

No. 29 OF 1938.

A LAW TO AMEND THE COURTS OF JUSTICE LAW, 1935.

H. R. PALMER,
Governor.

[10th November, 1938.]

BE it enacted by His Excellency the Governor and Commander-in-Chief of the Colony of Cyprus as follows:—

1. This Law may be cited as the Courts of Justice (Amendment) Law, 1938, and shall be read as one with the Courts of Justice Law, 1935, (hereinafter called "the Principal Law"), and the Principal Law and this Law may together be cited as the Courts of Justice Laws, 1935 and 1938.

Short title.
38 of 1935

2. Section 7 of the Principal Law is hereby amended by the addition at the end thereof of the following sub-section:—

Amendment
of section 7
of Law 38 of
1935.

"(3) No person shall be appointed to be a Judge of the Supreme Court unless—

(a) he is qualified to practise as an advocate in a Court in England, Scotland, Northern Ireland or some other part of His Majesty's dominions having unlimited jurisdiction in civil or criminal matters, and

(b) he has been qualified for not less than five years to practise as an advocate or solicitor in such a Court."

3. Section 23 of the Principal Law is hereby amended by the insertion of the words "a rule or" immediately after the word "makes" in sub-section (5) thereof.

Amendment
of section 23
(5) of Law
38 of 1935.

4. Section 24 of the Principal Law is hereby amended by the addition of the following paragraph at the end of sub-section (1) thereof:—

Amendment
of section 24
(1) of Law
38 of 1935.

"Where any such question has been reserved, the Assize Court may, in any case other than murder, release the accused on bail pending the determination by the Supreme Court of the question so reserved."

5. Part III of the Principal Law is hereby repealed and the following Part is substituted therefor:—

Repeal of
Part III of
Law 38 of
1935 and
substitution
of new Part.

"PART III.

APPEALS FROM ASSIZE COURTS.

Right of
appeal from
Assize Court
to Supreme
Court.

25.—(1) Subject to the limitations in sub-section (2) contained, when any person is convicted by an Assize Court and sentenced—

- (a) to death ;
- (b) to be imprisoned without the option of a fine ; or
- (c) to pay a fine exceeding twenty pounds either as a punishment for an offence or for failing to do or abstain from doing any act or thing required to be done or left undone,

such person may appeal to the Supreme Court in accordance with the provisions of this Part—

- (i) against his conviction as of right on any ground which involves a question of law alone ;
- (ii) with the leave of a Judge of the Supreme Court (not being the Judge who presided at the trial), against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Judge who considers the application for leave to appeal to be a sufficient ground of appeal ;
- (iii) with the leave of a Judge of the Supreme Court (not being the Judge who presided at the trial), against the sentence passed on his conviction unless the sentence is one fixed by law.

(2)—(a) A person who has been convicted and sentenced by an Assize Court upon a plea of guilty shall only be entitled to apply for leave to appeal to the Supreme Court—

- (i) against sentence ; or
- (ii) on the ground that the facts alleged in support of the information to which he so pleaded guilty did not disclose any offence.

(b) No application for leave to appeal shall lie where a person has been adjudged to undergo imprisonment for failure to comply with an order for the payment of money other than an order for the payment of a fine exceeding twenty pounds, for the finding of sureties, for the entering into any recognizance or for the giving of any security.

Notice of
appeal and
application
for leave to
appeal.

26.—(1) Where a person, who is entitled to appeal as of right on a point of law as in section 25 (1) (i) provided, desires to appeal to the Supreme Court he shall give notice of appeal within ten days of the date upon which sentence was pronounced.

(2) Every notice of appeal shall—

- (a) be in the form set out in Part I of the First Schedule ;
- (b) be signed by the applicant or his advocate ;
- (c) set out in full the grounds on which it is founded ;
- (d) be delivered to the Chief Registrar within ten days of the date upon which sentence was pronounced.

(3) Where a person desires to appeal to the Supreme Court under section 25 (1) (ii) or (iii), he shall apply for leave to appeal within ten days of the date upon which sentence was pronounced.

(4) Every application for leave to appeal shall—

- (a) be in the form set out in Part II of the First Schedule ;
- (b) be signed by the applicant or his advocate ;
- (c) set out the grounds on which it is founded ;
- (d) be delivered to the Chief Registrar within ten days of the date upon which sentence was pronounced.

(5) Upon receipt of a notice of appeal or of an application for leave to appeal the Chief Registrar shall file the same and shall forthwith request the President of the Assize Court to transmit to him the documents and exhibits hereinafter specified (which, together with the notice of appeal or the application for leave to appeal, as the case may be, are in this Part referred to as 'the file of the proceedings'), that is to say,—

- (i) the information ;
- (ii) the notes of the evidence taken by the Assize Court ;
- (iii) any statement which may have been made by the appellant or applicant before the Assize Court ;
- (iv) the judgment of the Assize Court and the written grounds thereof, if any ;
- (v) all documents which may have been put in evidence of which the Assize Court has the custody or copies of any of them of which the Assize Court has not the custody ; and
- (vi) such exhibits, other than documents, as may conveniently be forwarded to the Chief Registrar.

(6) In the case of an application for leave to appeal the Chief Registrar shall, as soon as conveniently may be after he had received the file of the proceedings, present the same to a Judge of the Supreme Court sitting in chambers (not being the Judge who presided at the trial) for consideration of, and decision on, the application for leave to appeal.

(7) No notice of appeal shall be valid and no application for leave to appeal shall be entertained unless such notice or application complies with the requirements of sub-section (2) or sub-section (4), as the case may be.

Power of
Judge of
Supreme
Court on
application
for leave to
appeal.

27.—(1) Where the file of the proceedings has been presented to a Judge of the Supreme Court in accordance with the provisions of section 26 (6), such Judge, after perusing the file of the proceedings and without hearing the applicant or his advocate or the Attorney-General or his representative, shall—

(a) grant leave to appeal on all or any of the grounds set out in the application for leave to appeal or on the ground that a substantial miscarriage of justice has occurred, whether such particular miscarriage of justice is or is not set out as a ground of appeal in the application for leave to appeal ; or

(b) refuse leave to appeal.

(2) Every order of a Judge of the Supreme Court on an application for leave to appeal shall be recorded by him in the file of the proceedings and shall be final and conclusive and shall be communicated by the Chief Registrar to the applicant or his advocate and where leave to appeal is refused, to the officer in charge of the prison in which the applicant is confined.

(3) An applicant may abandon his application for leave to appeal by giving notice thereof to the Chief Registrar and on such notice being received by the Chief Registrar the application shall be deemed to have been dismissed.

Supreme
Court to hear
appeal upon
notice of
appeal or
upon leave
being
granted.

28. Where—

(a) a notice of appeal has been delivered as in section 26 (2) provided ; or

(b) a Judge of the Supreme Court makes an order granting leave to appeal,

the Supreme Court shall, subject to the provisions of section 30, proceed to hear and determine such appeal,

Suspension
of sentence
and bail.

29.—(1) Where a person—

(a) has delivered a notice of appeal as in section 26 (2) provided ; or

(b) has been granted leave to appeal,

a Judge of the Supreme Court or the Judge of the Supreme Court who granted leave to appeal, as the case may be, may, if he thinks proper, pending the hearing of the appeal, on application made to him, either—

(i) remand such person in custody ; or

(ii) subject to the provisions of sub-section (2), suspend the execution of any sentence of imprisonment passed upon such person and admit him to bail.

(2) No person shall be admitted to bail under the provisions of sub-section (1) unless—

(a) the Judge of the Supreme Court who hears the application for bail is satisfied that by his refusal to grant bail such person will be impeded or prejudiced in prosecuting or presenting his appeal fully before the Supreme Court ; and

(b) such person names some proper address within the municipal limits of Nicosia where all notices, summonses, orders, and other written communications may be left for him.

(3) No person upon whom sentence of death has been passed shall be admitted to bail pending the hearing of his appeal.

(4) Any notice, summons, order or other written communication left at the address named by any person in accordance with the provisions of sub-section (2) shall be deemed to have been received by him or have come to his knowledge.

(5) Where a person—

(a) has delivered a notice of appeal as in section 26 (2) provided ; or

(b) has been granted leave to appeal,

in respect of any conviction involving a sentence for the payment of a fine exceeding twenty pounds, a Judge of the Supreme Court or the

Judge of the Supreme Court who granted leave to appeal, as the case may be, may, if he thinks proper, on application made to him, order that the payment of the fine shall be made at the final determination of the appeal, if the same be dismissed, to a Registrar of a District Court.

Fixing hearing of appeal and notice thereof.

30.—(1) The Chief Registrar shall, as soon as conveniently may be after the delivery of a notice of appeal as in section 26 (2) provided or after leave to appeal has been granted, as the case may be,—

- (a) fix the time for the hearing of the appeal;
- (b) give notice thereof to the Attorney-General;
- (c) transmit to the officer in charge of the Police at Nicosia a notice in writing addressed to the appellant of the time so fixed.

(2) Such police officer shall cause the notice to be served on the appellant and a certificate under the hand of the officer in charge of the Police of the District in which the notice has been served, that such notice has been served on the appellant or has been left at his address of service shall be evidence that the notice has been duly served.

(3) An appellant may abandon his appeal by giving notice thereof to the Chief Registrar and on such notice being received by the Chief Registrar the appeal shall be deemed to have been dismissed by the Supreme Court.

Powers of Supreme Court on hearing of appeal.

31.—(1) Subject to the provisions of sub-section (3), on the hearing of any appeal against conviction the Supreme Court, after perusing the file of the proceedings and after hearing the appellant or his advocate and the Attorney-General or his representative or such of them as shall attend at the time fixed for the hearing of the appeal, shall have full power to—

- (a) allow the appeal and quash the conviction if they think—
 - (i) that the conviction should be set aside on the ground that it was,

- having regard to the evidence adduced, unreasonable, or
- (ii) that the judgment of the Assize Court should be set aside on the ground of a wrong decision of any question of law, or
 - (iii) that on any ground there was a substantial miscarriage of justice ;
- (b) dismiss the appeal ;
 - (c) notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred ;
 - (d) call upon the President of the Assize Court which convicted the appellant to furnish any information the Supreme Court may think necessary beyond that which is furnished by the file of the proceedings as to the grounds upon which such Assize Court has found the appellant guilty ;
 - (e) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Supreme Court whether they were or were not called at the trial ;
 - (f) if they think fit receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness ;
 - (g) set aside the conviction and convict the appellant of any offence of which he might have been convicted by the Assize Court on the evidence which has been adduced and sentence him accordingly.
- (2) On an appeal against sentence the Supreme Court shall, if they think that a different sentence should have been passed at the trial, quash the sentence passed by the Assize Court, and pass such other sentence warranted in law by the judgment (whether

more or less severe) in substitution therefor as they think ought to have been passed, and in any other case shall dismiss the appeal.

(3) The Supreme Court shall not hear any party to the appeal, and shall not determine the appeal, except on the grounds set out—

(a) in the notice of appeal, or

(b) in the order granting leave to appeal, as the case may be :

Provided that the provisions of this sub-section shall not apply where, on the hearing of the appeal, the Supreme Court are of opinion that a substantial miscarriage of justice has occurred.

32. In case of the exercise by the Supreme Court—

(a) of the power contained in paragraph (a) of section 31 (1), the appellant, except where he is in custody in respect of any other offence or is undergoing imprisonment by virtue of any other sentence, shall forthwith be set at liberty or in the case of a fine, the fine, if already paid, shall be refunded ;

(b) of the power contained in paragraph (b), (c) or (g) of section 31 (1), then—

(i) where the appellant has been admitted to bail, the sentence of imprisonment shall commence to run from the date on which the judgment of the Supreme Court has been delivered ;

(ii) where the appellant has not been admitted to bail, the sentence of imprisonment shall commence to run either from the date of the conviction or of the order granting leave to appeal or from the date upon which the judgment of the Supreme Court has been delivered, as the Supreme Court may direct ;

(iii) where the appellant is undergoing sentence of imprisonment under any other conviction, the sentence of

Exercise of certain powers by Supreme Court under section 31.

imprisonment shall commence to run from the expiration of the first mentioned sentence of imprisonment, unless the Assize Court which passed sentence has otherwise directed ;

(iv) where an appellant has been remanded in custody the time during which the appellant was in custody shall not count as part of any term of imprisonment under his sentence.

Judgment to be entered in special book, etc.

33.—(1) Every judgment or order of the Supreme Court made on appeal from an Assize Court shall be drawn up and entered in a book to be kept for that purpose.

(2) Every such judgment or order of the Supreme Court when drawn up shall be signed by one of the Judges of the Supreme Court, and a copy thereof, certified by the Chief Registrar to be a true copy, shall be attached by him to the file of the proceedings.

(3) The Supreme Court shall issue all such warrants and orders as may be necessary for carrying into execution any such judgment or order.”

Repeal of section 34 of Law 38 of 1935 and substitution of new section.

6. Section 34 of the Principal Law is hereby repealed and the following section is substituted therefor:—

“ Appeals from District Courts exercising criminal jurisdiction to the Supreme Court.

34.—(1) Subject to the limitations in sub-section (4) contained, when any person is convicted by a District Court and sentenced—

(a) to be imprisoned without the option of a fine ; or

(b) to pay a fine exceeding ten pounds either as a punishment for an offence or for failing to do or abstain from doing any act or thing required to be done or left undone,

such person may appeal to the Supreme Court against conviction or sentence in accordance with the provisions of this Part.

(2) Where a person desires to appeal to the Supreme Court under sub-section (1), he shall immediately after sentence has been pronounced declare to the District Court by which he has been sentenced his intention to

apply for leave to appeal; and if he fails to make such declaration no application for leave to appeal shall lie unless, on application made within seven days from the date of sentence to the District Court which sentenced him, such District Court, on being satisfied, having regard to all the circumstances, that his failure to make such declaration was not unreasonable, grants him permission to make a declaration of his intention to apply for leave to appeal.

(3) Where any person declares his intention to apply for leave to appeal in accordance with the provisions of sub-section (2), the District Court sentencing him shall inform him of the proper steps to be taken by him to obtain leave to appeal and shall at the same time enter on the notes of the proceedings a note that such declaration has been made and such information given, which note shall be conclusive evidence thereof.

(4)—(a) A person who upon a plea of guilty has been convicted and sentenced by a District Court to imprisonment without the option of a fine or to pay a fine exceeding ten pounds shall only be entitled to apply for leave to appeal to the Supreme Court—

- (i) against sentence; or
- (ii) on the ground that the facts alleged in support of the charge to which he so pleaded guilty did not disclose any offence.

(b) No application for leave to appeal shall lie where a person has been adjudged to undergo imprisonment for failure to comply with an order for the payment of money other than an order for the payment of a fine exceeding ten pounds, for the finding of sureties, for the entering into any recognizance or for the giving of any security."

7. Section 36 of the Principal Law is hereby repealed and the following section is substituted therefor:—

Power of Judge of the Supreme Court on application for leave to appeal.

36.—(1) Where the file of the proceedings has been presented to a Judge of the Supreme Court in accordance with the provisions of section 35 (4), such Judge, after perusing the file of the proceedings and without hearing

Repeal of section 36 of Law 38 of 1935 and substitution of new section.

the applicant or his advocate or the Attorney-General or his representative, shall—

(a) grant leave to appeal on all or any of the grounds set out in the application for leave to appeal or on the ground that a substantial miscarriage of justice has occurred, whether such particular miscarriage of justice is or is not set out as a ground of appeal in the application for leave to appeal; or

(b) refuse leave to appeal.

(2) Every order of a Judge of the Supreme Court on an application for leave to appeal shall be recorded by him in the file of the proceedings and shall be final and conclusive and shall be communicated by the Chief Registrar to the applicant or his advocate and where leave to appeal is refused, to the officer in charge of the prison in which the applicant is confined.

(3) Where leave to appeal is refused, the sentence of imprisonment pronounced by the District Court shall commence to run from the date of such refusal—

(a) if the applicant was remanded in custody under the provisions of section 35 (6), or

(b) if, in the opinion of the Judge of the Supreme Court, the application for leave to appeal was frivolous.”

Repeal of section 38 of Law 38 of 1935 and substitution of new section.

8. Section 38 of the Principal Law is hereby repealed and the following section is substituted therefor:—

“ Suspension of sentence and bail.

38.—(1) Where any person is granted leave to appeal, the Judge of the Supreme Court who granted him leave may, if he thinks proper, pending the hearing of the appeal, on application made to him, either—

(a) remand such person in custody ; or

(b) subject to the provisions of sub-section (2), suspend the execution of any sentence of imprisonment passed upon such person and admit him to bail.

(2) No person shall be admitted to bail under the provisions of sub-section (1) unless—

(a) the Judge of the Supreme Court who hears the application for bail is satisfied that by his refusal to grant bail such person will be impeded or prejudiced in prosecuting or presenting his appeal fully before the Supreme Court; and

(b) such person names some proper address within the municipal limits of the principal town of the District in which the District Court which passed sentence is sitting, where all notices, summonses, orders, and other written communications may be left for him.

(3) Any notice, summons, order or other written communication left at the address named by any person in accordance with the provisions of sub-section (2), shall be deemed to have been received by him or to have come to his knowledge.

(4) Where any person is granted leave to appeal from any sentence for the payment of a fine exceeding ten pounds, the Judge of the Supreme Court who granted leave to appeal may, if he thinks proper, order that the payment of the fine shall be made at the final determination of the appeal, if the same be dismissed, to a Registrar of a District Court.

(5) Notwithstanding anything in any Law contained no District Court shall, after the coming into operation of this Law have power to admit to bail any person who has been convicted and sentenced save as provided in section 23 (5)."

9. Section 40 of the Principal Law is hereby amended by the repeal of sub-section (2) thereof and by the substitution therefor of the following sub-section:—

"(2) The Supreme Court shall not hear any party to the appeal, and shall not determine the appeal, except on the grounds set out in the order granting leave to appeal:

Provided that the provisions of this sub-section shall not apply where, on the hearing of the appeal, the Supreme Court are of opinion that a substantial miscarriage of justice has occurred."

Amendment
of section 40
(2) of Law
38 of 1935.

Amendment of section 41 of Law 38 of 1935.

10. Section 41 of the Principal Law is hereby amended by the insertion in paragraph (a) thereof immediately after the word "appellant" of the words "except where he is in custody in respect of any other offence or is undergoing imprisonment by virtue of any other sentence,".

Repeal of First and Second Schedules to Law 38 of 1935 and substitution of new Schedules.

11. The First and Second Schedules to the Principal Law are hereby repealed and the following Schedules are substituted therefor respectively:—

"FIRST SCHEDULE

PART I.

(Section 26 (2).)

FORM OF NOTICE OF APPEAL FROM ASSIZE COURT.

To the Chief Registrar of the Supreme Court.

Name of the appellant

Convicted by the Assize Court of

Offence

Sentence and when commencing

Date of conviction.....

Date of sentence

Grounds in full on which the appeal is founded :

.....

.....

.....

State whether appellant wishes to be present on the hearing of the appeal

I, the above-named appellant, hereby give notice that I desire to appeal to the Supreme Court from the conviction of the Assize Court of..... aforesaid on the grounds hereinbefore set out.

Dated the.....day of, 19..

.....
(Signature of appellant or his advocate.)

PART II.

(Section 26 (4).)

FORM OF APPLICATION FOR LEAVE TO APPEAL FROM ASSIZE COURT.

To the Chief Registrar of the Supreme Court.

Name of the applicant

Convicted by the Assize Court of

Offence

Sentence and when commencing

Date of conviction

Date of sentence

Grounds in full on which the application is founded :

.....
.....
.....

State whether applicant wishes to be present at the hearing of the appeal, if leave to appeal is granted :

.....

I, the above-named applicant, hereby apply for leave to appeal to the Supreme Court from the conviction (and/or sentence) of the Assize Court of aforesaid on the grounds hereinbefore set out.

Dated the.....day of, 19..

.....
(Signature of applicant or his advocate.)

SECOND SCHEDULE.

(Section 35 (2).)

FORM OF APPLICATION FOR LEAVE TO APPEAL FROM DISTRICT COURT.

To the Chief Registrar of the Supreme Court.

Criminal case No.

Name of the applicant

Convicted by of.....

Offence

Sentence and when commencing

Date of conviction

Date of sentence

Grounds in full on which the application is founded * :

.....
.....
.....

State whether applicant wishes to be present at the hearing of the appeal, if leave to appeal is granted :

.....

I, the above-named applicant, hereby apply for leave to appeal to the Supreme Court from the conviction (and/or sentence) of the aforesaid on the grounds hereinbefore set out.

Dated the.....day of....., 19..

.....
(Signature of applicant or his advocate.)

* State here each ground of appeal such as that there was no sufficient evidence whereupon to found the said conviction; or certain evidence (state the particular evidence) was improperly admitted or rejected; or the evidence given at the trial did not establish the offence of which I was convicted; or further evidence has become available since my trial; or there was an absence of the corroboration of the evidence of A.B. required by law; or the District Court which convicted me had no jurisdiction to try me; or there was an irregularity (say what the irregularity was) at the trial which prejudiced me; or the sentence passed upon me was illegal; or the sentence passed upon me was, having regard to the nature of my offence and the evidence given at my trial, excessive; or any other ground of appeal applicant intends to rely on."