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CEYLON GOVERNMENT
GAZETTE

EXTRAORDINARY.

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PART II.—LEGAL.

DRAFT ORDINANCES.

MINUTE.

The following Draft of a proposed Ordinance is published for general information :—

L. D.—O 93/38

An Ordinance to make necessary provisions for the purpose of bringing into operation the Criminal Procedure Code (Amendment) Ordinance, No. 13 of 1938, and for other matters incidental to the purpose aforesaid.

WHEREAS the Criminal Procedure Code, 1898, makes provision, *inter alia*, for a preliminary inquiry by a Magistrate in a case which appears not to be triable summarily but by a higher court and for the committal of the accused in any such case for trial before a higher court on the instructions of the Attorney-General :

And whereas by the Criminal Procedure Code (Amendment) Ordinance, No. 13 of 1938, other provision has been substituted for the preliminary inquiry by a Magistrate in any such case and for the direct committal by a Magistrate of the accused in any such case for trial before a higher court :

And whereas the first day of January, 1939, has been appointed as the date on which the said Ordinance shall come into operation :

And whereas it is expedient to make such provision as is contained in this Ordinance for the preliminary inquiry into and for the committal for trial of any such case, instituted under the provisions of the said Code prior to the said date, in which the statutory statement of such accused was recorded prior to the said date, and for other matters incidental to or consequential upon the amendment of the said Code by the said Ordinance :

Be it, therefore, enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

Short title and date of operation.

1 This Ordinance may be cited as the Criminal Procedure (Direct Committals) Transitory Provisions Ordinance, No. of 1938, and shall come into operation on the first day of January, 1939, hereinafter referred to as "the appointed date".

Procedure at non-summary inquiry where statutory statement of accused has been recorded prior to appointed date.

2 (1) Where in any non-summary case the statutory statement of the accused has been recorded by a Magistrate prior to the appointed date, non-summary proceedings in that case shall be continued and concluded in accordance with the provisions of the old law.

(2) Where in any case non-summary proceedings are continued under the old law in accordance with the provisions of sub-section (1), the Attorney-General may, in regard to any such case, exercise all or any of his powers under the old law, whether before or after that case is committed for trial before a higher court.

Procedure at trials held after appointed date.

3 Subject as hereinafter provided, the trial before a higher court of any case committed for trial, whether under the old law or the new law, shall be heard and determined under the new law :

Provided that the statutory statement of an accused person under the old law may be put in and read in evidence under the new law as though such statement had been made or recorded in accordance with the provisions of the new law.

Application of new law.

4 Save as provided in this Ordinance, the provisions of the new law shall, on and after the appointed date, apply to every inquiry or trial of any accused person in any case.

Operation of sections 20 and 21 of Ordinance No. 13 of 1938 deferred.

5 Notwithstanding anything in section 1 of the Criminal Procedure Code (Amendment) Ordinance, No. 13 of 1938, or in any Proclamation published under that section of that Ordinance, sections 20 and 21 of that Ordinance shall not come into operation until such date (being a date not earlier than the thirty-first day of July, 1939) as the Governor may appoint by Proclamation published in the Gazette.

Amendment of section 8 of Ordinance No. 20 of 1938.

6 The Courts and Magistrates (Change of Designation) Ordinance, No. 20 of 1938, is hereby amended in section 8 thereof, by the substitution, for the definition of "appointed date" in that section, of the following definition :—

"appointed date" means the first day of January, 1939 ;

Interpretation.

7 (1) In this Ordinance, unless the context otherwise requires—

"new law" means the Criminal Procedure Code, 1898, as amended by the Criminal Procedure Code (Amendment) Ordinance, No. 13 of 1938, or any other Ordinance ;

"non-summary proceedings", when used with reference to a non-summary case, includes all acts and proceedings incidental to or connected with that case, other than any act or proceeding in the court of trial ;

"old law" means the Criminal Procedure Code, 1898, as amended by any Ordinance other than the Criminal Procedure Code (Amendment) Ordinance, No. 13 of 1938 ;

"statutory statement" means the statement made by the accused to a Magistrate in answer to the charge preferred against him in a non-summary case.

(2) This Ordinance shall be read and construed as one with the Criminal Procedure Code, 1898, and any Ordinance amending that Code.

Objects and Reasons.

By Proclamation published under section 1 of the Criminal Procedure Code (Amendment) Ordinance, No. 13 of 1938, the first day of January, 1939, has been appointed as the date on which that Ordinance shall come into operation. It is

anticipated that on that date there will be pending in various courts non-summary proceedings in which statutory statements of accused persons have been recorded in compliance with the provisions of the old law.

2. The object of this Bill is to secure that the inquiry in such pending cases should be completed in accordance with the old law under which accused persons will be committed for trial on instructions issued by the Attorney-General. Any case in which process has been issued, but in which the statutory statement of the accused has not been recorded, will be proceeded with under the law as amended and the order for the committal of the accused for trial before a higher court will be made by the Magistrate on his own responsibility.

3. Sections 20 and 21 of the Criminal Procedure Code (Amendment) Ordinance, No. 13 of 1938, amend the qualifications of jurors in criminal trials before the Supreme Court. Section 258 of the Code requires the Fiscal to revise the lists of jurors in the month of July each year. As the new law comes into operation on the 1st January, 1939, the jury lists which were revised in July, 1938, cannot be used if the new law relating to the qualifications of jurors is in force on that date. It is therefore proposed that the operation of the law relating to the amended qualifications of jurors should be deferred to a date which will be proclaimed after the next revision of the lists (Clause 5).

4. The principal purpose of Clause 6 is to enable "Magistrate's Court" and "Magistrate" to be substituted for "Police Court" and "Police Magistrate" in the forms which have been prepared and printed in anticipation of the procedure of direct committals by Magistrates, although the original intention was that the change of designation should not become effective until the new edition of the Enactments has been given legislative force.

Colombo, November 15, 1938.

J. C. HOWARD,
Legal Secretary.

MINUTE.

The following Draft of a proposed Ordinance is published for general information:—

L. D.—O 93/38

An Ordinance to amend the Criminal Procedure Code (Amendment) Ordinance, No. 13 of 1938.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows:—

1 This Ordinance may be cited as the Criminal Procedure Code (Amendment) Ordinance, No. of 1938.

Short title.

2 Section 41 of the Criminal Procedure Code (Amendment) Ordinance, No. 13 of 1938, is hereby amended, in paragraph (9) of that section, by the substitution for the words "seventh column" of the words "eighth column".

Amendment of section 41 of Ordinance No. 13 of 1938.

3 This Ordinance shall be deemed to have come into force on the twelfth day of April, 1938, being the date on which the Criminal Procedure Code (Amendment) Ordinance, No. 13 of 1938, became law and took effect in accordance with the provisions of Article 74 of the Ceylon (State Council) Order in Council, 1931:

Retrospective effect of this Ordinance.

Provided that nothing herein contained shall be deemed or construed to bring into operation any provision of the Criminal Procedure Code (Amendment) Ordinance, No. 13 of 1938, before the date appointed by Proclamation under section 1 of that Ordinance.

Objects and Reasons.

In section 41 of the Criminal Procedure Code (Amendment) Ordinance, No. 13 of 1938, the reference to the "seventh column" of the second schedule to the Criminal Procedure Code is a mistake for the "eighth column" of that schedule. The object of this Bill is to correct the error with effect from the date on which the Criminal Procedure Code (Amendment) Ordinance, No. 13 of 1938, became law.

Chambers, Hulftsdorp,
Colombo, November 15, 1938.

J. C. HOWARD,
Legal Secretary.