

## CHAPTER 15.

## WEST AFRICAN COURT OF APPEAL (CRIMINAL CASES).

## ARRANGEMENT OF SECTIONS.

## SECTION.

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## CHAPTER 15.

## WEST AFRICAN COURT OF APPEAL (CRIMINAL CASES).

**An Ordinance to make provision for appeals to the West African Court of Appeal in Criminal Cases.** 10 of 1929.  
3 of 1940.

[10TH MARCH, 1930.]

1. (1) This Ordinance may be cited as the West African Court of Appeal (Criminal Cases) Ordinance. Short title.  
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(2) This Ordinance shall apply to the Colony and the Protectorate, and to all persons convicted after the commencement of this Ordinance.

(3) This Ordinance shall come into operation on such date as the Governor may fix by a proclamation in the *Gazette*.

2. In this Ordinance, unless the context otherwise requires— Interpreta-  
tion.

“Order in Council” means the West African Court of Appeal Order in Council, 1948;

“Court of Appeal” means the West African Court of Appeal established by the said Order in Council;

“Rules of Court” means rules of court made under the said Order in Council;

\* See footnote to Chapter 14.

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

“verdict” includes the decision of a judge as to whether or not an accused person is guilty in cases where such decision rests with the judge;

“conviction” means a conviction on information by or in the Supreme Court;

“information” shall be deemed to include a coroner’s inquisition;

“sentence” includes any order of the Court made on conviction with reference to the person convicted or his wife or children;

“Deputy Registrar” means the Deputy Registrar of the Court of Appeal in Sierra Leone.

#### RIGHT OF APPEAL AND DETERMINATION OF APPEALS.

Right of appeal in criminal cases.

3. A person convicted on information by or in the Supreme Court may appeal to the Court of Appeal—

(a) against his conviction on any ground of appeal which involves a question of law alone; and

(b) with the leave of the Court of Appeal or upon the Certificate of the Judge who 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 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 Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict should be set aside on the ground that it is unreasonable, or cannot be supported having regard to the evidence, or that the judgment of the Court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

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

(2) Subject to the special provisions of this Ordinance, the Court of 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 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.

5. (1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some count or part of the information, has been properly convicted on some other count or part of the information, 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 information on which the court consider that the appellant has been properly convicted.

Powers of  
court in  
special cases.

(2) Where an appellant has been convicted of an offence and the judge who tried him or the jury (as the case may be) could, on the information, have found him guilty of some other offence, and on the finding of such judge or the jury it appears to the Court of Appeal that such judge or 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 such judge or 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 by a jury the jury have found a special verdict, and the Court of 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 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 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 until Her Majesty's pleasure shall be known, and such order shall have the same effect as if it were made by the Judge by whom the appellant was tried.

(5) Where the Court of Appeal is of opinion that the proceedings in the trial court were a nullity, either through want of jurisdiction or otherwise, the Court may order the appellant to be tried by a court of competent jurisdiction.

Revesting  
and restitu-  
tion of  
property on  
conviction.

6. (1) The operation of any order for the restitution of any property to any person made on a conviction on information and the revesting, in case of any such conviction, in the original owner or his personal representative of the property in stolen goods, 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 such revesting, is suspended until the determination of the appeal, the order or such revesting, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal.

(2) The Court of 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 to the Court of Appeal, or to obtain the leave of that court to appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within ten days of the date of conviction:

Except in the case of a conviction involving sentence of death, the time, within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Court of Appeal or by the Court before whom the appellant was convicted.

(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 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.

8. For the purposes of this Ordinance, the Court of Appeal may, if they think it necessary or expedient in the interest of justice—

Supplemental  
powers of  
court.

(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, or, in the absence of rules of court making provision in that behalf, as they may direct, before any judge of the court or before any officer of the court 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, or, in the absence of rules of court making provision in that behalf, as they may direct, 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 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.

Right of  
appellant to  
be present.

9. (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 of Appeal or, in the case of an application to the court before whom the appellant was convicted for an extension of time within which notice of appeal or notice of application for leave to appeal may be given, the said court, gives him leave to be present.

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

Admission of  
appellant to  
bail, and cus-  
tody when at-  
tending court.  
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10. (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 rules which shall be made under the Prisons Ordinance.

(2) The Court of Appeal, or the court before whom he was convicted 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 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 period of imprisonment under his sentence, and, in the case of an appeal under this Ordinance, any imprisonment under the sentence of the appellant, whether it is the sentence passed by the court of trial or the sentence passed

\* The Prisons Ordinance was Cap. 180 of the 1946 edition. It is to be repealed and replaced and has been omitted from this edition.

by the Court of Appeal, shall, subject to any directions which may be given by the court as aforesaid, be deemed to be resumed or to begin to run, as the case requires, if the appellant is in custody, as from the day on which the appeal is 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 in a criminal proceeding under section 12 of this Ordinance, this section shall apply to the person in relation to whose conviction the case is stated as it applies to an appellant.

(5) Provision shall be made by rules under the Prisons Ordinance, for the manner in which an appellant, when in custody, is to be brought to any place at which he is entitled to be present for the purposes of this Ordinance or to any place to which the Court of Appeal 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.

11. If it appears to the Deputy 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 Deputy Registrar may refer the appeal to any judge of the Supreme Court other than the judge before whom the appellant was convicted, and such judge may, if he is of the same opinion, direct the Deputy Registrar to refer the appeal to the Court of Appeal in any colony or territory to which the Order in Council applies for summary determination, and, when the case is so referred, the Court of Appeal 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.

Procedure with respect to frivolous appeals on questions of law.

#### RESERVATION OF QUESTIONS OF LAW FOR THE OPINION OF THE COURT OF APPEAL.

12. In addition and without prejudice to the right of appeal conferred by this Ordinance any Judge of the Supreme Court may reserve for the consideration of the Court of Appeal, on a case to be stated by him, any question of law which may

Reservation of questions of law for opinion of Court of Appeal.

\* See footnote on previous page.

arise on the trial before such Judge of any person charged on information, and if a verdict of guilty be returned, may postpone judgment, or may direct judgment to be entered provisionally, subject to the opinion of the Court of Appeal, respiting execution of the judgment, and the Court of Appeal shall have power to hear and determine every such question.