WESTERN AUSTRALIA.

ANNO SECUNDO

GEORGII QUINTI REGIS,

VIII.

****

No. 52 of 1911.

AN ACT to amend the Criminal Code.

[*Assented to 31st December*, 1911.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title and commencement.

1. This Act may be cited as the *Criminal Code Amendment Act,* 1911, and shall come into operation on the first day of January, one thousand nine hundred and twelve.

Amendment of Section 18: Preventive detention.

2. Section eighteen of the Criminal Code (hereinafter called the Code) is hereby amended by the insertion of the words, "preventive detention" immediately before the last sentence thereof.

Amendment of Section 20.

3. The third paragraph inserted in section twenty of the Code by section two of the Criminal Code Amendment Act, 1906, is hereby repealed, and the following words are inserted in the said section in lieu thereof:—

7 Edw. VII., c. 23, s. 14 (3).

"The time during which a convicted appellant, pending the determination of his appeal, is admitted to bail and, subject to any directions which the Court of Criminal

Appeal may give to the contrary on any appeal, the time during which the appellant if in custody is specially treated as an unconvicted prisoner, shall not count as part of any term of imprisonment under his sentence, and in the case of an appeal under this Code any imprisonment under the sentence of the appellant, whether it is the sentence passed by the Court of trial or the sentence passed by the Court of Criminal Appeal, shall, subject to any directions which may be given by the Court as aforesaid, be deemed to be resumed or to begin to run, as the case requires, if the appellant is in custody, as from the day on which the appeal is determined, and, if he is not in custody, as from the day on which he is received into prison under the sentence."

Amendment of Section 21.
cf. 7 Edw. VII., c. 23, s. 19.

4. The following words are added to section twenty-one of the Code:—"but the Attorney General, on the consideration of any petition for the exercise of His Majesty's mercy having reference to the conviction of a person on indictment or to the sentence (other than sentence of death) passed on a person so convicted, may, if he thinks fit, at any time either—

(a) refer the whole case to the Court of Criminal Appeal, and the case shall then be heard and determined by the Court of Criminal Appeal as in the case of an appeal by a person convicted; or

(b) if he desires the assistance of the Court of Criminal Appeal on any point arising in the case with a view to the determination of the petition, refer that point to the Court of Criminal Appeal for their opinion thereon, and the Court shall consider the point so referred and furnish the Attorney General with their opinion thereon accordingly."

Amendment of Section 565.

5. The following subsection is hereby added to section five hundred and sixty-five of the Code:—

Charge of being habitual criminal may be joined with charge of crime.

"(6.) In an indictment against a person for a crime, he may also be charged with being an habitual criminal."

New section.

6. The following section is inserted in the Code immediately after section five hundred and sixty-seven:—

Indictment of habitual criminal.

"567a. In an indictment against a person as an habitual criminal, it is sufficient after charging the subsequent crime to state the substance and effect of each or any previous conviction, and the time and place thereof, and that the accused is an habitual criminal."

Amendment of Section 602.

7. Section six hundred and two of the Code is amended by the addition of the following words:—

See Code 593, 595.

"Upon the hearing of a demurrer, the Court may allow the demurrer or may order the indictment to be amended in such manner as the Court thinks just, or may overrule the demurrer."

New sections. Trial of habitual criminal.

8. The following sections are hereby inserted in the Code immediately after section six hundred and twenty-seven:—

cf. 8 Edw. VII., c. 59, s. 10 (4).

"**627a.** (1.) In proceedings on an indictment charging a person with a crime and also with being an habitual criminal, the accused shall in the first instance be arraigned on so much only of the indictment as charges the crime, and if on arraignment he pleads guilty or is found guilty by the jury, he shall be arraigned on the charge of being an habitual criminal.

"(2.) If the charge of the crime was inquired into by a jury, the same jury may inquire into the charge of being an habitual criminal, and it shall not be necessary to swear such jury again.

Procedure and evidence to be as on charge of an offence.

"**627b.** A charge in an indictment of having been previously convicted or of being an habitual criminal shall, for all purposes of procedure and evidence, be deemed a charge of having committed an offence."

Insertion of new sections.

9. The following sections are inserted immediately after section six hundred and fifty-three of the Code:—

Habitual criminals.

"**653a.** (1.) Every person shall be deemed to be an habitual criminal who—

cf. N.S.W., 1905, No. 15, s. 3.

"(a) commits any crime comprised in Class I., II., or III., mentioned in the table at the foot of this subsection, after having been twice previously convicted of a crime of the same class; or

"(b) commits any crime comprised in any other class mentioned in the said table, after having been thrice previously convicted of a crime of the same class; or

"(c) commits any crime whatever, after having been previously convicted as an habitual criminal in this State or convicted elsewhere as an habitual criminal within the meaning of the law there prevailing.

The Table referred to.

Class I. comprises all crimes made punishable under Chapter XXVIII or XXIX of this Code.

Class II. comprises all crimes made punishable under Chapter XXII. or XXXII. of this Code.

Class III. comprises all crimes made punishable under Division II. of Part VI. of this Code.

Class IV. comprises all crimes made punishable under Division I. of Part VI. of this Code.

Class V. comprises all crimes made punishable under Chapter XLIX. of this Code.

Class VI. comprises all crimes made punishable under Chapter XVIII of this Code.

"(2.) A person shall be deemed to have been previously convicted of a crime within the meaning of this section if so convicted anywhere or at any time whether heretofore or hereafter and whether within or outside of Western Australia.

"(3.) For the purposes of this section a conviction of any offence outside of Western Australia shall, if such offence is of the same or substantially the same nature as any of the crimes mentioned in the said table, be deemed a conviction of such crime.

Conviction and sentence of habitual criminal.

"**653b.** (1.) No person shall be convicted of being an habitual criminal except upon the indictment charging the commission of the subsequent crime.

"(2.) When a person is convicted of being an habitual criminal the Court may, in addition to any punishment provided by law which it may see fit to impose for the subsequent crime, sentence such person to preventive detention during the Governor's pleasure or for such period as to the Court may seem advisable.

Preventive detention of habitual criminal.

cf. 8 Edw. VII., c. 59, s. 13.

N.S.W., 1905, No. 15, s. 6.

"**653c.** (1.) Sentence of preventive detention shall become operative and commence on the expiry or sooner determination of any sentence involving deprivation of liberty which the convicted person is undergoing or has been sentenced to undergo.

"(2.) A person subject to preventive detention shall be detained in some place of confinement set apart by the Governor by proclamation in the *Government Gazette* as a place of detention for persons so sentenced.

"(3.) Every person so confined shall be required to work at some trade, work, or calling, and shall be paid such remuneration or granted such allowance as may be fixed by regulations made by the Governor, and such remuneration or allowance shall be disposed of for the benefit of the confinee or any wife, child, or reputed child of the confinee, or any other relative or reputed relative of such confinee dependent on him for support, in such manner and proportions as the Governor may think fit.

"(4.) Persons subject to preventive detention may be required to work outside the place of confinement, subject to such regulations as shall be made by the Governor, and such persons whilst outside the place of confinement for the purpose of so working shall be deemed in lawful custody, and (except in so far as is otherwise provided in the said regulations) shall be subject to the same liabilities and obligations and governed by the same laws and rules and entitled to the same rights as if they were within such place of confinement.

"(5.) Any such place of confinement as aforesaid shall be a prison, and persons subject to preventive detention shall be deemed criminal prisoners within the meaning of the Prisons Act, 1903, and such persons shall be governed by that Act and the regulations thereunder accordingly, subject to such modifications in the direction of less rigorous treatment as the Governor may see fit to prescribe.

"(6.) Any person sentenced to preventive detention shall, until he ceases to be an habitual criminal, be deemed to be a person convicted of and under sentence for crime and to be a convict within the meaning of the Statute (33 and 34 Vict., chap. 23), adopted and applied by the Act, 37 Victoriæ, No. 8.

Reports on habitual criminals by Comptroller General of Prisons. Appointment of assistant committees.

cf. 8 Edw. VII., c. 59, s. 14.

"**653d.** (1.) The Comptroller General of Prisons shall report annually to the Governor on the conduct and industry of persons undergoing preventive detention and their prospects and probable behaviour on release, and for this purpose shall be assisted by a committee at each place of detention, consisting of such persons as the Governor may from time to time appoint.

"(2.) Every such committee shall hold meetings at such intervals of not more than six months as may be prescribed by the Governor for the purpose of personally interviewing the persons undergoing preventive detention and preparing reports embodying such information respecting them as may be necessary for the assistance of the Comptroller General, and may at any other times hold such other meetings and make such special reports respecting particular cases as they may think necessary.

Discharge of habitual criminal on license.

cf. 8 Edw. VII., c. 59, s. 15.

N.S.W., 1905, No. 15, s. 7.

"**653e.** (1.) The Governor may at any time discharge on license a person undergoing preventive detention, on such conditions as may in each case be thought reasonable.

"(2.) The grant of any such discharge shall not determine the sentence, but the operation thereof shall be suspended whilst the license is in force.

"(3.) Any such license may prescribe as a condition that the habitual criminal be placed and remain under the supervision or authority of any society or person named in the license who may be willing to take charge of the case.

"(4.) The society or person under whose supervision or authority a person is so placed shall, whenever required by the Governor or the Comptroller General of Prisons, report on the conduct and circumstances of that person.

"(5.) Any habitual criminal released on license in which no such condition as is mentioned in subsection *three* has been inserted shall be subject to police supervision, and the provisions of subsections two and three of section six hundred and fifty-three of this Code shall apply to him accordingly.

"(6.) A license under this section may during the subsistence of the sentence of preventive detention be revoked by the Governor at any time, and such sentence shall again become operative.

Termination of preventive detention.

cf. 8 Edw. VII., c. 59, s. 16. N.S.W., 1905, No. 15s. ss. 7 and 9.

"**653f.** (1.) A sentence of preventive detention shall come to an end and the person thereby affected cease to be an habitual criminal by virtue thereof—

"(a) on the expiry of the term (if any) fixed by the sentence; or

"(b) if the Governor shall by order under his hand declare the sentence terminated; or

"(c) if the habitual criminal having been discharged on a license has for any period of three years been by virtue of such license lawfully free from preventive detention, and has not during that period been convicted of any crime or misdemeanour, or convicted of and sentenced to not less than three months' imprisonment for any simple offence.

"(2.) In calculating the term (if any) fixed by any sentence of preventive detention the time during which the person sentenced is lawfully absent from the place of confinement under a license shall be treated as part of the term; but save as herein provided no period during which such person is absent from the place of confinement shall be reckoned as part of the term.

Arrest of habitual criminal.

"**653g.** Any habitual criminal subject to preventive detention may, whenever necessary, be apprehended without warrant and taken to the proper place of confinement.

Other sentences not affected.

"**653h.** The fact that any person is subject to preventive detention shall not prevent him undergoing or suffering any other punishment to which he may be or become liable or affect any sentence passed upon him.

Repeal of Sections 667, 668, 669, 670, and 671, and substitution of new sections.

10. Sections six hundred and sixty-seven, six hundred and sixty-eight, six hundred and sixty-nine, six hundred and seventy, and six hundred and seventy-one of the Code, and all amendments thereof, are hereby repealed, and the following sections substituted:—

Court of Criminal Appeal.

cf. 7 Edw. VII., c. 23, ss. 1, 2.

"**667.** (1.) The Full Court (as defined by section fifteen of the Supreme Court Act, 1880) shall, subject as hereinafter provided, have jurisdiction to hear and determine appeals under this Chapter, and the expression *Court of Criminal Appeal* in this Code shall mean the said Full Court.

"(2.) The determination of any question before the Court of Criminal Appeal shall be according to the opinion of the majority of the members of the Court hearing the case.

"(3.) The Court of Criminal Appeal shall, for the purposes of and subject to the provisions of this chapter, have full power to determine, in accordance with this chapter, any questions necessary to be determined for the purpose of doing justice in the case before the Court.

"(4.) Rules of Court shall provide for securing sittings of the Court of Criminal Appeal, if necessary, during vacation.

"(5.) The Registrar of the Supreme Court shall be Registrar of the Court of Criminal Appeal.

"(6.) It shall be no objection to a Judge taking part in the determination of any question that he presided at the trial of the appellant or that the appeal is against his own decision.

"(7.) Appeals under this Chapter shall be heard and determined before an uneven number of Judges.

Right of appeal in criminal cases.

Ibid., s. 3.

"668. (1.) A person convicted on indictment may appeal to the Court of Criminal Appeal—

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

"(b) with the leave of the Court of Criminal Appeal or upon the certificate of the Judge who tried him 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 any other ground which appears to the Court to be a sufficient ground of appeal; and

8 Edw. VII., c. 59, s. 11.

"(c) against any sentence of preventive detention passed upon him; and

"(d) with the leave of the Court of Criminal Appeal against any other sentence passed on his conviction, unless the sentence is one fixed by law.

"(2.) An appeal may be made to the Court of Criminal Appeal on the part of the prosecution—

"(a) against any decision allowing a demurrer to an indictment or arresting judgment on an indictment or quashing an indictment; or

"(b) against any verdict of acquittal on an indictment and any judgment founded thereon when such verdict has been found by direction of the Judge or other authority entitled to give directions on law to the jury at the trial; or

"(c) against any judgment (including any verdict on which the same is founded) given on a plea to the jurisdiction of a Court to try an accused person for an offence alleged in an indictment.

Determination of appeals in ordinary cases.

7 Edw. VII., c. 23, s. 4.

"669. (1.) The Court of Criminal Appeal on any such appeal against conviction shall allow the appeal, if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the Court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

"Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

"(2.) Subject to the special provisions of this Chapter the Court of Criminal Appeal shall, if they allow an appeal against conviction, quash the conviction and either direct a judgment and verdict of acquittal to be entered or order a new trial.

"(3.) On an appeal against sentence the Court of Criminal Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as they think ought to have been passed and in any other case shall dismiss the appeal.

How other appeals disposed of.

"670. (1.) On any appeal against a decision allowing a demurrer, quashing an indictment, or arresting judgment the Court may affirm, reverse, or modify the decision, and give any judgment and make any order which ought to have been given or made in the first instance, and exercise any powers of amendment or any other powers and direct any step to be taken which ought to have been exercised or taken in the first instance.

"(2.) If an order arresting judgment is reversed, the Court is to direct that judgment be pronounced upon the offender, and he is to be ordered to appear, at such time and place as the Court may direct, to receive judgment, and any justice or the Registrar may, for the purpose of securing such appearance, issue his warrant for the arrest and detention of the offender. An offender so arrested may be admitted to bail by order of the Court, which may be made at the time when the order directing judgment to be pronounced is made or afterwards.

See Code 671.

"(3.) On any appeal against an acquittal by direction or on an appeal against any judgment given on a plea to the jurisdiction, the Court, if it allows the appeal, may reverse any judgment, decision, or verdict, the correctness of which was in question in the appeal, and may order a new trial or that the accused shall stand his trial, as the case may require.

"671. (1.) When the Court orders a new trial or that any person do stand his trial or be called upon to plead to an indictment, or where there is or may be any issue to be tried in consequence of the Court's decision, the Court may fix the time and place of the trial, and may give such directions with regard thereto as may appear necessary. Court may give directions as to new trial.

"(2.) Any justice or the Registrar may, with a view to securing such person's appearance at and during the trial, issue his warrant for the arrest and detention of the person to be tried or directed to be called upon to plead, and such person may be admitted to bail by order of the Court of Criminal Appeal or of the Court before which he is being or to be tried, which order may be made at any time.

"671a. When a person charged on indictment has been acquitted on account of unsoundness of mind, he shall have the like right of appeal as if he had been convicted, and the verdict shall for the purposes of the appeal be deemed to be a verdict convicting the accused with a declaration of his unsoundness of mind added, and the Court shall deal with the appeal accordingly: provided that if the appeal be allowed, the Court shall either order an unqualified verdict and judgment of acquittal to be entered or order a new trial. Appeal by person acquitted on the ground of insanity.

"671b. (1.) If it appears to the Court of Criminal Appeal that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the Court may either affirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefor as they think proper, and as may be warranted in law by the verdict on the count or part of the indictment on which the Court consider that the appellant has been properly convicted. Powers of Court in special cases. cf. 7 Edw. VII., c. 23, s. 5.

"(2.) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Criminal Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence not being a sentence of greater severity.

"(3.) Where on the conviction of the appellant the jury have found a special verdict, and the Court of Criminal Appeal consider that a wrong conclusion has been arrived at by the Court before which the appellant has been convicted on the effect of that verdict, the Court of Criminal Appeal may, instead of allowing

the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.

"(4.) When it appears to the Court that a convicted appellant ought to have been acquitted on account of unsoundness of mind, they may quash the conviction and direct a judgment and verdict of acquittal on account of unsoundness of mind to be entered, and shall thereupon order the appellant to be kept in strict custody until His Majesty's pleasure is known, and in any such case the Governor in the name of His Majesty may give such order for the safe custody of the appellant during the pleasure of the Governor, in such place of confinement and in such manner as the Governor in Council may think fit.

See Code 645.

Re-vesting and restitution of property on conviction.

cf. 7 Edw. VII., c. 23, s. 6.

"**671c.** The operation of any order for the restitution of any property to any person made on a conviction on indictment, and the operation, in case of any such conviction, of the provisions of subsection one of section twenty-four of the Sale of Goods Act, 1895, as to the re-vesting of the property in stolen goods on conviction, shall (unless the Court before whom the conviction takes place direct to the contrary in any case in which, in their opinion, the title to the property is not in dispute) be suspended—

"(a) in any case until the expiration of ten days after the date of the conviction; and

"(b) in cases where notice of appeal or leave to appeal is given within ten days after the date of conviction, until the determination of the appeal;

and in cases where the operation of any such order, or the operation of the said provisions, is suspended until the determination of the appeal, the order or provisions, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal. Provision may be made by rules of Court for securing the safe custody of any property, pending the suspension of the operation of any such order or of the said provisions.

"(2.) The Court of Criminal Appeal may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and if varied, shall take effect as so varied.

"(3.) Any person against whom an order of restitution is made may, subject to rules of Court, appeal to the Court of Criminal Appeal against such order.

"**671d.** (1.) Where a person convicted desires to appeal under this Chapter to the Court of Criminal Appeal, or to obtain the leave of that Court to appeal, he shall give notice of appeal or notice of his application for leave to appeal, in such manner as may be directed by rules of court, within ten days of the date of conviction. Such rules shall enable any convicted person to present his case and his argument in writing instead of by oral argument if he so desires. Any case or argument so presented shall be considered by the Court. Time for appealing. *Ibid.*, s. 7.

"In other cases notice of appeal must be given within ten days after the pronouncement, finding, or making of the judgment, verdict, order, or decision complained of.

"Except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given may be extended at any time by the Court of Criminal Appeal.

"(2.) In the case of a conviction involving sentence of death or corporal punishment—

"(a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under this section; and

"(b) if notice is so given, the appeal or application shall be heard and determined with as much expedition as practicable, and the sentence shall not be executed until after the determination of the appeal, or, in cases where an application for leave to appeal is finally refused, of the application.

"**671e.** The Judge or chairman of any Court before whom a person is convicted shall, in the case of an appeal under this Chapter against the conviction or against the sentence, or in the case of an application for leave to appeal under this Chapter, furnish to the Registrar, in accordance with rules of court, his notes of the trial; and in all cases of an appeal against sentence, and in any other case if he thinks it desirable in the interests of justice to do so, or if required by the Court of Criminal Appeal, shall also furnish to the Registrar in accordance with the rules of court a report giving his opinion upon the case or upon any point arising in the case. Judge's notes and report to be furnished on appeal. *Ibid.*, s. 8.

"**671f.** For the purposes of this Chapter, the Court of Criminal Appeal may, if they think it necessary or expedient in the interest of justice— Supplemental powers of Court. *Ibid.*, s. 9.

"(a) order the production of any document, exhibit, or other thing connected with the proceedings the production of which appears to them necessary for the determination of the case; and

"(b) if they think fit order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of the Court before any Judge of the Court or before any officer of the Court or justice of the peace or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court; and

"(c) if they think fit receive the evidence, if tendered, of any witness (including a convicted appellant) who is a competent but not compellable witness: provided that the evidence of the wife or husband of a convicted appellant shall not be received, except on behalf of the appellant, unless she or he has been first informed by the Court that she or he is not compellable to give evidence if she or he is unwilling to do so.

See W.A., 1906, No. 28, s. 8.

"(d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court conveniently be conducted before the Court, order the reference of the question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the Court, and act upon the report of any such commissioner so far as they think fit to adopt it; and

"(e) appoint any person with special expert knowledge to act as assessor to the Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case;

and exercise in relation to the proceedings of the Court any other powers which may for the time being be exercised by the Supreme Court on appeals in civil matters, and issue any warrants necessary for enforcing the orders or sentences of the Court: Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

Legal assistance to appellant.
7 Edw. VII., c. 23, s. 9.

"**671g.** The Court of Criminal Appeal may at any time assign a convicted appellant a solicitor and counsel or counsel only in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid.

Right of appellant to be present.
cf. *ibid.*, s. 11.

"**671h.** (1.) Subject to any order to the contrary made by the Court of Criminal Appeal, a convicted appellant, notwithstanding

that he is in custody, shall be entitled to be present if he desires it on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone, but in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal shall not be entitled to be present, except where rules of court provide that he shall have the right to be present, or where the Court gives him leave to be present.

"(2.) The power of the Court to pass any sentence under this Chapter may be exercised notwithstanding that the appellant is for any reason not present.

Admission of appellant to bail, and custody when attending Court. *Ibid.*, s. 14.

"**671i.** (1.) A convicted appellant who is not admitted to bail shall, pending the determination of his appeal or of his application for leave to appeal, be treated in accordance with the special regulations for the time being applicable to prisoners unconvicted of crime during the period of their detention for safe custody only.

"(2.) The Court of Criminal Appeal may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.

Duties of registrar with respect to notices of appeal, etc. *Ibid.*, s. 15.

"**671j.** (1.) The registrar shall take all necessary steps for obtaining a hearing under this Chapter of any appeals or applications, notice of which is given to him under this Chapter, and shall obtain and lay before the Court in proper form all documents, exhibits, and other things relating to the proceedings in the Court before which any convicted appellant or applicant was tried, which appear necessary for the proper determination of the appeal or application.

"(2.) If it appears to the registrar that any notice of an appeal against a conviction purporting to be on a ground of appeal which involves a question of law alone does not show any substantial ground of appeal, the registrar may refer the appeal to the Court for summary determination, and where the case is so referred, the Court may, if they consider that the appeal is frivolous or vexatious, and can be determined without adjourning the same for a full hearing, dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown thereon.

"(3.) Any documents, exhibits, or other things connected with the proceedings on the trial of any person on indictment, who, if convicted, is entitled to or may be authorised to appeal under this Chapter, shall be kept in the custody of the Court of trial in accordance with rules of court made for the purpose, for such time as may be provided by the rules, and subject to such power as may be given by the rules for the conditional release of any such documents, exhibits, or things from that custody.

"(4.) The registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Chapter to any person who demands the same, and to officers of Courts, governors of prisons, and such other officers or persons as he thinks fit, and the governor of a prison shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal, or to make any application under this Chapter, and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the registrar.

"(5.) The registrar shall report to the Court or some Judge thereof any case in which it appears to him that, although no application has been made for the purpose, a solicitor and counsel or counsel only ought to be assigned to an appellant under the powers given to the Court by this Chapter.

Powers which may be exercised by a Judge of the Court.
Ibid., s. 17.

"**671k.** The powers of the Court of Criminal Appeal under this Act to give leave to appeal, to extend the time within which notice of appeal or of an application for leave to appeal may be given, to assign legal aid to an appellant, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to admit an appellant to bail, may be exercised by any Judge of the Supreme Court in the same manner as they may be exercised by the Court of Criminal Appeal, and subject to the same provisions; but if the Judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Court of Criminal Appeal as duly constituted for the hearing and determination of appeals under this Chapter.

Definitions.
cf. *ibid.*, s. 21.

"**671l.** In the provisions of this Code relating to appeals to the Court of Criminal Appeal, unless the context otherwise requires—

"The expression 'convicted appellant' includes a person who has been convicted, or who has been acquitted on account of unsoundness of mind, and who desires to appeal or to obtain the leave of the said Court to appeal under this Chapter, and has given notice of appeal or of his application for leave to appeal within the time or extended time limited by or pursuant to this Chapter for that purpose; and

"The expression 'sentence' includes any order of the Court made on conviction with reference to the person convicted, and the power of the Court of Criminal Appeal to pass a sentence includes a power to make any such order of the Court."

Amendment of Section 713.

11. The following words are added to section seven hundred and thirteen of the Code:—

cf. *ibid.*, s. 18.

"and the procedure and practice relative to appeals to the Court of Criminal Appeals. Rules so made for the regulation of the procedure and practice relative to such appeals may make provision with respect to any matter for which provision is to be made under Chapter LXVIII. by rules of court or which it may be necessary or convenient to prescribe for any of the purposes of that Chapter or for the efficient conduct of any proceeding thereunder, and may regulate generally the practice and procedure under that Chapter, and the officers of any Court before whom an appellant has been convicted, and the governor or other officers of any prison or other officer having the custody of an appellant and any other officers or persons, shall comply with any requirements of those rules so far as they affect those officers or persons, and compliance with those rules may be enforced by order of the Court of Criminal Appeal."

Addition of new section.

12. A new section is added at the end of the Code, as follows:—

Power of Governor to make regulations.

cf. N.S.W., 1905, No. 15, s. 12.

"**714.** (1.) The Governor may by regulations—

"(a) prescribe the treatment of persons undergoing preventive detention, but so that such treatment shall be less rigorous than that of ordinary criminal prisoners;

"(b) prescribe the work to be performed by such persons and the conditions under which it shall be performed, but so that such work shall be less severe than the work classified as hard labour under the Prisons Act, 1903;

"(c) prescribe the remuneration or allowance to be paid or granted for the work of habitual criminals;

"(d) prescribe the manner in which a convicted appellant, or other person, when in custody, is to be brought to any place at which he is entitled to be present for the purposes of Chapter LXVIII., or to any place to which the Court of Criminal Appeal or any Judge of the Supreme Court may order him to be taken for the purpose of any proceedings of that Court or rendered necessary by or in consequence of any judgment or order of that Court, and for the manner in which he is to be kept in custody while absent from prison for the purpose; and declare that an appellant or other person whilst in custody in accordance with regulations made hereunder or taking effect by virtue of this section shall be deemed to be in legal custody.

"(2.) Any regulations made or purporting to be made under this section shall—

"(a) be published in the *Government Gazette;*

"(b) take effect according to their tenor from the date of publication or from a later date to be specified therein; and

"(c) be judicially noticed and, unless and until they are disallowed as hereinafter provided and except in so far as they are in conflict with any express provisions of this Code or of any Act, be conclusively deemed to be valid.

"(3.) Such regulations shall be laid before both Houses of Parliament within seven days after publication if Parliament is in session, and, if not, then within seven days after the commencement of the next session.

"(4.) If either House of Parliament passes a resolution at any time within one month after any such regulation has been laid before it, disallowing such regulation, then the same shall thereupon cease to have effect, but without prejudice to the past operation thereof."

By Authority: FRED. WM. SIMPSON, Government Printer, Perth.