

LEGISLATIVE COUNCIL.

Draft Bills.

No. S. 177.—The following draft Bills are published for general information :—

C.S.O. 1 in 2576/19.

A BILL.

INTITLED

An Ordinance to extend temporarily the provisions of the Rents Ordinances, 1921, with certain amendments.

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 Rents Ordinance, 1922.

Interpreta- 2. In this Ordinance :—
tion.

(a.) "Court" means the Supreme Court in its summary jurisdiction.

(b.) "Domestic tenement" includes every bed space, cubicle, room, portion of a floor, floor, or building, which is the subject of a separate letting, and which is used wholly or in part for human habitation, and every hotel and boarding house, whether such hotel or boarding house be held by the keeper thereof under one lease or more than one lease, and whether such hotel or boarding house be contained in one building or in more than one building : Provided that the following shall not be deemed to be domestic tenements within the meaning of this definition :—

(i) Any building or portion of a building which is used for habitation only by caretakers or watchmen not exceeding two in number.

(ii) Any building or portion of a building which is used for habitation only by office attendants or their families.

(iii) Any particular portion of any hotel or boarding house which is let by the keeper of such hotel or boarding house to a guest of such hotel or boarding house.

(iv) Any furnished house or furnished flat.

(v) Any building for the time being vested in the Custodian of Enemy Property, or any part of any such building.

(c.) "Lease" includes every agreement for the letting of any domestic tenement, whether oral or in writing.

(d.) "Lessee" includes a sub-lessee but does not include the Crown lessee.

(e.) "Lessor" includes every person who lets any domestic tenement to any other person.

(f) "Standard rent" with respect to any domestic tenement means:—

- (i) if the domestic tenement was actually let on the 31st December, 1920, the rate of rent which was recoverable from the tenant in actual occupation on the 31st December 1920; and
- (ii) if the domestic tenement was not actually let on the 31st December, 1920, but had been let on some previous date, the rate of rent which was recoverable from the tenant in actual occupation on the last occasion before the 31st December, 1920, on which the domestic tenement was actually let; and
- (iii) if the domestic tenement was not let until after the 31st December, 1920, or shall be first let after the commencement of this Ordinance, the rate of rent at which the domestic tenement was or shall be first let to a tenant in actual occupation.

(g) "Tenant in actual occupation" means a lessee of any domestic tenement who occupies such domestic tenement himself, or by his family or servants, provided that—

- (i) A lessee of any domestic tenement who occupies a portion of such domestic tenement himself, or by his family or servants, and who sub-lets other portions of such domestic tenement, shall be deemed to be the tenant in actual occupation of such domestic tenement as regards his immediate lessor.
- (ii) A sub-lessee from any such lessee as is referred to in proviso (i) above, of any domestic tenement which such sub-lessee occupies himself, or by his family or servants, shall be deemed to be the tenant in actual occupation of such domestic tenement.

3.—(1.) Notwithstanding any agreement to the contrary, whether made before or after the commencement of this Ordinance, and whether oral or in writing, no rent shall be recoverable in respect of any domestic tenement, from the tenant in actual occupation, in excess of the standard rent of such domestic tenement. No rent in excess of the standard rent to be recoverable.

(2.) This section shall apply to any rent which became due after the 31st December, 1920, and before the commencement of this Ordinance, and to any rent which shall become due during the continuance of this Ordinance, whatever the period may be in respect of which such rent became or shall become due.

4.—(1.) Notwithstanding any notice to quit, whether given before or after the commencement of this Ordinance, and notwithstanding the terms of any agreement whatsoever, whether made before or after the commencement of this Ordinance, and whether oral or in writing, an order or judgment against any tenant in actual occupation for the recovery of possession of any domestic tenement, or for the ejectment of a tenant therefrom, shall be made or given only if:— Restrictions on the right to possession.
10 & 11 Geo. 5, c. 17, s. 5.

- (a) the tenant has or shall have failed to pay duly the standard rent recoverable in respect of his domestic tenement ; or
- (b) the tenant has or shall have failed to perform some obligation of his tenancy ; or
- (c) the tenant or any person residing with him has or shall have been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has or shall have been convicted of using the domestic tenement or allowing the domestic tenement to be used for an immoral or illegal purpose, or the condition of the domestic tenement has or shall have, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person ; or
- (d) the tenant has or shall have given notice to quit, or has or shall have agreed in writing to quit, and in consequence of that notice or agreement the lessor has or shall have contracted to sell or let the domestic tenement or has or shall have taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession ; or
- (e) the domestic tenement is reasonably required by the lessor for occupation as a residence for himself or for his family, or for any person *bona fide* residing or to reside with him, or for some person in his whole time employment or in the whole time employment of some tenant from him, and the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available ; or
- (f) the lessor *bona fide* requires possession of the domestic tenement in order to pull down such domestic tenement or in order to reconstruct such domestic tenement to such an extent as to make such domestic tenement a new building within the meaning of the Public Health and Buildings Ordinance, 1903, and shall have given the tenant three months notice to quit, stating in writing whether he intends to pull down or to reconstruct such domestic tenement, and in the latter case stating the exact nature of the reconstruction intended : Provided that if the lessor fails to begin the work of pulling down or reconstruction within one month after the lessee shall have given up to the lessor possession of the domestic tenement, or shall fail to carry out the said work with reasonable expedition, the lessor shall, unless the contrary be proved, be deemed for the purpose of section 20 to have, in giving such notice, done an act *mala fide* with intent to induce the lessee to give up possession.

Ordinance
No. 1 of 1903.

(2.) If but for this Ordinance, or but for the Rents Ordinances, 1921, any tenancy would have expired by effluxion of time, or by reason of a notice to quit, or for any other reason, so that the tenancy is preserved only by reason of this Ordinance, or by reason of the Rents Ordinances, 1921, and this Ordinance, the terms of the tenancy so preserved, except as they may be modified by this Ordinance, and except as to the agreed period of tenancy, shall be as far as possible the same as the terms of the tenancy as it existed immediately before

the time at which, but for this Ordinance, or but for the Rents Ordinances, 1921, the tenancy would have expired.

(3.) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any domestic tenement, or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Ordinance, and not executed, at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession, for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit discharge or rescind any such order or judgment.

(4.) Where any order or judgment has been made or given before the passing of this Ordinance, but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Ordinance had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit.

(5.) Where a lessor has obtained an order or judgment for possession or ejectment on the ground that he requires a domestic tenement for his own occupation, and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the lessor to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

(6.) Nothing in this Ordinance shall be construed as affecting the operation of sections 205, 206, 207 or 207a of the Public Health and Buildings Ordinance, 1903. Ordinance No. 1 of 1903.

5.—(1.) Where the rights of any lessee of any building or buildings, other than the Crown lessee and the tenant in actual occupation, are affected by the operation of this Ordinance, it shall be lawful for such lessee to apply to the court for the revision of the rent payable under the lease, and upon such application the court may make such order as it shall think fit. Revision of the rent payable under intermediate leases.

(2.) It shall be lawful for the court to give such directions as it shall think fit for the procedure to be followed on such applications, and for the notice to be given to the other parties to any such lease, or to their agents.

(3.) Pending the decision of the court upon any such application the lessee under any such lease shall be bound to pay at the due date the rent reserved by such lease, as if no such application had been made, but if the court shall order the rent payable to be reduced, the lessee shall be entitled to recover back from the lessor any amount paid in excess of the revised rate of rent in respect of any period after the commencement of this Ordinance, or to deduct such amount from any subsequent rent payable under such lease, and such amount shall be ascertained by apportionment if necessary.

(4.) There shall be no appeal from any decision of the court under this section except with the leave of the court or of the full court of two judges, and if any appeal is allowed under this sub-section it shall be to the full court of two judges, whose decision shall be final.

(5.) Any application to the court for leave to appeal against any decision by it under this section shall be

made within 14 days after such decision shall have been given, and any application to the full court for leave to appeal under this section shall be by notice of motion which shall be filed with the Registrar within 14 days after the decision of the court under this section has been given, or, as the case may be, within 14 days after the refusal of the court to allow an appeal under this section.

Determina-
tion of the
construction
of the
Ordinance.

6.—(1.) If in any civil proceeding any question arises as to the recovery of possession of any domestic tenement, or as to the ejection of a tenant therefrom, or as to the construction of this Ordinance, such question shall be decided in the first instance by the court, and there shall be an appeal as of right from any decision of the court under this section to the full court of two judges, whose decision shall be final.

(2.) An appeal from any decision of the court under this section shall be by notice of motion which shall be filed with the Registrar within 14 days after such decision shall have been given.

Collection of
rates not to
be affected.

7. Nothing in this Ordinance shall be construed so as to prevent a lessor of a domestic tenement from collecting from his lessee the rates for the time being payable in respect of such domestic tenement, or such apportioned sum as shall properly be attributable to such domestic tenement in respect of rates, provided that the obligation of paying the rates in respect of such domestic tenement has not been assumed by the lessor under terms of the tenancy.

Evidence.

Ordinance
No. 6 of 1901.

8.—(1.) In any matter arising under or in consequence of this Ordinance, any returns made under the Rating Ordinance, 1901, relating to any domestic tenement, shall be admissible as evidence of the rent of such domestic tenement at the time when such return was made, and any return under the Rating Ordinance, 1901, which includes such domestic tenement shall be deemed to relate to such domestic tenement although such domestic tenement be not treated as a separate unit in such return.

(2.) In any matter arising under or in consequence of this Ordinance, any assessment whatsoever made under the Rating Ordinance, 1901, which may appear to the court to be relevant shall be admissible in evidence.

(3.) Any such return or assessment as is referred to in sub-sections (1) and (2) may be proved by a certificate under the hand of the Assessor or Assistant Assessor.

(4.) In any matter arising under or in consequence of this Ordinance, it shall be lawful for the court to order the production of any books of account or documents whatsoever if it shall appear to the court that such books of account or documents may be relevant for the purpose of determining such matter.

Application
of Ordinance.

Ordinance
No. 1 of 1903.

9.—(1.) This Ordinance shall not apply to the New Territories, except New Kowloon.

(2.) This Ordinance shall not apply to any entirely new building in the case of which the certificate referred to in section 204 of the Public Health and Buildings Ordinance, 1903, shall not have been issued before the commencement of this Ordinance.

Duration of
Ordinance.

10. This Ordinance shall continue in force until, and including, the 30th day of June, 1923, provided that it shall be lawful for the Legislative Council from time to time by resolution to extend the duration of this Ordinance for such term, not exceeding one year at any one time, as may be specified in such resolution.

11. Immediately after this Ordinance shall cease to be in force any tenant who shall have been in occupation at the time when this Ordinance ceases to be in force shall be deemed to be holding over lawfully on the tenancy terms on which he shall have been holding immediately before this Ordinance ceases to be in force, and at the standard rent, unless the lessor shall have given such tenant such notice to quit, terminating with the termination of this Ordinance, as would have been, as regards length of notice, a due notice to quit under the terms of the tenancy if this Ordinance had not been passed.

Effect on tenancies of the termination of the Ordinance.

12.—(1.) Notwithstanding anything contained in the Rating Ordinance, 1901, it shall be lawful for the assessor, in his absolute discretion, on the application of the owner or occupier of any tenement, to reduce the valuation of such tenement in any case in which the rent actually paid in respect of such tenement shall have been temporarily reduced in consequence of the operation of this Ordinance.

Assessor to have power to reduce valuations in certain cases.
Ordinance No. 6 of 1901.

(2.) Such reduced valuation shall apply to the quarter in which the reduction is made, and, subject to the provisions of the Rating Ordinance, 1901, with regard to interim valuations, shall continue to be in force while this Ordinance is in force and until the coming into effect of the first annual valuation made after this Ordinance shall have ceased to be in force.

(3.) If the valuation of any tenement is reduced under the provisions of this section, and if the rates in respect of such tenement for the quarter in which the reduction is made shall have been paid to the Treasurer, before the making of such reduction, the Treasurer shall refund the sum by which the amount of the rates payable under the former valuation exceeds the amount of the rates payable under the reduced valuation.

13. If the rent recoverable from the tenant in actual occupation of any domestic tenement on the 31st day of December, 1920, either (a) was a rent which had been agreed upon in writing at some date before the 1st day of January, 1918, or (b) was not higher than the rent recoverable from the tenant in actual occupation on the 1st day of January, 1918, it shall be lawful for the lessor of such tenement to apply to the court to fix such other rent than the standard rent as the court shall think fit as the rent to be paid in respect of such tenement during the continuance of this Ordinance, provided that nothing in this section shall affect any rent which became due before the commencement of this Ordinance, and provided that nothing in this section shall entitle any lessor, during the currency of any written lease of any domestic tenement for a definite and unexpired term, to any rent higher than the rent reserved in such lease.

Court may revise the rent in certain cases.

14. In case a lessor of any domestic tenement has expended or shall expend after the 31st day of December, 1920, the sum of five hundred dollars or upwards on additions or improvements thereto by which in the opinion of the court the rateable value thereof shall have been or shall be increased, the court may on application by the lessor for such purpose order that the rent of such tenement shall be increased beyond the standard rent by an annual sum equal to 8 per cent. on the amount so expended by the lessor on such additions, or improvements, provided that nothing in this section shall affect any rent which became due before the commencement of this Ordinance.

Court may increase rent in case of certain rateable improvements.

Certain tenancies to determine upon the lessee ceasing to occupy any portion of the domestic tenement.

15.—(1.) If a lessee of any domestic tenement ceases to occupy, by himself or by his family or servants, any portion of such domestic tenement, so that the whole of such domestic tenement is occupied by some other person or persons, the interest of such lessee shall thereupon cease and determine, and any person to whom such lessee shall have lawfully sub-let any portion of such domestic tenement shall thereupon become a tenant of the lessor, upon the same terms as those upon which he held from such lessee.

(2.) This section shall not apply to any case in which, at the commencement of the tenancy, it was not in contemplation of the parties that any part of the domestic tenement would be occupied by the lessee or by his family or servants.

Money not to be demanded for the grant, renewal or continuance of tenancies.

16.—(1.) No person shall, as a condition or pretended condition of the grant, renewal, or continuance, by himself or by any other person of a tenancy of any domestic tenement, demand payment of any sum of money whatsoever, in addition to the rent.

10 & 11 Geo. 5, c. 17, s. 8.

(2.) Every person demanding any payment in contravention of this section shall be liable upon summary conviction to a fine not exceeding one thousand dollars, and the magistrate by whom such person is convicted may order the amount paid to be repaid to the person by whom the same was paid.

(3.) This section shall not apply to any fine, premium, or other like sum, which any person, before the commencement of the Rents Ordinance, 1921, shall have agreed in writing to pay.

Recovery of rent by lessee.

10 & 11 Geo. 5, c. 17, s. 14 (1).

17. Where any sum shall, after the commencement of this Ordinance, have been paid on account of any rent, being a sum which is by virtue of this Ordinance irrecoverable by the lessor, the sum so paid shall be recoverable from the lessor who received the payment or his legal personal representative by the lessee by whom it was paid, and any such sum may, without prejudice to any other method of recovery, be deducted by the lessee from any rent payable by him to the lessor.

Transfer of actions to the original jurisdiction of the Supreme Court.

Ordinance No. 4 of 1873.

18.—(1.) Nothing contained in this Ordinance shall be deemed to affect the power of transferring actions from the summary jurisdiction of the Supreme Court to the original jurisdiction of the Supreme Court conferred by section 28 of the Supreme Court (Summary Jurisdiction) Ordinance, 1873.

(2.) Subject to the provisions of sub-section (3), if any action, to which any of the provisions of this Ordinance would have applied if such action had not been transferred to the original jurisdiction of the Supreme Court, is transferred to the original jurisdiction of the Supreme Court, the provisions of this Ordinance shall apply, in the further proceedings in such action, as if there were substituted for the term "court" in this Ordinance the term "Supreme Court in its original jurisdiction" except (i) in paragraph (a) of section 2, and (ii) where the word "court" forms part of the term "full court".

(3.) The special provisions of this Ordinance relating to appeals shall not apply to any action which is transferred from the summary jurisdiction of the Supreme Court to the original jurisdiction of the Supreme Court.

(4.) This section shall apply to actions instituted before the commencement of this Ordinance as well as to actions instituted after such commencement.

19.—(1.) Every person who, without lawful excuse, applies for a warrant of distress for any amount of rent in excess of the rent recoverable in accordance with the provisions of this Ordinance, and every person who, without lawful excuse, under threat of applying for or executing a warrant of distress, demands any amount of rent in excess of the rent recoverable in accordance with the provisions of this Ordinance, shall upon summary conviction be liable to a fine not exceeding two hundred and fifty dollars.

Distress for rent made irrecoverable by this Ordinance, and demand made under threat of such distress.

(2.) Upon the hearing of any summons issued under the provisions of this section, it shall be lawful for a magistrate, whether the defendant be convicted or not, and in addition to imposing a fine if the defendant be convicted, to order the defendant to pay to the tenant:—

- (a) any sum recovered or obtained from the tenant, by means of the distress or threatened distress, in excess of the rent recoverable in accordance with the provisions of this Ordinance;
- (b) any costs recovered or obtained from the tenant by means of the distress or threatened distress; and
- (c) damages, not exceeding two hundred and fifty dollars.

20. Every person who shall *mala fide* do any act whatsoever with intent to induce the lessee of any domestic tenement to give up possession of such domestic tenement shall be liable upon summary conviction to a fine not exceeding one thousand dollars, and shall also be liable in damages to the lessee for any loss which the lessee may sustain by reason of such act.

Acts done *mala fide* with intent to induce a lessee to quit prohibited.

21. Notwithstanding anything contained in the principal Ordinance or in this Ordinance, any *bona fide* notice to quit duly given by a lessor to a lessee in reliance on the provisions of paragraph (f) of subsection (1) of section 4, or in reliance on such provisions and on the provisions of section 22, and given in accordance with the provisions of the said paragraph, shall operate so as to bind all sub-lessees deriving title directly or indirectly from the lessee to whom such notice shall have been given.

Notice to quit to bind sub-lessees in certain cases.

22. If the owner of any domestic tenement agrees to sell such domestic tenement to a purchaser who *bona fide* intends forthwith to pull down such domestic tenement or to reconstruct such domestic tenement to such an extent as to make such domestic tenement a new building within the meaning of the Public Health and Buildings Ordinance, 1903, and if such owner agrees with such purchaser to give the necessary notices to quit, any notice to quit given by such owner in pursuance of such agreement shall enure for the benefit of such purchaser as if such purchaser had been the owner at the time when such notice to quit was given and had given such notice to quit, provided that nothing in this section shall relieve such owner from the obligation to state in writing at the time of giving such notice to quit whether such purchaser intends to pull down such domestic tenement or to reconstruct such domestic tenement, and in the latter case to state the exact nature of the reconstruction intended, and provided also that notwithstanding anything in this section the lessee shall have, in addition to any remedies which he

Notice to quit given by vendor to enure for benefit of purchaser in certain cases. Ordinance No. 1 of 1903.

may have against such owner, such remedies against such purchaser as he would have had if such notice to quit had been given by such purchaser.

Bankruptcy of lessee.

23. If the lessee of any domestic tenement is adjudged bankrupt neither the said lessee nor his trustee in bankruptcy shall be entitled to claim any right or benefit under section 4 in respect of the said domestic tenement by virtue of the tenancy, whether contractual or statutory, under which the said lessee held immediately before the making of the adjudication order.

Power to exclude the operation of Ordinance.

24. It shall be lawful for the Governor in Council to order that the provisions of this Ordinance, or any specified provision of this Ordinance, shall not apply in the case of any particular domestic tenement, if he thinks that the circumstances are sufficiently exceptional, and from the publication of such order in the *Gazette* the said provisions shall not apply to the said domestic tenement so long as such order remains unrevoked.

Notices given before the commencement of this Ordinance.

25. Every notice given before the commencement of this Ordinance which would have been valid under the provisions of the Rents Ordinances, 1921, and which would have been valid under the provisions of this Ordinance if given after the commencement of this Ordinance, shall be valid and effectual for all the purposes of this Ordinance.

Repeal of Rents Ordinances, 1921, not to affect existing tenancies.

26. Notwithstanding anything contained in section 11 of the Rents Ordinance, 1921, and notwithstanding anything else contained in the Rents Ordinances, 1921, the repeal of the Rents Ordinances, 1921, shall not have the effect of determining any tenancy, and shall not operate so as to enable any lessor to recover possession of any domestic tenement except upon the conditions provided in this Ordinance.

Repeal of Ordinances Nos. 13, 25 and 30 of 1921.

27. The Rents Ordinance, 1921, the Rents Amendment Ordinance, 1921, and the Rents Second Amendment Ordinance, 1921, are repealed.

Objects and Reasons.

1. The object of this bill is to extend temporarily the provisions of the Rents Ordinances, 1921. A few amendments have been made, but, as this is a temporary measure, it has been thought desirable to avoid change as much as possible.

2. Ordinance No. 30 of 1921 is absorbed into section 2 of Ordinance No. 13 of 1921. A better arrangement of the section of Ordinances Nos. 13 and 25 of 1921 could have been made, but for convenience the sections of each of these two Ordinances have been kept together in the bill. Clauses 1 to 17, both inclusive, represent Ordinance No. 13 of 1921, clauses 18 to 23, both inclusive, represent sections 4 to 9 of Ordinance No. 25 of 1921, and clauses 24 to 27 are new. Sections 1, 2 and 3 of Ordinance No. 25 of 1921 disappear as they are absorbed into other sections.

3. Some of the amendments made are necessary in order to link up the proposed legislation with the Ordinances which are to be repealed. Examples of this class of amendment are to be found in clauses 3 (2), 4 (2), 16 (3), and 25.

4. Clause 4 (1) (f) has been strengthened by the addition of a proviso which is aimed at *mala fide* action by a lessor under that paragraph. The paragraph in question is the one which gives a lessor power to recover possession if he intends to pull down or reconstruct the domestic tenement. The proviso lays down that if the lessor fails to begin the work within one month after obtaining possession, or fails to carry out the work with reasonable expedition, the onus shall lie upon him of showing that he acted *bona fide* in giving the notice. If he acted *mala fide* he is liable to a fine, and to damages, under clause 20. The express reference to damages in clause 20 is new, but it probably does not give any new right which did not exist before.

5. Section 15 of Ordinance No. 13 of 1921 is not very clear. An attempt is made in clause 15 of the bill to make the point clearer. The clause is intended to prevent subletting of the whole of a domestic tenement by a tenant who has ceased to use any part of it for himself. The section will not apply to the farming out of a block of buildings.

6. Clause 24 gives the Governor in Council power to exclude the operation of the Ordinance in any particular case in which the circumstances are sufficiently exceptional. One kind of case to which this section might be applied is where the premises are required for some charitable or public purpose. Another class of case to which it might be applied would be the case of a permanent resident who had bought a house for his own occupation before the commencement of the original Rents Ordinance.

7. Many criticisms and suggestions were received in response to the invitation of the Government. They were all carefully considered, and probably some at least of them would have been adopted if the measure were a permanent one, but it has been thought best, as stated above, to make as little change as possible in what is only a temporary measure.

J. H. KEMP,
Attorney General.

25th May, 1922.

A B I L L

INTITULED

An Ordinance to amend the Misdemeanours
Punishment Ordinance, 1898.

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 Misdemeanours Punishment Amendment Ordinance, 1922, and shall be read and construed as one with the Misdemeanours Punishment Ordinance, 1898, hereinafter called the principal Ordinance, and the said Ordinance and this Ordinance may be cited as the Misdemeanours Punishment Ordinances, 1898 and 1922. Short title and construction.
Ordinance No. 1 of 1898.

2. Sections 5 and 6 of the principal Ordinance are repealed and the following section is substituted therefor:— Repeal of Ordinance No. 1 of 1898, ss. 5 and 6 and substitution of new section.

5. Where any person is convicted of a common law misdemeanour, or of any offence declared by any enactment to be a misdemeanour, and no punishment is provided by any enactment for such misdemeanour, such person shall be liable to imprisonment for any term not exceeding three years and to a fine not exceeding one thousand dollars. Punishment of misdemeanour where punishment not otherwise specified.

Objects and Reasons.

1. Ordinance No. 1 of 1898 provides that the maximum penalty for certain specified conspiracies shall be three years imprisonment and a fine of \$500. It also provides that the maximum penalty for all other misdemeanours, unless otherwise specified in some Act or Ordinance, shall be one year's imprisonment and a fine of \$500. This maximum penalty seems too low for some misdemeanours. For example, it does not seem to be enough for forgery, yet the effect of the section is to make one year the maximum imprisonment for all common law forgeries. Again, by virtue of this provision, if the police surprise a gang of armed men on their way to commit a robbery, and one of the gang incite another to fire at the police in order to prevent the arrest of any of the gang, the maximum term of imprisonment is only one year. The bill, therefore, proposes to raise the maximum for all misdemeanours to three years imprisonment and a fine of \$1,000, unless of course some other maximum penalty is provided by some other enactment.

2. In England, except where the maximum penalty for any particular misdemeanour has been laid down by statute, there is no limit to the penalty which may be imposed for a misdemeanour, except the provisions of Magna Charta and the Bill of Rights against excessive fines.

J. H. KEMP,
Attorney General.

23rd May, 1922.