

LEGISLATIVE COUNCIL.

No. S. 53.—The following bill, which it is proposed to introduce into the Legislative Council on the 26th February, is published for general information :—

C.S.O. 2943/24

[No. 2 :—28.1.25.—1.]

A BILL

INTITULED

An Ordinance to amend the Legal Practitioners Ordinance, 1871.

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 Legal Practitioners Amendment Ordinance, 1925. Short title.

2. Section 28 of the Legal Practitioners Ordinance, 1871, is repealed and the following section is substituted therefor :— Repeal of Ordinance No. 1 of 1871, s. 28, and substitution of new section.

Rules of legal profession to be the same as in England.

2. Subject to the provisions of this Ordinance and of every other relevant Ordinance the law and practice relating to both branches of the legal profession shall be the same as the law from time to time for the time being in force in England.

3. Section 29 of the Legal Practitioners Ordinance, 1871, is repealed. Repeal of Ordinance No. 1 of 1871, s. 29.

*Objects and Reasons.*

1. The object of this bill is to repeal section 29 of the Legal Practitioners Ordinance, 1871.

2. The history of the section is shortly this. In 1873, Mr. Rowett, an unofficial member of the Legislative Council, brought forward a motion to the effect that it was desirable that barristers should be permitted to take business from clients direct in all cases except those in which litigation had been actually commenced. This motion did not go so far as the section goes, but the official view of the motion seems to have been that it practically amounted to a motion for amalgamation. There is some doubt as to whether Mr. Rowett did intend amalgamation. However that may be, his main argument was that "the practice of law was then in the hands of two or three attorney's firms who managed to screw the most extortionate charges from the unfortunate people who had to go to law". He made it clear that his object was to reduce costs. The Attorney General proposed an amendment to the effect that it was expedient to modify to a certain extent the rules of the legal profession which restricted barristers from giving consultations and transacting other business, in certain cases, without the intervention of an attorney, but that such modifications should be expressly defined and limited so as to meet the public without effecting an amalgamation. The amendment was carried, and the resulting legislation was what now appears as section 29 of Ordinance No. 1 of 1871. The result was a curious one, but it seems clear that amalgamation was not intended. On the other hand, a one-sided and partial amalgamation was in fact effected.

3. This is one objection to the section in question, *i.e.*, that it effects a one-sided and partial amalgamation. The view has been expressed that amalgamation would be desirable in Hongkong. That view has not hitherto been adopted by the Government. Whether amalgamation be desirable or not, however, there seems to be no good reason now for the peculiar provisions of the section in question. It may have been fully justified at the time when it was first introduced, but there seems to be nothing in modern conditions which calls for its retention.

4. Another objection to the section is that it is very doubtful what exactly it authorises. Opinions differ on this point. Where the law and etiquette of the legal profession are the same as in England it is always possible to get a decision from the Bar Council on any disputed matter of this kind, but the Bar Council would probably refuse to express any opinion as to the etiquette in Hongkong seeing that we have altered the English rules by our local Ordinance. A decision could be obtained from the Supreme Court here but possibly only upon an application to strike a barrister off the roll, a proceeding which one would be very slow to institute where there was room for a genuine doubt.

5. Whatever the limits of section 29 may be the section undoubtedly enables a barrister to do a certain amount of work which is usually done by a solicitor, and on one view, though probably a strained one, it enables a barrister to do almost anything which can be done by a solicitor. An objection to this from the point of view of the public is that while a solicitor is liable to be sued for negligence a barrister is not so liable, and it is very doubtful whether the section would make him liable.

6. For these reasons it has been decided to go back to the former state of affairs and to make the rules of both branches of the legal profession the same as those in force in England from time to time for the time being, subject to a few local provisions which have never given any trouble, and probably all of which are in harmony with the spirit of the English rules. One provision is that contained in section 30 of Ordinance No. 1 of 1871, which allows solicitors to practise as advocates before the Supreme Court in its Summary Jurisdiction. This is in accordance with the practice in the County courts in England. Other provisions relate to the Crown Solicitor and Assistant Crown Solicitors.

7. The present section 28 provides that the rules of the legal profession are to be modified to the extent mentioned in sections 29 and 30. The bill proposes to substitute for this a section declaring that the law and practice relating to the two branches of the legal profession shall be the same as the law and practice in force in England from time to time for the time being. This is effected by clause 2 of the bill.

8. Clause 3 of the bill simply repeals the present section 29.

J. H. KEMP,  
*Attorney General.*

*23rd January, 1925.*