girl, if the conviction depends almost entirely upon the story of the woman or girl, the judge should warn the jury that though the law does not require that there should be any corroboration of her story, and the jury are therefore entitled to act upon it alone if they think right, yet there may be considerable danger in so acting upon it against the denial on oath of the accused unless it is supported by other independent evidence, and, therefore, they should exercise great care in their consideration of the evidence (*b*). Where no such warning has been given, and there is, in the opinion of the Court, no corroboration, the Court may quash the conviction (*c*). If the girl or woman is an accomplice, the rules applying to corroboration of accomplices would seem to obtain (*d*).

The rule as to corroboration of accomplices does not extend to the evidence of a spy or agent provocateur (*e*).

Usurpation of Functions of Jury.

Where the judge takes upon himself the functions of the jury and decides the facts, directing the jury, in effect, to return a verdict of guilty, there has been a misdirection in law, and the appellant is entitled to have the conviction quashed where but for such a direction the jury might not have convicted; but if the court considers that the facts

(*a*) R. *v.* Tate, *supra*; R. *v.* Bowler, 2 Cr. App. R. 168. And see R. *v.* Kirkham, 73 J.P. 406; 25 T.L.R. 656; 3 Cr. App. 253; and R. *v.* Stanley, 5 Cr. App. R. 16.

(*b*) R. *v.* Graham, 74 J.P. 246; 4 Cr. App. R. 221.

(*c*) R. *v.* Benjamin Brown (No. 1), 6 Cr. App. R. 24; R. *v.* Stone, 6 Cr. App. R. 89.

(*d*) This is not quite clear, as there appears to be some confusion in the judgments, as reported, in the cases cited in note (*c*) between cases where the girl is clearly not an accomplice and cases where she clearly is.

(*e*) R. *v.* Bickley, 73 J.P. 239; 2 Cr. App. R. 53; R. *v.* Henser, 3 Cr. App. R. 76.

proved are only consistent with guilt, and that the jury would have returned the same verdict apart from such a direction, the appeal will be dismissed, as no substantial miscarriage of justice has occurred (*a*). But a strong expression of opinion by the judge as to the defendant's guilt is not misdirection, if the issues are really left to the jury (*b*). In a proper case the judge is entitled to comment strongly on the evidence (*c*).

Wrong Judgment entered upon Findings of the Jury.

Where the findings of the jury negative the existence of an essential element in the offence charged, or are inconsistent, but the judge has considered them as a verdict of guilty and entered judgment accordingly, the appellant is entitled to have the conviction quashed (*d*), subject to the special power of the Court to order a judgment of guilty of some other offence to be entered upon the findings where the special power applies (*e*). But the essential element must be clearly negatived, and the inconsistency must be material before the Court will interfere (*f*). Where the findings are difficult to construe the Court will quash the conviction, unless it can gather from them that the jury really understood the necessary elements which constitute the offences alleged, and meant to find a verdict of guilty though wrong terms were used by them (*g*).

Power where Special Verdict returned and Wrong Conclusion entered.

Where the jury have found a special verdict, and the Court of Appeal think that a wrong conclusion has been

(*a*) R. *v.* West, 4 Cr. App. R. 179; *Times* News. March 21/1910; R. *v.* Dinnick, 3 Cr. App. R. 77; R. *v.* Beeby, 6 Cr. App. R. 138.

(*b*) R. *v.* Randles, 1 Cr. App. R. 194; R. *v.* Melville, 2 Cr. App. R. 173; R. *v.* Harry Pope, 4 Cr. App. R. 123, 127; R. *v.* Hepworth, 4 Cr. App. R. 128, 130.

(*c*) *Ib.*

(*d*) R. *v.* Knight, 73 J.P. 14; 25 T.L.R. 87; 1 Cr. App. R. 186; R. *v.* Muirhead, 73 J.P. 31; 25 T.L.R. 88; 1 Cr. App. R. 189.

(*e*) See *ante*, p. 94.

(*f*) R. *v.* Petch, 25 T.L.R. 401; 2 Cr. App. R. 71; R. *v.* Ethel Harding, 1 Cr. App. R. 219; *Times* News. Dec. 5/08; R. *v.* Fairbrother, 1 Cr. App. R. 233; *Times* News. Dec. 12/08; R. *v.* Charlton, 6 Cr. App. R. 119.

(*g*) R. *v.* Rawlings, 3 Cr. App. R. 5. See also R. *v.* Rutter, 25 T.L.R. 73; R. *v.* Syme, 55 Sol. Jo. 704; *Times* News. July 25/11.

arrived at by the Court of Trial on the effect of the verdict, the Court of 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 (*a*).

The meaning and application of this section of the Act is not very clear, nor is it clear what constitutes "a special verdict" such as is referred to in it. It may be that it was intended to meet the kind of case mentioned above where the jury, instead of returning a simple verdict of guilty or not guilty, have put their findings in the form of answers to questions left to them by the judge, or have added to their verdict of guilty some other findings which affect the verdict. In such a case, if, notwithstanding that the judgment entered upon the findings is wrong, a judgment of guilty of some other offence, or on some other count of the indictment, ought to have been arrived at upon the findings, the Court can then substitute a judgment of guilty of the other offence, or on the other count of the indictment, and alter the punishment if they think proper to do so. The section did not make provision for the cases where it was impossible to enter any other conclusion than one of not guilty of any offence, and where, therefore, the conviction must be quashed, since such cases come within the ground of "wrong decision of a question of law" referred to in the previous section. It seems clear that the alteration of the judgment and sentence can only be by way of diminution, and that the Court could not direct a judgment of guilty of a graver offence to be entered and pass a heavier sentence. The special verdict of guilty, but insane, is provided for by another sub-section of the Act, and has already been considered (*b*).

Misdirection.

In General.—Misdirection by the judge in his summing up to the jury is by far the most frequent cause of convictions

(*a*) Section 5 (3), *post*, p. 150. (*b*) See *ante*, p. 96.

being quashed by the Court of Appeal (*a*). The term "misdirection" is a wide one. It covers a wrong positive direction as to the law applicable to the class of cases to which the case being tried belongs, or applicable to the facts of the particular case itself; a wrong positive direction as to the facts proved in evidence; a failure to direct the jury sufficiently as to the law or the evidence; a failure to put the defendant's case at all; a positive direction which practically usurps the functions of the jury.

It is clear that some forms of misdirection amount to wrong decisions of questions of law, and therefore come within the head under which the Court must quash the conviction which is under discussion. But it is not easy always to distinguish these from other forms of misdirection which are not considered to be wrong decisions of questions of law but which come under the general head of any ground which has caused a miscarriage of justice, which is discussed later. The difference is not unimportant, especially with regard to the special power of dismissing an appeal if the Court are satisfied that no substantial miscarriage of justice has actually occurred.

In determining whether or not there has been misdirection the Court has regard to what the proper nature of a summing up is. A summing up is not intended to be an exhaustive verbal dissertation of the law applicable to the class of cases to which the particular case belongs, or to the facts of the particular case itself (*b*), nor a lecture on it (*c*), nor to be like an extract from a treatise dealing fully and accurately with the law (*d*). Again, in dealing with the evidence the summing up is not intended to be a minute examination of all the facts elicited in evidence (*e*) or a reading of the judges' note of all the evidence. Nor does the judge necessarily misdirect the jury if he fails to point out to them

(*a*) See R. *v.* Rowan, 5 Cr. App. R. 279 at p. 281, per Lord Alverstone L.C.J.

(*b*) R. *v.* Hampton, 2 Cr. App. R. 274, 276.

(*c*) R. *v.* Soper and Mason, *Times* News. July 24/08; 1 Cr. App. R. 73, 76.

(*d*) R. *v.* Frank Albert Mason, 2 Cr. App. 59, 61; 73 J.P. 250.

(*e*) R. *v.* Farrington 1 Cr. App. R. 113, 119.

every conceivable defence possible to be raised or every conceivable alternative to a simple verdict of guilty or not guilty of the actual crime charged. A summing up is rather intended to be such a direction as to the law and evidence bearing upon the issues raised as will guide the jury properly as to what the issues are which they must consider, what the law applicable to those issues is and what is the bearing of the material evidence upon those issues. The Court of Appeal will, therefore, always interpret the summing up in the light of the conduct of the trial. Great regard will be paid to the lines upon which the case was conducted there (*a*), and the Court will also bear in mind, in the cases in which it applies, that counsel on both sides have addressed the jury fully, immediately before the summing up was delivered (*b*).

"The Court of Appeal does not sit to consider whether this or that phrase was the best that might have been chosen, or whether a direction which has been attacked might have been fuller or more conveniently expressed, or whether other topics which might have been dealt with on other occasions should have been introduced. The Court sits to administer justice and to deal with valid objections to matters which may have led to a miscarriage of justice. Its work would become well-nigh impossible if it is to be supposed that regardless of their real merits or of their effect upon the result, objections are to be raised and argued at great length which were never suggested at the trial, and which are only the result of criticism directed to discover some possible ground for argument" (*c*).

Misdirection as to the Law.—The ways in which the

(*a*) R. *v.* Vaughan, 1 Cr. App. R. 25, 26; R. *v.* Meyer, 99 L.T. 202; 24 T.L.R. 621; 1 Cr. App. R. 10; R. *v.* Mason and Soper, *Times* News. July 24/08; 1 Cr. App. R. 73, 76; R. *v.* Braun, 1 Cr. App., R. 256; R. *v.* Bertram Mortimer, 72 J.P., 349, 352; R. *v.* Hampton, 2 Cr. App. R. 274, 276; R. *v.* Stoddart, 73 J.P. 348, 352; 25 T.L.R. 612, 618; 2 Cr. App. R. 217, 246; R. *v.* Kirkham, 73 J.P. 406; 25 T.L.R. 656.

(*b*) R. *v.* Harry Thompson, 5 Cr. App. R. 9, 13; R. *v.* Kams, 4 Cr. App. R. 8, 16.

(*c*) R. *v.* Stoddart, 73 J.P. 348, 352; 25 T.L.R. 612, 617; 2 Cr. App. R. 217, 231, 246. See also R. *v.* Mason and Soper, *Times* News. July 24/08; 1 Cr. App. R. 73, at p. 76; R. *v.* Buckland, 4 Cr. App. R. 28, at p. 29; R. *v.* Harry Pope, 4 Cr. App. R. 123, at p. 127; R. *v.* Crippen, 27 T.L.R. 69, 72; 5 Cr. App. R. 255, 267.

Judge of the Court of Trial may misdirect the jury as to the law which applies to the case are not capable of exact classification, as obviously whether or not there is misdirection depends almost entirely upon the particular circumstances of each case. Instances are where there is either a positive wrong direction (*a*) or a failure to direct the jury sufficiently (*b*) as to what are the necessary elements of the offence charged; a direction that the jury may consider evidence which is inadmissible (*c*); a failure to direct the jury as to the weight to be attached to certain classes of evidence, *e.g.*, of accomplices (*d*); a wrong direction as to the burden of proof (*e*); a direction that upon the evidence the jury must find the defendant guilty(*f*).

Where the Judge of the Court of Trial has positively misdirected the jury as to the law applicable to the case, the appellant is entitled to have the conviction quashed unless the prosecution can show that on a right direction the jury must (*g*) or would (*h*) (not might) have come to the same conclusion (*i*). One test as to whether this would have happened is the consideration whether the facts proved in evidence are only consistent with guilt and inconsistent with innocence (*j*). Where the evidence leaves it in doubt

(*a*) See *infra*.
(*b*) See *post*, p. 112.
(*c*) See *ante*, p. 105.
(*d*) See *ante*, p. 105.
(*e*) See R. *v.* Stoddart, *infra*.
(*f*) See *ante*, p. 106.
(*g*) R. *v.* Dyson [1908], 2 K.B. 454, 457; 99 T.L. 201; 72 J.P. 303; 1 Cr. App. R. 13, 15; R. *v.* Cohen and Bateman, 73, J.P. 352; 2 Cr. App. R. 197, 207.
(*h*) R. *v.* Stoddart, 73 J.P. 384; 25 T.L.R. 612, 617; 2 Cr. App. R. 217, 245, where it was held that it was open to consideration whether "must" was not too strong and "would" was not more correct. See also R. *v.* Brownlow, 4 Cr. App. R. 131, 134; R. *v.* Norton, [1910], 2 K.B. 496, 501; 26 T.L.R. 550; 102 Cr. App. L.T. 926; 74 J.P. 375; 5 R. 65, 76 (following R. *v.* Stoddart) and R. *v.* Atherton, 5 Cr. App. R. 233, 236; R. *v.* Totterdell, 5 Cr. App. R. 274; R. *v.* Murtrie, 6 Cr. App. R. 128; R. *v.* Hickey, 27 T.L.R. 441; 6 Cr. App. R. 200.
(*i*) For other instances see R. *v.* Brownlow, 74 J.P. 240; 26 T.L.R. 345; 4 Cr. App. R. 131; R. *v.* Deana, 73 J.P. 255; 25 T.L.R. 399; 2 Cr. App. R. 75; R. *v.* Crane, 75 J.P. 415; 6 Cr. App. R. 185; R. *v.* Richard Johnson, 6 Cr. App. R. 218.
(*j*) R. *v.* Meyer, 99 L.T. 202; 24 T.L.R. 621; 1 Cr. App. R. 10, 12; R. *v.* O'Sullivan, *Times* News. July 4/08; 1 Cr. App. R. 35, 36; R. *v.* Coleman, 72 J.P. 425; 1 Cr. App. R. 50, 51. R. *v.* Farrington, 1 Cr. App. R. 113, 119; R. *v.* Bowler, 2 Cr. App. R. 168; R. *v.* Stoddart, 2 Cr. App. R. 217, 245; R. *v.* Woodbridge, 2 Cr. App. R. 321; R. *v.* Norton, *supra*.

whether the jury would have found the same verdict the conviction must be quashed since the Court cannot substitute themselves for the jury and find the facts which are necessary to support the conviction (*a*).

Omission to direct as to the Law.—Where the judge has omitted to direct the jury as to the law applicable to the facts proved in evidence in a case which clearly calls for a full direction and the omission, taken with his positive statements, is calculated to mislead the jury, the same rule as to allowing or dismissing the appeal applies as in the case of positive mis-direction in law, though it may be that it is more difficult to make out a sufficiently strong case to justify the interference by the Court with the verdict (*b*). Non-direction in such a case may amount to misdirection (*c*). Mere failure to point out to the jury that it is open to them to convict of a less serious offence than that charged in the indictment does not as a rule amount to mis-direction in law. It cannot be said as a matter of law that the judge must always tell the jury that it is open to them on the indictment charged to find a verdict of guilty of a less offence (*d*). The duty of the judge must depend on the particular circumstances of each case (*e*). Where, however, the circumstances of the case do call for such a direction the omission to give it may, in an exceptional case, amount to misdirection (*f*), though in such a case it will not necessarily cause the appeal to be allowed since the Court has other powers of substitution of a verdict of guilty of the other offence (*g*). Nor is it generally enough in itself that the judge has failed to direct the jury that the accused is entitled to the benefit of the doubt (*h*) though, possibly, such an omission

(*a*) R. *v.* Dyson, *supra*; R. *v.* Stoddart, *supra*; R. *v.* Norton, *supra*.

(*b*) See R. *v.* Bloom, 74 J.P. 183; 4 Cr. App. R. 30, 35 (conviction quashed); R. *v.* Clay, 74 J.P. 55; 3 Cr. App. R. 92 (conviction quashed); R. *v.* Moss, 74 J.P. 214; 4 Cr. App. R. 112 (conviction quashed); R. *v.* Cutting, 2 Cr. App. R. 150 (conviction affirmed under proviso); R. *v.* Bradshaw, 4 Cr. App. R. 280, 284 (conviction affirmed); R. *v.* Syers, 4 Cr. App. R. 42, 43 (conviction affirmed); and see R. *v.* Field, 4 Cr. App. R. 192; R. *v.* Meyer, 24 T.L.R. 621; and R. *v.* Beauchamp, 25 T.L.R. 330.

(*c*) R. *v.* Bradshaw, *supra*.

(*d*) R. *v.* Naylor, 74 J.P. 460; 5 Cr. App. R. 19.

(*e*) *Ib.*

(*f*) See R. *v.* John Wm. Smith, 5 Cr. App. R. 123, 130.

(*g*) See *ante*, pp. 92, 94.

(*h*) R. *v.* Thomas Smith, 74 J.P. 54; 3 Cr. App. R. 90, 92.

might be of sufficient importance in an exceptional case to cause the conviction to be quashed.

Misdirection as to the Facts.—Misdirection as to the facts proved in evidence may lead to a conviction being quashed just as misdirection as to the law may do. But the way the Court considers misdirection as to the facts differs somewhat from its consideration of misdirection as to the law. The latter is a wrong decision of a question of law, the former, if it is to have any effect at all, must be such as to come under the head of "any ground" upon which there has been a miscarriage of justice (*a*). The special power of the Court to dismiss an appeal where it considers that no substantial miscarriage of justice has occurred finds its chief application in cases where there has been misdirection as to the law (*b*); it hardly applies (if at all) to cases where misdirection as to the facts is alleged since the Court has no power to interfere with the verdict on this ground alone unless it has caused a miscarriage of justice, and in practice it is difficult to draw a real distinction between a miscarriage of justice and a substantial miscarriage of justice.

In considering alleged misdirection as to the facts, it is necessary to bear in mind what has already been said as to the way in which the Court regards the summing up of the judge (*c*). Every slight misstatement though in one sense misdirection is not misdirection which avails an appellant (*d*). There are few summings up which are not open to slight criticism when read subsequently as they appear in the transcript of the shorthand writers' notes, even assuming the note to be absolutely accurate. But it is not enough that some expressions of the judge are open to this kind of criticism (*e*). To have any effect in itself the misstatement of the evidence or the misdirection as to the effect of the evidence must be such as to make it reasonably possible

(*a*) R. *v.* Cohen and Bateman, 73 J.P. 352; 2 Cr. App. R. 197, 207; R. *v.* Nicholls, 25 T.L.R. 65; 1 Cr. App. R. 167, 168, see section 4, *post*, p. 149, and see *post*, 117.

(*b*) See *ante*, p. 111.

(*c*) See *ante*, p. 109.

(*d*) R. *v.* Parker, 2 Cr. App. R. 118.

(*e*) R. *v.* Dodds; 1 Cr. App. R. 65, 68; R. *v.* John Mack, 1 Cr. App. R. 132.

that the jury would not have returned their verdict of guilty if there had been no misstatements. It is assumed that the jury acted upon the direction (*a*). The burden of proof as to this still remains on the appellant and is not shifted, as in misdirection in law, on to the prosecution (*b*). "There is a miscarriage of justice when the Court is of opinion that the misstatement of fact may reasonably be considered to have brought about the verdict, and when on the whole facts, and with a correct direction, the jury might fairly and reasonably have found the appellant not guilty. Then there has been not only a miscarriage of justice but a substantial one, because the appellant has lost the chance which was fairly open to him of being acquitted and, therefore, as there is no power of the Court to order a new trial the conviction must be quashed. If, however, the Court in such a case comes to the conclusion that on the whole of the facts, and with a correct direction, the only reasonable and proper verdict would be one of guilty, there is no miscarriage of justice or at all events no substantial miscarriage of justice notwithstanding that the verdict actually given by the jury may have been due to some extent to such an error of the judge not being a wrong decision of a point of law" (*c*).

Omission to direct as to the Facts.—Where the alleged misdirection consists of omission to properly present the evidence to the jury, a stronger case must be shown before the Court will interfere. The fact that the summing up ought to have been fuller and more explicit is not enough, if the main points are

(*a*) R. *v.* Dodds, 1 Cr. App. R. 65, 68; R. *v.* John Mack, 1 Cr. App. R. 132; R. *v.* Coleman, 72 J.P. 425; 24 T.L.R. 798; 1 Cr. App. R. 50, 51; R. *v.* Sovosky, 1 Cr. App. R. 98, 100.

(*b*) See R. *v.* Rodda, 74 J.P. 412; 26 T.L.R. 539; 5 Cr. App. R. 85, 90.

(*c*) R. *v.* Cohen and Bateman, 73 J.P. 352; 2 Cr. App. R. 197, 207, per Channell, J. Instances where the conviction has been quashed on this ground are: R. *v.* Coleman, 72 J.P. 425, 427; 24 T.L.R. 798; 1 Cr. App. R. 50, 51; R. *v.* Sovosky, 72 J.P. 435; 1 Cr. App. R. 98, 100; R. *v.* Frank Albert Mason, 73 J.P. 250; 2 Cr. App. R. 59, 61; R. *v.* Joyce, 72 J.P. 483; 25 T.L.R. 8; 1 Cr. App. R. 142; R. *v.* Rodda, 74 J.P. 412; 5 Cr. App. R. 85, 90; R. *v.* Feldman, 5 Cr. App. R. 214; R. *v.* Wm. Johnson, 6 Cr. App. R. 82; R. *v.* Brooks, *Times* News. July 25/11; R. *v.* Ellsom, *Times* News. Sep. 29/11.

put properly (*a*). "It is no misdirection not to tell the jury everything which might have been told them. Again, there is no misdirection unless the judge has told them something wrong, or unless what he has told them would make wrong that which he has left them to understand" (*b*). The summing up must be so misleading as to be likely to cause the jury to go wrong (*c*).

Where this is the effect of the summing up, non-direction may be said to amount to misdirection (*d*), or, at any rate, it has the same effect. So, where the judge fails to fairly put a material defence raised by the accused either in his cross-examination of the witnesses for the Crown or in his own evidence (*e*), or fails to put the proper issues to the jury in any case of difficulty (*f*), or to distinguish sufficiently between the cases of persons tried together where a distinction ought to be drawn (*g*), or to direct the jury as to the unsatisfactory nature of an identification of the appellant where the question is all important (*h*), or where the summing up is insufficient generally (*i*), the non-direction may either be said to amount to misdirection or the same considerations apply as in the case of positive misdirection, and the conviction will be quashed where the Court thinks the result might fairly and

(*a*) R. *v.* John Bradley and others, 1 Cr. App. R. 146, 152; R. *v.* Edward Hayes, 2 Cr. App. R. 70, 71; R. *v.* Kirkham, 73 J.P. 406; 25 T.L.R. 656; R. *v.* Kams, 4 Cr. App. R. 8, 15; R. *v.* Wm. Syers, 4 Cr. App. R. 42, 43.

(*b*) Abrath *v.* The North-Eastern Rail Co., 1883, 11 Q.B.D. 440, at p. 452, per Brett-M-R quoted with approval in R. *v.* Stoddart, 73 J.P. 548; 2 Cr. App. R. 217, 246, and in R. *v.* Bradshaw and others, 4 Cr. App. R. 280, 284.

(*c*) See R. *v.* Richman, 4 Cr. App. R. 233, 247; R. *v.* Vassileva, 6 Cr. App. R. 228; *Times* News. June 21/11.

(*d*) See R. *v.* Bradshaw and others, *supra*, at p. 284, per Lord Alverstone, L.C.J.

(*e*) R. *v.* Richards, 4 Cr. App. R. 161, 163; R. *v.* Dinnick, 74 J.P. 18; 26 T.L.R. 74; 3 Cr. App. R. 77, 79; R. *v.* Rowan, 5 Cr. App. R. 279; *Times* News. Nov. 15/10. See also R. *v.* Warner, 73 J.P. 53; 1 Cr. App. R. 227, at p. 228, per Walton, J., and R. *v.* Frank Albert Mason, 2 Cr. App. R. 61; 73 J.P. 250.

(*f*) R. *v.* Moss, 74 J.P. 214; 4 Cr. App. R. 112, 114; R. *v.* Steel, 5 Cr. App. R. 289; R. *v.* John Gray, 6 Cr. App. R. 242, 246.

(*g*) R. *v.* Beauchamp, 73 J.P. 223; 25 T.L.R. 330; 2 Cr. App. R. 40; R. *v.* Rowan, *supra*; R. *v.* Ashworth, 6 Cr. App. R. 112, 113.

(*h*) R. *v.* Bundy, 75 J.P. 111; 5 Cr. App. R. 270.

(*i*) R. *v.* Steel, *supra*.

reasonably have been different had there been a proper direction (*a*).

Conviction of being a Habitual Criminal.

The principles considered above apply also to appeals against the conviction of being a habitual criminal on grounds involving questions of law.

Where objections are not taken at the trial to the absence of proof, or the mode of proof, of compliance with the formal requirements of the Prevention of Crime Act, the Court will not ordinarily allow them to be raised on appeal as grounds upon which the conviction should be quashed (*b*). But where an objection has been taken that the proper length of notice specified in the Act was not given, the appellant is probably entitled to have the conviction quashed (*c*), though where a notice was given which was incorrect in one of its details and a fresh notice was served but not in time, the appellant was held not to be entitled to have the conviction quashed, as the Court considered that, having regard to the other facts in the case, there had been no substantial miscarriage of justice (*d*).

Again, where evidence is given of a nature not suggested by the grounds stated in the notice given to the appellant, and he has, therefore, not had a fair opportunity of trying to meet it, the Court will quash the conviction unless they consider that the jury must have come to the same conclusion had the evidence not been given (*e*).

(*a*) R. *v.* Nicholls, 25 T.L.R. 65; 1 Cr. App. R. 167, 168; R. *v.* Cohen and Baleman, 73 J.P. 352; 2 Cr. App. R. 197, 207; and cf. cases cited in notes (*e*), (*f*), and (*g*) p. 115 with R. *v.* Daniel Smith, 2 Cr. App. R. 214; R. *v.* Kirkham, 2 Cr App. R. 253, 256; R. *v.* Richman, 4 Cr. App. R. 233, 247; R. *v.* Baker, 4 Cr. App. R. 152,154; R. *v.* Golding, 4 Cr. App. R. 83.

(*b*) R. *v.* Weston, 3 Cr. App. R. 53; and see R. *v.* Henry Foster, 3 Cr. App. R. 173, at p. 175.

(*c*) R. *v.* Turner [1910], 1 K.B. 346, 359; 74 J.P. 81; 26 T.L.R. 112; 102 L.T. 367.

(*d*) R. *v.* Edwin Jones, 5 Cr. App. R. 29, 30.

(*e*) R. *v.* Fawcett, 74 J.P. 444; 5 Cr. App. R. 115, 119; R. *v.* James Moran, 75 J.P. 110; 5 Cr. App. R. 219, 222. In R. *v.* Marshall, 74 J.P. 381; 5 Cr. App. R. 25, the Court refused to interfere, though such evidence had been given, on the ground that as the evidence had not been objected to, and no point had been taken in the notice of appeal that the evidence had been wrongfully admitted, the appellant was at the mercy of the Court and only entitled to strict justice, and that on the whole there had not been a substantial miscarriage of justice.

Again, where there is positive misdirection in law, *e.g.* as to the onus of proof of persistence in leading a criminal or dishonest life (*a*), or a direction to take into consideration other convictions of which no evidence at all has been given (*b*), the Court will quash the conviction unless the Crown can show that upon a right direction the jury must or would have come to the same conclusion.

Where the misdirection alleged consists of a failure to give a sufficient direction as to the essential element of persistence in leading a criminal or dishonest life in a case where there is a substantial lapse of time between the release from custody and commission of the offence charged in the indictment which also charges the appellant with being a habitual criminal, the conviction may be quashed if the Court thinks that, upon the whole of the facts, and with a proper direction, the jury might fairly and reasonably have found the appellant not guilty (*c*). But slight misstatements of fact in the summing up or other slight defects are not sufficient in themselves to amount to such misdirection or non-direction as will cause the Court to interfere with the conviction (*d*).

"Any Ground" causing a Miscarriage of Justice.

As has already been seen the Court of Criminal Appeal must, subject to certain exceptions, allow an appeal against the conviction if they think the verdict is unreasonable or insupportable, or that the judge has given a wrong decision of a question of law, or that on any ground there has been a miscarriage of justice. It remains to consider this last ground. In one sense it is wider than the other two, in that it includes every possible ground other than them. If the verdict is unreasonable, there is a miscarriage of justice; if the judge has given a wrong decision of a question of law there

(*a*) R. *v.* Stewart, 74 J.P. 246; 4 Cr. App. R. 175, 178.

(*b*) R. *v.* Stewart, 74 J.P. 246; 4 Cr. App. R. 175, 178; R. *v.* Culliford, 75 J.P. 232; 6 Cr. App. R. 142.

(*c*) R. *v.* Kelly, 74 J.P. 167; 26 T.L.R. 196; 3 Cr. App. R. 248, 251; R. *v.* Franklin, 3 Cr. App. R. 48, 51; R. *v.* Henry Foster, 3 Cr. App. R. 173, 175; R. *v.* Wells, 5 Cr. App. R. 33.

(*d*) R. *v.* Jennings, 74 J.P. 245; 4 Cr. App. R. 120, 122.

may be a miscarriage, but it must be a substantial one before the Court can interfere. The last ground is the indefinite, vague one which includes every miscarriage of justice not coming within either of the two former kinds. It does not lend itself to exact classification, but practically only permits of the statement of such other grounds as have or have not been held to have caused a miscarriage of justice in the particular cases coming before the Court. As has already been pointed out, it has been held that misdirection or non-direction as to questions of fact comes under this head, but for the sake of clearness they have already been considered under the second head, where the different kinds of misdirection are considered (*a*). So also where, though upon the evidence as given before the jury it cannot be said that the verdict is unreasonable, the Court of Appeal in a proper case allows further evidence to be adduced before them which makes the verdict insupportable, the reason for the inability to give that evidence at the Court of Trial has occasioned a miscarriage of justice, and the conviction will be quashed, but this class of case has also been already considered under the first head (*b*).

Where fact that Appellant has been previously convicted becomes known to Jury.

A class of cases which has from time to time come up for the consideration of the Court under the general head is where, apart from improper cross-examination, and apart from cases where such evidence may in law be given in chief, it has been brought to the knowledge of the jury that the accused has been previously convicted. This occasionally happens in practice, and in some cases is hardly avoidable. Sometimes the same jury try the accused on two or more indictments, or if a fresh jury is empanelled it may be that some of the jurors were in Court during the first trial, or, if the second trial does not take place on the same day, some of the jurors have seen the fact of the first conviction in the newspapers. Or again, the appellant, when arraigned on more charges than one, may have pleaded

(*a*) See *ante*, p. 113. (*b*) See *ante*, p. 90.

guilty in the hearing of the jury to an indictment under the Prevention of Crimes Act, 1871, which charged him with committing an offence after a conviction of some other offence (*a*). But the more frequent case is where the accused is undefended, and in his evidence or address from the dock it comes out that he has been previously convicted. Whether or not this knowledge on the part of the jury will be considered by the Court of Appeal as a reason for quashing the conviction on the ground that it has brought about a miscarriage of justice, must depend almost entirely upon the strength of the case against the appellant, and therefore upon the special facts of each case. But it may be said that the Court will rarely quash a conviction on this ground alone, even though there has been no warning to the jury not to allow their minds to be influenced in the slightest degree by their knowledge of the previous conviction (*b*).

Where Trial conducted unfairly.

A trial may be so conducted that things which tend to prejudice the fair trial of the accused occur, and then the Court of Appeal has to consider whether the event is likely to have influenced the jury to any appreciable extent in arriving at their conclusion, or whether there is so strong a case against the appellant, apart from the event, as to prevent them from holding that it has occasioned a miscarriage of justice (*c*).

(*a*) See R. *v.* Froggart, 4 Cr. App. R. 115, 119.

(*b*) In R. *v.* Lee, 72 J.P. 253; 24 T.L.R. 627; 1 Cr. App. R. 5, the conviction was quashed chiefly on this ground, but the Judge of the Court of Trial was dissatisfied with the verdict of the jury and had given a certificate that the case was a fit one for an appeal. In R. *v.* Henry Joyce, 25 T.L.R. 8; 1 Cr. App. R. 142, it was held that the conviction would not be quashed on this ground alone, although no caution was given, and in R. *v.* Warner, 73 J.P. 53; 25 T.L.R. 142; 1 Cr. App. R. 227, it was held that R. *v.* Lee, *supra*, was not to be taken as deciding that the Court would quash the conviction in every such case. See also R. *v.* Abraham George, 1 Cr. App. R. 168, at p. 169, per Channell, J.; R. *v.* George Joyce, 1 Cr. App. R. 82; R. *v.* Hargreaves, 6 Cr. App. R. 97.

(*c*) See R. *v.* Samuel George Watkins, 2 Cr. App. R. 119, 120; R. *v.* Bloom, 74 J.P. 183; 4 Cr. App. R. 30, 35; R. *v.* Biddulph, 4 Cr. App. R. 221, 224; R. *v.* Ashford, 1 Cr. App. R. 185; R. *v.* Warner, 73 J.P. 53; 25 T.L.R. 142; 1 Cr. App. R. 227; R. *v.* John Mack, 1 Cr. App. R. 132; *Times* News. Sept. 19/08; R. *v.* Edward Hill, *Times* News. Sept. 29/11.

So, if the identification of the accused before trial has been improperly conducted through the witnesses having an opportunity of seeing, beforehand, the person they have come to identify under such circumstances as to assist them in subsequently picking him out of others, or they have been assisted by some improper suggestion or in any other improper way, the Court will quash the conviction where they come to the conclusion that a right verdict depended on the independent identification of the person charged, and the identification appears to them to have been effected by the improper means used (*a*). So also where there has been any tampering with a juror the Court may consider the trial unfair and quash the conviction (*b*).

And if a trial has been conducted by the prosecution in an unfair manner, so as to cause some injustice to the defendant, *e.g.* by setting a trap in cross-examination so as to elicit answers which will enable certain evidence to be given which is prejudicial to the defendant, the Court may consider that conducting a case in such a manner may have caused a miscarriage of justice (*c*).

Where admissible evidence in rebuttal has been allowed to be given, the Court of Appeal will not on this ground alone quash the conviction, though they might possibly have decided differently to the Judge of the Court of Trial. The matter is one for the discretion of the Judge of the Court of Trial, and assuming the case to have been properly conducted by the prosecution, the Court of Appeal will not interfere with the exercise of the discretion (*d*). So also where the Judge of the Court of Trial discharged a jury after some evidence had been given by the prosecution, in order that other evidence might

(*a*) R. *v.* Dickman, 26 T.L.R. 640, 642; 74 J.P. 449, 451; 5 Cr. App. R. 135, 142. See also R. *v.* John Smith and W. Evans, 1 Cr. App. R. 203; and R. *v.* Bundy, 75 J.P. 111; 5 Cr. App. R. 270, 272.

(*b*) R. *v.* Crippen [1911], 1 K.B. 149, 156; 23 T.L.R. 69, 70; 5 Cr. App. R. 255, 259; R. *v.* Morrison, 6 Cr. App. R. 159, 171.

(*c*) See R. *v.* Crippen [1911], 1 K.B. 149, 158; 27 T.L.R. 69, 72; 75 J.P. 141, 143; 5 Cr. App. R. 255, 267, per Darling, J., and R. *v.* Grant, 74 J.P. 30; 3 Cr. App. R. 64, 67, and R. *v.* Richard Jones, 26 T.L.R. 59, 60; 3 Cr. App. R. 67, 70, per Lord Alverstone, L.C.J.; R. *v.* Seigley, 6 Cr. App. R. 106, 107.

(*d*) R. *v.* Crippen, *supra*; R. *v.* Isaac Foster, 6 Cr. App. R. 196.

be given by other witnesses who were not present, the Court of Appeal held that they had no power to interfere, the matter being one for the discretion of the judge, though they thought the discretion had not been exercised well (*a*).

The Proviso to Section 4 (1) *of the Act.*

As has already been stated, the Court has been given power to dismiss an appeal against conviction notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, where they also consider that no substantial miscarriage of justice has actually occurred. The considerations which apply to the user of this power have already been discussed separately under some of the grounds upon which it is most frequently sought to upset convictions, but it may perhaps be convenient to bring them together here. The proviso can hardly have any application where the ground of the appeal is that the verdict is unreasonable, or cannot be supported, having regard to the evidence, and, as has already been seen, it is necessary for the appellant to establish this before the Court can interfere with the conviction upon that ground alone. If that be established, there must clearly have been a substantial miscarriage of justice so far as that verdict is concerned, and if the powers of substitution of some other verdict do not apply, the conviction must be quashed. Nor does the proviso really apply to the general ground under which the Court must allow the appeal, if they think that "on any ground there was a miscarriage of justice." An actual miscarriage of justice must be shown by the appellant to have been caused by the event or events which form the grounds of the appeal before the Court can interfere with the conviction, on this ground and there can hardly be any real difference between miscarriage of justice and substantial miscarriage of justice. It is in appeals based on the second ground, viz. "that the judgment of the Court before whom an appellant was convicted should be set aside on the ground of a wrong

(*a*) R. *v.* Richard Lewis, 2 Cr. App. R. 180; *Times* News. May 19/09.

decision of any question of law" that the proviso finds its chief application.

Formerly, where the Court for Crown Cases Reserved came to the conclusion, on a case stated, that there had been a wrong decision of a question of law, the conviction was practically always quashed, and the special power given to the Court of Criminal Appeal was, therefore, probably intended to meet cases where the point raised in the case was technical rather than one which went to the question of guilt or innocence of the person on whose behalf the case had been stated. The day for such objections has now passed. Merely technical flaws which do not affect the merits of the case are now of little, if any, use, and the real consideration in cases where they are raised is always now, Did they or they not bring about a substantial miscarriage of justice? A merely technical point may be met, in a proper case, by a technical answer (*a*). In determining this the Court practically always must have in mind the consideration whether the facts proved are inconsistent with innocence of the offence charged, and consistent only with guilt, though the actual question the Court put to themselves does not always assume this form, and differs according to the nature of the defect in the trial. Where the matter is doubtful, the Court will allow the appeal, and quash the conviction on the ground that it is better that several guilty appellants should get off than an innocent one should have to undergo the punishment inflicted (*b*).

The Court will now hardly entertain an appeal where the only ground is a technical objection to the indictment which was not taken at the trial or which, even if taken, has no real bearing upon the guilt or innocence of the person convicted (*c*). The Court has even utilised the power given to them by the proviso to the extent of applying it to a case where the provisions of a statute intended to prevent the jury having any knowledge of a previous conviction were contravened, but the guilt of the appellant had been clearly established, both

(*a*) See R. *v.* Banks, 54 Sol. Jo. 727.
(*b*) R. *v.* Rowan, 5 Cr. App. R. 279; *Times* News. Nov. 15/10.
(*c*) See cases cited *ante*, p. 100, under Indictment bad in law.

by the trial, which was thus irregular, and by the trial, before another jury, of another indictment which charged part of the same facts as constituting another offence (*a*). But it does not extend to a case where the necessary consent of the Attorney-General to the prosecution of an offence has not been obtained, even though the appellant has not taken the point in his notice of appeal (*b*). Where the ground of the appeal is that there was no evidence to go to the jury at the close of the case for the prosecution, the cases decided show that the Court will have regard to the proviso where there has not been a submission to the judge, and evidence is afterwards given for the defence which to some extent supplies that which was lacking in the part of the prosecution; but if there has been such a submission and the Court come to the conclusion that it was right, the Court cannot regard the evidence given subsequently for the defence, even if it supplies material fit to be left to the jury (*c*).

Where the ground is wrongful admission of evidence the consideration is whether the evidence wrongfully admitted may reasonably have affected the minds of the jury in arriving at their verdict. If so there has been a substantial miscarriage of justice, but if the Court considers that it either has not in fact, or in all probability, or could not reasonably have affected the minds of the jury the appeal will be dismissed (*d*). A similar principle applies to the case of evidence wrongfully rejected (*e*).

In dealing with appeals based upon want of corroboration of certain evidence where corroboration is required by law the real consideration always is whether there is in fact any corroboration, and though there has been a failure to give a proper direction the Court will generally apply the proviso if they consider the evidence given discloses substantial corroboration. There has been no substantial miscarriage of justice, if

(*a*) R. *v.* Russell, 6 Cr. App. R. 78; trial for felony under the Coinage Act, sec. 37, where the appellant the day before had been convicted before another jury of the uttering of the coins.

(*b*) R. *v.* Bates [1911], 1 K.B. 964; 75 J.P. 271; 27 T.L.R. 314; 55 Sol. Jo. 410; 6 Cr. App. R. 153.

(*c*) See cases cited *ante*, p. 101.

(*d*) See cases cited *ante*, p. 103.

(*e*) See *ante*, p. 105.

in fact there was substantial corroboration, though the judge did not direct the jury properly. On the other hand, there may, in some cases, be a substantial miscarriage of justice if there is no corroboration, even though the jury have been given some direction as to the necessity for corroboration though where the direction is ample the case becomes one for the jury to decide, and the Court will probably not interfere unless they consider the verdict unreasonable (*a*).

Where misdirection in law is established the Court has more difficulty in applying the proviso. The Court is perhaps more ready to interfere with a conviction upon this ground than upon any other (*b*). It must be shown by the prosecution that on a right direction the jury would (not might) have come to the same conclusion, and if there is any doubt as to this there has been a substantial miscarriage of justice and the proviso, therefore, does not apply. But if upon a right direction the jury would have found the same verdict, or if, in other words, the facts are entirely inconsistent with the innocence and clearly establish the guilt of the accused there has not been a substantial miscarriage of justice, and the appeal will be dismissed (*c*).

Where misdirection not amounting to misdirection in law is established the proviso is not needed since it must be shown by the appellant that the misdirection has caused a miscarriage of justice (*d*).

(*a*) See *ante*, p. 105.

(*b*) R. *v.* Rowan, *Times* News. Nov. 15/10; 5 Cr. App. R. 279, 281.

(*c*) See *ante*, p. 111.

(*d*) There is a dictum in R. *v.* Coleman, 72 J.P. 427, against this contention, but this was an early case, and before a distinction had been clearly drawn between misdirection in law and misdirection in fact. See R. *v.* Cohen and Bateman, cited on p. 113, *ante*.

CHAPTER VII.

APPEALS AGAINST SENTENCE.

Power of the Court.

THE section of the Act which gives the Court its powers with regard to appeals against sentence is expressed in terms which are apparently both simple and wide. On any such appeal the Court has only to come to the conclusion that a different sentence should have been passed at the trial to enable the sentence to be quashed. If they do not think so the sentence must stand. If they do come to that conclusion and quash the sentence passed at the trial they must proceed to substitute for it such other sentence warranted in law by the verdict as they think ought to have been passed whether the substituted sentence be more or less severe. But though expressed in terms which apparently are simple, the words "such other sentence warranted in law *by the verdict*" almost compelled the Court to come to the logical conclusion that where there had been no verdict no other sentence could be substituted (*a*). It was, however, afterwards held that the words "by the verdict" might be treated as surplusage and disregarded so that effect might be given to the manifest intention of the Act (*b*).

And though the words used are so wide they have been given an interpretation by the Court which has limited considerably the application of the power to alter sentences given by them (*c*). Except in appeals against sentence under the Prevention of Crime Act, 1908, there is no appeal as of right against the sentence and the Court cannot increase the sentence on an application for leave to appeal, and will not give leave to appeal against sentence with the sole object of increasing the sentence passed at the trial without first drawing

(*a*) R. *v.* Davidson, 100 L.T. 623; 25 T.L.R. 325; 2 Cr. App. R. 51.
(*b*) R. *v.* Ettridge [1909], 2 K.B. 24; 100 L.T. 624; 73 J.P. 253; 25 T.L.R. 391; 2 Cr. App. R. 62, 66.
(*c*) See *post*, p. 126.

the appellant's attention to their power under the Act and in some degree, therefore, warning him of what the consequences may be if he proceeds with his application or appeal (*a*).

On appeals against sentence it is the duty of counsel appearing for the Crown to call the attention of the Court to any matters which affect the sentence which are not before the Court (*b*).

Principle on which Court acts.

On the other hand, the Court have laid down as a main guiding principle that they cannot interfere with the sentence passed at the trial merely because individual or all the judges constituting the Court sitting to hear the particular appeal think that a somewhat less severe sentence should have been passed, or at any rate would probably have been passed had he or they been the judge or judges of the Court of Trial (*c*). It has been held that if the Court of Trial has proceeded upon right principles and has not given undue weight to any of the facts proved in the case in passing sentence the Court will not enquire whether they themselves would have thought it well to pass it (*d*). That is not the right consideration (*e*). It is not the proper function of the Court to gauge nicely the sentence imposed by the Court of Trial (*f*). This principle applies equally to the exercise of the power of the Court to increase the sentence (*g*).

To some extent this principle is founded upon the fact that the Judge of the Court of Trial is generally in a better

(*a*) R. *v.* William Simpson, 75 J.P. 56; 5 Cr. App. R. 217. See also R. *v.* Brierly, *Times* News, Nov. 28/08. The only other case of increase of sentence is R. *v.* Bertram Mortimer, 72 J.P. 349, 352; 24 T.L.R. 745, 747; 1 Cr. App. R. 20, 24 which cannot be taken as an authority to the contrary.

(*b*) See R. *v.* Standing, 2 Cr. App. R. 5; R. *v.* Charles Wilson, 3 Cr. App. R. 8.

(*c*) R. *v.* Sidlow, 72 J.P. 391; 24 T.L.R. 754; 1 Cr. App. R. 28, 29; R. *v.* Heaps, 1 Cr. App. R. 106, 107; R. *v.* Hillier, 2 Cr. App. R. 142; R. *v.* M'Dowall, 2 Cr. App. R. 161.

(*d*) R. *v.* Sidlow, *supra*; R. *v.* Heaps, *supra*; R. *v.* Maurice, 1 Cr. App. R. 176, 177; R. *v.* O'Connell, 73 J.P. 118; R. *v.* Charles Wilson, 3 Cr. App. R. 8, 9.

(*e*) R. *v.* William Hillier, *supra*; R. *v.* M'Dowall, *supra*.

(*f*) R. *v.* Maxwell, 2 Cr. App. R. 28, 30.

(*g*) R. *v.* Sidlow, *supra*. For a case where the sentence was increased, see R. *v.* William Simpson, 75 J.P. 56; 5 Cr. App. R. 217.

position than the Court of Appeal to determine the proper extent of the punishment. He always has the accused before him, and where there has been a plea of not guilty he has had the advantage of hearing all the evidence and seeing other matters which may rightly affect the sentence (*a*). The Court on this ground alone is reluctant to interfere (*b*). But it is obvious that where there has been a plea of guilty the Court of Appeal are in almost as good a position as the Court of Trial. In these cases, therefore, the principle does not apply with equal force, and the Court of Appeal are better able to use their power (*c*).

Standardization of Sentences.

Further, there is the positive principle that the Court of Appeal will use their power as far as is possible to standardize sentences (*d*), which also operates to some extent against the principle of non-interference if there has not been any application by the Court of Trial of wrong principles in arriving at the sentence passed. It is, however, always difficult (*e*), and in some cases almost impossible (*f*) to apply this principle, since cases differ so materially, and the proper sentence depends so much upon the particular facts of the case; and for that reason the principle has not often been directly referred to in the cases coming before the Court, though the effect of interference by the Court with sentences passed by the Court of Trial must, in fact, tend to bring about some measure of standardization by the determination of what are and what are not the right principles to apply to cases of the same class and with similar circumstances. Some principles have now been clearly established by the Court of Appeal, and, where they have not been acted upon by the Court of Trial, the Court of Appeal may allow the appeal, and reduce the sentence passed. It is necessary to consider more particularly some of them.

(*a*) R. *v.* Nuttall, 73 J.P. 30; 25 T.L.R. 76; 1 Cr. App. R. 180.

(*b*) R. *v.* Nuttall, *supra*, and see R. *v.* Harrison, 2 Cr. App. R. 142.

(*c*) R. *v.* Nuttall, *supra*.

(*d*) R. *v.* Nuttall, *supra*; R. *v.* Woodman, 73 J.P. 286; 2 Cr. App. R. 67.

(*e*) See R. *v.* Nuttall, *supra*.

(*f*) *E.g.* crimes of violence. See R. *v.* Gorman, 2 Cr. App. R. 187, 189; but see R. *v.* O'Connell, 73 J.P. 118; 2 Cr. App. R. 11.

Heavier Sentence than last Sentence without due Consideration of the Circumstances of the Case.

It is not proper for the Court of Trial to pass a heavier sentence than the one passed previously, merely because the last sentence was so much, and without taking into due consideration the comparative gravity of the offences and the circumstances under which the offence for which the sentence was passed was committed (*a*). Where it can clearly be shown that this has been done the Court will generally reduce the sentence passed (*b*).

Again, in cases where it applies, due regard must be paid to any considerable interval which may have elapsed since the last conviction and to the good conduct of the accused during that time, and where these considerations have not been applied, the Court may reduce the sentence (*c*).

First Term of Penal Servitude.

The Court is inclined to adopt as a principle that in ordinary cases the first term of penal servitude imposed after other terms of imprisonment for similar offences should be the minimum (*d*), but this cannot be said to be a general rule, and is by no means always followed.

(*a*) See R. *v.* Nuttall, 73 J.P. 30; 1 Cr. App. R. 180; R. *v.* Raybould, 73 J.P. 334; 25 T.L.R. 581; 2 Cr. App. R. 184, 185; and see R. *v.* Thornton, *Times* News. July 17/09; 2 Cr. App. R. 284, 285; R. *v.* Ray, 6 Cr. App. R. 114.

(*b*) See R. *v.* Nuttall, *supra*; R. *v.* Percy Morton, *Times* News. Dec. 19/08; 1 Cr. App. R. 255; R. *v.* Myland, 27 T.L.R. 256; 6 Cr. App. R. 135; R. *v.* Haden, 2 Cr. App. R. 148; *Times* News. May 1/09 (cases where crimes of dishonesty committed when and probably because appellant was drunk); R. *v.* Boucher, 2 Cr. App. R. 177; R. *v.* Ray and Carter, 3 Cr. App. R. 189, 190; R. *v.* Virgin, 3 Cr. App. R. 175, 176; *Times* News. Dec. 3/09; R. *v.* Bennett and Holloman, 6 Cr. App. R. 203; R. *v.* Simmonds, 6 Cr. App. R. 246 (cases where offences were comparatively trivial but heavy sentences passed on account of previous record).

(*c*) R. *v.* John Hill, 2 Cr. App. R. 74; R. *v.* Cullen, 4 Cr. App. R. 7; R. *v.* Benjamin Smith, 4 Cr. App. R. 48; R. *v.* Chapman, 4 Cr. App. R. 54, 56; R. *v.* Hawkins, 5 Cr. App. R. 237; *Times* News. Nov. 1/10; R. *v.* Wilkinson, 6 Cr. App. R. 85; *Times* News. Dec. 21/10.

(*d*) R. *v.* Street, 4 Cr. App. R. 88; *Times* News. Feb. 12/10; R. *v.* Dean, *Times* News. March 12/10; 4 Cr. App. R. 155; R. *v.* Warnlow, 5 Cr. App. R. 230; *Times* News. Nov. 1/10.

Punishment for some other Offence.

It is essential that the punishment be awarded for the offence of which the accused has been actually found guilty by the jury, and if the Judge of the Court of Trial has passed the sentence appealed against because in his opinion the accused was guilty of some graver offence, the Court of Appeal will, in a proper case, reduce it to a proper sentence for the actual crime of which the accused was found guilty (*a*). So also where the sentence is to some extent founded on considerations which have no real bearing upon the actual offence committed (*b*), or where other offences which are denied, and of which there was no satisfactory proof, have been improperly taken into consideration (*c*).

Again, where the appellant has been sentenced to a long term of penal servitude on the ground that he is a habitual criminal, though he has not been found to be one, the Court will quash the sentence unless it can be justified on the facts actually proved (*d*). And where in such a case the sentence has been imposed with the intention that part of it shall be commuted by the Home Secretary to a term of preventive detention, the Court of Appeal will quash it unless it can be justified by the facts of the case itself, as the Court of Trial has no power with regard to such a commutation, the matter being one entirely for the discretion of the Home Secretary (*e*). But the fact that the Judge of the Court of Trial merely expressed the hope that the sentence would be commuted is not in itself a sufficient ground for interference if the sentence is justified on the facts. The Court of Appeal itself has occasionally

(*a*) See R. *v.* Harrison, 2 Cr. App. R. 94, 96; R. *v.* Edwin Wells, 73 J.P. 415; 2 Cr. App. R. 259, 260 (appellant discharged).

(*b*) R. *v.* Robert Dench, *Times* News. Jan. 29/10; 4 Cr. App. R. 26.

(*c*) See R. *v.* Kendrick, 6 Cr. App. R. 117; R. *v.* Campbell, 75 J.P. 216; 27 T.L.R. 256; 6 Cr. App. R. 131.

(*d*) R. *v.* Raybould, 73 J.P. 334; 25 T.L.R. 481; 2 Cr. App. R. 184, 185; R. *v.* Dorrington, 74 J.P. 392; 5 Cr. App. R. 119, 121.

(*e*) R. *v.* Flicker and Chuter, 74 J.P. 381; 26 T.L.R. 540; 5 Cr. App. R. 79. The note at the end of the last-cited report is obviously wrong. See also R. *v.* Dorrington, *supra*. There is a dictum in R. *v.* Raybould, *supra*, somewhat to the contrary.

had regard to the powers of commutation the Home Secretary possesses in their consideration of appeals against long sentences of penal servitude (*a*).

Where Maximum Sentence imposed.

The maximum sentence allowed by law is intended to be kept for the worst cases of the particular class, and if it has been passed in cases which clearly do not come within this category, the Court may reduce it (*b*). But this principle does not apply to cases where the maximum term of imprisonment with hard labour has been imposed instead of a sentence of penal servitude. In such a case, in considering the actual severity of the sentence, the Court will have regard to the facts that the full period need not necessarily be served, as remission may be earned by good conduct, and that the conditions under which the punishment is now served make it a less severe sentence than it used to be (*c*).

Imprisonment to run concurrently with Penal Servitude.

Where the appellant has on different counts of the same indictment or on different indictments been sentenced by the same Court to a term of penal servitude to run concurrently with a sentence of imprisonment, the Court of Appeal has generally reduced the imprisonment to the nominal term of one day, on the ground that although the terms of penal servitude and imprisonment were meant to be entirely concurrent by the Court of Trial, the total term of punishment will in fact

(*a*) R. *v.* Robert Thompson, 2 Cr. App. R. 112; R. *v.* George Morton, 2 Cr. App. R. 145.

(*b*) R. *v.* Harrison, 2 Cr. App. R 94; R. *v.* Joseph Edwards, 5 Cr. App. R. 229; R. *v.* Edward Edwards, 73 J.P. 286; 2 Cr. App. R. 79; R. *v.* Wm. Cooper, 5 Cr. App. R. 273; *Times* News. Nov. 8/10; R. *v.* Myland, 6 Cr. App. R. 135; *Times* News. Feb. 14/11. See also R. *v.* Franklin, 74 J.P. 15; 3 Cr. App. R. 52 and R. *v.* James Moran, 5 Cr. App. R. 222; 75 J.P. 110 (cases where the maximum period of preventive detention were imposed).

(*c*) R. *v.* M'Creese, 4 Cr. App. R. 72; R. *v.* Joseph Wilson, 5 Cr. App. R. 8; R. *v.* Jenner, 6 Cr. App. R. 63; *Times* News. Dec. 14, 1910.

be longer than if the term of penal servitude had alone been imposed, since the extent of possible remission for good conduct is lessened by the imposition of a concurrent term of imprisonment (*a*). But the Court of Appeal may refuse to interfere where the sentences have purposely been passed in that form by the Court of Trial with a full knowledge of their effect, and there is some reason for this having been done, unless the sentence is much too severe on the facts (*b*).

Where a sentence of penal servitude has been passed by one Court to be consecutive to a period of imprisonment with hard labour passed by another Court shortly before for similar offences, the offences for which the penal servitude was passed not having been before the Court passing the first sentence the Court of Appeal may alter the sentences on the grounds (1) that a sentence of penal servitude following upon a term of imprisonment is a harsh one, and (2) that if the offences for which the sentence was passed had been before the first Court such a sentence would probably not have been passed (*c*).

Sentence for Offence committed before last Imprisonment.

Where a prisoner after serving, or nearly completing, a term of imprisonment or penal servitude is charged with another offence committed before the offence for which he has completed or nearly completed the punishment, and is sentenced to a further long term of punishment, the Court of Appeal will reduce it if proper consideration has not been given to what the first sentence would probably have been had punishment for the two offences been given at or about

(*a*) R. *v.* Max Albert Martin, 1 Cr. App. R. 210; R. *v.* Islip, 3 Cr. App. R. 96, 99; *Times* News. Nov. 20/09.

(*b*) R. *v.* Bruce, 75 J.P. 111; 27 T.L.R. 51; 5 Cr. App. R. 213, 233.

(*c*) R. *v.* John Jones, 1 Cr. App. R. 196; *Times* News. Nov. 23/08. In this case the sentence of penal servitude was ordered to run concurrently with the hard labour sentence. This case affords a good instance of the lack of uniformity between Courts of Quarter Sessions which existed when the Criminal Appeal Act came into force.

the same time (*a*). This applies more strongly where the facts of the case last tried were known at the time of the trial of the first case and there appears to be no proper reason for the delay in bringing the second case to trial (*b*). But the application of the principle is not necessarily confined to cases where the facts of the subsequent case were known at the time of the first sentence (*c*). Wherever it is possible all the charges upon which it is intended to prosecute an accused person should be disposed of at the earliest time which is reasonably possible, and should not be allowed to remain till the punishment for one or more of the offences has been nearly or entirely completed (*d*).

Other Offences taken into consideration by Court of Trial.

Again, where an appellant has admittedly committed other offences about the same time, and similar to the one of which he has been convicted, and is about to be sentenced, and he desires the Court by which he is then about to be sentenced to take them into consideration, and the Court thereupon does so, and passes a sentence which is intended to be punishment for all the offences mentioned and admitted, the Court of Appeal will reduce a sentence which adds to any appreciable extent to the punishment already given, which is passed subsequently by another Court, without the knowledge that the offence then before the Court was taken into consideration by the first Court (*e*). The Judge of a Court of Trial is, at the prisoner's request and with his consent, entitled to take into consideration cases similar and admitted which it is intended to prosecute, whether there has already been a committal or not; and it is desirable that he should do so, though where there has been an actual committal in

(*a*) R. *v.* Joseph Taylor, 2 Cr. App. R. 158; *Times* News. May 4/09; R. *v.* Markham, 2 Cr. App. R. 160; *Times* News. May 4/09; R. *v.* Higson, 5 Cr. App. R. 167; R. *v.* Richardson, 5 Cr. App. R. 278; R. *v.* Birkett, 6 Cr. App. R. 122.

(*b*) *Ib.* and R. *v.* Sullivan, 6 Cr. App. R. 4.

(*c*) R. v. Hawes, 1 Cr. App. R. 42; *Times* News. July 4/08.

(*d*) See cases cited in note (*a*), *supra*, and Home Office Circular, dated 20th August 1896.

(*e*) R. *v.* Syres, 73 J.P. 13; 25 T.L.R. 71; 1 Cr. App. R. 172. In this case the offences dealt with by the second Court were not specifically denoted at the first Court.

another jurisdiction, he should first be satisfied that the prosecution consent to it being done (*a*). Where the other offences are dissimilar, the judge may take them into consideration, if admitted by the prisoner and at his request, whether there has been an actual committal in another county or not for any of them; but he should not do so unless the prosecution consent, and, even if that consent is given, unless he considers under all the circumstances that he ought to include them in his sentence (*b*). Where an offence has in fact been taken into consideration, whether it be a similar or dissimilar one, or whether there be a committal in another jurisdiction or not, but the prisoner is, nevertheless, brought before another Court subsequently for one of the offences already taken into consideration, the judge of the second Court should be informed of the fact, and he should then pass a sentence which will not increase the sentence already passed (*c*). But it does not follow that the Judge of the Court of Trial must take into consideration all the cases the prisoner desires him to do; and cases which in fact have not been taken into consideration either because they were not known to the judge (*d*) or the judge refused to do so (*e*), may subsequently be dealt with by the same or other Courts, though this should be done at the earliest time reasonably possible, as otherwise there may be a failure to comply with the principle mentioned above; and the fact that the prisoner is undergoing a sentence for similar offences committed about the same time should be taken into consideration (*f*).

The Court of Appeal itself may order that the sentence passed shall include other similar offences which are admitted by the appellant (*g*), and may ask the appellant if he admits other offences alleged against him (*h*).

(*a*) R. *v.* Syres, 73 J.P. 13; 25 T.L.R. 71; 1 Cr. App. R. 172; and R. *v.* M'Lean [1911], 1 K.B. 332; 27 T.L.R. 138; 6 Cr. App. R. 26.

(*b*) R. *v.* M'Lean, *supra.*

(*c*) R. *v.* M'Lean, *supra.*

(*d*) R. *v.* John Jones, 1 Cr. App. R. 196; *Times* News. Nov. 23/08. See also R. *v.* Louisa Hillier 6 Cr. App. R. 215.

(*e*) R. *v.* Shapcote, 3 Cr. App. R. 58.

(*f*) See p. 130, *ante.*

(*g*) R. *v.* Aleron, 2 Cr. App. R. 152; R. *v.* Wm. Richard Wells, 3 Cr. App. R. 197.

(*h*) R. *v.* William Smith, 6 Cr. App. R. 201.

Sentence bad in Law.

Where the sentence is bad in law the Court will quash it, and substitute for it the sentence they consider ought to have been passed (*a*), if any (*b*). Most of the cases which have occurred have been cases where imprisonment with hard labour was imposed for crimes which are not punishable with hard labour. As a rule, in such a case the Court does not interfere with the length of the term of imprisonment (*c*). Where the Judge of the Court of Trial has passed a sentence of imprisonment or penal servitude, to run concurrently with a remanet of a previous sentence of penal servitude, the Court will generally consider what the intention of the Judge of the Court of Trial was, and if they conclude that his intention was that, as a result of the commission of the crime, the appellant should not serve a longer term than the term actually imposed, the Court will, if possible, reduce the term so imposed, in order to carry out the intention of the Judge of the Court of Trial (*d*).

Where the sentence is ordered to commence after the expiration of the remanet, the Court may quash the part of the sentence referring to the remanet, since by the Penal Servitude Act, 1864 (*e*), the remanet must be served after the expiration of the sentence imposed (*f*).

Comparison with other Sentences.

The mere fact that a sentence seems severe upon comparison with another sentence passed upon a person convicted

(*a*) R. *v.* Briggs [1909], 1 K.B. 381; 73 J.P. 31; 25 T.L.R. 105; 1 Cr. App. R. 206 (imprisonment under the Inebriates Act, 1898, sec. 2, subsec. 1).

(*b*) In R. *v.* Bendon, 6 Cr. App. R. 178, where a sentence of police supervision had been illegally imposed, the Court simply quashed that part of the sentence.

(*c*) R. *v.* Hopkins, 2 Cr. App. R. 288; R. *v.* Albert Asquith Jackson, 3 Cr. App. R. 192, 196; R. *v.* Costello, 74 J.P. 11; 26 T.L.R. 31; 3 Cr. App. R. 27, 36 (term reduced as well); R. *v.* Laitwood, 4 Cr. App. R. 248, 252; R. *v.* Mallon, 5 Cr. App. R. 216.

(*d*) R. *v.* Matthew Wilson [1909], 2 K.B. 756; 73 J.P. 407; 2 Cr. App. R. 271, 273 (sentence reduced); R. *v.* Charles Hamilton, *Times* News. July 25/08; 1 Cr. App. R. 87 (bad part struck out, leaving Home Secretary to reduce actual term if he thought fit).

(*e*) 27 & 28 Vict. c. 47, sec. 9.

(*f*) R. *v.* John Smith and R. *v.* Wilson [1909], 2 K.B. 756; 73 J.P. 407; 2 Cr. App. R. 271, 273.

with the appellant is not a sufficient ground in itself to justify interference with it by the Court of Appeal if the sentence, in itself, is justified by the nature and circumstances of the crime, or the past record of the appellant, or both (*a*), though it may, possibly, afford ground for interference if it amounts to a failure to discriminate properly between cases where discrimination is really called for (*b*).

Other Grounds on which Court may Interfere.

Other cases in which the Court of Appeal may interfere with the sentence imposed by the Court of Trial are where it has allowed evidence, or further evidence, to be called, which was not called at the trial, as to the good character of the appellant, or of the circumstances under which the crime was committed (*c*), or has allowed evidence to show that the Judge of the Court of Trial proceeded upon a conclusion not justified by the evidence as to the question of relative guilt in cases where more than one prisoner has been convicted (*d*). So also where the judge has made a mistake as to the facts of the appellant's character (*e*), or the Court thinks he has come to a wrong conclusion as to the appellant's suitability for Borstal treatment (*f*). It will not interfere because a longer sentence of detention in a Borstal institution has been passed than would have been passed if ordinary imprisonment had been given, as it is legitimate to pass the longer sentence in order that the appellant may obtain the benefits of that special treatment (*g*). Where the person about to be sentenced

(*a*) R. *v.* Wm. Stutter, 5 Cr. App. R. 64; see also R. *v.* Baldwin, 2 Cr. App. R. 117; R. *v.* Garrett, 4 Cr. App. R. 21, 25.

(*b*) See R. *v.* Cunham, 5 Cr. App. R. 110, 112; *Times* News. July 5/10.

(*c*) R. *v.* Francis, 1 Cr. App. R. 259; R. *v.* Ettridge [1909], 2 K.B. 24; 2 Cr. App. R. 62, 66; R. *v.* Dickenson, 73 J.P. 286; 2 Cr. App. R. 78; R. *v.* Colclough, 2 Cr. App. R. 84; R. *v.* George Lane, 6 Cr. App. R. 136; R. *v.* Bradshaw, Beacham and Williams, 6 Cr. App. R. 221.

(*d*) R. *v.* John Charles Williams, 2 Cr. App. R. 156, 158; *Times* News. May 4/09.

(*e*) R. *v.* Whiteman, 73 J.P. 102; 2 Cr. App. R. 10.

(*f*) R. *v.* Watkins, Smallwood, and Jones, 26 T.L.R. 581; 74 J.P. 382; 5 Cr. App. R. 93, 97.

(*g*) R. *v.* Kirkpatrick, 73 J.P. 29; 25 T.L.R. 66; 1 Cr. App. R. 170; R. *v.* Webb, 5 Cr. App. R. 112.

is a convict on licence, the fact that he will forfeit his licence, and will have to serve the remanet after serving the sentence imposed upon him is a matter which ought to be taken into consideration in determining the length of the sentence which ought to be imposed (*a*).

Though the Court has laid down as a main principle that sentences will not, as a rule, be interfered with unless the Judge of the Court of Trial has proceeded upon a wrong principle or given undue weight to some of the matters elicited during the case, the Court does, in fact, occasionally interfere with sentences which they think exceed what in their opinion is the proper sentence (*b*). The principle is not an absolutely rigid one, or it may perhaps be said that where a sentence appreciably in excess of what the Court think proper has been imposed, the Judge of the Court of Trial has proceeded upon a wrong principle, in that he has departed to a considerable extent from what is the proper standard of punishment for the offence in question. This applies especially to cases of first offenders (*c*).

Sentences on Habitual Criminals.

Where an appellant has been convicted of being a habitual criminal, and has been sentenced to a long term of penal servitude to be followed by preventive detention, the Court has occasionally reduced the sentence of penal servitude

(*a*) R. *v.* Dorrington, 74 J.P. 392; 5 Cr. App. R. 119. See also R. *v.* John Fisher, 5 Cr. App. R. 269.

(*b*) See R. *v.* Prince, 25 T.L.R. 197; 1 Cr. App. R. 252; R. *v.* John Cooper, 3 Cr. App. R. 95; R. *v.* Ross, 3 Cr. App. R. 198; R. *v.* Mountford, *Times* News. Apr. 9/10; 4 Cr. App. R. 224; R. *v.* Edward Edwards, 73 J.P. 286; R. *v.* Hawkins, 5 Cr. App. R. 237; *Times* News. Nov. 1/10; R. *v.* Hudson, 5 Cr. App. R. 278; *Times* News. Nov. 8/10; R. *v.* Richmond, 6 Cr. App. R. 204.

(*c*) See R. *v.* Charles Harding, 3 Cr. App. R. 10; *Times* News. Aug. 21/09; R. *v.* Robert Dench, 4 Cr. App. R. 26; R. *v.* Henderson, *Times* News. June 28/10; 5 Cr. App. R. 97; R. *v.* Webb, 5 Cr. App. R. 112; R. *v.* Roberts, 6 Cr. App. R. 3; R. *v.* Bertie Tanner, 6 Cr. App. R. 62; R. *v.* Court, 6 Cr. App. R. 121; R. *v.* Fitzgerald, 6 Cr. App. R. 99; R. *v.* Heap, 6 Cr. App. R. 100. In a proper case a sentence of imprisonment in the 2nd div. will be substituted for a sentence of hard labour. R. *v.* Rouse, 2 Cr. App. R. 74; R. *v.* Cunham, 5 Cr. App. R. 110.

in order that the period of preventive detention may be accelerated (*a*).

The prior sentence of penal servitude which must be passed before a person found to be a habitual criminal can be sentenced to a term of preventive detention must be justified by the circumstances of the offence committed, and ought not to be imposed merely to enable a sentence of preventive detention to be given. If on an appeal against sentence the Court of Appeal come to the conclusion that it was not proper to pass a sentence of penal servitude under the circumstances, they must also quash the sentence of preventive detention, though the appellant has properly been found to be a habitual criminal (*b*).

(*a*) See R. *v.* Charles Smith, 74 J.P. 13; 3 Cr. App. R. 40, 47; R. *v.* Thomas Smith, 74 J.P. 54; 3 Cr. App. R. 90, 92; R. v. Peter Jackson, 4 Cr. App. R. 93, 95; R. *v.* Edward Taylor and Alfred Coney, 5 Cr. App. R. 168, 170; *Times* News. July 29/10; R. *v.* Alfred Walker, 27 T.L.R. 51; 5 Cr. App. R. 231, 232.

(*b*) R. *v.* John Jones, 27 T.L.R. 108; 6 Cr. App. R. 1. Before this decision doubts had been expressed on this point in the cases of R. *v.* Sweeney, 4 Cr. App. R. 72, and R. *v.* Carpenter, 4 Cr. App. R. 230.

CHAPTER VIII.

MATTERS SUBSEQUENT TO THE CONSIDERATION OF THE APPEAL.

Where other Indictments have been found against the Appellant.

WHERE the Court quash a conviction on one indictment but there remain untried on the file of the Court of Trial other indictments found against the appellant, they may order that the appellant be remanded in custody to take his trial on the other indictment or indictments unless he be admitted to bail or be otherwise lawfully discharged from custody (*a*). The exercise of this power has, up to the present, been limited to ordering the appellant to be remanded to custody to take his trial upon any other indictment or indictments found against him at the same Court of Trial and the same assizes or sessions as the indictment the conviction on which has just been quashed, but the power probably extends beyond this in a proper case, and there does not appear to be anything to prevent the Court ordering the appellant's remand to undergo his trial upon an indictment found against him at another Court of Trial. The Court may themselves admit the appellant to bail upon his entering into recognizance before them to appear and take his trial at the Court of Trial (*b*).

(*a*) See R. *v.* Sovosky, 72 J.P. 435, 436; 1 Cr. App. R. 98, 100; R. *v.* Halikiopulo, 3 Cr. App. R. 272, 275; R. v. Richards, 4 Cr. App. R. 161, 164; R. *v.* Brownlow, 4 Cr. App. R. 131, 134; R. *v.* Norton, 5 Cr. App. R. 65, 72; R. *v.* Coulter, 5 Cr. App. R. 147, 150; R. *v.* Rowan, *Times* News. Nov. 15/10; 5 Cr. App. R. 279.

(*b*) R. *v.* Rowan, *supra*. In R. *v.* Halikiopulo, and R. *v.* Brownlow, and R. *v.* Coulter, *supra*, the power of the Court was doubted, but it is submitted that there is power under sec. 1 (7) and sec. 9. Even if there is no power in the Court as such, each of the judges has power as a Judge of the High Court. See R. *v.* Rowan, *supra*, 5 Cr. App. R., at p. 282.

There is no power in the Court to order any other indictments to be taken off the file of the Court of Trial (*a*).

Time Appellant specially treated in Custody counting as part of the Sentence.

The moment an appellant in custody signs his notice of application for leave to appeal or appeal, he is specially treated as an appellant, and this continues till the final determination of the application or appeal. The time during which he is specially treated in this manner does not count as part of the sentence passed upon him, unless the Court of Appeal orders otherwise at the hearing. The Court leans against making the order, and will only do so when good cause for the exercise of the power can be made out. Where there has been unusual delay before the hearing of the application or appeal, not occasioned by the appellant, the Court often allows part of the time to count though it will probably not do so in cases it considers frivolous. Where leave to appeal has been given; where the sentence passed is considered by the Court to be more severe than they would have given but the Court are unable to interfere; where the sentence is reduced; where the Court considers there were substantial grounds for bringing the appeal; where a case is stated by the Court of Trial; or the Home Secretary refers a petition to the Court, the Court generally allows the time to count.

The special treatment appellants undergo is similar to, but not identical with imprisonment in the second division, and the fact, therefore, that a prisoner has been sentenced to this kind of imprisonment does not in itself entitle him to an order that the time he has been specially treated as an appellant should count as part of his sentence (*b*).

Restitution of Property.

If a conviction is quashed by the Court of Appeal, any order of restitution of property made by the Court of Trial

(*a*) R. *v.* Laws 72 J.P. 271; 24 T.L.R. 630, 632; 1 Cr. App. R. 6.

(*b*) R. *v.* Gylee, 73 J.P. 72; 1 Cr. App. R. 242.

on that conviction, and the provisions of the Sale of Goods Act as to revesting of property, if applicable, do not take effect (*a*). It seems clear that this must be so, even though there has been no suspension of the operation of the order or provisions of the Sale of Goods Act in a case where the property, in the opinion of the Court of Trial, is not in dispute, but the wording of the section in the Criminal Appeal Act is open to the interpretation that the quashing of a conviction by the Court of Appeal only affects the operation of orders of restitution and the provisions of the Sale of Goods Act where their operation is suspended (*b*).

When the conviction is not quashed the Court has power to annul or vary any order for restitution made by the Court of Trial upon the conviction, and the order, if annulled, does not take effect, and if varied, takes effect as so varied (*c*). It seems clear from the provisions of the Act that this power does not apply to the revesting of property under the provisions of the Sale of Goods Act, since no reference is made to that Act, but the rules made for carrying into effect this sub-section seem to imply that, to some extent, the Court has the power. The first rule provides that certain persons shall be entitled to be heard before the Court acts upon its powers given by the Act. The person in whose favour or against whom the order of restitution has been made is entitled as of right to be heard, but any other person must first obtain the leave of the Court (*d*). But the rule goes on to provide that the person in whose favour or against whom an order under the next rule has been made may also be heard as of right (*e*), and this rule relates to directions given or terms imposed upon persons by the Judge of the Court of Trial in cases where he thinks the title to any property the subject of an order for restitution, or to which the provisions of the Sale of Goods

(*a*) Section 6, *post*, p. 150. This follows automatically as a result of the quashing of the conviction. It is not necessary to make it a part of the order of the Court, though in some of the earlier cases this was done. See R. *v.* Henry Joyce, 72 J.P. 483, 484; 25 T.L.R. 8, 9; 1 Cr. App. R. 143; R. *v.* Leonard Osborne, 1 Cr. App. R. 144.

(*b*) See Section 6, *post*, p. 150.

(*c*) Section 6 (2), *post*, p. 150.

(*d*) Rule 9, *post*, p. 172.

(*e*) See Rules 9 and 10, *post*, p. 173.

Act applies is not in dispute, and therefore the operation of the order or provisions of the Act need not be suspended, but some provision is necessary for securing the production of the property or a sample or portion or facsimile representation of it for use at the hearing of an appeal, if any. Literally, therefore, the rules seem to assume that a person in whose favour or against whom the provisions of the Sale of Goods Act operates has a right to be heard by the Court under the circumstances mentioned in rule 10. But it is probable that the literal interpretation is the wrong one and that the Court of Appeal has no power to interfere with the revesting of property under the provisions of the Sale of Goods Act, except that, as a result of a conviction being quashed by the Court, the provisions of the Act become inoperative with regard to any property which revested in the owner of stolen goods upon the conviction of the thief. The Criminal Appeal Act or the rules thereunder do not give a person in whose favour or against whom a restitution order has been made a right to make a substantive application to annul or vary the order made by the Court of Trial. They only give him the right to be heard by the Court before the Court, on the hearing of an appeal in the case where the order has been made, proceed to annul or vary the order made by the Court of Trial, and this condition does not arise where the Court do not propose to interfere with the order (*a*).

If the appellant has been ordered to pay the costs of the prosecution by the Court of Trial, the order is necessarily quashed by the quashing of the conviction, just as any other part of the sentence is.

Notification of Results of Appeal.

The Registrar must notify the determination of the appeal, on the forms provided (*b*), to the appellant, if he has not been present at the determination of the appeal, and in cases involving sentence of death, whether he was present or not;

(*a*) R. *v.* Henry Elliott [1908], 2 K.B. 452; 72 J.P. 285; 24 T.L.R. 645; 99 L.T. 200; 1 Cr. App. R. 15.

(*b*) Forms XXIX. to XXXII., *post*, p. 208.

to the Home Secretary; to the Prison Governor of the prison in which the appellant then is or from which he was released on bail or to which he is committed under the order of the Court; and to the Prison Commissioners (*a*). He must also notify to the proper officer of the Court of Trial in the way he thinks most convenient the decision of the Court of Appeal, and any orders or directions made or given by the Court under the Act or Rules in relation to the appeal, or any matter connected therewith (*b*). In practice a similar notification is sent to the officer of the Court of Trial as to the Home Secretary.

Enforcement of Orders.

The Court has power to issue any warrants necessary for enforcing its orders or sentences (*c*). Any warrant for the apprehension of an appellant issued by the Court of Appeal is deemed to be, for all purposes, a warrant issued by a Justice of the Peace for the apprehension of a person charged with any indictable offence under the provisions of the Indictable Offences Act, 1848 (*d*), or any Act amending it (*e*). Under this power the Court issued a warrant for the arrest of an appellant where there had been a successful appeal to the Court, but on a further appeal to the House of Lords by the Director of Public Prosecutions the order of the Court had been reversed (*f*).

Costs.

On the hearing and determination of an appeal (including the hearing of a case stated under the Crown Cases Act, 1848 (*g*)), or any proceedings preliminary or incidental thereto under the Act, no costs can be allowed on either side.

The expenses of any solicitor or counsel assigned to an appellant (including the person in relation to whose conviction

(*a*) Rule 34 (*a*), (*b*), p. 182, and Rule 44, p. 186.
(*b*) Rule 35 (*a*), p. 182.
(*c*) Section 9, *post*, p. 152.
(*d*) 11 & 12 Vict. c. 42.
(*e*) Rule 47, *post*, p. 187. No form of warrant is provided except for the arrest of an appellant on bail. See Form XIX., p. 202.
(*f*) R. *v.* Ball [1911], A.C. 47, at p. 76.
(*g*) Costs in Criminal Cases Act, 1908 (8 Ed. VII. c. 15), sec. 9 (5). See *post*, p. 160.

a case is stated under the Crown Cases Act, 1848 (*a*)), under the Act, and 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 to any reference of a question to a special Commissioner appointed by the Court or of any person appointed as assessor to the Court, are defrayed, up to an amount allowed by the Court, but subject to any regulations as to rates and scales of payment made by the Secretary of State, out of local funds, under the Costs in Criminal Cases Act, 1908 (*b*).

The scale of costs allowed is set out in the Appendix (*c*). The payments are made by the County or Borough Treasurer in pursuance of orders drawn by the Registrar, to the person in whose favour the orders are drawn. A form of order is provided in the Schedule to the Rules. The Treasurer may make the payments by cheque or post office order if and when convenient (*d*).

Appeal.

The determination by the Court of any appeal or other matter which it has power to determine is final, and no appeal lies from the Court to any other Court, except that, if in any case the Director of Public Prosecutions or the prosecutor or defendant obtains the certificate of the Attorney-General that the decision of the Court involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, he may appeal from that decision to the House of Lords (*e*).

Where a conviction is quashed and the Director of Public Prosecutions or prosecutor intimates to the Court that he

(*a*) Costs in Criminal Cases Act, 1908 (8 Ed. VII. c. 15), sec. 9 (5). See *post*, p. 160.

(*b*) Section 13 (2), *post*, p. 153. As amended by sec. 9 (6) of the Costs in Criminal Cases Act, 1908 (8 Ed. VII. c. 15), set out, *post*, p. 160.

(*c*) See *post*, pp. 224, 226.

(*d*) Rule 49, *post*, p. 187.

(*e*) Section 1 (6), *post*, p. 148.

intends to apply to the Attorney-General for a certificate to enable him to appeal against the judgment to the House of Lords, the Court has no power to order the successful appellant's detention in custody or to admit him to bail (*a*).

Application for Attorney-General's Certificate.—The application to the Attorney-General for his certificate should be made in the form of a memorial setting out all the facts. It should be signed by the memorialist, and end with a prayer for the Attorney-General's certificate. The following documents should accompany the memorial:—

(*a*) A statutory declaration verifying the allegations in the memorial.
(*b*) A copy of the indictment.
(*c*) A copy of the proceedings at the trial.
(*d*) A certificate of counsel that in his opinion the decision of the Court of Criminal Appeal involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, giving the reasons for such opinion.

Enquiries respecting applications for the certificate should be made to the Chief Clerk, Law Officers' Department, Room 549, Royal Courts of Justice, and the memorial must be lodged there.

Procedure in the House of Lords.—No rules of the House of Lords have been made in respect of appeals from the Court of Criminal Appeal, but the House on presentation of the first appeal ordered that the appeal lodged by the appellant (the Director of Public Prosecutions) "be read and that the same be ordered to be prosecuted subject to such standing orders as may be applicable thereto and that the respondent be ordered to lodge a case forthwith in answer thereto." The papers which were before the Court of Criminal Appeal, together with the petition of appeal to the House and the certificate of the Attorney-General, were held to be

(*a*) R. *v.* Ball, 1911 A.C. 47, 59; 75 J.P. 180, 182; 5 Cr. App. R. 238, 252; 104 L.T. 47.

sufficient materials for the House, and it was also held that the parties need not be put to the expense and trouble of printing. All the papers in this case were, in fact, typewritten, except the petition of appeal (*a*).

Order of the House of Lords.—Upon the determination of the appeal by the House the cause is ordered to be remitted back to the Court of Criminal Appeal, to do therein as shall be just and consistent with the judgment (*b*).

If the House of Lords reverses the decision of the Court the successful appellant to the House of Lords must apply to the Court to make the order of the House of Lords an order of the Court, so that the decision of the House of Lords may become operative (*c*). Where the Court has quashed the conviction and the House of Lords has reversed the decision of the Court the defendant will be ordered into custody if he be present at the application to the Court to give effect to the decision of the House of Lords, and if not, a warrant may be issued by the Court for his arrest (*d*). Where the Court has dismissed the appeal but the House of Lords reverses the decision and allows the appeal, the successful appellant must apply to the Court to give effect to the decision by ordering the conviction to be quashed, and upon this being done he is entitled to his release if in custody.

Notification of the further order of the Court is given by the Registrar as in the case of the original order.

Appeal by some only of the Persons convicted.

Where some only of the persons convicted have appealed against conviction and their appeal is successful, another person convicted at the same time, whose case is similar, must separately apply for leave to appeal. The conviction against him cannot be quashed in the appeal by the others, as he is not before the Court (*e*).

(*a*) R. *v.* Ball, 1911, A.C. 47, at pp. 61, 62 (for form of petition see at p. 76), 75 J.P. 180, 183.

(*b*) R. *v.* Ball, 1911, A.C. 47, at p. 72.

(*c*) R. *v.* Ball, 1911, A.C. 47, at p. 74; 75 J.P. 180, 184; 6 Cr. App. R. 49; 104 L.T. 48; 27 T.L.R. 162.

(*d*) *Ib.*

(*e*) R. *v.* Crane, 75 J.P. 415; 6 Cr. App. R. 185.

APPENDICES.

APPENDIX A.

PAGE

CRIMINAL APPEAL ACT, 1907, AND OTHER STATUTES . . 147

APPENDIX B.

CRIMINAL APPEAL RULES, 1908, AND OTHER RULES . . 164

APPENDIX C.

FORMS UNDER THE CRIMINAL APPEAL ACT 189

APPENDIX D.

INSTRUCTIONS ISSUED BY THE HOME SECRETARY AND THE REGISTRAR UNDER THE CRIMINAL APPEAL ACT . . 219

APPENDIX E.

ORDERS RELATING TO COSTS AND SCALE OF ALLOWANCES TO WITNESSES AND SHORTHAND WRITERS 224

APPENDIX A.

CRIMINAL APPEAL ACT, 1907.
[7 EDW. 7. CH. 23.]

ARRANGEMENT OF SECTIONS.

Court of Criminal Appeal.

Section.
1. Constitution of Court of Criminal Appeal.
2. Registrar of the Court of Criminal Appeal.

Right of Appeal and Determination of Appeals.

3. Right of appeal in criminal cases.
4. Determination of appeals in ordinary cases.
5. Powers of court in special cases.
6. Re-vesting and restitution of property on conviction.

Procedure.

7. Time for appealing.
8. Judge's notes and report to be furnished on appeal.
9. Supplemental powers of court.
10. Legal assistance to appellant.
11. Right of appellant to be present.
12. Duty of Director of Public Prosecutions.
13. Costs of appeal.
14. Admission of appellant to bail, and custody when attending court.
15. Duties of registrar with respect to notices of appeal, etc.
16. Shorthand notes of trial.
17. Powers which may be exercised by a judge of the Court.
18. Rules of court.

Supplemental.

19. Prerogative of mercy.
20. Criminal informations, procedure in the High Court, etc.
21. Definitions.
22. Repeal.
23. Short title, extent, and application.

SCHEDULE.

CHAPTER 23.

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

[28th August 1907.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Court of Criminal Appeal.

Constitution of Court of Criminal Appeal.

1.—(1) There shall be a Court of Criminal Appeal, and the Lord Chief Justice of England and eight judges of the King's Bench Division of the High Court, appointed for the purpose by the Lord Chief Justice with the consent of the Lord Chancellor for such period as he thinks desirable in each case, shall be judges of that court.

(2) For the purpose of hearing and determining appeals under this Act, and for the purpose of any other proceedings under this Act, the Court of Criminal Appeal shall be summoned in accordance with directions given by the Lord Chief Justice of England with the consent of the Lord Chancellor, and the court shall be duly constituted if it consists of not less than three judges and of an uneven number of judges.

If the Lord Chief Justice so directs, the court may sit in two or more divisions.

The court shall sit in London except in cases where the Lord Chief Justice gives special directions that it shall sit at some other place.

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

(4) 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.

(5) 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.

(6) If in any case the Director of Public Prosecutions or the prosecutor or defendant obtains the certificate of the Attorney-General that the decision of the Court of Criminal Appeal involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, he may appeal from that decision to the House of Lords, but subject thereto the determination by the Court of Criminal Appeal of any appeal or other matter which it has power to determine shall be final, and no appeal shall lie from that court to any other 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 Act,

have full power to determine, in accordance with this Act, any questions necessary to be determined for the purpose of doing justice in the case before the court.

(8) Rules of court shall provide for securing sittings of the Court of Criminal Appeal, if necessary, during vacation.

(9) Any direction which may be given by the Lord Chief Justice under this section may, in the event of any vacancy in that office, or in the event of the incapacity of the Lord 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.

2.—There shall be a Registrar of the Court of Criminal Appeal (in this Act referred to as the Registrar) who shall be appointed by the Lord Chief Justice from among the Masters of the Supreme Court acting in the King's Bench Division, and shall be entitled to such additional salary (if any), and be provided with such additional staff (if any), in respect of the office of Registrar as the Lord Chancellor, with the concurrence of the Treasury, may determine.

The senior Master of the Supreme Court shall be the first Registrar.

Right of Appeal and Determination of Appeals.

Right of appeal in criminal cases.

3.—A person convicted on indictment may appeal under this Act 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.

4.—(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 Act, the Court of Criminal Appeal shall, if they allow 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 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.

Powers of court in special cases.

5.—(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.

(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 Trial of Lunatics Act, 1883, in the same manner as if a special verdict had been found by the jury under that Act.

46 & 47 Vict. c. 38.

Re-vesting and restitution of property on conviction. 56 & 57 Vict. c. 71.

6.—(1) The operation of any order for the restitution of any property to any person made on a conviction on indictment, and the operation in case of any such conviction, of the provisions of subsection (1) of section twenty-four of the Sale of Goods Act, 1893, 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.

Time for appealing.

7.—(1) Where a person convicted desires to appeal under this Act 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.

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.

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

8.—The judge or chairman of any court before whom a person is convicted shall, in the case of an appeal under this Act against the conviction or against the sentence, or in the case of an application for leave to appeal under this Act, 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.

Supplemental powers of court.

9.—For the purposes of this Act, 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 justice of the peace 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 court of appeal 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.

Legal assistance to appellant.

10.—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.

Right of appellant to be present.

11.—(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.

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

Duty of Director of Public Prosecutions.

12.—It shall be the duty of the Director of Public Prosecutions to appear for the Crown on every appeal to the Court of Criminal Appeal under this Act, except so far as the solicitor of a government department, or a private prosecutor in the case of a private prosecution, undertakes the defence of the appeal, and the Prosecution of Offences Act, 1879, shall apply as though the duty of the Director of Public Prosecutions under this section were a duty under section two of that Act, and provision shall be made by rules of court for the transmission to the Director of Public Prosecutions 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.

42 & 43 Vict. c. 22.

Costs of appeal.

13.—(1) On the hearing and determination of an appeal or any

proceedings preliminary or incidental thereto under this Act no costs shall be allowed on either side.

(2) The expenses of any solicitor or counsel assigned to an appellant under this Act, 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 Secretary of State, in the same manner as the expenses of a prosecution in cases of felony.

Admission of appellant to bail, and custody when attending court. 61 & 62 Vict. c. 41.

14.—(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 prison rules within the meaning of the Prison Act, 1898.

(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 or penal servitude under his sentence, and, in the case of an appeal under this Act, any imprisonment or penal servitude under the sentence of the appellant, whether it is the sentence passed by the court of trial or the sentence passed by the Court of Criminal Appeal, shall, subject to any directions which may be given by the court as aforesaid, be deemed to be resumed or to begin to run, as the case requires, if the appellant is in custody, as from the day on which the appeal is determined, and, if he is not in custody, as from the day on which he is received into prison under the sentence.

(4) Where a case is stated under the Crown Cases Act, 1848, this section shall apply to the person in relation to whose conviction the case is stated as it applies to an appellant. 11 & 12 Vict. c. 78.

(5) Provision shall be made by prison rules within the meaning of the Prison Act, 1898, 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 Act, 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.

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

15.—(1) The registrar shall take all necessary steps for obtaining a hearing under this Act of any appeals or applications, notice of which is given to him under this Act, 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) 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 Act, 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 Act to any person who demands the same, and to officers of courts, governors of prisons, and such other officers or persons as he thinks fit, and the governor of a prison shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Act, 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 Act.

Shorthand notes of trial.

16.—(1) Shorthand notes shall be taken of the proceedings at the trial of any person on indictment who, if convicted, is entitled or may be authorised to appeal under this Act, 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 the Treasury may fix.

(2) The Secretary of State 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) The cost of taking any such shorthand notes, and of any transcript where a transcript is directed to be made by the registrar or by the Secretary of State, shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of moneys provided by Parliament, and rules of court may make such provision as is necessary for securing the accuracy of the notes to be taken and for the verification of the transcript.

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

17.—The powers of the Court of Criminal Appeal under this Act 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 Act.

Rules of court.

18.—(1) Rules of court for the purposes of this Act shall be made, subject to the approval of the Lord Chancellor, and so far as the rules affect the governor or any other officer of a prison, or any officer having the custody of an appellant, subject to the approval also of the Secretary of State, by the Lord Chief Justice and the judges of the Court of Criminal Appeal, or any three of such judges, with the advice and assistance of the Committee herein-after mentioned. Rules so made may make provision with respect to any matter for which provision is to be made under this Act by rules of court, and may regulate generally the practice and procedure under this Act, and the officers of any court before whom an appellant has been convicted, and the governor or other officers 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.

(2) The Committee herein-before referred to shall consist of a chairman of quarter sessions appointed by a Secretary of State, the Permanent Under Secretary of State for the time being for the Home Department, the Director of Public Prosecutions for the time being, the Registrar of the Court of Criminal Appeal, and a clerk of assize, and a clerk of the peace appointed by the Lord Chief Justice, and a solicitor appointed by the President of the Law Society for the time being, and a barrister appointed by the General Council of the Bar. The term of office of any person who is a member of the Committee by virtue of appointment shall be such as may be specified in the appointment.

(3) Every rule under this Act shall be laid before each House of Parliament forthwith, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent thirty days on which the House has sat next after any such rule is laid before it, praying that the rule may be annulled, His Majesty in Council may annul the rule, and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

Supplemental.

Prerogative of mercy.

19.—Nothing in this Act 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 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 Secretary of State with their opinion thereon accordingly.

Criminal informations, procedure in the High Court, &c.

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

(2) This Act shall apply in the case of convictions on criminal informations and coroners' inquisitions and in cases where a person is dealt with by a court of quarter sessions as an incorrigible rogue under the Vagrancy Act, 1824, as it applies in the case of convictions on indictments, but shall not apply in the case of convictions on indictments or inquisitions charging any peer or peeress, or other person claiming the privilege of peerage, with any offence not now lawfully triable by a court of assize.

5 Geo. 4. c. 83.

(3) Notwithstanding anything in any other Act, an appeal shall lie from a conviction on indictment at common law in relation to the non-repair or obstruction of any highway, public bridge, or navigable river in whatever court the indictment is tried, in all respects as though the conviction were a verdict in a civil action tried at assizes, and shall not lie under this Act.

(4) All jurisdiction and authority under the Crown Cases Act, 1848, in relation to questions of law arising in criminal trials which is transferred to the judges of the High Court by section forty-seven of the Supreme Court of Judicature Act, 1873, shall be vested in the Court of Criminal Appeal under this Act, and in any case where a person convicted appeals under this Act 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 Crown Cases Act, 1848, as to the statement of a case should be followed, and require a case to be stated accordingly under that Act in the same manner as if a question of law had been reserved.

36 & 37 Vict. c. 66.

Definitions.

21.—In this Act, unless the context otherwise requires,—

The expression "appellant" includes a person who has been convicted and desires to appeal under this Act; and

The expression "sentence" includes any order of the court made on conviction with reference to the person convicted or his wife or children, and any recommendation of the court as to the making of an expulsion order in the case of a person convicted, and the power of the Court of Criminal Appeal to pass a sentence includes a power to make any such order of the court or recommendation, and a recommendation so made by the Court of Criminal Appeal shall have the same effect for the purposes of section three of the Aliens Act, 1905, as the certificate and recommendation of the convicting court.

5 Edw. 7. c. 13.

Repeal.

22.—The Acts specified in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Short title, extent, and application.

23.—(1) This Act may be cited as the Criminal Appeal Act, 1907.

(2) This Act shall not extend to Scotland or Ireland.

(3) This Act shall apply to all persons convicted after the eighteenth day of April nineteen hundred and eight, but shall not affect the rights, as respects appeal, of any persons convicted on or before that date.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
7 & 8 Will. 3. c. 3.	The Treason Act, 1695	In section nine, from "but nevertheless" to the end of the section.
11 & 12 Vict. c. 78.	The Crown Cases Act, 1848.	Sections three and five.
38 & 39 Vict. c. 77.	The Supreme Court of Judicature Act, 1875.	In section nineteen, the words "including the practice and procedure with respect to Crown cases reserved."
44 & 45 Vict. c. 68.	The Supreme Court of Judicature Act, 1881.	Section fifteen.

CRIMINAL APPEAL (AMENDMENT) ACT, 1908.

[8 EDW. 7. CH. 46.]

CHAPTER 46.

An Act to amend the Criminal Appeal Act, 1907, *with reference to the Judges of the Court of Criminal Appeal and the Registrar.*

[21st December 1908.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Judges of the Court of Criminal Appeal. 7 Edw. 7. c. 23.

1.—Notwithstanding anything in section one of the Criminal Appeal Act, 1907, all the judges of the King's Bench Division of the High Court shall be judges of the Court of Criminal Appeal.

Registrar of the Court of Criminal Appeal.

2.—(1) Notwithstanding anything in section two of the Criminal Appeal Act, 1907, from and after the passing of this Act the Master of the Crown Office shall be the Registrar of the Court of Criminal Appeal.

(2) The power to provide additional staff for the Registrar of the Court of Criminal Appeal includes a power to appoint an Assistant Registrar, but any Assistant Registrar so appointed shall be either a Master of the Supreme Court acting in the King's Bench Division or a practising barrister of not less than seven years' standing, and shall be appointed by the Lord Chief Justice of England.

Short title.

3.—This Act may be cited as the Criminal Appeal (Amendment) Act, 1908.

CROWN CASES ACT, 1848.

[11 & 12 Vict. Ch. 78.]

Sec. 1.—"When any person shall have been convicted of any treason, felony, or misdemeanour, before any court of oyer and terminer or gaol delivery, or court of quarter sessions, the judge or commissioner, or justice of the peace before whom the case shall have been tried, *may, in his or their discretion*, reserve any question of law which shall have arisen on the trial for the consideration of the justices of either bench and barons of the Exchequer; and thereupon shall have authority to respite execution of the judgment on such conviction, or postpone the judgment, until such question shall have been considered and decided, as he or they may think fit; and in either case the court in its discretion shall commit the person convicted to prison, or shall take a recognizance of bail, with one or two sufficient sureties, and in such sum as the court shall think fit, conditioned to appear at such time or times as the court shall direct, and receive judgment, or to render himself in execution, as the case may be."

Sec. 2.—"The judge or commissioner or court of quarter sessions shall thereupon state, in a case signed in the manner now usual, the question or questions of law which shall have been so reserved, with the special circumstances upon which the same shall have arisen (see *post*, p. 275); and such case shall be transmitted to the said justices and barons; and the said justices and barons shall thereupon have full power and authority to hear and finally determine the said question or questions, and thereupon to reverse, affirm, or amend any judgment which shall have been given on the indictment or inquisition on the trial whereof such question or questions have arisen, or to avoid such judgment, and to order an entry to be made on the record, that in the judgment of the said justices and barons, the party convicted ought not to have been convicted, or to arrest the judgment, or order judgment to be given thereon at some other session of oyer and terminer or gaol delivery, or other sessions of the peace, if no judgment shall have been before that time given, as they shall be advised, or to make such other order as justice may require; and such judgment and order, if any, of the said justices and barons shall be certified, under the hand of the presiding chief justice or chief baron, to the clerk of assize, or his deputy, or the clerk of the peace, or his deputy, as the case may be, who shall enter the same on the original record in proper form; and a certificate of such entry, under the hand of the clerk of assize, or his deputy, or the clerk of the peace, or his deputy, as the case may be, in the form as near as may be or to the effect mentioned in the schedule annexed to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the sheriff or gaoler in whose custody the person convicted shall be; and the said certificate shall be a sufficient warrant to such sheriff or gaoler, and all other persons, for the execution of the judgment, as the same shall be so certified to have been affirmed or amended, and execution shall be thereupon executed on such judgment, and for the discharge of the person convicted from further imprisonment, if the judgment shall be reversed, avoided, or arrested, and, in that case, such sheriff or gaoler shall forthwith discharge him, and, also, the next court of oyer and terminer and gaol delivery, or sessions of the peace, shall vacate the recognizance of bail, if

any; and, if the court of oyer and terminer and gaol delivery, or court of quarter sessions, shall be directed to give judgment, the said court shall proceed to give judgment at the next session."

Sec. 4.—"The said justices and barons, when a case has been reserved for their opinion, shall have power, if they think fit, to cause the case or certificate to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended."

PREVENTION OF CRIME ACT, 1908.

[8 EDW. 7. CH. 59.]

Sec. 11.—A person sentenced to preventive detention may, notwithstanding anything in the Criminal Appeal Act, 1907, appeal against the sentence without the leave of the Court of Criminal Appeal.

CHILDREN ACT, 1908.

[8 EDW. 7. CH. 67.]

Power to order parent to pay fine, &c., instead of child or young person.

Sec. 99.—(1) Where a child or young person is charged before any court with any offence for the commission of which a fine, damages, or costs may be imposed, and the court is of opinion that the case would be best met by the imposition of a fine, damages, or costs, whether with or without any other punishment, the court may in any case, and shall if the offender is a child, order that the fine, damages, or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person, unless the court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.

(2) Where a child or young person is charged with any offence, the court may order his parent or guardian to give security for his good behaviour.

(3) Where a court of summary jurisdiction thinks that a charge against a child or young person is proved, the court may make an order on the parent or guardian under this section for the payment of damages or costs or requiring him to give security for good behaviour, without proceeding to the conviction of the child or young person.

(4) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(5) Any sums imposed and ordered to be paid by a parent or guardian under this section, or on forfeiture of any such security as aforesaid, may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child or young person was charged.

(6) A parent or guardian may appeal against an order under this section—

(*a*) if made by a court of summary jurisdiction to a court of quarter sessions; and

(*b*) if made by a court of assize or a court of quarter sessions to the Court of Criminal Appeal in accordance with the Criminal Appeal Act, 1907, as if the parent or guardian against whom the order was made had been convicted on indictment, and the order were a sentence passed on his conviction.

7 Edw. 7. c. 23.

COSTS IN CRIMINAL CASES ACT, 1908.

[8 Edw. 7. Ch. 15.]

Order for Payment of Costs by Defendant or Prosecutor.

Power of court to order payment of costs of prosecution by defendant or of defence by prosecutor.

Sec. 6.—(1) The court by or before which any person is convicted of an indictable offence may, if they think fit, in addition to any other lawful punishment, order the person convicted to pay the whole or any part of the costs incurred in or about the prosecution and conviction including any proceedings before the examining justices, as taxed by the proper officer of the court.

Sec. 9.—(3) This Act shall not apply in the case of an offence in relation to the non-repair or obstruction of any highway, public bridge, or navigable river, and costs in any such case may be allowed as in civil proceedings as if the prosecutor or defendant were plaintiff or defendant in any such proceedings.

(4) This Act shall apply in a case of a person committed as an incorrigible rogue under the Vagrancy Act, 1824, as if that person were committed for trial for an indictable offence, and in the case of any appeal under that Act as if the hearing of the appeal by the court of quarter sessions were the trial of an indictable offence.

5 Geo. 4. c. 83.

(5) For the purpose of section thirteen of the Criminal Appeal Act, 1907 (which relates to the costs of appeal), the hearing of a case stated under the Crown Cases Act, 1848, shall be deemed to be an appeal, and the person in relation to whose conviction the case is stated shall be deemed to be an appellant, and the provisions of this Act giving power to direct the payment of the costs of the prosecution and defence shall not apply to the hearing of any case so stated.

7 Edw. 7. c. 23. 11 & 12 Vict. c. 78.

(6) A reference to the payment of costs out of local funds under this Act shall be substituted for any reference to the payment of expenses in the case of an indictment for felony, or in cases of felony, or in the case of a misdemeanour under the Criminal Law Act, 1826, or any like reference in section one of the Inebriates Act, 1899, or in section thirteen of the Criminal Appeal Act, 1907, or in any other enactment.

62 & 63 Vict. c. 35. 7 Edw. 7. c. 23. 7 Geo. 4. c. 64. 62 & 63 Vict. c. 35.

LARCENY ACT, 1861.

[24 & 25 Vict. Ch. 96.]

Sec. 100.—If any person guilty of any such felony or misdemeanour as is mentioned in this Act, in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving, any chattel, money,

valuable security, or other property whatsoever, shall be indicted for such offence by or on the behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and in every case in this section aforesaid, the court before whom any person shall be tried for any such felony or misdemeanour, shall have power to award from time to time writs of restitution for the said property, or to order the restitution thereof in a summary manner:

Provided that if it shall appear before any award or order made that any valuable security shall have been *bona fide* paid or discharged by some person or body corporate liable to the payment thereof, or, being a negotiable instrument, shall have been *bona fide* taken or received, by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had, by any felony or misdemeanour, been stolen, taken, obtained, extorted, embezzled, converted, or disposed of, in such case the court shall not award or order the restitution of such security:

Provided also, that nothing in this section contained shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker, or other agent intrusted with the possession of goods or documents of title to goods, for any misdemeanour against this Act.

OFFENCES AGAINST THE PERSON ACT, 1861.

[24 & 25 Vict. Ch. 100.]

Sec. 74.—Where any person shall be convicted on any indictment of any assault, whether with or without battery and wounding, or either of them, such person may, if the court think fit, in addition to any sentence which the court may deem proper for the offence, be adjudged to pay to the prosecutor his actual and necessary costs and expenses of the prosecution, and such moderate allowance for the loss of time as the court shall by affidavit or other inquiry and examination ascertain to be reasonable; and unless the sum so awarded shall be sooner paid, the offender shall be imprisoned for any term the court shall award, not exceeding three months, in addition to the term of imprisonment (if any) to which the offender may be sentenced for the offence.

CRIMINAL LAW AMENDMENT ACT, 1867.

[30 & 31 Vict. Ch. 35.]

Sec. 9.—Where any prisoner shall be convicted either summarily or otherwise of larceny or other offence which includes the stealing of any property, and it shall appear to the court by the evidence that the prisoner has sold the stolen property to any person, and that such person has had no knowledge that the same was stolen, and that any moneys have been taken from the prisoner on his apprehension, it shall be lawful for the court, on the application of such purchaser, and on the restitution of the stolen property to the prosecutor, to order that out of such moneys a sum not exceeding the amount of the proceeds of the said sale be delivered to the said purchaser.

FORFEITURE ACT, 1870.

[33 & 34 VICT. CH. 23.]

Sec. 3.—"It shall be lawful for any court by which judgment shall be pronounced or recorded, upon the conviction of any person for *treason* or *felony*, in addition to such sentence as may otherwise by law be passed, to condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he shall be convicted, if to such court it shall seem fit so to do; and the payment of such costs and expenses, or any part thereof, may be ordered by the court to be made out of any moneys taken from such person on his apprehension, or may be enforced at the instance of any person liable to pay, or who may have paid the same, in such and the same manner (subject to the provisions of this Act) as the payment of any costs ordered to be paid by the judgment or order of any court of competent jurisdiction in any civil action or proceeding, may for the time being be enforced; provided, that in the meantime and until the recovery of such costs and expenses from the person so convicted as aforesaid, or from his estate, the same shall be paid and provided for in the same manner as if this Act had not passed; and any money which may be recovered in respect thereof from the person so convicted, or from his estate, shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses may have been paid or defrayed."

Sec. 4.—"It shall be lawful for any such court as aforesaid, if it shall think fit, upon the application of any person aggrieved, and immediately after the conviction of any person for *felony*, to award any sum of money not exceeding one hundred pounds, by way of satisfaction or compensation for any *loss of property* suffered by the applicant through or by means of the said felony, and the amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs ordered by the court to be paid under the last preceding section of this Act."

PAWNBROKERS ACT, 1872.

[35 & 36 VICT. CH. 93.]

Sec. 30.—". . . If any person is convicted in any court of feloniously taking or fraudulently obtaining any goods or chattels, and it appears to the court that the same have been pawned with a pawnbroker . . . the court, on proof of the ownership of the goods and chattels, may, if it thinks fit, order the delivery thereof to the owner, either on payment to the pawnbroker of the amount of the loan or of any part thereof, or without payment thereof or of any part thereof, as to the court, according to the conduct of the owner and the other circumstances of the case, seems just and fitting."

PROSECUTION OF OFFENCES ACT, 1879.

[42 & 43 VICT. CH. 22.]

Sec. 7.—The prosecution of an offender by the director of public prosecutions shall, for the purpose of enabling a person to obtain a restitution of property, or obtaining, exercising, or enforcing any right, claim, or advantage whatsoever, have the same effect as if such person had been bound over to prosecute, and had prosecuted the offender, subject to this proviso, that such person shall give all reasonable information and assistance to the said director in relation to the prosecution.

SALE OF GOODS ACT, 1893.

[56 & 57 VICT. CH. 71.]

Sec. 24.—"Where goods have been stolen, and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise."

APPENDIX B.

RULES UNDER THE CRIMINAL APPEAL ACT, 1907.

Interpretation of Rules.

Nos.
1 Citation.
2 Definitions.
2 (*b*) Interpretation Act, 1889, to apply to Rules.
3 Scheduled Forms to be used.

Notices of Appeal.

4 (*a*) Notices of Appeal to be signed by Appellant and addressed to Registrar.
4 (*b*) How Notices, etc., may be sent or given.
4 (*c*) Where Appellant unable to write.
4 (*d*) Appellant's representative may act for him where question of insanity involved.
4 (*e*) Notices, etc., on behalf of Corporations.

Shorthand Writers and Transcript of Notes.

5 (*a*) Shorthand Writers, how appointed.
5 (*b*) Shorthand note to be certified by Writer.
5 (*c*) Transcript to be furnished on application of Registrar.
5 (*d*) Party interested may obtain transcript from Shorthand Writer.
5 (*e*) Party interested may obtain transcript from Registrar.
5 (*f*) Definition of "Party interested."
5 (*g*) Transcript to be made by Writer thereof, or some other person on Registrar's directions.
5 (*h*) Verification of transcript for use of Court of Appeal.

Certificate of Judge of Trial.

6 (*a*) Judge's Certificate under s. **3** (*b*).
6 (*b*) Judge's Certificate may be given at trial without application.

Appeals where Fine only is inflicted.

7 (*a*) Where fine imposed on conviction to be retained pending appeal.
7 (*b*) Person in custody in default of payment of fine deemed to be person sentenced to imprisonment.
7 (*c*) Person fined may in certain cases intimate appeal, and not pay fine. Power of Court of Trial in such cases to impose recognizances.
7 (*d*) Fine to be repaid on success of appeal.
7 (*e*) How Appellant committing breach of recognizance under this Rule may be dealt with.

Custody of Exhibits used at Trial.

Nos.
8 (*a*) Judge's directions as to custody of exhibits.
8 (*b*) Record of Judge's directions as to custody of exhibits.
8 (*c*) List of exhibits produced before committal to be made by Coroner or Clerk to Justices.

Order made at Trial. Consequential Orders and Suspension of same pending Appeal.

9 Varying Order of Restitution of property. Persons affected may appear on appeal.
10 Non-suspension of Orders for Restitution, etc., to be subject to property or a sample, etc., being necessary for purposes of appeal.
11 (*a*) Temporary suspension of orders made on conviction, as to money rewards, costs, etc.
11 (*b*) Judge's directions as to property of convicted person pending appeal.
11 (*c*) Suspension of disqualifications consequent on conviction.
11 (*d*) Judge's directions as to securing payment of money by convicted person pending appeal.
11 (*e*) Suspension of Order for destruction or forfeiture of property.
11 (*f*) Suspension of proceedings or claims consequent on conviction.
12 Period of suspension of orders under sec. 6 of Act.
13 (*a*) Certificate of Conviction not to issue for 10 days after conviction.
13 (*b*) After 10 days from conviction, Clerk to be satisfied no appeal pending before issuing Certificate of Conviction.

Notes and Report of Judge of Trial.

14 Judge's Note to be furnished to the Registrar on request.
15 (*a*) Report of Judge of Court of Trial.
15 (*b*) Judge's Report to be furnished to Court of Appeal.
16 Registrar to furnish Judge of Court of Trial with materials for Report.

Notices of Appeal and Period for Appealing: Abandonment of Appeals.

17 Obligation on Appellants to fill up forms of appeal Notices and answer questions thereon.
18 Time for appealing against conviction to run from Verdict.
19 Time for appealing against sentence to run from pronouncement of sentence.
20 (*a*) Registrar to request proper officer of Court of Trial to furnish him with particulars, etc., of trial.
20 (*b*) Registrar to require Proper Officer of Court of Trial to furnish him with Depositions, Indictments, Pleas, etc., for use of Court of Appeal.
21 Prosecutor at Trial to be ascertained.
22 Notice of Application for leave to appeal.
23 Abandonment of appeal.
24 Notice of Application for extension of time for appealing.

Proceedings before Judge of Appeal Court under Section 17.

Nos.

25 (*a*) How Application for leave to appeal and other preliminary applications are to be dealt with.

25 (*b*) Procedure where Judge of Court of Appeal refuses applications under sec. 17 of Act.

25 (*c*) Sittings of a Judge under sec. 17 of Act.

Procedure under Crown Cases Act, 1848.

26 (*a*) Procedure for adoption of Crown Cases Act, 1848.

26 (*b*) Materials to be supplied to Judge for statement of special case.

26 (*c*) Judge to forward special case to Registrar and copies to be supplied to Appellant and Respondents.

26 (*d*) These Rules to apply to convicted person where case stated under Crown Cases Act, 1848.

Duties of Director of Public Prosecutions.

27 (*a*) Registrar's duties as to ascertaining Respondent.

27 (*b*) Prosecution to afford all information, documents, etc., to Registrar and Director of Public Prosecutions.

28 Court may at any stage substitute Director of Public Prosecutions for a private prosecutor.

Procedure on Applications for Bail: Rights of Sureties: Estreat of Recognizances.

29 (*a*) Bail—Court of Appeal to specify amount and before whom recognizances to be taken.

29 (*b*) Appellant's recognizances to be taken before a Visiting Justice, surety's recognizances before Petty Sessional Court.

29 (*c*) Appellant and Prison Governor to receive notice of terms of bail.

29 (*d*) Police of district to assist Petty Sessional Court in inquiring as to surety's sufficiency.

29 (*e*) Appellant's and surety's recognizances to be forwarded to Registrar. Clerk to give surety certificate of recognizances.

29 (*f*) Registrar on receiving recognizances in due form to notify Governor of Prison to release Appellant.

29 (*g*) Form of recognizance.

29 (*h*) Presence of Appellant on bail at hearing of his Appeal.

29 (*i*) Varying order for bail by Court of Appeal.

29 (*j*) Provisions for sureties discharging their obligations.

29 (*k*) How Appellant on bail to be dealt with on arrest at instance of sureties.

29 (*l*) Arrest and commitment of Appellant to be notified to Registrar by Clerk to Petty Sessional Court.

29 (*m*) Power of Court of Appeal to revoke order for bail.

29 (*n*) Governor of Prison on commitment of Appellant to notify Registrar.

29 (*o*) Sureties' rights at Common Law preserved.

29 (*p*) Estreat of recognizances.

30 Duty of Police to inquire and report as to Appellant's means for purposes of Act on request of Registrar.

Nos.

31 (*a*) Warders, etc., to attend Sittings of Court of Appeal.

31 (*b*) Appellant to surrender on appeal, be searched, and remain in custody until further dealt with.

32 (*a*) Registrar on application of Appellant or Respondent, or where he think necessary, to obtain documents, exhibits, etc., for purposes of appeal, and same to be open for inspection.

32 (*b*) Court of Appeal may order production of any document or exhibits, etc.

32 (*c*) Service of Orders.

Exhibits in Court of Trial, how dealt with.

33 Exhibits to which Rule 8 (*a*) relates to be returned to persons producing same subject to order of Court.

Notifying result of Appeals.

34 (*a*) On final determination of appeals, etc., Registrar to notify Appellant, Prison Governor, Prison Commissioners.

34 (*b*) In cases of death sentence, Notice of Appeal, and of final determination to be sent to Secretary of State.

35 (*a*) Registrar to notify Officer of Court of Trial result of appeal.

35 (*b*) Officer of Court of Trial to enter decision of Court on Records.

36 Registrar after appeal to return original depositions, exhibits, indictment, etc., to Officer of Court of Trial when received from him.

Legal Aid to Appellants.

37 Reports as to legal aid under sect. 15, subsect. 5, to be made to Judge of Court.

38 (*a*) List of Counsel and Solicitors for purposes of Act to be prepared and maintained by Clerks of Assize.

38 (*b*) Legal aid to be provided from such lists.

Copies of Documents for use of Appellants.

39 (*a*) How Appellant or Respondent may obtain from Registrar copies of documents or exhibits.

39 (*b*) Counsel and Solicitor assigned to Appellant to receive copies of documents and exhibits free on his request.

39 (*c*) Transcript of Shorthand Notes not to be supplied free except on order of Judge of Court.

39 (*d*) Poor Appellant not legally represented may obtain copy of documents or exhibits free.

Procedure as to Witnesses before Court of Appeal and their examination before Examiner.

40 (*a*) Attendance of witness before Court of Appeal.

40 (*b*) Application to Court to hear witnesses.

40 (*c*) Order appointing Examiner.

40 (*d*) Registrar to furnish Examiner with exhibits, etc., necessary for examination.

Nos.
40 (*e*) Notification of date of examination.
40 (*f*) Evidence to be given on oath.
40 (*g*) Deposition of witness, how to be taken.
40 (*h*) Travelling expenses of witnesses before Examiner.
40 (*i*) Service of Notices and Orders under Rule.
40 (*j*) Presence of parties at examination of witnesses.
41 Proceedings under sect. 9, subsect. (*d*) on Reference.

Cause Lists.

42 (*a*) Register of Appeals to be kept by Registrar.
42 (*b*) Registrar to keep general list of appeals.
42 (*c*) List of cases for daily Sittings of Court. Notices to Appellants in custody.

Miscellaneous Provisions.

43 (*a*) Applications not specially provided for, how made.
43 (*b*) Audience of Solicitors.
44 Notice by Registrar to Appellant of result of all applications.
45 Non-compliance with Rules not wilful may be waived by Court.
46 Enforcing duties under Rules.
47 Warrants for arrest of Appellants to be deemed to be Warrants issued under Indictable Offences Act, 1848.
48 A Petitioner under sect. 19 (*a*) to be deemed an Appellant for all purposes.
49 Payment of Expenses under sect. 13.
50 Sittings during Long Vacation.
51 Reference to Court under sect. 19 (*b*).

STATUTORY RULES AND ORDERS, 1908,

No. 227, L. 6.

Criminal Procedure.

THE CRIMINAL APPEAL RULES, 1908. RULES MADE, WITH THE APPROVAL OF THE LORD CHANCELLOR AND THE SECRETARY OF STATE, BY THE LORD CHIEF JUSTICE AND THE JUDGES OF THE COURT OF CRIMINAL APPEAL.

Interpretation of Rules.

Citation. 1. These Rules may be cited as the Criminal Appeal Rules, 1908, and shall come into operation on the 18th of April 1908.

Definitions. 2. (*a*) The expression "The Act" shall mean the Criminal Appeal Act, 1907.

The expression "Judge of the Court of Trial" shall mean the Judge or Chairman of any Court from the conviction before or the sentence of which a person desires to appeal under the Act.

The expression "Proper Officer of the Court of Trial" shall mean the Clerk of Assize or Clerk of the Peace, or other person for the time being

acting as such in any Court of Assize or Court of Quarter Sessions or as Officer for the time being of any Court held under the Central Criminal Court Acts, 1834 to 1881, from the conviction before or the sentence of which a person desires to appeal under the Act.

The expression "Secretary of State" shall mean His Majesty's Principal Secretary of State for the Home Department.

The expression "Registrar" shall include any person temporarily appointed by the Lord Chief Justice from among the Masters of the Supreme Court acting in the King's Bench Division to act during the absence of the Registrar through sickness or other unavoidable cause.

The expression "Shorthand Writer" shall mean the person or persons appointed from time to time as such for the purposes of Section 16 of the Act.

The expression "Respondent" shall mean the person who under Section 12 of the Act has the duty of appearing for the Crown, or who undertakes the defence of the Appeal.

The expression "Government Department" shall, for the purposes of these Rules, be deemed to include the Commissioners of Police of the Metropolis.

The expression "Exhibits" shall include all books, papers, and documents, and all other property, matters and things whatsoever connected with the proceedings against any person who is entitled or may be authorised to appeal under the Act, if the same have been forwarded to the Court of Trial on the person accused being committed for trial or have been produced and used in evidence during the trial of, or other proceedings in relation to a person entitled or authorised under the Act to appeal, and any written statement handed in to the Judge of the Court of Trial by such person, but shall not include the original depositions of witnesses examined before the Committing Justice or Coroner nor any indictment or inquisition against any such person nor any plea filed in the Court of Trial.

(*b*) The Interpretation Act, 1889, shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament. Interpretation Act, 1889, to apply to Rules.

3. The forms set out in the Schedule to these Rules, or forms as near thereto as circumstances permit, shall be used in all cases to which such forms are applicable. Scheduled Forms to be used.

Notices of Appeal.

4. (*a*) Every Notice of Appeal or Notice of Application for leave to appeal or Notice of Application for extension of time within which such Notice shall be given under the Act shall be signed by the Appellant himself, except under the provisions of paragraphs (*d*) and (*e*) of this Rule. Notices of Appeal to be signed by Appellant and addressed to Registrar.

Any other Notice required or authorised to be given for the purposes of the Act or these Rules shall be in writing and signed by the person giving the same or by his Solicitor. All Notices required or authorised to be given for the purposes of the Act or these Rules to the Court of Criminal Appeal shall be addressed to "The Registrar of the Court of Criminal Appeal, London."

(*b*) Any notice or other document, which is required or authorised by the Act or these Rules to be given or sent shall be deemed to be duly given or sent if forwarded by Registered Post addressed to the person to whom such notice or other document is so required or authorised to be given or sent. How Notices, &c., may be sent or given.

Where Appellant unable to write.

(*c*) When an Appellant or any other person authorised or required to give or send any notice of appeal or notice of any application for the purposes of the Act or of these Rules is unable to write he may affix his mark thereto in the presence of a witness who shall attest the same and thereupon such notice shall be deemed to be duly signed by such Appellant.

Appellants' representative may act for him where question of insanity involved.

(*d*) Where, on the trial of a person entitled to appeal under the Act, it has been contended that he was not responsible according to law for his actions on the ground that he was insane at the time the act was done or the omission made by him, any notice required by these Rules to be given and signed by the Appellant himself may be given and signed by his Solicitor or other person authorised to act on his behalf.

Notice, &c., on behalf of Corporations.

(*e*) In the case of a body corporate where by the Act or these Rules any notice or other document is required to be signed by the Appellant himself, it shall be sufficient compliance therewith if such notice or other document is signed by the Secretary, Clerk, Manager, or Solicitor of such body corporate.

Shorthand Writers and Transcript of Notes.

Shorthand Writers, how appointed.

5. (*a*) Shorthand Writers shall be appointed from time to time as required for the purposes of the Act by the Lord Chancellor and the Lord Chief Justice for such period and on such conditions as they shall think right.

Shorthand note to be certified by the Writer.

(*b*) The Shorthand Writer shall sign the shorthand note taken by him of any trial or proceeding, or of any part of such trial or proceeding, and certify the same to be a complete and correct shorthand note thereof, and shall retain the same unless and until he is directed by the Registrar to forward such shorthand note to him.

Transcript to be furnished on Application of Registrar.

(*c*) The Shorthand Writer shall, on being directed by the Registrar, furnish to him for the use of the Court of Appeal a transcript of the whole or of any part of the shorthand note taken by him of any trial or proceeding in reference to which an Appellant has appealed under the Act.

Party interested may obtain transcript from Shorthand Writer.

(*d*) The Shorthand Writer shall furnish to a party interested in a trial or other proceeding in relation to which a person may appeal under the Act, and to no other person, a transcript of the whole or of any part of the shorthand note of any such trial or other proceedings, on payment by such party interested to such Shorthand Writer of his charges on such scale as the Treasury may fix.

Party interested may obtain transcript from Registrar.

(*e*) A party interested in an Appeal under the Act may obtain from the Registrar a copy of the transcript of the whole or of any part of such shorthand note as relates to the appeal subject to the provisions of Section 16 of the Act.

Definition of "Party interested."

(*f*) For the purposes of this Rule, "a party interested" shall mean the prosecutor (not being the Director of Public Prosecutions), or the person convicted, or any other person named in, or immediately affected by, any order made by the Judge of the Court of Trial, or other person authorised to act on behalf of a party interested, as herein defined.

Transcript to be made by Writer thereof or some other person on Registrar's directions.

(*g*) Whenever under the Act or these Rules a transcript of the whole or of any part of such shorthand note is required for the use of the Court of Appeal, such transcript may be made by the Shorthand Writer who took and certified the shorthand note, or by such other competent person as the Registrar may direct.

(*h*) A transcript of the whole or any part of the shorthand note relating to the case of any Appellant which may be required for the use of the Court of Appeal shall be typewritten and verified by the person making the same by a Statutory Declaration in the form (VIII.) in the Schedule to these Rules that the same is a correct and complete transcript of the whole, or of such part, as the case may be, of the shorthand note purporting to have been taken, signed, and certified by the Shorthand Writer who took the same. Verification of transcript for use of Court of Appeal.

Certificate of Judge of Trial.

6. (*a*) The certificate of the Judge of the Court of Trial under Section 3 (*b*) of the Act may be in the form (I.) in the Schedule to these Rules. Judge's certificate, under s. 3 (*b*).

(*b*) The Judge of the Court of Trial may, in any case in which he considers it desirable so to do, inform the person convicted before or sentenced by him that the case is in his opinion one fit for an appeal to the Court of Appeal under Section 3 (*b*), and may give to such person a certificate to that effect in the form (I.) in the Schedule to these Rules. Judge's certificate may be given at trial without application.

Appeals where fine only is inflicted.

7. (*a*) Where a person has, on his conviction, been sentenced to payment of a fine, and in default of payment to imprisonment, the person lawfully authorised to receive such fine shall, on receiving the same, retain it until the determination of any Appeal in relation thereto. Where fine imposed on conviction to be retained pending Appeal.

(*b*) If such person remains in custody in default of payment of the fine, he shall be deemed, for all purposes of the Act or these Rules, to be a person sentenced to imprisonment. Person in custody in default of payment of fine, deemed to be person sentenced to imprisonment.

(*c*) Where any person has been convicted and is thereupon sentenced to the payment of a fine, and, in default of such payment, to imprisonment and he intimates to the Judge of the Court of Trial that he is desirous of appealing against his conviction to the Court of Appeal, either upon grounds of law alone, or, with the Certificate of the Judge of the Court of Trial, upon any grounds mentioned in Section 3 (*b*) of the Act, such Judge may, if he thinks right so to do, order such person forthwith to enter into recognizances in such amount, and with and without sureties in each amount as such Judge may think right, to prosecute his appeal. And, subject thereto, may order that payment of the said fine shall be made at the final determination of his said appeal, if the same be dismissed, to the Registrar of the Court of Appeal, or as such Court may then order. The recognizance under this Rule shall be in the forms (XX.) and (XXI.) in the Schedule hereto. A surety becoming duly bound by recognizance under this Rule shall be deemed to be, for all purposes, and shall have all the powers of a surety under the provisions of Rule 29. Person fined may in certain cases intimate appeal, and not pay fine. Power of Court of Trial in such cases to impose recognizances.

The proper officer of the Court of Trial shall forward the recognizances of the Appellant and his surety or sureties to the Registrar.

(*d*) An Appellant who has been sentenced to the payment of a fine, and has paid the same in accordance with such sentence, shall, in the event of his Appeal being successful, be entitled, subject to any order of the Court of Appeal, to the return of the sum or any part thereof so paid by him. Fine to be repaid on success of Appeal.

How Appellant committing breach of recognizance under this Rule may be dealt with.

(*e*) If an Appellant to whom Rule 7 (*c*) applies, does not serve in accordance with these rules, a Notice of Appeal upon grounds of law alone, or with the Certificate of the Judge of the Court of Trial upon any grounds mentioned in Section 3 (*b*) of the Act, within 10 days from the date of his conviction and sentence, the Registrar shall report such omission to the Court of Appeal, who may, after notice in the forms (XXII.) and (XXIII.) in the Schedule hereto has been given to the Appellant and his sureties, if any, order an estreat of the recognizances of the Appellant and his sureties in manner provided by Rule 29 (*p*) hereof, and may issue a warrant for the apprehension of the Appellant and may commit him to prison in default of payment of his fine, or may make such other order as they think right.

Custody of Exhibits used at Trial.

Judge's directions as to custody of Exhibits.

8. (*a*) The Judge of the Court of Trial may make any Order he thinks fit for the custody, disposal, or production of any exhibits in the case, but unless he makes any such order, exhibits shall be returned to the custody of the person producing the same or of the Solicitor for the prosecution or defence respectively. Such person or Solicitor shall retain the same pending any appeal and shall, on notice from the Registrar or Director of Public Prosecutions, produce or forward the same as and when required so to do.

Record of Judge's directions as to custody of Exhibits.

(*b*) The proper officer of the Court of Trial shall keep a record of any order or direction of the Judge thereof given under this Rule.

List of Exhibits produced before Committal, to be made by Coroner or Clerk to Justices.

(*c*) Whenever a person is committed for trial, it shall be the duty of the Coroner or of the Clerk to the Justice committing such person for trial to make and forward, with the depositions taken in relation to such person, a complete list of such exhibits as have been produced and used in evidence for or against him during any proceedings before such Coroner or Justice, to the Court before which such person is to be tried. Such list shall be in the form (XXXIII.) in the Schedule to these Rules, subject to the necessary modifications, and shall be signed by such Coroner or Clerk. The exhibits appearing on such list shall be marked with consecutive numbers for the purpose of readily identifying the same.

Any exhibits put in for the first time at the trial shall be added to such list by the proper officer of the Court of Trial and marked as herein provided.

Order made at Trial. Consequential Orders and Suspension of same pending Appeal.

Varying Order of Restitution of property. Persons affected may appear on appeal.

9. Where, upon the trial of a person entitled to appeal under the Act against his conviction, an order of restitution of any property to any person has been made by the Judge of the Court of Trial, the person in whose favour or against whom the order of restitution has been made, any person in whose favour or against whom an order to which Rule 10 relates has been made, and, with the leave of the Court of Appeal, any other person, shall, on the final hearing by the Court of Appeal of an appeal against the conviction on which such order of restitution was made, be entitled to be heard by the Court of Appeal before any order under the provisions of Section 6, subsection 2, of the Act, annulling or varying such order of restitution is made.

Non-suspension of Orders for Restitution, &c., to be subject to property or a sample, &c., being necessary for purposes of Appeal

10. Where the Judge of the Court of Trial is of opinion that the title to any property the subject of an order of restitution made on a conviction of a person before him, or any property to which the provisions of sub-section 1 of Section 24 of the Sale of Goods Act, 1893, apply, is not in dispute, he, if he shall be of opinion that such property or a sample or portion or facsimile representation thereof is reasonably necessary to be produced for use at the hearing of any Appeal, shall give such directions to or impose such terms upon the person in whose favour the order of restitution is made, or in whom such property revests under such sub-section as he shall think right in order to secure the production of such sample, portion or facsimile representation for use at the hearing of any such Appeal.

Temporary suspension of orders made on conviction, as to money rewards, costs, &c.

11. (*a*) Where, on the conviction of a person, the Judge of the Court of Trial makes an order condemning such person to the payment of the whole or of any part of the costs and expenses of the prosecution for the offence of which he shall be convicted out of any moneys taken from such person on his apprehension or otherwise, or where such Judge lawfully orders a reward to any person who shall appear to have been active in the apprehension of any such convicted person, or where such Judge makes any order under Section 30 of the Criminal Law Act, 1826 (7 Geo. IV. c. 64), or under Section 74 of The Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), or under Section 9 of the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), or where such Judge makes any order awarding to any person aggrieved any sum of money to be paid by such convicted person under The Forfeiture Act, 1870 (33 & 34 Vict. c. 23), or where such Judge lawfully makes on the conviction of any person before him any order for the payment of money by such convicted person or by any other person or any order affecting the rights or property of such convicted person, the operation of such orders shall in any of such cases be suspended until the expiration of 10 days after the day on which any of such orders were made. And in cases where Notice of Appeal or Notice of Application for leave to appeal is given within 10 days from and after the date of the verdict against such person, such orders shall be further suspended until the determination of the appeal against the conviction in relation to which they were made. The Court of Appeal may by order, annul any order to which this Rule refers on the determination of any appeal under the Act, or may vary such order, and such order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

The proper officer of the Court of Trial shall keep a record of any orders to which this Rule refers.

Judge's directions as to property of convicted person pending appeal.

(*b*) Where the Judge of the Court of Trial makes any such Order on a person convicted before him, as in this Rule mentioned, he shall give such directions as he thinks right as to the retention by any person of any money or valuable securities belonging to the person so convicted and taken from such person on his apprehension or of any money or valuable securities at the date of his conviction in the possession of the prosecution for the period of ten days, or in the event of an appeal, until the determination thereof by the Court of Appeal. The proper officer of the Court of Trial shall keep a record of any directions given under this Rule.

Suspension of disqualifications consequent on conviction.

(*c*) Where upon conviction of any person of any offence any disqualification, forfeiture or disability attaches to such person by reason of such conviction, such disqualification, forfeiture or disability shall not attach for the period of ten days from the date of the verdict against such person

nor in the event of an appeal under the Act to the Court of Appeal, until the determination thereof. This Rule shall not affect the provisions of s. 8 of the Forfeiture Act, 1870 (33 & 34 Vict. c. 23).

Judge's directions as to securing payment of money by convicted person pending appeal.

(*d*) When the Judge of the Court of Trial on the conviction of a person before him, makes any order for the payment of money by such person or by any other person upon such conviction, and, by reason of this Rule, such order would otherwise be suspended, such Judge may, if he thinks right so to do, direct that the operation of such order shall not be suspended unless the person on whom such order has been made shall in such manner and within such time as the said Judge shall direct, give security by way of undertaking or otherwise for the payment to the person in whose favour such order shall have been made of the amount therein named. Such security may be to the satisfaction of the person in whose favour the order for payment shall have been made or of any other person as such Judge shall direct.

Suspension of order of destruction or forfeiture of property.

(*e*) Where on a conviction any property, matters or things the subject of the prosecution or connected therewith, are to be or may be ordered to be destroyed or forfeited under the provisions of any Statute, the destruction or forfeiture or order for destruction or forfeiture thereof shall be suspended for the period of 10 days from and after the date on which the verdict on such indictment was returned, and in the event of an appeal under the Act, shall be further suspended until the determination thereof by the Court of Appeal.

Suspension of proceedings or claims consequent on conviction.

(*f*) Where, upon conviction of any person of any offence, any claim may be made or any proceedings may be taken under any Statute against such person or any other person in consequence of such conviction, such proceedings shall not be taken until after the period of 10 days from the date on which the verdict against such person was returned nor in the event of an appeal under the Act to the Court of Appeal until the determination thereof.

Any person affected by any orders which are suspended under this Rule may, with the leave of the Court of Appeal, be heard on the final determination of any appeal, before any such orders are varied or annulled by the Court of Appeal.

Period of suspension of orders under s. 6 of Act.

12. The time during which an Order of Restitution or the operation of subsection 1, of Section 24 of the Sale of Goods Act, 1903, is suspended under Section 6 of the Act, shall commence to run from the day on which the Verdict of the Jury was returned, and, in cases where Notice of Appeal or Notice of Application for leave to appeal is duly given within 10 days after such day, the period of suspension of such order or of the operation of the subsection shall continue until the determination of the appeal.

Certificate of conviction not to issue for 10 days after conviction.

13. (*a*) The Clerk of the Court of Trial or other officer thereof, having the custody of the Records of such Court, or the deputy of such Clerk or other officer, shall not issue, under any Statutes authorising him so to do, a certificate of conviction of any person convicted on indictment in the Court to which he is such Clerk, officer, or deputy, for the period of 10 days after the actual day on which such conviction took place, nor in the event of such Clerk, officer, or deputy receiving information from the Registrar of the Court within such 10 days that a Notice of Appeal, or if Application for leave to appeal has been given under the Act, until the determination thereof.

After 10 days from

(*b*) Where an application is made to such Clerk, officer, or deputy to issue such Certificate of conviction as in this rule mentioned after the

expiration of the said period of 10 days, he shall require, before issuing the same, to be satisfied that there is no appeal then pending in the Court of Appeal against such conviction. A person desirous of obtaining a certificate of conviction from such Clerk, officer, or deputy shall be entitled to obtain from the Registrar a certificate in such form as the said Registrar may think right for the purpose of satisfying by the production thereof, such Clerk, officer, or deputy that no appeal against such conviction is then pending. After the expiration of two months from the date of the conviction a certificate thereof may be issued by such Clerk, officer, or deputy as heretofore, except in cases in which he has had notice of an appeal still undetermined.

conviction, Clerk to be satisfied no appeal pending before issuing Certificate of conviction.

For the purposes of this Rule the expression "conviction" shall mean the verdict or plea of guilty and any final judgment passed thereon.

Notes and Report of Judge of Trial.

14. The Registrar when he has received a Notice of Appeal, or a Notice of Application for leave to appeal under the Act, or a Notice of Application for extension of the time within which under the Act such notices shall be given, or when the Secretary of State shall exercise his powers under Section 19 of the Act, shall request the Judge of the Court of Trial to furnish him with the whole of or any part of his note of the trial or with a copy of such note or any part thereof, and such Judge of the Court of Trial shall thereupon furnish the same to the Registrar in accordance with such request.

Judge's note to be furnished to the Registrar on request.

15. (*a*) The Registrar when he has received a Notice of Appeal, or a Notice of Application for leave to appeal under the Act, or a Notice of Application for extension of time within which under the Act such notices shall be given, or when the Secretary of State shall exercise his powers under Section 19 of the Act, or whenever it appears to be necessary for the proper determination of any appeal or application, or for the due performance of the duties of the Court of Appeal under the said Section may and, whenever in relation to any appeal under the Act the Court of Appeal or any Judge thereof directs him so to do, shall, request the Judge of the Court of Trial to furnish him with a Report in writing, giving his opinion upon the case generally or upon any point arising upon the case of the Appellant, and the Judge of the Court of Trial shall furnish the same to the Registrar in accordance with such request.

Report of Judge of Court of Trial.

(*b*) The Report of the Judge shall be made to the Court of Appeal, and except by leave of the Court or a Judge thereof the Registrar shall not furnish to any person any part thereof.

Judge's Report to be furnished to Court of Appeal.

16. When the Registrar shall request the Judge of the Court of Trial to furnish a Report under these Rules, he shall send to such Judge of the Court of Trial a copy of the Notice of Appeal or Notice of Application for leave to appeal or Notice of Application for extension of time within which under the Act such notice shall be given or any other document or information which he shall consider material, or which the Court of Appeal at any time shall direct him to send, or with which such Judge may request to be furnished by the Registrar, to enable such Judge to deal in his Report with the Appellant's case generally or with any point arising thereon.

Registrar to furnish Judge of Court of Trial with materials for Report.

Notices of Appeal and Period for Appealing; Abandonment of Appeals.

Obligation on Appellants to fill up forms of appeal notices and answer questions thereon.

17. A person desiring, under the provisions of the Act, to appeal to the Court of Appeal against his conviction or sentence, shall commence his appeal by sending to the Registrar a Notice of Appeal or Notice of Application for leave to appeal, or Notice of Application for extension of time within which such notice shall be given, as the case may be, in the form of such Notices respectively set forth in the Schedule to these Rules, and in the Notice or Notices so sent, shall answer the questions and comply with the requirements set forth thereon, subject to the provisions of Rule 45.

Time for appealing against conviction to run from Verdict.

18. The time within which a person convicted shall give Notice of Appeal or Notice of his Application for leave to appeal to the Court of Criminal Appeal against his conviction, shall commence to run from the day on which the verdict of the Jury was returned, whether the Judge of the Court of Trial shall have passed sentence or pronounced final judgment upon him on that day or not.

Time for appealing against sentence to run from pronouncement of sentence.

19. The time within which a person convicted and sentenced, shall give Notice of Appeal or Notice of Application for leave to appeal against such sentence under the Act to the Court of Criminal Appeal, shall commence to run from the day on which such sentence shall have been passed upon him by the Judge of the Court of Trial.

Registrar to require proper officer of Court of Trial to furnish him with particulars, &c., of trial.

20. (*a*) When the Registrar has received a Notice of Appeal, or a Notice of Application for leave to appeal, or a Notice of Application for extension of time within which, under the Act, such notices shall be given, or where the Secretary of State shall exercise his powers under Section 19 of the Act, he shall forthwith apply to the proper officer of the Court of Trial for the particulars of the trial and conviction according to the form (II.) in the Schedule hereto, and for the Calendar supplied to the Judge of the Court of Trial or a copy thereof so far as the same refers to the Appellant, and such officer shall forthwith furnish the same to the Registrar.

Registrar to require proper officer of Court of Trial to furnish him with Depositions, Indictments, Pleas, &c., for use of Court of Appeal.

(*b*) The Registrar may, if it appears to him to be necessary for the proper determination of any appeal or application or for the due performance of the duties of the Court of Appeal under the said Section or whenever in any such cases he is directed by the Court of Appeal so to do, shall require the proper officer of the Court of Trial to furnish him with the original depositions of witnesses examined before the committing Justice or Coroner, or with any exhibit retained by such officer, and with the indictment or indictments or inquisition against the Appellant, or with an abstract or copy thereof or any part thereof or with any plea filed in the Court of Trial, and such officer shall forthwith furnish the same to the Registrar.

Prosecutor at trial to be ascertained.

21. The proper officer of the Court of Trial shall ascertain and record in every case the name and address of the person, whether a private prosecutor or not, who is responsible for and is carrying on a prosecution in such Court, and the name and address of the Solicitor, if any, for the prosecution.

Notice of Application for leave to appeal.

22. Where the Court of Appeal has, on a Notice of Application for leave to appeal duly served, and in the form provided under these Rules, given an Appellant leave to appeal, it shall not be necessary for such Appellant to give any Notice of Appeal, but the Notice of Application for leave to appeal shall in such case be deemed to be a Notice of Appeal.

23. An Appellant at any time after he has duly served notice of Appeal or of Application for leave to Appeal, or of application for extension of time within which under the Act such notices shall be given, may abandon his appeal by giving notice of abandonment thereof in the form (III.) in the Schedule to these Rules to the Registrar, and upon such notice being given the appeal shall be deemed to have been dismissed by the Court of Appeal. Abandonment of appeal.

24. An application to the Court of Appeal for an extension of time within which Notices may be given, shall be in the form (IX.) in the Schedule hereto. Every person making an application for such extension of time, shall send to the Registrar together with the proper form of such application, a form, duly filled up, of Notice of Appeal, or of Notice of Application for leave to appeal, appropriate to the ground or grounds upon which he desires to question his conviction or sentence, as the case may be. Notice of Application for extension of time for appealing.

Proceedings before Judge of Appeal Court under Section 17.

25. (*a*) Notice of Application for leave to appeal or for extension of time within which Notice of Appeal or Notice of Application for leave to appeal shall be given under the Act in the forms in the Schedule hereto, and the answers to the questions on forms (IV.), (V.), (VI.), and (VII.), which an Appellant is, by these Rules required to make, in reference to legal aid being assigned to him, or to leave being granted to him to be present at the hearing of his appeal, shall be deemed to be applications to the Court of Appeal in such matters respectively. How Application for leave to appeal and other preliminary applications are to be dealt with.

(*b*) The Registrar when any application mentioned in this Rule has been dealt with by such Judge shall notify to the Appellant the decision. In the event of such Judge refusing all or any of such applications the Registrar on notifying such refusal to the Appellant shall forward to him form (XIII.) in the Schedule hereto which form the Appellant is hereby required to fill up and forthwith return to the Registrar. If the Appellant does not desire to have his said application or applications determined by the Court of Appeal as duly constituted for the hearing of appeals under the Act, or does not return within 5 days to the Registrar form (XIV.) duly filled up by him, the refusal of his application or applications by such Judge shall be final. If the Appellant desires that his said application or applications shall be determined by the Court of Appeal as duly constituted for the hearing of appeals under the Act and is not legally represented he may, if the Court of Appeal give him leave, be present at the hearing and determination by the Court of Appeal of his said application : provided that an Appellant who is legally represented shall not be entitled to be present without special leave of the Court of Appeal. Procedure where Judge of Court of Appeal refuses applications under S. 17 of Act

When an Appellant duly fills up and returns within the prescribed time to the Registrar form (XIV.) expressing a desire to be present at the hearing and determination by the Court of Appeal of the applications mentioned in this Rule, such form shall be deemed to be an application by the Appellant for leave to be so present. And the Registrar, on receiving the said form, shall take the necessary steps for placing the said application before the Court of Appeal. If the said application to be present is refused by the Court of Appeal, the Registrar shall notify the Appellant ; and if the said application is granted, the Registrar shall notify the Appellant and the Governor of the Prison wherein the Appellant is in custody, and the Prison Commissioners, as provided by these

Rules. For the purpose of constituting a Court of Appeal the Judge who has refused any such application may sit as a member of such Court, and take part in determining such application.

Sittings of a Judge under S. 17.

(*c*) A Judge of the Court of Appeal sitting under the provisions of Section 17 of the Act may sit and act wherever convenient.

Procedure under Crown Cases Act, 1848.

Procedure for adoption of Crown Cases Act, 1848.

26. (*a*) Where a person entitled to appeal under the Act on grounds of appeal involving a question of law alone, and his appeal is not dealt with under the provisions of Section 15, Subsection 2, of the Act, an application by him or by the Respondent may at any time be made to the Court of Appeal that the questions of law raised in such appeal should be decided by the Court of Appeal in accordance with the procedure under The Crown Cases Act, 1848, as amended by the Act. And the Court of Appeal may upon such application, or upon a report made to them by the Registrar that the procedure under the Crown Cases Act, 1848, as amended by the Act, would, in his opinion, be a more convenient method of dealing with the points of law raised in such appeal, make an order that the same shall be so dealt with.

Materials to be supplied to Judge for statement of special case.

(*b*) When an order has been made under this Rule, the Registrar shall notify the Judge of the Court of Trial thereof, and shall forward to him for the purpose of giving to him facilities in the statement of the case, a copy of the Notice of Appeal and any supplemental or explanatory statement furnished by the Appellant to the Registrar and any other information or material which the Registrar may think necessary or such Judge may require.

Judge to forward special case to Registrar and copies to be supplied to Appellant and Respondent.

(*c*) The Judge of the Court of Trial shall forward a case stated by him in pursuance of this Rule to the Registrar, together with all documents or other material received from the Registrar, who shall on receiving the same send a copy of such case to the Appellant and Respondent respectively.

These Rules to apply to convicted persons where case stated under Crown Cases Act, 1848.

(*d*) Where under the provisions of the Crown Cases Act, 1848, the Judge of the Court of Trial states a case for the consideration of the Court for Crown Cases Reserved, the person convicted shall for the purposes of these Rules be deemed to be an Appellant who has appealed under Section 3 (*a*) of the Act, provided that in such case Section 15, Subsection 2, thereof shall not apply.

Duties of Director of Public Prosecutions.

Registrar's duties as to ascertaining Respondent.

27. (*a*) When the Registrar has received a Notice of Appeal, or a Notice of Appeal on grounds of law alone, which does not, in his opinion, fall within the provisions of Section 15, Subsection 2, of the Act, or where leave to appeal is granted to any Appellant, he shall forthwith ascertain from the person specified in form (II.) as the Prosecutor, unless such person shall be the Director of Public Prosecutions, or a Government Department, or from the Solicitor of such person, whether the Prosecutor intends to undertake the defence of the appeal. And in the event of the Prosecutor declining to undertake the defence of the appeal, notice to that effect shall be sent by the Registrar to the Director of Public Prosecutions.

Where such Prosecutor in the Court of Trial was the Director of Public Prosecutions, the Registrar shall notify him of such appeal.

(*b*) It shall be the duty of a Prosecutor who declines to undertake the defence of an appeal, and of his Solicitor, to furnish to the Registrar and the Director of Public Prosecutions, or either of them, any information, documents, matters, and things in his possession or under his control connected with the proceedings against the Appellant, which the Registrar or Director of Public Prosecutions may require for the purposes of their duties under the Act.

Prosecutor to afford all information, documents, &c., to Registrar and Director of Public Prosecutions.

28. Where the defence of an appeal is undertaken by a private prosecutor the Court of Appeal may, at any stage of the proceedings in such appeal, if it shall think right so to do, order that the Director of Public Prosecutions or the Solicitor of a Government Department shall take over the defence of the appeal and be responsible on behalf of the Crown for the further proceedings in the same.

Court may at any stage substitute Director of Public Prosecutions for a private prosecutor.

Procedure on Applications for Bail: Rights of Sureties: Estreat of Recognizances.

29. (*a*) When the Court of Appeal under the Act admits an Appellant to bail pending the determination of his appeal on an application by him duly made in compliance with these Rules, the Court shall specify the amounts in which the Appellant and his surety or sureties (if any be required) shall be bound by recognizance, and shall direct, if they think right so to do, before whom the recognizances of the Appellant and his surety or sureties (if any) may be taken.

Bail.

Court of Appeal to specify amount and before whom recognizances to be taken.

(*b*) In the event of the Court of Appeal not making any special order or giving special directions under this Rule, the recognizances of the Appellant may be taken before a Justice of the Peace being a member of the Visiting Committee of and at the Prison in which he shall then be confined or the Governor thereof, and the recognizances of his surety or sureties (if any) may be taken before any Petty Sessional Court.

Appellant's recognizances to be taken before a Visiting Justice.

Surety's recognizances before Petty Sessional Court.

(*c*) The Registrar shall notify the Appellant and the Governor of the Prison within which he is confined, the terms and conditions on which the Court shall admit the Appellant to bail under the Act.

Appellant and Prison Governor to receive notice of terms of bail.

(*d*) The said Petty Sessional Court shall be entitled to require the assistance of the Police acting within such Petty Sessional Division for the purpose of making inquiry as to the sufficiency or otherwise, of any person offering himself as a surety on behalf of any Appellant who has, under the Act, been granted bail, and it shall be the duty of such Police to give such assistance to and as and when required by a Petty Sessional Court under this Rule.

Police of district to assist Petty Sessional Court in inquiring as to surety's sufficiency.

(*e*) After the recognizances of a surety has been duly taken under these Rules by such Petty Sessional Court, the Clerk thereof shall forward such recognizance to the Registrar, and the Governor of the Prison in which the Appellant is then confined shall, after the Appellant's recognizances have been duly taken in pursuance of this Rule, forward the same to the Registrar. The Clerk shall after the recognizances of a surety are taken give to him a certificate in the form (XV.) in the Schedule hereto, which such surety shall sign, and retain.

Appellant's and surety's recognizances to be forwarded to Registrar. Clerk to give surety certificate of recognizances.

Registrar on receiving recognizances in due form to notify Governor of Prison to release Appellant.

(*f*) The Registrar on being satisfied that the recognizances of the Appellant and his surety or sureties (if any) are in due form and in compliance with the order of the Court admitting the Appellant to bail, shall send in the form (XII.) in the Schedule to these Rules a notice to the Governor of the Prison in which the Appellant shall then be confined. This notice, when received by the said Governor, shall be a sufficient authority to him to release the Appellant from custody.

Form of recognizance.

(*g*) The recognizances provided for in this Rule, shall be in the forms (X.) and (XI.) in the Schedule hereto.

Presence of Appellant on bail, at hearing of his appeal.

(*h*) An Appellant who has been admitted to bail under the Act, shall, by the order of the Court of Appeal or a Judge thereof under which he was so admitted to bail, be ordered to be and shall be personally present at each and every hearing of his appeal, and at the final determination thereof. The Court of Appeal may, in the event of such Appellant not being present at any hearing of his appeal, if they think right so to do, decline to consider the appeal, and may proceed to summarily dismiss the same, and may issue a Warrant for the apprehension of the Appellant in the form (XIX.) in the Schedule hereto. Provided that the Court of Appeal may consider the appeal in his absence, or make such other order as they think right.

Varying order for bail, by Court of Appeal.

(*i*) When an Appellant is present before the Court of Appeal, such Court may on an application made by any person or, if they think right so to do, without any application make any order admitting the Appellant to bail, or revoke or vary any such order previously made, or enlarge from time to time the recognizance of the Appellant or of his sureties or substitute any other surety for a surety previously bound as they think right.

Provisions for sureties discharging their obligations.

(*j*) Where the surety or sureties, for an Appellant under the Act, upon whose recognizances such Appellant has been released on bail by the Court of Criminal Appeal, suspects that the said Appellant is about to depart out of England or Wales, or in any manner to fail to observe the conditions of his recognizances on which he was so released, such surety or sureties may lay an information before one of His Majesty's Justices of the Peace acting in and for the Petty Sessional Division in which the said Appellant is, or is by such surety or sureties believed to be, or in which such surety or sureties may then be, in the form (XVI.) in the Schedule hereto, and such Justice shall thereupon issue a Warrant in the form (XVII.) in the Schedule hereto, for the apprehension of the said Appellant.

How Appellant on bail to be dealt with on arrest at instance of sureties.

(*k*) The said Appellant shall, on being apprehended under the said Warrant, be brought before the Petty Sessional Court in and for which the said Justice acts before whom the said information was laid, or some other Petty Sessional Court specified in the said Warrant. The said Petty Sessional Court shall on verification of the said information by oath of the informant, by Warrant of Commitment in the form (XVIII.) in the Schedule hereto, commit him to the prison to which persons charged with indictable offences before such Petty Sessional Court are ordinarily committed. The Governor of such prison shall, unless such prison was the prison from which the Appellant was released on bail under these Rules, notify the Prison Commissioners of such commitment, as in this Rule mentioned.

Where the Appellant is by such Petty Sessional Court committed to a prison which was not the prison from which he was released on bail after his conviction, the Prison Commissioners subject to any order of the Court of Appeal may transfer him to the prison from which he was so released.

(*l*) The Clerk of the said Petty Sessional Court on the commitment of any such Appellant, shall forthwith notify the Registrar to that effect, and forward to him the said information and the deposition in verification thereof taken before such Petty Sessional Court together with a copy of the said Warrant of Commitment.

Arrest and commitment of Appellant to be notified to Registrar by Clerk to Petty Sessional Court.

(*m*) At any time after an Appellant has been released on bail under the Act, the Court of Appeal may, if satisfied that it is in the interest of Justice so to do, revoke the order admitting him to bail, and issue a Warrant in the form (XIX.) in the Schedule hereto for his apprehension, and order him to be committed to prison.

Power of Court of Appeal to revoke order for bail.

(*n*) When an Appellant has been released on bail and has, under a Warrant under these Rules or by his surety or sureties, been apprehended and is in prison, the Governor thereof shall forthwith notify the Registrar, who shall take steps to inform the Court thereof, and the Court of Appeal may give to the Registrar such directions as to the appeal or otherwise as they shall think right.

Governor of Prison on commitment of Appellant to notify Registrar.

(*o*) Nothing in these Rules shall affect the lawful right of a surety to apprehend and surrender into custody the person for whose appearance he has become bound, and thereby to discharge himself of his suretyship.

Surety's rights at Common Law preserved.

(*p*) The Court of Appeal may on any breach of the recognizances of the Appellant, if it thinks right so to do, order such recognizances and those of his surety or sureties to be estreated, and the manner of such estreat shall be that provided for estreating recognizances under the Crown Office Rules, 1906 (Rule 115).

Estreat of recognizances.

30. It shall be the duty of the Chief Officer of Police of the district in which the Appellant shall have resided before his conviction, or of the district from which he was committed, to enquire as to and to report to the Registrar when applied to by him, upon the means and circumstances of any Appellant where a question as to his means and circumstances arises under the Act or these Rules.

Duty of Police to enquire and report as to Appellant's means, for purposes of Act on request of Registrar.

31. (*a*) The Prison Commissioners shall on notice from the Registrar cause from time to time such sufficient number of male and female warders to attend the sittings of the Court of Appeal, as having regard to the list of appeals thereat they shall consider necessary.

Warders, &c., to attend sittings of Court of Appeal.

(*b*) An Appellant who is not in custody, shall, whenever his case is called on before the Court of Appeal, surrender himself to such persons as the Court shall from time to time direct, and thereupon shall be searched by them, and shall be deemed to be in their lawful custody until further released on bail or otherwise dealt with as the Court shall direct.

Appellant to surrender on appeal, be searched, and remain in custody until further dealt with.

32. (*a*) The Registrar may, on an application made to him by the Appellant or Respondent in any appeal, or where he considers the same to be necessary for the proper determination of any appeal or application, or shall where directed by the Court of Appeal so to do obtain and keep available for use by the Court of Appeal any documents, exhibits, or other things relating to the proceedings before the Court, and pending the determination of the appeal, such documents, exhibits, or other things shall be open as and when the Registrar may arrange, for the inspection of any party interested.

Registrar on application of Appellant or Respondent, or where he thinks necessary, to obtain documents, exhibits, &c., for purposes of appeal, and same to be open for inspection.

Court of Appeal may order production of any document or exhibits, &c.

(*b*) The Court of Criminal Appeal may, at any stage of an appeal, whenever they think it necessary or expedient in the interest of Justice so to do, on the application of an Appellant or Respondent, order any document, exhibit, or other thing connected with the proceedings, to be produced to the Registrar or before them, by any person having the custody or control thereof. Any order of the Court of Appeal under this Rule may be served as in this Rule provided.

Service of orders.

(*c*) Service of any order made under this Rule shall be personal service, unless the Court otherwise order, and for the purpose of effecting due service thereof the Registrar may require the assistance of the Metropolitan Police, or may forward the order together with instructions to the Chief Officer of Police of the County or Borough in which the person is, or is believed to be, in whose custody or under whose control such document, exhibit, or other thing is; and it shall be the duty of the Metropolitan Police or of such Chief Officer of Police to carry out any directions of the Registrar under this Rule.

Exhibits in Court of Trial, how dealt with.

Exhibits to which Rule 8 (*a*) relates to be returned to persons producing the same subject to order of Court.

33. (*a*) Exhibits, other than such documents as are usually kept by the proper officer of the Court of Trial shall, subject to any order which the Court of Appeal may make, be returned to the person who originally produced the same, provided that any such exhibit to which the provisions of Section 6 of the Act relate shall not be so returned except under the direction of the Court of Appeal.

Notifying Result of Appeals.

On final determination of appeals, &c., Registrar to notify Appellant, Prison Governor, Prison Commissioners.

34. (*a*) On the final determination of any appeal under the Act or of any matter under Section 17 of the Act, the Registrar shall give to the Appellant, if he is in custody and has not been present at such final determination, and to the Secretary of State, and to the Governor of the prison in which the Appellant then is, or from which he has been released on bail or to which under such determination he is committed, and to the Prison Commissioners, notice of such determination in the forms (XXIX.), (XXX.), (XXXI.) and (XXXII.) respectively provided for such cases in the Schedule hereto.

In cases of death sentence, Notice of Appeal and of final determination to be sent to Secretary of State.

(*b*) In any case of an appeal in relation to a conviction involving sentence of death, the Registrar shall on receiving the Notice of Appeal or of Application for leave to appeal, send a copy thereof to the Secretary of State, and on the final determination of any such appeal by the Court of Appeal shall forthwith notify the Appellant, the Secretary of State, the Governor of the prison in which the Appellant then is or to which he is committed under such determination, and the Prison Commissioners thereof.

Registrar to notify Officer of Court of Trial result of appeal.

35. (*a*) The Registrar at the final determination of an appeal shall notify in such manner as he thinks most convenient to the proper officer of the Court of Trial the decision of the Court of Appeal in relation thereto and also any orders or directions made or given by the Court under the Act, or these Rules, in relation to such appeal or any matter connected therewith.

Officer of Court of Trial to enter decision of Court on Records.

(*b*) The proper officer of the Court of Trial shall on receiving the notification referred to in this Rule, enter the particulars thereof on the Records of the Court of which he is such officer.

36. Upon the final determination of an appeal for the purposes of which the Registrar has obtained from the proper officer of the Court of Trial any original depositions, exhibits, indictment, inquisition, plea, or other documents usually kept by the said officer, or forming part of the Record of the Court of Trial, the Registrar shall cause the same to be returned to such officer.

Registrar after appeal to return original depositions, exhibits, indictment &c., to Officer of Court of Trial when received from him.

Legal Aid to Appellants.

37. A report made by the Registrar under Section 15, Subsection 5, of the Act shall be made to a Judge of the Court, and any directions given thereupon by such Judge shall be final.

Reports as to legal aid under S. 15, s.s. 5, to be made to Judge of Court.

38. (*a*) The Clerk of Assize on each Circuit in England and Wales shall cause to be prepared, in such form as he thinks most convenient, a list of Counsel usually attending Courts of Assize and County and Borough Quarter Sessions held in the Counties on his Circuit who are willing to act as Counsel for Appellants if and when nominated under the Act. In the preparation of such list the Clerk of Assize shall, as far as possible, indicate the towns or places on his Circuit at which such Counsel usually practise.

List of Counsel and Solicitors for purposes of Act to be prepared and maintained by Clerks of Assize.

The Clerk of Assize on each Circuit shall also cause to be prepared in such form as he thinks most convenient a list of Solicitors practising at places within Counties comprising his circuit as shall be willing to act as Solicitors on behalf of Appellants if and when nominated so to do under the Criminal Appeal Act, 1907; and the Clerk of Assize may for the purposes of preparing such list of Solicitors consult with the President of the Law Society or the President or Chairman of any Local Law Society within the Counties comprising his Circuit.

Such list shall be prepared and forwarded to the Registrar as soon as may be after the 18th April 1908, and before the conclusion of the Winter Assize in each succeeding year shall be similarly revised by, and, when revised, forwarded by the Clerk of Assize to the Registrar.

For the purposes of this rule the Quarter Sessions for the Counties of London and Middlesex respectively and the Sessions of the Central Criminal Court shall be deemed to be Courts of Assize for their respective jurisdictions; and the Clerks of the Peace of the said Counties and the Clerk of the Central Criminal Court shall be respectively deemed to be Clerks of Assize.

(*b*) When legal aid is assigned to an Appellant, the Court of Appeal may give such directions as to the stage of the appeal at which such legal aid shall commence and whether Counsel only, or Counsel and Solicitor, shall be assigned or otherwise as they think right.

Legal aid to be provided from such lists.

The Registrar shall thereupon, subject to any special order of the Court of Appeal, select from such lists or otherwise a Counsel $\frac{\text{or}}{\text{and}}$ Solicitor for the purpose of affording legal aid to an Appellant under the directions of the Court of Appeal, having regard in so doing to the place at which the Appellant was tried and the Counsel or Solicitor, if any, who represented the Appellant at his trial and the nature of the appeal.

Copies of Documents for use of Appellants.

How Appellant or Respondent may obtain from Registrar copies of documents or exhibits.

39. (*a*) At any time after Notice of Appeal or Notice of Application for leave to appeal has been given under the Act or these Rules, an Appellant or Respondent, or the Solicitor or other person representing either of them, may obtain from the Registrar copies of any documents or exhibits in his possession under the Act or these Rules for the purposes of such appeals. Such copies shall be supplied by the Registrar at such charges as may be provided in regulations as to rates and scales of payment to be made by the Treasury, and such charges shall be paid by stamps.

Counsel and Solicitor assigned to Appellant may receive copies of documents and exhibits free on his request.

(*b*) Where Solicitor and Counsel, or Counsel only, are assigned to an Appellant under the Act, copies of any documents or exhibits which they or he may request the Registrar to supply shall without charge be supplied unless the Registrar thinks that they are not necessary for the purpose of the Appeal.

Transcript of Shorthand Notes not to be supplied free except on order of Judge of Court.

(*c*) A transcript of the Shorthand Notes taken of the proceedings at the trial of any Appellant shall not be supplied free of charge, except by an Order of the Court of Appeal or a Judge thereof, upon an application made by an Appellant or by his Counsel or Solicitor assigned to him under the Act.

Poor appellant not legally represented may obtain copy of documents or exhibits free.

(*d*) Where an Appellant, who is not legally represented, requires from the Registrar a copy of any document or exhibit in his custody for the purposes of his appeal, he may obtain it free of charge if the Registrar thinks, under all the circumstances, it is desirable or necessary to supply the same to him.

Procedure as to Witnesses before Court of Appeal, and their Examination before Examiner.

Attendance of witness before Court of Appeal.

40. (*a*) Where the Court of Appeal have ordered any witness to attend and be examined before the Court under Section 9 (*b*) of the Act, an order in the form (XXV.) in the Schedule hereto shall be served upon such witness specifying the time and place at which to attend for such purpose.

Application to Court to hear witnesses.

(*b*) Such order may be made on the application at any time of the Appellant or Respondent, but if the Appellant is in custody and not legally represented the application shall be made by him in the form (XXVI.) in the Schedule hereto.

Order appointing Examiner.

(*c*) Where the Court of Appeal order the examination of any witness to be conducted otherwise than before the Court itself, such order shall specify the person appointed as examiner to take and the place of taking such examination and the witness or witnesses to be examined thereat.

Registrar to furnish Examiner with exhibits, &c., necessary for examination.

(*d*) The Registrar shall furnish to the person appointed to take such examination any documents or exhibits and any other material relating to the said appeal as and when requested so to do. Such documents and exhibits and other material shall after the examination has been concluded be returned by the Examiner together with any depositions taken by him under this Rule to the Registrar.

(*e*) When the Examiner has appointed the day and time for the examination he shall request the Registrar to notify the Appellant or Respondent and their legal representatives, if any, and when the Appellant is in prison, the Governor of that Prison, thereof. The Registrar shall cause to be served on every witness to be so examined a notice in the form (XXVII.) in the Schedule hereto. Notification of date of examination.

(*f*) Every witness examined before an Examiner under this Rule shall give his evidence upon oath to be administered by such Examiner, except where any such witness if giving evidence as a witness on a trial on indictment need not be sworn. Evidence to be given on oath.

(*g*) The examination of every such witness shall be taken in the form of a deposition in the same manner as is prescribed by Section 17 of The Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), and unless otherwise ordered shall be taken in private. The caption in the form (XXIV.) in the schedule hereto shall be attached to any such deposition. Deposition of witness, how to be taken.

(*h*) Where any witness shall receive an order or notice to attend before the Court of Appeal or an Examiner, the Police Officer serving the same may, if it appears to him necessary so to do, pay to him a reasonable sum not exceeding the amount of the scale sanctioned by the Secretary of State for the travelling expenses of such witness from his place of residence to the place named in such notice or order, and the sum so paid shall be certified by such Officer to the Registrar. Any expenses certified by the Registrar under this Rule shall be paid as part of the expenses of a prosecution. Travelling expenses of witnesses before Examiner. Service of Notices and Orders under Rule.

(*i*) Any order or notice required by this Rule to be given to any witness may be served as an order may be served under Rule 32 (*c*) hereof, and any such notice shall be deemed to be an order of the Court of Appeal on such witness to attend at the time and place specified therein. Presence of parties at examination of witnesses.

(*j*) The Appellant and Respondent, or Counsel or Solicitor on their behalf, shall be entitled to be present at and take part in any examination of any witness to which this Rule relates. Proceedings under S. 9, s.s. (*d*), on Reference.

41. When an order of Reference is made by the Court of Appeal under Section 9 (*d*) of the Act, the question to be referred and the person to whom as Special Commissioner the same shall be referred shall be specified in such order. The Court of Appeal may in such order or by giving directions as and when they from time to time shall think right, specify whether the Appellant or Respondent or any person on their behalf may be present at any examination or investigation or at any stage thereof as may be ordered under Section 9 (*d*) of the Act, and specify any and what powers of the Court of Appeal under the Act or these Rules may be delegated to such Special Commissioner, and may require him from time to time to make interim reports to the Court of Appeal upon the question referred to him under Section 9 (*d*) of the Act, and may, if the Appellant is in custody, give leave to him to be present at any stage of such examination or investigation and give the necessary directions to the Governor of the Prison in which such Appellant is, accordingly, and may give directions to the Registrar that copies of any Report made by such Special Commissioner shall be furnished to the Appellant and Respondent or to Counsel or Solicitor on their behalf.

Cause Lists.

42. (*a*) The Registrar shall keep a Register, in such form as he think right, of all cases in which he shall receive a Notice of Appeal, or Notice Register of appeals to be kept by the Registrar.

of Application for leave to appeal under the Act, which Register shall be open for public inspection in such place and at such hours as the Registrar, subject to the approval of the Court of Appeal, shall consider convenient.

Registrar to keep general list of appeals.

(*b*) The Registrar shall also take the necessary steps for preparing, from time to time, a general list of cases to be dealt with by the Court of Appeal when fully constituted for hearing appeals under the Act or for considering applications which a Judge of the Court has, when sitting, under Section 17 of the Act, refused to grant, and shall cause such list to be published at such times in such a manner and at such places as subject to the approval of the Court of Appeal he shall think convenient for giving due notice to any parties interested, of the hearing of such cases by the Court of Appeal.

List of cases for daily sittings of Court. Notices to Appellants in custody.

(*c*) The Registrar shall also prepare from such general list a list of appeals and applications which have been refused by a Judge of the Court of Appeal when sitting under Section 17 of the Act, which the Court of Appeal may consider on the days on which the Court of Appeal as fully constituted shall sit, and shall cause such list to be published at such times, in such places, and in such a manner as he, subject to the approval of the Court of Appeal, shall think convenient for giving due notice to any parties interested therein of the hearing of the cases in such list by the Court of Appeal. Provided that, where an Appellant is in custody and has obtained leave or is entitled to be present at the hearing and determination of his application or appeal, the Registrar shall notify the Appellant, the Governor of the Prison in which the Appellant then is, and the Prison Commissioners, of the probable day on which his appeal or application will be heard. The Prison Commissioners shall take steps to transfer the appellant to a prison convenient for his appearance before the Court of Appeal, at such a reasonable time before the hearing as shall enable him to consult his legal adviser, if any.

Miscellaneous Provisions.

Application not specially provided for, how made.

43. (*a*) Except where otherwise provided in these Rules, any application to the Court of Appeal may be made by the Appellant or Respondent, or by Counsel on their behalf, orally or in writing, but in regard to such applications if the Appellant is unrepresented and is in custody and is not entitled or has not obtained leave to be present before the Court, he shall make any such application by forwarding the same in writing to the Registrar, who shall take the proper steps to obtain the decision of the Court thereon.

Audience of Solicitors.

(*b*) In all proceedings before a Judge under Section 17 of the Act, and in all preliminary and interlocutory proceedings and applications except such as are heard before the full Court, the parties thereto may be represented and appear by a Solicitor alone.

Notice by Registrar to Appellant of results of all applications.

44. When the Court of Appeal has heard and dealt with any application under the Act or these Rules, the Registrar shall (unless it appears to him unnecessary so to do) give to the Appellant (if he is in custody and has not been present at the hearing of such application) notice of the decision of the Court of Appeal in relation to the said application.

Non-compliance with Rules not wilful may be waived by Court.

45. Non-compliance on the part of an Appellant with these rules or with any rule of practice for the time being in force under the Act, shall not prevent the further prosecution of his appeal if the Court of Appeal or a Judge thereof consider that such non-compliance was not wilful, and that the same may be waived or remedied by amendment or otherwise.

The Court of Appeal or a Judge thereof may in such manner as he or they think right, direct the Appellant to remedy such non-compliance, and thereupon the appeal shall proceed. The Registrar shall forthwith notify to the Appellant any directions given by the Court or the Judge thereof under this Rule, where the Appellant was not present at the time when such directions were given.

Enforcing duties under Rules.

46. The performance of any duty imposed upon any person under the Act or these Rules may be enforced by Order of the Court of Appeal.

Warrants for arrest of Appellants to be deemed to be Warrants issued under Indictable Offences Act, 1848.

47. Any Warrant for the apprehension of an Appellant issued by the Court of Appeal shall be deemed to be, for all purposes, a Warrant issued by a Justice of the Peace for the apprehension of a person charged with any indictable offence under the provisions of The Indictable Offences Act, 1848 (11 & 12 Vict. c. 42) or any Act amending the same.

A Petitioner under S. 19, s.s. (*a*), to be deemed an Appellant for all purposes.

48. When the Secretary of State exercises his powers under Section 19 (*a*) of the Act and refers the whole case to the Court of Appeal, the petitioner whose case is so dealt with shall be deemed to be for all the purposes of the Act or these Rules a person who has obtained from the Court of Appeal leave to appeal, and the Court of Appeal may proceed to deal with his case accordingly.

Payment of expenses under S. 13.

49. The payments to be made in pursuance of orders by the Court of Appeal on a County or Borough Treasurer under Section 13, Subsection 2, of the Act shall be payable by him either to the persons in whose favour such orders are made or to the Solicitor of or assigned to the Appellant in any case or to any Police Officer named in the order. Such payments may if and when convenient be made by cheque or Post Office Order. Orders for payment under this Rule shall be in the form (XXVIII.) in the Schedule hereto.

Sittings during Long Vacation.

50. The Judges of the Court of Criminal Appeal shall make arrangements for any sittings that may be necessary between the 1st of August and the 12th of October.

Reference to Court under S. 19 (*b*).

51. Where the Secretary of State refers a point to the Court of Criminal Appeal under Section 19 (*b*) of the Act, such Court shall, unless they otherwise determine, consider such point in private.

17*th March*, 1908.

RULES OF THE CROWN OFFICE WITH REFERENCE TO APPEALS IN HIGHWAY CASES.

RULE 17 a—

(*a*) Appeals under the Criminal Appeal Act, 1907, Section 20 (3), from convictions on highway indictments shall be set down and entered at the Crown Office.

(*b*) On the setting down of an appeal under the Criminal Appeal Act, 1907, Section 20 (3), if the indictment has not already been removed into the King's Bench Division for the purpose of trial a writ of certiorari shall be issued to the appellant, as a matter of course, to remove the indictment and all things touching the same into the King's Bench Division, for the purpose of appeal to the Court of Appeal without any order or recognizances.

STATUTORY RULES AND ORDERS, 1908.

No. 277, L. 10.

Criminal Procedure.

Criminal Appeal Rules, 1908. Additional Rule made, with the Approval of the Lord Chancellor, by the Lord Chief Justice and the Judges of the Court of Criminal Appeal.

Definition of "proceedings" in S. 16.

52. For the purpose of Section 16 of the Act proceedings at the trial shall mean the evidence and any objections taken in the course thereof, any statement made by the prisoner, the summing up, and sentence of the Judge of the Court of Trial, but unless otherwise ordered by such Judge shall not include any part of the speeches of counsel or solicitor.

27*th March* 1908.

CROWN OFFICE RULES AS TO ESTREATING RECOGNIZANCES.

Rule 115—

Whenever it has been made to appear to the Court or a Judge that a party has made default in performing the conditions of any recognizance into which he has entered, filed on the Crown Office, the Court or a Judge upon notice to the cognizor and his sureties, if any, may order such recognizance to be estreated into the Exchequer without issuing any writ of scire facias: provided that nothing herein contained shall be deemed to take away or prejudice the right of any party to have questions of fact tried by a jury, in such cases as he might before the Crown Office Rules of 1886 have so required. The trial of any such questions of fact shall be had without pleadings by a common or special jury at such place and upon such issues as may be ordered by the Court or a Judge and provided also that nothing herein contained shall be deemed to take away the jurisdiction of the Court or Judge to order the estreat of any recognizance when the breach of its conditions has been committed in the face of the Court or Judge.

For the practice under this rule, see Short and Mellor's *Practice*, s. 1, the Crown Office, 2nd ed. p. 290.

APPENDIX C.

FORMS UNDER THE CRIMINAL APPEAL ACT, 1907.

CRIMINAL APPEAL ACT, 1907. FORM I.

Judge's Certificate.

In the Court of ,
Holden at ,
in and for the of .

R. *v.*

Whereas the said was tried and convicted before me, the undersigned, in the said Court on the day of , on an indictment charging him with and was thereupon sentenced by me to

(State shortly the offence, *e.g.*, Larceny, Murder, Forgery, etc.)

I do hereby certify that the case is a fit case for an Appeal by the said to the Court of Criminal Appeal under Section 3 (*b*) of the Criminal Appeal Act, 1907, upon the following grounds :—

Here specify in general terms the grounds on which Certificate granted.

(Signed)

Judge or Commissioner of Assize.
Recorder of the Borough of .
Chairman of Quarter Session for the County of .

Dated this day of 19 .

CRIMINAL APPEAL ACT, 1907. FORM II.

REX *v.*

(Appellant.)

Particulars of Trial.

1. Age and occupation of Appellant (as given in the Calendar).
2. Date of trial and sentence.
   Place and Court of trial.
   Before whom tried.
3. Charge. (*See note* (*a*) *on page* 190.)
4. Plea.
5. Verdict.
6. Sentence (and any order or recommendation of the Court under Sec. 21 of the Act).

7. Previous Convictions.

No.	Date.	Where Tried.	Offence.	Sentence.
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				

8. Name and Address of the Person who was responsible for, and who carried on the Prosecution in the Court of Trial. (See Rule 21.)
9. Name and Address of Counsel for the Prosecution.
10. Name and Address of Solicitor for the Prosecution.
11. Name and Address of Counsel for the Defence.
12. Name and Address of Solicitor for the Defence.
13. Was the Appellant defended under the Poor Prisoners Defence Act, 1904, or at request of Court or privately?
14. Name and Address of Shorthand Writer.
15. Were any Exhibits put in before Committal or at the trial? (*See note (b) infra.*)
16. Was any statement by Appellant read and not marked as an exhibit? (*See note (c) infra.*)
17. Was a Certificate under Sec. 3 (b) of the Act given?
18. Was Appellant bailed before trial, if so with how many sureties and in what amounts?
19. What Orders (if any) were made for the Restitution of Property, etc.?
20. Name of Local Authority responsible under the Costs in Criminal Cases Act, 1909, for the costs of the prosecution, together with name and address of the Treasurer.

(Signed)

Clerk of Assize, or Clerk of the Peace, or Officer of the Court of Trial.

Dated this day of , 19 .

NOTE.—(*a*) Set out a short Abstract of the Indictment or Indictments upon which the Appellant was tried and/or sentenced. If there were any Indictments which were not proceeded with make a note to that effect and forward such Indictments (with Depositions, etc., relating thereto) with the other papers.

(*b*) If any Exhibits were put in before Committal or for the first time at the Trial, a complete list properly marked in accordance with Rule 8 of the Criminal Appeal Rules, 1908, and distinctly stating in whose custody the Exhibits are, must accompany this form. If no Exhibits were put in either before Committal or at the Trial, a statement to that effect must be made.

(*c*) If any such statement was read or handed in, it should be forwarded with the other papers.

[AUTHOR'S NOTE.—This Form has been substituted for the original Form II. as scheduled to the Criminal Appeal Rules, by order of the Court.]

CRIMINAL APPEAL ACT, 1907. FORM III.

R. *v.*

Notice of Abandonment.

I, having been convicted
of at the Assizes at
[at the Quarter Sessions for the of]
and having been desirous of appealing and having duly sent notice to that effect to the Court of Appeal against my said conviction [or the sentence of passed upon me on my said conviction] do hereby give you notice that I do not intend further to prosecute my appeal, but that I hereby abandon all further proceedings in regard thereto as from the date hereof.

(Signed)
(Witness)

Dated this day of , 19 .
To the Registrar of the Court of Criminal Appeal.

CRIMINAL APPEAL ACT, 1907. FORM IV.

NOTICE OF APPEAL.

Question of Law only.

To the Registrar of the Court of Criminal Appeal.

I,
having been convicted of the offence of

(Here state the offence, *e.g.*, Larceny, Murder, Forgery, &c.)

and being now a prisoner in His Majesty's Prison at
[or* now living at]
do hereby give you Notice of Appeal against my conviction (particulars of which hereinafter appear) to the Court of Criminal Appeal on questions of law, that is to say—

* Where appellant for any reason not in custody.

(Here state as clearly as you are able the question or questions of law on which you desire to appeal.)

(or Mark) . (Signed) .
Appellant.

Signature and address of
Witness attesting Mark.

Dated this day of , 19 .

Particulars of Trial and Conviction.

Fill in all these particulars.

1. Date of Trial.
2. In what Court tried.
3. Sentence.
4. Whether above questions of law were raised at the Trial?

You are required to answer the following questions :—

1. If you desire to apply to the Court of Criminal Appeal to assign you legal aid on your appeal, state your position in life, and amount of wages, or salary, etc., and any other facts which you submit show reasons for legal aid being assigned to you.

2. Do you desire to be present on the hearing of your appeal by the Court of Criminal Appeal? If you do so desire, state the reasons upon which you submit the said Court should give you leave to be present.

3. The Court of Criminal Appeal will, if you desire it, consider your case and argument if put into writing by you or on your behalf, instead of your case and argument being presented orally. If you desire to present your case and argument in writing, set out here as fully as you think right your case and argument in support of your appeal.

[AUTHOR'S NOTE.—This form has in practice been superseded by Form XXXIV., *post*, p. 210.]

FORM V.

CRIMINAL APPEAL ACT, 1907.

NOTICE OF APPEAL UPON CERTIFICATE OF THE JUDGE OF THE COURT OF TRIAL.

To the Registrar of the Court of Criminal Appeal.

I,
having been convicted of the offence of

Here state the offence, *e.g.* Larceny, Murder, Forgery, &c.

and being now a prisoner in His Majesty's Prison at
[or,—* now living at]

* Where appellant for any reason not in custody.

and having duly obtained a Certificate which is hereto annexed from the Judge before whom I was tried for the said offence, that it is a fit case for appeal, Do Hereby Give You Notice of Appeal against my said conviction (particulars of which hereinafter appear) to the Court of Criminal Appeal.

(or Mark) (Signed)

Appellant.

Signature and address of
Witness attesting Mark.

Dated this day of 19 .

Fill in all these particulars.

PARTICULARS OF TRIAL AND CONVICTION.

1. Date of Trial.
2. In what Court tried.
3. Sentence.

You are required to answer the following questions :—

1. If you desire to apply to the Court of Criminal Appeal to assign you legal aid on your appeal, state your position in life, amount of wages, or salary, etc., and any other facts which you submit show reasons for legal aid being assigned to you.

2. Do you desire to be present on the hearing of your Appeal by the Court of Criminal Appeal?

3. The Court of Criminal Appeal will, if you desire it, consider your case and argument if put into writing by you or on your behalf instead of your case and argument being presented orally. If you desire to present your case and argument in writing, set out here as fully as you think right your case and argument in support of your appeal.

You must send with this Notice to the Registrar the Certificate of the Judge who tried you.

[AUTHOR'S NOTE.—This form has in practice been superseded by Form XXXIV. *post*, p. 210.]

CRIMINAL APPEAL ACT, 1907. FORM VI.

NOTICE OF APPLICATION FOR LEAVE TO APPEAL AGAINST A CONVICTION, UNDER SEC. 3 (*b*).

To the Registrar of the Court of Criminal Appeal.

I,
having been convicted of the offence of (Here state the offence, *e.g.* Larceny, Murder, Forgery, &c.)

and [being now a prisoner in His Majesty's] Prison at
[or * now living at]
and being desirous of appealing against my said conviction Do Hereby Give You Notice that I hereby apply to the Court of Criminal Appeal for leave to appeal against my said conviction on the grounds hereinafter set forth.

* Where applicant for any reason not in custody.

(or Mark) (Signed)
Applicant.

Signature and address of
Witness attesting Mark.

Dated this day of 19 .

PARTICULARS OF TRIAL AND CONVICTION.

1. Date of Trial.
2. In what Court Tried.
3. Sentence.

Fill in all these particulars.

Grounds for Application.

(Here state as clearly and concisely as possible the grounds on which you desire to appeal against your conviction.)

You are required to answer the following questions :—

1. If you desire to apply to the Court of Criminal Appeal to assign you legal aid on your appeal, state your position in life, amount of wages or salary, etc., and any other facts which you submit show reasons for legal aid being assigned to you.

2. If you desire to be present when the Court of Criminal Appeal considers your present application for leave to appeal, state the grounds on which you submit that the Court of Criminal Appeal should give you leave to be present thereat.

3. The Court of Criminal Appeal will, if you desire it, consider your case and argument if put into writing by you or on your behalf, instead of your case and argument being presented orally. If you desire to present your case and argument in writing set out here, as fully as you think right, your case and argument in support of your appeal.

State if you desire to be present at the final hearing of your appeal.

[AUTHOR'S NOTE.—This form has in practice been superseded by Form XXXIV. *post*, p. 210.]

FORM VII.

CRIMINAL APPEAL ACT, 1907.

NOTICE OF APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE.

To the Registrar of the Court of Criminal Appeal.

I,
having been convicted of the offence of
and being now a prisoner in His Majesty's Prison at
[or * now living at]
Do Hereby Give You Notice that I desire to apply to the Court of Criminal Appeal for leave to appeal to the said Court against the sentence of , passed upon me for the said offence on the following grounds :—

(Here state the offence, *e.g.* Larceny, Murder, Forgery, &c.)

* Where appellant for any reason not in custody.

(Here set forth the grounds on which you desire to question the sentence.)

(or Mark) (Signed)
Appellant.

Signature and address of Witness attesting Mark.

Dated this day of 19 .

PARTICULARS OF TRIAL AND CONVICTION.

Fill in all these particulars.

1. Date when Sentence passed.
2. In what Court tried.

You are required to answer the following questions :—

1. If you desire to apply to the Court of Criminal Appeal to assign you legal aid on your appeal, state your position in life, wages, salary, etc., and any other facts which you submit show reason for legal aid being assigned to you.

2. If you desire to be present when the Court of Criminal Appeal considers your present application for leave to appeal, state the grounds on which you submit that the Court of Criminal Appeal should give you leave to be present thereat.

State if you desire to be present at the final hearing of your appeal.

3. The Court of Criminal Appeal will, if you desire it, consider your case and argument if put into writing by you or on your behalf instead of your case and argument being presented orally. If you desire to present your case and argument in writing, set out here as fully as you think right your case and argument in support of your appeal.

[AUTHOR'S NOTE.—This form has in practice been superseded by Form XXXIV. *post*, p. 210.]

CRIMINAL APPEAL ACT, 1907. FORM VIII.

DECLARATION VERIFYING TRANSCRIPT OF SHORTHAND NOTES.

I, of ,
do solemnly and sincerely declare that, having been required by the Registrar of the Court of Criminal Appeal to furnish to him a transcript of the shorthand note relating to the trial [or other proceeding] in relation to , which shorthand note is now produced and shown to me marked , and purporting to have been signed and certified by [or signed and certified by me], I have made a correct and complete transcript thereof to the best of my skill and ability in pursuance of the said requirement, which said transcript is now shown to me marked "B." And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Dated this day of , 19 .

(Signed)

CRIMINAL APPEAL ACT, 1907. FORM IX.

Notice of Application for Extension of time within which to Appeal.

To the Registrar of the Court of Criminal Appeal.

I,
having been convicted of the offence of (1)
at the Assizes (Sessions) held at
on the day of , A.D. 19 ,
and being now in His Majesty's Prison at (2)

(1) Here state the offence :— *e.g.* Larceny, Forgery, False Pretences, &c.

(2) If not in custody, set out address in full.

Give You Notice, that I hereby apply to the Court of Criminal Appeal for an extension of the time within which I may give Notice of Appeal (or Notice of Application for leave to appeal), on the grounds following :—

Here set out clearly and concisely *the reasons for the delay* in giving such Notice, and the grounds on which you submit the Court should extend the time.

(Signed)
Appellant.

Dated this day of 19 .

Form XXXIV. must be filled up and sent *with this notice* to the Registrar.

[AUTHOR'S NOTE.—This Form has been substituted for the original Form IX. as scheduled to the Criminal Appeal Rules, by order of the Court.]

FORM X. CRIMINAL APPEAL ACT, 1907.

Recognizance of Bail of Appellant.

Be it remembered that whereas
was convicted of on the
day of , 190 (and was thereupon
sentenced to),
and now is in lawful custody in His Majesty's Prison at
and has duly appealed against his conviction (and sentence) to the Court of Criminal Appeal, and has applied to the said Court for bail pending the determination of his appeal, and the said Court has granted him bail on entering into his own recognizances in the sum of £ (and with sureties each in the sum of £),
the said personally cometh
before me the undersigned being one of His Majesty's Justices of the Peace acting in and for the
of and a Member of the Visiting Committee of the said Prison [or Governor of the said Prison], and acknowledges himself to owe to our said Lord the King the said sum of £ , of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements to the use of our said Lord the King, his heirs and successors, if he the said
fail in the condition endorsed.

Taken and acknowledged this day of ,
19 , at the Prison at ,
before me,

Justice of the Peace.

Condition.

The condition of the within written recognizance is such that if he the said shall personally appear and surrender himself at and before the Court of Criminal Appeal at each and every hearing of his appeal to such Court and at the final determination thereof and to then and there abide by the Judgment of the said Court and not to depart or be absent from such Court at any such hearing without the leave of the said Court, and in the meantime not to depart out of England or Wales, then this recognizance to be void or else to stand in full force and effect.

The following to be filled up by the Appellant and signed by him :—

When released on bail my residence, to which any Notices, etc., are to be addressed, will be as follows :—

(Signed)

Appellant.

CRIMINAL APPEAL ACT, 1907. FORM XI.

Recognizance of Appellant's Sureties.

Be it remembered that on this day of ,
190 , of ,
(occupation) and of ,
(occupation) personally came before us the undersigned being (two) of His Majesty's Justices of the Peace sitting at a Petty Sessional Court at in the of and severally acknowledged themselves to owe to our Lord the King the several sums following, that is to say, the said the sum of £ , and the said the sum of £ , of good and lawful money of Great Britain, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of said Lord the King, his heirs and successors, if now in lawful custody in His Majesty's Prison at , fail in the condition hereon endorsed.

Taken and acknowledged before (us) the undersigned, the day and year first above mentioned.

Justices of the Peace.

Condition.

The condition of the within written Recognizance is such that whereas the said having been convicted of and now in such lawful custody as before-mentioned (under a sentence of for such offence), has duly appealed to the Court of Criminal Appeal against his said conviction (and sentence), and having applied to the said Court for bail, pending the determination of his said appeal, has been granted bail on his entering into recognizance in the sum of £ , with sureties each in the sum of £ , if the said shall personally appear and surrender himself at and before the said Court at each and every hearing of his said appeal to such Court and at the final determination thereof, and to there and then abide by the Judgment of the said Court and not depart or be absent from the said Court at any such hearing without the leave of the Court, and in the meantime not to depart out of England or Wales, then this recognizance to be void or else to stand in full force and effect.

CRIMINAL APPEAL ACT, 1907. FORM XII.

NOTICE TO GOVERNOR TO RELEASE APPELLANT ON BAIL.

R. *v.*

To the Governor of His Majesty's Prison at .

WHEREAS has duly appealed to the Court of Criminal Appeal against his conviction for (and sentence

of), and having duly applied to the said Court has been granted bail by the said Court pending the determination of his said appeal on entering into recognizances himself in the sum of £ , (and with sureties each in the sum of £ ,) in the forms provided under the said Act. And Whereas I, the Registrar of the said Court, have been given to understand that the said is now in your lawful custody in the said prison under the said conviction and sentence. And Whereas I have received a recognizance of the said from you (and recognizances from sureties for the said), and the said recognizances are in due form and in compliance with the order of the said Court of Appeal, admitting the said to bail.

NOW I DO GIVE YOU NOTICE that if the said do remain in your custody under the said conviction (and sentence) and for no other cause you shall on receipt of this Notice suffer him to go at large. And this Notice shall be your authority in that behalf.

Registrar of the Court of Criminal Appeal.

Dated the day of , 19 .

CRIMINAL APPEAL ACT, 1907.

FORM XIII. NOTIFICATION TO APPELLANT OF JUDGE'S DECISION UNDER SEC. 17.

R. *v.*

THIS IS TO GIVE YOU NOTICE that a Judge of the Court of Criminal Appeal acting under Section 17 of the Act has considered your application for—

Strike out any of them which have not been made or have been granted.

(*a*) for extension of time within which Notice of Appeal or of Application for leave to appeal may be given;
(*b*) leave to appeal against;
(*c*) legal aid to be assigned to you;
(*d*) permission to you to be present at the hearing of any proceedings in relation to your appeal;
(*e*) bail;

and has determined the same and has

Dated this day of , 19 .

(Signed)

Registrar.

To the above-named

If you desire to have any of the above-mentioned Applications which have been refused determined by the full Court of Criminal Appeal as duly constituted for the hearing of appeals you must forthwith give notice of appeal to the Registrar on Form XIV.

CRIMINAL APPEAL ACT, 1907. FORM XIV.

NOTICE OF APPEAL BY APPELLANT FROM JUDGE UNDER SEC. 17.

R. *v.*

I, having received your notification that my Applications for—

(*a*) for extension of the time within which Notice of Appeal or application for leave to appeal may be given ;

(*b*) leave to appeal ;

(*c*) legal aid to be assigned to me ;

(*d*) permission to me to be present at the hearing of any proceedings in relation to my appeal ;

(*e*) bail ;

have been refused ;

Strike out any of those which have not been made or which have been granted.

do hereby give you notice that I desire that the said applications shall be considered and determined by the Court of Criminal Appeal [*and that as I am not legally represented I desire to be present at the determination of my said applications.]

* Strike out this if you do not desire to be present.

(Signed)

Appellant.

Witness attesting Mark.

To the Registrar of the Court of Criminal Appeal.

Dated this day of , 19 .

If you desire to state any reasons in addition to those set out by you in your original notice upon which you submit that the Court of Criminal Appeal should grant your said applications, you may do so in the space below.

CRIMINAL APPEAL ACT, 1907. FORM XV.

CERTIFICATE TO SURETY.

R. *v.*

THIS IS TO CERTIFY that you of , whose signature is below, have been accepted by the Petty Sessional Court acting in and for the Petty Sessional Division of , on this day of , A.D. 19 , as surety for the above-named in the sum of £ , for the due appearance of the said before the Court of Criminal Appeal at each and every hearing of his appeal and at the final determination thereof, and that the said shall then and there abide by the Judgment of the said Court and not depart or be absent from such Court at any such hearing without the leave of the said Court, and in the meantime not to depart out of England or Wales. And that your said recognizance will be duly forwarded by me to the Registrar of the Court of Criminal Appeal.

Here fill in Surety's name and address.

(Signed)

Clerk of the said Court.

I acknowledge that the above Certificate is correct.

(Signed)

Surety.

FORM XVI.

CRIMINAL APPEAL ACT, 1907.

Information of Surety for Arrest of Appellant.

R. *v.*

(Appellant).

( ) to Wit.

The Information of* of laid before me the undersigned one of His Majesty's Justices of the Peace acting in and for the Petty Sessional Division of upon an application for a Warrant for the apprehension of† and the deposition of the said in support thereof on the day of .

† Here state Appellant's name and address if known.

The said* saith as follows :—

* Here fill in the name, address and description of Surety.

I,* do say that the above-named† having been granted bail by the Court of Criminal Appeal, himself in the sum of £ , and with surety in the sum of £ , was released on such bail on condition that he should personally appear and be present at and before the Court of Criminal Appeal at each and every hearing of his appeal and at the final determination thereof and to then and there abide by the Judgment of the said Court and not to depart or be absent from such Court on any such hearing without the leave of the said Court and in the meantime not to depart out of England or Wales.

And that I became surety for the performance of the said conditions by the said in the sum of £ , a Certificate whereof signed by the Clerk of the Petty Sessional Division of and by me is now shown to me marked (*a*).

And that I suspect that the said is about to depart out of England or Wales (*or state in what manner the Appellant is believed to be about to fail in the observance of his recognizances*) and I therefore desire to surrender the said into custody and thereby discharge myself from my said recognizances. I verily believe that the said is now in the Petty Sessional Division of .

(Signed)

Surety.

Laid before me the day and year first above written.

(Signed)

( )

Justice of the Peace.

FORM XVII.

Warrant on Information of Surety.

( ) to Wit.

To the Constables of the Metropolitan Police Force (or as the case may be).

WHEREAS Information hath been duly laid before me the undersigned by of

for that * having been released on bail by the Court of Criminal Appeal on recognizances conditioned to appear and to be present at and before the Court of Criminal Appeal at each and every hearing of his appeal and at the final determination thereof and to then and there abide by the Judgment of the said Court and not to depart or be absent from such Court on any such hearing without the leave of the said Court and in the meantime not to depart out of England or Wales. And that the said † doth suspect that the said is about to depart out of England or Wales (*or as the case may be*). And that the said is believed to be within the Petty Sessional Division of .

* Here fill in the Appellant's name.

† Here fill in Surety's name.

These are therefore to authorise you the said Constables forthwith to apprehend the said and to bring him before the Petty Sessional Court of to the intent that he may be committed to His Majesty's Prison at and there to be detained according to law.

Given under my hand and seal this day of , A.D. 19 .

(Signed) .
( )
Justice of the Peace.

Acting in and for the Petty Sessional Division of in the of .

Commitment of Appellant on Surety's Information.

FORM XVIII.

To the Constables of the Metropolitan Police Force (or as the case may be) and to the Governor of His Majesty's Prison at .

( ) to Wit.

WHEREAS on the day of Information was laid before one of His Majesty's Justices of the Peace acting in and for the County of upon an application for a warrant for the apprehension of for that he being a prisoner released on bail by the Court of Criminal Appeal was believed and suspected of being about to fail to observe the conditions of his recognizance by the said his surety. And that the said was then desirous of surrendering the said

AND WHEREAS the said * being now before the Petty Sessional Court of and surrendered by the said in discharge of his recognizance You are therefore hereby commanded, forthwith to deliver him the said to the Governor of His Majesty's Prison at together with this warrant of Commitment and you the said Governor are

[* Appellant.]

required to receive the said into your custody in the said prison and there safely to keep him according to law.

Given under our hands and seal this day of , A.D. 19 .

(Signed)
( )
( )
Justices of the Peace for the said Petty Sessional Division.

FORM XIX. CRIMINAL APPEAL ACT, 1907.

WARRANT FOR ARREST OF APPELLANT ON BAIL.

In the Court of Criminal Appeal.

R. *v.*

To the Constables of the Metropolitan Police Force (or as the case may be), and to the Governor of His Majesty's Prison at

Warrant issued by Court of Appeal.

WHEREAS an Appellant in the Court of Criminal Appeal has been released by the said Court on bail, and it has now been ordered by the said Court that a Warrant be issued for the apprehension of the said .

These are therefore to command you the said Constables forthwith to apprehend the said and to bring him to the Governor of the said Prison, and there deliver him with this Warrant into the custody of the said Governor and you the said Governor are hereby required to receive the said into your custody in the said prison and there safely to keep him until further order of the said Court.

(Signed)
(President of the Court of Criminal Appeal).

Dated this day of , 19 .

FORM XX. CRIMINAL APPEAL ACT, 1907.

RECOGNIZANCE OF APPELLANT SENTENCED TO PAYMENT OF A FINE.

Be it remembered that whereas of was on the to wit day of , A.D. 19 , convicted of and was thereupon sentenced to pay the sum of £ as a fine for his said offence by the Here fill in the Court of Trial. and has intimated to the said Court that he desires to appeal against his said conviction on a question of law alone (or upon a certificate of the Judge of the said Court that his is a fit case for appeal). And whereas the said Court considers that the said Appellant may in lieu of payment at and upon his said conviction of the said sum, be ordered to enter into recognizance of bail himself in the sum of £ and with

sureties, each in the sum of £ to prosecute his said appeal before the Court of Criminal Appeal.

The said doth hereby acknowledge himself to owe to our Lord the King the said sum of £ of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lord the King his heirs and successors if he the said fail in the condition endorsed.

Taken and acknowledged this day of at the said Court, at and before the Judge of the said Court.

(Signed)

Clerk of the Peace
or
Clerk of Assize
(as the case may be).

CONDITION.

The Condition of the within written recognizance is such that if the said of shall personally appeal and be present at and before the Court of Criminal Appeal at each and every hearing of his appeal to such Court, and at the final determination thereof and then and there to prosecute his said appeal and abide by the Judgment of the said Court, and not to depart or be absent from such Court, at any such hearing without leave of the said Court, and to pay the said sum of £ , or such sum as the said Court may order to the Registrar thereof, then this recognizance shall be void, otherwise of full force and effect.

CRIMINAL APPEAL ACT, 1907. FORM XXI.

RECOGNIZANCE OF SURETIES FOR APPELLANT SENTENCED TO A FINE.

Be it remembered that on the day of 19 , of (occupation) and of (occupation) to wit personally came before the Court of and severally acknowledged themselves to owe to our Lord the King the several sums following, that is to say, the said the sum of £ and the said the sum of £ of good and lawful money of Great Britain, to be made and levied of their goods and chattels, lands and tenements respectively to the use of our said Lord the King his heirs and successors if now before the said Court fail in the condition hereon endorsed.

Here fill in name of Court of Trial.

Taken and acknowledged before the said Court of on the day and year first above mentioned.

(Signed)

Clerk of the Peace
or
Clerk of Assize
(as the case may be).

CONDITION.

The condition of the within written recognizance is such that whereas the said
having been convicted of
and having been sentenced to pay a fine of £ for his said offence, and having now intimated his desire to appeal on question of law alone (or with the certificate of the Judge of this Court to the Court of Criminal Appeal, against the said conviction, and having, in lieu of payment at and upon his said conviction of the said sum of £
been ordered to enter into recognizance of bail himself in the sum of £ and with sureties in the sum of £
if the said shall personally appear and be present at and before the Court of Criminal Appeal at each and every hearing of his appeal to such Court and at the final determination thereof, and then and there to prosecute his said appeal and abide by the Judgment of the said Court, and not to depart or be absent from such Court at any such hearing without the leave of the said Court, then this recognizance to be void, or else to stand in full force and effect.

FORM XXII.

CRIMINAL APPEAL ACT, 1907.

NOTICE TO APPELLANT SENTENCED TO FINE, OF BREACH OF HIS RECOGNIZANCES.

R. *v.*

To the above named
Appellant.

WHEREAS you were convicted on the day of
190 of the offence of
and were sentenced to the payment of £ , and in default of such payment to imprisonment, and that under the Criminal Appeal Rules, 1908, you entered into recognizances in the sum of £ ,
with sureties in the sum of £ each to prosecute your Appeal, and whereas 10 days have elapsed since your said conviction, and no Notice of Appeal has been served by you, Now I Hereby Give You Notice that unless you attend at the sitting of the Court of Criminal Appeal to be holden on day, the day of , and then show good cause to the contrary, the Court may order an estreat of your recognizances and those of your sureties, or may otherwise deal with you according to law.

(Signed)
Registrar to the Court of Criminal Appeal.

FORM XXIII.

CRIMINAL APPEAL ACT, 1907.

NOTICE TO SURETY FOR APPELLANT OF ESTREAT OF RECOGNIZANCE.

R. *v.*

* Fill in here Surety's name and address.

To* of
WHEREAS you the above named became duly bound in recognizances as surety, for that the said
having been convicted of

and for this said offence fined the sum of £ , should duly prosecute an appeal in relation to his said conviction before the Court of Criminal Appeal, and whereas the said has not so prosecuted his appeal, now I Hereby Give You Notice that at the sitting of the Court of Criminal Appeal on next your recognizances may be ordered to be estreated, unless you then shew good cause to the contrary.

(Signed)
Registrar of the Court of Criminal Appeal.

CRIMINAL APPEAL ACT, 1907 FORM XXIV.

CAPTION FOR DEPOSITION OF WITNESS EXAMINED BEFORE EXAMINER.

R. *v.*

The depositions (on oath) taken before me the undersigned, being an Examiner duly appointed by the Court of Criminal Appeal in that behalf, of of and of witnesses, examined before me under an order of the said Court dated day of 19 , in the presence of the said Appellant (or of his Counsel and Solicitor) and the Respondent (or his Counsel and Solicitor) at on the day of which said Appellant and Respondent (personally, or by their Counsel and Solicitors respectively) had full opportunity of asking questions of the said witnesses, to whom the depositions following were read by me before being signed by them the said witnesses respectively

The deposition of of who (upon oath duly administered by me) saith as follows :—

(Here follows deposition).

(Signed)

Witness.

Taken before me this
day of 19 .
Examiner

CRIMINAL APPEAL ACT, 1907. FORM XXV.

ORDER TO WITNESS TO ATTEND COURT FOR EXAMINATION.

R. *v.*

(Appellant).

To of

WHEREAS on good cause shown to the Court of Criminal Appeal you have been ordered to attend and be examined as a witness before such Court upon the appeal of the above-named Appellant. This is to Give You Notice to attend before the said Court on the day of , 19 , in , at the (Royal Courts of Justice, Strand, London) at o'clock in the noon. You are also required to have with you at the said time and place any books, papers, or other things relating to the said appeal which you may have had notice so to produce.

Registrar.

Dated the day of 19 .

FORM XXVI.

CRIMINAL APPEAL ACT, 1907.

APPELLANT'S APPLICATION FOR FURTHER WITNESSES.

R. *v.*

I, , having appealed to the Court of Criminal Appeal hereby request you to take notice that I desire that the said Court shall order the witness(es) hereinafter specified to attend the Court and be examined on my behalf.

Signature of witness attesting mark.

Signed (or Mark) Appellant.

Dated this day of 19 .

You are required to fill up the following form and sign the same.

1. Name and address of witness.
2. Whether such witness has been examined at Trial.
3. If not, state the reason why he was not so examined.
4. On what matters do you wish him to be examined on the appeal. State shortly the evidence you think he can give.

FORM XXVII.

CRIMINAL APPEAL ACT, 1907.

NOTICE TO WITNESS TO ATTEND BEFORE EXAMINER.

R. *v.*

To of (Name, etc., of witness).

WHEREAS on good cause shown to the Court of Criminal Appeal you have been ordered to be examined as a witness upon the appeal of the above-named, and your deposition to be taken for the use of the said Court.

This is to give you notice to attend at *

on the day of 19 , before†

at o'clock in the noon.

* Specify place of examination.

† Fill in examiner's name.

You are also required to have with you at the said time and place any books, papers or other things under your control or in your possession in any manner relating to the said appeal of which you may have had notice so to produce.

Registrar.

Dated the day of , 19 .

FORM XXVIII.

CRIMINAL APPEAL ACT, 1907.

ORDER FOR EXPENSES.

R. *v.*

(Appellant).

To the Treasurer for the of

WHEREAS the above named Appellant was convicted at the for the of on the day of 19 .

And Whereas the said Appellant has appealed to the Court of Criminal Appeal and such appeal has been finally determined by that Court.

And Whereas the costs and expenses set forth in the Schedule hereto have been incurred in connection with the appeal of the above-named Appellant and have been allowed by the Court of Criminal Appeal.

Now it is hereby ordered that the above-mentioned Treasurer do pay

to the persons to whom they are respectively due the amounts appearing against their respective names in the Schedule hereto.

Dated this day of , 19 .

By the Court.

Assistant Registrar of the Court of Criminal Appeal.

The Schedule above referred to.

Name and Address of Payee. 1.	Expenses. 2.	Amount. 3.		
		£	s.	d.
	A. Solicitor. Fee . . . . . Travelling Expenses . . .			
	B. Counsel. Brief on Application . . ,, on Appeal . . .			
	C. Appellant's Appearance at Court . (Particulars enclosed herewith.)			
	D. Witness. day's attendance at Court . nights' allowance . . . Travelling from and return . . Railway fare . . . . Mileage . . . . Witness. day's attendance at Court . nights' allowance . . . Travelling from and return . . Railway fare . . . . Mileage . . . . Witness. day's attendance at Court . nights' allowance . . . Travelling from and return . . Railway fare . . . . Mileage . . . . Witness. day's attendance at Court . nights' allowance . . . Travelling from and return . . Railway fare . . . . Mileage			
	E. Other Expenses under Sec. 13 (2) of the Criminal Appeal Act, 1907 . . (Particulars enclosed herewith.)			
	Total			

By the Court.

Assistant Registrar of the Court of Criminal Appeal.

[AUTHOR'S NOTE.—This form has been substituted for the original Form XXVIII., as scheduled to the Criminal Appeal Rule, by order of the Court.]

Forms XXIX. & XXXII.

CRIMINAL APPEAL ACT, 1907.

NOTIFICATION OF RESULT OF FINAL APPEAL.

R. *v.*

(Appellant).

H.M. Prison

This is to give you notice that the Court of Criminal Appeal, as duly constituted for the hearing of Appeals under the Act, has this day considered the appeal of the above-named Appellant against

and has finally determined the same, and has

Dated this day of , A.D. 19 .

Registrar of the Court of Criminal Appeal.

To His Majesty's Principal Secretary of State for the Home Department.
To the Prison Commissioners.
To the Governor of His Majesty's Prison at
To the Clerk of
To the above-named Appellant.

[AUTHOR'S NOTE.—This form is used in practice in substitution for Forms XXIX. & XXXII. in the Schedule to the Criminal Appeal Rule, 1908.]

Forms XXX. & XXXI.

CRIMINAL APPEAL ACT, 1907.

NOTIFICATION OF RESULT OF APPLICATION TO THE FULL COURT.

R. *v.*

(Appellant).

H.M. Prison.

This is to give you Notice that the Court of Criminal Appeal, as duly

constituted for the hearing of Appeals under the Act, has this day considered the Application of the above-named Appellant for:

(*a*) extension of the time within which Notice of Appeal or Application for leave to appeal may be given;
(*b*) leave to appeal against;
(*c*) legal aid;
(*d*) permission to be present during the proceedings in the appeal;
(*e*) bail;
(*f*) leave to call further evidence;
and has finally determined the same and has

Dated this day of A.D. 19 .

Registrar of the Court of Criminal Appeal.

To His Majesty's Principal Secretary of State for the Home Department.
To the Prison Commissioners.
To the Governor of His Majesty's Prison at
To the Clerk of
To the above-named Appellant.

[AUTHOR'S NOTE.—This form is used in practice in substitution for Forms XXX. & XXXI. in the Schedule to the Criminal Appeal Rules, 1908,]

CRIMINAL APPEAL ACT, 1907.

FORM XXXIII.

R. *v.*

LIST OF EXHIBITS.

Number or other identifying mark on Exhibit.	Short description of Exhibit.	Produced by Prosecution or Defence.	Directions of the Judge of the Court of Trial.	Name and address of person retaining Exhibits.

Signed *Coroner.*
Clerk to Committing Justice.
Officer of Court of Trial.

NOTE.—*The following Forms are not included in the Schedule to the Criminal Appeal Rules* 1908, *but have been drawn up by the Registrar.*

CRIMINAL APPEAL ACT, 1907.

FORM XXXIV. NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION OR SENTENCE.

To the Registrar of the Court of Criminal Appeal.

Name of Appellant
Convicted at the[1] held at

Offence of which convicted[2]

Sentence
Date when convicted
Date when sentence passed
Name of Prison[3]

I the above-named Appellant hereby give you notice that I desire to appeal to the Court of Criminal Appeal against my conviction[4]

and
against my sentence[5]

on the grounds hereinafter set forth on page 2 of this notice.

(Signed) [6]
(Appellant).

Dated this[7] day of A.D. 19 .

(1) Assizes, Central Criminal Court, or County, City, or Borough Sessions.
(2) *e.g.*, Larceny, Forgery, "Habitual Criminal."
(3) If not in custody here set out your address in full.
(4) If you admit that you are guilty, or only desire to appeal against your sentence, cross out the words "against my conviction."
(5) If you only desire to appeal against your conviction and not against your sentence cross out the words "against my sentence."
(6) This notice must be signed by the Appellant. If he cannot write he must affix his mark in the presence of a witness. The name and address of such attesting witness must be given.
(7) If this notice is signed more than ten days after the conviction or sentence appealed against the Appellant must obtain and fill in Form IX., and send it with this notice.

The Appellant must answer the following questions :—

QUESTION.	ANSWER.
1. Did the Judge before whom you were tried grant you a Certificate that it was a fit case for Appeal?	
2. Do you desire the Court of Criminal Appeal to assign you legal aid? If your answer to this question is "Yes," then answer the following questions :—	
(*a*) What was your occupation and what wages, salary, or income were you receiving before your conviction?	
(*b*) Have you any means to enable you to obtain legal aid for yourself?	
(*c*) Is any Solicitor now acting for you? If so, give his name and address.	

QUESTION.	ANSWER.
3. Do you desire to be present when the Court considers your case?	
4. Do you desire to apply for leave to call any witnesses on your appeal? If your answer to this question is "Yes," you must obtain Form XXVI., fill it up, and forward it *with this notice.*	

Grounds of Appeal or Application.

These must be filled in before the notice is sent to the Registrar.

You must here set out the grounds or reasons you allege why your conviction should be quashed or your sentence reduced.

You can also, if you wish set out, in addition to your above reasons, your case and argument fully.

CRIMINAL APPEAL ACT, 1907. FORM XXXV.

NOTICE OF APPLICATION BY APPELLANT FOR BAIL PENDING APPEAL.

To the Registrar of the Court of Criminal Appeal.

I, having been convicted of the offence of and being now a prisoner in His Majesty's Prison at and having given notice of my desire to appeal to the Court of Criminal Appeal, do hereby give you Notice that I desire to apply to the Court of Criminal Appeal for bail with Sureties on the following grounds :—

The undermentioned persons are willing to become Sureties for my presence at the hearing and determination of the Appeal in the sum of £ [a] each.

(a) Fill in the amount for which each Surety is willing to be bound.

Name of Surety
Occupation
Address
Name of Surety
Occupation
Address

Signed [b]

(Appellant).

(b) This notice should be signed by the Appellant.

Dated this day of 19 .

NOTICE THAT REFUSAL OF SINGLE JUDGE HAS BECOME FINAL THROUGH FAILURE TO APPEAL WITHIN TIME STATED.

CRIMINAL APPEAL ACT, 1907.

R. *v.*

(Appellant).

(H.M. Prison,).

To His Majesty's Principal Secretary of State for the Home Department.
To the Prison Commissioners.
To the Governor of His Majesty's Prison at
To the Clerk of

This is to give you Notice that the above-named Appellant having applied for leave to appeal against for the offence of at and the said application having, on the day of 19 , been refused by a Judge of the Court of Criminal Appeal, and Notification of the refusal having been given to the Appellant on the day of 19 , enclosing Form XIV. of the Forms under this Act, and the said Form XIV. not having been returned to me duly filled up by the Appellant, the refusal of his application is final by virtue of Rule 25 (b) of the Criminal Appeal Rules, 1908.

Registrar of the Court of Criminal Appeal.

Dated this day of 19 .

CRIMINAL APPEAL ACT, 1907.

NOTICE TO APPELLANT ON BAIL TO SURRENDER.

R. *v.*

(Appellant).

To the above-named Appellant.

This is to give you notice that you are required to personally appear and surrender yourself at and before the Court of Criminal Appeal in Court at the Royal Courts of Justice, Strand, London, on the day of 19 , at o'clock in the noon, and at each and every subsequent hearing of your appeal and at the final determination thereof.

(Signed)
Registrar of the Court of Criminal Appeal.

Dated this day of 19 .

CRIMINAL APPEAL ACT, 1907.

Mr. Justice R. *v.*

(Appellant).

Upon consideration being this day had by a Judge of the Court of Criminal Appeal, acting under Section 17 of the Act, of the application of the above-named Appellant for :—

(*a*) Extension of time within which Notice of Appeal or of application for leave to appeal may be given.
(*b*) Leave to appeal against
(*c*) Legal aid to be assigned to him.

(*d*) Permission to him to be present during the proceedings in the appeal.

(*e*) Bail.

The Court doth determine the same and doth

Dated this day of A.D. 19 .

CRIMINAL APPEAL ACT, 1907.

R. *v.*

(Appellant).

Upon consideration being this day had by the Court of Criminal Appeal, as duly constituted for the hearing of appeals under the Act, of the application of the above-named Appellant for :—

(*a*) Extension of time within which Notice of Appeal or of application for leave to appeal may be given.

(*b*) Leave to appeal against

(*c*) Legal aid to be assigned to him.

(*d*) Permission to him to be present during the proceedings on the appeal.

(*e*) Bail.

(*f*) Leave to call further evidence.

The Court doth finally determine the said applications and doth

Dated this day of , A.D. 19 .

CRIMINAL APPEAL ACT, 1907.

R. *v.*

(Appellant).

Upon consideration being this day had by the Court of Criminal Appeal, as duly constituted for the hearing of appeals under the Act, of the appeal of the above-named Appellant against conviction.

This Court doth finally determine the said Appeal and doth allow the same, and doth quash the conviction, and direct a judgment and verdict of acquittal on the indictment whereon the Appellant was convicted to be entered

Dated this day of , A.D. 19 .

CRIMINAL APPEAL ACT, 1907.

R. *v.*

(Appellant).

Upon consideration being this day had by the Court of Criminal Appeal, as duly constituted for the hearing of appeals under the Act, of the appeal of the above-named Appellant against sentence.

This Court doth finally determine the same and doth quash the sentence passed at the trial, and doth pass a sentence of

in substitution therefor, and doth order that the time during which the Appellant has been specially located in custody as an Appellant shall count as part of the said substituted sentence.

Dated this day of , A.D. 19 .

CRIMINAL APPEAL ACT, 1907.

R. *v.*

(Appellant).

Upon consideration being this day had by the Court of Criminal Appeal, as duly constituted for the hearing of appeals under the Act, of the appeal of the above-named Appellant against

This Court doth finally determine the said appeal and doth dismiss the same, and doth order

Dated this day of , A.D. 19 .

FORM OF APPELLANT'S RECOGNIZANCE ENTERED INTO WHEN ON AN APPEAL AGAINST SENTENCE. THE SENTENCE IS QUASHED AND THE APPELLANT IS RELEASED UPON ENTERING INTO RECOGNIZANCES WITH OR WITHOUT SURETIES.

COURT OF CRIMINAL APPEAL.

R. *v.*

(Appellant).

Appellant's Recognizance.

Be it remembered that whereas the Appellant on the day of , A.D. 19 , at the Assizes Sessions held at for the County, City, Borough of was convicted on indictment for the offence of and that the Appellant was thereupon sentenced to be imprisoned and kept to hard labour for the space of calendar months for the said offence.

And whereas the said conviction is still in full force and effect, and the Appellant has duly appealed to the Court of Criminal Appeal against the said sentence, and the Court of Criminal Appeal has quashed the said sentence and has not yet passed any other sentence in substitution for the said sentence, but has ordered that the Appellant be released from custody upon his entering into his own recognizances in the sum of together with sureties each in the sum of £ for the performance of the condition hereinafter mentioned.

Now the Appellant personally comes before the said Court of Criminal Appeal, and acknowledges himself to owe to our Lord the King the sum of £ of good and lawful money of Great Britain to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lord the King, his heirs and successors, if he, the Appellant, fail in the condition hereinafter mentioned.

Condition.

The condition of this recognizance is such that if the Appellant shall appear at such future sitting of the Court of Criminal Appeal within the space of years from the taking and acknowledging of this Recognizance of which he shall receive notice, and shall surrender himself into custody to receive the judgment and sentence of the said Court on the indictment for the said offence whereof he now stands convicted, and shall in the meantime

Be of good behaviour and keep the peace towards our said Lord the King and all his liege people,

then this said recognizance shall be void but otherwise shall remain in full force and effect.

(Signed)
(Address)

Taken and acknowledged before the Court of Criminal Appeal at the Royal Courts of Justice, London, on the day of , A.D. 19 . } Registrar.

FORM OF SURETY'S RECOGNIZANCE ENTERED INTO WHEN ON AN APPEAL AGAINST SENTENCE. THE SENTENCE IS QUASHED AND THE APPELLANT RELEASED UPON ENTERING INTO RECOGNIZANCES WITH SURETY OR SURETIES.

COURT OF CRIMINAL APPEAL.

R. *v.*

(Appellant).

Sureties' Recognizance.

Be it remembered that whereas the Appellant on the day of , A.D. 19 , at the Assizes Sessions held at for the County, City, Borough of was convicted on indictment for the offence of and that the Appellant was thereupon sentenced to be imprisoned and kept to hard labour for the space of calendar months for the said offence.

And whereas the said conviction is still in full force and effect, and the Appellant has duly appealed to the Court of Criminal Appeal against the said sentence, and the Court of Criminal Appeal has quashed the said sentence, and has not yet passed any other sentence in substitution for the said sentence, but has ordered that the Appellant be released from custody upon his entering into his own recognizances in the sum of £ together with sureties each in the sum of £ for the performance of the condition hereinafter mentioned.

Now of and of personally come before me being and each severally acknowledges himself to owe to our Lord the King the sum of £ of good and lawful money of Great Britain to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lord the King, his heirs and successors, if the Appellant fail in the condition hereinafter mentioned.

Condition.

The condition of this recognizance is such that if the Appellant shall appear at such future sitting of the Court of Criminal Appeal within the space of years from the taking and acknowledging of this recog-

nizance of which he shall receive notice, and shall surrender himself into custody to receive the judgment and sentence of the said Court on the indictment for the said offence whereof he now stands convicted, and shall in the meantime

Be of good behaviour and keep the peace towards our said Lord the King and all his liege people

then this said recognizance shall be void, but otherwise shall remain in full force and effect.

(Signed)
(Address)

Taken and acknowledged before
at on the
day of 19 .

FORM OF RECOGNIZANCE ENTERED INTO BY APPELLANT WHERE, AFTER A CONVICTION UPON ONE INDICTMENT HAS BEEN QUASHED, HE IS ADMITTED TO BAIL TILL HE TAKE HIS TRIAL UPON ANOTHER INDICTMENT FOUND AGAINST HIM.

Whereas
was on the day of , A.D. 19 , at the Court
General Quarter Sessions of the Peace
holden at in and for the of
convicted on a certain bill of indictment for that he

and was thereupon sentenced to be

And whereas the Court of Criminal Appeal has this day quashed the said conviction and sentence, and has ordered that the said shall take his trial upon a certain other bill or bills of indictment, which were found by the Grand Jury at the said Court of Quarter Sessions against the said , and that in the meantime the said be released on bail on entering into his own recognizances in the sum of £

Thereupon the said personally cometh before the Court of Criminal Appeal, and acknowledges himself to owe to our Lord the King the said sum of £ of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lord the King, his heirs and successors, if the said fail in the condition endorsed.

Taken and acknowledged this day of , 19 , at the Court of Criminal Appeal.

Registrar.

Condition.

The condition of the within written recognizance is such that if the said shall personally appear and surrender himself at the Court of General or Quarter Sessions of the Peace to be holden in and for the on a day and time of which notice shall be given to him there to take his trial

upon any indictment or indictments against him now remaining untried on the file of the said Court of Quarter Sessions, then this recognizance to be void or else to stand in full effect.

When released on bail my residence, to which any notices, etc., are to addressed, will be as follows :—

(Signed)

Appellant.

FORM OF ORDER TO GOVERNOR OF PRISON AFTER AN APPEAL HAS BEEN DISMISSED TO SECURE AN APPELLANT ADMITTED TO BAIL INTO CUSTODY.

To the Governor of His Majesty's Prison at .

Whereas on the day of , A.D. 19 , was at the holden at in and for the County, City, Borough of duly convicted of and was thereupon sentenced to be imprisoned and kept to hard labour in His Majesty's Prison at , for the space of calendar months.

And whereas the said afterwards appealed to the Court of Criminal Appeal against his said conviction .

And whereas the said was released from custody on bail on the day of , A.D. .

And whereas the Court of Criminal Appeal has this day dismissed the said appeal and affirmed the above-mentioned conviction and sentence

You are hereby ordered and required forthwith to receive the said into your custody in the said prison at , and there safely keep him to hard labour until he shall have completed the said term of , calendar months' imprisonment with hard labour.

Dated this day of , A.D. 19 .

Registrar.

FORM OF ORDER TO GOVERNOR OF PRISON WHERE AN APPELLANT IS REMANDED IN CUSTODY TO TAKE HIS TRIAL UPON ANOTHER INDICTMENT FOUND AGAINST HIM.

To the Keeper of His Majesty's Prison at .

Whereas was on the day of , A.D. 19 , at the Court of Oyer and Terminer and general Gaol Delivery, General Quarter Sessions of the Peace holden at in and for the of convicted on a certain Bill of Indictment for that he and was thereupon sentenced to be .

And whereas the Court of Criminal Appeal has this day quashed the said conviction and sentence, and has ordered that the said shall take his trial upon a certain other Bill or Bills of Indictment which were found by the Grand Jury at the said Court against the said ,
and that in the meantime the said
be committed to prison and there kept in safe custody until the next available Court of Terminer and general Gaol Delivery, General Quarter Sessions of the Peace to be holden at
the said County, City, Borough, unless in the meantime he be duly admitted to Bail to appear at the said Court and take his trial upon the said other Bills of Indictment.

You are hereby ordered forthwith to receive the said into your custody at the said Prison, and there safely keep him until he shall be thence delivered by due course of law.

Dated this day of , A.D. 19 .

Registrar.

FORM OF ORDER TO GOVERNOR OF PRISON WHERE THE HOUSE OF LORDS REVERSE THE ORDER OF THE COURT OF CRIMINAL APPEAL QUASHING A CONVICTION.

To the Governor of His Majesty's Prison at

Whereas was on the day of 19 convicted at the
on an indictment of
and was sentenced to

And whereas on the day of 19 the Court of Criminal Appeal ordered that the said conviction be quashed, and that the said be released from custody.

And whereas the Lords Spiritual and Temporal in the Court of Parliament of His Majesty the King assembled have ordered that the said Order of the Court of Criminal Appeal be reversed.

And whereas the Court of Criminal Appeal has this day ordered that the aforesaid conviction of the day of 19 be affirmed, and that the appeal against the said conviction be dismissed.

You are hereby required to receive the said into your custody in the said Prison, and there safely keep him according to law.

Dated this day of 19

Registrar.

APPENDIX D.

CRIMINAL APPEAL ACT, 1907.

Shorthand Notes of Proceedings and Transcripts.

I.

Shorthand Notes.

1. Where any person is indicted, or is charged upon a Coroner's Inquisition, or upon a Criminal Information, or is dealt with at Quarter Sessions as an Incorrigible Rogue, a shorthand note must be taken of the proceedings.

2. Such shorthand note should set out, *verbatim* :—

(*a*) The plea of the prisoner to the indictment or indictments whereon he is charged.

(The actual charge, as put to the prisoner by the officer of the Court, and the prisoner's reply thereto should be set out.)

(*b*) Any application made by the prisoner at any time during the proceedings (*e.g.*, for postponement of trial, legal aid, etc., etc.)

(*c*) Objections (if any) taken to any of the Jury.

(If the Jury are sworn without any challenge or other objection no note of the names or of the swearing of the Jury need be made. If any objection is taken a note of such objection should be taken.)

(*d*) The name of each witness called, and a note stating whether he was sworn or not.

(If a witness is sworn in the ordinary way, a note, "duly sworn," should be made after his name. If he is not sworn in the ordinary way, a note should be made of what actually takes place.)

(*e*) Each question asked during the proceedings by the Judge, Counsel, Jury, or Prisoner, and the answer thereto.

(The note should clearly distinguish between examination, cross-examination, and re-examination, and if any question or objection is interposed during such examination, etc., the note should show by whom it was interposed, and when the original examination, etc., was resumed.)

(*f*) All statements made, or objections taken during the proceedings by the Judge, Counsel (except as hereinafter mentioned), Witnesses, or Prisoner, or by any other person (on any matter relating to the proceedings).

(*g*) So much of any letter, statement, or other written document, etc., as is actually read aloud in the hearing of the Judge or Jury.

(If the document read is very long, or if for any reason it cannot conveniently be set out in full in the shorthand note, a note should be made which will clearly show (on reference to the original) how much was actually read aloud.)

(*h*) The summing up.

(Everything said by the Judge must be set out in full, and if in summing up he reads any notes or documents, the *whole* of what is actually read must be set out.)

(*i*) The verdict of the Jury.

(The actual questions asked by the officer of the Court and the replies of the Foreman, or other member of the Jury, thereto should be set out. If the Jury retired to consider their verdict, a note should be made showing how long (about) they were absent.)

(*k*) All applications, objections, questions, answers, and statements, etc., made, taken, or asked *after* conviction.

(It is most important that all the proceedings *after* conviction, and up to and including the sentence, and the making of any order (of restitution, etc.), should be set out with the same particularity as those before conviction.)

N.B.—A note need not be taken of the speeches of Counsel unless the Judge otherwise orders. A note of the fact that "Mr. —— opened the case for the prosecution" (or as the case may be) should be made. But if any objection is taken during any speech by Counsel, or if any argument on a point of law arises, a full note of such objection or argument must be taken.

3. The shorthand writer must sign the shorthand note taken by him of every trial or proceeding, or of any part of such trial or proceeding, and certify the same to be a complete and correct note thereof.

4. The shorthand writer must retain such shorthand note unless and until he is directed by the Registrar to forward such shorthand note to him.

(Although a prisoner ought to give notice of appeal within ten days of his conviction or sentence, he is entitled, in nearly all cases, to apply at any time for an extension of time in which to appeal. No shorthand note of any trial, etc., should be destroyed.)

II.

Transcripts of Shorthand Notes.

(*Supplied to the Registrar for the use of the Court of Criminal Appeal.*)

1. The shorthand writer must on being directed by the Registrar furnish to him, with as little delay as possible, a transcript (and one carbon copy thereof) of the whole or of any part of the shorthand note taken by him of any trial or proceeding.

2. Such transcript must be typewritten, and must be verified by the person making the same that the same is a correct and complete transcript of the whole or of such part (as the case may be) of the shorthand note purporting to have been taken, signed, and certified by the shorthand writer who took the same.

(The form (VIII.) of the certificate is given in the forms in the Schedule to the Criminal Appeal Rules, 1908. The transcript should be on foolscap paper, and all the sheets should be firmly fastened (bookwise) together.)

3. Such transcript must show the name of the prisoner, and where, when, and before whom he was convicted and sentenced, and must set out in full the whole of the shorthand note that was taken of the proceedings (or such part thereof as the case may be).

(If the prisoner pleaded in one Court and was tried in another Court the transcript of the proceedings at the trial need *not* include the transcript

of the proceedings at the plea (unless such last-mentioned transcript is specially directed to be supplied), but a note should be made on the transcript of the trial that the plea was taken in another Court. If the plea and trial were in the same Court both should be included in the transcript (unless the Registrar directs to the contrary).)

4. Each question asked in the proceedings must be numbered. The numbers must be consecutive throughout the proceedings, and must not recommence with each witness. If the prisoner was tried on two or more indictments, etc., the questions of each subsequent trial must be consecutive on the preceding trial.

5. An index, showing the names of the witnesses and the pages of the transcript whereon their evidence appears, must be attached to the beginning of the transcript.

6. The shorthand writer when supplying a transcript to the Registrar must enclose with it an account of his charges for the same upon one of the forms supplied by the Registrar.

CRIMINAL APPEAL ACT, 1907.

Section 15 (4).

INSTRUCTIONS TO APPELLANTS AND PRISON GOVERNORS.

1. If a prisoner desires to appeal, he should obtain Form No. XXXIV. from the Governor of the Prison, and fill in all the particulars and answer all the questions on page 1 thereof, and sign the notice in the proper place. He must also fill in the grounds of his appeal on page 2.

2. If more than 10 days have elapsed since the conviction or since the passing of sentence (according as the prisoner desires to appeal against his conviction or sentence) the Prisoner, in addition to the above form, must obtain Form IX. (845) from the Governor of the Prison and set out thereon the reasons why he has not appealed within the prescribed time, and must also sign the form.

3. If the prisoner desires to apply for leave to call witnesses on his appeal, he must answer question 4 on Form XXXIV. "Yes," and he must also obtain Form XXVI. from the Governor of the Prison, fill it up and sign it.

4. If the prisoner is unable to write, his Notice of Appeal, including his statement of his grounds of appeal (and also Forms IX. and XXVI. if necessary) may be filled in by an officer of the prison, or some other person, and the prisoner must, instead of signing Form XXXIV., affix his mark thereto in the presence of a witness. Such witness must sign his name and set out his address and occupation.

5. It is desirable that a prisoner should make his complete statement of all his applications, and of his grounds or argument for appeal, when he sends in Form XXXIV., and that he should not afterwards forward further statements unless there are further facts of real importance to the Prisoner's case *which have not been mentioned by him in any previous statement* sent to the Registrar.

6. If a prisoner who has given notice of his desire to appeal desires to

apply for bail pending the hearing of his appeal, he must apply to the Governor of the Prison for Form XXXV. and fill it up, sign it, and give all the particulars there required.

7. All Notices before being sent to the Registrar should be carefully examined by the Prison Officials, and care taken to see that the name of the Appellant, the Court of Trial, the nature of the offence, the description of the sentence, the date of the conviction and sentence, and the name of the Prison are all correctly set out.

8. If a prisoner desires to abandon his appeal he must obtain Form III. from the Governor of the Prison, fill it up and sign it. This form must be signed by an attesting witness. It is very desirable that this form should be used in all cases of abandonment.

9. When a Prisoner's application for leave to appeal against conviction or sentence has been refused by the Judge under Sect. 17, and the Prisoner does *not* desire to appeal to the full Court against such refusal, it is very desirable that he should at once fill up a notice of abandonment (Form III.). If he does desire to appeal to the full Court he must fill up Form XIV. within five days.

10. All Forms when signed by Prisoners should be forwarded forthwith to the Registrar by the Governor, and should not be handed to the Prisoner's solicitors or to any other person.

11. All communications should be addressed to

The Registrar,
Court of Criminal Appeal,
Royal Courts of Justice,
London, W.C.

12. These "instructions" are to take the place of the "instructions" previously issued.

JAMES R. MELLOR,
Registrar of the Court of Criminal Appeal.

The 30th day of June, A.D. 1910.

RULES, DATED APRIL 8, 1908, MADE BY THE SECRETARY OF STATE UNDER THE PRISON ACT, 1898, AND THE CRIMINAL APPEAL ACT, 1907, FOR THE TREATMENT AND CUSTODY OF APPELLANTS NOT ADMITTED TO BAIL.

Separation from other classes of prisoners.

212. (*a*) (1) An Appellant shall, as far as possible, be kept apart from other classes of prisoners.

Custody outside prison.

(2) Any Appellant who when in custody is to be brought to any place at which he is entitled to be present for the purposes of the Criminal Appeal Act, 1907, or to any place to which the Court of Criminal Appeal or any Judge thereof may order him to be taken for the purposes of any proceedings of that Court, shall, while absent from the Prison, be kept in the custody of the officers directed by the Governor of the Prison to convey him to that place.

Dress.

(3) An Appellant when absent from Prison under the foregoing rule shall wear his own clothing, or if his own clothing cannot be used,

clothing different from prison dress. An Appellant when in prison shall wear a prison dress of a different colour from that worn by other convicted prisoners.

(4) An Appellant shall not be required to sleep without a mattress, except in case of misconduct. Mattress.

(5) An Appellant shall be employed at work of an industrial or manufacturing nature. Employment.

(6) If an Appellant is released after his appeal, such an allowance on account of his earnings, if any, shall be paid to him on his discharge as the Commissioners think reasonable. Allowance for earnings.

(7) Due provision shall be made for the admission, at proper times and under proper restrictions, of persons with whom an Appellant desires to communicate regarding his case, care being taken that, so far as is consistent with the interests of justice, prisoners shall see their legal advisers alone. Visits.

(8) An Appellant shall at his request be allowed to see his legal adviser (being his counsel, his solicitor, or his solicitor's clerk, if the clerk has written authority from his principal) on any week day at any reasonable hour, and, if required, in the sight but not in the hearing of an officer. Communication with legal adviser.

(9) Paper and all other writing materials to such extent as may appear reasonable to the Governor shall be furnished to any Appellant who requires to be so supplied for the purposes of communicating with friends or preparing his appeal. Any confidential written communication prepared for his counsel or solicitor may be delivered personally to him or his authorised clerk, without being previously examined by any officer of the prison; but all other written communications are to be considered as letters, and are not to be sent out of the prison without being previously inspected by the Governor. Written communications.

(10) An Appellant shall be subject to the general prison rules, except so far as they are inconsistent with the foregoing special rules relating to Appellants. Application of general prison rules.

APPENDIX E.

STATUTORY RULES AND ORDERS, 1908.

No. 247, L. 7.

Criminal Procedure.

Costs of Appeal.

Order of Secretary of State, dated March 27, 1908, under Section 13 (2) of the Criminal Appeal Act, 1907.

In pursuance of the power conferred on me by section 13 (2) of the Criminal Appeal Act, 1907, I hereby make the following regulations :—

1. The expenses of any Solicitor or Counsel assigned to an Appellant by the Court of Criminal Appeal shall be allowed as follows :—

As respects an application for leave to appeal or an application for extension of time—

A fee not exceeding £2 : 2s. for a Solicitor, and £1 : 3 : 6 for Counsel.

As respects any appeal—

A fee not exceeding £2 : 2s. for a Solicitor and a fee for Counsel not exceeding £1 : 3 : 6, or, if in the opinion of the Court the case is one of difficulty, not exceeding £2 : 4 : 6 ; provided that the Court, after the conclusion of the appeal may, if it thinks fit, certify that the case was one of exceptional length or difficulty, and thereupon the fee may be increased to such sum as the Court, having regard to the length and difficulty of the case, may direct, but not exceeding £7 : 7s. for a Solicitor and £11 for Counsel.

In addition to such fees as aforesaid, a Solicitor may be allowed travelling expenses actually and necessarily incurred by himself or his Clerk on the scale applicable to an ordinary witness in a case of felony tried at Assizes under the Secretary of State's Order of the 14th June, 1904.

2. The expenses of any witnesses attending on the Order of the Court, or examined in any proceedings incidental to the appeal, shall be allowed on the same scale as those of a witness in a case of felony tried at Assizes under the Secretary of State's Order of 14th June, 1904 ; except that the night allowance of witnesses necessarily detained away from home in London for one or more nights may, if the Court thinks fit, be increased to not more than 8s. a night, but shall not exceed the expense reasonably incurred by the witness.

3. The expenses of the appearance of an Appellant not in custody on the hearing of his appeal, or on any proceeding preliminary or incidental to the appeal, may be allowed on the same scale as those of an ordinary witness in a case of felony tried at Assizes under the Secretary of State's Order of 14th June, 1904.

Where the Appellant appears in custody, the Warders attending in charge of him may receive the same allowances as Warders in charge of a prisoner may receive under the said Order.

4. Where any examination of witnesses is conducted by a person appointed by the Court for the purpose, the person so appointed shall be allowed, if he be a Stipendiary Magistrate or Justice of the Peace, the actual expenses of travelling, the actual cost of hiring a room for the examination, if no Court or public room is available, and such other incidental expenses as in the opinion of the Court are necessarily and reasonably incurred. If the person appointed be a practising Barrister he shall be allowed such expenses as aforesaid, and in addition such fee, not exceeding Five Guineas a day, as the Court may allow.

5. Where any question is referred to a special Commissioner appointed by the Court, or where any person is appointed as assessor to the Court, he shall be allowed such fee as the Court, having regard to his qualifications and ordinary professional remuneration, may think reasonable, not exceeding Ten Guineas a day.

Given under my hand at Whitehall, this 27th day of March, 1908.

H. J. GLADSTONE,
One of His Majesty's Principal
Secretaries of State.

REGULATIONS AS TO ALLOWANCES TO PROSECUTORS AND WITNESSES.

Memorandum.

The annexed Regulations are based on the Report made to the Secretary of State by a majority of the Members of a Committee specially appointed to consider the Allowances to Prosecutors and Witnesses in Criminal Prosecutions, of which the Right Hon. Sir John Dorington, Bart., M.P., was Chairman. *See* Parliamentary Paper 1903 [Cd. 1650].

It has been found possible, in accordance with the recommendations of the Committee, to increase considerably the scale of allowances to be paid to prosecutors and witnesses without departing from the principle that *it is a primary duty incumbent on every citizen to assist the course of criminal justice*, and that a witness, except where he is specially called in on account of his possessing professional or expert qualifications, is not entitled to any remuneration in the strict sense of the term. In this matter the Secretary of State concurs in the following remarks made in the Report :—

> "We agreed with the Committee of 1855, and with the Royal Commission of 1858, in repudiating any scale of allowances based merely or mainly on social position ; although, as will be seen, we do not think that the principle of absolute equality of payment can, or ought to be, pushed to its logical conclusion. The principle we have adopted would be better described as that of preserving from loss the witness of the poorer classes who earns a daily wage, which he loses by attendance in Court, and the aim which we have had in view throughout has been that of making such payments as will secure the efficient administration of justice, without imposing an undue burden on local rates. With this end in view we have endeavoured to settle an allowance of general application to ordinary prosecutors and witnesses, which, while not attempting to indemnify the richer witness, shall be sufficient to save the poor witness from loss."

A few words of explanation appear to be necessary with regard to some of the allowances.

Witnesses giving Professional Evidence.

There is a considerable increase in the allowances permitted under this head. They are fixed on a higher scale than the rates for ordinary witnesses on the ground, stated by the Committee with reference to the medical profession, that "its members are much more frequently called on to assist criminal justice by evidence drawn from their professional experience than any other class of the community."

Except in one point the fees under this head follow the recommendations of the Committee, with a few alterations in the wording which seemed to be necessary to avoid ambiguities. The one exception is that the fee recommended by the Committee for making a preliminary examination in cases of suspected sexual offences has been omitted. Were this fee inserted in a table of fees to witnesses, it would, of course, be payable only where the examination leads to a prosecution in which the medical man who made the examination is called as a witness. It appears to the Secretary of State to be wrong in principle that a medical man should be placed in the position of earning a fee if he recommends a prosecution, and of receiving nothing if his report negatives the institution of proceedings. In such cases the medical man makes the examination as the adviser to the police or to the prosecutor, and he is entitled to receive an appropriate fee whether the examination is or is not followed by criminal proceedings.

It is necessary to bear in mind that the sums fixed by this Regulation are maximum rates, and in each case discretion must be used as to the circumstances in which the maximum may properly be allowed, such as *e.g.*, whether the witness is detained all night or is losing private practice. The same observation applies, *mutatis mutandis*, to most of the other Regulations. The responsibility which rests in this matter on the Taxing Officer is much increased by the raising of the scale of allowances effected by the new Regulations. The allowances permissible under former Regulations were so small in amount that they could hardly be regarded as excessive in any case, but in future the allowances that can be made from local funds will be sufficiently high to call for an exercise of discretion as to whether any witness is or is not entitled to the full amount.

Expert Witnesses.

It is not intended to make any alterations with regard to the allowances to expert witnesses, which have hitherto been, and will continue to be, in the discretion of the Court.

No definition of "expert" witness has been inserted, the term being well known to the courts of law. It has, however, been made clear that as heretofore the allowance may cover not only the attendance to give evidence in court, but also where necessary the time spent in "qualifying" to give evidence.

It should also be borne in mind that the Court, in pursuance of its power to allow expenses incurred in "otherwise carrying on the prosecution" (7 Geo. IV. cap. 64, sec. 22), may allow reasonable fees for analyses, microscopical examinations, plans, etc., which are necessary for the prosecution, and are made under proper authority.

Police and Prison Warders.

The sums to be allowed under Regulations 3 and 4 may be regarded as fixed, unless there are very special reasons for making the allowance to an individual officer less than the sums specified.

Special allowances to police for proving previous convictions are abolished.

No allowances other than travelling allowances are given to police attending as witnesses in cases arising in their own police district, the intention being that they should receive from the police funds the same allowances as are given when they are absent from home on any other special duty. The Secretary of State has issued a circular to police authorities expressing his opinion, that where an officer attends to give evidence in a case arising in another police district, and the allowance made to him from Court funds falls short of the allowance to which he is entitled under the regulations of his force for an absence from home on special duty, the difference should be made good to him by his police authority.

In accordance with the recommendations of the Committee, the allowances to prison warders are at the same rates as those allowed them from prison funds when absent on duty. In making day allowances to warders payment will, of course, be made only for those meals which the officer has actually had to obtain during his absence on duty.

Ordinary Witnesses.

The maximum rates for ordinary witnesses (which have hitherto been 3s. 6d. a day, and 2s. or 2s. 6d. a night) are raised to 7s. a day, and 5s. a night. It should be clearly understood that these rates are *maxima*, and on this point special attention should be drawn to the following remarks of the Committee :—

> "We are of opinion that this general allowance [allowance to ordinary witnesses] might reasonably be fixed, *as a maximum*, at 7s. per day, with a further sum of 5s. if the witness is detained for the night, making a total of 12s. for the twenty-four hours.
>
> "Payments not exceeding this maximum will, we believe, fairly meet the ordinary case.
>
> "On the other hand, the suggested maximum payments will clearly be unduly large for many witnesses, such as agricultural and ordinary labourers, men in casual employ, children, women not earning wages, and domestic servants who lose no wages by attending, and a numerous body of witnesses in the lower ranks of clerical and trading employment.
>
> "To avoid therefore (1) extravagance, and (2) the great danger of affording an incentive to needy persons to come forward as prosecutors or witnesses, it is clear that large numbers of payments must be made of a less amount than the maximum recommended above."

In order to assist Taxing Officers in exercising their discretion within the maxima, a scale has been inserted limiting the amounts which may, in the absence of special and unusual reasons, be allowed to witnesses of certain classes.

It will be observed that these lower rates cover, broadly speaking, all

classes of persons in the service of employers and all classes of persons who lose nothing by attending the Court. Persons who are not in the service of an employer, but suffer loss by attendance, such as, *e.g.*, tradesmen in business on their own account, do not fall within any of the subheads (1) to (4), and are entitled to any sum within the general maximum which the Court may think fit to allow. In dealing with such witnesses it will not usually be necessary to require proof of actual money loss; a tradesman's absence from his shop or a farmer's from his farm may, in ordinary cases be accepted as entailing some loss upon him. The Taxing Officer will, however, exercise his discretion in each case, and will fix the sum to be allowed with due regard to the circumstances and probable earnings of the witness.

It will also be observed that the lower rates may be exceeded, within the general maximum, in the case of any witness who is necessarily detained from home all night, and of any witness who produces a certificate of his employer that he has actually lost by attendance wages to an amount larger than that which he would otherwise have received from the Court.

In the case of witnesses detained away from home all night, the Taxing Officer should be careful to see that the day and night allowances granted do not together exceed such amount as is reasonably necessary, having regard to the accommodation available in the town and to the class to which the witness belongs.

Travelling Allowances.

The question whether a railway fare in excess of 3rd class is to be allowed in any case will mainly depend on what may be reasonably supposed to be the witness's ordinary habit and practice. First-class fare should not be allowed even to a professional witness unless there is reasonable ground for supposing that he ordinarily travels first-class.

In making the travelling allowance in cases where a railway is not available, regard should be had to the nature of other means of transit which may reasonably be used. Where a tramway or omnibus is available the ordinary fares should be allowed. The allowances to witnesses who walk, or use private or hired means of conveyance, should only be made when the Taxing Officer is satisfied that it was not reasonably practicable for the witness to have used a public conveyance.

Lastly, it should be noticed that no distinction is made between attendance at Petty Sessions and attendance at Quarter Sessions and Assizes. In the former case, however, Regulation 7, which limits the allowances when the attendance involves less than four hours' loss of time, will much more frequently apply.

REGULATIONS MADE BY THE SECRETARY OF STATE GOVERNING THE ALLOWANCES PAYABLE TO PROSECUTORS AND WITNESSES IN CRIMINAL PROSECUTIONS.

In pursuance of the powers vested in me by Section 5 of the Criminal Justice Administration Act, 1851 (14 and 15 Vict. cap 55), I hereby make the following Regulations :—

1. *Witnesses giving Professional Evidence.*

There may be allowed to practising members of the legal and medical professions, for attending to give professional evidence, but not otherwise, allowances not exceeding the sums stated in the following scale :—

For attending to give evidence in the town or place where the witness resides or practises—

If the witness attends to give evidence in one case only, not more than one guinea per diem ;

If the witness gives evidence on the same day in two or more separate and distinct cases, not more than two guineas ;

For attending to give evidence elsewhere than in any town or place where the witness resides or practises, whether in one or more cases, not more than two guineas per diem.

In this Regulation "town" means Municipal Borough or Urban District ; and "place" means the area within a radius of three miles from the Court at which the witness attends to give evidence.

No allowance may be given under this Regulation to the solicitor for the prosecution, except that, if such solicitor gives professional evidence which, in the opinion of the Court, was necessary, and saved the attendance of another witness, a fee of 6s. 8d. may be allowed.

2. *Expert Witnesses and Interpreters.*

There may be allowed (*a*) to expert witnesses such allowances for attending to give expert evidence as the Court may consider reasonable, including, where necessary, an allowance for qualifying to give evidence, and (*b*) to persons employed as interpreters, such allowances as the Court may consider reasonable.

3. *Police Officers.*

There may be allowed to Police Officers :—

When attending as prosecutors or witnesses at Courts situate within the area of their own Police Authority, no allowance other than travelling allowances as provided in Regulation 8.

When attending as prosecutors or witnesses at Courts situate outside the area of their own Police Authority—

(*a*) In the case of Constables and Sergeants, a sum not exceeding—

For the day	4s.
For the night	4s.

(*b*) In the case of Inspectors, a sum not exceeding—

For the day	5s.
For the night	5s.

(*c*) In the case of Superintendents and Chief Constables, a sum not exceeding—

For the day	7s.
For the night	5s.

For the purposes of this Regulation, any Court at which cases arising in the area of any Police Authority or part thereof are ordinarily heard or tried, shall be deemed, so far as regards such cases, to be situate within that area.

4. *Prison Warders.*

There may be allowed to prison warders attending as prosecutors or witnesses, or in charge of a prisoner produced to give evidence, a sum equal to that allowed them by the Regulations of the Prison Department, viz. :—

	Day and night.	Day only.	
Chief warders . .	8s.	Breakfast . 1s. Dinner . 2s. 6d. Supper . . 1s.	4s. 6d.
Principal warders . .	6s. 6d.	Same as above.	
Warders and assistant warders . . .	6s.	Breakfast . 1s. Dinner . . 2s. Supper . . 1s.	4s.

For a prisoner so produced in the custody of warders, such sum for subsistence as the warders have been authorised to spend, and has been actually expended on his behalf.

5. *Ordinary Witnesses.*

There may be allowed to witnesses, other than those hereinbefore mentioned, allowances not exceeding 7s. for the day and 5s. for the night :

Provided that the day allowance to the under-mentioned classes of witnesses, *when they are not necessarily detained from home for a night*, shall not, except for special reasons allowed by the Court, exceed the following rates : —

(1) For children the allowance shall not exceed 1s. per diem ;
(2) For persons of the pauper or vagrant class the allowance shall not exceed 1s. per diem ;
(3) For other persons *who do not lose wages, earnings, or income by attendance*, the allowance shall not exceed 2s. 6d. per diem ;
(4) For persons in the service of an employer, *who lose wages by attendance*, the allowance shall not exceed the following rates, except on the production of a certificate from the employer showing that the wages so lost are in excess of such rates :—

	s.	d.	
For agricultural labourers, unskilled labourers and others similarly employed . . .	3	6	per diem.
For artisans, mechanics, and others similarly employed	5	0	„
For clerks, shop assistants, and others similarly employed	5	0	„

Provided also that no night allowance, within the above-mentioned limit of 5s., shall exceed the expense reasonably incurred by the witness.

6. *Seamen.*

Where seamen have been detained on shore for the purpose of giving evidence in a criminal prosecution, the amount actually and reasonably incurred for their maintenance during their detention may be allowed in addition to any allowances made under the foregoing rule.

7. *General Regulation.*

No full day allowance under Regulations 1, 3, and 5 shall be paid unless the witness is necessarily detained away from his home, or place of business or employment, for at least four hours for the purpose of giving evidence.

If the time during which the witness is necessarily detained away from his home, or place of business or employment, be less than four hours, he shall receive not more than one-half of the allowance which he would have received had he been detained for the full day :

Provided that this Regulation shall not apply (1) where the full day allowance is not more than 1s. ; and (2) where the Court is satisfied that a witness, though absent for less than four hours, necessarily loses, in consequence of his attendance, his whole day's wages.

No night allowance under Regulations 3, 4, and 5 shall be paid unless the witness in order to give evidence is necessarily detained away from home for the night.

There may be allowed to any prosecutor or other person who, in the opinion of the Court, necessarily attends for the purpose of the prosecution otherwise than as a witness, the same allowance, including travelling allowance, as to an ordinary witness.

8. *Travelling Allowances.*

For attending Court from a distance of over two miles there may be allowed :—

(1) To witnesses travelling by railway or other public conveyance, the fare actually paid. Railway fares, except for special reasons allowed by the Court, shall be 3rd class ; and if return tickets are available, only return rates shall be allowed. In the case of police witnesses, the reduced rates under the Cheap Trains Act, 1883, shall not be exceeded, except where the single fare is less than 1s., or for special reasons allowed by the Court.

(2) Where no railway or other public conveyance is available, and one or more witnesses necessarily travel by a hired vehicle, the sum actually paid for the hire of such vehicle, not exceeding 1s. a mile each way : provided that, where two or more witnesses attend from the same place, the total allowance shall not exceed 1s. a mile each way, unless the Court is satisfied that it was reasonably necessary to hire more than one vehicle.

(3) To each witness travelling on foot or by a private conveyance, where no railway or other public conveyance is available, a sum not to exceed 2d. a mile each way.

Allowances made under (2) and (3) shall be made separately as mileage.

For the conveyance of witnesses suffering from serious illness, or for the carriage of heavy exhibits, sums in excess of the above rates may be allowed if the Court is satisfied that the expense incurred was reasonably necessary.

Warders in charge of prisoners produced to give evidence may be allowed the cost of travelling by such means of conveyance as the Governor of the Prison may have directed.

9. *Form of Certificate.*

The form of certificate in Appendix A. hereto shall be used when a magistrate or magistrates acting under the Indictable Offences Act, 1848, grants a certificate of the allowances payable to prosecutors, witnesses, and other persons appearing before them. The profession, trade, or occupation of each person, or the fact that he is without employment or occupation, must be stated on the form.

The form in Appendix B. may be used when a Magistrate grants a certificate under Section 28 of the Summary Jurisdiction Act, 1879, for the costs of prosecution of an indictable offence tried summarily.

10. *Date of Commencement.*

These Regulations shall take effect on and after the 1st July 1904.

The Order of the 12th November 1903 is hereby revoked.

Given under my hand at Whitehall this 14th day of June 1904.

A. AKERS-DOUGLAS,
One of His Majesty's Principal Secretaries of State.

APPENDIX A.

Certificate of Costs of Prosecution.

In the [County of . Petty Sessional Division of]

A. B. having been examined before on a charge of ; it is hereby certified that the undermentioned persons are, for their expense, trouble, and loss of time in connection with the said charge, entitled to compensation as follows :—

	£	s.	d.
To C. D. [*state profession, trade, or occupation*], the prosecutor, residing at , for his attendance here half day day and night			
For travelling : mileage miles at per mile ; fares			
To the same for fees payable by him to the Justice's Clerk, as per authorised table			
To E. F. [*state profession, trade, or occupation*], a witness, residing at , for his attendance here half day day night			
For travelling : mileage miles at per mile ; fares			

Dated this day of , one thousand nine hundred and .

J. P.
Justice of the Peace for the [County] aforesaid.

APPENDIX B.*

Certificate of Costs of Prosecution of Indictable Offence dealt with Summarily.

In the [County of Petty Sessional Division of].

Before the Court of Summary Jurisdiction sitting at .

A. B. [an adult, young person, or child] having been charged for that he did [*state substance of charge*], and the above Court, having, in pursuance of its statutory jurisdiction, dealt with the case summarily, on the day of , and convicted the said A.B. [or dismissed the said charge]; it is hereby certified that the undermentioned persons are, for their expenses, trouble, and loss of time in connection with the said charge, entitled to compensation as follows:—

	£	s.	d.
To C. D. [*state profession, trade, or occupation*], the prosecutor, residing at , for his attendance here half day, day, and night			
For travelling: mileage miles at per mile ; fares			
To the same for fees payable to the Justices' Clerk . .			
To the same for fees payable to the Clerk of the Peace .			
To E. F. [*state profession, trade, or occupation*], a witness residing at , for his attendance here half day day, and night .			
For travelling: mileage miles at per mile ; fares			

Dated this day of , one thousand nine hundred and

J. P.

Justice of the Peace for the [County] aforesaid.

* This is the form prescribed in the Summary Jurisdiction Rules, 1886, with the variations rendered necessary by the present Regulations.

Rates of Payment fixed by the Lords Commissioners of His Majesty's Treasury for Shorthand Writing and Copying under the Criminal Appeal Act, 1907, and the Criminal Appeal Rules, 1908.

I. For shorthand notes and transcripts thereof under section 16 of the Criminal Appeal Act, 1907.

(*a*) Attendance Fee.

To shorthand writers employed at the public charge in the Criminal Courts, £1 : 1s. a day for each day's necessary attendance, with an additional fee of half-a-guinea in respect of any day on which a shorthand writer is required to attend in Court for more than seven hours.

(*b*) Payments for Transcripts.

8d. a folio (72 words) for transcripts directed to be made for the purposes of the Act; this payment to cover the supply of one copy of the

transcript also when it is required by the Officer for whom the transcript is ordered.

For any further copies of transcripts supplied either for public use or to parties interested, 1½d. a folio.

(*c*) Allowances for Expenses.

(1) *Travelling.*

Second-class railway fare, or first-class fare on lines of railway on which there is no second class, with other reasonable expenses of locomotion actually and necessarily incurred.

(2) *Lodging.*

An allowance at the rate of £2 : 2s. a week, or 8s. a night for a broken part of a week, provided that the total of £2 : 2s. a week is not exceeded.

N.B.—These allowances will only be made in cases where it is established to the satisfaction of the Lord Chancellor or the Lord Chief Justice, as the case may be, that no competent local shorthand writer is available, and it therefore becomes necessary to bring a shorthand writer from a distance, and the lodging allowance will only be made where such shorthand writer is compelled to be absent from home for the night.

II. For copying under No. 39 (*a*) of the Criminal Appeal Rules, 1908—

(*a*) For copies of any documents or exhibits, other than those mentioned hereunder, in the possession of the Registrar of the Court of Criminal Appeal under the Criminal Appeal Act, 1907, or the Rules framed thereunder, 1½d. per folio of 72 words;

(*b*) For copies of any plan, map, section, drawing, photograph or diagram, the actual cost of production as certified by the Registrar.

Criminal Appeal Act, 1907.

Claim for remuneration for services as Official Shorthand Writer at the Assizes held at

Name and Address of Shorthand Writer.	Date of Attendance at Court.	Amount Claimed.
		£ s. d.

I certify the above claim to be correct.

(Date)

Clerk of Assize Circuit.

To

The Assistant Paymaster-General,
Royal Courts of Justice,
London, W.C.

NOTE.—If two Shorthand Writers are employed on the same day it should be stated that *two Courts were held.*

When the extra fee of 10s. 6d. is claimed for over seven hours' attendance the time of the sitting of the Court should be given.

Claims for travelling expenses and lodging allowance should be sent in separately.

CRIMINAL APPEAL ACT, 1907.

Claim for remuneration for services as Official Shorthand Writer at the Court of Quarter Sessions held at

Name and Address of Shorthand Writer.	Date of Attendance at Court.	Amount Claimed.
		£ s. d.

I certify the above claim to be correct.

(Date)

Clerk of the Peace for

To

The Assistant Paymaster-General,
Royal Courts of Justice,
London, W.C.

NOTE.—If two Shorthand Writers are employed on the same day it should be stated that *two Courts were held.*

When the extra fee of 10s. 6d. is claimed for over seven hours' attendance the time of the sitting of the Court should be given.

CRIMINAL APPEAL ACT, 1907.

(Date) 191 .

(Postal Address)

R. *v.*

Account for supplying Transcript of Notes of the above trial held at

	£	*s.*	*d.*
folios @ 8d. per folio			
„ @ 1½d. „			

(Signature)

Official Shorthand Writer.

To
The Registrar,
Court of Criminal Appeal,
Royal Court of Justice,
London, W.C.

A fee of 8d. per folio is allowed for the transcript (including the carbon copy) of the note taken, or such part as the Registrar orders and for the index. A fee of 1½ per folio is allowed for the numbers of the questions on each of the copies (original and carbon).

INDEX

Figures in italics thus, *177*, are references to the Statute or Rules.

ABANDONMENT—
of appeal, 83, *177*
of application for leave to appeal, 60, 65, 83, *177*

APPEAL—
abandonment of, 60, 65, 83, *177*
application for leave to, 10, 22, 65. *See* Applications
applications in, consideration of, 58-83. *See* Applications
case stated, by means of, 18
certificate of Judge of Court of Trial, with, 18, 19
Children Act, under, 12, 23
commencement of, 27, *176*
conviction, against, 12, 14-24. *See* Appeal against Conviction
counsel, number who may be heard in an, 86
defence of by prosecutor, 45-47
discretion of judge not subject-matter of, 16
disqualifications, effect on of, 34
fine imposed, where, 30, *171*
fitness to plead, finding as to not the subject of, 13
forms to be filled up, 27, 60, *177*. *See* Notice of Appeal
from order of single judge, 60, *177*. *See* Single Judge
grounds of, to be stated, 28, 60
hearing of, Registrar to take steps to secure, 58, *153*
highway cases, in, 11
House of Lords to, 143
incorrigible rogue, by, 11. *See* Incorrigible Rogue
list of, to be kept by Registrar, 58, 61, *185*
misdirection, where alleged, 15, 29, 108-114. *See* Misdirection
mode of commencing an, 27-30. *See* Notice of Appeal
noncompliance with rules relating to, 30, 60, 65, *186*
notification of hearing of, 62
notification of determination of, 141, *182*, *186*
peers and peeresses, by, 10
pregnancy, finding of, where woman convicted of murder, 13
Prevention of Crime Act, under, 12, 13, 21

APPEAL—*continued*
reference by Home Secretary, 19. *See also* Home Secretary
requirements for, 27-30. *See* Notice of Appeal
sentence, against, 12, 21, 22, 125. *See* Appeal against Sentence
some only of the persons convicted, by, 145
summary determination of, 85, *154*
the right of, 10, 12, *149*, *156*
time for, 24-27, *151*, *176*. *See* Time for Appealing

APPEAL AGAINST CONVICTION. *See also* Conviction
any ground causing a miscarriage of justice, on, 117, *149*
application for leave to, 22, 66, *149*. *See* Applications
assessor, power to appoint to assist Court in consideration of, 84, *152*
case stated, by way of, 16, 37, 85. *See* Case Stated
certificate of Judge of Court of Trial, with, 18, 19, *149*
Children Act, under, 23
cross-examination as to character, a ground for, 15, 103
discretion of judge, matters within, not the subject of, 16
evidence further, effect of, 90
evidence further, when will be allowed in, 78, 80
evidence wrongly admitted or rejected, 15, 103, 105
frivolous or vexatious, summary determination of, 86, *154*.
fresh case may not be set up by appellant on, 78
fresh case may not be set up by prosecution on, 92
generally, 13-22, 84-124, *149*
grounds on which appeal may be allowed, 87, *149*
grounds involving questions of fact, 22, *149*
of law, 14, 15, *149*
of mixed law and fact, 22, *149*
habitual criminal, by, 13, 98, 116
incorrigible rogue, none by, 12
lunatic, by, 12, 13, 29, 96
misdirection as ground for, 15, 108. *See* Misdirecton
no case to go to jury as ground for, 16, 100
question of law, grounds involving, 14, *149*
question of law, wrong decision of, 99, *149*
reference to special examiner of question arising in, 84, *152*
summary determination of, 85, *154*
time for, 24-27. *See* Time for appealing
verdict amounting to one of not guilty, as a ground for, 16, 107
verdict wrong as to part of the indictment, 92, *150*
verdict unreasonable as ground for allowing, 88, *149*. *See* Verdict

APPEAL AGAINST SENTENCE. *See also* Sentence
application for leave to, 22, 67, *149*
bad in law, 14, 134
Borstal System, 135

APPEAL AGAINST SENTENCE—*continued*
breach of recognizance, 14
circumstances of case not fully considered by Court of Trial, 128
commutation of, not ground for an, 14
comparison with other sentences, not good ground for, 134
evidence allowed on, 135
fixed by law, no, 12
generally, 12, 125
habitual criminal, by, 12, 21, 136
imprisonment concurrent with penal servitude, 130
maximum sentence imposed, as a ground for, 130
mistake of judge as to facts, as a ground for, 135
offences committed before last imprisonment, 131
order to pay costs of prosecution the subject of an, 14
other offences taken into consideration, 132
penal servitude, concurrent with imprisonment, 130
penal servitude, first term of, 128
power of Court with regard to, 125, *149*
pregnancy, finding of, where woman convicted of murder, 13
Prevention of Crime Act, under, 12, 21, 136
principles on consideration by Court of, 126
question of law involved, 14, 134
remanet, no appeal lies against, 12
remanet, to be taken into consideration in determining sentence, 136
remanet, when ordered to run concurrently with or consecutively to sentence imposed by, 134
time for, 24-26. *See* Time for Appealing

APPEAL TO HOUSE OF LORDS—
Attorney-General's certificate to be obtained, 144
enforcement of order of House of Lords, 145
no power to admit to bail pending, 144
procedure on, 144
when lies, 143

APPLICATIONS—
consideration of, by full Court, 61
consideration of, by one Judge of the Court, 58
practice as to, 59
solicitors' right of audience, 59
when granted, final, 59
when refused may be appealed against, 60
leave to appeal, 22
consideration by single judge, 65
consideration by full Court, 66
conviction against, 22, 66. *See* Appeal against Conviction
sentence against, 22, 67. *See* Appeal against Sentence

APPLICATIONS—*continued*
notification of determination of, 60
notification of hearing of, 62
other than notice of appeal may be signed by appellant's solicitor, 29, *169*
to be in writing, 29, *169*, *186*
what may be considered by one Judge of the Court, 58

AUTREFOIS ACQUIT OR CONVICT—
consideration by Court of finding of jury on plea of, 13

BAIL—
appeal to House of Lords, where, 143
application for, 73
arrest of appellant admitted to, 75, *180*, *181*
conviction quashed but trial on other indictment ordered, 138
duty to be present at hearing of appeal of person admitted to, 72, 75. *180*, *181*
failure to surrender, 75
modification of, 75
necessity for surrender at hearing of appeal, 72, 75, *180*, *181*
notification by Prison Governor of arrest of person admitted to, 76, *181*
power to admit to, 72
practice as to, 73, *179*
prosecution to be informed of application for, 73
recognizance, forms of, *180*, *196*, *197*
recognizance, how to be entered into, 74, *179*
recognizance, estreat of, 77, *188*
revocation of, 75, *180*, *181*
surety, recognizance of, 74 *179*,
when will be granted, 73
who may admit to, 72

BORSTAL SYSTEM—
appeal against sentence of, 135

CASE STATED—
at request of Court of Appeal, 37, 85, *178*
person in whose behalf case is stated becomes an Appellant, 16, *153*, *178*
power of Court of Appeal to order, 85, *178*
power to state case under Crown Cases Act still exists, 16
procedure, 17, 37, 85
time for statement of case, 25, 85
whether case can be stated where question of sentence only involved, 17

CAUSE LISTS—
preparation of, by Registrar, 58, 61, *186*
publication of, 58, 61, *186*

CERTIFICATE—
of Judge of Court of Trial, that case is fit for Appeal, 18, 19, 37, *149*, *171*
time for appealing with, 25

CERTIFICATE OF CONVICTION—
issue of, by Clerk of Court of Trial, 43, *174*

CHILDREN ACT—
appeal under, 12, 14, 23
time for, 25

CLERK OF ASSIZE OR OF THE PEACE—
certificates of conviction, issuing of, by, 43, *174*
compliance with rules under Criminal Appeal Act, 45
exhibits, duties with regard to, 40, 43
list of counsel and solicitors to be prepared by, 44, *183*
notification by Registrar of orders of Court of Appeal, 43, *182*
particulars of decision of Court of Appeal to be entered on Record of Court of Trial, 43, *182*
particulars of trial to be furnished by, 39, *176*
prosecutor to be ascertained and name and address recorded, 45, *176*
to record orders made by Judge of Court of Trial, 42, *172*, *173*
to record orders made by Court of Appeal, 43, *182*

COMMISSIONER—
power to refer question in appeal to, 84, *152*
directions to be given, 84, *185*

CONVICTION—
appeal against. *See* Appeal against Conviction
autrefois convict or acquit, finding of, may be considered though not a, 13
fitness to plead, finding of, not a, 13
meaning of, 13
plea of guilty included in, 13
Prevention of Crime Act, under, 87
quashing of, where appeal allowed, 87, *149*

CORROBORATION—
consideration of appeal based on absence of, 105, 123

COSTS—
amount of expenses allowed, 143
appeal, of, none allowed, 142, *152*

COSTS—*continued*
appearance of appellant, expenses of, 143, *153*
counsel, of, 142, *153*
how defrayed, 143, *153*
how to be paid, 143, *153*
order to pay costs of prosecution, part of sentence, 14
solicitor, of, 142, *153*
witnesses, of, 143, *153*

COUNSEL—
assignment of, to appellant, 67, *152*, *183*
documents furnished by Registrar to, 69, *184*
list of, to be furnished by Clerk of Assize, 44, *183*
one only may be heard in appeals, 86
selection of, by Registrar, 69, *183*

DIGNITY OF THE COURT—
court a superior Court of Record, 3, *148*

DIRECTOR OF PUBLIC PROSECUTIONS—
defence of appeal by, 47, *152*, *178*

DISQUALIFICATIONS—
effect of appeal on, 34

DOCUMENTS—
connected with the appeal, power of Court to obtain, 40, *154*
copies of, for appellants in person, 69, *184*
for counsel, 69, *184*
for solicitor for appellant, 70, *184*
custody of, 40, *154*

ESTABLISHMENT—
date of, 1, *148*
past attempts to effect, 1

ENFORCEMENT—
power of Court to issue warrant to enforce its orders, 142, *187*

EVIDENCE. *See also* Witnesses
application by appellant for leave to call, 78
by prosecution for leave to call, 81
by appellant, strong case required before will be allowed, 80
cases in which leave to call will be granted, 78-80
corroboration of, 105
effect of, when allowed on appeal against conviction, 90
against sentence, 78, 135
establishing case of suspicion only, 92
insufficient for case to be allowed to go to jury, 100
insufficient to prove offence charged against appellant, 91

EVIDENCE—*continued*
leave to call, how obtained, 78
power of Court to allow, 77, *151*
practice as to allowance of, 78
rebuttal, the allowance of, not a ground for appeal, 120
sentence may not be increased by reason of further, 78, *152*
special examiner, before, 82, *152*
when further evidence will be allowed, 78-80
witnesses giving, 81, 82. *See* Witnesses
wrongful admission of, as ground for appeal, 15
as ground for allowing appeal, 103
objection to be taken at trial to, 104
particulars to be given when alleged, 29
wrongful rejection of, as ground for appeal, 15
as ground for allowing appeal, 105

EXHIBITS—
custody of, 38, *172*
definition of, 41, *169*
duty of Judge of Court of Trial with regard to, 38, *173*, *174*
of officer of Court of Trial with regard to, 40, *154*, *173*, *174*
of registrar to obtain, 40, *154*, *181*, *182*
list of, 41, *172*, *173*
orders with regard to, 38, *172*
power of Court to obtain, 40, *154*, *181*
return of, 42, *182*, *183*

HABITUAL CRIMINAL—
appeal by, 12, 13, 21
time for, 25
appeal against conviction by, where verdict unreasonable alleged, 98
appeal against conviction on question of law, 116
appeal against sentence by, 136

HIGHWAY CASES—
appeal in, 11, *156*
rules of Court with regard to, *187*

HOME SECRETARY—
difference between power of, and of the Court, 5
duties with regard to exercise of prerogative of mercy not interfered with, 5, *155*
may obtain assistance of Court, 6, *155*
reference of petition by, 19-21, *155*
effect of reference, 21, *187*
power to refer, 19, 20, *155*
reports sent with, cannot be treated as evidence, 91
treatment of, by Court same as an appeal, 21, 91, *187*

IDENTIFICATION—
when improperly effected may cause miscarriage of justice, 120

INCORRIGIBLE ROGUES—
appeal by, 11, *156*
reference by Home Secretary of petition relating to conviction only, 20

INDICTMENT—
appellant may be ordered to be tried on another on file of Court of Trial, 158
bad in law, as ground of appeal, 100
Court cannot order to be taken off file of Court of Trial, 139
to be sent to Registrar by Clerk of Court, 39
verdict of acquittal to be entered when conviction quashed, 87

INFORMATION—
on revenue side of King's Bench Division not a criminal, 11
right of appeal to persons convicted on, 11, *156*

INSANITY—
finding of, under Trial of Lunatic's Act, 13
notice of appeal to be drawn by solicitor when alleged, 24
no appeal against sentence of detention passed on finding of, 12
power of Court of Appeal to find, 96, *150*

JUDGE OF COURT OF APPEAL—
appeal from decision of, 60, *177*
consideration of applications by, 58
practice as to, 59
power to refer application to full Court, 61
power to sit as member of full Court, 61, *178*
power to sit where convenient, 59

JUDGES OF COURT OF APPEAL—
number constituting the Court, 8, *148*
president, who is, 9, *148*
who are the, 1, *148*

JUDGMENT OF THE COURT—
appeal from, 143, *148*
finality of, 3, 143, *148*
one only to be delivered, except where questions of law involved, 9, *148*
to be according to opinion of the majority, 9, *148*

JUDGE OF COURT OF TRIAL—
case stated by, at own initiative, 16
case stated by, at request of Court of Appeal, 37
case stated by, procedure, 17

JUDGE OF COURT OF TRIAL—*continued*
certificate by, that case is fit for appeal, 18, 19, 37, *149*, *171*
exhibits, duties with regard to, 38
matters within discretion of, no appeal lies from decision of, 16
meaning of, 35, *168*
notes of trial to be furnished to Registrar, 35, 36, *151*, *175*
orders for restitution, etc., duties as to, 37, *173*, *174*
report as to trial to be furnished to Registrar, 35, 36, *151*, *175*

JURISDICTION OF THE COURT—
to enforce its orders, 3, 142, *152*
transferred from Court for Crown Cases reserved, 3, *156*
with regard to appeals, 3, *148*, *152*

JURY—
discharge of, not ground for appeal, 120
tampering with, may cause miscarriage of justice, 120
previous convictions known to, 118

LEGAL AID—
application for, 27, *177*
assignment of, to appellant, 67, *152*, *183*
documents furnished by Registrar when granted, 69
enquiry as to means of appellant before granting, 67, *181*
power to grant, 67, *152*, *183*
practice as to, 67
report of Registrar as to necessity for, 68, *154*, *183*
selection of by Registrar, 69, *183*
solicitor, when will be assigned, 68

LUNATIC—
notice of appeal may be drawn up and signed by legal adviser on behalf of, 29
power to find appellant a, 96, *150*
sentence of detention, no appeal against, 12
verdict under Trial of Lunatics Act, against what part of finding appeal lies, 13

MISCARRIAGE OF JUSTICE—
as ground for allowing appeal, 87, 117, *149*
corroboration where no, or no warning as to need of, 105, 121, 123
failure to obtain consent of Attorney-General to prosecution is a substantial, 123
misdirection where alleged, 111, 124
must be substantial before appeal can be allowed, 87, 121, *149*
no evidence to go to jury, 101, 123
objections to indictment do not amount as a rule to, 100, 122
previous convictions known to jury, 118

MISCARRIAGE OF JUSTICE—*continued*
tampering with jury may cause, 120
technical flaws in trial do not amount to, 122
trial conducted unfairly, 119
verdict unreasonable, 92, 121, *149*
wrong decision on question of law, where, 87, 122, *149*
wrongful reception or rejection of evidence, 103, 123

MISDIRECTION—
as ground of appeal against conviction, 15
as to the facts, as ground for quashing conviction, 113
as to the law, as ground for quashing conviction, 110
in appeals by habitual criminals, 117
in general, as ground for quashing conviction, 108
omission to direct as to the fact, 114
omission to direct as to the law, 112
particulars to be given, 29
where verdict of guilty of another offence substituted, 96

NEW TRIAL—
no power to order, 4

NON-COMPLIANCE—
where notice of appeal from single judge not sent in time, 60, 65
with rules of Court, when can be remedied, 30, *186*

NOTICES—
appeal of, 27, *169*. *See* Notice of Appeal
other than notice of appeal may be signed by appellant's solicitor, 29, *169*
signature, where person unable to write, 29, *170*
signature, where person alleged at trial to be insane, 29, *170*
signature, where appellant corporate body, 29, *170*
to be forwarded by registered post, 28, 29, *169*
to be in writing, 28, *169*

NOTICE OF APPEAL—
commencement of appeal by giving, 27, *151*
forms to be filled up, 27, *177*
forwarding by Prison Governor, 29
grounds of appeal must be stated in, 28
grounds stated in, may be considered against the appellant, 29
misdirection, where alleged, particulars must be given, 29
Prison Governor to provide appellant with, 28
to forward to Registrar, 29
signature of, 29, *169*, *170*
where leave to appeal granted, separate notice not to be filled up, 30, *176*
wrongful admission or rejection of evidence, particulars to be given of, in, 29

OFFICER OF COURT OF TRIAL—
duties of, 39-45. *See* Clerk of Assize
meaning of, 39, *168*

PEERS—
appeal by, 10

POLICE—
duties with regard to witnesses, 56
duty to assist Court generally when required, 57
enquiries as to means of appellants, 55, *181*

PRESENCE—
appeal cannot be heard in absence of appellant where he has right to be present unless he waives the right, 71
appellant on bail, 72
application for, 71, *177*
arrangements for bringing appellant before Court, 71, *153*
before examiner, 82
when will be granted or refused, 72
where appellant has or has not right of, 70, *152*

PREVENTION OF CRIME ACT—
appeal under, consideration of, 98, 116, 136
right of, 12, 13, 21
time for, 25

PRISON COMMISSIONERS—
attendance of warders at Court, 55, *181*
bring appellants before the Court, 54
special treatment of appellants in custody, 53

PRISON GOVERNOR—
duty to assist prisoner desiring to appeal, 28, 52
to forward notice of appeal to Registrar, 29
to see formal parts of notice filled in correctly, 52
notification of receipt into custody where appellant on bail arrested, 54
postponement of sentence of death or corporal punishment, 52, *151*
recognizance of appellant admitted to bail, 54
release of appellant admitted to bail, 54
special treatment of appellant in custody, 53

PROSECUTOR—
ascertainment of, by Clerk of Court of Trial, 45, *176*
Commissioners of Police as, 46, *169*
defence of appeal by, 45, *152*, *178*
duty to give information to Registrar or Director of Public Prosecutions, 47, *179*
government department as, 46, *169*, *178*

PROVISO TO SECTION 4—
any ground causing a miscarriage of justice, 113, 121, *149*
corroboration cases, 105, 123
fiat of Attorney-General not obtained, 123
misdirection cases, 111, 124
no evidence to go to jury cases, 101, 123
objections to indictment cases, 100, 122
substitution of verdict, 96
technical points, 122
verdict unreasonable, 92, 121
wrong decision on question of law, 87, 122, *149*
wrongful reception or rejection of evidence, 103, 123

QUESTION OF LAW—
as ground for appeal, 14
corroboration, absence of, 105
corroboration, absence of warning as to need of, 105
discharge of jury not a, 120
indictment bad in law a, 100
misdirection as to the facts not a, 15, 113
misdirection as to the law a, 15, 108
no evidence to go to jury, 100
rebuttal evidence when allowed not a, 120
usurpation of functions of jury, 106
wrong decision of, as ground for allowing appeal, 99
wrong decision of, what is, 99
wrong decision of, matter within discretion of judge not a, 99
wrong judgment entered on findings of jury, 107
wrongful admission of evidence a, 103
wrongful rejection of evidence a, 105

REGISTRAR OF THE COURT—
appointment of, 1, *149*
assistant, 2, *157*
deputy, 2, *169*
documents, supply of, to parties, 69
exhibits, power with regard to, 40, *154*, *181*, *182*
forms, duty to supply forms, *154*
hearing of appeals and applications, duty to obtain, 58
instructions to appellants, 39, *154*, 220
instructions to prison governors, 39, *154*, 221
instructions to shorthand writers, 219
legal aid, report as to necessity of, 68, *154*, *183*
meaning of term, *169*
notes of Judge of Court of Trial, request for, 35, *175*

REGISTRAR OF THE COURT—*continued*
notification of decision of full Court, 141, *182*, *186*
notification of decision of single judge, 60, *177*
notification of hearing of appeals or applications, 62, *186*
particulars of trial, request for, 39, *176*
preparation of list of appeals and applications, 61, *186*
publication of list of appeals and applications, 61, *186*
reference of appeal on question of law for summary determination, 85
register, to keep, *185*
report of Judge of Court of Trial, request for, 36, *175*
selection of counsel and solicitor, 69, *183*
staff of, 2, *149*
transcript of shorthand notes, to obtain, 48, *154*

RESTITUTION, ORDERS FOR—
annulment of, where conviction quashed, 139, *150*
annulment of, though conviction not quashed, 139, *151*
duties of Judge of Court of Trial with regard to, 37, *173*, *174*
effect of appeal on, 32, 34, *150*, *173*
power of Court of Appeal to annul or vary, though conviction not quashed, 140, *150*
right of parties affected to be heard by Court of Appeal, 141, *172*
suspension of operation of, 32, 34, *150*, *173*, *174*
where conviction quashed, 139, *150*

RULES OF COURT—
annulment of, 7, *155*
approval of, by Lord Chancellor, 7, *155*
approval of, by Home Secretary, 7, *155*
power to make, 7, *155*
non-compliance with, 30
rule committee, 7, *155*

SALE OF GOODS ACT—
annulment of effect of where conviction quashed, 140, *150*
postponement of effect of, 32, *150*, *173*, *174*

SENTENCE—
appeal against. *See* Appeal against Sentence
application for leave to appeal against. *See* Appeal against Sentence
bad in law, 14, 134
Borstal system, under, 135
commutation of, 12
comparison of, with others, 134
costs of prosecution, order to pay included in, 14
expulsion order, included in meaning of, 14
fixed by law, 12
further evidence allowed as to, 135

SENTENCE—*continued*
habitual criminal, on, 12, 21, 136
imprisonment concurrent with penal servitude, 130
lunatic, no appeal lies by, 12
maximum, when imposed, 130
meaning of, 13, *156*
mistake of judge as to facts in passing, 135
offences committed before last imprisonment, for, 131
other offence, for, 129
other offences taken into consideration, 132
penal servitude concurrent with imprisonment, 130
penal servitude, first term of, 128
power of Court to alter, 125
postponement of execution of, 52, *151*
Prevention of Crime Act, under, 12, 21, 136
principles of Court with regard to alteration of, 126
remanet, no appeal against, 12
remanet, to be considered in determining, 136
remanet, where ordered to be concurrent or consecutive to, 134
standardization of, 127

SHORTHAND WRITERS—
appointment, 48, *170*
certification of note taken, 50, *170*
custody of note taken, 50
effect of no note or incomplete note taken, 51
meaning of, *169*
note to be taken, 49, *154*, *170*, *188*
defrayment of cost of, *154*
remuneration, 49, *154*
signing note taken, 50, *170*
transcript of note taken, 50, *154*, *170*. *See* Transcript

SINGLE JUDGE—
appeal from decision of, 60, *177*
consideration of applications by, 58, 65
granting application by, 59
power to exercise powers of the Court, 58, *154*
power to refer application to full Court, 61
power to sit as member of full Court, 61, *178*
power to sit where convenient, 59, *178*
practice with regard to consideration of applications, 59
refusal of application by, 60, *177*
solicitor has right of audience before, 59, *186*
what applications may be considered by, 58, *154*

SITTINGS OF THE COURT—
different divisions, may be in, 8, *148*
how to be summoned, 8, *148*
place of, 8, *148*
president, who is, 8, *148*
vacation, during, 8, *149*, *187*
when held, 8

SOLICITOR—
assignment of, to appellant, 67, 68, *152*, *183*
audience, right of, before single judge, 59, *186*
list of, willing to act for appellant to be furnished to Registrar by Clerk of Assize, 44, *183*
selection of, by Registrar when assigned to appellant, 69
witness, as, *80*, *91*

SPECIAL TREATMENT IN CUSTODY—
appellant's right to, 53, 139, *153*
duration of, 53
time not to count as part of sentence unless Court orders otherwise, 53, *153*
when Court will allow time to count, 139

TIME FOR APPEALING—
case stated, where, 25
certificate given, where, 25
Children Act, under, 25
computation of, 26, 60
conviction, against, 24, *151*, *176*
extension of, application for, 27, 62, *177*
amendment of notice of appeal, for, 64
conviction involving sentence of death, no power to grant, 27, 62, *151*
lodgment of further notice, for, 64
power to grant, 27, 62, *151*
practice as to, 63
when will be granted, 63, 64
where appeal from single judge not received in time, 60, 65
habitual criminal, by, 25
reference by Home Secretary, where, 25
refusal of application by single judge, from, 60
sentence, against, 24, *151*, *176*

TRANSCRIPT—
demand for, by Registrar, 51, *170*
of what must consist, 50
supply of, by Registrar free of charge, 69, *184*
to whom may be furnished, 50, *154*, *170*
verification of, 51, *171*
who may make, 50, *170*

VENIRE DE NOVO—
power to order, 5

VERDICT—
against the weight of evidence, 89
insanity of, appeal from, 13, 97
Court of Appeal cannot substitute, 96, *150*
special, 107, *150*
substitution of, 94, *150*
application of proviso to Section 4, 96
where misdirection alleged, 96
unreasonable or insupportable, 88-90, *149*
appeal by habitual criminal, 98
evidence insufficient to prove case, 91
further evidence, 90
principles on which Court acts, 88-90
where judge directs jury what to find, 106
wrong as to part of indictment, 93, *150*
wrong judgment entered on findings of jury, 107, *150*

WARRANT—
power of Court to issue, 142, *152*, *187*

WITNESSES—
appellant as a witness, 80, *152*
application by appellant to call, 78, *184*
when will be granted, 78-81
application by prosecution to call, 81, *184*
attendance of, before leave to call obtained, 80
how obtained, 81, *184*
costs of, to be defrayed out of local funds, 143
examination of, before Court, 81, *151*, *184*
before special examiner, 82, *152*, *184*
expenses of, advancement by police, 81, *185*
defrayment out of local funds, 143
leave to call, how obtained, 78, 81, *184*
power of Court to order attendance of, 77, *151*
practice as to applications for, 78, 81
presence of appellant during examination of, 72, 82
sentence may not be increased by reason of further evidence of, 78, *152*
special examiner, examination before, 82, *152*, *184*
summoning by Registrar of, 81, *184*, *185*
when will be allowed to be called before the Court, 78
who may be called before the Court, 77, *151*