

LEGISLATIVE COUNCIL.

No. S. 94.—The following Bills were read a first time at a Meeting of the Council held on the 20th April, 1911 :—

A BILL

ENTITLED

An Ordinance to amend the Flogging Ordinance, 1903.

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

Short title and construction.

1. This Ordinance may be cited as "The Flogging Amendment Ordinance, 1911", and it shall be read and construed as one with the Flogging Ordinance, 1903, hereinafter called "the Principal Ordinance".

Amends section 3 of the Principal Ordinance.

2. Section 3 of the Principal Ordinance is hereby amended by the addition after the figures "1865" in sub-section (5) thereof of the words "sections 44 and 45 of the Offences against the Person Ordinance, 1865;".

Repeals section 4 of the Principal Ordinance and substitutes another section.

3. Section 4 of the Principal Ordinance is hereby repealed and the following section is substituted therefor :—

4.—(1.) In the case of any crime made punishable under section 31 of the Larceny Ordinance, 1865, where the punishment of flogging is awarded by the Supreme Court on an offender whose age exceeds sixteen years the following provisions shall have effect :—

(a.) the sentence shall prescribe the number of strokes to be inflicted ;

(b.) the number of strokes shall not exceed twenty-four and the instrument used shall be either the instrument commonly known as the "cat" or else a birch, as the Court, in its sentence, may specify ;

(c.) the flogging shall be inflicted privately in prison and within six months of the sentence.

(2.) In all other cases where the punishment of flogging is awarded by the Supreme Court or by a Magistrate the following provisions shall have effect :—

(a.) the sentence shall prescribe the number of strokes to be inflicted ;

(b.) in the case of an offender whose age does not exceed sixteen years the number of strokes shall not exceed twelve ;

(c.) in the case of any other offender the number of strokes shall not exceed twenty-four ;

(d.) the flogging shall be inflicted with a birch on the breech, privately, in prison and within six months of the sentence."

Objects and Reasons.

This Bill has been submitted to and sanctioned by the Secretary of State for the Colonies. It authorises the infliction of the birch in the case of offences against the two sections of Ordinance No. 2 of 1865 which deal with kidnapping in its most serious forms, and it authorises the infliction of the "cat" in cases which fall within the section of Ordinance No. 5 of 1865 dealing with robbery with violence.

C. G. ALABASTER,
Attorney General.

A BILL

ENTITLED

An Ordinance to correct certain references to previous Ordinances contained in the Ordinances passed in the years 1902 and 1903.

WHEREAS the references to previous Ordinances contained in the Ordinances passed in the years 1902 and 1903 are, for the most part, to the numbering of such Ordinances and to the numbering of the sections of such Ordinances as they were originally passed, and it is expedient to correct such references in order to make them correspond with the numberings of such Ordinances and sections of such Ordinances as they are contained in the Revised Edition of the Laws of the Colony issued by authority in virtue of Ordinance No. 12 of 1900:—

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

1. The Correction of References Ordinance, 1911. Short title.
2. The substitutions and amendments indicated in the schedule to the Ordinances therein indicated are hereby authorised to be made. Amendments.
3. All references to the old numbering of Ordinances and of sections in any Ordinance passed prior to the years 1902 and 1903 contained in any Ordinances passed in those years which have since been repealed are hereby declared to have related to the corresponding Ordinances and sections of Ordinances as contained in the said Revised Edition. Extension of amendments to repealed Ordinances.

SCHEDULE.

Ordinance No. 3 of 1902:—

in section 2,

for "section 5 of Ordinance No. 3 of 1871",
there shall be read "section 2 of Ordinance No. 1 of 1871".

Ordinance No. 6 of 1902:—

in section 3,

for "section 4",
there shall be read "section 3".

Ordinance No. 7 of 1902:—

throughout,

for "Ordinance No. 14 of 1873",
there shall be read "Ordinance No. 4 of 1873";
and for "section 25", "section 35" and "section 50",
there shall be read "section 18", "section 27"
and "section 40", respectively;

and section 2 is repealed.

Ordinance No. 9 of 1902:—

in section 1,

for "Ordinance No. 6 of 1883, as amended by
Ordinance No. 18 of 1883",
there shall be read "Ordinance No. 2 of 1883";

in section 2,

for "Ordinance No. 6 of 1883 and of Ordinance
No. 18 of 1883",

there shall be read "Ordinance No. 2 of 1883";
and for "No. 6 of 1883" there shall be read
"No. 2 of 1883";

and in the title, the words from "(No. 6" to "of
1883)" are repealed.

Ordinance No. 11 of 1902:—

in the preamble,

for "Ordinance No. 21 of 1901",
there shall be read "Ordinance No. 15 of 1901";

and in section 1 (2), the words "as amended by
Ordinance No. 17 of 1900" are repealed.

Ordinance No. 15 of 1902:—

throughout, for "Ordinance No. 14 of 1875" and
for words and figures referring to that Ordinance,
there shall be read "Ordinance No. 7 of 1875";

in section 3,

for "section 9"
there shall be read "section 6";

- in section 6,
for "Form B",
there shall be read "Form No. 3";
and in section 2, the words "as amended by Ordinance 14 of 1896" are repealed.
- Ordinance No. 20 of 1902 :—
in section 1,
for from "Ordinance 8 of 1873" to the end,
there shall be read "Ordinance No. 1 of 1873";
in section 2,
the words from "section 2" to "substituted" are repealed; and
for "section 5 of Ordinance 8 of 1873",
there shall be read "section 3 of Ordinance No. 1 of 1873";
and section 3 is repealed.
- Ordinance No. 21 of 1902 :—
throughout,
for "Ordinance No. 3 of 1860",
there shall be read "Ordinance No. 1 of 1860";
in section 2,
the words from "as amended" to the end are repealed;
in sections 3, 4 and 6,
for "section 3", "section 7", and "section 15",
there shall be read "section 4", "section 8",
and "section 16", respectively.
- Ordinance No. 36 of 1902 :—
throughout,
for "Ordinance No. 3 of 1844",
there shall be read "Ordinance No. 1 of 1844";
in section 2,
for "section 14",
there shall be read "section 26".
- Ordinance No. 41 of 1902 :—
in sections 1 and 2,
for "No. 8 of 1901",
there shall be read "No. 6 of 1901".
- Ordinance No. 42 of 1902 :—
throughout,
for the words "The Chinese Hospital Incorporation",
there shall be read "The Tung Wa Hospital Incorporation";
in the title,
the words "No. 3 of 1870" are repealed.
- Ordinance No. 45 of 1902 :—
in the schedule,
for "14 of 1845" and "section 3 (3)",
there shall be read "1 of 1845" and "section 6 (3)" respectively.
- Ordinance No. 2 of 1903 :—
in the title,
the words "Consolidation", and from "and to" to the end, are repealed;
in section 1,
the words "the Merchant Shipping Amendment Ordinance, 1901, and", are repealed;
in section 3,
the words from "as amended" to "1901", and "hereby further", are repealed;
in section 16,
for "sub-section (1) of section 35 of the Merchant Shipping Amendment Ordinance of 1901",
there shall be read "section 41 of the Principal Ordinance".
- Ordinance No. 3 of 1903 :—
in section 3 (3),
for "section 19 of Ordinance 4 of 1865",
there shall be read "section 20 of Ordinance No. 2 of 1865",
and in (5), for "No. 7 of 1865"
there shall be read "No. 5 of 1865";
in section 8,
for "No. 10 of 1901",
there shall be read "No. 7 of 1901".
- Ordinance No. 5 of 1903 :—
In section 2,
for from "Ordinance No. 22 of 1890" to "1899",
there shall be read "section III of Ordinance No. 1 of 1889".
- Ordinance No. 16 of 1903 :—
in section 2,
for "No. 8 of 1901",
there shall be read "No. 6 of 1901".

A BILL

ENTITLED

An Ordinance to establish Registered Partnerships and to give effect to certain Chinese Partnership Customs.

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

1. This Ordinance may be cited as the Registered Partnerships Ordinance, 1911. Short title.

2. In the construction of this Ordinance the following words and expressions shall have the meanings respectively assigned to them in this section, unless there be something in the subject or context repugnant to such construction:— Interpretation of terms.

“Firm”, “firm name”, and “business” have the same meanings as in the Partnership Ordinance, 1897. Ordinance No. 1 of 1897.

“Registered Partner” shall mean any partner who is registered as such under this Ordinance.

“Registrar of Companies” shall mean the officer appointed for the registration of Companies under the Companies Ordinance, 1865, or any Ordinance amending the same. Ordinance No. 1 of 1865.

“The Court” shall mean the Supreme Court.

“Full name” shall, in the case of a person who carries on business in more than one name, include all the names in which such person carries on business, and in the case of persons with Chinese names or of Chinese origin shall include the first name given after birth and the place of origin.

“*Hung Kū* shareholder” means the person who is registered as such in a registered partnership and who holds a *hung kú* (紅股) or red share, and is a person who is entitled to no interest on capital, but who shares with the partners the surplus profit after interest on capital has been paid.

3.—(1.) From and after the commencement of this Ordinance registered partnerships may be formed in the manner and subject to the conditions by this Ordinance provided. Definition and constitution of limited partnership.

(2.) A registered partnership shall not consist of more than twenty persons, at least one of whom must be registered as a registered partner.

(3.) Firms or family *tongs* may be registered as registered partners in a registered partnership, provided that a firm or family *tong* registered as a registered partner shall be regarded so far as the registered partnership is concerned as one person, and provided also that a partner in the firm or a member of the *tong* is registered as a representative of the firm or *tong* in the registered partnership, and provided also that no person may be registered as a representative of a firm or *tong* unless the Registrar of Companies is satisfied that he has the authority of the other members of his firm or *tong* to be registered as a representative of them in the registered partnership, and unless one week shall have elapsed since an announcement of his intention to apply for registration as a representative of the firm or *tong* in question shall have been published in the *Gazette* and in two Chinese daily newspapers circulating in the Colony.

(4.) Bodies corporate may be registered as partners in a registered partnership.

4.—(1.) The liability of a registered partnership, which may sue and be sued in its registered name, shall be unlimited, provided that no registered partner shall be liable to pay out of such assets as he possesses, unconnected with the registered partnership, more than such proportion of a debt of the registered partnership as his interest in the registered partnership bears to the total interest of all the partners, whether registered or unregistered in the regis- Limitation of liability of registered partners.

tered partnership: and provided also that no person registered only as a *hung kú* shareholder shall be liable to pay any debt of the registered partnership.

(2.) The burden of proving that assets in his possession are unconnected with the registered partnership shall be on the registered partner who seeks to have his liability limited under this section.

Modifications of general law in case of limited partnerships.

5.—(1.) No member of a firm or *t'ong* registered as a registered partner other than the registered representative thereof may take part in the management of the business of the registered partnership or have power to bind the registered partnership.

Provided that any member of such a firm or *t'ong* may by himself or his agent at any time inspect the books of the firm and examine into the state and prospects of the partnership business.

If a member of such a firm or *t'ong* other than the registered representative thereof takes part in the management of the business of the registered partnership he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were an unregistered partner in the registered partnership.

(2.) A registered partnership shall not be dissolved by the death or bankruptcy of a partner, and the lunacy of a partner shall not be a ground for dissolution of the partnership by the Court unless the lunatic's share cannot be otherwise ascertained and realised.

(3.) In the event of the dissolution of a registered partnership its affairs shall be wound up by the partners unless the Court otherwise orders.

Ordinance No. 1 of 1865.

(4.) Applications to the Court to wind up a registered partnership shall be by petition under the Companies Ordinance, 1865, and the provisions of that Ordinance relating to the winding up of companies by the Court and of the rules made thereunder (including provisions as to fees) shall, subject to such modification (if any) as the Governor-in-Council may by rules provide, apply to the winding-up by the Court of registered partnerships, with the substitution of partners for directors.

(5.) Subject to any express agreement between the partners,—

(a.) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners;

(b.) A partner shall not be entitled to dissolve a registered partnership by notice.

Law as to private partnership to apply subject to this Ordinance.

6. Subject to the provisions of this Ordinance, the Partnership Ordinance, 1897, and the rules of equity and of common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the last mentioned Ordinance, shall apply to partnerships and partners registered under this Ordinance.

Manner and particulars of registration.

7. The registration of a partnership under this Ordinance shall be effected by delivering to the Registrar of Companies a statement signed by such of the partners and *hung kú* shareholders as desire to be registered under this Ordinance containing the following particulars:—

(a.) The firm name;

(b.) The general nature of the business;

(c.) The principal place of business;

(d.) The full name and address of each of the partners and *hung kú* shareholders who desires to be registered under this Ordinance;

(e.) The term, if any, for which the partnership is entered into, and the date of its commencement;

(f.) The sum contributed by each partner who desires to be registered under this Ordinance, and whether paid in cash or how otherwise.

(g.) The proportion in which the interest in the firm of each partner who desires to be registered under this Ordinance stands in relation to the interests of all the partners, whether registered or unregistered, in the firm.

(h.) The interest in the firm of any *hung kú* shareholder who desires to be registered as such under this Ordinance.

8.—(1) If during the continuance of a registered partnership any change is made or occurs, whether by reason of the death of a registered or unregistered partner or otherwise howsoever, in :—

- (a.) the firm name,
- (b.) the general nature of the business,
- (c.) the principal place of business,
- (d.) the partners or the name of any partner,
- (e.) the term or character of the partnership,
- (f.) the sum contributed by any registered partner,
- (g.) the proportion in which the interest in the firm of any registered partner stands in relation to the interests of all the partners whether registered or unregistered.

a statement, signed by the firm and by one or more of the registered partners, specifying the nature of the change shall within fourteen days be delivered to the Registrar of Companies.

(2.) If default is made in compliance with the requirements of this section each of the registered partners shall, on summary conviction before a Magistrate, be liable to a fine not exceeding ten dollars for each day during which the default continues. Provided that no single partner shall be liable to pay a fine exceeding five hundred dollars.

9. The statement of the amount contributed by a registered partner, and a statement of any increase in that amount, sent to the Registrar for registration under this Ordinance, shall be charged with an *ad valorem* stamp duty of \$2 for every \$1,000 or portion of every \$1,000 up to \$10,000, and \$1 for every \$1,000 or portion of \$1,000 on the next \$15,000 and 50 cents for every \$1,000 or portion of \$1,000 on sums above \$25,000 of the amount, as the case may be ; and, in default of payment of stamp duty thereon as herein required, the duty with interest thereon at the rate of seven per cent. per annum from the date of delivery of such statement shall be a joint and several debt to His Majesty, recoverable from the registered partners, or any of them, in the said statements named, or, in the case of an increase, from all or any of the said registered partners whose discontinuance in the firm shall not, before the date of delivery of such statement of increase, have been duly notified to the Registrar of Companies.

Ad valorem stamp duty on contributions by limited partners.

10. Every one commits a misdemeanour who makes, signs, sends, or delivers for the purpose of registration under this Ordinance any false or incomplete statement known by him to be false or incomplete.

Making false returns to be misdemeanour.

11. On receiving any statement made in pursuance of this Ordinance the Registrar of Companies shall cause the same to be filed, and he shall send by registered post or deliver to the firm from whom such statement shall have been received a certificate of the registration thereof.

Registrar to file statement and issue certificate of registration.

12. The Registrar of Companies shall keep at his office, in proper books to be provided for the purpose, a register and an index of all the registered partnerships registered as aforesaid, and of all the statements registered in relation to such partnerships.

Register and index to be kept.

13.—(1.) Any person may inspect the statements filed under this Ordinance by the Registrar of Companies, and there shall be paid for each such inspection a fee of one dollar; and any person may require a certificate of the registration of a registered partnership, or a copy of or extract from any registered statement, to be certified by the Registrar of Companies, and there shall be paid for such certificate of registration, certified copy, or extract such fees as the Governor-in-Council may appoint, not exceeding \$1 for the certificate of registration, and not exceeding forty cents for each folio of seventy-two words.

Inspection of statements registered.

(2.) A certificate of registration, or a copy of or extract from any statement registered under this Ordinance, if duly certified to be a true copy under the hand of the Registrar of Companies or one of the Deputy Registrars (whom it shall not be necessary to prove to be the Registrar or Deputy Registrar) shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence.

14. Nothing in this Ordinance shall be taken to affect any debt or liability incurred by a registered firm or a registered partner or *hung kü* shareholder prior to the date of their respective registrations.

Powers of
Governor-in-
Council to
make rules.

15. The Governor-in-Council may make rules concerning any of the following matters :—

- (a.) The fees to be paid to the Registrar of Companies under this Ordinance so that they do not exceed in the case of the original registration of a limited partnership the sum of twenty dollars and in any other case the sum of three dollars.
- (b.) The duties or additional duties to be performed by the Registrar of Companies for the purposes of this Ordinance.
- (c.) The performance by Deputy Registrars and other officers of acts by this Ordinance required to be done by the Registrar of Companies.
- (d.) The forms to be used for the purposes of this Ordinance.
- (e.) Generally the conduct and regulation of registration under this Ordinance and any matters incidental thereto.

Commence-
ment of
Ordinance.

16. This Ordinance shall come into operation on the first day of January, 1912.

Memorandum.

The present partnership law, codified in Ordinance No. 1 of 1897, is habitually evaded by respectable and responsible members of the Chinese mercantile community because it runs counter to the essential characteristics of Chinese partnerships. In deciding a case under that Ordinance the Chief Justice said (3 H.K.L.R. 170) :—“ This is an Ordinance passed in 1897 by the local Legislature, and I can only hold, there being no reference from end to end to Chinese customs, that it was the deliberate intention to ignore the Chinese customs of partnership. Whether this was wise or unwise is not for me to say. But I must point out to the Government the extreme danger of reproducing English legislation bodily into the Colonial Statute Book without at least considering the question how it may effect the customs of the large body of Chinese who are legislated for.”

The chief characteristics of the present partnership law are the unlimited liability of each partner for the debts of the firm, the dissolution of the partnership upon the death or bankruptcy of any partner, and the limit to the number of partners.

The chief characteristics of a Chinese Partnership are :—

- (1.) Each partner is liable to pay out of his private property only such proportion of a partnership debt as his share bears to the total of the shares of all the partners. But the partnership as a whole may be sued for the whole debt.
- (2.) Partnerships do not come to an end on the death of a partner, but the deceased partner's sons are admitted as partners and their father's share is sometimes divided between them and sometimes remains intact under the father's *tong* name, the interest being divided among the sons.
- (3.) Firms may take shares in other firms and there is no limit to the number of persons who may become partners.

- (4.) Shares are frequently held in *tong* names, names invented by the individual partner for the purpose of holding property and, not infrequently, also for the purpose of concealing his identity from the general public.
- (5.) Before a dividend is paid out of profits interest on capital, usually at the rate of 10% *per annum*, is paid to the partners who have subscribed it.
- (6.) Many firms have, in addition to the partners subscribing capital, a *hung kú* or red shareholder, a person, usually the promoter or manager, who is given a share though he subscribes no capital. He gets no interest on capital but he shares with the partners the surplus profit after interest on capital has been paid. He is not, moreover, liable for the debts of the firm.

The objection to the recognition of the first of these characteristics is that unless the unpaid creditor of an insolvent firm can find and sue every single partner of the debtor firm he cannot hope to be paid in full. But this is not a fatal objection as his position is better than that of the creditor of an insolvent limited company who cannot reach the private property of individual shareholders at all.

As to the second characteristic. There seems no reason why the death of a partner should destroy the partnership. In fact in the case of limited partnerships registered under the Imperial Act 7 Ed. VII chap. 21 the death of a limited partner does not dissolve the partnership. But the death of a partner would result of course, in a change in the proportionate interests of the remaining partners in the firm, and the value of the share of the dead partner would have to be paid to his personal representatives. It would be undesirable, if only for fiscal reasons, to recognise the right of sons to take their deceased father's share without taking out Letters of Administration.

As to the third characteristic. There is *prima facie* no reason why a firm should not hold a share in another firm. This can be done subject to one limitation under the present partnership law (*see Warner v. Smith* 32 L. J. Ch. 573). The limitation is that imposed by section 4 of the Companies Ordinance No. 1 of 1865 which provides that no partnership consisting of more than twenty persons may be formed for the purpose of carrying on any business that has for its object the acquisition of gain unless it is registered as a company. A firm is not, like a body corporate, a single entity. It is merely a convenient name for describing a number of individuals who are associated together. So if firms are allowed indiscriminately to take shares in other firms the number of partners in the latter firms would often exceed twenty. The difficulty can be got over by providing that where a firm is registered as a partner it is to be regarded for the purposes of the Ordinance as one person, and by providing that only one of its members should be allowed to interfere in the management of the partnership in which the firm has taken a share.

With regard to the fourth characteristic. It is undesirable that individuals should hide their identity under *tong* names. It is submitted that a Chinese partner should be registered either in the first name he receives after birth or in the name he receives when he reaches manhood's estate. A *tong* name may be registered in addition.

The last two characteristics are typically Chinese and to ignore them in a Bill intended, as far as possible, to give effect to Chinese customs would be measurably to defeat the object of the Bill.

The accompanying Bill embodies the views expressed in this memorandum. Registration is voluntary but partners who do not register are subject to the unlimited liability of the present partnership law. The principles of the new Bill are essentially different from the principles of the Limited Partnership Act 1907 which limits the liability of sleeping partners and which, some day, it may be necessary to introduce into the Colony; but as far as it has been practicable to do so the Bill is modelled on that Act.

C. GRENVILLE ALABASTER,
Attorney General.

A BILL

ENTITLED

An Ordinance to further amend the Summary Offences Ordinance, 1845.

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

Short title and construction. 1. This Ordinance may be cited as "The Summary Offences Amendment Ordinance, 1911," and it shall be read and construed as one with the Summary Offences Ordinance 1845, hereinafter called "the Principal Ordinance", and the Ordinances amending the same.

Repeals section 11 of Ordinance No. 1 of 1845 and substitutes another section therefor. 2. Section 11 of the Principal Ordinance is hereby repealed and there shall be substituted the following :—

Penalties for violation of sections 9 and 10.

" 11.—(1.) Every person who violates, disobeys, or fails to comply with any of the provisions of section 9 shall be liable to a penalty not exceeding fifty dollars, besides the expenses of the removal of the building or thing occupied or erected.

(2) Every person who violates, disobeys, or fails to comply with any of the provisions of section 10 shall be liable to a penalty not exceeding five dollars."

Objects and Reasons.

Section 9 of the Principal Ordinance in the Revised Edition was taken from section 20 of Ordinance No. 8 of 1858 and by section 28 of that Ordinance offenders against section 20 were liable to a penalty of fifty dollars besides the expenses of removal. In the Revised Edition the penalty was, evidently by mistake, changed to five dollars only. This Bill corrects the mistake.

C. G. ALABASTER,
Attorney General.

NOTICES.

COLONIAL SECRETARY'S DEPARTMENT.

No. S. 95.—Statement of Sanitary Measures adopted by Hongkong.

Disease.	Port or Place.	Restrictions in Force.	Authority.
Choiera.	Bangkok.	Medical examination; quarantine at the discretion of the Health Officer.	Proclamation No. 1 dated 6th May, 1910.
Plague.	Chefoo, Ching-wang-tao, Dalny and Newchwang.	Do.	Proclamation No. 2 dated 2nd February, 1911.
Do.	Taku & Tientsin.	Do.	Proclamation No. 3 dated 1st March, 1911.

C. CLEMENTI,
Colonial Secretary.

21st April, 1911.