

Draft Bill.

No. S. 467.—The following Bill is published for general information:—

[No. 26 :—18.11.38.—1.]

C.S.O. 3603/31.

A BILL

INTITULED

An Ordinance to amend the Criminal Procedure Ordinance, 1899.

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 Criminal Procedure Amendment Ordinance, 1938.

Substitution for Ordinance No. 9 of 1899, s. 77A.

2. The Criminal Procedure Ordinance, 1899, is amended by the substitution of the following section for section 77A thereof:—

Offence of infanticide. 1 & 2 Geo. 6, c. 36, s. 1.

77A.—(1) Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for the provisions of this section the offence would have amounted to murder, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.

(2) Where upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, notwithstanding that the circumstances were such that but for the provisions of this section they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide.

(3) Nothing in this section shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of guilty but insane, or a verdict of concealment of birth, in pursuance of section 49 of the Offences against the Person Ordinance, 1865, except that for the purposes of the proviso to that section a child shall be deemed to have recently been born if it had been born within twelve months before its death.

Ordinance No. 2 of 1865.

(4) The said section 49 shall also apply in the case of the acquittal of a woman upon an indictment for infanticide as it applies upon the acquittal of a woman upon an indictment for murder.

---

*Objects and Reasons.*

1. Clause 2 of this Bill enacts in section 77A of the Criminal Procedure Ordinance, No. 9 of 1899, the provisions of section 1 of the Infanticide Act, 1938, (1 & 2 Geo. 6, c. 36) in substitution for the provisions of section 1 of the Infanticide Act, 1922, (12 & 13 Geo. 5, c. 18).

C. G. ALABASTER,  
*Attorney General.*

*November, 1938.*