

Draft Bills.

No. S. 87.—The following bills are published for general information:—

C.S.O. 3094/25.

[No. 3 :—13.2.31.—2.]

A B I L L

INTITULED

An Ordinance to amend further the law relating to Larceny.

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows:—

Short title. 1. This Ordinance may be cited as the Larceny Amendment Ordinance, 1930.

Insertion of new s. 78A. in Ordinance No. 5 of 1865. 2. The following heading and section are inserted in the Larceny Ordinance, 1865, immediately after section 78 thereof:—

Obtaining Credit by Fraud, etc.

Obtaining credit by fraud, etc. 78A. Any person shall in each of the cases following be guilty of a misdemeanor and shall upon conviction be liable to imprisonment for any term not exceeding one year, that is to say:—

32 & 33 Vict. c. 62, s. 13. Ordinance No. 7 of 1891, s. 82 (5). (a) if in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud; or

(b) if with intent to defraud his creditors or any of them, he has made or caused to be made any gift or transfer of, or charge on, his property; or

(c) if with intent to defraud his creditors, he has concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him; or

16 & 17 Geo. 5, c. 7, s. 6. (d) if with intent to defraud his creditors or any of them, he has caused or connived at the levying of any execution against his property.

Repeal of paragraphs (a) (b) and (c) in s. 82 (5) of Ordinance No. 7 of 1891. 3. Paragraphs (a) (b) and (c) in section 82 (5) of the Bankruptcy Ordinance, 1891, are repealed.

Objects and Reasons.

Section 82 (5) (a), (b) and (c) of the Bankruptcy Ordinance, 1891, Ordinance No. 7 of 1891, create three offences, which were adopted from the Debtors Act, 1869, 32 and 33 Vict. c. 62, s. 13. Though these provisions appear in the Bankruptcy Ordinance, the offences, unlike many other offences referred to in the Bankruptcy Ordinance, can be committed by

persons who have neither been adjudicated bankrupt nor had a receiving order made against them. A new Bankruptcy Ordinance, based on the English Bankruptcy Acts of 1914 and 1926, is in course of preparation, and the offences referred to in that Ordinance will be confined to persons against whom bankruptcy proceedings are taken. It is therefore necessary to provide elsewhere for the continuance of the general provisions of section 82 (5) (a), (b) and (c) of the present Bankruptcy Ordinance. This is done accordingly by the repeal of the misplaced paragraphs and by the insertion of a new section in the Larceny Ordinance, 1865. Paragraph (d) in the new section is derived from section 6 of the Bankruptcy (Amendment) Act, 1926; but is not limited, as that section is, to the case of persons who have been adjudged bankrupt or in respect of whose estates receiving orders have been made.

C. G. ALABASTER,
Attorney General.

February, 1931

C S O 1058/15 Part II.

[No. 20 :—6.1 31.—5]

A BILL

INTITLED

An Ordinance to amend the law relating to
Deportation.

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as the Deportation Short title. Amendment Ordinance, 1931.

2. Section 3 of the Deportation Ordinance, 1917, as amended by sections 2 and 3 of the Deportation Amendment Ordinance, 1929, and section 4 of the Deportation Ordinance, 1917, are repealed and the following sections are substituted therefor :—

Deportation Order against an alien. Summary procedure.

3.—(1) The Governor in Council may at any time summarily issue a deportation order against any person whom he finds to be an alien :—

- (a) if in the opinion of the Governor in Council he has been deported or banished from the United Kingdom, from any British possession or from any territory which is under His Majesty's protection, or in respect of which a mandate is being exercised by the Government of any part of His Majesty's dominions ; or
- (b) if the alien has been convicted in the Colony of any offence ; or
- (c) in any special case not falling under paragraph (a) or (b) of this subsection, if the Governor in Council deems it to be conducive to the public good to make summarily a deportation order against the alien.

Repeal of s. 3 of Ordinance No. 25 of 1917, as amended by ss. 2 and 3 of Ordinance No. 34 of 1929, and of s. 4 of Ordinance No. 25 of 1917, and substitution of new sections.

Deportation Order against an alien. Long procedure. (2) The Governor in Council may also at any time issue a deportation order against any person whom he finds to be an alien if upon any inquiry in the manner prescribed in section 3A he is of opinion that the alien should be deported.

Deportation Order against alien. Schedule Form No. 7A. (3) Any deportation order issued under the provisions of this section may be in Form No. 7A in the Schedule.

Arrest, detention and inquiry. Schedule Form No. 1. 3A.—(1) The Governor may whenever it shall appear to him that there are reasonable grounds for inquiry as to whether any person should be deported, issue a warrant in Form No. 1 in the Schedule authorising the arrest of such person and his detention for a period not exceeding fourteen days.

(2) Any person arrested under such warrant may be detained in the custody of any officer referred to in the said warrant and may be transferred from the custody of such officer to any other such officer as often as may be desirable.

Schedule Form No. 2. (3) So soon as conveniently may be after the arrest of any person under any such warrant, the Secretary for Chinese Affairs or one of the Assistants to the Secretary for Chinese Affairs, or a District or Assistant District Officer, shall interview the person so arrested and shall ask such person the questions set forth in Form No. 2 in the Schedule: Provided however, that, if such person does not in answer to the fourth question in the said form say anything in answer to the charge preferred against him or give any reason why he should not be deported, it shall not be necessary for such person to be asked to answer the fifth, sixth and seventh questions in the said form.

(4) The officer who interviews such person may, in addition to the questions specified in the said form, ask him any other questions which such officer may think desirable for the purpose of elucidating his answers or for the purpose of directing his attention to any particular which appears to such officer to require a reply or further reply.

(5) The officer who interviews such person shall take down in English, with or without the assistance of an interpreter and whether such interpreter be sworn or not, a full record of the answers given by the person interviewed to the questions asked him, and such answers so taken down by such officer shall be read over to such person and may if such person is willing so to do be signed or in other manner signified as correct by such person and by the interpreter if any be employed.

(6) The said officer shall place on record in a form convenient for the consideration of the Governor in Council the reports on which the allegations in the fourth question were based, the statements of witnesses and other evidence adduced by such person and any further statements or evidence which it becomes necessary to adduce in consequence thereof and he may from time to time adjourn the proceedings for the purpose.

Schedule Form No. 3. (7) So soon as conveniently may be there-after the Secretary for Chinese Affairs shall transmit to the Colonial Secretary a report in Form No. 3 in the Schedule for the consideration of the Governor in Council.

(8) A magistrate may at any time after the conclusion of the interview referred to in subsection (3) and after the examination of the witnesses called by the person in question, or at any previous time with the consent of the Secretary for Chinese Affairs, admit to bail any person in custody under any warrant issued under this section upon such security as in the opinion of the magistrate will be sufficient to ensure the appearance and surrender of such person at the Central Police Station at any specified date and time. The recognizance of bail may be in Form No. 5 in the Schedule.

Schedule Form No. 5. (9) The Colonial Secretary by direction of the Governor may by order in Form No. 6 in the Schedule direct the release of any person under any such warrant as aforesaid, and on receipt of such order the Superintendent of the House of Detention shall release such person.

Detention Warrants. Schedule Form No. 1. 3B.—(1) A warrant in Form 1 in the Schedule may be used also where the summary procedure authorised by section 3 (1) is adopted, provided the Governor is satisfied that detention is necessary in order that the proceedings may be completed.

(2) In proceedings under this Ordinance the Governor may from time to time by warrant authorise the detention of a person already in custody for a further period of seven days from the date of the expiration of the previous warrant or of the sentence as the case may be, provided the Governor is satisfied that the said person ought to be detained in order that further enquiry may be made or the existing proceedings completed. A warrant under this sub-section may be in Form No. 4 in the Schedule with such variation as the case may require.

Schedule Form No. 4. 4.—(1) Subject to the provisions of this section the Governor in Council may issue a deportation order in Form No 7 in the Schedule, against any person whom he finds to be a British subject if in the opinion of the Governor in Council he—

- Deportation Order against British subject. Schedule Form No. 7.
- (a) has been guilty before or after the commencement of this Ordinance of any criminal offence, or of any other misconduct, connected with the preparation, commencement, prosecution, defence or maintenance of any legal proceedings, or the sharing in the proceeds thereof, or the settlement or compromise thereof, or the obtaining or preparation of evidence in anticipation thereof or in relation thereto; or
 - (b) has been guilty before or after the commencement of this Ordinance of any criminal offence, or of any other misconduct, which is not included under paragraph (a) but which is connected with the administration of the law relating to bankruptcy or of the law relating to the winding-up of companies; or
 - (c) has been guilty before or after the commencement of this Ordinance of any criminal offence, or of any other misconduct, connected with the preparation, registration, presentation, filing, issuing or certifying of any document which any public officer is required or empowered to register, receive, file issue, or certify; or

(d) was born in the Colony of parents neither of whom was a British subject at the date of the birth of such person unless he has obtained a certificate of his British birth under the hand of the Governor and the public seal of the Colony ; or

(e) has acted, is acting, or is about to act, whether within or without the Colony, in a manner prejudicial to public safety, or to the defence, peace or security of His Majesty's dominions, or any part thereof, or of any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's dominions.

(2) No deportation order may be issued against a British subject unless he shall have been examined in accordance with the provisions of section 3A and unless such examination shall have taken place in the presence of a judge in chambers.

(3) In such cases the report shall be signed and transmitted by the judge and not by the Secretary for Chinese Affairs. The opinion required of the judge in such report shall be his opinion whether or not the allegations in the fourth question are well founded in fact.

Exclusion of necessity for steps not expressly provided for. 4A. No steps or proceedings whatsoever other than those expressly specified in this Ordinance shall be necessary to the validity of any deportation order made or purporting to have been made under this Ordinance.

Previous deportation proceedings to be no bar to subsequent deportation proceedings. 4B. No proceedings whatsoever connected in any manner with any consideration or inquiry under the provisions of this Ordinance, or with any other consideration or inquiry with a view to deportation made before or after the commencement of this Ordinance under the provisions of any other enactment, shall be any bar to any subsequent consideration or inquiry under the provisions of this Ordinance or to the making of any deportation order thereon.

Court or magistrate may recommend deportation. 4C. If any court or magistrate has convicted any alien of any offence, the court or magistrate may recommend that a deportation order should be made in his case either in addition to or in lieu of sentence.

Repeal of s. 8 of Ordinance No. 25 of 1917.

3. Section 8 of the Deportation Ordinance, 1917, is repealed.

Amendment of s. 9 of Ordinance No. 25 of 1917.

4. In section 9 of the Deportation Ordinance, 1917, the following words are repealed :—

“ either ” and “ virtue of ” in line 2 ;

“ or by virtue of the provisions of section 8 of this Ordinance or of the provisions of section 11 of the Deportation Ordinance, 1912,” in lines 4, 5 and 6 ;

“ or at any time contrary to the provisions of section 8 of this Ordinance or to the provisions of section 11 of the Deportation Ordinance, 1912,” in lines 9, 10, 11 and 12.

Amendment of s. 10 of Ordinance No. 25 of 1917.

5. In section 10 of the Deportation Ordinance, 1917, the following words are repealed :—

“ either ” and “ virtue of ” in line 3 ;

“or by virtue of the provisions of section 8 of this Ordinance, or of the provisions of section 11 of the Deportation Ordinance, 1912,” in lines 5, 6 and 7.

6. Section 12 of the Deportation Ordinance, 1917, is amended by the repeal of sub-section (3) thereof and by the addition of the following words at the end of sub-section (4) thereof :—

Amendment of s. 12 of Ordinance No. 25 of 1917.

“ Also any indorsement on any detention warrant issued under this Ordinance, purporting to state the date of arrest of any person under the said detention warrant, and purporting to be signed by the officer who made the arrest, shall, until the contrary is proved, be deemed sufficient evidence that the person referred to was arrested on the date stated.”

7. Section 14 of the Deportation Ordinance, 1917, is amended by the deletion of the figures “ 3 (2) ” at the end thereof and by the substitution therefor of the following figures and words :—

Amendment of s. 14 of Ordinance No. 25 of 1917.

“ 3 (1) (c). Where the deportation order is made contrary to the opinion expressed in the report of the judge required by section 4 (3) full particulars shall be sent.”

8.—(1) Forms Nos. 1 and 4 in the Schedule to the Deportation Ordinance, 1917, as amended by section 14 of the Police Force Amendment Ordinance, 1929, are further amended by the deletion of the words “ six days ” and “ four days ” respectively and by the substitution therefor of the words “ fourteen days ” and “ seven days ” respectively.

Amendment of Forms Nos. 1, 4 and 5 in Schedule to Ordinance No. 25 of 1917.

(2) Form No. 1 in the Schedule to the Deportation Ordinance, 1917, is also amended by the deletion of the words “ from the date hereof ” and by the substitution therefor of the words :—

“ from the day on which he is arrested, including the day of the arrest ”.

(3) The Condition on Form No. 5 in the Schedule to the Deportation Ordinance, 1917, is amended by the deletion of the words “ Superintendent of the House of Detention ” and by the substitution therefor of the words “ Police Officer in charge at the Central Police Station ”.

(4) Forms Nos. 7 and 7A in the Schedule to the Deportation Ordinance, 1917 are amended in each case by the deletion of the words “ days from the said date be fixed ” and by the substitution therefor of the words “ days from the date of the discharge of the said person from prison, or from the date of service upon him of this Order, whichever be the later, be fixed ”.

9. The reference to section 4 in section 7 of the Deportation Ordinance, 1917, as amended by section 4 of the Deportation Amendment Ordinance, 1929, shall be deemed to apply to the new section 4 enacted by section 2 of this Ordinance.

Application of Ordinance No. 25 of 1917, s. 7 as amended by Ordinance No. 34 of 1929, s. 4.

10. Sub-section (7) of section 85 of the Magistrate Ordinance, 1890, is repealed.

Repeal of Ordinance No. 3 of 1890, s. 85 (7).

Objects and Reasons.

1. The object of this Ordinance is to amend the principal Ordinance (No. 25 of 1917) by reverting to the arrangement adopted in the case of the previous principal Ordinance (No. 9 of 1912), under which the provisions relating to deportation orders against British subjects were dealt with in a section separate from that which dealt with the deportation of aliens and to introduce special safeguards in the case of British deportations. This Ordinance also amends the procedure in certain details as the result of experience acquired in practice.

2. Section 2 of this Ordinance repeals sections 3 and 4 of the principal Ordinance and substitutes new sections 3, 3A, 4, 4A, 4B and 4C. Of these the new section 3 (1) (a) authorises the issue of summary orders against alien banishees from other parts of the Empire. Sections 8, 9, 10 and 12 (3) of the principal Ordinance prohibited the residence here of banishees from the Straits Settlements, and Malay States and Borneo, and dealt with the penalties to be imposed and the evidence to be adduced if they were found here. For some years it has been found impracticable to impose these penalties. It is moreover illogical to limit the exclusion of alien deportees to those deported only from the places named. It seems desirable therefore to abolish altogether the automatic exclusion and to make provision for the issue of local summary orders if and whenever it is considered desirable to get rid of the alien deportees from other parts of the Empire.

3. The new sections 3 (1) (b) and (c) are derived respectively from the old sections 3 (1) (a) and (b) and (2). Provision similar to the latter is also to be found in section 12 (6) (c) of the Aliens Order, 1920, made under the Aliens Restriction Acts, 1914 and 1919. The new section 3 (1) (c) applies only to special cases which must be reported to the Secretary of State under section 14 of the principal Ordinance as amended by section 7 of this Ordinance.

4. The new section 3 (2) is practically a re-enactment of section 4 (1) and (11) of the principal Ordinance but limits it to aliens. The new section 3 (3) provides for the use in the case of alien deportations of the form of order authorised by section 3 of the amending Ordinance No. 34 of 1929.

5. The new section 3A (1) (2) (3) (5) (7) (8) and (9) is practically a re-enactment of section 4 (4) (5) (6) (7) (8) (10) and (12) of the principal Ordinance save that it has been found necessary to extend the time authorised by the Detention Warrant to fourteen days.

6. The provisions of the new section 3A (4) and (6), though not re-enactments of any express provisions of the principal Ordinance, merely enact the practice which obtains and which seems to be required by the language of sub-section 4 (10) (3A (8) in this Ordinance) and of Form No. 3 in the Schedule to the principal Ordinance.

7. The new section 3B (1) authorises detention where necessary in cases where the summary procedure is adopted. The new section 3B (2) is derived from the old section 4 (9) and authorises the further detention of persons already in custody for periods of seven days at a time where such detention is necessary to complete the inquiry or proceedings. The period of four days hitherto authorised has been found insufficient.

8. The new section 4 (1) is practically a re-enactment of section 4 (13) and (14) of the principal Ordinance. Paragraph (e) of the sub-section has been extended so as to include mandated territory.

9. Sub-sections (2) and (3) of the new section 4 insist on long procedure in the presence of a judge in chambers and a report from the judge as to whether or not the allegations are in his opinion well founded in the case of the deportation of British subjects.

1

10. The new sections 4A and 4B are with slight verbal changes re-enactments of section 4 (2) and (3) of the principal Ordinance. The new section 4C is suggested by section 12 (6) of the Aliens Order and authorises courts and magistrates to recommend aliens for banishment.

11. Sections 3, 4, 5 and 6 of this Ordinance effect the repeals of the provisions relating to the exclusion of banishees from certain parts of the Empire referred to in paragraph 2 of this Memorandum.

12. Section 7 of this Ordinance makes section 14 of the principal Ordinance applicable to the new sections introduced by this Ordinance and provides for the transmission of full particulars to the Secretary of State in certain cases.

13. Section 8 of this Ordinance amends the forms of detention warrant so as to extend the period of detention to correspond with the periods authorised by section 3 (3) and 3A (1) and amends Form No. 1 so as to correspond with the terms of the sub-section under which it is made. It amends the condition on the recognizance of bail so as to provide for surrender into police custody instead of surrender at the House of Detention. It also amends the method of completing the period which is to elapse before a deportee must leave the Colony.

14. Section 9 of this Ordinance makes a reference in section 7 of the principal Ordinance as amended by Ordinance No 34 of 1929 applicable to a new section introduced by this Ordinance.

15. Section 10 of this Ordinance repeals a sub-section of section 85 of the Magistrates Ordinance, 1890, which authorised the flogging of returned banishees, as this punishment is not considered suitable.

C. G. ALABASTER,
Attorney General.

January, 1931.

NOTICES.

COLONIAL SECRETARY'S DEPARTMENT.

No. S. 88.—Statement of Sanitary Measures adopted by Hong Kong.

Disease.	Port or Place.	Restriction in Force.	Authority.
Plague.	Bangkok.	Quarantine and/or Disinfection at the discretion of the Health Officer.	Notification No. 51 of 29th January, 1931.

E. R. HALLIFAX,
Colonial Secretary.

13th March, 1931.