

BILL ENTITLED AN ORDINANCE TO REPEAL ORDINANCE 6 OF 1889, AND TO AMEND THE STATUTE LAW PRESERVATION ORDINANCE, 1886.—The Acting Attorney General moved the second reading of this Bill.

The Colonial Secretary seconded.

Question—put and passed.

Bill read a second time.

The Council then went into Committee on the Bill.

Bill reported without amendment.

The Acting Attorney General then moved that the Bill be read a third time.

Question—put and passed.

Bill read a third time.

Question put—that this Bill do pass.

Bill passed, and numbered as Ordinance 17 of 1889.

BILL ENTITLED THE PROTECTION OF WOMEN AND GIRLS ORDINANCE, 1889.—On the motion of the Acting Attorney General, the Council resumed Committee on this Bill.

Progress reported.

ADJOURNMENT.—The Governor then adjourned the Council till Monday, the 6th instant, at 4 P.M.

G. WILLIAM DES VŒUX,
Governor.

Read and confirmed, this 6th day of May, 1889.

ARATHOON SETH,
Clerk of Councils.

GOVERNMENT NOTIFICATION.—No. 222.

The following Bill, which was read a first time at a Meeting of the Legislative Council held this day, is published for general information.

ARATHOON SETH,
Clerk of Councils.

Council Chamber, Hongkong, 6th May, 1889.

DRAFT BILL

ENTITLED

Title. *An Ordinance to amend the law relating to the Extradition of Chinese Criminals.*

Preamble. **W**HEREAS by Article XXI. of the Treaty between Her Majesty and the Emperor of China done at Tientsin on the 26th June, 1858, it was agreed and concluded that if criminals, subjects of China, shall take refuge in Hongkong, or on board the British ships there they shall, upon due requisition by the Chinese authorities, be searched for, and on proof of their guilt, be delivered up; and whereas it is expedient to amend the law for the more effective carrying out of the said treaty in relation to the surrender of criminals, subjects of China, who take refuge in Hongkong, or on board the British ships there: Be it enacted by the Governor of Hongkong by and with the advice and consent of the Legislative Council thereof, as follows:—

Short Title. **1.** This Ordinance may be cited for all purposes as *The Chinese Extradition Ordinance, 1889.*

Repeal. **2.** Ordinances No. 2 of 1850 and No. 2 of 1871 are hereby repealed, but such repeal shall not affect anything done or suffered or any proceedings for the surrender of a criminal commenced under the said Ordinances or either of them before the coming into operation of this Ordinance and such proceedings may be completed and the criminal surrendered as if this Ordinance had not come into operation.

3. In this Ordinance unless repugnant to or inconsistent with the context the term *Extradition Crime* shall mean a crime which if committed in the Colony would be one of the crimes mentioned in the First Schedule hereto and the term *Fugitive Criminal* shall mean any subject of China accused of an extradition crime committed within the jurisdiction of China or on board a Chinese ship on the High Seas, who is or is suspected of being in Hongkong or on board a British ship there.

Interpretation.

All crimes *jure gentium*.

The crimes mentioned in the First Schedule to this Ordinance shall be construed according to the law in force in the Colony at the date of the alleged crime.

4. The provisions of this Ordinance shall apply to the surrender of criminals under any future arrangement that may be made by Her Majesty with the Emperor of China with respect to the surrender of fugitive criminals, as well as to their surrender under any Treaty in force at the coming into operation of this Ordinance.

Application of Ordinance.

5. The following restrictions shall be observed with respect to the surrender of fugitive criminals:—

Restrictions on surrender.

(1.) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character or if he prove to the satisfaction of the Magistrate, or of a judge of the Supreme Court, if brought before the Court on a writ of *Habeas Corpus*, or of the Governor that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character or for an offence which is not an extradition crime.

(2.) A fugitive criminal, who has been accused of an offence within British Jurisdiction not being an offence for which his surrender is demanded, or who is undergoing sentence under any conviction in the Colony, shall not be surrendered until after he has been discharged whether by acquittal or on expiration of his sentence or otherwise.

(3.) A fugitive criminal shall not in any case be surrendered unless an engagement is given by the Chinese Government that he shall not until he has been restored or had an opportunity of returning to Her Majesty's Dominions be detained or tried in China for any offence committed before his surrender other than the extradition crime on which the surrender is demanded.

6. Every fugitive criminal, who is in Hongkong, shall be liable to be apprehended and surrendered in manner provided by this Ordinance, whether the crime in respect of which the surrender is demanded was committed before or after the passing of this Ordinance, and whether there is or is not any concurrent jurisdiction in any Court in the Colony over that crime.

Liability to be surrendered.

7. Whenever a requisition for a surrender of a fugitive criminal, who is in, or suspected of being in Hongkong, is made to the Governor by some officer of the Chinese Government, the Governor may, by order under his hand and seal, signify to a Magistrate that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

Requisition to the Governor may be followed by order to Magistrate for warrant of apprehension.

8. A Magistrate, on receipt of the said order, shall issue his warrant for the apprehension of the fugitive criminal, or, if the fugitive criminal be already in custody shall issue his order to all necessary persons to bring the fugitive criminal before him to be dealt with according to this Ordinance.

Duties of a Magistrate upon receipt of such order.

9. A Magistrate may also issue his warrant for the apprehension of a fugitive criminal on such information or complaint as would, in his opinion, justify the issue of a warrant if the crime had been committed in the Colony.

Magistrate may also issue warrant as in ordinary cases.

A fugitive criminal apprehended on a warrant so issued shall be discharged by the Magistrate, unless the Magistrate within such time as, with reference to the circumstances of the case, he shall think reasonable, receives from the Governor an order signifying that a requisition has been made for the surrender of such fugitive criminal.

Hearing of
the case and
evidence of
crime being
political.

10. When a fugitive criminal is brought before a Magistrate, he shall hear the case in the same manner, and have the same jurisdiction and powers, as nearly as may be, as if the prisoner were brought before him charged with an indictable offence committed in the Colony.

The Magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused, is an offence of a political character, or is not an extradition crime.

Committal to
prison.

11. If at the hearing before a Magistrate such evidence is produced as would subject to the provisions of this Ordinance justify the committal of the fugitive criminal for trial at the Supreme Court if the crime of which he is accused had been committed in the Colony, the Magistrate shall commit him to Victoria Gaol to await the further order of the Governor but otherwise shall order him to be discharged.

If the Magistrate commits the fugitive criminal to Victoria Gaol, he shall thereupon inform the fugitive criminal that he will not be surrendered until after the expiration of fifteen days from the date of such committal and that he has a right to apply to the Supreme Court for a writ of *Habeas Corpus*, and such Magistrate shall forthwith send to the Governor the depositions and other evidence in the case together with such report thereon as he thinks fit.

Notice to
Crown
Solicitor
before
discharge.

12. Before ordering a fugitive criminal to be discharged the Magistrate shall cause notice of his intention to make such order to be served on the Crown Solicitor.

Warrant of
surrender
when to be
signed.

13. Upon the expiration of fifteen days from the date of the Magistrate's order of committal or if a writ of *Habeas Corpus* has been issued and if upon the return to the writ the Supreme Court has not discharged the fugitive criminal, immediately after the decision of the Court, or after such further period in either case as the Governor may allow the Governor may, by warrant under his hand and seal, order the fugitive criminal to be surrendered to such person as the Governor considers to be authorized to receive him on behalf of the Chinese authorities and the fugitive criminal shall be surrendered accordingly.

If the fugitive criminal while in the Colony escapes out of any custody into which he has been delivered in pursuance of a Magistrate's warrant as aforesaid it shall be lawful for any police officer or constable to take him without warrant and to restore him to the custody from which he has escaped, and for the person from whose custody the fugitive criminal has escaped to retake him or receive him from such police officer or constable and to hold him at all times as upon the original warrant.

Discharge of
fugitive
criminal.

14. Except where any proceedings are actually pending upon a writ of *Habeas Corpus* before the Supreme Court and in such case with the concurrence in writing of the Judge having cognizance thereof, the Governor may at any time by order under his hand and seal discharge a fugitive criminal from custody.

Discharge if
not surren-
dered within
two months or
on application
after decision
upon *Habeas
Corpus* to
a judge
upon notice
to the Crown.

15. If a fugitive criminal who has been committed to prison under this Ordinance to await the order of the Governor is not surrendered and conveyed out of the Colony within two months after such committal, or if a writ of *Habeas Corpus* has issued, and upon the return of the writ the fugitive criminal has not been discharged any Judge of the Supreme Court may upon application made to him by or on behalf of the fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the Crown Solicitor, order the fugitive criminal to be discharged out of custody unless sufficient cause is shewn to the contrary.

Depositions,
oaths, &c.,
taken in
China.

16. Depositions or statements on oath or affirmations taken in China and copies thereof shall if duly authenticated be received in evidence in proceedings under this Ordinance. Such depositions statements or affirmations and copies thereof shall be deemed to be duly authenticated for the purpose of this Ordinance if they purport to be certified under the hand of the Judge Magistrate or Officer before whom they were taken to be the original depositions statements or affirmations or to be true copies thereof as the case may require and if they are sealed with the official seal of some Officer of State in China and all Courts in the Colony shall for the purposes of this Ordinance take judicial notice of such seal and shall admit the documents so authenticated by it without further proof.

17. Every person who is accused or convicted of having counselled procured commanded aided or abetted the commission of any extradition crime or of being accessory before the fact to any extradition crime shall be deemed for the purposes of this Ordinance to be accused or convicted of having committed such crime and shall be liable to be apprehended and surrendered accordingly.

Aid and abettors in extradition crimes.

18. If any suit or action be brought against a Magistrate Superintendent of the Victoria Gaol, Gaoler Police Officer, Constable or any other person for anything done under or in obedience to any warrant or order issued under the provisions of this Ordinance, the proof of such warrant or order shall be a sufficient answer to such suit or action, and the defendant on such proof as aforesaid shall be entitled to a verdict or judgment accordingly and shall also be entitled to all costs of suit.

Protection of Magistrate and others acting under warrant.

19. The forms in the second schedule hereto or forms to the like effect with such variations and additions as circumstances require may be used for the purposes therein indicated and according to the directions therein contained and instruments in these forms shall (as regards the form thereof) be valid and sufficient.

Forms.

20. This Ordinance shall not come into operation unless and until the Officer Administering the Government notifies by Proclamation that it is Her Majesty's pleasure not to disallow the same; and thereafter it shall come into operation on such day as the Officer Administering the Government shall notify by the same or any other proclamation.

Suspending clause.

FIRST SCHEDULE.

EXTRADITION CRIMES.

Murder and attempt to murder.

Manslaughter.

Malicious wounding.

Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.

Forgery, or counterfeiting or altering, or uttering what is forged, or counterfeited or altered, comprehending the crimes designated in the laws of Hongkong as counterfeiting or falsification of paper money, bank notes, or other securities, forgery, or other falsification of other public or private documents, likewise the uttering or bringing into circulation, or wilfully using such counterfeited, forged, or falsified papers.

Embezzlement or larceny.

Receiving stolen goods.

Obtaining money or goods by false pretences.

Crimes against bankruptcy law.

Fraud committed by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any Company, made criminal by any law for the time being in force.

Rape.

Abduction.

Child stealing.

Kidnapping.

False imprisonment.

Burglary, or house-breaking.

Arson.

Robbery with violence.

Threats by letter or otherwise with intent to extort.

Piracy whether by law of nations or by municipal law.

Sinking or destroying a vessel at sea, or attempting to do so.

Assaults on board a ship on the high seas, with intent to destroy life, or to do grievous bodily harm.

Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master.

Perjury or subornation of perjury.

Malicious injury to property, if the offence be indictable.

Any indictable offence under Ordinance No. 7 of 1865 entitled "An Ordinance to consolidate and amend the Enactments in force in this Colony relating to Larceny and other similar offences" or any Ordinance amending or substituted for the same which is not included in the foregoing list.

Any indictable offence under Ordinance No. 6 of 1865 entitled "An Ordinance to consolidate and amend the Enactments in force in this Colony relating to indictable offences by forgery" or any Ordinance amending or substituted for the same which is not included in the foregoing list.

Any indictable offence under Ordinance No. 10 of 1865 entitled "An Ordinance to consolidate and amend the Enactments in force in this Colony against offences relating to the Coin" or any Ordinance amending or substituted for the same which are not included in the foregoing list.

Any indictable offence under the Ordinance No. 4 of 1865 entitled "An Ordinance to consolidate and amend the Enactments in force in this Colony relating to offences against the person" or any Ordinance amending or substituted for the same which are not included in the foregoing list.

SECOND SCHEDULE.

FORMS.

Form of Order by the Governor to a Magistrate to issue his warrant.

By His Excellency
Governor and Commander-in-Chief of the Colony of Hongkong
and its Dependencies.

To

} Police Magistrates.

Whereas requisition has been made to me by
for the surrender of late of
accused of the commission of the crime of within the
jurisdiction of China: now I hereby, by this order under my
hand and seal, signify to you that such requisition has been made,
and require you to issue your warrant for the apprehension of
such fugitive.

Given under my hand and seal at Victoria, Hongkong, this
day of 18

Governor.

By Command,

Colonial Secretary.

*Form of Warrant of apprehension by order of the Governor.*IN THE POLICE COURT AT VICTORIA IN THE COLONY
OF HONGKONG.

To all and each of the Constables of the Hongkong Police
Force.

Whereas His Excellency the Governor
by order under his hand and seal, hath signified to me that
requisition hath been duly made to him for the surrender of
late of accused of the commission of the
crime of within the jurisdiction of China. This is
therefore to command you in Her Majesty's name forthwith to
apprehend the said wherever he may be found in
the Colony and bring him before me or some other Magistrate
sitting in this Court, to show cause why he should not be sur-
rendered in pursuance of the "Chinese Extradition Ordinance,
1889," for which this shall be your warrant.

Dated this day of 18

[Seal.]

(Signed),
A Magistrate.

*Form of Order to bring before a Magistrate a criminal already in custody.*IN THE POLICE COURT AT VICTORIA IN THE COLONY
OF HONGKONG.

To the Superintendent of Victoria Gaol and to all and each of
the Constables of the Colony.

Whereas His Excellency the Governor,
by order under his hand and seal, hath signified to me that re-
quisition hath been duly made to him for the surrender of
late of accused of the commission of the crime of
within the jurisdiction of China. This is therefore
to command you in Her Majesty's name forthwith to bring the
said before me or some other Magistrate sit-
ting in this Court, to be dealt with according to the provision of
the "Chinese Extradition Ordinance, 1889," for which this shall
be your warrant.

Dated the day of 18

[Seal.]

(Signed),
A Magistrate.

*Form of Warrant of apprehension without order of the Governor.*IN THE POLICE COURT AT VICTORIA IN THE COLONY
OF HONGKONG.

To all and each of the Constables of the Colony.

Whereas it has been shown to the undersigned, a Magistrate in
and for the Colony of Hongkong, that late of
is accused of the commission of the crime of
within the jurisdiction of China.

This is therefore to command you in Her Majesty's name
forthwith to apprehend the said and to bring
him before me or some other Magistrate sitting at this Court to
be further dealt with according to law, for which this shall be
your warrant.

Dated the day of 18

[Seal.]

(Signed),
A Magistrate.

Form of Warrant of Committal.

IN THE POLICE COURT AT VICTORIA IN THE COLONY
OF HONGKONG.

To _____ one of the Constables of the Colony,
and to the Superintendent of Victoria Gaol.

On this _____ day of _____ 188____, _____ late of _____ is brought before me a Magistrate of the Colony of Hongkong, to show cause why he should not be surrendered in pursuance of the "Chinese Extradition Ordinance, 1889" on the ground of his being accused of the commission of the crime of _____ within the jurisdiction of China, and for as much as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Ordinance.

This is therefore to command you the said Constable in Her Majesty's name forthwith to convey and deliver the body of the said _____ into the custody of the said Superintendent of Victoria Gaol, and you the said Superintendent to receive the said _____ into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said "Chinese Extradition Ordinance, 1889," for which this shall be your warrant.

Dated this _____ day of _____ 18____

[Seal.]

(Signed), _____,
A Magistrate.

Form of Warrant of the Governor for the surrender of a fugitive Criminal.

By His Excellency _____ Governor and
Commander-in-Chief of the Colony of Hongkong, and its Depen-
dencies.

To the Superintendent of Victoria Gaol, and
to _____

Hongkong } Whereas
to wit. }

late of _____ accused of the commission of the crime of _____ within the jurisdiction of _____ the Superintendent of Victoria Gaol by warrant dated the _____ pursuant to the "Chinese Extradition Ordinance, 1889."

Now I do hereby in pursuance of the said Ordinance, order you the said Superintendent of Victoria Gaol to deliver the body of the said _____ into the custody of the said _____ and I command you the said _____ to receive the said _____ into your custody, and to convey him _____, and there place him into the custody of _____ who is authorised by the Chinese authorities to receive him, for which this shall be your warrant.

Given under my hand and seal this _____ day of _____ 18____

[Seal.]

By Command,
Colonial Secretary.

_____,
Governor.

Form of Order of discharge by the Governor.

By His Excellency _____ Governor and
Commander-in-Chief of the Colony of Hongkong and its Depen-
dencies.

To the Superintendent of Victoria Gaol.

Whereas one _____ is now in your custody as a fugitive criminal under the provision of the "Chinese Extradition Ordinance, 1889."

And whereas it has been determined that no warrant shall be granted for the surrender of the said _____

Now I do hereby order and require you to discharge the said _____ from custody under the said Ordinance.

Given under my hand and seal at Victoria, Hongkong this
day of _____ 18____

[Seal.]

By Command,
Colonial Secretary.

_____,
Governor, &c.