

Criminal Code Amendment Act. 4 GEO. V. No. 23,

CRIMINAL LAW.

Criminal Code Amendment Act of 1913 ... 4 *Geo. V. No. 23*
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4 Geo. V.
No. 23.
THE
CRIMINAL
CODE AMEND-
MENT ACT OF
1913.

An Act to Amend the Criminal Code by Establishing a Court of Criminal Appeal and making better provision for Appeals in Criminal Cases, and for other purposes incidental to the aforesaid objects.

[ASSENTED TO 26TH NOVEMBER, 1913.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

Short title
and
construction.

1. This Act may be cited as "*The Criminal Code Amendment Act of 1913*," and shall be read as one with the Criminal Code.*

Amendment
of Criminal
Code.

2. (1.) Sections six hundred and sixty-eight to six hundred and seventy-two, both inclusive, of the Criminal Code* are repealed.

(2.) In the third paragraph of section six hundred and forty-nine of the said Code,* the words "Supreme Court" are repealed, and the words "Court of Criminal Appeal" are inserted in lieu thereof.

(3.) The following provision is added to section seven hundred and seven of the said Code* :—

General Rules as to Criminal Appeals.

7 Edw. 7
c. 23, s. 18.

(2.) The judges may also make General Rules for the purposes of Chapter LXVII., but such rules shall be subject to the approval of the Crown Law Officer, so far as they affect the superintendent or any other officer of a prison or any officer having the custody of an appellant.

Such rules may be made with respect to all or any of the following matters:—

- (a) The regulation of the practice and procedure under Chapter LXVII.;
- (b) The sitting of the Court of Criminal Appeal, if necessary, during any vacation;

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- (e) The powers and duties of the registrar and other officers of such Court;
- (d) The admission to bail or detention of an appellant and the safe custody of any property pending any appeal, or application for leave to appeal, or new trial;
- (e) The taking of shorthand notes and the making of transcripts thereof;
- (f) Applications for and furnishing of notes of trial and reports by judges of courts of trial;
- (g) Any matters which, in the opinion of the judges, are necessary or expedient for giving effect to the purposes of Chapter LXVII.

Amendments as to Criminal Appeals.

3. The following sections are inserted in lieu of the sections of the said Code* hereby repealed, and shall in the said Code* bear the numbers respectively set against them in square brackets.

Definitions.

4. [668.] In this Chapter—

The term “appellant” includes a person who has been convicted and desires to appeal under this Chapter.

The term “Court” means the Court of Criminal Appeal.

The term “court of trial” means any court from whose finding, sentence, or other determination a person is by this Act entitled to appeal or to apply for leave to appeal.

The term “Registrar” means the registrar of the Court.

The term “sentence” includes any order made by the court of trial on conviction with reference to the person convicted or his property.

The power of the Court to pass any sentence includes a power to make any such order.

For the purposes of this Chapter a person acquitted on the ground of insanity, where such insanity was not set up as a defence by him, shall be deemed to be a person convicted, and any order to keep him in custody shall be deemed to be a sentence.

* 63 Vic. No. 9, Sch. I., *supra*, page 344.

Court of Criminal Appeal.

5. [668A.] (1.) The Supreme Court shall be the Court of Criminal Appeal, and the Court shall be duly constituted if it consists of not less than three judges and of an uneven number of judges.

The determination of any question before the Court shall be according to the opinion of the majority of the members of the Court hearing the case :

Provided that the judge of the court of trial shall not be one of such judges.

(2.) The Registrar of the Supreme Court shall be the registrar of the Court.

Reservation of Points of Law.

6. [668B.] When any person is indicted for any indictable offence, the court of trial must, on the application of counsel for the accused person made before verdict, and may in its discretion, either before or after judgment, without such application, reserve any question of law which arises on the trial for the consideration of the Court.

If the accused person is convicted, and a question of law has been so reserved before judgment, the court of trial may either pronounce judgment on the conviction and respite execution of the judgment, or postpone the judgment until the question has been considered and decided, and may either commit the person convicted to prison or admit him to bail on recognizance, with or without sureties, and in such sum as the court of trial thinks fit, conditioned to appear at such time and place as the court of trial may direct, and to render himself in execution, or to receive judgment, as the case may be.

The judge of the court of trial is thereupon required to state, in a case signed by him, the question of law so reserved, with the special circumstances upon which it arose ; and the case is to be transmitted to the Court.

Any question so reserved is to be heard and determined as an appeal by the Court. The Court may send the case back to be amended or restated if it thinks it necessary so to do.

Appeal from Arrest of Judgment.

7. [668c.] When the court of trial before which a person is convicted on indictment arrests judgment, the court is required, on the application of counsel for the prosecution, to reserve a case for the consideration of the Court as hereinbefore provided.

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On the hearing of the case the Court may affirm or reverse the order arresting judgment. If the order is reversed, the Court is to direct that judgment be pronounced upon the offender, and he is to be ordered to appear at such time and place as the Court may direct to receive judgment, and any justice may issue his warrant for the arrest of the offender.

An offender so arrested may be admitted to bail by order of the Court or a judge thereof, which may be made at the time when the order directing judgment to be pronounced is made, or afterwards.

Right of Appeal.

8. [668D.] A person convicted on indictment may ^{7 Edw. 7} appeal to the Court— _{c. 23, s. 3.}

- (a) Against his conviction on any ground which involves a question of law alone; and
- (b) With the leave of the Court, or upon the certificate of the judge of the court of trial that it is a fit case for appeal, against his conviction on any ground of appeal which involves a question of fact alone, or 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, against the sentence passed on his conviction.

Determination of Appeal in Ordinary Cases.

9. [668E.] (1.) The Court on any such appeal ^{7 Edw. 7} against conviction shall allow the appeal if it is of opinion _{c. 23, s. 4.} 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 of trial should be set aside on the ground of the wrong decision of any question of law, or that on any ground whatsoever there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that it is of the opinion that the point or points raised by the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

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

(3.) On an appeal against a sentence, the Court, if it is of opinion that some other sentence, whether more or less severe, is warranted in law and should have been passed, shall quash the sentence and pass such other sentence in substitution therefor, and in any other case shall dismiss the appeal.

Powers of Court in Special Cases.

7 Edw. 7
c. 23, s. 5.

10. [668F.] (1.) If it appears to the Court that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the Court may either affirm the sentence passed at the trial or pass such sentence, whether more or less severe, in substitution therefor, as it thinks proper, and as may be warranted in law by the conviction on the count or part of the indictment on which it considers the appellant has been properly convicted.

(2.) Where an appellant has been convicted of an offence, and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court that the jury must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3.) Where, on the conviction of the appellant, the jury have found a special verdict, and the Court considers that a wrong conclusion has been arrived at by the court of trial on the effect of that verdict, the 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, whether more or less severe, 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 that, although the appellant committed the act or made the omission charged against him, he was not of sound mind at the time when the act or omission alleged to constitute the offence occurred, so as not to be responsible therefor according to law, the Court may quash the sentence passed at the trial, and order the appellant to be kept in strict

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custody in the same manner as if a jury had found that fact specially under section six hundred and forty-seven of this Code.

Power to Grant New Trial.

11. [669.] On an appeal against a conviction on indictment, the Court may, either of its own motion or on the application of the appellant, order a new trial in such manner as it thinks fit, if the Court considers that a miscarriage of justice has occurred, and that, having regard to all the circumstances, such miscarriage of justice can be more adequately remedied by an order for a new trial than by any other order which the Court is empowered to make.

Revesting and Restitution of Property on Conviction.

12. [670.] The operation of any order for the restitu- ^{7 Edw. 7} tion of any property, or for the payment of compensation ^{c. 23, s. 6.} to an aggrieved person, made by the court of trial, and the operation of the provisions of subsection one of section twenty-six of "*The Sale of Goods Act of 1896*"* as to the revesting of the property in stolen goods on conviction, shall (unless such court directs to the contrary in any case in which in its opinion the title to the property is not in dispute) be suspended—

- (a) Until the expiration of the time provided for appealing to the Court; and
- (b) Where notice of appeal or of application for leave to appeal is given within the time provided, until the determination of the appeal or refusal of the application;

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 Court.

The Court may annul or vary any such order, although the conviction is not quashed.

Time for Appealing.

13. [671.] (1.) Any person convicted desiring to ^{7 Edw. 7} appeal to the Court, or to obtain the leave of the Court to ^{c. 23, s. 7.} appeal from any conviction or sentence, shall give notice

* 60 Vic. No. 6, *supra*, page 2159.

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of appeal or notice of application for leave to appeal, in the prescribed manner, within fourteen days of the date of such conviction or sentence.

(2.) In the case of a conviction involving sentence of death or whipping—

(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; 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 when an application for leave to appeal is finally refused, of the application.

(3.) Except in the case of 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.

Judge's Notes and Report to be Furnished on Appeal.

7 Edw. 7
c. 23, s. 8.

14. [671A.] The judge of the court of trial shall, in case of any appeal or application for leave to appeal, furnish to the registrar his notes of the trial, and also a report giving his opinion upon the case or upon any point arising in the case:

Provided that, where shorthand notes have been taken in accordance with this Chapter, a transcript of such notes may be furnished in lieu of such judge's notes.

Supplemental Powers.

7 Edw. 7
c. 23, s. 9.

15. [671B.] The Court may, if it thinks it necessary or expedient in the interests of justice—

(a) Order the production of any document, exhibit, or other thing connected with the proceedings; and

(b) Order any persons 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 any such persons to be examined before any judge of the Court, or before any officer of the Court, or justice, or other person appointed by the Court for the purpose, and admit any depositions so taken as evidence; and

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- (c) Receive the evidence, if tendered, of any witness (including the appellant) who is a competent, but not a compellable, witness; 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, be conveniently conducted before the Court, refer the question for inquiry and report to a commissioner appointed by the Court, and act upon the report of such commissioner so far as the Court thinks fit; and
- (e) Appoint any person with special expert knowledge to act as assessor to the Court in any case in which it appears to the Court that such special knowledge is required for the determination of the case;

and exercise in relation to the proceedings of the Court any other powers which may for the time being be exercised by the Supreme Court on appeals or applications in civil matters, and issue any warrant or other process 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.

Subject to this Chapter, the General Rules may provide that any application under paragraphs (a), (b), (d), or (e) of this section may be heard and determined by a judge of the Court.

Legal Assistance to Appellant.

16. [671c.] The judge of the court of trial, or the ^{7 Edw. 7} Court, or the Crown Law Officer may at any time assign ^{c. 23, s. 10.} to an appellant a solicitor and counsel, or counsel only, in any appeal or proceedings preliminary or incidental to an appeal, whether to the Court or on appeal therefrom to the High Court of Australia, in which, in his opinion, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid.

Right of Appellant to be Present.

17. [671d.] (1.) An appellant, notwithstanding that ^{7 Edw. 7} he is in custody, shall be entitled to be present if he ^{c. 23, s. 11.}

desires it, on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone. On an appeal on such ground, and on an application for leave to appeal, and on any proceedings preliminary or incidental to an appeal, the appellant shall not be entitled to be present, except by leave of the Court.

(2.) The power of the Court to pass any sentence may be exercised notwithstanding that the appellant is not present.

Appeals Permitted in Writing.

7 Edw. 7
c. 23, s. 7.

18. [671E.] An appellant shall be entitled to present his case and his argument to the Court in writing if he so desires.

Costs of Appeal.

7 Edw. 7
c. 23, s. 13.

19. [671F.] (1.) On the hearing or determination of an appeal, or any proceedings preliminary or incidental thereto, no costs shall be allowed on either side.

(2.) The expenses of any solicitor or counsel assigned, and of any assessor appointed, and of any witnesses attending on the order of the Court or examined, and of any incidental to any examination or reference, and of the appearance of an appellant on the hearing of his appeal or on any proceedings preliminary or incidental to his appeal, shall be defrayed out of the Consolidated Revenue up to an amount allowed by the registrar; but, subject to any regulations as to rates of payment made by the Crown Law Officer, the decision of the registrar may be reviewed by the Court or a judge thereof.

Admission of Appellant to Bail and Custody when Attending Court.

7 Edw. 7
c. 23, s. 14.

20. [671G.] (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 regulations made under the laws relating to prisons.

(2.) The Court may, if it thinks fit, on the application of the appellant, admit the appellant to bail, with or without sureties, pending the determination of the appeal.

(3.) The time during which an appellant, pending the determination of his appeal, is liberated on bail or recognizances, and (subject to any directions which the Court may give to the contrary on any appeal) the time during which an 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.

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Any imprisonment under such sentence, whether it is the sentence passed by the court of trial or the sentence passed by the Court, shall, subject to any directions which the Court may give 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.) Provision shall be made by regulations under the laws relating to prisons for the manner in which an appellant, when in custody, is to be brought to any place where he is entitled to be present, or ordered to be taken, for the purposes of this Chapter, and for the manner in which he is to be kept in custody whilst absent from prison for the purpose; and an appellant whilst in custody in accordance with those regulations shall be deemed to be in legal custody.

Duties of Registrar.

21. [671H.] (1.) The registrar shall take all necessary ^{7 Edw. 7} steps for obtaining a hearing of any appeals or applica- _{c. 23, s. 15.} tions, notice of which is given to him, and shall obtain and lay before the Court in proper form all documents, exhibits, and other things relating to the proceedings in the court of trial which appear necessary for the proper determination of the appeal or application.

(2.) If it appears to the registrar that any notice of appeal against a conviction does not show any substantial ground of appeal, he may refer the appeal to the Court for summary determination; and the Court may thereupon, if it considers that the appeal is frivolous or vexatious, dismiss the appeal summarily without calling upon any person to attend the hearing.

(3.) The registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application to any person who demands the same, and to officers of courts, superintendents of prisons, and to such other officers or persons as he thinks fit, and the superintendent of every prison shall cause such forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application, and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the registrar.

(4.) The registrar shall report to the Crown Law Officer any case in which it appears to him that, although

no application has been made for the purpose, legal assistance ought to be provided to an appellant under the powers given to the Crown Law Officer.

Documents, Exhibits, &c.

7 Edw. 7
c. 23, s. 15 (3).

22. [671J.] Any documents, exhibits, or other things connected with any proceedings before a court of trial, in respect of which any person is entitled or may be authorised to appeal, shall be kept in the custody of the court of trial for such time as may be prescribed, subject to such power as may be prescribed for the conditional release of any such documents, exhibits, or other things from that custody.

Shorthand Notes of Trial.

7 Edw. 7
c. 23, s. 16.

23. [671K.] Shorthand notes shall, if practicable, be taken of the proceedings at every trial of any person on indictment; and on any notice of appeal or application for leave to appeal a transcript of the notes, or any part thereof, shall be made if the registrar so directs, and furnished to the registrar for the use of the Court or any judge thereof; and a transcript shall be furnished to any party interested upon the payment of such charges as may be prescribed by the Governor in Council.

Powers Exercisable by a Judge.

7 Edw. 7
c. 23, s. 17.

24. [671L.] The powers of the Court to give leave to appeal, to extend the time in 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 Court in the same manner as they may be exercised by the Court, and subject to the same provisions; but if the judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Court.

Appeals from the Decisions of the Court.

25. [672.] (1.) Where an appeal to the Court is upheld, and the appellant is entitled to have the conviction against him quashed by order of the Court, the Court may, upon application on behalf of the Crown, at any time before the release of such appellant, either by the same or

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by a separate order, direct that execution of the order quashing the appellant's conviction be stayed for such time (not exceeding seven days) as the Court thinks fit; and the Court or a judge thereof shall thereupon make such order for the detention of the appellant or his return to any former custody, or for liberating him on bail or recognizance, as the Court or judge thinks fit, for the time during which such stay has been directed.

(2.) The Court or a judge thereof may, upon application by or on behalf of the Crown Law Officer, make such order for the detention of the appellant or for liberating him on bail or recognizance pending the hearing of an appeal to the High Court of Australia as the Court or a judge may think fit, and may at any time vary or rescind such order.

(3.) On the application of any appellant deeming himself wronged by any failure to diligently prosecute such appeal, the Court or a judge thereof may order the immediate execution of the original order of the Court quashing the conviction, and may order the appellant's immediate release, and the Court may further, if it thinks fit, award him such compensation as appears just.

Pardoning Power Preserved.

26. [672A.] Nothing in the foregoing provisions of ^{7 Edw. 7} this Chapter shall affect the pardoning power of the ^{c. 23, s. 19.} Governor on behalf of His Majesty, but the Crown Law Officer, on the consideration of any petition for the exercise of the pardoning power having reference to the conviction of any person or to any sentence other than the sentence of death passed on a convicted person, may—

- (a) Refer the whole case to the Court, and the case shall be heard and determined by the Court as in the case of an appeal by a person convicted;
- (b) If he desires the assistance of the Court on any point arising in the case with a view to the determination of the petition, refer that point to the Court for its opinion thereon, and the Court shall consider the point so referred and furnish the Crown Law Officer with its opinion thereon accordingly.