*Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition for leave to Appeal in the case of Philip Esnouf* v. *Her Majesty's Attorney General for the Island of Jersey, from the Full Court of Appeal of the Royal Court of the Island of Jersey; delivered March 3rd*, 1883.

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Present:

LORD BLACKBURN.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THIS is a petition for leave to appeal from the island of Jersey. By an Order in Council made as long ago as the reign of Queen Elizabeth—the 13th May 1572—it was directed "That no appeal in any cause or matter, great or "small, be permitted or allowed before the same "matter be fully examined and ended by defini- "tive sentence or other judgment having the "force or effect of a sentence definitive." That Order in Council of Queen Elizabeth was subsequently re-enacted, leaving out, however, the last line and a half, and it stands thus: "That "no appeal in any cause or matter, great or "small, be permitted or allowed before the same "matter be fully examined and ended by defini- "tive sentence"—leaving out the words "or "other judgment having the force or effect of a "sentence definitive." Their Lordships, however, do not think that the leaving out of those words really makes any difference.

Now the first question that arises in the case of an appeal from Jersey, before we consider

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whether the appeal is one which it would be proper to grant, is this, Has the time for granting the appeal come? Has it reached the position of being matter decided by a definitive sentence? Of course, whether an appeal should be granted at all in a criminal matter is quite a different question. The question whether leave to appeal should be granted must depend on the question whether the time has come for it, and whether the matter has been disposed of by a definitive sentence. It appears that the Criminal Court in Jersey, which would have general jurisdiction to try criminal matters, has in this case had the matter brought before them by what would be equivalent or analogous to an information of the Attorney General in this country accusing the Defendant of what is called the grave offence of having been guilty of libel. The Court, acting upon that, have caused him to be arrested and brought before them and held to bail. The first thing he has complained of is this. He maintained that the proceeding was altogether obsolete, as he said, and as his Counsel repeatedly asserted, and moreover had been taken away by the Act of 1863, and that consequently he was not compelled to plead to it at all. The Court, of course, are capable of making a mistake; but they rightly or wrongly said that he must plead, that he was brought before them in such a way that according to the laws of Jersey he must plead, and he did plead. He pleaded Not guilty. The first point which he wishes to appeal against is this: he says that they ought not to have directed him to plead. Their Lordships must, in the first instance, see whether it can be said that the matter has ended in a definitive sentence. It seems pretty clear that the question whether or not he was guilty of this grave offence by the laws of Jersey was not ended by a definitive sentence, it was put in train to be tried by causing him to plead, but it

has not gone further, and it seems therefore impossible to say that there was an end of the matter by a definitive sentence.

It seems to be agreed on all hands that if this had been a matter which had proceeded by arrest and bringing him before a stipendiary magistrate who had committed him for trial, then, *primâ facie* at least, the case would be tried by a jury. It seems to be agreed, or at all events asserted, that by the proceeding of information before the Court it is not so; and that the old practice would be, *primâ facie* at least, that the trial should be, not before a jury, but before the Judges. On appeal, the High Court held that both the decisions of the Lower Court were right in holding that he ought to be made to plead, and further that having pleaded Not guilty he should be tried without a jury. The Court may have been wrong in their decision, but *primâ facie*, and until one sees the contrary, they are to be supposed to be right. The question comes to be this, Does that amount to a definitive sentence? Their Lordships do not think it does. There is a great deal more plausibility in this contention than there was in the other. It may very well be that in many offences, and perhaps in the case of libel more than in another case, a man may be convicted before a Judge who tries the case who would not be convicted before a jury. Their Lordships do not think he ought to be convicted before the one and not before the other, but it might make a considerable difference in the probability of his being convicted, and, therefore, it may be said that sending to the one tribunal instead of to the other, to decide a question of mixed fact and law, whether he was guilty or not guilty, would make a great difference in the final result; still their Lordships think they cannot say that that is a definitive sentence within the meaning

of the words as they understand them to be used in this Order in Council.

It seems that the result is this, that the matter which is to be decided, viz., his guilt or innocence of a crime punishable by the laws of Jersey, is put in train to be decided by the decision of a Court sitting without a jury, instead of the decision of a jury; but in neither case is it finally decided until the verdict of the Court is given on the question which is thus remitted to them. Then the matter will have been finally decided; and then, and not till then, supposing there is no other objection to it, would be the time at which an appeal might be granted.

Then would arise the question of whether or not in criminal appeals at large, and in particular in Jersey, after the matters that have been stated before us, an appeal should be granted at all in a criminal case. As to that, their Lordships think that it would be premature to give any absolute decision. There are strong grounds for saying it would not be right to grant an appeal in a criminal case in Jersey, but at the same time their Lordships bear in mind what Baron Parke said at the end of Ames' case. After saying that the law as to criminal appeals in Jersey had been brought to their notice, he says: "We are "disposed to say that we ought not to have "recommended Her Majesty to have allowed the "appeal, but we are not disposed to say that we "have not the power so to have done, as Her "Majesty is the head of justice, and we are "sitting here, not merely as a judicial body, but "as Privy Councillors, and the matter of the "former petition was referred to us generally. "But we are fully aware of the difficulties which "we should entail on ourselves if we were to "grant appeals in matters of criminal prosecu-"tions," and then he says that in that particular case they certainly ought not to have done it.

Their Lordships now repeat that cautious language. We do not say that in no case whatever, even in an appeal from Jersey in a criminal matter, would it be the duty of this Board to advise Her Majesty to grant an appeal; we do not say under what circumstances it might be advisable so to advise Her Majesty, but we do say, repeating the language of Baron Parke used many years ago, that it should be done very cautiously, and after great consideration. We are by no means to be taken to say that we should grant it in this case if the party now petitioning were convicted and he were to apply for leave to appeal. At the same time it is not to be taken as the decision of their Lordships that they would not grant leave if there was a sufficient case put before them. Again it is not to be supposed that their Lordships say, notwithstanding the rules that have been laid down, that leave is only to be granted with reference to a definitive matter, that never would Her Majesty be advised to grant an appeal under any circumstances, but that we must wait for the final disposal of the case. We do not say that never would it be done. That would be rash. All their Lordships do say is that it certainly should not be done in such a case as the present.

Their Lordships will accordingly report to Her Majesty that this petition should be dismissed.