LEGISLATIVE COUNCIL.

No. S. 167.—The following draft of a bill which will be introduced at the Meeting of the Legislative Council to be held on Thursday, the 23rd June, 1921, is published for general information.

CLAUD SEVERN,
Colonial Secretary.

17th June, 1921.

A BILL

INTITULED

An Ordinance to repeal the Non-Ferrous Metal Industry Ordinance, 1919, and the Non-Ferrous Metal Industry Amendment Ordinance, 1920.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Non-Ferrous Metal Industry Ordinance, 1921.

Repeal of Ordinances No. 1 of 1919 and 4 of 1920.

2. The Non-Ferrous Metal Industry Ordinance, 1919, and the Non-Ferrous Metal Industry Amendment Ordinance, 1920, are repealed.

Objects and Reasons.

It is recognised that the licence system introduced by the Non-Ferrous Metal Industry Ordinance, 1919, is of no practical use in Hongkong, which, as regards the metal industry, is a transhipping centre and not a producing country.

J. H. KEMP,
Attorney General.

6th June, 1921.

No. S. 168.—The following draft of a bill which will be introduced at the Meeting of the Legislative Council to be held on Thursday, the 23rd June, 1921, is published for general information.

CLAUD SEVERN,
Colonial Secretary.

17th June, 1921

A BILL

INTITULED

An Ordinance to amend the law relating to criminal procedure in the Supreme Court.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

Short title and construction. Ordinances Nos. 9 of 1899 and 27 of 1913.

1. This Ordinance may be cited as the Criminal Procedure Ordinance, 1921, and shall be read and construed as one with the Criminal Procedure Ordinance, 1899, and with the Criminal Procedure Amendment Ordinance, 1913, and the said Ordinances and this Ordinance may by cited together as the Criminal Procedure Ordinances, 1899 to 1921.

Amendment of Ordinance No. 9 of 1889, s. 78 (2).

2. Sub-section (2) of sections 78 of the Criminal Procedure Ordinance, 1899, is repealed and the following sub-section is substituted therefor:—

(2.) Upon the consideration of the question so reserved it shall be lawful for the Full Court to affirm or to quash the conviction or to direct a new trial, and to make such other orders as may be necessary to give effect to its decision, provided that the Full Court may, notwithstanding that it is of opinion that the question so reserved might be decided in favour of the convicted person, affirm the conviction if it considers that no substantial miscarriage of justice has actually

3. It shall not be necessary in any case whatsoever when a verdict of guilty has been returned by the jury to ask the accused whether he has anything to say why judgment should not be given against him, but upon a verdict of guilty being returned by the jury in any case it shall be lawful for the judge, failing any motion in arrest of judgment, forthwith to pass sentence upon the accused. Calling upon the accused after verdict declared unnecessary.

Objects and Reasons.

1. The object of this bill is to effect three improvements in the criminal procedure of the Supreme Court.

2. Clause 2 effects two alterations in the law. In the first place it gives the Full Court power to order a new trial upon a question of law being reserved by the trial judge. It is true that the Court of Criminal Appeal in England has no power to order a new trial, but the Judges have frequently expressed the opinion that that Court ought to have such a power. For instance, in *R.* v. *Bloom*, 4 Cr. App. R., at p. 35, the Lord Chief Justice (Lord Alverstone) said, "In this case we have a strong illustration of what we have had to observe many times, *viz*:—the importance that this Court should have power to order a new trial. It is impossible for the Court properly to perform its duties without that power." And in *R.* v. *Bloom*, 7 Cr. App. R. at p. 8, Darling J. in delivering judgment of the Court, which consisted of Lord Alverstone C. J. and Darling and Hamilton JJ. said, "In this case we desire to repeat and emphasise what the Lord Chief Justice has had on several occasions, that it appears to us after some years' experience of the working of this Act, to be a matter of great regret that we have no power to order a new trial, as can be done on appeal in a civil case where a verdict is set aside on such grounds as those on which we feel bound to act to-day. In this Court if a sufficient legal reason is advanced against the conclusion of a judge and jury, we have no alternative but to quash the conviction, and no further proceedings can be taken. This is a case, like many others which have come before us, where it is clearly desirable that all the facts should be submitted again to a jury with an adequate and proper direction. We hope that what we are now saying will be considered by those who have power to amend the law in this respect."

3. In the second place clause 2 provides that even if the question reserved might be decided in favour of the accused the Full Court may affirm the conviction if it considers that no substantial miscarriage of justice has actually occurred. This provision is taken from section 4 (1) of the Criminal Appeal Act, 1807, 7 Edward 7, c. 23. The chief application of this provision in England occurs where the ground alleged is misdirection as to the law or wrongful admission or rejection of evidence. The rule adopted by the Court of Criminal Appeal with regard to evidence wrongfully admitted has been that it will not act upon the above proviso in any case in which it appears to it clear that the jury may have been influenced by the evidence wrongfully admitted: see *R.* v. *Rodley* (1913) 3 K. B. 468.

4. Clause 3 proposes to abolish the necessity of calling upon the accused after a verdict of guilty has been returned by the jury. The only object of calling upon the accused in this way is to give him an opportunity of moving in arrest of judgment. Motions in arrest of judgment are seldom made and they are very rarely successful. They are of necessity made upon technical grounds. If any such grounds are open to a defended prisoner his counsel may be trusted to bring them forward at the proper time, and an undefended prisoner is extremely unlikly to discover any such grounds. The clause still leaves it open to the accused to move in arrest of judgment after verdict and before sentence. Under the present rule of practice, by which the accused is called upon after verdict in cases of felony, the experience of those conversant with the Courts is that the accused either does not know what to say or else enters once more upon his general defence. This is mere waste of time, and is sometimes distressing, especially in capital cases.

J. H. KEMP,
Attorney General.