

No. S. 329. - The following Bill with amendments proposed to be made in Committee, is published for information under Standing Order 27 (14):—

[No. 2:—17.8.38.—5.]

C.S.O. 2531/21.

A BILL

INTITULED

An Ordinance to amend the Dangerous Drugs Ordinance, 1935.

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 Dangerous Drugs Amendment Ordinance, 1938. Short title.

2. Sub-section (2) of section 17 of the Dangerous Drugs Ordinance, 1935, is amended by the substitution of the words "on indictment" for the words "or indictment" in the first line of paragraph (a) thereof. Amendment of Ordinance No. 35 of 1935, s. 17 (2).

3. The Dangerous Drugs Ordinance, 1935, is amended by the insertion of the following new sections immediately after section 21 thereof:— New section 21A added to Ordinance No. 35 of 1935.

21A.—(1) No person shall—

(a) have in his possession any pipe fit and intended for the smoking of heroin: The burden of proof that any pipe fit for the smoking of heroin is not intended for such smoking shall lie on the defendant;

(b) smoke or consume any heroin in any heroin divan;

(c) keep, manage or act or assist in the management of any heroin divan or of any place in which heroin is unlawfully stored or manufactured;

(d) being the tenant, lessee, occupier or person in charge of any place, permit such place or any part thereof to be used as a heroin divan or for the unlawful storage or manufacture of heroin;

(e) being the lessor or landlord of any place, or the agent of such lessor or landlord, let the same with the knowledge that such place or some part thereof is to be used as a heroin divan or for the unlawful storage or manufacture of heroin, or consent to the use at any time of such place or any part thereof as a heroin divan or for the unlawful storage or manufacture of heroin.

(2) In and for the purposes of this section—

(a) "place" means any house, room, agency, boat, vehicle, vessel or any erection movable or otherwise or any spot on land or water;

Special provision for the prohibition of heroin divans, storage places and factories, and for the responsibility of landlords in respect thereof.

(b) "lessee" and "tenant" respectively include any sub-lessee or sub-tenant and "tenancy" includes any sub-tenancy;

(c) "lessor" and "landlord" include the holder of any lease or tenancy who has sub-let his holding or any part thereof;

(d) "heroin divan" means any place opened, kept or used—

(i) for the sale of heroin to be smoked or consumed in such place; or

(ii) for the smoking or consumption of heroin where a fee or its equivalent is charged for such smoking or consumption or where any benefit or advantage whatever, direct or indirect, is derived by the keeper of such place in consequence of such smoking or consumption;

(e) whenever two or more pipes fit for the smoking of heroin are found in any place it shall be presumed until the contrary is proved that the place is a heroin divan;

(f) every person found in a heroin divan or found escaping therefrom on the occasion of its being entered under this Ordinance shall, until the contrary is proved, be presumed to be or to have been smoking or consuming heroin therein;

(g) the lessor or landlord of any place or the agent of such lessor or landlord shall be presumed to have consented to the use of such place or of any part thereof as a heroin divan or, as the case may be, for the unlawful storage or manufacture of heroin if it is proved to the satisfaction of the magistrate that he knew of such use and failed forthwith to proceed to put an end to the same by making a report at any police station or by terminating the lease or tenancy.

(h) "unlawful" or "unlawfully" in relation to the storage or manufacture of heroin means otherwise than in accordance with—

(i) the provisions of this Ordinance or any regulations made thereunder; or

(ii) the terms and conditions of any licence or authorization granted in pursuance of the said provisions.

(3) Where it is proved to the satisfaction of a magistrate that an offence under sub-section (1) has been committed with respect to any premises or any part thereof he may order that a notice of the fact shall be served either personally or by registered post upon the landlord or tenant of the premises, or if such landlord or tenant is absent or under a disability upon his attorney, agent or rent collector, or if such landlord or tenant is a corporation upon the secretary or manager thereof.

(4) After service of such notice as is mentioned in sub-section (3) any magistrate may, at the request of any such landlord, tenant, attorney, agent, rent collector, secretary or manager, make an order (which shall be recognized and given effect to in any proceeding in any court) absolutely putting an end to any existing tenancy of such premises or any part thereof as from the date of such order, and thereupon such tenancy shall absolutely cease and determine for all purposes and any tenant or occupier of such premises or such part may thereafter be treated as a trespasser.

Any such order shall be sufficient authority to any constable to enter (by force, if needful) into the premises and give possession of the same, or any part thereof specified in the order, to the landlord or his agent: Provided that such entry shall not be made at any time except between 9 a.m. and 5 p.m.: Provided also that the powers given by this section shall be in addition to and not in derogation of any powers conferred by or under any other enactment.

(5) If, within twelve months after service of such notice as is mentioned in sub-section (3), an offence against sub-section (1) is proved to have been committed by the same or any other offender in respect of the same premises or any part of the same premises, the person upon whom service is made (and the landlord or tenant also, if such person be an attorney, agent, rent collector, secretary or manager) shall be guilty of an offence, and liable on summary conviction to a fine not exceeding five hundred dollars, unless he proves to the satisfaction of the magistrate that he neither knew nor had reasonable means of knowing that the premises were being used again in contravention of sub-section (1).

(6) Every person who, after having been previously convicted of an offence punishable under this section or under section 10, subsequently commits any such offence (whether each of the convictions has been in respect of an offence of the same description or not) shall be liable on summary conviction to imprisonment for any term not exceeding twelve months, in addition to any punishment to which he may otherwise by law be liable.

21B.—(1) Except as hereinafter mentioned, no information laid under this Ordinance shall be admitted in evidence in any civil or criminal proceeding, and no witness shall be obliged to disclose the name or address of any informer or to state any matter which might lead to his discovery, and if any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding contain any entry in which any such informer is named or described or which might lead to his discovery, the court or magistrate shall cause all such passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer from discovery, but no further.

Rules as to
secrecy of
information
and protec-
tion of
informers.

(2) But if, in any proceedings before a magistrate for any offence against any provision of this Ordinance, the magistrate, after full inquiry into the case, believes that the informer wilfully made in his information a material statement which he knew or believed to be false or did not believe to be true, or if, in any other proceeding, the court or magistrate is of opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, it shall be lawful for the court or magistrate to require the production of the original information, and to permit inquiry and require full disclosure concerning the informer.

Objects and Reasons.

1. The object of clause 2 of this Bill is to correct a typographical error, the substitution of "on" for "or", in section 17 (2) (a) of the principal Ordinance, No. 35 of 1935.

2. The object of clause 3 of the Bill is to enact special provisions for the prohibition of heroin divans, storage places and factories and for the responsibility of landlords of premises in respect thereof on lines similar to the provisions enacted with respect to houses of ill fame by section 3 of Ordinance No. 25 of 1936 and with respect to opium divans by section 15 of Ordinance No. 7 of 1932, as amended by Ordinance No. 7 of 1934.

3. Paragraph (1) (a) of the new section 21A inserted by clause 3 of this Bill in the principal Ordinance further makes it an offence to possess a pipe fit for heroin-smoking with intent that it shall be so used, and in such a case throws the burden of disproving such intent upon the defendant. Heroin pipes are of special manufacture and distinctive design, resembling opium pipes but easily distinguishable from them.

4. The presumptions raised by paragraphs (e) and (f) of the same new section 21A relating to the finding of two or more heroin pipes and persons found in or escaping from heroin divans are based on provisions of a similar nature in section 16 of Ordinance No. 7 of 1932.

5. Sub-section (4) of new section 21A authorizes any constable to enter premises in respect of which a magistrate has made an order under that sub-section and give possession of the same to the landlord or his agent.

6. Sub-section (5) of new section 21A imposes an additional penalty of 12 months' imprisonment on summary conviction in case of a second or subsequent offence against the provisions of this section or of section 10.

7. The object of new section 21A is to secure at least as great a measure of control over the evil of heroin divans as exists in the case of opium divans.

8. New section 21B reproduces the provisions of section 34 of the Opium Ordinance, 1932 (No. 7 of 1932), relating to the secrecy of information and protection of informers.

J. A. FRASER,
Attorney General

September, 1938.