

Removal of Convictions and Orders on *Certiorari* to the Court of Appeal at once.
Proposed clause.

IV. REMOVAL OF CONVICTIONS AND ORDERS TO COURT OF APPEAL.

72a. With respect to convictions or orders of a Penal character which are removable by *certiorari* it might be provided as follows.

5. "Whenever the Supreme Court grants a *certiorari* to bring up a conviction or order of a Penal nature from an inferior Court, or in any case of Appeal on such conviction or order, such Supreme Court may, if the parties interested shall so agree, order that such conviction or order shall be removed directly into the Court of Appeal, which shall thereupon have such authority to hear and determine the same, and give such judgment thereon as the Supreme Court would have had, if it had been removed into it."

6. "Any party aggrieved by the judgment of the Supreme Court on any conviction or order removed into such Court by *certiorari*, or on an appeal against any such order, may appeal to the Court of Appeal, and the same proceedings shall be taken for the transmission of the documents into such last mentioned Court, and for the hearing and determining of such Appeal, as in civil cases, and the said Court of Appeal shall have power to give such judgment upon such appeal as the said Supreme Court might have done, besides judgment for the costs of the Appeal."

V. CASES RESERVED BY THE JUDGES.

Appeal from Judge of Supreme Court on Conviction or Order, removed to the Court of Appeal.

Whether District Court Judges should have power to reserve questions directly for Court of Appeal.

73. We now come to consider the proceedings necessary for enabling Judges to reserve questions of law arising on the trial of criminal cases for the consideration of the Court of Appeal.

The first matter to be determined under this head, is whether this power should be confined to the Judges of the Supreme Court, or should be extended also to the Judges of the District Courts. According to the existing law the Judges of the District Courts may reserve any point of law arising in a criminal case, and take the opinion of the Supreme Court upon it; but it seems doubtful from the wording of the section of "The District Courts Act, 1858," which confers such power on the Judge (sec. 152) whether the "opinion" to be expressed by the Supreme Court is of such a kind as might properly be appealed from. We think that means ought to be afforded for obtaining the decision of the Court of Appeal in such case, and we would therefore suggest that on any point of law being reserved by a Judge of a District Court for the opinion of the Supreme Court, the Supreme Court may reserve it for the consideration of the Court above, as if it had arisen in the Supreme Court itself.

Mode of reserving cases.

74. The mode of reserving questions in criminal cases by the Judges of the Supreme Court may be similar to that which has been already suggested for civil cases (par. 38); with necessary additions, which can be conveniently taken from the English Statute, 11 & 12 Vic., c. 78, under which the Court for crown cases reserved was established.

Proposed clauses.

Clauses to the following effect might be introduced into the Bill:—

Power to Judge of Supreme Court to reserve cases.

1. "When any person shall have been convicted of any treason, felony, or misdemeanour before any Court presided over by a Judge of the Supreme Court, such Judge may, in his discretion, reserve any question of law which shall have arisen on the trial, for the consideration of the Court of Appeal, and thereupon he shall have authority to respite execution of the judgment on such conviction, or postpone the judgment until such question shall have been considered and decided, as he may think fit; and in either case the Court in its discretion shall commit the person convicted to prison, or shall take a recognizance of bail with one or two sufficient sureties, and in such sum as the Court shall think fit, conditioned to appear at such time as the Court shall direct, and receive judgment, or to render himself in execution, as the case may be."

Bail.

2. "The provisions contained in sections [] for the statement, amendment and hearing of a case when a Judge reserves a question of law in civil actions shall be applied, so far as they are applicable, to criminal cases."

Mode of stating case.

3. "The Court of Appeal shall have full power and authority to hear and finally determine every such question of law as last mentioned; and thereupon to reverse, affirm or amend any judgment which shall have been given on the Indictment, information or inquisition on the trial whereof such question has arisen, or to avoid any such judgment, and to order an entry to be made on the record that in the judgment of the said Court of Appeal the party convicted ought not to have been convicted, or to arrest the judgment, or to order judgment to be given thereon at the next sittings of the Court in which the case was tried, if no judgment shall have been given before that time, as it shall be advised, or to make such other order as justice may require; and such judgment and order, if any, of the said Court of Appeal shall be certified under the hand of the presiding Judge to the Registrar of the Court in which the case was tried, who shall enter the same on the record in proper form; and a certificate of such entry under the hand of such Registrar shall be delivered or transmitted by him to the gaoler in whose custody the person convicted shall be, if he has not been admitted to bail, or to whose custody he ought to be committed if the conviction should be affirmed; and if the judgment shall have been reversed, avoided, or arrested, such certificate shall be a sufficient warrant to the said gaoler to discharge the person so convicted, if in custody, out of his custody; or if the person convicted shall have been admitted to bail, the Court which shall have so admitted him, shall, on the production of such certificate, vacate the recognizances of bail; and if the judgment shall have been affirmed, or so altered that execution is to follow thereon against the party convicted, such certificate shall be sufficient warrant to such gaoler as aforesaid to execute and carry out such judgment so affirmed or so altered as aforesaid; and if the Court of Appeal shall direct

Power of Court of Appeal and proceedings thereon.