

LEGISLATIVE COUNCIL.

No. S. 300.—The following Bill was read a first time at a meeting of the Council held on the 28th September, 1922 :—

C.S.O. 3181/14—II.

A BILL

INTITLED

An Ordinance to amend the Stamp Ordinance, 1921.

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

Short title and construction. Ordinances Nos. 8 and 21 of 1921.

1. This Ordinance may be cited as the Stamp Amendment Ordinance, 1922, and shall be read and construed as one with the Stamp Ordinance, 1921, and with the Stamp Amendment Ordinance, 1921, and the said Ordinances and this Ordinance may be cited together as the Stamp Ordinances, 1921 and 1922.

Amendment of Ordinance No. 8 of 1921, s. 6.

2. Section 6 of the Stamp Ordinance, 1921, is amended as follows :—

(a.) Paragraph (b) of sub-section (3) is amended by the insertion of the word "such" between the word "any" and the word "case" in the first line thereof.

(b.) The following paragraph is added at the end of sub-section (3) :—

(c.) If the payment of stamp duty be voluntary, and the instrument be produced to any such court, arbitrator or referee, the instrument shall, saving all just exceptions on other grounds, be received in evidence upon payment to the court, arbitrator or referee, of the amount of the unpaid duty and of the penalty if any. Such duty and penalty, if any, shall be remitted to the Collector with the instrument to be stamped after the instrument has been admitted in evidence.

(c.) The following sub-section is added at the end thereof :—

(5.) The penalties on stamping instruments out of time referred to in paragraph (c) of sub-section (3) of this section shall be as follows :—

- within one month out of time - - - \$ 5;
over one month and within three months out of time - - - - - \$ 25;
over three months and within six months out of time - - - - - \$ 50;
over six months out of time - - - - - \$ 100.

Amendment of Ordinance No. 8 of 1921, s. 21.

3. Section 21 of the Stamp Ordinance, 1921, is amended by the insertion of the words "whether wholly or in part on his own account or as an assistant or servant of any other person," between the word "Colony" and the word "unless" in the sixth line thereof.

Amendment of Ordinance No. 8 of 1921, Schedule, Heading No. 5.

4. Heading No. 5 of the Schedule of the Stamp Ordinance, 1921, is amended by the insertion after the word "trustee" of the words "including the transfer of any property made for the purpose of effectuating the appointment of the new trustee".

Amendment of Ordinance No. 8 of 1921, Schedule, Heading No. 12A.

5. Heading No. 12A of the Schedule to the Stamp Ordinance, 1922 as enacted by section 6 of the Stamp Amendment Ordinance, 1921, is repealed and the following heading is substituted therefor :—

Table with 7 columns: 12A, Bond to secure the payment or repayment of money, 20 cents for every \$100 or part thereof of the penalty or maximum amount payable, Over-embossed, Before execution, execu- tion, All persons executing.

6. The following heading is inserted in the Schedule to the Stamp Ordinance, 1921, immediately after Heading No. 15 :—

Insertion of new Heading No. 15A in the Schedule to Ordinance No. 8 of 1921.

15A.	Conveyance or Transfer of any kind not herein specifically described.	\$20.	Over-embossed.	7 days after execution.	All persons executing.
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7. Sub-heading (7) of Heading No. 29 of the Schedule to the Stamp Ordinance, 1921, is amended by the addition of the following proviso at the end of the words in the third column thereof :—

Amendment of Ordinance No. 8 of 1921 Schedule. Heading No. 29.

Provided that any portion of the principal sum not expressed in any prior instrument then to be released or discharged shall be deemed to be released by the final instrument of reconveyance, reassignment, release, discharge, surrender, or renunciation.

8. Heading No. 43 of the Schedule to the Stamp Ordinance, 1922, is repealed and the following heading is substituted therefor :—

Amendment of Ordinance No. 8 of 1921. Schedule, Heading No. 43.

43.	Trade Mark (or trade marks), together with the good will of the business concerned in the goods for which it has (or they have) been registered, Assignment of.	\$10.	Over-embossed.	Seven days after execution.	All persons executing.
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9. The following heading is inserted in the Schedule to the Stamp Ordinance, 1921, immediately after Heading No. 43 :—

Insertion of new Heading No. 43A in the Schedule to the Stamp Ordinance, 1921.

43A.	Vesting Order (other than a vesting order which is a conveyance on sale), including the transfer of any property transferred by the order.	\$20.	Over-embossed.	Before the order is signed by the Registrar.	The person obtaining the order.
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10. Heading No. 44 of the Schedule to the Stamp Ordinance, 1921, is amended by the deletion of all the words in the third column thereof, and by the substitution therefor of the following words :—

Amendment of Ordinance No. 8 of 1921, Schedule. Heading No. 44.

\$1 for every \$100 or part thereof of the value of the property conveyed or transferred.

Objects and Reasons.

1. The amendments proposed to be made by this bill would probably not have justified immediate legislation but for the fact that a revised edition of the Ordinances is in course of preparation and that it is desirable that these amendments should be made in time for inclusion in the revised edition.

2. In general, it is a criminal offence not to stamp any instrument included in the schedule in the Stamp Ordinance. There are four exceptions to this rule, agreements generally, agreements of service with a corporation, attested copies, and duplicates. In these four cases, the only important class of which is that of agreements, it is no offence not to stamp, but an unstamped document may not be received in evidence. Section 16 of the principal Ordinance, which at present contains the only power to stamp an instrument out of time, is so strictly worded that exceptional circumstances are generally necessary before stamping can be allowed. It is thought that this would be likely to cause considerable hardship in the case of agreements. Agreements are very frequently entered into by persons who have no legal training or advice, and who probably never think of the question of stamping at all. If a dispute arises and litigation ensues the party relying on the agreement may find himself wholly unable to enforce his rights, solely because the agreement was not stamped within seven days of execution. The other party to the contract is thus sometimes provided with a not very praiseworthy defence to a claim otherwise perfectly

good. The reason for this strictness in the principal Ordinance in the case of agreements was that it was hoped that the public generally would be induced to stamp all agreements but it is now thought that sporadic cases of individual hardship would probably never teach the community at large, so that the only justification for inflicting hardship in individual cases disappears. The effect of clause 2 is that all "voluntary" instruments, i.e., instruments where the non payment of duty is no offence, may be stamped as of right, subject to certain penalties which are set out in the new sub-section (5) which is to be added to section 6 of the principal Ordinance.

3. Clause 3 is intended to make it clear that the persons who are required to take out certificates to practise must do so although they may not be practising on their own account.

4. The present duty on the appointment of a new trustee is \$10, and apparently there is no duty on the transfer of the property to the new trustee. The addition of the proposed new Heading No. 15A, which is the object of clause 6 of the bill, would have the effect of making the total duty on the appointment of a new trustee, and the transfer of the property to him, \$30. To avoid this, clause 4 proposes the addition to Heading No. 5 of words which will make the \$10 duty cover both the appointment and the transfer. In England the instrument pays 10/- as an appointment and 10/- in respect of the transfer. The latter duty is under section 62 of the Stamp Act, 1891. Similar words are included in the new Heading No. 43A which is proposed in clause 9 of the bill.

5. Bonds to secure the payment or repayment of money, e.g., an arbitration bond, pay \$20 at present. This seems too high. Under the Stamp Ordinance, 1891, they paid the same *ad valorem* duty as a mortgage, and this is the rule in England. Clause 5 adopts this rule, which had already been adopted in Ordinance No. 21 of 1921, for the case of bonds to secure the payment of estate duty.

6. Clause 6 proposes to insert a heading which is adapted from the English Stamp Acts.

7. Clause 7 is intended to make it clear that upon re-assignment of a security, whether the re-assignment be a single re-assignment of the whole security or consist of several separate re-assignments, the total re-assignment duty must amount to 10 cents for every \$500 of the whole sum secured. It may happen that the mortgage is paid off in instalments, without any re-assignment taking place on the payment of any given instalment. This case is not met very clearly by the form of the present heading.

8. The repeal of heading No. 43, which the regulations published on the 24th February, 1922, purported to effect, was of doubtful validity, as it subjected the assignment of trade marks to the *ad valorem* conveyance duty. Clause 8 is intended to make the stamp duty on an assignment of a trade mark (or trade marks) with the goodwill \$10. This was probably the intention of the original heading No. 43, because a trade mark cannot be validly assigned without the goodwill.

9. Clause 9 imposes a stamp duty of \$20 on vesting orders other than vesting orders which fall within the definition of a conveyance on sale. An example of a vesting order which would come under heading 43A would be a vesting order on the appointment of a new trustee.

10. Clause 10 proposes to effect an amendment which the regulations published on the 24th February, 1922, purported, with doubtful validity, to effect. It is arguable that the amendment is not absolutely necessary, because section 23 of Ordinance No. 8 of 1921 provides that a voluntary disposition *inter vivos* is to be charged as if it were a conveyance on sale, and Ordinance No. 21 of 1921 made the duty on conveyances for sale \$1 for every \$100. It is, however, desirable to correct the present misleading heading No. 44, especially as it is also arguable that the duty on voluntary dispositions *inter vivos* is really governed by that heading and not by section 23 of Ordinance No. 8 of 1921.

J. H. KEMP,
Attorney General.

29th June, 1922.