

be deducted all disbursements and expenses wholly and exclusively incurred by such person in acquiring the income—

(ii) where the income arises from any other source during such time as is provided for in section 6 of this Law, and such disbursements and expenses may include:

(e) any allowances made in accordance with the provisions of the Second Schedule to the Law; ...

(h) the amount of any loss sustained in a trade, profession or business carried on in the Island or in the ownership or occupation of any land situate in the Island—

(i) which, if it had been profit, would have been assessable under this Law;

(ii) during the six years preceding the year of assessment;

Provided that the total amount of such loss which was admitted for those years shall be reduced by any amount which has been claimed under the immediately preceding sub-paragraph or allowed against the income of any previous year or in the year of assessment; ...

It was agreed by the appellant and the respondent that the word "may" in s. 8 means "must". We are also of the view that the word "may" is used in a mandatory sense and means "must". (See *Caribbean Sales, Ltd. v. Commissioner of Income Tax* (1).)

Since the word "may" in s. 8 means "must" then it follows that the appellant is entitled to claim all the deductions allowed under s. 8. The section is silent as to the order, if any, in which the deductions are to be made. The learned judge of the Revenue Court was of the view that s. 47 of the Law assisted him in coming to the conclusion that there was a discretion in the Commissioner of Income Tax to dictate the order in which the deductions are to be made.

Section 47 of the Law deals with assessments including power of assessment given to the Commissioner of Income Tax. We have considered s. 47 and without setting out what this section states, we cannot see how this section can be said to give the respondent any discretion to dictate the order in which the deductions are to be made. We are, therefore, of the view that s. 47 has no relevance in the interpretation of s. 8.

The position in England offers no assistance. The United Kingdom Income Tax Act 1952 makes provisions for previous year losses but not as deductions in ascertaining the chargeable income as is the case under s. 8 of the Jamaica Income Tax Law, 1954. (See s. 341 and s. 342 of the United Kingdom Income Tax Act 1952.)

In *Canadian Eagle Oil Co., Ltd. v. R.* (2) ([1946] A.C. at p. 140). VISCOUNT SIMON, L.C., said:

"In the words of the late ROWLATT, J. (In *Cape Brandy Syndicate v. Inland Revenue Commissioners* (3)) whose outstanding knowledge of this subject was coupled with a happy conciseness of phrase, 'in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.'"

Looking fairly at the language used in s. 8 of the Law, we are of the opinion that since the appellant is entitled to claim all or any of the deductions allowed under s. 8 of the Law, the question of order or priority of deductions does not arise. Further, we are of the view that the Law gives no discretion to the respondent to dictate the order in which the deductions are to be made. To accept the computation of the Commissioner, in the absence of any express statutory provision so to do, would be to deprive the tax payer of an undoubted benefit which the statute has given him. We, therefore, hold that the appellant is entitled to the deductions as set out in his computation.

For these reasons we allowed the appeal and made the Order as above stated.

Appeal allowed.

CHRYSLER (U.K.), LTD. v. ROBINSON & CO., LTD.

[COURT OF APPEAL (Watkins, J.A., Melville, Rowe, J.J.A. (Ag.)),
March 14, 15, 16, 17, April 1, 1977]

Power of Attorney—Recording under Conveyancing Act not effected—Validity.

On August 25, 1969, a representative of Chrysler (U.K.), Ltd. left at the office of Robinson & Co., Ltd., a letter purporting to terminate a distributorship agreement between the parties. The letter was signed in purported exercise of powers under a power of attorney dated July 1, 1969. Section 51 of the Conveyancing Act provides that "an instrument creating a power of attorney must be duly proved and recorded in the Record Office". The power of attorney was not so recorded.

Held: (i) that the Conveyancing Act by definition applies only to instruments made by deed;

(ii) that the power of attorney could be validly exercised other than by deed and therefore was not such a power as is required to be recorded under s. 51 of the Conveyancing Act;

(iii) that where a power of attorney to which s. 51 applies has not been recorded the persons permitted to refuse to recognise it are those whose rights flow from or arise out of the exercise of that power.

Cases referred to:

(1) *Hunter v. Parker* (1840), 7 M. & W. 322.

(2) *Re Tahiti Cotton Co, ex parte Sargent* (1874), L.R. 17 Eq. 273.

(3) *Windsor Refrigerator Co., Ltd. v. Branch Nominees, Ltd.*, [1961] 1 All E.R. 277; [1961] Ch. 88; [1961] Ch. 375; [1961] 2 W.L.R. 196.

Richard Mahfood, Q.C., and David Muirhead, Q.C., for the appellant.

H. D. Carberry and R. N. A. Henriques for the respondent.

ROWE, J.A. (Ag.): The appellant, a company registered in England, manufactures and distributes throughout the world motor vehicles and parts therefor. In 1966, Rootes Motors Overseas, Ltd. was a wholly owned subsidiary of Rootes Motors, Ltd. and in 1970 this latter company changed its name to Chrysler (U.K.), Ltd. Under its previous name of Rootes Motors Overseas, Ltd., the appellant entered into an agreement with the respondent dated September 1, 1966, whereby the respondent was appointed exclusive distributor of the appellant's vehicles in Jamaica and the non-exclusive distributor for service parts for the appellant's vehicles. Provisions were made in that agreement whereby either party could terminate that agreement by notice in writing in conformity with certain special conditions. On August 25, 1969, a representative of the appellant left at the office of the respondent a letter purporting to terminate the distributorship agreement. This letter was signed:

"Yours faithfully
Chrysler International S.A. on behalf
of Rootes Motors Limited. Under Power of
Attorney dated July 1, 1968."

This power of attorney was not recorded in the Record Office of Jamaica.

The respondent brought an action against the appellant claiming damages, *inter alia*, for breach of the distributorship agreement. It was agreed between the appellant and the respondent that certain points of law arose in the action which could conveniently be disposed of as preliminary points of law under s. 236 of the Civil Procedure Code, prior to

the trial of the action. Neither side took the trouble to formulate these points of law with any precision. Nevertheless, the Master ordered that the points of law raised in some six paragraphs of the statement of claim be tried as preliminary points of law.

At the hearing of the preliminary points before ALLEN, J.(Ag.) two broad questions of law were argued:

[His Lordship then mentioned the first question in respect of which there was no appeal.]

(b) Assuming that the notice was in fact signed by an existing legal person or by persons authorised to sign on behalf of Chrysler International S.A. and that Chrysler International S.A. in fact had a power of attorney from the defendant, is the power of attorney effective in Jamaica if not having been recorded in accordance with s. 51 of the Conveyancing Law, Cap. 73, or proved in accordance with the provisions of the Probate of Deeds Law, Cap. 308? The learned judge held that the power of attorney must comply with the formal requirements of the law of Jamaica to be complete and decided the question in favour of the respondent.

By its notice of appeal, the appellant asks that this court order, "that the notice of termination of the agreement dated 4th August, 1969 was a valid and effective notice", After some argument Mr. Mahfood, conceded that having due regard to the preliminary points of law submitted for the court's determination, the very farthest the court could go in his favour would be to determine that the notice of termination was not invalid by virtue of the power of attorney not having been recorded.

Two broad questions arise for determination on this appeal. Firstly, whether s. 51 of the Conveyancing Act applies to all powers of attorney or whether it is limited to powers of attorney involving the execution of conveyances; and secondly, assuming that s. 51 does apply to all powers of attorney, what is the consequence of a failure to record the power.

It is convenient to set out the terms of s. 51 of the Conveyancing Act:

"An instrument creating a power of attorney must be duly proved and recorded in the Record Office. The recording of such instrument shall be necessary for its completion and no person whose rights depend upon an exercise of the power shall be required to recognize the existence of such power until the same is so duly recorded."

The present s. 51 of the Conveyancing Act found its way into the laws of Jamaica as s. 40 of the Conveyancing Act of 1889. The researches of counsel have shown no provision of exact parallel in English or Australian law and one is led to conclude that the Jamaican legislators boldly adopted a provision to suit the particular needs of Jamaica.

To arrive at its true construction s. 51 must be read as a whole and in its context as a section of the Conveyancing Act. A prime purpose of the Conveyancing Act was to simplify instruments of conveyance by implying a bundle of rights, privileges, and obligations which hitherto had to be laboriously reproduced in each conveyance. Section 10 of the Act deals with implied covenants for title and is of the first importance to conveyancers.

These implied covenants provide in summary that the vendor has a good right to convey the whole property and interest agreed to be sold; that the purchaser shall have quiet enjoyment of the land; that the land shall be enjoyed free from incumbrances other than those subject to which the conveyance is expressly made; and that the vendor shall execute such assurances and do such things as are necessary to cure any defect in the conveyance.

With what description of property does the Conveyancing Act deal? Property is defined in s. 3 of the Act to mean:

"Property unless a contrary intention appears, included real and personal property, and any estate or interest in any property, real or personal, and any debt, and anything in action, and any other right or interest in the nature of property, whether in possession or not."

Any reading of this definition quickly reveals its comprehensive nature and renders it impossible to argue that choses in action or moveables may not be transferred under the Conveyancing Act.

The term "conveyance" is defined as follows:

"'Conveyance' unless a contrary intention appears, includes assignment, appointment, lease, settlement and any other assurance, and covenant to surrender, made by deed (italics mine) on a sale, mortgage, demise or settlement, of any property, or on any other dealing with or for any property, and convey, unless a contrary intention appears, has a meaning corresponding with that of Conveyance."

The argument, attractively put forward by Mr. Mahfood, is that the Conveyancing Act is wholly concerned with transactions in property which for their efficacy in law ought to be made by or to be contained in a deed. He argued further that where it is not legally necessary to pass rights and/or obligations in property by having recourse to a deed, the provisions of the Conveyancing Law are irrelevant. He says that in the instant case, the agent was attempting to terminate a distributorship agreement in respect of which a deed is not made necessary by the agreement itself or by operation of the law of contract.

When one speaks of a power of attorney one is in a strict sense referring to a formal grant of a power by deed or a formal grant of a power contained in a deed: BOWSTEAD ON AGENCY (13th edn.), p. 66. The relationship of agency may be created by word of mouth, by instrument in writing, by conduct of the parties, from necessity, and by deed. Where it is intended to confer power upon an agent to execute a deed, and only in such a case, is it legally necessary for the appointment of the agent to be by deed.

In the early stages of his argument Mr. Mahfood endeavoured to show that it does not matter so far as the appellant's case is concerned whether the power of attorney given to the appellant's agent is effective as a deed, as the appellant is still entitled to rely on the document as an instrument in writing. In support of this proposition he relied on three cases: *Hunter v. Parker* (1); *Re Tahiti Cotton Co, ex parte Sargent* (2); *Windsor Refrigerator Co., Ltd. v. Branch Nominees, Ltd.* (3). In all those cases, a *prima facie* deed failed to have efficacy as such, either because the agent executing the deed had no authority by deed so to act, or one or other of the formalities of signing, sealing and delivering was not complied with. In those cases, the common law rule as to the formalities requisite for the completion of a deed were not affected by any statutory provision similar to s. 51 of the Conveyancing Act rendering an otherwise good deed incomplete, for want of recording. In the end Mr. Mahfood placed no reliance on this submission, conceding that s. 51 cannot be bypassed or driven through. His path to success, if at all, lies in a favourable construction of s. 51.

The legislature has made provision for the recording of deeds, which by definition includes powers of attorney, in a number of statutes. An Act was passed in 1681 entitled—The Record of Deeds, Wills and Letters Patent Act, which provided that a deed made in due form, properly proved and registered at length in the Record Office shall be valid to pass certain property without the old formalities of handing over, e.g. livery, seisin, or attornment. A further provision of that Act is to the effect that after 1681 a deed not acknowledged or proved and recorded shall not be effective to pass away any freehold or inheritance or to grant a lease for more than three years.

The Probate of Deeds Act 1863 defines "deed" to include power or letter of attorney, and provides the methods of proving the same wherever executed. The present statute which prescribes the process by which a deed, including a power of attorney, may be recorded is the Record Office Act, first passed in 1879.

There was such occasion for the use of powers of attorney in Jamaica during the years of the sugar revolution and after when absentee owners of the sugar plantations lived in some luxury in England leaving the management of their estates in Jamaica to attorneys, acting under powers of attorney. Frequent recourse to the original powers of attorney for day to day transactions as well as for use in courts in the pursuit of actions, proved burdensome to both absentee owners and attorneys and the practice developed whereby those powers of attorney would be recorded in the Island Secretary's Office. It appears that in reliance upon the record in the Island Secretary's Office, the donees of these powers of attorney became careless as to the custody, care and preservation of the originals. It is recited in the preamble of an Act of 1844 that the Supreme Court decided

that originals and not recorded powers of attorney were the best evidence in proof of such authority and as a consequence, an "Act to make recorded powers of attorney evidence in all Courts of law and equity in the island" was passed. A

This Act was passed to facilitate proof of powers of attorney and not in any way to confer special benefits on those dealing with donees of the powers.

It can be fairly said that the several legislative provisions made for the recording of deeds including powers of attorney, were aimed at encouraging the makers of such deeds to use the facilities for permanent recording which in time would make for certainty in the identification and content of the instruments, give notice thereof to the world at large, and effectively prevent or restrict fraudulent transactions. There are instances in which the legislature provides a sanction for non-recording as in the Record of Deeds, Wills and Letters Patent Act, where it is provided in s. 2 (2): B

"No deed made after the year 1681 without such acknowledgement or proof or recording, shall be sufficient to pass away any freehold or inheritance, or to grant any lease for above the space of three years." C

It is significant, however, that the statute makes it abundantly clear for what specific purposes the deed shall be invalid due to non-recording, and does not expressly or by inference say that a non-recorded deed is ineffectual for all purposes. D

The Conveyancing Act is primarily concerned with interests in land. Section 6 (1), (3) deals with leases, s. 9 with conveyance of land or buildings, s. 10 with implied covenants for title referable to land or interests in land. Part III of the Act containing ss. 12-16 deals with leases, Parts IV and V containing ss. 18-33 deal with mortgages. Parts VII, VIII and IX are concerned with trustees, executors, married woman and infants. Some of these provisions are identical to those in the Trustee Act viz., s. 34 of Conveyancing Act identical to s. 11 of Trustee Act; s. 35 of Conveyancing Act identical with s. 10 (3) of Trustee Act; s. 36 of Conveyancing Act is contained in s. 12 of Trustee Act; s. 37 of Conveyancing Act with s. 13 of Trustee Act; s. 38 of Conveyancing Act with s. 20 of Trustee Act; s. 39 of Conveyancing Act with s. 21 of Trustee Act. E

Part XI of the Conveyancing Act contains five sections numbered 47-51 and is headed Powers of Attorney. Section 47 is of the most general nature and it is agreed by counsel on both sides, that that section can apply to all powers of attorney. By virtue of s. 47 the donee of a power of attorney may act in his own name and under his own signature. Sections 48 and 49 are dealing with a special class of persons, viz., purchaser for value. Section 50, like s. 47, is of general application and protects the donee of a power who acts in good faith in the exercise of the power in ignorance of the revocation of the power or the death, bankruptcy, lunacy or unsoundness of mind of the donor. F

Finally, ss. 52 to the end of the Act deal with the construction and effect of deeds and other instruments; the enlargement of long terms (residue unexpired of not less than 100 years of a term originally not less than 300 years) into fee simple, and some miscellaneous provisions. G

By definition, whether the property transaction be by way of sale, mortgage, demise, or settlement, or any other dealing, it is not a conveyance unless made by deed. The conveyance may take the form of an assignment, an appointment, a lease, a settlement or other assurance or covenant to surrender but in each case it must be contained in a deed. H

When one looks at the types of property with which the Conveyancing Act is primarily concerned, it clearly appears that the only transactions comprehended by that Act are those made by deed and for which deeds are requisite in law. It can never be argued that every contract for the sale of goods which is governed by the provisions of the Sale of Goods Act must be made by deed. Section 4 of the Sale of Goods Act provides: I

"Subject to the provisions of this law and of any statute in that behalf, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties. Provided that nothing in this section shall affect the Law relating to corporations."

A ^ In construing s. 51 of the Conveyancing Act within the context of that Act it appears sensible and logical to hold that the section applies to powers of attorney which authorise acts which can only be performed through the instrumentality of a deed. If what the donee of a power proposes to accomplish does not require a deed to be effective in law such a power of attorney does not fall to be construed under s. 51 of the Conveyancing Act.

Clause 31(B) of the Distributorship Agreement of September 1, 1966, provided that:

B "Either party may without assigning any reason or incurring any liability to compensate the other, terminate this agreement by giving to the other 60 days' notice expiring at any time."

That is the clause under which Chrysler International S.A. purported to act in terminating the distributorship agreement. Clause 30 of the agreement which made detailed provisions for the service of notices as between the parties, clearly implies that a notice under cl. 31(B) should be in writing. C

Neither cl. 30 nor cl. 31(B) of the distributorship agreement expressly or by implication provides that a notice terminating the agreement should be made by deed or be contained in a deed. There is no rule at common law, nor is there a rule under any statutory provision which requires that for validity in law, a notice terminating an agreement such as this distributorship agreement, should be made by deed. D

A ^ The Conveyancing Act by definition applies only to instruments made by deed. As the power of attorney in the instant case may be validly exercised to determine the distributorship agreement other than through the instrumentality of a deed, it follows, and I so hold, that the power of attorney granted to Chrysler International S.A. by the appellant is not such a power as is required to be recorded under s. 51 of the Conveyancing Act. E

The determination of this question in favour of the appellant makes it somewhat unnecessary to go on to consider the second question argued before us, viz., assuming that the instant power of attorney is one to which s. 51 of the Conveyancing Act applies, what is the effect in law of its non-recording? But in deference to the arguments of counsel, I will deal with the point quite shortly.

F Non-recording does not render the power ineffectual for all purposes. To arrive at any other conclusion would require the reading into the section of some such words as "failure to record shall make the power of attorney void". The section when read as a whole shows that the effect of non-recording is merely to suspend the effectiveness of the power while at the same time permitting persons whose rights depend upon the exercise of the power to recognize the existence of the power if those persons so wish notwithstanding the failure of the donee to record the power of attorney. G

The world at large is not empowered by s. 51 to decline to recognize a non-recorded power of attorney. Only a special class of persons is so privileged and this class is limited to persons whose rights depend upon an exercise of the power.

H A wary and prudent purchaser taking a conveyance from the donee of a power will be careful to ensure that the bundle of rights which appertain to the property are passed on to him. Such rights as the purchaser will obtain will flow directly from the exercise of the donee's power. In that sense the purchaser's rights will depend upon the exercise of the donee's power. It has been argued that "depend" in the sense used in s. 51 has a meaning which extends to and includes the expression "affected by". It seems to me that this contention would give an unnatural meaning to the word "depend" and if so interpreted could include anyone however remotely affected.

I I am of the view the persons who are permitted to refuse to recognise a non-recorded power of attorney are those whose rights flow from or arise out of the exercise of that power. Can it be said that the respondent's rights flow from or arise out of the letter terminating its distributorship agreement? I answer No. Such rights as the respondent has, arise out of his contract with the appellant, the contract which is pleaded in the statement of claim, and for breach of which damages are claimed.

For these reasons I am of the view that this second question must also be determined in favour of the appellant.

I would allow the appeal with costs for the appellant in this court and the court below. A

WATKINS, J.A.: I agree.

MELVILLE, J.A.(Ag.): I agree.

Appeal allowed.

DIRECTOR OF PUBLIC PROSECUTIONS v. DONALD WHITE C

[PRIVY COUNCIL (Lord Diplock, Lord Simon of Glaisdale, Lord Salmon, Lord Edmund-Davies, Lord Russell of Killowen), April 27, 1977]

Criminal Law—Appeal against conviction in the Supreme Court—Grounds upon which Court of Appeal may allow an appeal—Courses open to Court of Appeal on allowing an appeal—Effect of absence of an order for a new trial. D

The respondent was charged on an indictment containing two counts. After a five-day trial the jury returned their verdict after having retired for 27 minutes only. On the face of the record the jury were unanimously agreed on only one of the two counts and it could not be ascertained which one that was. By s. 44 (3) of the Jury Act one hour had to elapse before a majority verdict could be taken. The Crown did not seek to support the convictions. The Court of Appeal, having quashed the convictions, held that the first trial being a nullity they had no power to order a new trial. They, however, granted leave to appeal to Her Majesty in Council and in so doing certified four questions. E

Held: (i) that every ground of appeal on which the Court of Appeal shall allow an appeal against a conviction in the Supreme Court must fall within the categories defined in s. 14 (1) of the Judicature (Appellate Jurisdiction) Act; F

(ii) that where an appeal is allowed on the ground of a wrong decision in law or a miscarriage of justice the Court of Appeal is by s. 14 (2) limited in its judgment either to:

(a) quashing the conviction and entering a verdict of acquittal; or

(b) quashing the conviction and if the interests of justice so require, ordering a new trial; G

(iii) that on the grounds on which the appeal was allowed the Court of Appeal could not decline either to enter a verdict of acquittal or to order a new trial;

(iv) that the absence of an order for a new trial after an appeal is allowed and the conviction quashed would presuppose that the Court of Appeal had ordered a verdict of acquittal to be entered. The accused could in such circumstances plead *autrefois acquit* in bar if rearraigned on the same indictment (or a new one charging the same offences). H

Appeal allowed.

Cases referred to:

(1) *R. v. Ashbel Davis* (1941), 4 J.L.R. 19.

(2) *R. v. Kalphat* (1939), 2 A.C.J.B. 26.

(3) *Crane v. D.P.P.*, [1921] All E.R. 19; [1921] 2 A.C. 299.

J. S. Kerr, Q.C., and *Stuart McKinnon* for the appellants.

Berthan Macaulay and *Margaret Macaulay*, of the Jamaica Bar for the respondents.

A grievous bodily harm; and, secondly, illegal possession of a firearm. After a five-day trial the jury returned their verdict in the following manner as disclosed in the record:

"REGISTRAR: Mr. Foreman, please stand.

Mr. Foreman and members of the Jury, have you arrived at a verdict?

FOREMAN: Yes, we have.

B REGISTRAR: Is your verdict unanimous, that is are you all agreed?

FOREMAN: Yes, unanimous on one count.

REGISTRAR: May I take the verdict?

HIS LORDSHIP: Just a minute—Yes?

REGISTRAR: Do you find the accused, Donald White guilty or not guilty of count one, which charges him with shooting with intent?

C FOREMAN: We find him guilty on the first count.

REGISTRAR: Do you find the accused guilty or not guilty of count two which charges him with illegal possession of firearm?

FOREMAN: Guilty.

REGISTRAR: Mr. Foreman and members of the Jury, you say the accused is guilty on counts one and two, that is your verdict and so say all of you?

D FOREMAN: Yes."

The learned trial judge then sentenced the respondent on each count.

The respondent appealed to the Court of Appeal on a number of grounds. In the upshot only one was argued, since the Court of Appeal allowed the appeal on that ground. By s. 44 (3) of the Jury Act one hour had to elapse before a majority verdict could be taken.

E The record showed that the jury returned their verdict, in the form indicated above, after having retired for twenty-seven minutes only. On the face of the record the jury were unanimously agreed on only one of the counts, and it could not be ascertained which one that was. The Crown did not seek to support the convictions. The issue before the Court of Appeal was whether that court, having quashed the convictions, should (as was argued for the instant appellant) order a new trial or (as was argued for the instant respondent) direct that a judgment and verdict of acquittal should be entered. In the event the Court of Appeal quashed the convictions, but neither directed a verdict of acquittal nor ordered a new trial. There were conflicting authorities in the West Indies on statutory provisions similar to those governing the instant appeal; but the Court of Appeal, both on principle and on preference of authority, held that, the first trial being a nullity, they had no power to order a new trial.

G Subsequently the Court of Appeal, considering the matter to be of exceptional public importance, granted leave to appeal to Her Majesty in Council.

The jurisdiction of the Court of Appeal in Jamaica is wholly statutory.

The relevant provisions are as follows:

"Judicature (Appellate Jurisdiction) Act:

13.—(1) A person convicted on indictment in the Supreme Court may appeal under this Act to the Court—

H (a) against the conviction on any ground of appeal which involves a question of law alone; and

(b) with leave of the Court of Appeal or upon the certificate of the Judge of the Supreme Court before whom he was tried that it is a fit case for appeal, against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court or Judge aforesaid to be a sufficient ground of appeal; and

I (c) with the leave of the Court of Appeal against the sentence passed on his conviction unless the sentence is one fixed by law.