

LEGISLATIVE COUNCIL.

Draft Bill.

No. S. 108.—The following bill, which it is proposed to introduce into the Legislative Council at an early date, is published for general information:—

C.S.O. 2935/24.

[No. 1:—1.2.24.—1.]

A BILL

INTITLED

An Ordinance to amend the law relating to stowaways.

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 Stowaways Ordinance, 1924.
- Interpretation. 2. In this Ordinance "Owner" includes agent and charterer.
- Offences. 3. The following shall be deemed to be offences against this Ordinance:—
(1) being on board any ship in the waters of the Colony with intent to obtain a passage therein without the consent of the owner; and
(2) arriving in the waters of the Colony on board any ship, having obtained a passage therein to Hongkong without the consent of the owner.
- Presumption. 4. Every person who is found on board any ship between Hongkong and the next port of call and who is unable to prove that he left the Colony on board the said ship with the consent of the owner shall be deemed to have been on board the said ship in the waters of the Colony with intent to obtain a passage therein without the consent of the owner.
- Stowaways brought into the waters of the Colony in custody. 5. A person who, at some place outside the Colony and the waters thereof, obtains a passage on board any ship without the consent of the owner, and who is brought into the waters of the Colony on board the said ship in custody, shall, notwithstanding the fact of such custody, be deemed to have committed the offence specified in paragraph (2) of section 3, provided that such person was first detained in custody on board the said ship after leaving the last port of call before arrival in the waters of the Colony.
- Onus. 6. The onus of proving the consent of the owner shall lie upon the accused.
- Arrest. 7. Every person who has committed any offence against this Ordinance may be arrested without warrant by the master or any member of the crew of the ship on which the offence was committed.
- Penalties. 8. Every person who commits any offence against this Ordinance shall upon summary conviction be liable to a fine not exceeding one thousand dollars and to imprisonment for any term not exceeding nine months.
- Repeal of Ordinance No. 5 of 1903. 9. The Stowaways Ordinance, 1903, is repealed.
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Objects and Reasons.

1. Section 3 of the Stowaways Ordinance, 1903, is difficult to construe. The first difficulty is in the wording of the first part of the section, *i.e.*, "Every person found on board with intent". Stowaways are often not found until the ship has left our waters, and we cannot legislate for events outside our waters. The word "found" was discussed in *Moran v. Jones* (1911) 104 L.T. Rep. 921, and it was said in one of the judgments that the offence in such a case requires two elements, (1) the being upon premises, and (2) the being found there. It is therefore arguable that a stowaway who is not found until after the ship has left the waters of the Colony has committed no offence against this part of the section.

2. The second difficulty is on the second part of the section. The words "Every person arriving in this Colony on board any ship who has obtained a passage therein" are wide enough to cover a case of a man who stows away on a Chilean ship intending to go from Valpariso to Santiago but who is brought on to Hongkong against his will because the ship does not call at Santiago. It can scarcely have been intended to make such an act criminal by our law. The natural meaning of the words therefore appears to be too wide, but there is no clue in the section as to how they are to be restricted.

3. The first difficulty is dealt with in the bill by making it an offence *to be* on the ship with intent. The element of finding is therefore eliminated. This is dealt with in paragraph (1) of clause 3. Clause 4 of the bill provides that if a person is found on board a ship between Hongkong and the next port of call it shall, unless he can prove the owner's consent, be presumed that he was on board the ship in Hongkong with intent to obtain a passage without the consent of the owner.

4. The second difficulty is dealt with in the bill in paragraph (2) of clause 3 and in clause 5. The effect of this provision is that an offence against the Ordinance is committed by any person who arrives in Hongkong having stowed away in the ship elsewhere, provided that he was voluntarily on board at some part of the voyage between the last port of call and Hongkong. It is submitted that this legislation is not *ultra vires*. To stow away outside the Colony is not made any offence. What is prohibited is the arrival of such a person in the Colony. It is obviously undesirable that persons of this class should land here, or have the opportunity of landing here, because they often become a charge on the Colony, and in other cases they tend to swell the criminal population.

J. H. KEMP,
Attorney General.

8th January, 1924.