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## **The Origin Of The Jersey Court Of Appeal**

### **Terry Sowden QC**

From time to time reference is made to the “Channel Islands Court of Appeal”. That court did once exist, but its life was short and inglorious. Its history goes back to 1946.

The story starts when, by resolutions dated January 23rd, 1946, the States of Guernsey adopted proposals relating to the reform of the States of Guernsey, which resolutions were transmitted in order that the pleasure of His Majesty might be ascertained on the reforms therein envisaged.

By Act of the States of Jersey dated January 31st, 1946, when the States of Jersey were considering the question of their reforms, the Assembly asked the Royal Court to consider its own reform.

The Report of the Royal Court in relation to judicial reform was presented to the States by the Bailiff and lodged *au Greffe* on January 31st, 1946<sup>[1]</sup>.

By an Act dated March 14th, 1946, the States of Jersey charged their President (the Bailiff) to transmit to the Lieutenant Governor an Act and Report of the States relating to reform of the States of Jersey, in order that the pleasure of His Majesty might be ascertained on the reforms therein envisaged.

A supplementary report of the Royal Court was presented to the States by the Bailiff on April 2nd, 1946<sup>[2]</sup>.

By Order in Council dated June 4th, 1946, His Majesty appointed a Committee to inquire into the proposed reforms in the constitution and procedure of the States of Jersey and of Guernsey and into proposed judicial reform. The Committee of the Privy Council so appointed to advise His Majesty comprised the Rt. Hon. James Chuter Ede, The Home Secretary, (chairman), the Viscount Samuel, the Lord Ammon, the Rt. Hon. Richard Austen Butler and the Rt. Hon. Sir John Beaumont.

The Committee stayed in Jersey between September 15th and September 21st, and in Guernsey from September 21st to September 29th, 1946, and received evidence.

Sir Alexander Coutanche, Bailiff of Jersey, gave the following evidence to the Committee:-

“If I might just return from one moment to the criminal side.....so far as the Superior Number is concerned, where there is the unsatisfactory factor of an appeal to the same body as has determined the matter in first instance, or to a body which can contain those persons who have assisted in the formulation of the first judgment, it is proposed to make a drastic change.

.....there have been consultations between this Bailiwick and the Bailiwick of Guernsey, and the proposals for the constitution of that Channel Islands Court, which are before your Lordships, are approved in Guernsey too.

.....I should like to stress, if I may, what appears to me to be a very important factor in this new proposal, and that is that for the first time in the history of this Island – I speak not of the others – there will be an appeal in criminal matters. At the present moment, as your Lordships know, there is no right of appeal from a decision of the Royal Court of Jersey in a criminal matter; anyone who feels himself aggrieved by a sentence pronounced by this Court or by the finding of a jury, any person who is critical of the conduct of the proceedings or of the summing-up of the presiding judge, may apply to Your Lordships' Board for special leave to appeal. There is no appeal as of right from this Court, and, speaking as the person who for the last 11 years has been charged with the duty of administering the criminal justice in this place, I yearn for the day when there will be a Court of Appeal readily accessible to rectify such errors as may occur.”[\[3\]](#)

The Bailiff was later questioned by the chairman on the procedure following committals to the Royal Court from the Police Court.[\[4\]](#)

“A...the papers are then sent to the Attorney, who drafts an indictment and presents the prisoner at this Bar. The prisoner then says ‘Guilty’ or ‘Not Guilty’. If he says ‘Guilty’, he is dealt with by the Court right away, unless he is sent to the Superior Number to receive sentence. If he pleads ‘Not Guilty’, then either he is sent to Assizes to be tried by a jury or he is tried by the Inferior Number without a jury as his own request.

Q. And there is no appeal at all? – A. There is no appeal at all.

Q. Because the Judicial Committee of the Privy Council is not really a Court of Criminal Appeal? – we have said that over and over again; we only interfere if there has been some gross miscarriage of justice.

A. It is for that reason, My Lord, that I venture to think this Channel Islands Court of Appeal is very necessary in order that the prisoner shall have ready access to a Court of Appeal and not to a Body which only grants special leave to appeal if there has been a miscarriage of justice."

The Report of the Committee of the Privy Council was presented by the Secretary of State for the Home Department to Parliament by command of His Majesty in March, 1947.[\[5\]](#)

At page 37 of its report the Committee stated:-

“So far as criminal cases are concerned there is an appeal to the Judicial Committee of the Privy Council by Special Leave of the Committee. The Judicial Committee cannot, however, be regarded as a general appeal court to which access is readily available. In this connection the Lords of the Judicial Committee observed in their judgment of April 6th, 1936, in *Renouf v Attorney General of Jersey*[\[6\]](#):-

‘In the case of misdirection, as in any other case of an alleged failure in the proper trial of a criminal case, the Board give advice to His Majesty to intervene only if there is shown to be such a violation of the principles of justice that grave and substantial injustice has been done. The Board has repeatedly declined to act as a general Court of Appeal.’

*Inter alia*, at page 39 of its report the Committee recommended:-

“1. That a joint Court of Appeal be constituted for the whole of the Channel Islands to hear civil and criminal cases, with right of appeal therefrom in civil cases to the Judicial Committee of the Privy Council under rules to be framed.”

By Order in Council dated March 17th, 1947, it was ordered that the said Report be transmitted to be registered and published in the Islands of Jersey and Guernsey, which Order was transmitted to the Bailiff through the usual channels.

On March 27th, 1947, the Bailiff presented the Order in Council, together with the Report, to the States. The States thereupon requested the Bailiff to present the said documents, in original, to the Royal Court in order that the Order in Council might be registered and published in the customary manner and that the said Report and accompanying correspondence might be lodged to form part of the records of the Island.[\[7\]](#)

Thereafter, the Bailiffs and Law Officers of the two Islands collaborated in preparing a scheme substantially carrying into effect the recommendations contained in the Report forming part of the Order in Council. On September 22nd, 1948, the scheme was approved by the States of Guernsey and a petition was presented praying that His Majesty in Council might direct that the same should have the force of law in the Bailiwick of Guernsey.

An Order in Council, embracing the scheme and constituting the Channel Islands Court of Appeal, entitled “Court of Appeal (Channel Islands) Order, 1949” was accordingly made on May 31st, 1949 and was registered in Guernsey on June 18th, 1949, and in Jersey on June 24th, 1949. It appears that the Order in Council was intended to have the force of law in Guernsey but curiously not in Jersey. It seems that it was registered in Jersey more for the information of the inhabitants of Jersey rather than that they “should govern themselves accordingly”.

There followed some differences of opinion between the States of Jersey and the States of Guernsey concerning the emoluments of the Ordinary Judges of the Court of Appeal, but these differences were reconciled and on October 4th, 1951, His Majesty approved an Act of the States of Guernsey concerning such emoluments.

As a result of further consideration, it became apparent that arrangements in connection with the Channel Islands Court of Appeal which would be convenient in the one Bailiwick, would not be convenient in the other.

The matter was discussed with Sir Frank Newsam and Sir Austin Strutt of the Home Office, together with delegations of the Royal Court and States of the respective Islands. Eventually it was agreed that there should be separate Courts of Appeal for each of the bailiwicks and that draft legislation in this connection should be submitted for the consideration of the Home Office by Jersey and Guernsey contemporaneously[\[8\]](#).

In so far as Jersey is concerned, this led, in the fullness of time, to the enactment of the Court of Appeal (Jersey) Law, 1961, and to the revocation of the Court of Appeal (Channel Islands) Order, 1949, which revocation took place by Order in Council dated May 26th, 1961.

In the absence of this note it is difficult for the casual reader of Tome 1961-62 of the Jersey *Recueil des Lois* to fathom why it appears that the Channel Islands Court of Appeal never sat to determine appeals from Jersey.

For the sake of completeness the Court of Appeal (Jersey) Law, 1961, was registered in Jersey on June 17th, 1961.

*Terry Sowden QC was Her Majesty's Solicitor General between 1986 and 1993. From 1993 until his retirement in July 1999 he was Juge d'Instruction or Magistrate.*

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[\[1\]](#) 1946 *Rapports et Correspondance* page 10

[\[2\]](#) 1946 *Rapports et Correspondance* page 15

[\[3\]](#) *Minutes of evidence of Privy Council Committee on Channel Islands' reform; published 1946, pages 86 - 88*

[\[4\]](#) *Ibid*, pages 90 -91

[\[5\]](#) HMSO, Cmnd 7074

[\[6\]](#) [1936] AC 445

[\[7\]](#) 1947 *Rapports et Correspondance* page 5

[\[8\]](#) *See June 30th, 1955, Act of the Special Committee constituted by the States of Jersey dated December 13th, 1948.*