

CHAPTER 235.

CHINESE EXTRADITION.

To amend the law relating to the extradition of Chinese criminals.

Originally  
26 of 1889.  
Fraser  
7 of 1889.

[9th November, 1889.]

WHEREAS by Article XXI of the Treaty between Her Majesty and the Emperor of China done at Tientsin on the 26th day of June, 1858, it was agreed and concluded that if criminals, subjects of China, shall take refuge in Hong Kong 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 Hong Kong or on board the British ships there:

1. This Ordinance may be cited as the Chinese Extradition Ordinance. Short title.

2. In this Ordinance—

Interpretation.

“Chinese authority” means any person declared by the Governor to be or to represent the person or persons actually exercising authority in any province or other territory which, in the opinion of the Governor, forms or at any time has formed part of the Republic of China;

“extradition crime” means a crime which, if committed in the Colony, would be one of the crimes mentioned in the First Schedule;

“fugitive criminal” means any national 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 Hong Kong or on board a British ship there;

First  
Schedule.

“jurisdiction of China” includes the jurisdiction of any Chinese authority as defined in this section;

“national of China” means any person who, not being a national of any other state, possesses Chinese nationality.

[s. 2 cont.]

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

Application  
of the  
Ordinance.

3. The provisions of this Ordinance shall apply to the surrender of criminals under any future arrangement that may be made by His Majesty with China with respect to the surrender of fugitive criminals, as well as to their surrender under any treaty in force at the commencement of this Ordinance.

Restrictions  
on surrender  
of fugitive  
criminal.

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

- (a) 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 proves, to the satisfaction of the magistrate, or of a judge 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;
- (b) 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; and
- (c) a fugitive criminal shall not in any case be surrendered unless an engagement is given by the Chinese authority to whom he is to be surrendered that he shall not, until he has been restored or had an opportunity of returning to His 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.

Liability  
of fugitive  
criminal  
to be  
surrendered.

5. Any fugitive criminal who is in the Colony 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

commencement of this Ordinance and whether there is or is not any concurrent jurisdiction in any court in the Colony over that crime.

6. Whenever a requisition for the surrender of a fugitive criminal who is in or suspected of being in the Colony is made to the Governor by a Chinese authority, 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, or otherwise to proceed in conformity with the provisions of this Ordinance.

Requisition to Governor and order to magistrate.

Second Schedule. Form 1.

7. A magistrate, on receipt of the said order, shall issue his warrant for the apprehension of the fugitive criminal, or, if the fugitive criminal is 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.

Duty of magistrate on receipt of order.

Second Schedule. Forms 2 and 3.

8. (1) 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.

Power to issue warrant as in ordinary case.

Second Schedule. Form 4.

(2) 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 may think reasonable, receives from the Governor an order signifying that a requisition has been made for the surrender of such fugitive criminal.

9. (1) When a fugitive criminal is brought before a magistrate, the magistrate 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: Provided always that—

Procedure on fugitive criminal being brought before magistrate.

(a) in any case where the extradition crime alleged is murder, manslaughter, piracy, burglary, house-breaking, or robbery with violence, and the accused person has not resided in the Colony for more than six months during the period of twelve months immediately prior to the date of his being so brought before the magistrate, the magistrate may receive

[s. 9 cont.]

in evidence copies of any such depositions relating to the charge as purport to have been taken in China in the presence of a British consular officer, and are accompanied by a certificate in English, purporting to be a certificate by such officer, that such copies are true copies of the originals and that the original depositions have been respectively read over to the respective deponents, that they respectively appeared to understand the same, and that, to the best of such officer's belief, no compulsion had been used in obtaining such depositions;

- (b) translations in English of such depositions, if certified by such British consular officer to be correct translations, may accompany the certified copy of the depositions, and in such case such translations may be received in evidence in the same manner as the originals;
- (c) any copies of depositions received in evidence, or, if necessary, a translation thereof, shall be read over to the fugitive criminal, if he so desires, and he shall be asked if he has any valid cause to show why he should not be committed to prison to await the order of the Governor;
- (d) the burden of proof that a fugitive criminal has resided in this Colony for more than six months, during the period mentioned in paragraph (a) of this proviso, shall lie on such fugitive criminal; and
- (e) in every case proof of the identity of the fugitive criminal must be given, to the satisfaction of the magistrate.

(2) 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 or  
discharge.

Second  
Schedule.  
Form 5.

**10.** (1) 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 prison to await the further order of the Governor, but otherwise shall order him to be discharged.

(2) If the magistrate commits the fugitive criminal to prison, 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 the magistrate shall forthwith send to the Governor the depositions and other evidence in the case, together with a report thereon and in particular in relation to—

- (a) the lapse of time since the commission of the extradition crime;
- (b) the length of residence in the Colony and the character of the fugitive criminal; and
- (c) any circumstances throwing suspicion on the origin or nature of the charge made.

11. Before ordering a fugitive criminal to be discharged, the magistrate shall cause notice of his intention to make such order to be given to the Attorney General.

Notice to  
Attorney  
General  
before  
discharge.

12. (1) On 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, on 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 authority to whom the Governor considers that he should be surrendered, and the fugitive criminal shall be surrendered accordingly: Provided always that whenever the Governor, from the magistrate's report or otherwise, has reason to suppose that any fugitive criminal who has been committed to prison to await the further order of the Governor has been resident in the Colony for one year or upwards, the depositions and evidence taken before the magistrate on the investigation of the case shall, together with the magistrate's report thereon, be considered by the Governor in Council, who shall decide whether such fugitive criminal shall be surrendered or not.

Warrant for  
surrender,  
etc.

Second  
Schedule.  
Form 6.

(2) 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

[s. 12 cont.] lawful for any police officer 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 constable and to hold him at all times as upon the original warrant.

Power to  
Governor  
to order  
discharge.

Second  
Schedule.  
Form 7.

**13.** 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  
surrendered  
within two  
months.

**14.** 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, a judge may, on application made to him by or on behalf of the fugitive criminal and on proof that reasonable notice of the intention to make such application has been given to the Attorney General, order the fugitive criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

Aiders and  
abettors in  
extradition  
crime.

**15.** Any 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.

Protection  
of magistrate  
and others  
acting under  
warrant or  
order.

**16.** If any action or suit is brought against a magistrate, the Commissioner of Prisons, a gaoler, police officer, 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 sufficient answer to such action or suit, 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.

Forms.  
Second  
Schedule.

**17.** The forms in the Second Schedule or forms to the like effect, with such variations and additions as circumstances may require, may be used for the purposes therein indicated

and according to the directions therein contained, and instruments in those forms shall (as regards the form thereof) be valid and sufficient.

18. In all proceedings contemplated by this Ordinance every fugitive criminal for whose surrender a requisition is made shall be deemed to be a national of China unless he shall prove the contrary affirmatively: Provided that this section shall not be construed as imposing any obligation on the Governor or as binding the Crown in any manner whatsoever.

Fugitive criminal to be deemed to be a national of China.

19. A certificate under the hand of the Colonial Secretary shall, upon production and without proof of the signature or any other proof, be conclusive evidence in any proceedings on any question relating to any declaration, opinion, or discretion, which the Governor is authorized by this Ordinance to make, form, or exercise, respectively.

Evidence.

20. A fugitive criminal shall be liable to be surrendered under and in accordance with the provisions of section 12 although the crime of which he is accused may have been committed within the jurisdiction of a Chinese authority other than the Chinese authority by whom the requisition was made, or other than the Chinese authority to whom he is to be surrendered, and although the Chinese authority to whom he is to be surrendered is not the Chinese authority by whom the requisition was made.

Liability to be surrendered not to be affected by change of Chinese authority.

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FIRST SCHEDULE.

[s. 2.]

LIST OF EXTRADITION CRIMES.

1. Murder and attempt to murder.
2. Manslaughter.
3. Malicious wounding.
4. Counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money.
5. Forgery, or counterfeiting, or altering, or uttering what is forged, or counterfeited, or altered, comprehending the crimes designated in the laws of the Colony 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.

[First Sch.  
cont.]

6. Embezzlement or larceny.
7. Receiving stolen goods.
8. Obtaining money or goods by false pretences.
9. Crimes against bankruptcy law.
10. 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.
11. Rape.
12. Abduction.
13. Child-stealing.
14. Kidnapping.
15. False imprisonment.
16. Burglary or housebreaking.
17. Arson.
18. Robbery with violence.
19. Threats by letter or otherwise with intent to extort.
20. Piracy, whether by the law of nations or by municipal law.
21. Sinking or destroying a vessel at sea, or attempting to do so.
22. Assault on board a ship on the high seas, with intent to destroy life or to do grievous bodily harm.
23. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master.
24. Perjury or subornation of perjury.
25. Malicious injury to property, if the offence is indictable.
26. Any indictable offence under—
  - (a) the Coinage Offences Ordinance;
  - (b) the False Personation Ordinance;
  - (c) the Falsification of Documents Ordinance;
  - (d) the Forgery Ordinance;
  - (e) the Larceny Ordinance;
  - (f) the Offences against the Person Ordinance,
 or any Ordinance amending or substituted for the same, which is not included in the foregoing list.

(Cap. 204).  
 (Cap. 207).  
 (Cap. 208).  
 (Cap. 209).  
 (Cap. 210).  
 (Cap. 212).

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 SECOND SCHEDULE.

[s. 17.]

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 FORM 1.

[s. 6.]

*Order by the Governor to a magistrate to issue his warrant.*

By His Excellency \_\_\_\_\_, Governor and Commander-in-Chief of the Colony of Hong Kong and its dependencies.

To

\_\_\_\_\_, Magistrate.

Whereas requisition has been made to me by \_\_\_\_\_ for the surrender of \_\_\_\_\_, late of \_\_\_\_\_, accused of the commission of the crime of \_\_\_\_\_ within the juris-



diction of China namely the province (or, territory) of : 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, or otherwise to proceed in conformity with the provisions of the Chinese Extradition Ordinance (Chapter 235 of the Revised Edition of Ordinances).

Given under my hand and seal at Victoria, Hong Kong, this day of , 19 .

[L.S.]

(Signed)

Governor.

FORM 2.

[s. 7.]

*Warrant of apprehension by order of the Governor.*

HONG KONG.

IN THE MAGISTRATE'S COURT AT

*To each and all of the police officers of the Colony.*

Whereas His Excellency the Governor, by order under his hand and seal, has signified to me that requisition has 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 His 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 surrendered in pursuance of the Chinese Extradition Ordinance, (Chapter 235 of the Revised Edition of Ordinances) for which this shall be your warrant.

Dated the day of , 19 .

[L.S.]

(Signed)

Magistrate.

FORM 3.

[s. 7.]

*Order to bring before a magistrate a fugitive criminal already in custody.*

HONG KONG.

IN THE MAGISTRATE'S COURT AT

*To the Commissioner of Prisons, and to each and all of the police officers of the Colony.*

Whereas His Excellency the Governor, by order under his hand and seal, has signified to me that requisition has 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 His Majesty's name, forthwith to bring the said before me or some other magistrate sitting in this court, to be dealt with according to the provisions of the Chinese Extradition Ordinance, (Chapter 235 of the Revised Edition of Ordinances) for which this shall be your warrant.

Dated the day of , 19 .

[L.S.]

(Signed)

Magistrate.

[Second Sch.,  
cont.]

FORM 4.

[s. 8.]

*Warrant of apprehension without order of the Governor.*

HONG KONG.

IN THE MAGISTRATE'S COURT AT

*To each and all of the police officers of the Colony.*

Whereas it has been shown to me, the undersigned, a magistrate of the said Colony, that \_\_\_\_\_, late of \_\_\_\_\_, is accused of the commission of the crime of \_\_\_\_\_ within the jurisdiction of China: This is, therefore, to command you, in His Majesty's name, forthwith to apprehend the said \_\_\_\_\_ and to bring him before me or some other magistrate sitting in this court, to be further dealt with according to law, for which this shall be your warrant.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

[L.S.] (Signed) \_\_\_\_\_ Magistrate.

FORM 5.

[s. 10.]

*Warrant of committal.*

HONG KONG.

IN THE MAGISTRATE'S COURT AT

*To \_\_\_\_\_, one of the police officers of the Colony, and to the Commissioner of Prisons.*

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, late of \_\_\_\_\_, is brought before me, a magistrate of the said Colony, to show cause why he should not be surrendered in pursuance of the Chinese Extradition Ordinance, (Chapter 235 of the Revised Edition of Ordinances) on the ground of his being accused of the commission of the crime of \_\_\_\_\_ within the jurisdiction of China, and forasmuch as no sufficient cause has been shown to me why he should not be surrendered in pursuance of this said Ordinance: This is, therefore, to command you, the said constable, in His Majesty's name, forthwith to convey and deliver the body of the said \_\_\_\_\_ into the custody of the Commissioner of Prisons, and you, the said Commissioner, to receive the said \_\_\_\_\_ into your custody in a prison, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Ordinance, for which this shall be your warrant.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

[L.S.] (Signed) \_\_\_\_\_ Magistrate.

FORM 6.

[s. 12.]

*Warrant of the Governor for the surrender of a fugitive criminal.*

By His Excellency \_\_\_\_\_, Governor and Commander-in-Chief of the Colony of Hong Kong and its dependencies.

*To the Commissioner of Prisons, and  
to \_\_\_\_\_*

Whereas \_\_\_\_\_, late of \_\_\_\_\_, accused of the commission of the crime of \_\_\_\_\_ within the jurisdiction of China, was delivered into the custody of you \_\_\_\_\_,

the Commissioner of Prisons, by warrant dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, pursuant to the Chinese Extradition Ordinance, (Chapter 235 of the Revised Edition of Ordinances): Now I do hereby, in pursuance of the said Ordinance, order you, the said Commissioner, 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 to \_\_\_\_\_ and there place him into the custody of \_\_\_\_\_, who is authorized by the Chinese authorities to receive him, for which this shall be your warrant.

Given under my hand and seal at Victoria, Hong Kong, this day of \_\_\_\_\_, 19\_\_\_\_.

[L.S.] \_\_\_\_\_ (Signed) Governor.

FORM 7. [s. 13.]

*Order of discharge by the Governor.*

By His Excellency \_\_\_\_\_, Governor and Commander-in-Chief of the Colony of Hong Kong and its dependencies.

*To the Commissioner of Prisons.*

Whereas one \_\_\_\_\_ is now in your custody as a fugitive criminal under the provisions of the Chinese Extradition Ordinance, (Chapter 235 of the Revised Edition of Ordinances) 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, Hong Kong, this day of \_\_\_\_\_, 19\_\_\_\_.

[L.S.] \_\_\_\_\_ (Signed) Governor.