

Necessity for *fiat* of Attorney-General.

80. We meet, however, with a difficulty at the very threshold. The writ of Error in England does not seem, strictly, to be grantable in treason and felony *ex debito justitiæ*, but only *ex gratiâ*; nor is it granted in misdemeanours as a matter of course, but in all cases under the *fiat* of the Attorney-General, on probable ground being shown, and on the certificate of Counsel; and it might be suggested that the abolition of the Writ of Error in criminal cases, and the granting of power to parties to bring Error without the *fiat* of an Officer of the Crown might imply a diminution or infraction of the Prerogative of the Crown, within the Royal instructions of 9th February, 1855, s. 7, which might prevent your Excellency's Government from proposing a Bill containing a provision to that effect, or oblige your Excellency to reserve the Act for the signification of Her Majesty's pleasure.

We doubt whether this suggestion would be found, on consideration, to present any very formidable objection. The necessity for the Attorney-General's *fiat* in England probably acts only as a wholesome check upon frivolous proceedings in Error, but were the authority of the Attorney-General of New Zealand indispensable in all cases here, much more delay and inconvenience might be engendered than seems desirable.

Attorney-General or Commissioner may grant *fiat* on proceedings in Error.

81. If a general system of public prosecution were adopted, with local Crown prosecutors under the control of the Attorney-General, that officer might depute his authority in the matter to the local prosecutors, who might be empowered or directed to grant leave in all cases where any probable cause should be shewn for the commencement of proceedings in Error; the decision of the local prosecutors being liable to review by the Attorney-General.

Necessary provisions.

82. The provisions to be introduced into the Bill for the conduct of the proceedings may be taken with due alterations and modifications from the clauses proposed for Error in civil cases, and from the clauses regulating the hearing and determining, and the giving of judgment, and carrying out execution, in cases where questions of law have been reserved by the Judges.

Proposed clauses.

For what Error will lie.

83. It might first be provided—

1. "Error will lie to the Court of Appeal upon the judgment of the Supreme Court "or of any inferior Court, on any indictment, inquisition, or information, for any treason, "felony, or misdemeanour, for or in respect of any matter, thing, or ground of Error for "which Error would have lain in England on the 14th January, A.D. 1840."

Power of Court of Appeal.

2. "The Court of Appeal shall have all such power, authority and jurisdiction in "respect of such proceedings in Error as last aforesaid, as any Court of Error had in "England on the said 14th January, A.D. 1840."

Obtaining *fiat* of Attorney-General.

3. "The party wishing to commence such proceedings in Error as last aforesaid, "shall obtain from the Attorney-General, or any person thereunto authorised by him, a "*fiat* granting leave to such person to commence proceedings in Error, upon a statement "of some grounds of Error, and the certificate of Counsel that he is of opinion that there "is a good ground for commencing such proceedings."

Writ not necessary.

4. "No writ of Error shall be necessary to commence proceedings in Error."

Then the proceedings might go on by delivery of a memorandum and grounds of Error, as in civil cases (par. 47).

Delivery of *fiat*. Memorandum and grounds.

5. "The party alleging Error may deliver to the Registrar of the Supreme Court "the *fiat* last mentioned, and also a memorandum in writing alleging that there is Error in "law in the record and proceedings, and stating the grounds of Error to be relied on; "whereupon the said Registrar shall file such *fiat* and such memorandum, and deliver to "the party lodging the same a note of the receipt thereof; and a copy of such note of the "receipt of the *fiat* and memorandum shall within [] days of the delivery thereof to "the Registrar, be served by the party alleging Error upon the prosecutor."

Provisions for misdemeanant's bail during proceedings in Error.

84. According to the law of England since 1845, persons found guilty of misdemeanour may be let out on bail during the pendency of proceedings in Error, and in case of the affirmance of the judgment, the period for which they may have been imprisoned before the proceedings in Error commenced is to be taken into consideration in reckoning the time of punishment. These provisions are made by the 8th and 9th Vict., c. 68, the 1st, 2nd, 3rd and 4th sections of which we would recommend *mutatis mutandis* to be introduced into the Bill.

8 & 9 Vic. c. 68, secs. 1, 2, 3, and 4.

Joinder in Error.

85. The provision for joinder in Error contained in proposed section 8, par. 51, page 18, may be modified for criminal cases, the portion relating to pleas of a bar or release of Error being omitted as inapplicable to criminal cases.

Setting down case and sending documents.

86. With respect to setting down the case for hearing in the Court of Appeal, the transmission of documents, the argument and judgment, a slight modification of proposed section 12, par. 54, page 19, will probably be sufficient.

Hearing and Judgment.

87. With respect to the hearing and judgment, it will probably be sufficient to provide that the Court shall have the same powers as are contained in "proposed section" 12 ante par. 54, page 19, in cases of questions reserved by the Judges.

11 & 12 Vic. c. 78, s. 15. Remitting case to Court below for judgment after reversal.

88. The provision of 11 and 12 Vic., c. 78, s. 15, for enabling the Court of Error to remit a case to the Court below for judgment, when the judgment has been reversed on Error, may also be introduced with such slight change as will be necessary.