



ANNO DECIMO QUINTO

GEORGII V REGIS.

A.D. 1924.

No. 1613.

An Act to give a Right of Appeal to persons convicted of Crimes, and for other purposes.

[Assented to, November 6th, 1924.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. This Act may be cited as the "Criminal Appeals Act, 1924." Short title.

2. This Act shall apply to all persons convicted after the first day of October, nineteen hundred and twenty-five, but shall not affect the rights, as respects appeal, of any persons convicted on or before that date. Application of Act.

3. In this Act, unless inconsistent with the context or subject-matter— Interpretation.

"Appellant" includes a person who has been convicted and desires to appeal under this Act ;

"Full Court" means the Supreme Court constituted of an uneven number of Judges, not being less than three ;

"Information" means information whereby any person is put upon his trial for any crime or offence at any Criminal Session of the Supreme Court or before any Court of oyer and terminer and general gaol delivery ;

"Judge" means Judge of the Supreme Court ;

"Master" means the Master of the Supreme Court ; and

"Sentence"

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“ Sentence ” includes any order of the Court of trial or of the Judge thereof made on or in connection with a conviction with reference to the person convicted or any property, or with reference to any moneys to be paid by him.

Court to decide according to opinion of majority.

Cf. 7 Edw. VII, c. 23, s. 1 (4), (5).

4. (1) The determination of any question before the Full Court under this Act shall be according to the opinion of the majority of the members of the Court hearing the case.

(2) Unless the Court directs to the contrary in cases where, in the opinion of the Court, the question is a question of law on which it would be convenient that separate judgments should be pronounced by the members of the Court, the judgment of the Court shall be pronounced by the Chief Justice, if present, or in his absence by the senior member of the Court, or by such other member of the Court hearing the case as the Chief Justice or senior member directs, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of the Court.

Right of Appeal and Determination of Appeals.

Right of appeal in criminal cases.

Cf. *ibid.*, s. 3.

5. A person convicted on information may appeal under this Act to the Full Court—

- (a) against his conviction on any ground of appeal which involves a question of law alone: Provided that the Full Court in any such case may, if it thinks fit, decide that the procedure with relation to Crown cases reserved under the Criminal Law Consolidation Act, 1876, 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, and thereupon the provisions of the said Act shall with the necessary modifications apply accordingly;
- (b) upon the certificate of the Judge of the Supreme Court before whom he was tried 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;
- (c) with the leave of the Full Court, upon any such ground as is mentioned in subdivision (b) hereof or any other ground which appears to the Full Court to be a sufficient ground of appeal; and
- (d) with the leave of the Full Court, against the sentence passed on his conviction, unless the sentence is one fixed by law.

Determination of appeals in ordinary cases.

Cf. *ibid.*, s. 4.

6. (1) The Full Court on any such appeal against conviction shall allow the appeal if it thinks 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

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Court before which 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 Full Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favor of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) Subject to the special provisions of this Act the Full Court shall, if it allows an appeal against conviction, quash the conviction and either direct a judgment and verdict of acquittal to be entered or direct a new trial to be had.

(3) Where a new trial is directed the Full Court may make such order as it thinks fit for the safe custody of the appellant or for admitting him to bail.

(4) On an appeal against sentence the Full Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal.

7. (1) If it appears to the Full Court 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 it thinks proper and as may be warranted in law by the verdict on the count or part of the information on which the Court considers that the appellant has been properly convicted.

Powers of Court in special cases.

Cf. *ibid.*, s. 5.

(2) Where an appellant has been convicted of an offence and the jury could on the information have found him guilty of some other offence, and on the finding of the jury it appears to the Full Court 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 has found a special verdict and the Full Court considers 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 Full Court 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 Full Court that an appellant found guilty of the offence with which he was charged was insane at the time of the commission of such offence so as not to be responsible according

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according to law for his actions, the Court may quash the sentence passed at the trial and order the appellant to be kept in strict custody until the Governor's pleasure shall be known in the same manner as if the appellant had been found to be insane by the special verdict of the jury under section 381 of the Criminal Law Consolidation Act, 1876.

Re-vesting and
restitution of
property on
conviction.

Cf. ibid., s. 6.

8. (1) The operation of any order for the restitution of any property to any person or with reference to any property or the payment of money made on or in connection with a conviction on information and the operation in case of any such conviction of the provisions of subsection (1) of section 24 of the Sale of Goods Act, 1895, as to the re-vesting of the property in stolen goods on conviction shall (unless the Court before which the conviction takes place directs to the contrary in any case in which in its opinion the title to the property is not in dispute) be suspended—

(a) in any case until the expiration of ten days after the date of the conviction; and

(b) in cases where notice of appeal or leave to appeal is given within ten days after the date of 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, except by the special order of the Full Court. 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 Full Court may by order annul or vary, or refuse to annul or vary, any order made on or in connection with a conviction for the restitution of any property to any person or with reference to any property or the payment of money, whether the conviction or sentence is or is not quashed; and the order if annulled shall not take effect, and if varied shall take effect as so varied.

Jurisdiction of Full
Court.

9. All jurisdiction and authority under any other Act in relation to questions of law arising in criminal trials which are vested in the Judges of the Supreme Court or the Full Court of the Supreme Court as constituted by the Supreme Court Act, 1878, shall be vested in the Full Court for the purposes of this Act.

Procedure.

Time for appealing.

Cf. ibid., s. 7.

10. (1) Where a person convicted desires to appeal under this Act to the Full Court 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

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instead of by oral argument if he so desires. Any case or argument so presented shall be considered by the Full 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 Full Court, notwithstanding that the application for extension was made after the time had expired.

(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, until after the determination of the application.

11. The Judge of the Supreme 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 Master in accordance with Rules of Court his notes of the trial and shall also furnish to the Master in accordance with Rules of Court a report giving his opinion upon the case or upon any point arising in the case.

Judge's notes and report to be furnished on appeal.

Cf. *ibid.*, s. 8.

12. For the purposes of this Act the Full Court may, if it thinks it necessary or expedient in the interests of justice,—

Supplemental powers of Court.

Cf. *ibid.*, s. 9.

(a) order the production of any document, exhibit, or other thing connected with the proceedings the production of which appears to it necessary for the determination of the case ;

(b) 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 Supreme Court or before any officer of the Supreme Court or Justice of the Peace or other person appointed by the Full Court for the purpose, and allow the admission of any depositions so taken as evidence before the Full Court ;

(c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness and, if the appellant consents, 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 with such consent ;

(d) where

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- (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 Full Court, conveniently be conducted before the Court, order the reference of the question in manner provided by Rules of Court for inquiry and report to a special commissioner appointed by the Court and act upon the report of any such commissioner so far as it thinks fit to adopt it ;
- (e) appoint any person with special expert knowledge to act as assessor to the Full Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case ;
- (f) exercise in relation to the proceedings of the Court any other powers which may for the time being be exercised by the Supreme Court on appeals or applications in civil matters ; and
- (g) 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.

Cf. *ibid.*, s. 10.

13. A Judge may assign to an appellant a solicitor and counsel or counsel only in any appeal or new trial, or proceedings preliminary or incidental to any appeal or new trial, in which, in the opinion of the Judge, it appears desirable in the interests of justice that the appellant should have legal aid and when, in the opinion of the Judge, he has not sufficient means to enable him to obtain that aid.

Right of appellant to be present.

Cf. *ibid.*, s. 11.

14. (1) An appellant if he so desires shall, notwithstanding that he is in custody, be entitled to be present 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 Full Court gives him leave to be present.

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

Right of audience.

Cf. *ibid.*, s. 12.

15. The Attorney-General or counsel on his behalf shall appear for the Crown on every appeal to the Full Court under this Act, unless a private prosecutor in the case of a private prosecution undertakes the defence of the appeal, and provision shall be made by Rules of Court for the transmission to the Attorney-General 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.

16. (1) On

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16. (1) On the hearing and determination of an appeal or new trial or any proceedings preliminary or incidental thereto under this Act no costs shall be allowed on either side. Costs of appeal.
Cf. *ibid.*, s. 13.

(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 Full Court or examined in any proceedings incidental to the appeal or new trial and of the appearance of an appellant on the hearing of his appeal or new trial or on any proceedings preliminary or incidental to the appeal or new trial, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the Full Court for the purpose of any reference of a question to a special commissioner appointed by the Full Court or of any person appointed as assessor to the Full Court, shall be defrayed, up to an amount allowed by the Master and approved by any Judge who was a member of the Full Court on the hearing of the appeal, out of moneys provided by Parliament for the purpose; but subject to any regulations as to rates and scales of payment made by the Governor.

17. (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 and regulations under the Prison Act, 1869.

Admission of
appellant to
bail and custody
when attending
Court.

(2) The Full Court may, if it thinks fit, on the application of an appellant admit the appellant to bail pending the determination of his appeal, or where a new trial is directed until the commencement of the new trial.

Cf. *ibid.*, s. 14.

(3) The time during which an appellant, pending the determination of his appeal or pending a new trial, is admitted to bail and, subject to any directions which the Full Court 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 under his sentence. And in the case of an appeal under this Act any imprisonment of the appellant, whether it is under the sentence passed by the Court of trial or the sentence passed by the Full Court, shall, subject to any directions which may be given by the Full Court as aforesaid, be deemed to be resumed or 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 question of law is reserved under section 397 of the Criminal Law Consolidation Act, 1876; 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 and regulations under the Prison Act, 1869, 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 Full Court or any Judge of the Supreme Court may order him to be taken for the purpose of any proceedings of the Full Court, and
for

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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 and regulations shall be deemed to be in legal custody.

Duties of Master with respect to notices of appeal, etc.

Cf. *ibid.*, s. 15.

18. (1) The Master 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 Full 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 Master that any notice of an appeal against a conviction does not show any substantial ground of appeal the Master may refer the appeal to the Full Court for summary determination and where the case is so referred the Court may, if it considers 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 information 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 Master 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, keepers of gaols, and such other officers or persons as he thinks fit, and the keeper of a gaol 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 Master.

Notes of evidence on trial.

Cf. *ibid.*, s. 16.

19. (1) On any appeal or application for leave to appeal a transcript of the notes of the Judge of the Court of trial or, where shorthand notes have been taken by direction of such Judge, a transcript of such notes or any part thereof shall be made if the Master so requests, and furnished to the Master for the use of the Full Court or any Judge thereof: Provided that a transcript shall be furnished to any party interested upon the payment of such charges as the Attorney-General may fix.

(2) The Attorney-General may also, if he thinks fit in any case, request a transcript of the notes to be made and furnished to him for his use.

(3) The

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(3) The cost of making any such transcript, where a transcript is requested to be made by the Master or by the Attorney-General, shall be defrayed in accordance with scales of payment fixed for the time being by the Attorney-General out of moneys provided by Parliament for the purpose.

(4) Rules of Court may make such provision as is necessary for the verification of the transcript.

20. The powers of the Full Court 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 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 Supreme Court in the same manner as they may be exercised by the Full 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 favor, the appellant shall be entitled to have the application determined by the Full Court.

Powers which may be exercised by a Judge of the Court.

Cf. *ibid.*, s. 17.

21. (1) Rules of Court for the purposes of this Act shall be made by the Judges of the Supreme Court.

Rules of Court.

Cf. *ibid.*, s. 18.

(2) 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.

(3) The officers of any Court before which an appellant has been convicted on information, and the keeper or other officers of any gaol 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 Full Court or of any Judge of the Supreme Court.

(4) The provisions of Part V. of the Supreme Court Act, 1878, shall, so far as the same are applicable, apply to Rules made under this section.

References on Petitions for Mercy.

22. Nothing in this Act shall affect the prerogative of mercy, but the Chief Secretary on the consideration of any petition for the exercise of His Majesty's mercy having reference to the conviction of a person on information or to the sentence (other than sentence of death) passed on a person so convicted may, if he thinks fit, with the concurrence of the Attorney-General, at any time either—

References by Chief Secretary.

Cf. *ibid.*, s. 19.

(a) refer the whole case to the Full Court, and the case shall then be heard and determined by that Court as in the case of an appeal by a person convicted; or

(b) if

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assistance of
Judges.

(b) if he desires the assistance of the Judges of the Supreme Court on any point arising in the case with a view to the determination of the petition, refer that point to such Judges for their opinion thereon, and such Judges or any three of them shall consider the point so referred and furnish the Chief Secretary with their opinion thereon accordingly.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

TOM BRIDGES, Governor.