

LEGISLATIVE COUNCIL.

No. S. 147.—The following Bills were read a first time at a meeting of the Council held on the 14th May, 1925 :—

C.S.O. 1 in 750/17.

[No. 1 :—16.4.25.—4.]

A BILL

INTITLED

An Ordinance to provide for the incorporation of the Trustees of the Sailors Home, Hongkong.

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 Sailors Home Ordinance, 1925.

Incorporation.      2. The trustees of the Sailors Home, Hongkong, and their successors in office as hereinafter defined, shall be a body corporate, hereinafter called the corporation, and shall have the name of "The Trustees of the Sailors Home, Hongkong," and in that name shall have perpetual succession, and shall and may sue and be sued in all courts in the Colony, and shall and may have and use a common seal.

Trustees.          3.—(1) The person for the time being performing the duties of Harbour Master and the person for the time being in charge of the business of Jardine, Matheson & Co., Limited in Hongkong shall be two of the said trustees.

(2) There shall be two other trustees who shall be appointed from time to time by the Committee of the Hongkong General Chamber of Commerce and a minute of such Committee to the effect that a person is appointed a trustee shall be a sufficient appointment for the purpose of this Ordinance.

(3) The certificate of the Colonial Secretary that any person was at the date of the certificate, or had been at some previous specified date, one of the said trustees, shall for all purposes be sufficient evidence of that fact.

(4) The first trustees shall be Dallas Gerald Mercer Bernard, George Francis Hole (Harbour Master), Archibald Orr Lang and George Macdonald Young.

Powers of corporation.      4.—(1) The corporation shall have power to acquire, accept leases of, purchase, take, hold and enjoy any lands, buildings, messuages or tenements of what nature or kind soever and wheresoever situated, and also to invest moneys upon mortgage of any lands, buildings, messuages, or tenements, or upon the mortgages, debentures, stocks, funds, shares or securities of any government, municipality corporation or company, and also to purchase, acquire and possess vessels and other goods and chattels of what nature and kind soever.

(2) The corporation shall further have power by deed under its seal to grant, sell, convey, assign, surrender, exchange, partition, yield up, mortgage, demise, reassign, transfer or otherwise dispose of any lands, buildings, messuages, tenements, mortgages, debentures, stocks, funds, shares or securities, vessels, or other goods and chattels, which are for the time being vested in or belonging to the corporation upon such terms as to the corporation may seem fit.

Execution of documents.      5. All deeds and other instruments requiring the corporate seal of the corporation shall be sealed in the presence of two of the trustees and shall be signed by two of the trustees.

6. The piece or parcel of ground registered in the Land Office as Marine Lot No. 187A, together with all rights, easements and appurtenances belonging or appertaining thereto or therewith usually held, occupied and enjoyed, is hereby transferred to and vested in the corporation, for the unexpired residue of the term of years created by the Crown lease thereof, subject to the payment of the rent and the performance of the covenants and conditions reserved by and contained in the Crown lease of the same.

Vesting of  
certain  
property.

7. Nothing in this Ordinance shall affect or be deemed to affect the rights of His Majesty the King, his heirs or successors, or the rights of any body politic or corporate or of any other person except such as are mentioned in this Ordinance and those claiming by from or under them.

Saving of the  
rights of the  
Crown and of  
certain other  
persons.

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*Objects and Reasons.*

1. The object of this bill is to create a corporation to be known as "The Trustees of the Sailors Home in Hong-kong", to appoint the first trustees, and to vest in the new corporation the Crown lease of the land on which the present Sailors Home stands.

2. The present Sailors Home was provided by the community, the site being given by the Government and the cost of the buildings being defrayed by public subscription. The original Crown lessees, who were practically trustees of the Sailors Home, have all died, and the Home has for many years been conducted by an informal committee which grew out of the body composed of the original Crown lessees.

3. The present site has become quite unsuitable for the purposes of a Sailors Home, and it is proposed to transfer the Home to a site in Kowloon near Signal Hill. There is no person or body at present who has any legal right to deal with the existing site. Accordingly the bill proposes to create a corporation consisting of the members of the present informal committee and to vest the present site in the new corporation. The members of the present committee, who will be the members of the new corporation, have agreed informally to surrender the existing site and buildings to the Crown, and the Government have undertaken to grant to the corporation the proposed new site in Kowloon and to provide the sum of \$800,000 for the erection, furnishing and endowment of the new Home.

4. St. Peter's church was erected in the year 1871 on a portion of the present site of the Sailors Home. The cost of the building was defrayed by subscriptions raised in the Colony and elsewhere and by a grant of \$2,500 by the Government. The total cost appears to have been about £1,500. The site of the church is required for public purposes, and the authorities of the church would prefer to have it in a quieter neighbourhood than the present one. The Government accordingly propose to grant a new site for the church and to contribute the sum of \$50,000 for the erection of a new church.

5. The bill follows the usual form of incorporation Ordinances.

H. E. POLLOCK,  
*Attorney General.*

7th April, 1925.

A BILL

INTITLED

An Ordinance to provide for the incorporation of the Mother Superior in this Colony of the Society of the "Petites Soeurs des Pauvres, St. Pern, Bretagne", commonly known as The Little Sisters of the Poor.

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 "Petites Soeurs des Pauvres, St. Pern, Bretagne" Incorporation Ordinance.

Incorporation of the Mother Superior in Hongkong of the Society of the Petites Soeurs des Pauvres, St. Pern, Bretagne.

2. The Mother Superior for the time being in this Colony of the Society of the Petites Soeurs des Pauvres, St. Pern, Bretagne, shall be a corporation sole (hereinafter called the corporation), and shall have the name of "The Mother Superior of the Petites Soeurs des Pauvres, St. Pern, Bretagne" and by that name shall and may sue and be sued in all courts in this Colony and shall and may have and use a common seal.

Powers of corporation.

3.—(1) Subject to the licence of the Governor having been previously obtained in each case, the corporation shall have power to acquire, accept leases of, purchase, take, hold and enjoy any lands, buildings, messuages, or tenements of what nature or kind soever and wheresoever situated in this Colony, and also to invest moneys upon mortgage of any lands, buildings, messuages, or tenements, or upon the mortgages, debentures, stocks, funds, shares or securities of any government, municipality, corporation or company, and also to purchase, acquire and possess goods and chattels of what nature and kind soever.

(2) The corporation shall further have power by deed under its seal to grant, sell, convey, assign, surrender, exchange, partition, yield up, mortgage, demise, reassign, transfer or otherwise dispose of any lands, buildings, messuages, tenements, mortgages, debentures, stocks, funds, shares or securities, or other goods and chattels whatsoever, which are for the time being vested in or belonging to the corporation upon such terms as to the corporation may seem fit.

Property transferred to corporation to pass to successors.

4. The legal estate in any property whatsoever, transferred to the corporation in any manner whatsoever, shall, in the event of the death of the Mother Superior for the time being, or in the event of her ceasing to hold office as such Mother Superior, pass to her successor in such office when appointed.

Execution of documents.

5. All deeds and other instruments requiring the seal of the corporation shall be sealed in the presence of the person who is for the time being Mother Superior in this Colony of the corporation or of her attorney duly authorised and such deeds and instruments and all other documents instruments and writings requiring the signature of the corporation shall be signed by such Mother Superior or her attorney.

Appointment of Mother Superior.

6.—(1) Sister Bernadette, the present Mother Superior in this Colony of the corporation, having furnished to the Governor satisfactory evidence of her appointment to that office, shall for the purposes of this Ordinance be deemed to be the Mother Superior in this Colony of the corporation until the appointment in her stead of some other person as such Mother Superior.

(2) When any other person is appointed to the office of Mother Superior in this Colony of the corporation, such person shall, within three weeks after her appointment or within such further time as may be allowed by the Governor, furnish to the Governor satisfactory evidence of her appointment.

(3) A notification in the Gazette under the hand of the Colonial Secretary that such evidence has been furnished to the Governor by such person shall be conclusive evidence of such appointment.

7. Nothing in this Ordinance shall affect or be deemed to affect the rights of His Majesty the King his heirs and successors, or the rights of any body politic or corporate or of any other person except such as are mentioned in this Ordinance and those claiming by, from or under them. Saving of rights of the Crown and others.

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*Objects and Reasons.*

1. The object of this bill is to incorporate the Petites Soeurs des Pauvres, St. Pern, Bretagne, in order to enable them to hold immovable property in perpetual succession.

2. The Bill, in general, follows the usual form of incorporation Ordinances. Clause 4 is similar to clause 4 of the Bishop of Victoria Incorporation Ordinance, 1925. It appears that at common law a corporation sole cannot take a term in its corporate capacity, and therefore that a lease granted to a corporation sole passes to personal representatives and not to successors: see *Arundell's Case* (1615) 1 Roll. Abr. 515, cited in *Fulwood's Case* (1591) 4 Co. Rep. 65a, note A, 76 E.R. (K.B.) 1032, note A. The rule is given in Halsbury's Laws of England, Vol. 8, p. 371. It is possible that this clause is unnecessary in view of the terms of clause 3, but it has been thought safer to deal with the matter expressly.

H. E. POLLOCK,  
*Attorney General.*

1st April, 1925.

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C.S.O. 2943/24

[No. 2 :— 2 5.25.—3.]

A BILL

INTITLED

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 amended by the substitution of the words and figures "section 30" for the words and figures "sections 29 and 30". Amendment of Ordinance No. 1 of 1871, s. 28.

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

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*Objects and Reasons.*

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

2. The history of section 29 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. 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. 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 anybody 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. 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. Clause 2 of this bill substitutes "section 30" for "sections 29 and 30".

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

H. E. POLLOCK,  
*Attorney General.*

30th April, 1925.