

LEGISLATIVE COUNCIL.

No. S. 31.—The following Bills were read a first time at a meeting of the Council held on the 4th February, 1926 :—

C.S.O. 2942/24.

[No. 20 :—21.1.26.—4.]

A BILL

INTITULED

An Ordinance to authorise the preparation of an edition of the regulations, rules and by-laws in force in the Colony on the 31st day of December, 1925.

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 Regulations Ordinance, 1926.

Interpretation.

2. In this Ordinance,

(a) "Regulations" shall include—

(i) all regulations, rules, orders, by-laws, forms, and tables of fees or rents or duties, made in pursuance of powers conferred by any Ordinance;

(ii) all consents, exemptions, permissions and other orders and directions, which are given or granted or made in pursuance of powers conferred by any Ordinance and which have the effect of modifying any Ordinance or regulation either generally or with respect to a class of persons or things.

(b) "The Ordinances of Hongkong, 1844-1923" means the edition of the Ordinances of Hongkong prepared by Arthur Dyer Ball, Esquire, and referred to in the proclamation of the Governor, dated the 18th day of September, 1924, and made in virtue of Ordinance No. 18 of 1923.

Savings.

3.—(1) Nothing in this Ordinance shall affect the operation of—

(a) any proclamation by His Majesty;

(b) any order of His Majesty in Council;

(c) any proclamation by the Governor; or

(d) any resolution of the Legislative Council.

(2) Nothing contained in the Ordinances of Hongkong, 1844-1923, shall be deemed to affect, or at any time to have affected, the validity of any regulation made after the 31st day of December, 1923.

Appointment of editor and title of edition.

4.—(1) It shall be lawful for the Governor to appoint some fit and proper person as editor, hereinafter called "the editor", to prepare an edition of the regulations in force in the Colony on the 31st day of December, 1925.

(2) The said edition shall be called "The Regulations of Hongkong, 1844-1925".

5. In the preparation of the said edition, the editor shall have the following powers :— Powers of the editor.

- (1) to omit from the said edition—
- (a) any regulations in force, which in his opinion are obsolete, spent or of no effect ;
 - (b) save by reference only, Schedules to Ordinances contained in the Ordinances of Hongkong, 1844-1923, and any orders by a competent authority amending the same ;
 - (c) any rules made under section 4 (8) of the Merchant Shipping Ordinance, 1899, relating to examinations for certificates of competency ; Ordinance No. 10 of 1899.
 - (d) any regulation made under the Post Office Ordinance, 1900 ; Ordinance No. 6 of 1900.
 - (e) any order of the Governor under section 92 of the Public Health and Buildings Ordinance, 1903 ; Ordinance No. 1 of 1903.
 - (f) any regulation made under the Railways Ordinance, 1909 ; Ordinance No. 21 of 1909.
 - (g) any order of the Governor in Council under section 24 of the Rents Ordinance, 1922 ; Ordinance No. 14 of 1922.
 - (h) any pension minute other than any regulation made under section 17 of the Police Force Ordinance, 1900 ; Ordinance No. 11 of 1900.
 - (i) any order of any court in any legal proceeding, or any other order of the Governor, or of the Governor in Council, or of any other authority, which is of particular and not of general application ;

Provided that the omission from the said edition of any such Schedules, rules, regulations, orders or minutes as are referred to in sub-paragraphs (b), (c), (d), (e), (f), (g), (h) and (i) above shall not affect the validity or operation thereof in any manner whatsoever ;

(2) to include in the said edition an Appendix which may contain, in addition to regulations, such Government Notifications as the editor may think it desirable to print therein for purposes of convenient reference ;

(3) to revise punctuation and to make grammatical and typographical amendments, where in the opinion of the editor such revision or amendments is or are necessary ;

(4) to recast and add marginal notes and headings of divisions or sub-divisions of regulations, where in the opinion of the editor such recasting and addition is necessary ; and

(5) to do all such things relating to form and method as may be necessary for the perfecting of the said edition.

6. Subject to the provisions of the proviso to section 5 (1), from and after such date as may be appointed by order of the Governor in Council,— Operation of the edition.

- (1) the said edition shall for all purposes be deemed to contain all the regulations in force on the 31st day of December, 1925 ;
- (2) any regulations which were in force in the Colony on the 31st day of December, 1925, and which are not contained in the said edition, shall be deemed to have been repealed ; and
- (3) in so far as there may be variations between the regulations which were in force in the Colony on the 31st day of December, 1925, and the same regulations as printed in the said edition, the regulations which were in force on the 31st day of December, 1925, shall be deemed to have been repealed, and the regulations as printed in the said edition shall be deemed to have been substituted therefor ;

Provided that nothing in this section shall affect the previous operation of any regulation so deemed to have been repealed, or anything duly done or suffered under any such regulation, or any right, privilege, obligation or liability acquired, accrued or incurred under any such regulation, or any penalty, forfeiture or punishment incurred in respect of any offence committed against any such regulation, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid :

Provided also that nothing in this section shall affect the operation of any regulation which may be made after the 31st day of December, 1925.

Repeal of
Ordinance
No. 7 of 1915
from date
appointed by
Governor in
Council.

7. From and after the date appointed by the Governor in Council under section 6, the Regulations Ordinance, 1915, shall be deemed repealed.

Objects and Reasons.

1. The object of this bill is to authorise the preparation of a new edition of the regulations in force in the Colony at the end of 1925.

2. The bill takes the usual form of enabling bills of its kind, and *inter alia*—

- (1) saves certain other forms of legislation (clause 3);
- (2) provides the necessary power for appointment of an editor (clause 4);
- (3) assigns certain powers to the editor (clause 5);
- (4) provides for the validity and operation of the new edition (clause 6).

3. Attention is directed to clause 5 (1) of the bill, in which the editor is given power to omit certain "regulations" from the edition, which it is thought unnecessary to reprint at the present time. In particular, Schedules to Ordinances which have lately been revised and reprinted in the recent edition of the Ordinances of the Colony will be omitted, partly to save expense and partly to avoid confusion. It is at the same time enacted in a proviso to clause 5 (1) that the omission from the edition of the specified "regulations" shall not affect their validity and operation, and they do not therefore fall under clause 6 (2), which provides that any regulation omitted from the edition is to be deemed repealed.

4. Clause 7 enacts that the Regulations Ordinance, 1915, which authorised the preparation of the present edition, is to be deemed repealed from the date which the Governor in Council may appoint for the coming into operation of the new edition.

J. H. KEMP,
Attorney General.

15th January, 1926.

A BILL

INTITULED

An Ordinance to amend the Magistrates Ordinance, 1890.

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 Magistrates Short title. Amendment Ordinance, 1926.

2. Section 7 (2) of the Magistrates Ordinance, 1890, is amended to read as follows :—

Amendment of Ordinance No. 3 of 1890, s. 7 (2).

(2) The Governor may appoint magistrates from time to time and any such magistrate so appointed shall be capable of exercising all the powers and jurisdiction of a magistrate even though he has been appointed to some other office subsequently to his appointment as such magistrate.

3. Section 8 of the Magistrates Ordinance, 1890, is amended as follows :—

Amendment of Ordinance No. 3 of 1890, s. 8.

(1) by the substitution of the words "The Harbour Master and the Assistant Harbour Master shall each of them be a marine magistrate, and", for the words "There shall be as heretofore a marine magistrate, who", in the first line thereof;

(2) by the substitution of the words "a marine magistrate" for the word "him" in the third line thereof; and

(3) by the substitution of the word "a" for the word "the" in the penultimate line thereof.

4. The following section is inserted immediately after section 17 of the Magistrates Ordinance, 1890 :—

Addition of new section immediately after Ordinance No. 3 of 1890, s. 17.

Power to order production of documents. 4 & 5 Geo. 5, c. 58, s. 29. 17A. The powers contained in sections 17 and 69 enabling a magistrate to issue a summons to any witness to attend to give evidence before a magistrate shall be deemed to include the power to summon and require a witness to produce to such magistrate books, plans, papers, documents, articles, goods, and things likely to be material evidence on the hearing of any charge, information, or complaint, and the provisions of those sections relating to the neglect or refusal of a witness, without just excuse, to attend to give evidence, or to be sworn, or to give evidence, shall apply accordingly, and a magistrate shall have power to vary or add to the forms in the First Schedule accordingly.

Forms Nos. 8, 9, 10 and 11.

5. The following section is inserted immediately after section 31 of the Magistrates Ordinance, 1890 :—

Addition of new section after Ordinance No. 3 of 1890, s. 31.

Reduction of imprisonment on part payment of fine. 4 & 5 Geo. 5, c. 58, s. 3 (1). 31A.—(1) Subject to the provisions of subsections (2) and (3), where a term of imprisonment is imposed by a magistrate in respect of the non-payment of any sum of money adjudged to be paid by a conviction or order, that term shall, on payment of a part of such sum to any person authorised by a magistrate to receive it, be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days in the term as the sum paid bears to the sum adjudged to be paid.

(2) Notwithstanding the provisions of subsection (1), no person who has been sentenced to imprisonment in default of payment of a sum adjudged to be paid by a conviction or order shall be entitled to be discharged on the first day of his imprisonment except upon the payment in full of the sum in respect of which the sentence of imprisonment was imposed.

(3) Notwithstanding the provisions of subsection (1), where any person who has been sentenced to imprisonment in default of payment of a sum of money adjudged to be paid by a conviction or order earns under the Prison Rules any remission of the sentence, the term of his imprisonment shall for the purposes of subsection (1) be deemed, at any given time, to have been reduced by such period of remission as may at the time stand to his credit.

Repeal of Ordinance No. 3 of 1890, s. 45, and substitution of new section.

6. Section 45 of the Magistrates Ordinance, 1890, is repealed and the following section is substituted therefor:—

Consecutive sentences of imprisonment. 4 & 5 Geo. 5, c. 58, s. 18.

45. Where a term of imprisonment is imposed by a magistrate, either in the first instance or in respect of the non-payment of any sum of money adjudged to be paid by a conviction or order, the magistrate may order that the said term shall commence at the expiration, in whatever manner, of any other term of imprisonment which has previously been imposed by any court: Provided that where two or more terms of imprisonment imposed by a magistrate or magistrates are ordered to run consecutively the aggregate of the said terms of imprisonment shall not exceed twelve months.

Amendment of Ordinance No. 3 of 1890, s. 88.

7. Section 88 of the Magistrates Ordinance, 1890, is amended by substituting "one hundred" for "fifty" in the fifth line thereof.

Objects and Reasons.

1. The object of clause 2 of this bill is to enable a Government servant who has once been appointed a police magistrate to exercise the powers of a magistrate even though he has since been appointed to some other office. In practice the exercise of such a power would be convenient so as to enable a magistrate, who has moved on to another post, to complete the hearing of part-heard cases.

2. Clause 3 of the bill, coupled with amendments to be made in the Merchant Shipping Ordinance, 1899, is intended to confer upon the Assistant Harbour Master the same magisterial powers as the Harbour Master can now exercise, so as to remedy the inconvenience of the hearing of cases before the Marine Magistrate being delayed if at any time the Harbour Master is either ill or absent from the Harbour Office on other duties.

3. Clause 4 of the bill, which is based on section 29 of the Criminal Justice Administration Act, 1914, 4 & 5 Geo. 5, c. 58, gives a magistrate power to issue a subpoena *duces tecum* which at present can only be obtained from the Supreme Court.

4. Clause 5 of the bill, which is based on the section 3 (1) of the Criminal Justice Administration Act, 1914, gives statutory recognition to the practice of accepting of payment of part of a sum of money adjudged to be paid by a conviction or order in commutation of a proportionate part of the alternative term of imprisonment.

5. Section 45 of the Magistrates Ordinance, 1890, provides that where a magistrate imposes a sentence of imprisonment, and the defendant "is then in prison undergoing imprisonment on a conviction for any other offence", the magistrate may order that the subsequent sentence shall commence at the expiration of the previous sentence. This section is defective in several respects. In the first place it limits the power of imposing consecutive terms to two sentences: see *R. v. Martin* (1911) 2 K.B. 450. In the second place it is not quite clear that it applies to cases where the imprisonment has been ordered in default of payment of a sum of money. In the third place it fixes no maximum aggregate. The wording of the section is also rather inappropriate to the common case where a defendant is convicted and sentenced for two offences at the same sitting of the court. It has been held in *R. v. Cutbush* (1867) L.R. 2 Q.B. 379, that the corresponding section in the English Act does apply to the above case, and *R. v. Cutbush* was cited with approval in the House of Lord in *R. v. Castro* (1881) 6 A.C. 229, but the opportunity is taken of making the wording more appropriate. The proposed new section 45 is partly based on section 18 of Criminal Justice Administration Act, 1914, and it endeavours to remedy the defects mentioned above. The proposed new section provides that where two or more terms of imprisonment imposed by a magistrate or magistrates are ordered to run consecutively, the aggregate of the said terms shall not exceed twelve months. In the English Act the maximum aggregate is six months unless the sentence include at least two sentences for indictable offences dealt with summarily by consent or on a plea of guilty, in which case the maximum aggregate is twelve months.

6. Clause 9 of the bill increases from \$50 to \$100 the amount which may be ordered to be paid by an offender as compensation to a person who has suffered injury or loss to his person or property by any offence.

J. H. KEMP,
Attorney General.

15th January, 1926.

NOTICES.

COLONIAL SECRETARY'S DEPARTMENT.

No. S. 32.—Statement of Sanitary Measures adopted against Hongkong.

| Place or Port. | Nature of Measures. | Date. | Reference to Government Notification. |
|----------------|--|-------------------|---------------------------------------|
| Manila. | Inspections outside Manila harbour from 20th April. Third class passengers and new crew must comply with the vaccination requirements. | 16th April, 1924. | — |