



BERMUDA

CRIMINAL APPEAL ACT 1952

1952 : 5

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[preamble and words of enactment omitted]

Interpretation

1 (1) In this Act—

“appeal” means an appeal to the Supreme Court under this Act in respect of a charge of an offence heard before, and determined by, a court of summary jurisdiction;

“appellant” includes any person who has a right of appeal under section 3, 4, 5 or 6 and who wishes to appeal under this Act;

“compensation order” means an order made by a court of summary jurisdiction requiring a person convicted of an offence by that court to pay to any other person damages for injury or compensation for loss arising out of the act or omission constituting the offence, being a reparation order within the meaning of section 70I of the Criminal Code [title 8 item 31];

“costs of appeal” has the meaning given in section 21(2) ;

“notice of appeal” means a notice of appeal duly given under section 9;

“order for the payment of costs”, in relation to any criminal proceedings before a court of summary jurisdiction, means an order made by the court of summary jurisdiction requiring any person to pay any of the costs incidental to those proceedings;

“respondent,” in relation to an appeal, means—

- (i) where the appellant was the defendant in the criminal proceedings in respect of which notice of appeal was given, then the person who was the informant in those proceedings; or
- (ii) where the appellant was the informant in criminal proceedings as aforesaid, then the person who was the defendant in those proceedings;

“restitution order” includes any order made under section 70H of the Criminal Code [title 8 item 31] by a court of summary jurisdiction requiring the restitution of property.

(2) For the purposes of this Act, “sentence” shall be deemed to include—

- (a) any order made on a conviction by a court of summary jurisdiction, being an order relating to the person convicted or to his wife or children, not being—
 - (i) an order for absolute discharge; or
 - (ii) an order for conditional discharge or a probation order; or

- (iii) a compensation order; or
 - (iv) an order for the payment of costs; or
 - (v) a restitution order; or
 - (vi) an order made under section 12 of the Care and Protection of Animals Act 1975 [*title 25 item 16*] (which section enables a court to order the destruction of an animal); or
 - (vii) an order made in pursuance of any enactment under which the court has no discretion as to the making of the order or as to the terms thereof, or
 - (viii) an order committing a person to the Supreme Court for sentence; and
- (b) a recommendation for the making of a deportation order under Part VII of the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*], made on a conviction by a court of summary jurisdiction and relating to the person convicted;

but any power of the Supreme Court, acting in its appellate jurisdiction under this Act, to impose a sentence shall be deemed to include a power, subject to this Act, to make any such order as aforesaid (including any order mentioned in subparagraphs (i), (ii), (iii), (iv), (v), (vi), (vii), or (viii) of paragraph (a) and to include a power to make a recommendation as mentioned in paragraph (b).

In this subsection “order for conditional discharge” and “probation order” have the meanings respectively given in section 3 of the Criminal Code [*title 8 item 31*].

(3) Nothing in this Act shall affect Her Majesty’s Prerogative of mercy or any power vested in the Governor acting as the representative of Her Majesty, to exercise such Royal Prerogative on behalf of Her Majesty, or to grant a pardon either free or subject to conditions or any remission of sentence, or any respite of the execution of any sentence.

[Section 1 subsection (1) “compensation order” and “restitution order” amended by 2001:29 s.11(1) & Sch effective 29 October 2001]

Appeals from courts of summary jurisdiction to Supreme Court

2 The Supreme Court, subject to and in accordance with this Act, shall have an appellate jurisdiction in respect of appeals against convictions, sentences, orders and other decisions of courts of summary jurisdiction (including Children’s Courts) arising out of a charge of an offence heard before and determined by such courts.

Conviction or sentence; appeal

3 (1) A person convicted of an offence by a court of summary jurisdiction shall have a right of appeal to the Supreme Court in the manner provided by this Act against his conviction or sentence.

(2) A person upon whom sentence has been imposed by a court of summary jurisdiction in respect of an offence of which he was convicted by another court of summary jurisdiction shall have a like right of appeal against that sentence.

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(3) Notwithstanding anything in subsection (1) or (2), a person shall not have a right of appeal in respect of his sentence where under any enactment that person was, after his conviction of an offence by a court of summary jurisdiction, committed for sentence to the Supreme Court and sentenced by the Supreme Court for that offence.

(4) In this section “convicted”, in relation to the commission of an offence by any person, includes—

- (a) a conviction upon that person’s plea of guilty of the, offence; or
- (b) a conviction upon that person being dealt with *ex parte* whether or not he has admitted to the court the truth of the information;

and “conviction” shall be construed accordingly.

Point of law; appeal by informant

4 (1) A person who was the informant in respect of a charge of an offence heard before and determined by a court of summary jurisdiction shall have a right of appeal to the Supreme Court, in the manner provided by this Act, upon a ground which involves a question of law alone—

- (a) where the information was dismissed, then against any decision in law which led the court of summary jurisdiction to dismiss the information;
- (b) in any other case, against any decision in law which led the court of summary jurisdiction, after convicting the defendant in those proceedings, to impose a particular sentence or to deal with him in a particular way.

(2) For the purposes of this section, a decision of a court of summary jurisdiction in respect of a trial on an information—

- (a) discharging an accused person on the grounds that there is no case to answer;
- (b) staying proceedings as an abuse of process; and
- (c) issuing a ruling which would otherwise have the effect of terminating the trial,

shall be deemed to involve a question of law alone.

[Section 4 subsections (1) and (2) inserted by 2015 : 37 s. 19 effective 6 November 2015]

Sentence; appeal by informant

4A Any person who was the informant in respect of a charge of an offence heard before and determined by a court of summary jurisdiction may, in relation to any sentence imposed by that court, appeal to the Supreme Court against the sentence, on the ground that the sentence so imposed is manifestly inadequate.

Compensation order; appeal

5 Notwithstanding anything in sections 1 to 4, where, in connection with the conviction of any person of an offence by a court of summary jurisdiction, it was competent

for that court, on application thereto, to make a compensation order requiring the person so convicted to pay to any other person any sum by way of damages or compensation, then in any such case the person so convicted or any other person who was, or who might have been, awarded any sum by way of damages or compensation, shall have a right of appeal to the Supreme Court in the manner provided by this Act—

- (a) in the case of the person so convicted, where a compensation order was made by the court of summary jurisdiction—
 - (i) then against the making of the order; or
 - (ii) against the amount of the sum required to be paid under the order; or
- (b) in the case of such other person—
 - (i) where the making of a compensation order was refused by the court of summary jurisdiction, then against the refusal to make such an order; or
 - (ii) where a compensation order was made by the court of summary jurisdiction, then against the amount of the sum required to be paid under the order.

Order for payment of cost; appeal

6 Notwithstanding anything in sections 1 to 5, a person convicted of an offence by a court of summary jurisdiction, or a person who was the informant in respect of a charge of an offence heard before and determined by a court of summary jurisdiction, shall each have a right of appeal to the Supreme Court in the manner provided by this Act, upon a ground which involves a question of law alone—

- (a) where an order for the payment of costs was made by the court of summary jurisdiction—
 - (i) then against the making of the order; or
 - (ii) against the amount of the sum required to be paid under the order; or
- (b) where the making of an order for the payment of cost was refused by the court of summary jurisdiction, then against the refusal to make such an order.

Time for giving notice of appeal

7 (1) Without prejudice to section 8, where a person who has a right of appeal by virtue of section 3, 4, 5 or 6 wishes to appeal to the Supreme Court, he shall give notice of appeal within the periods respectively specified in this section.

(2) Subject to subsections (3) and (5), an appellant who wishes to appeal under section 3 against his conviction or sentence shall give notice of appeal—

- (a) within ten days after the day on which he was convicted; or

- (b) where the court of summary jurisdiction by which he was convicted adjourned the case after conviction, then within ten days after the day on which the court sentenced or otherwise dealt with him:

Provided that nothing in this subsection shall prevent an appellant, in the circumstances set out in paragraph (b) from giving notice of appeal before he is sentenced or otherwise dealt with by the court of summary jurisdiction; and where he does so give notice of appeal section 11(1) shall have effect accordingly.

- (3) Notwithstanding anything in subsection (2), where an appellant—

- (a) has, subsequent to his being dealt with on his conviction of an offence by a court of summary jurisdiction by way of the making of an order for conditional discharge or a probation order, been sentenced under any enactment by a court of summary jurisdiction for the offence in respect of which the order was made; and

- (b) wishes to appeal under section 3 against that sentence,

then in any such case he shall give notice of appeal within ten days after the day on which he was so sentenced.

- (4) An appellant who (having been an informant) wishes to appeal under section 4 in connection with any decision in law of a court of summary jurisdiction shall give notice of appeal—

- (a) where the appeal is in respect of a decision in law which led the court of summary jurisdiction to dismiss the information, then within ten days after the day on which the information was dismissed; or

- (b) where the appeal is in respect of a decision in law which led the court of summary jurisdiction, after convicting an offender, to impose a particular sentence or to deal with him in any particular way, then within ten days after the day on which the court imposed the sentence or, as the case may be, made the order, by or under which the offender was then dealt with.

- (5) *Deleted by 1999:51*

- (6) An appellant who wishes to appeal under section 5 in connection with the making of a compensation order, or, as the case may be, in connection with a refusal to make such an order, shall give notice of appeal—

- (a) where a compensation order was made, then within ten days after the day on which the order was made;

- (b) where the making of a compensation order was refused, then within ten days after the day on which the making of an order was refused.

- (7) An appellant who wishes to appeal under section 6 in connection with the making of an order for the payment of costs or, as the case may be, in connection with a refusal to make such an order, shall give notice of appeal—

- (a) where an order for the payment of costs was made, then within ten days after the day on which the order was made;

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- (b) where the making of an order for the payment of costs was refused, then within ten days after the day on which the making of an order was refused.

[Section 7 amended by 1998:38 effective 1 January 2000; subsection (5) deleted by 1999:51 s.4 & Sch effective 23 December 1999]

Extension of time

8 (1) Where it appears to the Supreme Court, on application made in accordance with this section, that any person wishing to appeal to the Supreme Court has failed to give notice of appeal within the period required by the section 7, the Court may, if it thinks fit, direct that any such notice of appeal previously given by the applicant after the expiration of such period, or any such notice that may be given by him within such further time as may be specified in the direction, shall be treated as if it had been given within such period.

(2) An application for a direction under subsection (1) shall be made in writing and shall be sent by the appellant to the Registrar; and, where any such direction is given by the Supreme Court, the Registrar shall give notice of the terms of the direction to the appellant and to the Senior Magistrate and to the respondent in the appeal.

(3) The powers of the Supreme Court under subsection (1) may be exercised by a judge.

[Section 8 amended by 1998:38 effective 1 January 2000; subsection (1) amended by 1999:51 s.4 & Sch effective 23 December 1999]

Form of notice of appeal; service

9 (1) A notice of appeal given by an appellant under section 7 or 8—

- (a) shall be in writing;
- (b) shall set out the grounds of appeal;
- (c) shall join every ground of appeal in respect of which the appellant is then appealing; and
- (d) shall be signed by the appellant or by counsel on His behalf

(2) Notice of appeal shall be duly given if a notice of appeal as aforesaid is personally served upon the Senior Magistrate within the time allowed for notice of appeal to be given under this Act.

Amendment of notice of appeal

10 (1) Where it appears to the Supreme Court, on application made in accordance with this section, that it is just or expedient that any notice of appeal duly given under section 7 or section 8 should be amended in any particular, the Court may direct that any such notice of appeal shall be so amended and shall be treated as though it had been duly given in its amended form.

(2) An application for a direction under subsection (1) shall be made in writing and shall be sent by the appellant to the Registrar; and, where any such direction is given by

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the Supreme Court, the Registrar shall give notice of the terms of the direction to the appellant and to the Senior Magistrate, and to the respondent in the appeal.

(3) The powers of the Supreme Court under subsection (1) may be exercised by a judge.

Effect of giving notice of appeal on sentence or order

11 (1) Where notice of appeal has been duly given by an appellant under this Act all further proceedings shall, subject to this section, be stayed; and accordingly, after notice of appeal has been given, no sentence shall be imposed or order made pending the determination, or, as the case may be, the abandonment of the appeal.

(2) Where a court of summary jurisdiction, before notice of appeal has been given,—

- (a) has imposed a sentence; or
- (b) has made a compensation order or an order for the payment of costs; or
- (c) has made any order mentioned in paragraph (a) of section 1(2) (including any order mentioned in sub-paragraphs (ii), (v), (vi), (vii) or (viii) of that paragraph) ; or
- (d) has made a recommendation mentioned in section 1(2)(b),

then, upon notice of appeal being duly given—

- (i) where a sentence of imprisonment has been imposed the appellant, unless released from custody under section 12, shall be detained in a prison pending the determination or abandonment of his appeal; and in any such case section 70J(3) of the Criminal Code [*title 8 item 31*] and section 8(2) of the Prisons Act 1979 [*title 10 item 32*], shall have effect accordingly;
- (ii) where a sentence of corrective training has been imposed by a Family Court the appellant, unless released from custody under section 12, shall be detained in a residential home operated under the Children Act 1998 [*title 27 item 26*] pending the determination or abandonment of the appeal; and in any such case the Young Offenders Act 1950 [*title 10 item 33*], shall have effect accordingly;
- (iii) where a sentence of a fine has been imposed, the payment of the fine (unless stayed under section 12) shall be enforced as though no notice of appeal had been given, so, however, that any sums paid to a court of summary jurisdiction in part or full payment of the fine shall not be paid by the court into the Consolidated Fund but shall be retained in the custody of the court pending the determination or abandonment of the appeal; and, where any sums as aforesaid are duly retained by the court, section 25 shall have effect with respect to their disposal upon the determination or, as the case may be, the abandonment, of the appeal:

Provided that where a person convicted by a court of summary jurisdiction has been given time in which to pay a fine the time pending the determination or abandonment of

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the appeal, if shorter than the time so given, shall be counted in computing time for that purpose; and

- (iv) *[deleted by 1999:51]*
 - (v) except as otherwise expressly provided in any Act, and subject to subsection (3), where any order or recommendation has been made then that order or recommendation shall be suspended and shall be deemed to be of no effect pending the determination or abandonment of the appeal.
- (3) Notwithstanding anything in subsection (2)(v), where—
- (a) as a result of a conviction of an offence under the Road Traffic Act 1947 *[title 21 item 3]*, or under the Motor Car Insurance (Third Party Risks) Act 1943 *[title 21 item 5]*, an order has been made suspending a driver's licence, or cancelling a driver's licence and declaring the person convicted to be disqualified for obtaining another licence, or declaring the person convicted disqualified for driving an auxiliary bicycle; or
 - (b) as a result of a conviction of an offence of cruelty to a child under section 19 of the Children Act 1998 *[title 27 item 26]*, an order has been made under section 8 of that Act relating to the care or supervision of the child; or
 - (c) as a result of a conviction of an offence in respect of a foster child under the Children Act 1998 *[title 27 item 26]*, an order has been made under section 63(2) relating to the removal of the child and placing him in the care of the Director; or
 - (d) as a result of a conviction of cruelty within the meaning of the Care and Protection of Animals Act 1975 *[title 25 item 16]*, an order has been made under that Act for the destruction of an animal or for depriving the person convicted of the ownership of an animal,

then in any such case any such order made as aforesaid shall have effect pending the determination or abandonment of the appeal; and notwithstanding that upon the determination of the appeal the conviction, or, as the case may be, the order as aforesaid made thereon, is quashed, or another order is substituted for the original order, any contravention of or failure to comply with any requirement imposed by virtue of the original order shall, as respects the period pending the determination or abandonment of the appeal, be deemed to have the same effect and to create a liability to the same consequences as if notice of appeal had not been given.

[Section 11 amended by 1998:38 effective 1 January 2000; subsection (2)(d)(iv) deleted by 1999:51 s.4 & Sch effective 23 December 1999; subsection (2)(d)(1) amended by 2001:29 s.11(1) & Sch effective 29 October 2001]

Release pending appeal

12 (1) Where an appellant, being an offender who has been sentenced by a court of summary jurisdiction to a term of imprisonment or to undergo corrective training, has duly given notice of appeal against the sentence or against the conviction in respect of which that sentence was imposed, a court of summary jurisdiction may, if it thinks fit, upon the

application of the appellant, release him from detention in custody on such terms and conditions as it thinks fit pending the abandonment or determination of the appeal.

(2) Wherever a court of summary jurisdiction exercises the powers vested in it by subsection (1), it shall address an order to the Commissioner of Prisons for the release of the appellant from detention in custody.

(3) Where an appellant, being an offender who has been sentenced by a court of summary jurisdiction to pay a fine, has duly given notice of appeal against that sentence or against the conviction in respect of which that sentence was imposed, then in any such case a court of summary jurisdiction shall, upon the application of the appellant, release him from any obligation to pay the fine pending the determination or abandonment of his appeal upon his entering into a recognizance conditioned for his appearance before a court of summary jurisdiction—

- (a) within three days after the determination of the appeal, unless—
 - (i) the Supreme Court quashes the conviction or sentence; and
 - (ii) the Supreme Court does not substitute any other conviction for the original conviction or does not impose any sentence or make an order for conditional discharge or a probation order in substitution for the original sentence; and
 - (iii) the Supreme Court does not make any order requiring the appellant to pay all or any part of the costs of the appeal; or
- (b) within three days after the abandonment of the appeal.

(4) Where an appellant is aggrieved by the amount of a recognizance which he is required to enter into under this section or is otherwise aggrieved with respect to such a recognizance, then the appellant may apply to the Supreme Court or to a judge to be released from detention in custody, or, where the appellant has been sentenced to pay a fine, then to be released from his obligation to pay the fine, pending the determination or abandonment of his appeal; and the Court or judge may grant the application accordingly.

(5) The Supreme Court or a judge, in exercising any power conferred by subsection (4), may direct that a recognizance shall be entered into or other security given before a court of summary jurisdiction.

(6) *[deleted by 1973:107]*

(7) Any time during which an appellant is released from detention in custody under this section shall not count as part of any term of imprisonment to which he was sentenced; or, if he was sentenced to undergo corrective training, as part of any period of the corrective training; and where an appellant is so released from detention in custody, any term of imprisonment or, as the case may be, of corrective training, which the appellant is required to serve by reason of his sentence, (whether that sentence is the sentence imposed by the court of summary jurisdiction or is a sentence imposed on appeal by the Supreme Court in substitution for the original sentence) shall, subject to any directions which may be given by the Supreme Court, begin to run as from the day on which (after the

determination or abandonment of the appeal) he is received into a prison[reference to a junior training school omitted].....to serve that term.

Documents to be sent to Registrar

13 (1) Without prejudice to any power of the Supreme Court under section 15(1) to order a magistrate to furnish a supplementary report in connection with proceedings taken before him, upon an appellant duly giving notice of appeal in the manner provided by this Act, the Senior Magistrate (if he was not the magistrate comprising or presiding over the court in question) shall forthwith inform the magistrate who comprised or presided over the court in question; and the magistrate comprising the court of summary jurisdiction or, (in the case of a Family Court), presiding over the court of summary jurisdiction before which the proceedings in connection with which the notice of appeal was given were heard, shall, unless the appeal is earlier abandoned, prepare a report giving his opinion upon the proceedings and upon any points arising in the proceedings which he thinks it expedient to embody in the report, and shall (if he is not the Senior Magistrate) cause the report to be transmitted to the Senior Magistrate as soon as practicable, and in any event within five days after the day on which notice of appeal was given.

(2) Upon an appellant duly giving notice of appeal in the manner provided by this Act, the Senior Magistrate—

- (a) shall, unless the appeal is earlier abandoned, cause the following documents, together with two copies of each such document, to be transmitted to the Registrar as soon as practicable, and in any event within seven days after the day on which notice of appeal was given, that is to say,—
 - (i) the notice of appeal;
 - (ii) a copy of the record of the conviction, sentence, order or other decision in respect of which notice of appeal was given and of the record of all other proceedings (including preliminary process) connected with the criminal proceedings in question;
 - (iii) a copy of the notes of evidence given in the criminal proceedings aforesaid, taken in pursuance of section 83 of the Criminal Jurisdiction and Procedure Act 2015;
 - (iv) a copy of the judgment recorded in accordance with section 83 of the Criminal Jurisdiction and Procedure Act 2015;
 - (v) any documents or other articles entered as exhibits in the criminal proceedings aforesaid;
 - (vi) the report prepared in accordance with subsection (1);
 - (vii) the recognizance (if any) entered into by the appellant in connection with the appeal, or a statement of any other security given, or (if the appellant is detained in custody) a statement to that effect; and

- (b) shall, unless the appeal is earlier abandoned, cause copies of the documents specified in sub-paragraphs (i), (ii), (iii), (iv), (v) and (vi) of paragraph (a) to be transmitted within the same time to the appellant and to the respondent in the appeal:

Provided that where either the appellant, or (as the case may be) the respondent, appeared in the criminal proceedings before the court of summary jurisdiction—

- (i) by counsel instructed by the Director of Public Prosecutions in that behalf; or
- (ii) by a police officer authorized by the Commissioner of Police in that behalf; or
- (iii) by an officer of a Government Department or of a Government Board, acting on behalf of that Department or Board,

then in any such case the copies of the documents shall be transmitted to the Attorney-General instead of to the appellant or, (as the case may be) the respondent in the appeal; and

- (c) shall cause copies of the documents specified in paragraph (b) to be delivered to such other persons as are made additional parties to the appeal under section 14(2), within such times as the Supreme Court may direct.

(3) The Registrar, upon receiving the documents and other articles (if any) specified in subsection (2)(a)—

- (a) shall enter the appeal; and
- (b) shall in due course give notice of the date upon which the appeal will be heard by the Supreme Court to the appellant and the respondent, (or in the circumstances mentioned in the proviso to subsection (2)(b), to the Director of Public Prosecutions and to the appellant or respondent, as the case may be), and to such other persons as are made additional parties to the appeal under section 14(2).

[Section 13 amended by 1998:38 effective 1 January 2000; subsections (2)(b)(i) and (3)(b) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; subsection (2)(a) amended by 2015 : 38 s. 91 effective 6 November 2015]

Perfection of appeals

13A (1) Before the Registrar can set a date upon which an appeal will be heard under section 13(3)(b), the appeal shall be perfected.

(2) An appeal is perfected when—

- (a) the requirements of section 13(2) are complied with;
- (b) the appellant has finalized his grounds for appeal;

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- (c) the appellant has served his finalized grounds of appeal and supporting submissions and authorities to the court and to the respondent; and
- (d) such other requirements are complied with as may be provided for by rules made pursuant to section 540 of the Criminal Code Act 1907.

(3) The date upon which an appeal will be heard shall be at least ten clear days from the time an appeal is perfected under this section.

[Section 13A inserted by 2015 : 37 s. 19 effective 6 November 2015]

Consolidation; additional parties

14 (1) Where more than one person concerned in criminal proceedings before a court of summary jurisdiction duly gives notice of appeal, then in any such case the Supreme Court, if it thinks fit, may order the appeals to be consolidated and to be heard at the same time.

(2) Where an appeal relating to a compensation order involves persons other than the informant and defendant in criminal proceedings before a court of summary jurisdiction, then in any such case the Supreme Court may, if it thinks fit, order those persons (if not already appellants) to be made additional parties to the appeal, and may give such directions in the matter as it thinks fit.

(3) The powers of the Supreme Court under this section may be exercised by a judge.

Supplemental powers of Supreme Court

15 (1) The Supreme Court of its own motion, or upon the application of the appellant or the respondent in an appeal, or upon the application of any person who under section 14 is made an additional party to an appeal, may, if it appears to the Court to be necessary or expedient in the interests of justice, exercise in connection with the hearing of the appeal any or all of the following powers, that is to say,—

- (a) the Court may order the magistrate comprising the court of summary jurisdiction or, (in the case of a Family Court), presiding over the court of summary jurisdiction, to submit to the Court a supplementary report giving his opinion upon any point arising in the proceedings;
- (b) where the appeal is on a ground involving a question of law alone, the Court may order the court of summary jurisdiction to state a case for the opinion of the Court;
- (c) may appoint any person with special expert knowledge of any matter to act as an assessor to the Court where it appears to the Court that such special knowledge is required for the proper determination of the appeal;

and the Supreme Court may in addition exercise, in relation to any proceedings taken before the Court in its appellate jurisdiction under this Act, any ancillary or supplemental powers which the Court finds it necessary or expedient to exercise in connection with any such proceedings, being powers which for the time being are exercisable by the Supreme Court in its original criminal jurisdiction.

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(2) Any power conferred upon the Supreme Court by virtue of subsection (1) may be exercised by a judge.

(3) Where in compliance with an order under paragraph (a) or under paragraph (b) of subsection (1) a supplementary report or a case stated is submitted to the Supreme Court, the Registrar shall cause copies of the report or case stated (as the case may be) to be transmitted forthwith to the appellant and to the respondent and to any person made an additional party to the appeal:

Provided that where either the appellant or the respondent appeared in the criminal proceedings before the court of summary jurisdiction in any of the circumstances mentioned in paragraphs (i), (ii) and (iii) of the proviso to paragraph (b) of section 13(2), then in any such case the Registrar shall cause copies of the report or case stated to be transmitted to the Director of Public Prosecutions instead of to the appellant or (as the case may be) the respondent.

[Section 15 amended by 1998:38 effective 1 January 2000; proviso to subsection (3) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Hearing of appeals

16 (1) Subject to this section, the hearing of an appeal by the Supreme Court shall be by way of argument—

- (a) upon the record of the proceedings taken before the court of summary jurisdiction contained in the documents transmitted to the Registrar in accordance with section 13(2)(a); or
- (b) where a case is stated by the court of summary jurisdiction in accordance with the terms of an order made under section 15(1)(b), then upon the case so stated.

(2) If in connection with the hearing of any appeal, upon the application of the appellant, or (subject as hereinafter in this subsection provided) of the respondent or any person made an additional party to the appeal, it is made to appear to the Supreme Court that in the interest of justice it is reasonable to do so, the Court shall supplement the procedure mentioned in subsection (1) by any or all of the following means, that is to say,—

- (a) by ordering or allowing any person who was or would have been a compellable witness in the proceedings before the court of summary jurisdiction to give evidence at the hearing of the appeal, whether or not that person gave evidence before the court of summary jurisdiction;
- (b) by allowing any person (including, where an appeal is brought under section 3 or section 4, the appellant) who was or would have been a competent but not a compellable witness in the proceedings before the court of summary jurisdiction to give evidence at the hearing of the appeal, whether or not that person gave evidence before the court of summary jurisdiction;

- (c) upon the application of the appellant, the appellant being a convicted person appealing under section 3, by allowing the husband or wife of the appellant to give evidence (where the evidence of the husband or wife could not, by reason of the Evidence Act 1905 [*title 8 item 10*], have been given before the court of summary jurisdiction except upon such an application) at the hearing of the appeal, whether or not the husband or wife of the appellant gave evidence before the court of summary jurisdiction;
- (d) by ordering or allowing the introduction in evidence at the hearing of the appeal of affidavits relating to facts which were not in evidence before the court of summary jurisdiction;
- (e) by ordering or allowing the production and the examination at the hearing of the appeal of any document, exhibit, article or thing, whether or not it was in evidence in the proceedings before the court of summary jurisdiction;
- (f) where any question arising out of the appeal involves the prolonged examination of documents or accounts or involves any scientific examination or the examination of any locality which cannot conveniently be conducted before the Court, by ordering the reference of that question to a special commissioner appointed by the Court for enquiry and report, and by examining the report of any commissioner so appointed, whether or not the report relates to facts which were not in evidence before the court of summary jurisdiction.

(3) The Supreme Court may of its own motion supplement the procedure mentioned in subsection (1) by any or all of the means referred to in subsection (2)(a), (d), (e) and (f).

Hearing of appeals; supplemental

17 (1) Where an appeal is heard by the Supreme Court the Director of Public Prosecutions, in any of the circumstances set out in the proviso to section 13(2)(b), may appear in person, or may instruct counsel to appear, on behalf of the respondent, or, as the case may be, the appellant.

(2) Where an appeal is heard by the Supreme Court it shall not of itself be a ground for the allowance of the appeal that the respondent in the appeal does not appear or is not represented.

(3) The Supreme Court shall, in connection with the hearing of an appeal, have power—

- (a) where any objection is taken in respect of any omission or mistake in the drawing up of any document recording or relating to a conviction, sentence, order or other decision of a court of summary jurisdiction; and
- (b) where it appears to the Court that there were sufficient grounds before the court of summary jurisdiction to have justified the drawing up of the document free from the omission or mistake,

to amend any such document, and to adjudicate thereon as if no such omission or mistake had occurred; and, upon any such amendment as aforesaid, the Court may make such order as to costs as appears to it just and equitable.

(4) Where under this Act any recognizance has been entered into or other security given, and it appears to the Supreme Court that the recognizance was insufficiently entered into, or the other security was otherwise defective or invalid, then in any such case the Court, if it thinks fit, may allow a new and sufficient recognizance to be entered into or other security to be given before the Court in the place of the insufficient, defective or invalid recognizance or security ; and any such substituted recognizance or security shall be as valid and effectual as if it had been duly entered into or given at any earlier time; and the Supreme Court, in exercising any power in pursuance of this subsection, may make such examination, and allow such time and make such order as to the payment of costs, as appears to the Court to be just and equitable.

[Section 17 subsection (1) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Appeals under section 3 against conviction or sentence

18 (1) Subject as hereinafter provided, the Supreme Court in determining an appeal under section 3 by an appellant against his conviction, shall allow the appeal if it appears to the Court—

- (a) that the conviction should be set aside on the ground that, upon a weighing up of all the evidence, it ought not to be supported; or
- (b) that the conviction should be set aside on the ground of a wrong decision in law; or
- (c) that on any ground there was a miscarriage of justice;

and in any other case shall dismiss the appeal:

Provided that the Supreme Court, notwithstanding that it is of opinion that any point raised in the appeal might be decided in favour of the appellant, may dismiss the appeal if it appears to the Court that no substantial miscarriage of justice in fact occurred in connection with the criminal proceedings before the court of summary jurisdiction.

(2) Subject as hereinafter provided, the Supreme Court, if it allows an appeal against a conviction, shall quash the conviction and direct a judgment of dismissal of the information to be entered:

Provided that where an appellant has been convicted of an offence by a court of summary jurisdiction and that court could, in respect of the information before it, have convicted him of some other offence, and on the finding of the court of summary jurisdiction it appears to the Supreme Court that the court of summary jurisdiction must have been satisfied of facts which would have justified his conviction of that other offence, then in any such case the Supreme Court, instead of allowing or dismissing the appeal, may substitute for the conviction by the court of summary jurisdiction a conviction of that other offence, and may impose such sentence in substitution for the sentence imposed by the court of summary jurisdiction as may be allowed in law for that other offence so, however, that unless the appellant has appealed against the sentence imposed on him by the court of

summary jurisdiction, any sentence imposed by the Supreme Court under this subsection shall not be a sentence of greater severity than the original sentence.

(3) Subject as hereinafter provided, the Supreme Court, in determining an appeal under section 3 by an appellant against his sentence, if it appears to the Court that a different sentence should have been imposed, or that the appellant should have been dealt with in some other way,—

- (a) may quash the sentence imposed by the court of summary jurisdiction and may impose such other sentence allowed by law (whether more or less severe) in substitution for the original sentence as the Court thinks just; or
- (b) may quash the sentence imposed by the court of summary jurisdiction and may deal with the appellant in such way as may be allowed by law in respect of the conviction of the offence in question;

and in any other case shall dismiss the appeal:

Provided that no sentence imposed by a court of summary jurisdiction shall be increased upon appeal by reason of or in consideration of any evidence which was not given during the criminal proceedings before the court of summary jurisdiction.

(4) Where it appears to the Supreme Court that an appellant who is appealing under section 3 against his conviction though not properly convicted of some offence or part of an offence, has been properly convicted of some other offence or part of an offence, then in any such case the Supreme Court may either affirm the sentence imposed by the court of summary jurisdiction in respect of the conviction, or impose such sentence (whether more or less severe) in substitution for the original sentence, or may otherwise deal with the appellant, in such way as may be allowed in law with respect to the conviction of that other offence, and which appears to the Court to be just:

Provided that unless the appellant has appealed against the sentence imposed on him by the court of summary jurisdiction, the sentence imposed by the Supreme Court under this subsection shall not be a sentence of greater severity than the original sentence.

(5) Notwithstanding anything in subsections (1) to (4), where it appears to the Supreme Court that by reason of any imperfection or irregularity—

- (a) in the constitution of the court of summary jurisdiction; or
- (b) in any criminal proceedings before the court of summary jurisdiction; or
- (c) in any other matter,

an appellant who is appealing under section 3 against his conviction of an offence could not lawfully have been convicted by that court of summary jurisdiction of that offence, then in any such case the Supreme Court, instead of allowing or dismissing the appeal, may order a new trial of the appellant before a court of summary jurisdiction.

(6) Notwithstanding anything in subsections (1) to (5), where it appears to the Supreme Court that an appellant who is appealing under section 3 against his conviction of an offence did the act or made the omission constituting that offence, but was suffering

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from mental disorder at the time the act was done or the omission was made so as not to be criminally responsible for the act or omission, then in any such case the Supreme Court shall quash the conviction and shall order the appellant to be kept in custody; and the appellant shall thenceforth be treated as though he were a person in respect of whom section 546 of the Criminal Code [title 8 item 31] had effect.

Appeals under section 4 on point of law

19 (1) The Supreme Court, in determining an appeal under section 4 by an appellant (being an informant) against any decision in law which led a court of summary jurisdiction to dismiss an information, shall allow the appeal if it appears to the Supreme Court that the dismissal of the information should be set aside on the ground of a wrong decision in law; and in any other case shall dismiss the appeal.

(2) The Supreme Court, on allowing an appeal as aforesaid, may set aside the dismissal of the information and may remit the matter to a court of summary jurisdiction with a direction to that court to convict the respondent or otherwise to proceed in accordance with law; and the court of summary jurisdiction shall govern itself accordingly.

(3) The Supreme Court, in determining an appeal under section 4 by an appellant (being an informant) against any decision in law which led a court of summary jurisdiction after convicting an offender to impose a particular sentence or to deal with him in a particular way, shall allow the appeal if it appears to the Supreme Court that the sentence or order whereby he was sentenced or otherwise dealt with should be set aside on the ground of a wrong decision in law and in any other case shall dismiss the appeal.

(4) The Supreme Court, on allowing an appeal under subsection (3), shall set aside the sentence or order as aforesaid, and may remit the matter to a court of summary jurisdiction for the respondent to be sentenced or dealt with according to law; and the court of summary jurisdiction shall govern itself accordingly.

Appeal under section 4A against sentence

19A On an appeal under section 4A against sentence, the Supreme Court shall, if it thinks that the sentence imposed is manifestly inadequate or excessive, quash the sentence imposed by the court of summary jurisdiction, and impose such other sentence as may be warranted in law in substitution therefor, and in any other case shall dismiss the appeal.

Appeals under section 5 or 6 on compensation or costs

20 (1) The Supreme Court, in determining an appeal under section 5 in connection with the making or refusal to make, a compensation order, or under section 6 in connection with the making or refusal to make an order for the payment of costs, shall allow the appeal if it appears to the Supreme Court—

- (a) that an order should not have been made; or
- (b) that a different order should have been made; or
- (c) where the making of an order was refused, that an order should have been made;

and in any other case shall dismiss the appeal.

(2) The Supreme Court, in allowing an appeal as aforesaid, may make such order in the matter as appears to the Court to be just and equitable, and in making any such order may exercise any power which the court of summary jurisdiction might have exercised if it had just convicted the appellant or, as the case may be, the respondent, in the appeal.

Cost of appeal

21 (1) Upon the determination of an appeal under this Act, the Supreme Court, if it appears in the circumstances equitable to the Court to do so, may make an order requiring the appellant or the respondent to pay all or any part of the costs of appeal.

(2) For the purposes of this section—

(a) “costs of appeal” includes any costs—

(i) in respect of the preparation of copies of any documents required to be transmitted to the Registrar or to any other person in connection with the appeal;

(ii) in respect of the stating of a case in connection with the appeal;

(iii) in respect of the preparation of any affidavits made in connection with the appeal;

(iv) in respect of the appearance and examination of any witness upon the hearing of the appeal; and

(v) in respect of the enquiry and report of a special commissioner appointed under section 16(2)(f) ; and

(b) any order made by the Supreme Court as to the payment of the costs of appeal may direct all or any part of the costs of appeal, being costs otherwise falling to be met out of public funds, to be paid into the Consolidated Fund.

Restitution orders

22 (1) The Supreme Court, upon the determination of an appeal, may if it thinks fit by order annul or vary any restitution order made upon the conviction of the appellant by a court of summary jurisdiction, whether or not the conviction is itself quashed on appeal; and the restitution order, if annulled, shall not take effect, and if varied, shall take effect as so varied.

(2) Nothing in subsection (1) shall confer any right of appeal upon any person in connection with the making, or with the refusal to make, a restitution order.

Duties of Registrar and Senior Magistrate on determination of appeal

23 (1) Upon an appeal being heard and determined by the Supreme Court the Registrar—

- (a) shall endorse a memorandum of the decision of the Supreme Court regarding such determination on each document transmitted to him in pursuance of this Act (being a document recording the conviction, sentence, order or other decision in respect of which the appeal was heard and determined) ; and
- (b) shall transmit to the Senior Magistrate a like memorandum; and
- (c) where the appellant was not present at the determination of the appeal, shall (without prejudice to anything in section 12) cause the appellant to be informed of the determination of the appeal and of any order made by the Supreme Court in connection with the determination of the appeal.

(2) The Senior Magistrate shall cause the terms of the memorandum transmitted to him as aforesaid to be entered in the appropriate record book kept under section 83 of the Criminal Jurisdiction and Procedure Act 2015.

(3) Whenever any copy or certificate of a conviction, sentence, order or other decision referred to in subsection (1) is made, a copy of the memorandum referred to in that subsection shall be endorsed upon the copy or certificate and shall be sufficient evidence of the decision of the Supreme Court with respect to the determination of an appeal in connection therewith where the copy or certificate would be sufficient evidence of the conviction, sentence, order or other decision as aforesaid.

[Section 23 subsection (2) amended by 2015 : 38 s. 91 effective 6 November 2015]

Abandonment of appeal

24 (1) Where an appellant has duly given notice of appeal or has made an application for a direction under section 8 in respect of an extension of time within which to give notice of appeal, he may by written notice to the Registrar abandon the appeal.

(2) Where an appeal is abandoned as aforesaid the Registrar shall give notice of the abandonment—

- (a) to the respondent in the appeal; and
- (b) to the Senior Magistrate,

and shall transmit to the Senior Magistrate such documents or other articles mentioned in section 13(2)(a), as are in the circumstances appropriate.

(3) Upon the Senior Magistrate receiving a notice in pursuance of subsection (2), a court of summary jurisdiction may—

- (a) where the appellant, having been convicted and sentenced, gave notice of appeal against either his conviction or against his sentence, enforce the conviction, or any sentence or order passed or made in respect of the conviction and, where any sum was retained in the custody of the court in pursuance of section 11(2)(iii), pay that sum into the Consolidated Fund:

Provided that no steps shall be taken to enforce a sentence of a fine in the circumstances set out in section 12(3) until the appellant bound by a recognizance under that subsection has failed to fulfil the condition of that recognizance.

- (b) where the appellant, having been convicted but not sentenced, gave notice of appeal against his conviction, enforce the conviction and impose and enforce any sentence and make and enforce any order as if the sentence or order were imposed or made in respect of a conviction arising out of criminal proceedings just heard before and determined by the court of summary jurisdiction;
 - (c) in any case summon the appellant before the court, and make such order as to the payment of costs of appeal incurred up until the time of abandonment of the appeal as the court thinks just and equitable.
- (4) For the purposes of this section—
- (a) any powers of a court of summary jurisdiction under this section to order the payment of any costs of appeal shall be construed as including any powers conferred upon the Supreme Court to order payment of such costs by section 21(2)(b);
 - (b) the Criminal Jurisdiction and Procedure Act 2015, shall have effect as near as may be with respect to the summoning of any person before a court of summary jurisdiction under this section; and the enforcement of an order made under this section for the payment of costs of appeal shall be treated, for the purposes of that Act, as though such order were an order for the payment of costs to which section 60 of that Act applied.

[Section 24 subsection (4)(b) amended by 2015 : 38 s. 91 effective 6 November 2015]

Enforcement of sentences or orders

- 25 (1) Where, as a result of the determination of an appeal—
- (a) any conviction, sentence or order of a court of summary jurisdiction is affirmed by the Supreme Court;
 - (b) any other conviction, sentence or order is substituted by the Supreme Court for the original conviction, sentence or order; or
 - (c) a conviction, sentence or order which might have been made or imposed by the court of summary jurisdiction is made or imposed by the Supreme Court;

then in any such case a court of summary jurisdiction shall, subject as hereinafter provided, have the like powers with respect to the enforcement of the conviction, sentence or order as though it were a conviction, sentence or order made or imposed in respect of criminal proceedings just heard before and determined by the court of summary jurisdiction:

Provided that no steps shall be taken to enforce a sentence of a fine in the circumstances set out in section 12(3) until the appellant bound by a recognizance under that subsection has failed to fulfil the condition of that recognizance.

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(2) Notwithstanding anything in subsection (1), where sums representing part or all of the payment of a fine are in pursuance of section 11(2)(iii), at the time of the determination of an appeal against the imposition of the fine, or against the conviction in respect of which the fine was imposed, in the custody of a court of summary jurisdiction, then in any such case—

- (a) where the appeal, being an appeal against conviction, is allowed, then the sums as aforesaid, shall, subject as hereinafter provided, be repaid to the appellant;
- (b) where the appeal, being an appeal against sentence, is dismissed, then the sums as aforesaid shall be paid into the Consolidated Fund;
- (c) where the appeal, being an appeal against sentence, is allowed, then the sums as aforesaid shall, to the amount required to satisfy the sentence (if any) as substituted by the Supreme Court, be paid into the Consolidated Fund; and the remainder of such sums shall, subject as hereinafter provided, be repaid to the appellant:

Provided that where an appellant who is entitled to be repaid any sums as aforesaid is required to pay any or all of the costs of the appeal the amount of such costs shall not be repaid to him, but shall to the extent of the sums otherwise falling to be repaid to him be paid into the Consolidated Fund in part or in full settlement of his liability to pay such costs.

(3) Where upon the determination of an appeal an order for the payment of the costs of appeal is made under section 21 by the Supreme Court, any such order may, without prejudice to subsection (2), be enforced—

- (a) by the Supreme Court as though any such order were an order for payment of costs of prosecution ordered to be paid under the Criminal Code [*title 8 item 31*], and section 556 of the Criminal Code shall have effect accordingly with respect to the enforcement of any such order; or
- (b) if the Supreme Court so directs, by a court of summary jurisdiction as though any such order were an order for the payment of costs made by the court of summary jurisdiction in respect of criminal proceedings before that court; and the Summary Jurisdiction Act 1930 [*title 8 item 34*], shall have effect accordingly with respect to the enforcement of any such order.

Exhibits; delay before restitution order takes effect

26 (1) Where in any criminal proceedings before a court of summary jurisdiction any documents or other articles have been entered as exhibits, such documents or other articles shall not be released by a court of summary jurisdiction until after the expiration of one or other of the following periods, that is to say—

- (a) if the defendant in such proceedings was convicted by the court of summary jurisdiction, then after the expiration of the period specified in section 7(2)(b); or

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(b) if the information in such proceedings was dismissed, then after the expiration of ten days after the day of dismissal of the information:

Provided that a judge may for special reasons by order allow the release of any such document or article before the expiration of either such period.

(2) Any document or other articles as aforesaid shall, upon the determination of an appeal, be transmitted by the Registrar to the Senior Magistrate, who shall cause them to be dealt with according to law.

(3) Where as a result of the conviction of any person by a court of summary jurisdiction a restitution order is made in connection with the conviction, the restitution order shall, without prejudice to anything in section 11(2), be deemed not to have effect before the expiration of the period specified in section 7(2)(b).

27 [repealed by 1978:37]

[Assent Date: 20 February 1952]

[Amended by:

1951 : 78
1952 : 58
1953 : 72
1956 : 30
1964 : 107
1968 : 295
1971 : 83
1973 : 101
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