

# THE APPEAL ORDINANCE OF 1909.

No. 8 of 1909.

## An Ordinance to Regulate Appeals.

**B**E it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

### I.—CRIMINAL.

1. When any person is indicted for an indictable offence the Central Court<sup>(2)</sup> must on 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 High Court of Australia.<sup>(3)</sup> If the accused person is convicted and a question of law has been so reserved before judgment the Court 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 recognisance with or without sureties and in such sum as the Court thinks fit conditioned to appear at such time and place as the Court may direct and to render himself in execution or to receive judgment as the case may be.

Reservation of points of law. Criminal Code, s. 668.

The Chief Judicial Officer<sup>(4)</sup> 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 High Court.

(1) Particulars of this Ordinance are as follows:—

Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
1. 6. 1909	1. 12. 1909	1. 6. 1909 ( <i>Statute Law of Papua 1888 to 1916</i> , Vol. II, p. 23)

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(3) Held, by the High Court, that this section does not impose any restriction on the general right of appeal to the High Court given by Section 43 of the *Papua Act* 1905: *The King v. Bernasconi* (1915) 19 C.L.R. 629; 21 A.L.R. 86.

(4) See Section 4 of the *Central Court Ordinance*, 1925.

## COURTS—

Certain errors  
not to avoid  
conviction.  
*Criminal Code,*  
s. 671.

2. A conviction cannot be set aside upon the ground of the improper admission of evidence if it appears to the High Court that the evidence was merely of a formal character and not material nor upon the ground of the improper admission of evidence adduced for the defence.

## II.—CIVIL.

Where appeal  
lies.

3. In all civil matters an appeal shall lie from the Central Court<sup>(2)</sup> to the High Court of Australia.

Notice of  
appeal.

4. When a party is desirous of appealing from the decision or judgment of the Central Court<sup>(2)</sup> he shall file in the Central Court<sup>(2)</sup> a notice of appeal within seven days after the decision or judgment has been given.

The notice of appeal shall be in writing and shall state the grounds on which the party appeals and shall be signed by the appellant his counsel attorney or agent. The notice shall be filed in the Central Court<sup>(2)</sup> by handing or posting it in duplicate to the Registrar who shall as soon as is practicable serve a copy on the other party by handing or posting it to him.

Form of  
appeal.

5. The appeal shall be in the form of a case agreed upon by both parties or their counsel attorneys or agents; and if they cannot agree the Chief Judicial Officer<sup>(4)</sup> shall upon application being made to him settle the case and sign it.

Case to be  
served on  
opposite party.

6. Every case on appeal shall unless the Chief Judicial Officer<sup>(4)</sup> otherwise orders be handed or posted by the appellant to the opposite party within twenty-one days or such other time as may be prescribed by Regulation after the day on which the decision or judgment appealed from was given.

Unless such party shall within two months or such other time as may be prescribed by regulation after the case was handed or posted to him notify to the appellant his disapproval thereof he shall be taken to have approved and agreed to such case.

Procedure  
where parties  
agree on case.

7. Whenever both parties have agreed to a case the case shall be transmitted to the Chief Judicial Officer<sup>(4)</sup> and he shall within a reasonable time after the receipt thereof sign and seal the same if he approves of the case as giving a correct statement of the facts and then transmit it so signed and sealed to the appellant. If he does not approve he may return it for amendment.

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(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(4) See Section 4 of the *Central Court Ordinance*, 1925.

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8. In the event of the party upon whom a case on appeal is served disagreeing therefrom he shall notify on the paper on which the case is written or on another paper to be annexed by him thereto the fact of his dissent and his reasons for the same. The case shall then be returned to the appellant who shall within seven days or such other time as shall be prescribed from the receipt thereof transmit it to the Chief Judicial Officer<sup>(4)</sup> and the Chief Judicial Officer<sup>(4)</sup> shall within a reasonable time from the receipt of the case settle the same without the intervention of either party and after signing and sealing the case so settled by him shall transmit the same to the High Court.

Procedure where they disagree.

9. Each party may attach to the case any legal argument which he wishes to submit and on the hearing of the appeal it shall not be necessary for the parties to appear personally or by counsel.

Legal argument may be attached to the case; parties need not appear on appeal.

10. The Chief Judicial Officer<sup>(4)</sup> may make such rules<sup>(5)</sup> as may be necessary for carrying out this Ordinance and may fix a scale of fees.<sup>(6)</sup> On publication in the *Gazette* they shall have the force of law.

Regulations.

11. In any case where the exact observance of the provisions of this Ordinance or of the Regulations in matters of procedure appears likely to cause injustice the Chief Judicial Officer<sup>(4)</sup> may upon application made to him vary or relax them in any way he thinks fit.

Procedure may be varied if necessary.

12. This Ordinance may be cited as *The Appeal Ordinance of 1909.*<sup>(1)</sup>

Short title.

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(1) See footnote (1) printed on p. 567.

(4) See Section 4 of the *Central Court Ordinance, 1925.*

(5) No rules have been made.

(6) No scale of fees has been published in *Papua Govt. Gaz.*

COURTS—