

LEGISLATIVE COUNCIL.

Draft Bills.

No. S. 228.—The following bill, which will be introduced into the Legislative Council at an early date, is published for general information.

C.S.O.

[No. 10a:—4 9.25.—2.]

A BILL

INTITLED

An Ordinance to amend the Code of Civil Procedure.

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 Code of Civil Procedure Amendment Ordinance, 1925.

Amendment of Ordinance No. 3 of 1901, s. 4.

2. Section 4 of the Code of Civil Procedure, (hereinafter called the Code) is amended by the substitution of the words "for the time being" for the words "on the 31st day of December, 1911" in the third line thereof.

Substitution of new section 306 in Ordinance No. 3 of 1901.

3. Section 306 of the Code is repealed and the following section is substituted therefor:—

Notes of evidence. 306. The Court shall take or cause to be taken a note of the *virá voce* evidence and shall put down or cause to be put down the terms of any particular question or answer, if there appears to be any special reason for doing so.

Addition of new section after Ordinance No. 3 of 1901, s. 626.

4. The following heading and section is inserted in the Code after section 626 thereof:—

Declarations on Originating Summons.

Power to make declarations on originating summons.

626A (1).—Any person claiming to be interested in a deed, will or other written instrument, may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested.

Service.

(2) The judge may direct such persons to be served with the summons as he may think fit.

Evidence.

(3) An application shall be supported by such evidence as the judge may require.

Discretion of Court.

(4) The judge shall not be bound to determine any such question of construction if in his opinion it ought not to be determined on originating summons.

New Chapter to Code.

5. The following Chapter shall be added immediately after Chapter XXX of the Code:—

CHAPTER XXXI.

DELEGATION TO AND REFERENCE BACK BY AND APPEAL FROM REGISTRAR.

Delegation of powers and duties to Registrar.

710. It shall be lawful for the Chief Justice, if he thinks fit, by rules of Court made under this Code, to direct that any of the powers and duties conferred and imposed on a judge in chambers by this Code shall be exercised and performed by the Registrar: Provided always that no such rules shall come into operation until the same shall have been approved by the Legislative Council and published in the Gazette.

Reference by registrar to a judge. 711. If any matter falling within the provisions of any rules made under section 710 appears to the registrar proper for the decision of a judge, the registrar may refer the same back to a judge, and the judge may either dispose of the matter or refer the same back to the registrar with such directions as he may think fit.

Appeal from registrar. 712. Any person affected by any order or decision of the registrar may appeal therefrom to a judge at chambers. Such appeal shall be by notice in writing to attend before the judge without a fresh summons, within five days after the decision complained of, or such further time as may be allowed by the judge or the registrar. Unless otherwise ordered there shall be at least one clear day between service of the notice of appeal and the day of hearing. An appeal from the decision of the registrar shall be no stay of proceedings unless so ordered by a judge or registrar.

6. Section 685 of the Code is repealed.

Repeal of
Ordinance 8
of 1901,
s. 685.

Objects and Reasons.

1. This bill effects various amendments in the Code of Civil Procedure (No. 3 of 1901).

2. By clause 2 of the bill section 4 of the Code is amended so as to introduce here the English practice rules up to date, in cases which are not provided for by the Code, instead of leaving the present date of the 31st December, 1911. This restores the law as it was prior to the passing of Ordinance 26 of 1911. Although a slight difficulty may occur in ascertaining the English Rules of Practice right up to date, it is thought preferable to bring our Rules or Practice up to date rather than to continue to work on a date which is now over 13 years old.

3. Clause 3 of this bill empowers the presiding judge to order notes to be taken through the medium of a shorthand writer. This will tend towards saving time in the hearing of cases.

4. Clause 4 of this bill which is taken from the English order 54A rule 1, enlarges the power of the Court with reference to the making of declarations on originating summons.

5. Clause 710 which is enacted by clause 5 of this bill is intended to speed up procedure in the Supreme Court in interlocutory matters by conferring upon the Chief Justice power to delegate by rules of court to the Registrar the powers and duties of a judge in chambers. The wording of this clause is copied to a certain extent from section 32 (1) of Ordinance 3 of 1873.

6. Clause 711, which is enacted by clause 5 of this bill, copies the English order 54, rule 20.

7. Clause 712, which is enacted by clause 5 of this bill, is based upon the English order 54, rule 21 and gives an appeal from the registrar to a judge in chambers.

8. Clause 6 of this bill repeals section 685 of the Code because section 710 (enacted by clause 6) is a wider provision than section 685.

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August, 1925.