

9. *New Territories Regulation Amendment Bill*.—The Attorney General addressed the Council and moved the First reading of a Bill intituled “An Ordinance to amend the New Territories Regulation Ordinance, 1910.”

The Colonial Secretary seconded.

Question—put and agreed to.

Bill read a first time.

10. *Full Court Bill*.—The Attorney General addressed the Council and moved the First reading of a Bill intituled “An Ordinance to amend and consolidate the Full Court Ordinances.”

The Colonial Secretary seconded.

Question—put and agreed to.

Bill read a first time.

ADJOURNMENT.

11. The Council then adjourned until Thursday, the 23rd day of March, 1933, at 2.30 p.m.

W. PEEL,
Governor.

Confirmed this 23rd day of March, 1933.

R. A. C. NORTH,
Deputy Clerk of Councils

No. 185.—His Excellency the Governor has given his assent, in the name and on behalf of His Majesty the KING, to the following Ordinances passed by the Legislative Council :—

Ordinance No. 5 of 1933.—An Ordinance to amend the Criminal Procedure Ordinance, 1899.

Ordinance No. 6 of 1933.—An Ordinance to amend the Summary Offences Ordinance, 1932.

Ordinance No. 7 of 1933.—An Ordinance to amend the New Territories Regulation Ordinance, 1910.

Ordinance No. 8 of 1933.—An Ordinance to amend and consolidate the Full Court Ordinances.

HONG KONG.

No. 5 of 1933.

I assent.

(L.S.)

W. PEEL,
Governor.

24th March, 1933.

An Ordinance to amend the Criminal Procedure Ordinance,
1899.

[24th March, 1933.]

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, 1933.

Substitution for Ordinance No. 9 of 1899, s. 10.

2. Section 10 of the Criminal Procedure Ordinance, 1899, is repealed and the following section is substituted therefor:—

Rules and orders as to practice and procedure.

10.—(1) The Chief Justice may make rules and orders regulating the practice and procedure under this Ordinance:

Provided that no such rules and orders shall be binding until the same have been approved by the Legislative Council and have been published in the *Gazette*.

(2) Such rules and orders may provide for regulating and prescribing forms to be used, the times for or within which documents must be filed or notices given, the duties of the various officers of the court, the manner in which cases and arguments are to be presented, the assigning of solicitors and counsel as legal aids in or incidental to capital cases, or appeals or cases reserved, the fees and costs to be allowed therefor, and generally for the better carrying out of the provisions of this Ordinance.

(3) Subject to the provisions of this Ordinance and to such rules and orders and any other enactment (including any enactment relating to juries) applicable thereto, the practice and procedure in all criminal causes and matters (including trials for treason or misprision of treason) shall be, as nearly as possible, the same as the practice and procedure from time to time and for the time being in force for similar cases in England.

New headings and sections 78A, B and C added to Ordinance No. 9 of 1899.

3. The following headings and sections are inserted after section 78 of the Criminal Procedure Ordinance, 1899:—

Appeals.

78A.—(1) A person convicted on indictment may appeal to the Full Court— Appeals
7 Ed. 7,
c. 23, s. 3.

(a) against his conviction on any ground of appeal which involves a question of law alone; and

(b) against his conviction, with the leave of the Full Court or upon the certificate of the judge who tried him that it is a fit case for appeal, on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Full Court or to the judge who tried him to be a sufficient ground of appeal; and

(c) with the leave of the Full Court or upon the certificate of the judge who tried him against the sentence passed on his conviction, unless the sentence is one fixed by law.

(2) On an appeal against conviction and, subject to the provisions of sub-section (5) of this section and section 78B. 7 Ed. 7,
c. 23, s. 4
(1). the Full Court shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the Full Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

(3) The Full Court may, if they allow an appeal against conviction, quash the conviction, and either direct a judgment and verdict of acquittal to be entered or order a new trial. 7 Ed. 7,
c. 23, s. 4
(2).

(4) On an appeal against sentence the Full Court shall— 7 Ed. 7,
c. 23, s. 4
(3).

(a) if they think that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence (whether more or less severe) warranted in law by the verdict in substitution therefor as they think ought to have been passed; and

(b) in any other case, dismiss the appeal.

(5) If it appear to the Full Court— 7 Ed. 7,
c. 23, s. 5.

(a) that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the Full Court may either affirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefor as they think proper, and as may be warranted in law by the verdict on the count or part of the indictment on which they consider that the appellant has been properly convicted;

(b) that on the finding of the jury, where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, the

jury must have been satisfied of facts which proved him guilty of that other offence, the Full Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity;

(c) that, where on the conviction of the appellant the jury have found a special verdict, a wrong conclusion has been arrived at by the court before which the appellant has been convicted on the effect of that verdict, the Full Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to them to be in law required by the verdict and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law;

(d) that, although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or omission made so as not to be responsible according to law for his actions, the Full Court may quash the sentence passed at the trial and make such order and report as would have been made by the trial judge under section 76 if a special verdict had been found by the jury;

7 Ed. 7,
c. 23, s. 6
2).

(e) that any order made on the trial for the restitution of any property to any person should be annulled or varied, although the conviction is not quashed, the Full Court may annul or vary the order; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

S. S. Ord.
No. 5 of
1931,
s. 3 (6).

(6) Unless the Full Court direct to the contrary in cases where, in their opinion, the appeal involves a question of law on which it would be convenient that separate judgments should be pronounced by the members of the court, the judgment of the Full Court shall be pronounced by the president or such other member of the Full Court hearing the case as the president directs.

7 Ed. 7,
c. 23, s. 7.

(7) Notice of appeal or of an application for leave to appeal shall be given within ten days of the date of conviction, or (except in case of a conviction involving sentence of death) within such extended time as the Full Court may allow, in such manner as may be provided by rules and orders made under section 10 of this Ordinance or as may be directed by the Chief Justice in any matter not provided for by any such rules. Such rules shall enable any person convicted to present his case and his argument in writing instead of by oral argument if he so desires. In the case of a conviction involving sentence of death or corporal punishment the sentence shall not be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given; and if notice is so given the appeal or application shall be heard and determined with as much expedition as practicable, and the sentence shall not be executed until after the determination of the appeal, or, in cases where an application for leave to appeal is finally refused, of the application.

7 Ed. 7,
c. 23, s. 9.

(8) For the purposes of this Ordinance, the Full Court may, if they think it necessary or expedient in the interests of justice—

(a) order the production of any document, exhibit, or other thing connected with the proceedings the production of

which appears to them necessary for the determination of the case; and

(b) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Full Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules and orders made under section 10 of this Ordinance before any judge of the court or before any officer of the court or any magistrate, justice of the peace or other person appointed by the Full Court for the purpose, and allow the admission of any depositions so taken as evidence before the Full Court; and

(c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness; and

(d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation which cannot in the opinion of the Full Court conveniently be conducted before them, order the reference of the question in manner provided by such rules and orders as aforesaid for inquiry and report to a special commissioner appointed by the Full Court, and act upon the report of **any such commissioner so far as they think fit to adopt it; and**

(e) appoint any person with special expert knowledge to act as assessor in **any case where it appears to the Full Court that such special knowledge is required for the proper determination of the case :**

and exercise in relation to the proceedings of the Full Court any other powers which may for the time being be exercised by the Full Court on appeals in civil matters, and issue any warrants necessary for enforcing the orders or sentences of the Full Court. **Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.**

(9) The Full Court may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of the appeal. 7 Ed. 7,
c. 23, s. 14.

Further provisions relating to appeals and cases reserved.

78B. Except where, in the opinion of the Full Court, a substantial miscarriage of justice has actually occurred, no judgment shall be stayed or reversed under section 78 and no appeal shall be allowed under section 78A— Prohibition
of staying
or reversal
of judgment
on specified
grounds.

(a) on the ground of any defect which, if pointed out before the jury were empanelled or during the progress of the trial, might have been amended by the court; or

(b) because of any error committed in summoning or swearing the jury or any of them; or

(c) because any person who has served on the jury has not been returned by the Registrar; or

(d) because of any objection which might have been stated as a ground of challenge of any of the jurors; or

(e) because of any informality in swearing the witnesses or any of them.

Treatment pending determination of case by Full Court.
7 Ed. 7, c. 23, s. 14.
Ordinance No. 4 of 1899.

78C.—(1) Persons committed to prison under section 78 (1) and appellants not admitted to bail under section 78A (9) shall, pending the determination of their cases by the Full Court, be treated in such manner as may be directed by any rules, made under the Prisons Ordinance 1899, relating to prisoners committed for trial for any indictable offence.

Effect on sentence.

(2) The time during which any such person or appellant is admitted to bail under section 78 (1) or section 78A (9), and, subject to any directions which the Full Court may give to the contrary, the time during which any such person or appellant is in custody pending the determination of his case shall not count as part of any term of imprisonment under his sentence, which shall be deemed to be resumed or to begin to run, as the case requires, if the person or appellant is in custody, as from the day on which the case is determined by the Full Court, and, if he is not in custody, as from the day on which he is received into prison under the sentence.

Presence of accused.
7 Ed. 7, c. 23, s. 11.

(3) An appellant notwithstanding that he is in custody, shall be entitled to be present, if he desires it, on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone, but, in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal, shall not be entitled to be present, except where rules, and orders made under section 10 of this Ordinance provide that he shall have the right to be present or where the Full Court gives him leave to be present. Such leave may be given also in any case under section 78; but without it the accused shall not be entitled to be present.

Absence of accused.
7 Ed. 7, c. 23, s. 11.

(4) The power of the Full Court to pass any sentence under this Ordinance may be exercised notwithstanding that the accused is for any reason not present.

General powers.

(5) The Full Court in every appeal or case reserved under this Ordinance shall, subject to the express provisions of this Ordinance, have all the powers of the court of trial, with regard to sentence, commencement of sentence, costs, compensation, release on recognizances or any other matter.

Repeal of Ordinance No. 9 of 1899, ss. 68 and 109.

4. Sections 68 and 109 of the Criminal Procedure Ordinance, 1899, are repealed.

Passed the Legislative Council of Hong Kong, this 23rd day of March, 1933.

R. A. C. NORTH,
Deputy Clerk of Councils.

HONG KONG.

No. 6 OF 1933.

I assent.

W. PEEL,
Governor.

24th March, 1933.

An Ordinance to amend the Summary Offences Ordinance,
1932.

[24th March, 1933.]

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 Summary Offences Amendment Ordinance, 1933. Short title.

2. The Summary Offences Ordinance, 1932, is amended by the insertion of the following new section after section 20 thereof:— New
Section
20A for
Ordinance
No. 40 of
1932.

20A.—(1) Every person who pretends or professes to tell fortunes, or uses any subtle craft, means or device by palmistry, divination, sortilege, astrology, phrenology, physiognomics, or otherwise to deceive and impose on any one, shall be liable to a fine not exceeding two hundred and fifty dollars or to imprisonment for any term not exceeding three months; and the magistrate may order to be forfeited any book or other article used or capable of being used by the offender for the purposes of the offence. Fortune
telling.

(2) Nothing in this section shall be deemed to prohibit the practice of fortune telling in Chinese temples registered under the Chinese Temples Ordinance, 1928, and conducted by the temple-keepers in accordance with the religious principles governing Miu, Tsz, Kun, To Yuen or Om in the worship of gods or communication with spirits. Ordinance
No. 7 of
1928.

(3) No prosecution under this section shall be instituted without the consent of the Secretary for Chinese Affairs: Provided that such consent shall not be necessary for the arrest of any person suspected of having committed an offence against this section.

Passed the Legislative Council of Hong Kong, this 23rd day of March, 1933.

R. A. C. NORTH,
Deputy Clerk of Councils.

HONG KONG.

No. 7 OF 1933

I assent.



W. PEEL,
Governor.

24th March, 1933.

An Ordinance to amend the New Territories Regulation Ordinance, 1910.

[24th March, 1933.]

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 New Territories Regulation Amendment Ordinance, 1933.

Amendment
of Ordinance
No. 34 of
1910,
s. 6A.

2. The following sub-section is added at the end of section 6A of the New Territories Regulation Ordinance, 1910.

(3) It shall be lawful for the Governor in Council to make rules prohibiting the keeping of cattle, swine, sheep or goats either generally or except under and in accordance with a licence from the Sanitary Board or such other authority as may be specified, in any place or places in the New Territories, except New Kowloon, specified in such rules.

Amendment
of Ordinance
No. 34 of
1910, ss. 7
and 8.

3. The word and figure "or 6A" is added after the figure "6" in sections 7 and 8 of the New Territories Regulation Ordinance, 1910.

Passed the Legislative Council of Hong Kong, this 23rd day of March, 1933.

R. A. C. NORTH,
Deputy Clerk of Councils.

HONG KONG.

No. 8 OF 1933.

I assent.



W. PEEL,
Governor.

24th March, 1933.

An Ordinance to amend and consolidate the Full Court Ordinances.

[24th March, 1933.]

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 Full Court Ordinance, 1933. Short title.

2.—(1) In this and in all existing and future enactments, “Full Court” means any two or three judges sitting together, whether in Court or in Chambers. Constitu-
tion of
Full
Court.

(2) Except in the case of questions or points reserved under any Ordinance or of appeals under the Criminal Procedure Ordinance, 1899, or except for the purpose of dealing with any interlocutory or incidental matter relating to an appeal, the trial judge or a judge whose judgment or order is appealed from shall not be a member of a Full Court of two judges only. Ordinance
No. 9 of
1899.

(3) Subject to the provisions of sub-section (2) the Chief Justice shall direct in every case whether the Full Court shall consist of two or of three judges, and, subject to the provisions of sub-section (4), he shall also direct of what judges it shall consist

(4) A Full Court of three judges shall consist of the Chief Justice, the Puisne Judge and either the Judge of His Britannic Majesty’s Supreme Court for China (if the Principal Secretary of State for Foreign Affairs has consented to such appointment) or a barrister who has previously held or has acted in any judicial office in the Colony, or a barrister of not less than seven years standing, temporarily appointed by the Governor from time to time for the purpose of this Ordinance.

3. The Chief Justice shall preside in any Full Court of which he is a member and shall decide who shall be president of any Full Court of which he is not a member. Precedence.

Rule
where
judges
differ.

4.—(1) Where a Full Court consisting of three judges sits, the judgment or order of any two of them shall be deemed the judgment or order of the Full Court. If no two of such judges agree as to the judgment or order to be made, then the judgment or order appealed from shall be deemed to be the judgment or order of the Full Court.

(2) Subject to the provisions of sub-section (4), where a Full Court consisting of two judges only sits in appellate jurisdiction and the two judge differ, then the judgment or order appealed from shall be disturbed only in so far as it may be modified or affected by any order they may make as to which they do not differ. If the judgment or order appealed from is not so modified or affected it shall be deemed to be the judgment or order of the Full Court; and if the judgment or order appealed from is so modified or affected it shall, as so modified or affected, be deemed to be the judgment or order of the Full Court.

(3) Subject to the provisions of sub-section (4), where a Full Court consisting of two judges only sits otherwise than in appellate jurisdiction and the two judges differ, the judgment or order of the president shall be deemed to be the judgment or order of the Full Court, subject to a right which is hereby conferred on any party aggrieved to an appeal to a Full Court consisting of three judges if applied for within fourteen days after the delivery of the judgment or order.

Ordinance
No. 9 of
1899.

(4) Where a Full Court consisting of two judges only sits to determine any question reserved for consideration or any appeal under the Criminal Procedure Ordinance, 1899, and the two judges differ as to the judgment or order to be made, then the matter shall be reheard by a Full Court consisting of three judges, and if no two of such three judges agree as to the judgment or order to be made, then the judgment or order of the trial judge, if he be a member of the Full Court, or of the president, if the trial judge be not a member of the Full Court, shall be deemed to be the judgment or order of the Full Court.

Provision
for pending
appeals and
motions.

5. All appeals and all motions for a new trial or to set aside a verdict, finding or judgment, which have been brought or made before the date of the coming into operation of this Ordinance and which have not been heard and determined before that date, may be continued before and heard and determined by the Full Court as constituted by this Ordinance in all respects as if such appeals and motions had been brought or made since the date of the coming into operation of this Ordinance.

Repeal of
Ordinance
No. 27 of
1912, and
Ordinance
No. 35 of
1931.

6. The Full Court Ordinance, 1912, and the Full Court Amendment Ordinance, 1931, are repealed.

Passed the Legislative Council of Hong Kong, this 23rd day of March, 1933.

R. A. C. NORTH,
Deputy Clerk of Councils.