

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 Part III of the Principal Law is hereby repealed and the following Part is substituted therefor:—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