

LEGISLATIVE COUNCIL.

Draft Bills.

No. S. 281.—The following draft Bills are published for general information :—  
C.S.O. 705/15.

A BILL

INTITULED

An Ordinance to amend the Dangerous Goods Ordinance, 1873.

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

Short title and construction. Ordinance No. 1 of 1873

1. This Ordinance may be cited as the Dangerous Goods Amendment Ordinance, 1922, and shall be read and construed as one with the Dangerous Goods Ordinance, 1873, hereinafter called the Principal Ordinance, and the said Ordinance and this Ordinance may be cited together as the Dangerous Goods Ordinances, 1873 and 1922.

Repeal of Ordinance No. 1 of 1873, ss. 5 and 6 and substitution of new section.

2. Sections 5 and 6 of the principal Ordinance are repealed, and the following section is substituted therefor :—

Regulations. 5.—(1.) It shall be lawful for the Governor in Council to make regulations for the following purposes :—

- (a) for declaring that any substances whatever shall be deemed to be dangerous goods within the meaning of this Ordinance ;
- (b) for declaring that any substances which by virtue of the provisions of this Ordinance are deemed to be dangerous goods shall not be deemed to be dangerous goods ;
- (c) for regulating the possession, landing, shipment, transhipment, storage and movement of dangerous goods ;
- (d) for providing for the issue of licences for prescribing the conditions of such licences, and for fixing the fees to be paid for such licences ;
- (e) for exempting any substance, or any specified quantity of any substance, or any specified form of any substance, from any of the provisions of this Ordinance or of any Order in Council or regulation made under this Ordinance ;
- (f) for prescribing any tests to be applied to any dangerous goods for any purpose whatsoever ;
- (g) for the general carrying out of the provisions of this Ordinance.

(2.) All regulations made under this Ordinance shall be laid on the table of the Legislative Council at the first meeting thereof held after the publication in the Gazette of the making of such regulations, and if a resolution be passed at the first meeting of the Legislative Council held after such regulations have been laid on the table of the said Council resolving that any such regulation shall be rescinded, or amended in any manner whatsoever,

the said regulation shall, without prejudice to anything done thereunder, be deemed to be rescinded, or amended as the case may be, as from the date of publication in the Gazette of the passing of such resolution.

3. Section 7 of the principal Ordinance is amended by the substitution of the words "stored, possessed," for the word "carried" in the first line thereof, and by the substitution of the figure "5" for the figure "6" in the fifth line thereof. Amendment  
of Ordinance  
No. 1 of 1873,  
s. 7.

4. Section 10 of the principal Ordinance is amended as follows:— Amendment  
of Ordinance  
No. 1 of 1873,  
s. 10.

(a.) Sub-section (1) is amended by the insertion of the words "or as may be provided by regulation made under section 5" immediately after the word "mentioned" in the first line thereof, and by the deletion of the words "or in pursuance of a permit issued in accordance with regulations made under section 6", in the fifth and sixth lines thereof;

(b.) Sub-sections (6) and (7) are repealed.

5. Section 16 of the principal Ordinance is repealed. Repeal of  
Ordinance  
No. 1 of 1873,  
s. 16.

6. Section 18 of the principal Ordinance is amended as follows:— Amendment  
of Ordinance  
No. 1 of 1873,  
s. 18.

(a.) Sub-section (1) is amended by the deletion of the words "(excepting those specified in section 13)";

(b.) Sub-section (2) is repealed.

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*Objects and Reasons.*

1. The object of this bill is to enable certain alterations to be made in the rules relating to dangerous goods. The proposed new rules have been discussed with certain representative persons concerned in the trade in the kinds of dangerous goods affected, and some of the rules are based on a model supplied by the Petroleum Department of His Majesty's Government.

2. The new section 5 which is to be enacted by clause 2 of the bill is intended to confer the powers at present contained in sections 5 and 6 of the principal Ordinance, and certain additional powers, including the power of prescribing licence conditions which is referred to in section 10 of the principal Ordinance.

3. The amendments of section 7 of the principal Ordinance are merely consequential.

4. The amendment of sub-section (1) of section 10 of the principal Ordinance is consequential. Sub-sections (6) and (7) of that section are repealed because the matters dealt with in them are such as are usually dealt with by regulation.

5. The latter remark applies also to the repeal of section 16 of the principal Ordinance.

6. Section 18 of the principal Ordinance withdraws offences under section 13 from the jurisdiction of a single magistrate, and it confers the jurisdiction on two magistrates sitting together subject to a right in the accused to apply for trial by jury. This seems unnecessary, as a single magistrate has jurisdiction in many more serious offences.

7. If time had allowed the whole of the principal Ordinance would have been redrafted, but it is thought that the amendments made by the bill will be sufficient for the present purpose.

J. H. KEMP,  
*Attorney General.*

13th June, 1922.

C.S.O. 2567/22.

A BILL

INTITLED

An Ordinance to amend the law relating to evidence and to the administration of oaths.

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 Evidence Amendment Ordinance, 1922.

Amendment of Ordinance No. 2 of 1889, s. 29. 2. Section 29 of the Evidence Ordinance, 1889, is amended as follows:—

- (a.) The words “, or because he cannot be found at his last known place of residence in the Colony” are inserted immediately after the word “behalf” in the twelfth line thereof.
- (b.) The words “or warning” in the sixteenth line thereof are deleted.
- (c.) The words “or given” in the seventeenth line thereof are deleted.

Amendment of Ordinance No. 2 of 1889, s. 32. 3. Section 32 of the Evidence Ordinance, 1889, is amended as follows:—

- (a.) The said section is re-numbered as sub-section (1) of section 32.
- (b.) The word “so” in the first line thereof is deleted.
- (c.) The words “who is” are inserted immediately before the word “dangerously” in the first line thereof.
- (d.) The words “that he is not likely to recover” in the second line thereof are deleted.
- (e.) The words “ever be able to travel or to give evidence” in the twenty-eighth and twenty-ninth lines thereof are deleted.
- (f.) The words “be able to attend and give evidence at the trial” are inserted immediately before the word “it” in the twenty-ninth line thereof.
- (g.) The following sub-section is added thereto:—

(2) No such statement shall be rejected on the ground of any failure to comply with any of the provisions of sub-section (1) with regard to the notice or the caption unless the court is of opinion that the person accused was substantially prejudiced by such failure.

Normal manner of administration of oaths. 4.—(1.) Any oath may be administered and taken in the form and manner following:—

9 Edw. 7, c. 39, ss. 2 and 3. Ordinance No. 3 of 1910, ss. 2 and 4.

The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words “I swear by Almighty God that.....”, followed by the words of the oath prescribed by law.

(2.) The officer shall, unless the person about to take the oath voluntarily objects thereto, or is physically incapable of so taking the oath, administer the oath in the form and manner aforesaid without question:

Provided that, in the case of a person who is neither a Christian nor a Jew, the oath may be administered in any manner which is now lawful.

(3.) In this section the word "officer" includes every person authorised to administer oaths.

5. If any person to whom an oath is administered desires to swear with uplifted hand, in the form and manner in which an oath is usually administered in Scotland, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question.

Swearing with uplifted hand.  
51 & 52 Vict. c. 46, s. 5.  
Ordinance No. 3 of 1910, s. 3.

6. Where an oath has been duly administered and taken, the fact that the person to whom the same was administered had, at the time of taking such oath, no religious belief, shall not for any purpose affect the validity of such oath.

Validity of oath not affected by absence of religious belief.  
51 & 52 Vict. c. 46, s. 3.

7.—(1.) Every person upon objecting to being sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or shall be required by law.

Affirmation in case of oath.  
51 & 52 Vict. c. 46, s. 1.  
Ordinance No. 2 of 1889, s. 43.

(2.) Every person who is neither a Christian nor a Jew shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or shall be required by law.

Ordinance No. 2 of 1889, s. 44.

(3.) Every such affirmation shall be as follows :—  
"I, A.B., do solemnly, sincerely, and truly declare and affirm,"

51 & 52 Vict. c. 46, s. 2.

and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.

(4.) Every affirmation in writing shall commence "I, ....., of....., do solemnly and sincerely affirm," and the form in lieu of jurat shall be "Affirmed at....., this.....day of .....19....., Before me."

51 & 52 Vict. c. 46, s. 4.

(5.) Every affirmation shall be of the same force and effect as an oath in the usual form.

Ordinance No. 2 of 1889, s. 45.

8. If any person taking an oath or making an affirmation is ignorant of the English language the oath or affirmation shall be interpreted to him by a sworn interpreter.

Interpretation of oaths and affirmations.  
Ordinance No. 2 of 1889, s. 44.

9. In any prosecution for murder or manslaughter any medical notes or report by any Government medical officer which purport to relate to the deceased shall be admissible in evidence upon proof of the hand writing of such Government medical officer, and upon proof of his death or absence from the Colony.

Admissibility of certain medical notes and reports.

10. On the hearing of any indictable offence it shall be the duty of the magistrate to take down in the minute of proceedings any material statement or observation made, and any evidence given, by the accused in the course of the proceedings, and, without prejudice to any other method of proof, any such statement or observation or evidence so taken down shall be admissible in evidence against the accused on his trial upon production of the minute of proceedings.

Observations and evidence of accused person before magistrate to be taken down and to be admissible at trial on production of the minute of proceedings.

11. The enactments specified in the Schedule are Repeals, repealed, to the extent specified in the third column thereof.

**SCHEDULE.**

[s. 11.]

ENACTMENTS REPEALED.

Number of Ordinance.	Short Title.	Extent of Repeal.
1 of 1869.	The Promissory Oaths Ordinance, 1869.	Section 15.
2 of 1889.	The Evidence Ordinance, 1889.	Sections 43, 44 and 45.
3 of 1910.	The Oaths Ordinance, 1910.	The whole.
31 of 1911.	The Interpretation Ordinance, 1911.	In section 31, the words "declare or to solemnly", the words "declaration and solemn", and the words "declare and solemnly".

*Objects and Reasons.*

1. This bill proposes to make various amendments in the law relating to evidence and to the administration of oaths and declarations.

2. Section 29 of the Evidence Ordinance, 1889, provides that a deposition taken at the magistracy may be read at the trial at the sessions if the prosecution are, for certain specified reasons, unable to produce the witness at the trial. Owing to difficulties of proof the specified grounds have been found insufficient, and it is proposed to add to them a further ground. Under the section as amended by clause 2 it will be enough to prove that the witness cannot be found at his last known place of residence in the Colony. Without some provision for reading the depositions of absent witnesses it would in many cases be a simple matter in this Colony to defeat the ends of justice by bribing a material witness to disappear or by driving him away by threats. In a recent case, which failed in this way because leave to read the depositions could not be given, the principal witnesses were driven out of the Colony by threats. The amendments to be made by paragraphs (b) and (c) of clause 2 are formal.

3. Section 32 of the Evidence Ordinance, 1889, provides that a deposition taken by a magistrate anywhere from a person who is dangerously ill may, if relevant, be read at the trial of any prisoner for any indictable offence, if the deponent is dead, provided that certain requirements with regard to the taking of the deposition were complied with. This section is often made use of in wounding cases which may develop into murder or manslaughter cases in the event of the death of the injured man. The statement is usually taken at the Government Civil Hospital and it is generally a matter of great urgency. Some of the requirements above referred to are rather technical. The substantial one is that the accused person must be present and must have an opportunity of cross-examining the deponent. The broad general intention of the section seems to be (1) that such evidence should be made available in case of

the deponent's death, and (2) that in the taking of the evidence the interests of the accused or suspected person should be considered as much as is reasonably possible. It sometimes happens, however, that the courts feel bound to exclude these dying depositions, as they are called, on somewhat technical grounds. Clause 3, therefore, proposes to add to section 32 a provision that no dying deposition shall be excluded on the ground of any failure to comply with any of the above requirements which relate (a) to the caption (b) to the notice to be given to the accused person, unless the court is of opinion that the accused person was substantially prejudiced by such failure. The caption is a technical part of the record of the deposition. This provision is added by paragraph (g) of clause 3. The other paragraphs of clause 3 deal with purely technical amendments.

4. Clauses 4 to 8 deal with the form of oath or affirmation. The principal changes which they propose to make in the existing law are as follows.

5. Clause 7 provides an alternative of affirmation in all cases where an oath is required by law. At present the alternative of affirmation is provided only (1) in the case of *viva voce* evidence, affidavits and depositions (Ordinance No. 2 of 1889, s. 43), and (2) in the case of the official oaths prescribed by the Promissory Oaths Ordinance, 1869, (Ordinance No. 1 of 1869). The alternative is not provided in the case of the oath of allegiance generally, though of course particular Ordinances do provide an alternative for cases where the oath is to be taken under that particular Ordinance.

6. Under section 43 (1) of the Evidence Ordinance, 1889, if any person who is not a native of China is unwilling from conscientious motives to be sworn he is allowed to make an affirmation, but it would appear from the form of affirmation that this option is given only to persons who have a religious belief and who are prepared to say that the taking of an oath is unlawful according to their religious belief. The section does not seem to provide for the case of persons who have no religious belief. This case is provided for in sub-clause (1) of clause 7 of the bill, which is taken from section 1 of the Oaths Act, 1888.

7. Section 43 (1) of the Evidence Ordinance, 1889, does not give the option of affirmation to persons who are natives of China. This does not seem to be warranted. It is quite possible that a native of China might be found who had a conscientious objection to taking an oath. It is also not always possible to ascertain a witness's place of birth. Further, there does not seem to be any reason why, in a case of this kind, persons of Chinese race, religion and traditions who happen to have been born out of China should be treated on a different footing from those born in China. Clause 7 of the bill abandons this distinction.

8. Section 44 of the Evidence Ordinance, 1889, provides that every person who is neither a Christian nor of the Jewish religion shall in lieu of an oath make a declaration. In the first place this is inconsistent with section 43 of the same Ordinance, which gives in certain cases the alternative of an affirmation. In the second place it denies to anyone who is not a Christian or a Jew the right of taking an oath at all. In the third place, there seems to be no reason why the declaration under section 44 should be in a different form from the affirmation under section 43. Sub-clause (2) of clause 7 of the bill provides that every person who is neither a Christian nor a Jew shall be permitted to make an affirmation instead of taking an oath, and it is proposed that under this provision the affirmation shall be administered to Chinese witnesses as a matter of course. Clause 7 also adopts one form, *i.e.*, that of affirmation, instead of the two different forms, *i.e.*, of affirmation and declaration, provided for by sections 43 and 44 of the Evidence Ordinance, 1889.

9. Clause 4 provides that in the case of an oath the words of the oath are to be repeated by the person taking it. This is in accordance with the English practice, and it is in accordance with the existing practice here with regard to declarations.

10. The other provisions of clauses 5 to 8 are taken from existing Ordinances, except that clause 6 has been adopted from the Oaths Act, 1888, the exact form of affirmation has also been taken from that Act, and clause 8 is made general and is not restricted to the case of declarations.

11. Clause 9 is an innovation. It provides that in any prosecution for murder or manslaughter any medical notes or report by any Government medical officer which purport to relate to the deceased shall be admissible in evidence upon proof of the hand writing of the medical officer and upon proof of his death or absence from the Colony. This is desirable in a place like Hongkong where officers are frequently away on long leave, and where officers who have left the Government service are often so far from the Colony that it is impossible to bring them back to give evidence. The difficulty probably occurs rarely in England. Usually the most important medical evidence in a murder case is the evidence of the officer in charge of the mortuary. His evidence is required for two purposes, to prove the cause of death, and to assist in proving the identification of the body. Of course his evidence is often useful for other purposes also, *e.g.*, as to the nature and direction of the wound. A record, in the hand writing of the medical officer in charge, is kept at the mortuary, and of course is always referred to by the medical officer when he is called as a witness. The longer the lapse of time, the more does his evidence in fact depend on the written record and the less on his recollection. It does not therefore seem to be a very violent step to make the record itself evidence when the officer cannot be called.

12. Clause 10 deals with a point upon which there has been some doubt here, *i.e.*, the proper method of proof of an observation made by the prisoner during the course of the preliminary proceedings before the magistrate. Section 73 (3) of the Magistrates Ordinance, 1890, makes the formal statement of the prisoner admissible on mere production, but the Ordinance is silent as to the proof of any observation or statement made by the prisoner at any other stage of the proceedings.

13. The legal position in England is not quite clear. It is quite certain that such an observation may be proved as a trial, and this has been done in a number of reported cases. The cases are not consistent on the method of proof. For example, in *R. v. Weller* (1846) 2 C and K 223, Platt, B., refused to receive evidence of an observation by the prisoner on the ground that it should have appeared on the depositions. This is in conflict with *R. v. Spilsbury* (1835) 7 C and P. 187, where Coleridge, J., admitted oral evidence of such an observation. Russell on Crimes, 7th ed., p. 2224, expresses the view that *R. v. Weller* cannot be supported. The authority of most of the cases cited in the books on this point is perhaps subject to some doubt in this Colony, because nearly all the cases were under 7 Geo. 4, c. 64, which requires Justices to "take the examination" of the prisoner. However, in *R. v. Taylor* (1875) 13 Cox 77, which was after the passing of the Indictable Evidences Act, 1848, Brett, J., seems to have assumed that such an observation could be proved by the depositions, though he allowed oral proof in that particular case. What was there proved was a question by the prisoner in cross examining a witness.

14. Clause 10 of the bill directs the magistrate to take down such observations, and it makes the depositions evidence of any such observation so taken down, without prejudice to any other method of proof. The clause also applies to any evidence given by the accused before the magistrate. Probably the whole clause is merely declaratory.

15. It may be noted that under 1 and 2 Vict. c. 105, an oath may be administered in any form which the witness declares to be binding on him.

J. H. KEMP,  
*Attorney General.*

15th August, 1922.

C.S.O. 655/22.

**PERJURY ORDINANCE, 1922.**

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ARRANGEMENT OF SECTIONS.

*Section.*

1. Short title.
2. Interpretation.
3. Perjury.
4. False statements on oath made otherwise than in a judicial proceeding.
5. False statements, &c., with reference to marriage.
6. False statements, &c., as to births or deaths.
7. False statutory declarations and other false statements without oath.
8. False declarations, &c., to obtain registration, &c., for carrying on a vocation.
9. Aiders, abettors, suborners, &c.
10. Contradictory statements on oath.
11. Using false affidavits.
12. Power to direct a prosecution for perjury.
13. Form of indictment.
14. Corroboration.
15. Proof of certain proceedings on which perjury is assigned.
16. Form of oath.
17. Savings.
18. Repeals.

SCHEDULE.

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A BILL

INTITULED

An Ordinance to consolidate and simplify the law relating to perjury and kindred offences.

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 Perjury Ordinance, 1922.

Interpretation. 2. In this Ordinance the words "oath" and "affidavit" include, in the case of persons allowed or required by law to affirm instead of swearing, "affirmation", and the word "swear" in the like case includes "affirm".

Perjury. 3.--(1.) If any person lawfully sworn as a witness, or sworn as an interpreter, either generally or in a particular judicial proceeding, wilfully makes a statement in any judicial proceeding, which is material in that proceeding, and which he knows to be false or does not believe to be true, he shall be guilty of perjury, and shall, on conviction thereof on indictment, be liable to imprisonment for any term not exceeding seven years and to a fine.

(2.) The expression "judicial proceeding" includes a proceeding before any court, tribunal, or person having by law power to hear, receive, and examine evidence on oath.

(3.) Where a statement made for the purposes of a judicial proceeding is not made before the tribunal itself, but is made on oath before a person authorised by law to administer an oath to the person who makes the statement, and to record or authenticate the statement, it shall, for the purposes of this section, be treated as having been made in a judicial proceeding.

(4.) A statement made by a person lawfully sworn in Hongkong for the purposes of a judicial proceeding—

- (a) in another part of His Majesty's dominions, or
- (b) in a British tribunal lawfully constituted in any place by sea or land outside His Majesty's dominions, or
- (c) in a tribunal of any foreign state,

shall, for the purposes of this section, be treated as a statement made in a judicial proceeding in Hongkong.

(5.) The question whether a statement on which perjury is assigned was material is a question of law to be determined by the court of trial.

False statements on oath made otherwise than in a judicial proceeding. 4. If any person being required or authorised by law to make any statement on oath for any purpose, and being lawfully sworn (otherwise than in a judicial proceeding) wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true he shall be guilty of a misdemeanour, and, on conviction thereof on indictment, shall be liable to imprisonment for any term not exceeding seven years and to a fine.

False statements, &c., with reference to marriage. 5. If any person—  
(a) for the purpose of procuring a marriage, or a certificate or licence for marriage, knowingly and wilfully makes a false oath, or makes or signs a false declaration, notice or certificate required under any enactment for the time being in force relating to marriage, or

- (b) knowingly and wilfully makes, or knowingly and wilfully causes to be made, for the purpose of being inserted in any register of marriage, a false statement as to any particular required by law to be known and registered relating to any marriage, or
- (c) forbids the issue of any certificate or licence for marriage by falsely representing himself to be a person whose consent to the marriage is required by law knowing such representation to be false,

he shall be guilty of a misdemeanour, and, on conviction thereof on indictment, shall be liable to imprisonment for any term not exceeding seven years and to a fine.

6.—(1) If any person—

- (a) wilfully makes any false answer to any question put to him by any registrar of births or deaths relating to the particulars required to be registered concerning any birth or death, or wilfully gives to any such registrar any false information concerning any birth or death or the cause of any death, or
- (b) wilfully makes any false certificate or declaration under or for the purposes of any enactment relating to the registration of births or deaths, or, knowing any such certificate or declaration to be false, uses the same as true or gives or sends the same as true to any person, or
- (c) wilfully makes, gives or uses any false statement or declaration as to a child born alive as having been still-born, or as to the body of a deceased person or a still-born child in any coffin, or falsely pretends that any child born alive was still-born, or
- (d) makes any false statement with intent to have the same inserted in any register of births or deaths,

False statements, &c., as to births or deaths.  
1 & 2 Geo. 5, c. 6, s. 4.

he shall be guilty of a misdemeanour and shall be liable—

- (i) on conviction thereof on indictment, to imprisonment for any term not exceeding seven years and to a fine, and
- (ii) on summary conviction thereof, to a fine not exceeding two hundred and fifty dollars.

(2.) A prosecution on indictment for an offence against this section shall not be commenced more than three years after the commission of the offence.

7. If any person knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made—

- (a) in a statutory declaration, or
- (b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return, or other document which he is authorised or required to make, attest, or verify, by any enactment for the time being in force, or
- (c) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force,

False statutory declarations and other false statements without oath.  
1 & 2 Geo. 5, c. 6, s. 5.

he shall be guilty of a misdemeanour and shall be liable on conviction thereof on indictment to imprisonment for any term not exceeding two years and to a fine.

False declarations, &c., to obtain registration, &c., for carrying on a vocation.  
1 & 2 Geo. 5, c. 6, s. 6.

8. If any person—

- (a) procures or attempts to procure himself to be registered on any register or roll kept under or in pursuance of any enactment for the time being in force of persons qualified by law to practise any vocation or calling, or
- (b) procures or attempts to procure a certificate of the registration of any person on any such register or roll as aforesaid,

by wilfully making or producing or causing to be made or produced either verbally or in writing, any declaration, certificate, or representation which he knows to be false or fraudulent, he shall be guilty of a misdemeanour and shall be liable on conviction thereof on indictment to imprisonment for any term not exceeding twelve months and to a fine.

Aiders, abettors, suborners, &c.  
1 & 2 Geo. 5, c. 6, s. 7.

9.—(1.) Every person who aids, abets, counsels, procures, or suborns another person to commit an offence against this Ordinance shall be liable to be proceeded against, indicted, tried and punished as if he were a principal offender.

(2.) Every person who incites or attempts to procure or suborn another person to commit an offence against this Ordinance shall be guilty of a misdemeanour.

Contradictory statements on oath.  
Ordinance No. 2 of 1889, s. 47.

10. Where two or more contradictory statements of fact or alleged fact, material to the issue or matter in question, have been wilfully made on oath by one and the same witness in any judicial proceeding or proceedings, whether before the same Court or tribunal or person or not, and whether the respective truth or falsehood of the said statements can be ascertained or not, an indictment may be preferred against him, charging him with having wilfully made the said contradictory statements, and, on conviction thereof, either in whole or in part, such witness shall be liable to imprisonment for any term not exceeding seven years and to a fine.

Using false affidavits.

11. If any person wilfully uses for any purpose any affidavit which he knows to be false or does not believe to be true, wherever such affidavit may have been sworn, he shall be guilty of a misdemeanour, and, on conviction thereof on indictment, shall be liable to imprisonment for any term not exceeding seven years and to a fine.

Power to direct a prosecution for perjury.  
1 & 2 Geo. 5, c. 6, s. 9.

12.—(1.) Where any judge or magistrate is of opinion that any person has, in the course of a proceeding before him, been guilty of perjury, he may order the prosecution of that person for such perjury, in case there shall appear to be reasonable cause for such prosecution, and may commit him, or admit him to bail, to take his trial at the proper court, and may require any person to enter into a recognizance to prosecute or give evidence against the person whose prosecution is so ordered, and may give the person so bound to prosecute a certificate of the making of the order for the prosecution, for which certificate no charge shall be made.

(2.) An order made or a certificate given under this section shall not be given in evidence for the purpose or in the course of any trial of a prosecution resulting therefrom.

Form of indictment.  
1 & 2 Geo. 5, c. 6, s. 12.

13.—(1.) In an indictment—

- (a) for making any false statement or false representation punishable under this Ordinance, or

- (b) for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly taking, making, signing, or subscribing any oath, affirmation, solemn declaration, statutory declaration, affidavit, deposition, notice, certificate, or other writing, or
- (c) for wilfully making contradictory statements on oath in a judicial proceeding or proceedings, or
- (d) for wilfully using a false affidavit,

it is sufficient to set forth the substance of the offence charged, and before which court or person (if any) the offence was committed, without setting forth the proceedings or any part of the proceedings in the course of which the offence was committed, and without setting forth the authority of any court or person before whom the offence was committed.

(2.) In an indictment for aiding, abetting, counselling, procuring, or suborning any other person to commit any offence hereinbefore in this section mentioned, or for conspiring with any other person, or with inciting or attempting to procure or suborn any other person, to commit any such offence, it is sufficient—

- (a) where such offence has been committed, to allege that offence, and then to allege that the defendant procured the commission of that offence, and
- (b) where such offence has not been committed, to set forth the substance of the offence charged against the defendant without setting forth any matter or thing which it is unnecessary to aver in the case of an indictment for a false statement or false representation punishable under this Ordinance.

14. A person shall not be liable to be convicted of any offence against this Ordinance, or of any offence declared by any other enactment to be perjury or subornation of perjury, or to be punishable as perjury or subornation of perjury, solely upon the evidence of one witness as to the falsity of any statement alleged to be false. Corroboration.  
1 & 2 Geo. 5.  
c. 6, s. 13.

15. On a prosecution—

- (a) for perjury alleged to have been committed on the trial of an indictment for felony or misdemeanour, or
- (b) for procuring or suborning the commission of perjury on any such trial,

Proof of certain proceedings on which perjury is assigned.  
1 & 2 Geo. 5.  
c. 6, s. 14.

the fact of the former trial shall be sufficiently proved by the production of a certificate containing the substance and effect (omitting the formal parts) of the indictment and trial, purporting to be signed by the Registrar or other person having the custody of the records of the court where the indictment was tried, or by the deputy of that Registrar or other person, without proof of the signature or official character of the Registrar or person appearing to have signed the certificate.

16. For the purposes of this Ordinance, the forms and ceremonies used in administering an oath are immaterial, if the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question, and if the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection, or has declared to be binding on him. Form of oath.  
1 & 2 Geo. 5.  
c. 6, s. 15.

17.—(1.) Where the making of a false statement is not only an offence under this Ordinance, but also by virtue of some other enactment is a corrupt practice or subjects the offender to any forfeiture or disqualification or to any penalty other than imprisonment, or fine, the Savings.  
1 & 2 Geo. 5.  
c. 6, s. 16.

liability of the offender under this Ordinance shall be in addition to and not in substitution for his liability under such other enactment.

(2.) Where the making of a false statement is made punishable by any other enactment, whether passed before or after the commencement of this Ordinance, proceedings may be taken either under such other enactment or under this Ordinance.

Repeals.  
1 & 2 Geo. 5,  
c. 6, s. 17.

18. The enactments specified in the schedule to this Ordinance are repealed, to the extent specified in the third column of that schedule.

SCHEDULE.

ENACTMENTS REPEALED.

Number and year of Ordinance.	Short Title.	Extent of Repeal.
3 of 1873.	The Supreme Court Ordinance, 1873.	In section 31, the words "or that any person, in swearing in any affidavit required to be made before the Court, has been guilty of the like offence," , and the words "to direct a prosecution for perjury to be forthwith instituted against such person so falsely swearing as aforesaid, in order that he may be punished according to law; or where such perjury is committed by any person examined as a witness in open court, it shall be lawful for the Court, instead of directing such prosecution to be instituted as aforesaid, either."
7 of 1875.	The Marriage Ordinance, 1875.	Section 18.
2 of 1881.	The Census Ordinance, 1881.	Section 8, sub-section (2), paragraph (a), and sub-section (3).
1 of 1884.	The Medical Registration Ordinance, 1884.	Section 15.
7 of 1886.	The Bills of Sale Ordinance, 1886.	Section 24.
12 of 1886.	The Legislative Council (Witnesses) Ordinance, 1886.	Section 3, sub-section (1).
13 of 1886.	The Commissioners Powers Ordinance, 1886.	Section 6.
3 of 1888.	The Regulation of Chinese Ordinance, 1888.	Section 52, paragraph (4).

SCHEDULE.—*Continued.*

Number and year of Ordinance.	Short title.	Extent of Repeal.
2 of 1889.	The Evidence Ordinance, 1889.	Section 46, 47, 48, 49 and 50.
3 of 1890.	The Magistrates Ordinance, 1890.	Section 24, sub-section (2).
2 of 1892.	The Patents Ordinance, 1892.	In section 2, sub-section (3), the words "and every person who knowingly makes any untrue or false statement in any such declaration shall be liable to the penalties of perjury".
8 of 1893.	The Statutory Declarations Ordinance, 1893.	Section 5.
7 of 1896.	The Births and Deaths Registration Ordinance, 1896.	Section 23.
9 of 1899.	The Criminal Procedure Ordinance, 1899.	Sections 23 and 24.
10 of 1899.	The Merchant Shipping Ordinance, 1899.	Section 5, sub-section (10), and section 10, sub-section (22).
34 of 1910.	The New Territories Regulation Ordinance, 1910.	Section 10, sub-section (3).
53 of 1911.	The Chinese Partnerships Ordinance, 1911.	In section 11, the words "be guilty of a misdemeanour, and shall also".
58 of 1911.	The Companies Ordinance, 1911.	Sections 208 and 259.
30 of 1915.	The Asiatic Emigration Ordinance, 1915.	Sections 50 and 51.

*Objects and Reasons.*

1. This bill is founded on the Perjury Act, 1911, 1 and 2 Geo. 5, c. 6. The general reasons for adopting English criminal legislation are especially strong in this case, as the Perjury Act, 1911, is a true codifying enactment. It sets out the whole law on the subject, both common law and statute law, and it is not a mere consolidating Act which only collects and rearranges the statutory law.

2. Clause 2 is practically a copy of section 31 of the Interpretation Ordinance, 1911, as it will read when it has been amended by the Evidence Ordinance, 1922. It is repeated here because the use in certain sections of this Ordinance of the term "affirmation" might be used to found an argument that an intention contrary to the general intention of the Interpretation Ordinance should be assumed. The English Perjury Act contains a similar interpretation clause although the English Interpretation Act contains a provision similar to section 31 of our Interpretation Ordinance.

3. Clause 3 relates to perjury on oath in the course of, or for the purpose for, judicial proceedings. A false statement on oath by a person sworn here for the purpose of a judicial proceeding elsewhere is to be treated as if it were made for the purpose of a judicial proceeding here. Before the Perjury Act, 1911, there were many decisions as to whether the proceeding in which the perjury was committed was a judicial proceeding or not. The term judicial proceeding is defined in the Act and bill, and is defined so widely that the definition probably covers all cases likely to occur. Clause 3 also clears up another doubt, *i.e.*, how far an interpreter is liable to punishment for wilful misinterpretation of a witness's statement. Sub-clause (1) makes the interpreter in such a case liable to the general penalties for perjury. It may be added that at common law it was necessary to prove that the false statement was made before a court of competent jurisdiction. Under the Act and Ordinance it would seem that perjury may be committed though the court had in fact no jurisdiction in the particular case in which the statement was made. This gets rid of another body of cases.

4. Clause 4 deals with false statements on oath made otherwise than in a judicial proceeding.

5. Clause 5 deals with false statements of various kinds with reference to marriage.

6. Clause 6 deals with false statements with reference to births and deaths.

7. Clause 7 deals with false statutory declarations and other false statements made without oath.

8. Clause 8 deals with false declarations made for the purpose of obtaining registration in order to carry on a vocation. This is a general provision and will cover all existing and future professional registers.

9. Clause 9 provides that aiders and abettors may be tried and punished as if they were principal offenders, and that every person who incites or attempts to procure another person to commit an offence against the Ordinance shall be guilty of a misdemeanour. The general penalty for misdemeanour is to be found in Ordinance No. 1 of 1898, as amended by Ordinance No. 13 of 1922.

10. Clause 10 deals with the case of contradictory statements on oath by the same witness. It is taken from section 47 of the Evidence Ordinance, 1889. The word knowingly has been omitted from the draft of clause 10 because one of the statements may be true and it is not necessary to prove the falsehood of any of the statements. Certain words in the present section, dealing with the form of the indictment, are omitted in the draft clause because the form of indictment under the Ordinance is dealt with generally in clause 13.

11. Clause 11 makes it an offence to use wilfully for any purpose any affidavit which the person in question knows to be false or does not believe it to be true, wherever such affidavit may have been sworn. The penalties are the same as for perjury. This provision does not appear in the English Act.

12. Clause 12 deals with the case where a judge or magistrate directs a prosecution for perjury.

13. Clause 13 deals with the form of indictments under the Ordinance.

14. Clause 14 embodies the common law rule that corroboration is necessary in prosecutions for perjury.

15. Clause 15 deals with the technical proof of certain proceedings on which perjury is assigned.

16. Clause 16 provides that the forms and ceremonies used in administering an oath are immaterial, if the court has power to administer the oath, and if the oath was administered in a form which the person taking the oath accepted without objection or declared to be binding on him.

17. Clause 17 provides that where the making of a false statement subjects the offender, under any other enactment, to any forfeiture or disqualification or to any penalty other than imprisonment or fine, the liability of the offender under this Ordinance shall be in

addition to his liability under the other enactment. It also provides that where the making of a false statement is made punishable by some other enactment, proceedings may be taken either under this Ordinance or under the other enactment.

18. Clause 18 provides for the repeal of the provisions set out in the Schedule.

19. Apart from obvious adaptations, such as the substitution of "Hongkong" for "England", and the substitution of dollars for pounds, the principal variations between the Act and the bill are as follows.

20. In clause 3 words are inserted to cover the case of an interpreter who is sworn generally and not for any particular case. This is necessary because the court interpreters here are sworn once and for all. In England interpretation is the exception and not the rule.

21. Section 1 (5) of the Act provides that false statements on oath made out of England under the authority of an Act of Parliament for the purpose of a judicial proceeding in England are to be treated as having been made in the judicial proceeding in England. The competence of the local legislature to enact such a provision is doubtful, and the sub-section has therefore been omitted from the bill.

22. Paragraph (2) of section 2 of the Act, which deals with the use of a false affidavit for the purpose of the Bills of Sale Act, 1878, is omitted, as it is covered by the general clause 11 of the bill.

23. In clause 6 the maximum summary penalty is fixed at \$250, which is the standard maximum fine in summary cases here. The maximum penalty in the Act is £10.

24. Section 8 of the Act provides that where an offence against the Act is committed outside the United Kingdom the offender may be tried in any place in England. This is omitted in the bill because the bill has no extraterritorial effect.

25. Clause 10 of the bill deals with contradictory statements on oath. This provision does not occur in the English Act. It is taken from Ordinance No. 2 of 1889, section 47.

26. Clause 11 does not appear in the English Act. It makes it an offence to use wilfully any false affidavit for any purpose.

27. Clause 13 contains a paragraph, (c), which makes the clause apply to indictments for making contradictory statements on oath.

28. Clause 17 (2) of the bill is general in form and provides that where the making of a false statement is made punishable by any other enactment, proceedings may be taken either under such an enactment or under the Perjury Ordinance. The corresponding sub-section in the Act only deals with the case of false statements made punishable on summary conviction. The wider form of the sub-clause in the bill is based on section 17 (2) of the Forgery Ordinance, 1922.

29. Section 21 of Ordinance No. 4 of 1886 has not been dealt with in the Schedule because the corresponding section in the English Act has not been amended. Regulation 17 (b) of Table I of the Merchant Shipping Ordinance, 1899, has also not been dealt with. It can be amended by regulation if necessary.

J. H. KEMP,  
*Attorney General.*

9th August, 1922.



A BILL

INTITLED

An Ordinance to regulate the employment of children in certain industries.

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 Industrial Employment of Children Ordinance, 1922.

Interpretation. 2. In this Ordinance :—

(1) "child" means a person under the age of 15 years ;

(2) "dangerous trade" means any trade or occupation whatsoever which is declared by regulation made under this Ordinance to be a dangerous trade ;

1 Edw. 7,  
c. 22, s. 149.

(3) "factory" means any premises wherein or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to making any article, or part of any article, or altering, repairing, ornamenting, finishing, or adapting for sale any article, provided that at least ten persons are employed in manual labour in the said premises and the close, curtilage and precincts thereof ;

10 & 11  
Geo. 5, c. 65,  
Schedule.

(4) "industrial undertaking" includes :—

(a) mines, quarries and other works for the extraction of minerals from the earth ;

(b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including ship-building, and the generation, transformation, and transmission of electricity and motive power of any kind ;

(c) construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gaswork, waterwork, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure ;

(d) transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses, and the carriage of coal and building material and debris ;

but does not include any agricultural operation.

- (5) "inspector" means any person appointed by the Governor to be an inspector of juvenile labour for the purposes of this Ordinance;
- (6) "Protector" means any person appointed by the Governor to be the Protector of Juvenile Labour for the purposes of this Ordinance.

3.—(1.) It shall be lawful for the Governor in Council to make regulations for any of the following purposes :— Regulations.

- (1) declaring what trades and occupations are to be deemed to be dangerous trades for the purposes of this Ordinance;
- (2) prescribing the ages under which children shall not be employed in particular trades or occupations;
- (3) prescribing the conditions under which children may be employed in industrial undertakings;
- (4) imposing obligations upon persons who employ children in industrial undertakings, and on the servants of such persons;
- (5) defining the duties and powers of the Protector and the inspectors;
- (6) exempting any industrial undertakings or factories from the operation of the Ordinance or of any part thereof;
- (7) generally, for the purpose of carrying into effect the provisions of this Ordinance.

(2.) The regulations in the Schedule shall be deemed to have been made under this Ordinance, and shall be in force until rescinded or amended by regulations made under this Ordinance.

(3.) All regulations made under this Ordinance shall be laid on the table of the Legislative Council at the first meeting thereof held after the publication in the Gazette of the making of such regulations, and if a resolution be passed at the first meeting of the Legislative Council held after such regulations have been laid on the table of the said Council resolving that any such regulation shall be rescinded or amended in any manner whatsoever, the said regulation shall, without prejudice to anything done thereunder, be deemed to be rescinded or amended as the case may be, as from the date of publication in the Gazette of the passing of such resolution.

4.—(1.) It shall be lawful for the Protector, and for any person authorised thereto in writing by the Protector, and for any inspector, to enter and search any place in which he may have reason to believe that any child is being employed in an industrial undertaking, and to seize any thing which may appear to be evidence of any offence against this Ordinance. Search and enquiries.

(2.) Every person who employs or has employed any child in an industrial undertaking, and every servant of any such employer, shall on demand give to the Protector, or to any inspector, all information in his possession with reference to such child, and all information in his possession with reference to the labour conditions and treatment of any children employed by such employer.

5. In any prosecution under this Ordinance :— Presumptions.

- (a) if it appears to the magistrate that any person who is alleged in the charge to have been a child at the date of the alleged offence was a child at such date, it shall be presumed, until the contrary is proved, that such person was a child at such date;



(3.) Every such record shall be entered up promptly and accurately.

6. No child shall be allowed to work in any industrial undertaking for more than 9 hours in any period of 24 hours.

7. No child shall be allowed to work in any industrial undertaking for more than 5 hours continuously.

8. In any industrial undertaking the interval of relaxation between any spell of 5 hours continuous work and the next spell of work shall be not less than one hour, and the interval of relaxation after any spell of work of less than 5 hours duration shall be of reasonable duration having regard to all the circumstances.

9. Every child employed in any industrial undertaking shall be allowed one day's rest in every seven days.

10. No child shall be employed in any industrial undertaking between the hours of 7 and 7 a.m.

11. No child shall be allowed to carry any weight which is unreasonably heavy having regard to the child's age and physical development, and no child whatever shall be allowed to carry any load exceeding 40 cabbies in weight.

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*Objects and Reasons.*

1. This bill has been drafted in order to carry out so far as possible the recommendations of the Commission on the industrial employment of children which was appointed by H. E. the Governor on 24th March, 1921, and which reported on the 24th October, 1921.

2. A child is defined in clause 2 as meaning a person under the age of 15 years. In the Employment of Women, Young Persons and Children Act, 1920, 10 and 11 Geo. 5, c. 65, child is defined as a person under the age of 14 years, but that Act deals also with young persons whereas the bill deals only with children. The ages in the bill and regulations are taken from the recommendations of the Commission, the ages given in the Report being converted into English reckoning by the deduction of one year from the age as given in Chinese reckoning. The definition of factory is adapted from section 149 of the Factory and Workshop Act, 1901, 1 Edw. 7, c. 22. The definition of industrial undertaking is adapted from Article 1 of the Schedule to the employment of Women, Young Persons and Children Act, 1920. Paragraph (d) of the latter definition expressly includes the carriage of coal and building material and débris, because that is one of the occupations which it is particularly desired to regulate.

3. Clause 3 gives a wide power of making regulations.

4. Clause 4 gives a power of search and powers for the purpose of making enquiries.

5. Clause 5 is intended to dispense with strict proof of age, as such proof is often very difficult to obtain.

6. Clause 6 is the usual penalty section.

7. Clause 7 provides that no prosecution under the Ordinance is to be commenced without the consent of the Protector.

8. Clause 8 postpones the commencement of the Ordinance.

9. The practical and detailed provisions appear in the regulations in the Schedule. These regulations are not intended to be final. They form a tentative proposal for dealing with the problem. It is obviously necessary to approach the problem cautiously and slowly, in order to avoid upsetting long established social and economic conditions. Too drastic an interference with juvenile labour would undoubtedly cause great hardship to the poorer classes.

10. Regulation 1 specifies three dangerous trades, and regulation 2 provides that no child is to be employed in a dangerous trade. The two trades reported upon by the Commission as dangerous were boiler chipping and glass making. The manufacture of fireworks has been added on the suggestion of the District Watchmen Committee. It will be noticed that the term "dangerous" is meant to include trades which are injurious to health as well as those which are dangerous in the ordinary sense.

11. Regulation 3 provides that no child under the age of 10 years is to be employed in any factory. This age may be low by European standards, but the reasons for fixing the age so low are given in the Report of the Commission.

12. Regulation 4 provides that no child under the age of 12 years is to be employed in carrying coal or building material or debris.

13. Regulation 5 provides for a running record of children employed in factories.

14. Regulations 6 to 10 deal with the question of hours of labour.

15. Regulation 11 limits the weights which may be carried by children. Considerable discussion was devoted to this point, but it was thought better not to attempt to be too particular and precise, at all events for the present.

16. The bill and regulations should be read in conjunction with the Report of the Commission.

17. In certain respects the recommendations of the Commission have not been adopted.

18. The proposal of the Commission that employers be compelled to provide rest rooms, sanitary conveniences, and first aid, has not been included in the bill because it seemed to be rather a matter for general factory legislation. The subject can however be dealt with by regulation, as regards children in factories, if the experience gained under the Ordinance shows that it is desirable to do so.

19. The Commission recommended that in building and engineering contracts a clause should be inserted regulating the weights to be carried by children. It is very doubtful if this provision would be effective, because there would be practically no sanction to ensure the carrying out of the clause. The point has been dealt with otherwise in regulation 11.

20. The Commission recommended that no child under 13 (Chinese reckoning) should be employed in any form of casual labour. This was not adopted because of the difficulty of defining casual labour. The point has been dealt with partially in regulation 4, which provides that no child under 12 is to be employed in carrying coal or building material or débris. This seems to be the most important form of casual labour from the point of view of the health and development of children.

21. The Commission recommended that all employers of children should be compelled to register them, though they were prepared to exclude for the present employers of casual labour. If the Commissioners intended to recommend some form of registration in a central office it would seem that registration would be impracticable. Employers from all parts of the Colony would have to send to the Protector's office whenever a child was engaged, and it is probable that there is a good deal of movement and change in the employment of children. In the case of casual labour in particular it is difficult to see how registration could be required, because a child may be employed for a single day. It can hardly have been intended to create a class of licensed child workers and to make it an offence for any one to employ a child without a licence. The question of registration has therefore been confined for the present to the keeping of a running record of children employed in factories. Of course in this point as in others it may be found possible and desirable later on to extend the law.

22. The Commissioners recommended a 54 hour week. The District Watchmen Committee recommended instead a 9 hours day and this proposal has been adopted. The provision of one day's rest in every 7 has of course been retained. The Commissioners recommended that children should not be employed between 7 p.m. and 6 a.m. On the recommendation of the District Watchmen Committee this has been extended to 7 a.m.

23. It is intended that the Secretary for Chinese Affairs or some officer in his department shall be appointed Protector of Juvenile Labour under the Ordinance. It is also intended that blank register forms shall be supplied free by the Government.

24. The bill is also intended to carry out, so far as possible, the spirit of the Draft Convention fixing the minimum age of admission of children to industrial employment which was adopted at Washington on the 28th November, 1919, by the International Labour Conference.

J. H. KEMP,  
*Attorney General.*

*8th September, 1922.*