

Draft Bill.

No. S. 204.—The following bill is published for general information:—

[No. 11 :—26.4.33.—1.]

(C.S.O. 1 in 4299/29).

A BILL

INTITULED

An Ordinance to amend further the Supreme Court Ordinance, 1873.

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 Supreme Court Amendment Ordinance, 1933. Short title.

2. Sections 9, 10 and 11 of the Supreme Court Ordinance, 1873, as amended by the Supreme Court Amendment Ordinance, 1929, are repealed and the following sections are substituted:— Substitution for Ordinance No. 3 of 1873, ss. 9, 10 and 11, as amended by Ordinance No. 1 of 1929.

9.—(1) The Supreme Court shall consist of and be holden by and before a Chief Justice and one or more other judges. Constitution of the Supreme Court.

(2) Every Chief Justice and every Puisne Judge shall, save when appointed by the Governor under the provisions of section 10 of this Ordinance or under the provisions of section 2 (4) of the Full Court Ordinance, 1933, be appointed by Letters Patent under the public seal by the Governor, in accordance with such instructions as he may receive through a Secretary of State, and shall hold his office during the pleasure of His Majesty, subject to suspension by the Governor in like manner as other officers in the Colony. Ordinance No. 8 of 1933.

10.—(1) In case the office of Chief Justice or of any Puisne Judge becomes vacant by death or otherwise, it shall be lawful for the Governor to appoint another fit and proper person to fill the said office until His Majesty's pleasure is known. Temporary appointments.

(2) In case of the temporary illness or absence of the Chief Justice or of any Puisne Judge, it shall be lawful for the Governor to appoint a fit and proper person to fill his office until he resumes the duties thereof: Provided always that, until such appointment is made, the whole business of the court, except in the hearing of matters required to be heard before the Full Court, shall devolve upon and be transacted by the remaining or continuing Chief Justice or Puisne Judge or Judges.

Ordinance  
No. 8 of  
1933.

(3) If in any other case the Governor either for the purposes of the Full Court Ordinance, 1933, or for any other reason considers it desirable that a temporary additional judge or temporary additional judges should be appointed, it shall be lawful for him temporarily to appoint a fit and proper person or persons to be a temporary additional judge or temporary additional judges and to terminate any such appointment as and when he shall think it desirable.

(4) Judges temporarily appointed by the Governor under this section shall be given instruments of appointment under the public seal: Provided that any such instrument, in the case of a judge temporarily appointed for the purposes of the Full Court Ordinance, 1933, may provide that it shall take effect whenever and as often as the services of the judge may be required by the Chief Justice for the purposes of the said Ordinance: Provided also that nothing herein contained shall be deemed to require a special instrument in the case of the Judge of His Britannic Majesty's Supreme Court for China when a member of the Full Court under the said Ordinance.

Chief  
Justice and  
Puisne  
Judges not  
to hold  
other office  
of profit.  
Proviso.

11. No Chief Justice or Puisne Judge shall be capable of accepting or performing any other office or place of profit or emolument not authorised by law, and any such acceptance or performance shall be *ipso facto* an avoidance of his office of Chief Justice or Puisne Judge: Provided that this section shall not apply to a judge temporarily appointed under section 10.

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*Objects and Reasons.*

1. This Bill repeals sections 9, 10 and 11 of the principal Ordinance, No. 3 of 1873, as amended by Ordinance No. 1 of 1929, and re-enacts them in a redrafted form which clarifies the procedure and effect of the appointment of permanent and temporary judges of the Supreme Court.

2. In the new section 9 the old sub-sections (2) and (3) as amended in 1929 are redrafted and consolidated as sub-section (2).

3. In the new sub-section 10 (1) the words "In case the office of the Chief Justice or of any Puisne Judge" are substituted for the words "In case the office of any judge in the permanent service of the Colony", and correspondingly alterations have been made in sub-section 10 (2).

4. The old sub-section 10 (3) was added in 1929 to enable the Governor to appoint temporary judges in addition to the judges in the permanent service of the Colony and contemplated such appointments "to relieve from or in his judicial duties a judge who may be engaged at the time in other public work, or to appoint an additional judge for the purpose of dealing with a pressure of judicial work," (see Objects and Reasons in 1929 Hong Kong Hansard p. 14) and gave power to the Governor to appoint a temporary judge

in any case not covered by the previous sub-sections. In redrafting the sub-section it has been considered desirable to provide for more than one temporary additional judge, to make express reference to the temporary members of the Full Court, and to omit, as in case of sub-section (1), the words "in the permanent service of the Colony".

5. Sub-section 10 (4) is new. It appears from the Objects and Reasons of the 1929 Ordinance (1929 Hansard p. 14) that the intention of the saving in section 9 (2) was to provide that temporary judges need not be appointed in the formal manner in which permanent judges are appointed. The new sub-section (4) added to sub-section 10 clarifies the method of appointment of temporary judges.

6. Section 11 of the principal Ordinance which avoids the office of a judge of the Supreme Court taking or performing any other place of profit or emolument not authorised by law has been redrafted and made inapplicable to judges temporarily appointed under section 10. The section in the principal Ordinance evidently contemplated the situation of a permanent judge accepting or performing the duties of another office and not the situation of the holder of another position being required temporarily to assist as a judge in the Supreme Court.

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*April, 1933.*