

## CRIMINAL LAW AND PROCEDURE.

TO AMEND THE LAW AND PROCEDURE IN CRIMINAL CASES.

1 OF 1886.(<sup>1</sup>)

HENRY BULWER.]

[March 20, 1886.]

## PART 1.

*As to certain Punishments.*

## 1. In this Law :—

“ Detention for life ” means the punishment defined in Article 23 of the Ottoman Penal Code;

“ Temporary detention ” means the punishment defined in Article 24 of the said Code;

“ Exile for life ” means the punishment defined in Article 28 of the said Code;

“ Temporary exile ” means the punishment defined in Article 35 of the said Code;

“ Hard labour ” means the punishment defined in Article 19 of the said Code as hereinafter amended;

“ Imprisonment ” means the punishment defined in Article 34 of the said Code.

Interpreta-  
tion.*repealed  
by Criminal  
Code 1928*

2. No person shall be sentenced for any offence to undergo the punishment of detention or that of exile.

Detention  
and exile  
abolished.

3. Any person who if this Law had not been passed might have been sentenced to detention for life, or temporary detention, shall be liable to be sentenced to undergo hard labour for any term not exceeding the maximum term of detention to which he might have been sentenced if this Law had not been passed, or imprisonment for any term, as the Court by which he is convicted may direct.

Punishment  
substituted  
for detention.

4. Any person who if this Law had not been passed might have been sentenced to exile for life shall be liable to be sentenced to undergo hard labour for any term not exceeding twenty years, or imprisonment for any term, as the Court by which he is convicted may direct.

Punishment  
substituted  
for exile for  
life.

5. Any person who if this Law had not been passed might have been sentenced to temporary exile shall be liable to be sentenced to undergo imprisonment for any term not exceeding three years.

Punishment  
substituted  
for temporary  
exile.

(1) For contents see Index p. 995.

Death penalty abolished in certain cases.

2. 1908, 2.

Man-slaughter.

12. 1914, 5.

Indecent assault.

12. 1914, 6.

Amendment of the Penal Code, Article 224.

3. 1922, 2.

Abolition of minimum penalties.

12. 1914, 2.

Power to impose fines and bind over.

12. 1914, 3.

6.—(1.) Any person convicted under any of the Articles 59, 60, 61 and 163 of the Ottoman Penal Code shall be liable to imprisonment with hard labour for life or for any shorter term but shall not be liable to the punishment of death.

(2.) Any person who commits homicide without premeditation shall be liable to imprisonment for life or for any less term with or without hard labour.

(3.) Any person who commits the second offence referred to in the Addition to Article 202 of the Ottoman Penal Code, dated 3 Jemazi' ul-Akhir, 1277 (indecent assault), shall be liable to imprisonment for any term not exceeding one year.

(4.) Any person convicted under the Ottoman Penal Code, Article 224, shall be liable to imprisonment for any term not exceeding three years, without prejudice to any other punishment prescribed in the said Article.

(5.) All enactments of the Ottoman Penal Code or any amendment thereof which provide that a minimum punishment shall be imposed for any offence, except enactments whereby a person is punishable for treason or homicide punishable by death, shall be read as though they contained no provision as to the minimum punishment to be imposed for such offence and where one term of imprisonment only is provided it shall be considered the maximum term only.

(6.) Whenever any person shall be convicted under the Ottoman Penal Code or any amendment thereof or the Press Law, 2 Shaban, 1281, in respect of any of the offences in this section referred to which is punishable by imprisonment not exceeding three years, the Court may, if it shall think fit, in lieu of the punishments by the law authorized, fine the offender, and on conviction of any offence in this section referred to the Court may in addition to any other punishment require the person convicted to enter into his own recognizance with or without sureties to keep the peace and to be of good behaviour. The offences above referred to are as follows:—

Larceny.

Malicious damage to property.

Forgery.

Coining.

Offences against the person except such as are punishable with death.

Perjury.

Libel.

(7.)—(i.) In any case in which a person is convicted of an offence punishable with imprisonment for not more than three years, if it appears to the Court before which he is convicted, that (regard being had to all or any of the following matters, namely, the youth, character and antecedents of the offender, the trivial nature of the offence, and any extenuating circumstances under which the offence was committed) it is expedient that the offender be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a recognizance, with or without sureties, within such period as the Court may direct, to appear and receive sentence when called upon and in the meantime to keep the peace and be of good behaviour.

(ii.) The Court may, if it thinks fit, order that the offender shall pay the costs of the prosecution, or some portion of them, within such period and by such instalments as the Court may direct.

(iii.) If a Court having power to deal with the offender in respect of his original offence, or any Court of summary jurisdiction, is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(iv.) An offender, when apprehended on any such warrant, shall, if not brought forthwith before the Court having power to sentence him, be brought before a Magisterial Court, and that Court may either remand him by warrant until the time at which he was required by his recognizance to appear for judgment, or until the next sitting of a Court having power to deal with his original offence, or may admit him to bail with a sufficient surety conditioned for his appearing for judgment.

(8.)—(i.) In this sub-section:—

“Child” means a person who in the opinion of the Court is under the age of fourteen years;

“Young person” means a person who in the opinion of the Court is fourteen years of age or upwards and under the age of sixteen years.

(ii.) Sentence of death shall not be pronounced on or recorded against a child or young person but in lieu thereof the Court shall sentence the child or young person to be detained during the High Commissioner's pleasure and if so sentenced he shall be liable to be detained in such place and under such conditions as the High Commissioner may direct and whilst so detained shall be deemed to be in legal custody: Provided that no such period of detention shall in any case exceed ten years.

First offenders.

12. 1914, 4.

Abolition of death sentence in case of children and young persons.

4. 1909.

4. 1911.

Labour in chains not to form part of punishment awarded by Court.

7.—(1.) The wearing of leg-irons shall not form part of the punishment of any person under any sentence passed by any Court of Justice in this Island; and such parts of Articles 19, 20, and 21 of the Ottoman Penal Code as provide that the wearing of leg-irons shall form part of any such punishments are hereby repealed.

Use of irons permitted in certain cases.

(2.) Nothing in this Law shall be construed so as to prevent the use of leg-irons in cases where the wearing thereof may be lawfully imposed as a punishment for any breach of prison discipline, nor when the use of such irons is necessary for the better securing of prisoners.

## PART 2.

### *Accomplices and Receivers.*

Interpretation.

8. In this Part of this Law "Offence" means any act made punishable by the Ottoman Penal Code or any article or articles thereof, or by any other law of the Ottoman Empire which was in force in Cyprus on the 13th day of July, 1878, or by any Order of Her Majesty the Queen in Council applicable in Cyprus, or by any Law enacted by the Legislative Council of Cyprus, except such offences as are punishable with no greater punishment than those mentioned in Article 5 of the Ottoman Penal Code.

Accomplices.

9. Accomplices in offences are of two kinds, viz., accomplices in the commission of offences and accomplices after the commission of offences.

Who are accomplices in the commission of an offence.

10.—(1.) An accomplice in the commission of an offence is:—

(a.) A person who, in furtherance of a common purpose formed by him and others to commit an offence and with knowledge that such offence is to be committed, accompanies the person who actually commits it at the time when it is committed, whether he so attends in order to witness the commission of the offence or to assist, encourage, exhort, or compel the commission thereof, or to aid or assist the perpetrators thereof or any of them to escape detection, pursuit, or apprehension after the commission thereof, or in order in any other manner to further the common purpose formed by him and his associates;

(b.) A person who, though he be not present at the time when the offence is committed, procures, commands, or in any way assists or incites another to commit an offence, whether he does so directly or through the medium of a third person.

(2.) Where an offence is committed by an innocent person on the instigation of another, the instigator of the offence shall be deemed to be the actual perpetrator thereof.

(3.) If any person who has procured, commanded, or in any way incited or assisted another to commit an offence shall before the commission thereof have countermanded the commission thereof, he shall not be deemed to be an accomplice in the offence if it is subsequently committed.

(4.) Where the acts which constitute an offence are committed partly by one person and partly by another or others, every such person, if he acted with a knowledge that he was thereby contributing to or assisting in the commission of an offence, shall be deemed to be an actual perpetrator thereof.

**11. An accomplice after the commission of an offence is:—**

(a.) A person (other than the father, mother, son, daughter, or other relative in the direct line of relationship, or the brother or sister, husband or wife of the offender) who, knowing an offence to have been committed by another person, receives, relieves, comforts, or assists him in order to hinder his being apprehended or tried for his offence or to hinder his suffering any punishment to which he may have been condemned therefor;

(b.) A person who, by himself or by an agent, receives or wilfully takes upon himself, either alone or jointly with any other person, the control or disposition of any property whatsoever knowing it to have been stolen.

Who are accomplices after the commission of an offence.

**12. Every person who, in furtherance of a common purpose formed by him and others to commit an offence and with knowledge that such offence is to be committed, accompanies the person who actually commits it at the time when it is committed, whether he so attends in order to witness the commission of the offence or to assist, encourage, exhort, or compel the commission thereof, or to aid or assist the perpetrators thereof or any of them to escape detection, pursuit, or apprehension after the commission thereof, or in order in any other manner to further the common purpose formed by him and his associates, is an accomplice not only in the commission of the offence committed in the pursuance of the common purpose, but in the commission of every offence actually committed with the object of executing or in the attempt to execute the common purpose.**

An accomplice present at commission of an offence is an accomplice in commission of all offences committed incidentally to execution of criminal design.

**13. Every person who, though not present at the time when the offence is committed, procures, commands, or in any way assists or**

One who counsels an offence is an

accomplice in the commission of incidental offences.

incites another to commit an offence, whether he does so directly or through the medium of another person, is an accomplice not only in the commission of the offence which he has procured, commanded, assisted, or incited the other person to commit, but in the commission of every offence proved to have been committed in consequence of the wrongful procurement, persuasion, command, or incitement given by him.

Punishment of accomplice in commission of offence.

12. 1888, 7.

14. Every person by this Law defined to be an accomplice in the commission of an offence is himself guilty of an offence, and shall be liable to the same description of punishment as if he had actually committed the offence in the commission whereof he is an accomplice. In case the punishment to which the principal is condemned is death, the Court shall have power to inflict upon any accomplice in the offence the punishment of death, or that of hard labour for life or for any term of not less than fifteen years.<sup>(1)</sup>

Punishment of accomplices after commission of offence.

15. Every person (not being the father, mother, son, daughter, or other relative in the direct line of relationship, or the brother or sister, husband or wife of the offender) who, knowing an offence to have been committed by another person, receives, relieves, comforts, or assists him in order to hinder his being apprehended or tried for his offence or to hinder his suffering any punishment to which he may have been condemned therefor, is himself guilty of an offence, and shall be liable to the punishment hereinafter expressed; that is to say:—

If the offence committed by the person received, relieved, comforted, or assisted renders the perpetrator thereof liable to be sentenced on conviction thereof to death or hard labour, the person by whom he is received, relieved, comforted, or assisted shall be liable to imprisonment for any term not exceeding two years;

If the offence renders the perpetrator thereof liable to be sentenced on conviction thereof to imprisonment, the person by whom he is received, relieved, comforted, or assisted shall be liable to imprisonment for any term not exceeding one-half of the period of imprisonment to which the perpetrator is liable for his offence.

Punishment of receiver of stolen goods.

40. 1922, 3.

16.—(1.) Any person who, by himself or by an agent, wilfully receives or takes upon himself, either alone or jointly with any other person, the control or disposition of any property whatsoever knowing it to have been stolen shall be liable to imprisonment for any term not exceeding ten years, with or without hard labour.

(2.) Any person may be charged on information before a District Court with any or all of the offences referred to in subsection (1) of this section, and on conviction of such person before a District Court

(1) See s. 6 (5) *supra*.

of any such offence he shall be liable to imprisonment for any term not exceeding three years with or without hard labour.

Provided that nothing herein contained shall prevent a person being charged before an Assize Court for any offence under subsection (1) of this section, but so that he shall not be punished twice for the same offence.

17. Every person by this Law defined to be an accomplice in an offence may be brought to trial and convicted of an offence under this Law whether the actual perpetrator of the offence in which he is an accomplice has or has not been previously convicted of the offence, or whether it is or is not possible to institute proceedings against him and enforce any punishment that he may be ordered to undergo for the offence; and any accomplice may be tried either alone or together with the actual perpetrator of the offence or with any other accomplice therein.

Accomplice may be tried whether principal has been convicted or not.

18. The following Articles of the Ottoman Penal Code are hereby repealed, viz. :—

Enactments repealed.<sup>(1)</sup>

Articles 45, 81, 121, 175, 184 and 185; so much of Article 206, and of the laws adding to or amending it as relates to a person assisting another in the forceable abduction of a woman or female child; and so much of Article 230 and of the Laws adding to or amending it as provides a punishment for persons who knowingly assist or conceal thieves, who knowingly conceal any stolen property or who receive any of the proceeds of a robbery knowing the same to have been stolen: Provided that nothing in this section shall be taken to have repealed that part of the said Article 230 and the Laws adding to or amending it which relates to persons who, having knowingly assisted or concealed thieves or having knowingly concealed any stolen property, spontaneously give information against the actual thieves.

19. Where any act constitutes an offence under the preceding sections of this Part of this Law and also under any Part of the Ottoman Law not hereby specifically repealed, the person doing the act shall be deemed guilty of an offence under the Ottoman Law, and shall be punishable in the same manner as heretofore and not under this Law.

Ottoman Law to prevail unless specifically repealed.

20. Whoever has in his possession any movable property which is reasonably suspected of being stolen property, shall, unless he establishes to the satisfaction of a Court that he acquired the possession of it lawfully, be liable to imprisonment for any term not exceeding six months or to a fine not exceeding ten pounds.

Unlawful possession of property.

<sup>(1)</sup> And see s. 63 *infra*.

## PART 3.

*False and Contradictory Statements.*

Contradictory evidence by same witness before Magistrate and on trial on information; or in sworn charge and in evidence before Magistrate.

**21.—(1.) Any person who:—**

- (a.) Being a witness at the trial on information of a person for any offence shall, on his examination as such witness, wilfully make any statement tending to prove the guilt or innocence of the accused, inconsistent with or contradictory to what he has stated on his examination as a witness concerning the same matter before the Magisterial Court, or;
- (b.) Having made a charge or complaint on oath before a Magisterial Court of the commission of an offence, subsequently, on his examination as a witness before a Magisterial Court when the charge or complaint is being inquired into, wilfully makes any statement tending to prove the guilt or innocence of the person charged inconsistent with or contradictory to what he stated on his sworn charge or complaint,

shall be deemed to have given false evidence within the meaning of clause 193 of the Cyprus Courts of Justice Order 1882.

Evidence before Magistrate contradictory to statement made under ss. 26 and 27.

(2.) Any person who, having made a statement in accordance with sections 26 and 27 of this Law, subsequently, on his examination as a witness before a Magisterial Court when the offence in relation to which the statement was made is being inquired into, makes any statement tending to prove the guilt or innocence of any person inconsistent with or contradictory to his first mentioned statement shall be deemed to have committed an offence under section 24 of this Law.

Mode of proving offence under s. 21.

**22.** Upon the trial of any person for any offence under section 21, it shall not be necessary to prove the falsity of either of the inconsistent or contradictory statements but, upon proof that both the statements were made by him, the Court before which he is tried, if it considers that the statements, or either of them, were, or was, made with a view to deceive the Court to which, or the person to whom, the statements, or either of them, were, or was, made and thereby improperly to prove the guilt or innocence of any person of the offence in relation to which the statements were made, shall convict the accused.

Assize Court may commit for trial at same sitting.

**23.** When an Assize Court commits a person for trial for giving false evidence in any proceeding before it, he may, if the Court thinks fit, be committed for trial and tried at the same sitting of the Court.

24. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence to any Local Commandant or person authorized to inquire<sup>(1)</sup> into such offence which he knows or believes to be false, shall be liable to imprisonment for any term not exceeding one year or to a fine not exceeding ten pounds.

Giving false information to public officer.

25. Whoever gives or offers or promises to give to any witness or to any person about to be called as a witness in any judicial proceeding any gratification upon any understanding or agreement that the testimony of that witness or person shall be thereby influenced, or who attempts by any means whatsoever to induce any witness to give false evidence or to withhold true testimony, shall be liable to imprisonment for any term not exceeding three years.

Inducing witnesses to give false or or withhold true testimony.

PART 4.

*Evidence and Procedure.*

26. A Local Commandant of Police, or any competent and trustworthy person having experience in criminal investigation whom the High Commissioner has by writing under his hand authorized to hold inquiries into the commission of offences, may examine orally any person supposed to be acquainted with the facts and circumstances of any offence in respect whereof the Local Commandant of Police or other authorized person is inquiring, and may reduce into writing any statement made by a person so examined.

Examination of witnesses.

The person so examined shall be bound to answer truly all questions put to him by the Local Commandant or other authorized person, other than questions the answers to which would have a tendency to expose him to a criminal charge.

27. Any such statement when reduced into writing shall be read over to the person examined, who shall be requested to sign it, or, if he is illiterate, to affix his mark to it.

Statement of witnesses to be reduced into writing.

If he refuses to sign the statement or affix his mark to it, the Local Commandant of Police or other authorized person shall note in writing at the foot of the written statement that the person making the statement has refused to sign it or affix his mark to it, and the reason, if ascertained, of the refusal.

The written statement shall then be signed by the Local Commandant of Police or other authorized person; and in any proceeding against the person making it for not truly answering any

*repealed by Law 12 of 1909*

<sup>(1)</sup> See Section 26.

question put to him, the written statement shall be evidence of the statements made by him, unless it is proved that he did not make the statements or any of them.

Statements in depositions afterwards contradicted may be considered as evidence in certain cases.

28. Where upon the trial on information of a person accused of any offence, any witness shall make any material statement of fact in direct contradiction to a statement of fact contained in his deposition taken before a Magisterial Court, or upon commission in accordance with the provisions of clause 105 of the Cyprus Courts of Justice Order, 1882, in or in the course of the preliminary inquiry into the charge against the accused person, the deposition may be put in evidence; and if it appears to the Court, having regard to all the circumstances of the case, that the statement therein contained is true (notwithstanding that the witness has so contradicted it as aforesaid), it shall be lawful for the Court, in considering whether the accused person has or has not committed the offence charged against him in the information or any offence for which he may be lawfully convicted by the Court on his trial, to treat the statement of fact contained in the deposition as the true evidence of the witness and to act upon it accordingly.

Provided that the Court shall not treat the statement of fact contained in the deposition of a witness as his evidence unless it appears to the Court that the fact deposed to by the witness is corroborated in some material particular by other evidence in the case.

Particulars of immediate complaint may be given in evidence on behalf of the prosecution.

29. Any Magisterial Court before which the charge or complaint of an offence made against any person is being investigated, or any Court before which any person accused of any offence by information is being tried, may receive in evidence, on behalf of the complainant or of the prosecution, the particulars of any complaint or any statement relating to the offence made by the person on whom the offence has been committed, or the person in charge of any property against which the offence has been committed and who was present when the offence was so committed.

Provided that the particulars of any such complaint or statement shall not be admissible on behalf of the complainant or of the prosecution unless it appears to the Magisterial Court or the Court before which the accused person is being tried that the complaint or statement has been made, having regard to the circumstances of the case, immediately after the commission of the offence, and to the first person or persons to whom the person making the complaint or statement spoke after the commission of the offence, or to the person or persons to whom the Court considers that it was natural that he would complain or make a statement regarding the offence.

PART 5.

*Previous Convictions.*

30. Where any person is tried on an information charging him with an offence and is, by reason of a previous conviction, liable on conviction of the offence charged in the information to more severe punishment than he would otherwise have been liable to, no reference to the previous conviction shall be contained in the information, but, when the Court has found such person guilty of the offence charged in the information, the previous conviction alleged against the convict may thereupon be brought to the notice of the Court.

Previous conviction how to be alleged and proved.

*repealed  
of Criminal  
Code,  
1918*

The Court shall require all such particulars of the alleged previous conviction to be stated as in the opinion of the Court are necessary to enable the convict to understand in respect of what offence it is alleged that he has been previously convicted; and if, from the particulars furnished, it appears that the previous conviction is for such an offence as to render the convict liable to a more severe punishment than he would have been liable to in the absence of the previous conviction, the Court shall inquire of the convict whether he admits or denies that he has been previously convicted as alleged, and if he admits that he has been, the fact of the previous conviction shall be assumed without further evidence. If he does not admit that he has been previously convicted as alleged the Court shall require the conviction to be proved.

31. Where an accused person is proved in manner aforesaid to have been previously convicted of an offence the judgment of the Court shall specify the fact.

Previous conviction to be recorded in judgment.

32. Where a person accused by information before any District Court of an offence within the jurisdiction of that Court is, by reason of a previous conviction, liable to greater punishment than he would otherwise have been, the Court may, if he is convicted on the information, impose upon him any punishment allowed by the Law notwithstanding that the term of such punishment may exceed three years.

Powers of District Courts.

33. Where a person convicted of any offence is, while undergoing sentence on such conviction, convicted of another offence, the Court before which he is convicted of the last-mentioned offence may direct that the sentence therefor take effect at any subsequent time not later than the expiration of the sentence which the convict is undergoing at the time of his subsequent conviction, and the sentence shall take effect accordingly.

Power of Courts to regulate commencement of sentence on convict undergoing sentence.

## PART 6.

*Appeals, etc.*

Appeals from  
decision of  
District  
Court.

34. Where, under the judgment of a District Court in any criminal matter, any person is liable to a penalty of ten pounds or upwards or to undergo imprisonment without the option of a fine, he may appeal to the Supreme Court. Provided that he shall immediately after sentence has been pronounced declare to the Court before which he has been convicted his desire to appeal.

Whenever any person convicted as aforesaid declares his desire to appeal in accordance with the provisions of this section, a note of the declaration shall thereupon be entered on the notes of the proceedings by the President of the Court.

Documents to  
be forwarded  
to Supreme  
Court.

35. Where any person has declared his desire to appeal as aforesaid, the Registrar of the District Court shall forthwith transmit to the Registrar of the Supreme Court the documents hereinafter specified (which are hereinafter referred to as the file of the proceedings); that is to say,—the information, the depositions of the witnesses examined before the Magisterial Court, the notes of the evidence taken before the District Court, and of any statement or statements which may have been made by the appellant before the Magisterial Court or before the District Court. He shall also forward any documents that may have been put in evidence of which he shall have the custody, or certified copies of any of them of which he shall not have the custody, if he can procure copies thereof, or, if he shall not be able to forward the originals or copies of any of such documents, he shall furnish a statement of the reasons why he is unable to do so.

Intermediate  
effects of  
appeal.

36. Where any person has declared his desire to appeal as aforesaid, the District Court before which he is convicted shall, where sentence of imprisonment has been passed, suspend execution of the sentence, and shall either remit the appellant to prison for safe custody or admit him to bail pending the hearing of the appeal, and, where a penalty has been ordered to be paid, shall either cause the sentence to be put into execution or shall take such security as it shall think necessary, either by recognizances with or without security, or by deposit of money, for securing the payment of any penalty that may have been imposed upon him.

Provided that the Court shall not admit the appellant to bail unless he names some proper place within the Municipal limits of the town within which the Court house is situate where all notices, summonses, orders, and other written communications may be left for him. Any

notice, summons, order, or other written communication left at the place named by any appellant in accordance with the provisions of this section shall be deemed to have been thereupon received by him or to have come to his knowledge.

37. In any case where a District Court has refused to admit an appellant to bail, the Supreme Court or any Judge thereof may, on his application, admit him to bail on the same terms as he might have been admitted to bail by the District Court under the provisions of the preceding section.

Supreme Court or Judge thereof may admit appellant to bail.

38. The Registrar of the Supreme Court shall, as soon as conveniently may be after he has received the file of the proceedings, fix the time for the hearing of the appeal and give notice thereof or cause notice to be given to the Queen's Advocate and to the appellant, and shall transmit to the Local Commandant of Police of the District within which is situate the place appointed for the service of notice on the appellant a notice in writing of the time so fixed. The Local Commandant of Police shall cause the notice to be duly served on the appellant; and a certificate under the hand of the Local Commandant that the notice has been left at the appellant's address for service shall be taken as evidence that the notice has been duly served.

Notice of hearing of appeal.

39. The Supreme Court on perusing the file of the proceedings, and after hearing the Queen's Advocate and the appellant or such of them as shall attend at the time fixed for the hearing of the appeal, shall give judgment, and shall have power to confirm or set aside the finding of the District Court as to the guilt of the appellant or, subject to the proviso hereinafter contained, to find him guilty of any other offence of which he appears to be guilty from the evidence taken before the District Court, or to acquit him and, subject to the proviso hereinafter contained, to pass on him any sentence which is provided by law for the offence of which the Supreme Court may consider him guilty, and for that purpose to increase the punishment awarded by the District Court.

Powers of Supreme Court on hearing appeal.

Provided always that an appellant shall not on the hearing of his appeal be found guilty of an offence other than that mentioned in the information if such other offence renders him liable to any greater punishment than that which may be inflicted for the offence mentioned in the information; but if the Supreme Court considers that the evidence which has been adduced justifies a charge of any such other offence, it may direct that an information be filed against the appellant for such other offence, and he shall be brought up for trial on the information before such District Court or Assize Court as it

shall think fit at the next sitting thereof, and the convict shall in the meantime be committed to prison or released on bail, and his trial shall take place in the same manner as though he had been committed for trial for the offence by a Magisterial Court.

Supreme Court may ask for grounds of judgment and

40. The Supreme Court may call upon the District Court to furnish all information it may think necessary beyond that which is furnished by the file of the proceedings as to the grounds on which it has found the appellant guilty or passed sentence upon him.

may call for further evidence.

41. On the hearing of any appeal under this Law the Supreme Court may call for further evidence, and reserve its decision until such evidence has been adduced. The costs of all witnesses called on the part of the prosecution shall in the first instance be paid out of the Public Treasury; and in any proceeding under this Law the Court may order that the expenses of any witness either on the part of the prosecution or of the defence be paid out of the Public Treasury.

Judgment to specify day on which term of imprisonment, etc., shall commence.

42. In all cases in which the Supreme Court shall give judgment on appeal against any person appealing under the provisions of this Law, the Court shall specify in its judgment the day on which any term of imprisonment or hard labour to which the appellant may be sentenced shall commence; and notwithstanding anything to the contrary contained in the Ottoman Penal Code, and notwithstanding that the appellant may have been in prison awaiting trial or pending his appeal, the Court may direct that the term shall commence on any day not later than the day on which the judgment is given, or, if the appellant is undergoing sentence under any other conviction, then not later than the expiration of the last-mentioned sentence.

Judgment to be entered in special book.

43. Every judgment or order of the Supreme Court made on an appeal under this Law shall be drawn up and entered in a book to be kept for that purpose; and the Court shall issue all such warrants and orders as may be necessary for carrying it into execution.

Judgment to be signed and certified copy attached to file of proceedings.

44. Every judgment or order of the Supreme Court given on an appeal under this Law when drawn up shall be signed by one of the Judges of the Court; and a copy of every such judgment or order, certified by the Registrar of the Supreme Court to be a true copy, shall be attached by him to the file of the proceedings and returned therewith to the District Court before which the information was tried.

#### *Appeals from Magisterial Courts.*

Appeal where fine £5 or over.  
12. 1914, 18.

45. Any person who is adjudged by conviction of a Magisterial Court to pay a fine of £5, or upwards, may appeal to the Supreme Court and on such appeal the Court may quash the conviction and

*repealed by Criminal Code 1928.*

have such further powers as are given by sections 39, 40 and 41 of this Law. Provided that any person desiring to appeal shall immediately after sentence has been pronounced declare to the Court by which he has been convicted his desire to appeal, and if he fails to make such declaration no appeal will lie unless on application made within seven days, for good cause proved, the Court before whom he is tried, or the Supreme Court shall give leave to appeal.

*Applications to Quash Convictions by Magisterial Courts.*

46.—(1.) Any person convicted before a Magisterial Court may apply to the Supreme Court to enquire into any conviction or judgment of such Magisterial Court on the ground that such Magisterial Court has no jurisdiction to try the case or has made an order or given a judgment which is illegal or in excess of the powers conferred on such Magisterial Court. Such application shall be in writing signed by the applicant or his advocate and shall be made by filing the same with the Registrar of the Supreme Court.

Application  
on ground of  
illegality.

12, 1914, 19.

(2.) Any such application shall be made and notice of it given to all other parties to the proceedings of which complaint is made and to the Judge or one of the Judges of which such Magisterial Court is composed, within seven days of the conviction or other matter of which complaint is made or within such further time as the Supreme Court may for special reasons allow.

(3.) On receipt of the notice of the application the Magisterial Court shall transmit to the Registrar of the Supreme Court all such documents, so far as possible, as the Registrar of the District Court is required to transmit in the case of an appeal and all subsequent proceedings shall be taken in the manner provided in case of an appeal.

(4.) On hearing of such application the Court may quash all proceedings before the Magisterial Court or in case of a conviction or order may confirm or set aside the finding of the Magisterial Court and shall have all such other powers as are given to the Supreme Court in case of an appeal, and may make such further or other order as seems to the Court just.

(5.) Where the application is to set aside a conviction or judgment all the provisions of the law as to appeals shall apply so far as they are applicable, and the service of the notice of the application on the Judge or the Magisterial Court shall have the same effect as a declaration of a desire to appeal under section 34 of this Law.

*repealed*

Stating Cases by Magisterial Courts.

Case for opinion of Supreme Court:

s. 1919, 2.

47.—(1.) If any question of law arises on the trial of any person before a Magisterial Court, the Court may in its discretion reserve such question for the Supreme Court. If the Court determines to reserve any such question, it shall state the question or questions reserved, with the special circumstances upon which the same has arisen, and shall direct such case to be specially entered in the record, and a copy thereof to be transmitted to the Supreme Court.

Power of Supreme Court.

s. 1919, 2.

s. 1919, 2.

(2.) If the Court reserves any question of law for the opinion of the Supreme Court in manner hereinbefore mentioned, the Supreme Court shall consider and determine such question, after hearing the advocates on both sides or the accused in person, if the King's Advocate or the accused thinks it fit that the case should be argued.

The Supreme Court may either—

Confirm the judgment of the Magisterial Court;

Or direct that the judgment of the Magisterial Court shall be set aside (which shall have for all purposes the same effect as if the accused had been acquitted);

Or direct that the judgment of the Magisterial Court shall be set aside, and that instead thereof, such judgment shall be given by the Magisterial Court, as ought to have been given at the trial;

Or if the Magisterial Court has not delivered judgment, remit the case to it in order that it may deliver judgment;

Or itself give such judgment as ought to have been given at the trial.

Rules and fees.

s. 1919, 4.

(3.) The High Commissioner with the advice of the Chief Justice may make rules under the hand and official seal of the High Commissioner and the hand of the Chief Justice as to the time and manner in which such case shall be stated and heard as aforesaid, and may prescribe fees to be taken in respect of any proceedings under this section or any rules to be made thereunder.

PART 7.

Offences, etc.

Child, exposure of.

12. 1914, 7.

48. Any person who unlawfully abandons or exposes any child under the age of two years, whereby the life of the child is endangered or its health has been or is likely to be permanently injured, shall be liable to imprisonment for any term not exceeding five years with or without hard labour.

Child, neglect of.

12. 1914, 8.

49. Any person being the parent, master or mistress or any other person in charge of any child of tender years and unable to provide for itself, who refuses or neglects (being able to do so) to provide sufficient food or other necessaries for the child and thereby injures

repealed by Criminal Code 1928

repealed by Criminal Code 1928

its health, shall be liable to imprisonment for any term not exceeding four years with or without hard labour.

If such person as aforesaid is convicted of causing death by such refusal or neglect as aforesaid he shall be liable to imprisonment for any term not exceeding ten years with hard labour.

Provided that nothing herein contained shall operate to prevent any proceeding in respect of homicide with premeditation.

50. Any person being the parent son or daughter of any person incapable of providing for himself through mental or bodily weakness or old age who refuses or neglects (being able to do so) to provide sufficient food or other necessaries for such person so incapable as aforesaid may on conviction thereof before a Court of summary jurisdiction be ordered to maintain such incapable person, and on default shall be liable on conviction by a competent Court to imprisonment for any term not exceeding two years with or without hard labour and shall also be liable to be ordered to reconvey to such incapable person any property in his or her possession which may have been received on a division of the property of or gift from such incapable person, but no such order shall prejudice the rights of other persons.

Incapable relation, neglect of.

12. 1914, 9.

51. Any person who unlawfully and maliciously kills, maims or wounds or renders useless any cattle or other animal belonging to another person, or administers poison to the same, shall be liable to pay such compensation as the Court may direct and shall be liable to imprisonment for any term not exceeding one year with or without hard labour.

Animal, killing or wounding.

12. 1914, 10.

52. Any person who unlawfully and maliciously cuts, breaks, throws down, destroys, injures, or removes any battery, machinery, wire, cable, post, or other matter or thing whatsoever being part of or being used or employed in or about any electric line or work shall be liable to a fine not exceeding ten pounds or to imprisonment for any term not exceeding three months.

Malicious injury to electric line, etc.

12. 1914, 11.

53.—(1.) If any person wilfully or maliciously commits any damage to any immovable or movable property whatsoever, either of a public or private nature; he shall be liable:—

Malicious damage to property.

3. 1922 3.

(a.) If the amount of the damage is, in the opinion of the Court, five pounds or less, to imprisonment for a term not exceeding two months or to a fine not exceeding five pounds;

(b.) If the amount of the damage is, in the opinion of the Court, more than five pounds and not more than twenty-five pounds, to imprisonment for a term not exceeding six months or to a fine not exceeding twenty pounds; and

(c.) If the amount of the damage is, in the opinion of the Court, more than twenty-five pounds, to imprisonment for any term not exceeding two years or to a fine not exceeding fifty pounds; and in any case to the payment of such further amount as appears to the Court reasonable compensation for the damage so committed which last mentioned amount shall be paid to the party aggrieved :

Provided that this provision shall not apply where the alleged offender acted under a fair and reasonable supposition that he had a right to do the act complained of.

(2.) Nothing in this section shall be deemed to repeal or affect the provisions of this Law or any other law, but so that a person shall not be punished twice for the same offence.

Drunken-  
ness.

12. 1914, 12.

54. Any person who in any public way or place, whether a building or not, is guilty, while drunk, of riotous or disorderly behaviour, or who is drunk while in possession of any loaded firearm, knife or other deadly weapon, may be apprehended, and shall be liable to a fine not exceeding two pounds.

Indecency.

12. 1914, 13.

55. Any person who in any public way or place is guilty of indecent conduct shall be liable to a fine not exceeding one pound.

Dancing girl  
at Moslem  
feasts.

12. 1914, 14.

56.—(1.) In this section :—

“ Moslem feast ” means a Moslem festival arranged for or in connection with a marriage or for circumcision.

“ Dancing girl ” means a prostitute or a woman who dances or sings for pay at Moslem feasts.

(2.) Any person who shall hold or be responsible for a Moslem feast or shall be the occupier of premises on which such Moslem feast is held and shall engage whether with or without pay or shall knowingly permit a dancing girl to dance or sing at such feast shall be guilty of an offence and be liable to a fine not exceeding five pounds for each offence.

Threat.

12. 1914, 15.

57. Any person who threatens another with any injury to his person, reputation or property, or to the person, or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, shall be liable to a fine not exceeding ten pounds or to imprisonment for any term not exceeding one year with or without hard labour; and if the threat be to cause an offence punishable with death or imprisonment for a term exceeding three years, shall be liable to imprisonment for any term not exceeding three years with or without hard labour.

Criminal  
trespass.  
40. 1922, 2.

58. Whoever enters into or upon property in the possession of another, with intent to commit an offence punishable by the

criminal law, or to intimidate, insult, or annoy any person in possession of such property; or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence punishable by the criminal law, shall be liable to imprisonment for any term not exceeding two years with or without hard labour.

59. Any person who incites or attempts to induce another person to undertake the commission of an offence punishable with imprisonment exceeding one year, whether such other person consents to commit the offence or not, shall be liable to imprisonment for any term not exceeding three years with or without hard labour.

Incitement to commit offence.

12. 1914, 16.

Provided that if the offence to the commission of which the person is so incited is punishable with a less term than three years, the person committing an offence under this section shall not be liable to a longer term of imprisonment than such less term.

#### *Attempts.*

60.—(1.) Any person who unlawfully attempts to commit homicide shall be liable to imprisonment for any term not exceeding twenty years with or without hard labour. Provided that in determining the punishment the Court shall take into consideration the circumstances which led to the offence not being completed.

Homicide, attempt.

12. 1914, 17.

(2.) Any person who attempts to commit the indecent offence with violence shall be liable to imprisonment for any term not exceeding five years with or without hard labour.

Rape, etc., attempt.

As amended by 29. 1923, 2.

(3.) Any person who attempts to commit any kind of larceny shall be liable to imprisonment for any term not exceeding three years with or without hard labour, but for no longer term than that for which he might have been imprisoned if the offence had been completed.

Larceny, attempt.

(4.) Any person who attempts to commit any offence, other than those above-mentioned, shall be liable to imprisonment for any term not exceeding two years with or without hard labour, but for no longer term than that for which he might have been imprisoned if the offence had been completed. Provided that no person shall be punishable for an attempt to commit an offence punishable without consent by a Court of summary jurisdiction, unless otherwise expressly provided.

Other crimes attempt.

(5.) The term "attempt to commit an offence" in this section means the doing or omitting to do an act, the doing or omission to do whereof immediately and directly tends to the execution of that offence with intent to commit that offence, such act or omission forming part of a series of acts or omissions which would have constituted the offence if such series of acts or omissions had not been interrupted by some cause other than the voluntary determination of the offender not to complete the offence.

Attempt defined.

29. 1923, 3.

*Larceny.*

Definition.  
27. 1920, 2.

61. For the purposes of the Penal Code, and of any amendment thereof—

(1.) A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking permanently to deprive the owner thereof:

Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner.

(2.)—(i.) The expression “takes” includes obtaining the possession—

(a.) by any trick;

(b.) by intimidation;

(c.) under a mistake on the part of the owner with knowledge on the part of the taker that possession has been so obtained;

(d.) by finding, where at the time of the finding the finder believes that the owner can be discovered by taking reasonable steps;

(ii.) The expression “carries away” includes any removal of anything from the place which it occupies, but in the case of a thing attached, only if it has been completely detached;

(iii.) The expression “owner” includes any part owner, or person having possession or control of, or a special property in, anything capable of being stolen.

(3.) Everything which has value and is the property of any person, and if adhering to the realty then after severance therefrom, shall be capable of being stolen.

*Orders as to Property.*

Orders with  
respect to  
property in  
possession  
of police.

3. 1922, 4.

62.—(1.) Where any property has come into the possession of the police in connection with any criminal charge, any Assize Court or District Court or a Judge thereof may, on application either by an officer of police or by a claimant of the property, make an order for the delivery of the property to the person appearing to the Court or Judge to be the owner thereof, or, if the owner cannot be ascertained, make such order with respect to the property as to the Court or Judge may seem meet.

(2.) An order under this section shall not affect the right of any person to take within six months from the date of the order legal

proceedings against any person in possession of property delivered by virtue of the order for the recovery of the property, but on the expiration of those six months the right shall cease.

*Repeals.*<sup>(1)</sup>

63. Articles 174 and 180, and addition to article 180, the addition to article 198, the addition to article 230, and article 245 of the Ottoman Penal Code are hereby repealed.

Repeals.  
12. 1914, 21.  
29. 1923, 4.

*Title.*

64. This Law may be cited as the Criminal Law and Procedure Amendment Law, 1886. Short title.

CRUELTY TO ANIMALS, *see* ANIMALS.

CURRENCY NOTES, *see* EVIDENCE.

CUSTOMS, EXCISE, AND REVENUE.

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21 OF 1879.

CONCERNING EXEMPTIONS FROM TAXATION.

G. J. WOLSELEY.]

[May 3, 1879.

1. There shall not be claimed by or allowed to any person, native or alien, whose domicile for the time being is this Island, and whether under plea or pretence of custom, licence, nationality, condition, creed, calling or otherwise, the right of exemption from payment of any of the several taxes, duties, imposts or obligations enumerated in the Schedule to this Law.

No one exempt from taxes enumerated in schedule.

<sup>(1)</sup> And *see* s. 18, *supra*.