

HONGKONG.

ANNO VICESIMO SEPTIMO VICTORIÆ REGINÆ.

No. 6 of 1864.

By His Excellency SIR HERCULES GEORGE ROBERT ROBINSON, Knight, Governor and Commander-in-Chief of the Colony of Hongkong and its Dependencies, and Vice-Admiral of the same, with the Advice of the Legislative Council of Hongkong.

HERCULES G. R. ROBINSON.

Title. *An Ordinance to render admissible in certain cases the Depositions of Witnesses who cannot be produced at the Trial, and to make Provision for the reception in Evidence of the Statements of the accused.*

[30th April, 1864.]

Preamble. Whereas the circumstances of this Colony are such as to render it necessary, in order to prevent a failure of justice, that more effectual Provision should be made for receiving in Evidence in certain cases, the Depositions of Witnesses which shall appear to the Court to have been duly taken, as also the Statements of the accused: Be it therefore enacted by His Excellency the Governor of Hongkong, with the advice of the Legislative Council thereof, as follows:

Section 4 of Ordinance No. 7 of 1857 repealed. I. Section 4 of Ordinance No. 7 of 1857 shall be and the same hereby is repealed.

Depositions of Persons who have died or who are absent or who from other specified cause cannot be produced, as Witnesses in any Criminal Prosecution, may, in certain cases, be read in Evidence. II. Whenever it shall be proved, by the Oath of any credible witness, or shall in any other manner whatsoever, appear to the satisfaction of the Supreme Court, that the Attorney General, or other Person conducting a Criminal Prosecution on behalf of the Crown, is unable to produce, at the Trial of the accused, any Person as a Witness, in consequence of the Death of such Person, or of his absence from the Colony, or of the impracticability of serving process upon him, or of his being so ill as not to be able to travel, or of his being insane, or of his being kept out of the way by means of the procurement of the accused, or of his being domiciled in a Country, the laws of which prohibit his absenting himself therefrom, or which he shall refuse to quit after application made to him in that behalf; and if it also appear that such Person was examined before a Magistrate, or other Officer of Her Majesty to whom the cognizance of the Crime or Offence appertained, and that the usual Oath, Affirmation or Declaration was administered to such Person prior to his examination, and that the examination was taken in the presence of the accused, and that he or his Counsel or Attorney had a full opportunity of cross-examining such Person, and that the Examination of such Person was reduced into writing and read over to and signed by the Person examined, and also by the Magistrate or other Officer of Her Majesty as aforesaid, and that such Examination or a copy thereof is in the custody of the Supreme Court, it shall be lawful for the Supreme Court and it is hereby required to allow to be read and received in evidence, in such Prosecution, so much of the Examination so taken as aforesaid as would have been admissible, according to the Law and Practice of the Supreme Court, had the said Person been produced and examined before the said Court, in the ordinary and accustomed manner.

What shall be deemed *prima facie* proof of Examination having been duly taken.

III. If the Attorney General, or other Person conducting a Criminal Prosecution, on behalf of the Crown, shall, at the Trial of any Person accused, apply to the Court for leave to read as evidence, in such Prosecution, the Examination of any Person, and it shall appear from the Registrar or Deputy Registrar or other competent Officer of the said Court that the Depositions, including the Examination of such Person, or a copy thereof are in the custody of the said Court, and if it shall appear from the perusal of such Examination by the Presiding Judge that such Examination contains any Statement to the effect, or from which it may fairly and reasonably be inferred, that such Person was examined before a Magistrate or other Officer of Her Majesty to whom the cognizance of the Crime or Offence appertained, and that the usual Oath, Affirmation or Declaration was administered to such Person, prior to his Examination, and that the Examination was taken in the presence of the accused, and that he or his Counsel or Attorney had a full opportunity of cross-examining such Person, and that the Examination of such Person was reduced into writing and read over to the Person examined, then, if such Examination purports to be signed by the Person examined and by the Magistrate or other Officer by or before whom the same purports to be taken, it shall be lawful to read such Examination in evidence, without further proof of the matters

in this Section aforesaid, unless it be proved that such Examination was not taken in manner aforesaid, or was not in fact signed by the Person examined or by the Magistrate or Officer aforesaid, purporting to sign the same.

IV. No objection to the reception in evidence of the Examination of any Person shall be permitted to prevail upon the ground that the particular Examination of such Person was not signed by the Magistrate or other Officer of Her Majesty as aforesaid, if it shall appear, in manner aforesaid, that the Depositions wherein such Examination was included, were so signed.

No objection to admissibility of Examination in evidence if Depositions signed by the Magistrate, &c., notwithstanding particular Examination not so signed.

V. If, after the Examination of all the Witnesses on the part of the Prosecution shall have been completed, before a Magistrate or other Officer of Her Majesty to whom the cognizance of the crime or offence appertained, any statement shall have been made by the accused before such Magistrate or Officer of Her Majesty as aforesaid, it shall be lawful for the Supreme Court, and it is hereby required to allow such statement to be read and received in Evidence in such Prosecution upon the Presiding Judge being satisfied that the following conditions had been in each case complied with:

If party accused make a Statement before Magistrate, &c., same may be read in Evidence if certain preliminaries are complied with.

- (1.) That prior to such statement having been made the Magistrate, or other Officer of Her Majesty to whom the cognizance of the crime or offence appertained, had read or caused to be read, or, where necessary, had translated, or cause to be translated to the accused, the Depositions taken against him.
- (2.) That prior to such statement having been made the Magistrate, or other Officer of Her Majesty to whom the cognizance of the crime or offence appertained, had addressed to the accused these words or words to the like effect: "Having heard the Evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in Evidence against you upon your Trial."
- (3.) That prior to such statement having been made the Magistrate, or other Officer of Her Majesty to whom the cognizance of the crime or offence appertained, had given the accused clearly to understand that he had nothing to hope from any Promise of favour, and nothing to fear from any Threat which might have been held out to him to induce him to make any admission or confession of his Guilt, but that whatever he then said might be given in Evidence against him upon his trial notwithstanding such Promise or Threat.
- (4.) That what the Prisoner answered thereto was taken down in writing and read over to him.
- (5.) That the said statement had been kept with, and at the time of the application to receive the same in Evidence was in the custody of the Supreme Court in the same manner as, the Depositions of the Witnesses which had been taken in the same matter.

Provided nevertheless, that nothing herein enacted or contained shall prevent the Attorney General, or other Person conducting a Criminal Prosecution on behalf of the Crown from giving in Evidence any admission or confession or other statement of the Person accused, made at any time, which by Law would be admissible as Evidence against such Person.

VI. If the Attorney General, or other Person conducting a Criminal Prosecution, on behalf of the Crown shall at the trial of any Person accused apply to the Court for leave to read as Evidence in such Prosecution the statement of such Person, and it shall appear from the Registrar or Deputy Registrar or other competent Officer of the said Court that the Depositions including the statement of such Person or a copy thereof are in the Custody of the said Court, and if such statement shall appear to have been duly taken and in compliance with the conditions by the last Section imposed, then if such statement purports to be signed by the Magistrate or other Officer by or before whom the same purports to be taken, it shall be lawful to read such statement in Evidence without further proof of the matters in the Section last aforesaid, unless it be proved that such statement was not duly taken, or was not in fact signed by the Magistrate or Officer aforesaid purporting to sign the same.

What shall be deemed a *prima facie* proof of Statement having been duly taken, &c.

Passed the Legislative Council of Hongkong, this 30th Day of April, 1864.

L. D'ALMADA E CASTRO,
Clerk of Councils.