

HONGKONG LEGISLATIVE COUNCIL.

19TH JANUARY, 1904.

PRESENT:—

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT, F.H. MAY, C.M.G.

MAJOR-GENERAL VILLIERS HATTON, C.B.
(Commanding the Troops).

Hon. A. M. THOMSON (Acting Colonial Secretary).

Hon. Sir HENRY S. BERKELEY, Kt. (Attorney-General).

Hon. L. A. M. JOHNSTON (Acting Colonial Treasurer).

Hon. A. W. BREWIN (Registrar-General).

Hon. BASIL R. H. TAYLOR (Harbour Master).

Hon. W. CHATHAM (Director of Public Works).

Hon. Sir C. P. CHATER, C.M.G.

Hon. Dr. HO KAI, C.M.G.

Hon. WEI A YUK.

Hon. C. W. DICKSON.

Hon. GERSHOM STEWART.

Mr. R. F. JOHNSTON (Acting Clerk of Councils).

PAPERS.

The ACTING COLONIAL SECRETARY laid on the table the Report of the committee appointed by His Excellency the Governor to enquire into the causes of Chinese infantile mortality in the Colony; a Report by the D.P.W. on Tytamtuk Waterworks Scheme for City and Hill District Supply; and a paper dealing with an increase of the Police Force.

FINANCIAL.

The ACTING COLONIAL SECRETARY laid on the table Financial Minutes (Nos. 1 to 7), and moved that they be referred to the Finance Committee.

The ACTING COLONIAL TREASURER seconded, and the motion was agreed to.

The ACTING COLONIAL SECRETARY laid on the table the Report of the Finance Committee (No. 13) and moved its adoption.

The ACTING COLONIAL TREASURER seconded, and the motion was agreed to.

REGISTRATION OF DOMESTIC SERVANTS.

Hon. H. E. POLLOCK—Your Excellency, I would ask permission to lay upon the table a petition which

has been signed by numerous ladies in the Colony with reference to the registration of domestic servants. That petition, sir, is not formally addressed to the members of this Council, but it has to do with legislation, and therefore, sir, I think it is fit that it should be laid upon the table of this Council.

HIS EXCELLENCY—I think the hon. member's petition is not in order and cannot be laid upon the table of this Council, I think the hon. member must have received a letter addressed to him by the Colonial Secretary by my direction stating that as the petition is addressed to the Officer Administering the Government and not addressed to the hon. members of this Council, it is therefore not in order.

Hon. Mr. POLLOCK—Of course I bow to your Excellency's ruling, but as the petition has to do with legislation it seems to me that it could be laid upon the table of the Council.

SANITARY BYE-LAWS.

The ACTING COLONIAL SECRETARY laid on the table and moved the approval of a repeal of bye-laws made by the Sanitary Board under Sub-section 7 of Section 16 of the Public Health and Buildings Ordinance, 1903:—"The Bye-laws under the heading 'Nightsoil Carriers' contained in Schedule 'B' of the Public Health and Buildings Ordinance, 1903, are hereby repealed." He pointed out that this was rendered necessary by the new system.

The DIRECTOR OF PUBLIC WORKS seconded the motion, and it was agreed to.

SUMMONING OF CHINESE ORDINANCE.

The ACTING COLONIAL SECRETARY moved the following resolution:—"Whereas by section 5 of the Summoning of Chinese Ordinance, 1899 (No. 40 of 1899), it was enacted that the said Ordinance should only continue in operation for the period of two years from the coming into operation of the said Ordinance and for such further period or periods as might, from time to time, be determined by Resolution of the Legislative Council, and whereas such

operation has been continued by Resolution of this Council till the 30th day of March, 1904, inclusive:—It is hereby resolved by this Council that the Summoning of Chinese Ordinance, 1899, shall be further continued in operation for the further period of two years from the 31st day of March, 1904, inclusive." He said—I may say, sir, that the working of this Ordinance has been found to put no hardship on anyone. It is a small convenience, and it may well continue in operation for two more years.

The ATTORNEY-GENERAL seconded, and the motion was agreed to.

OPENING OF STREETS.

Hon. GERSHOM STEWART asked:—

(1) Under what conditions are public companies or private individuals permitted to pick up and obstruct the public highways?

(2) In the event of the party responsible being dilatory in the completion of the work involving the picking up of public roads, what powers have the Government to compel them to proceed with expedition?

(3) Can offenders be fined so much per diem if found negligent?

(4) Are the crossings provided during the construction of the low level tramway, where the public highways are picked up, passed by the Public Works Department as proper and adequate for the traffic they have to carry?

The DIRECTOR OF PUBLIC WORKS replied as follows:—

(1) Some Companies, such as the Gas Company, have powers under agreements entered into with the Government; others, such as the Electric Tramway Company, have powers conferred upon them by Ordinance. In every case notice to and authority from the Director of Public Works is required.

(2) Companies are required to complete the work for which they have broken up any road with due diligence or with all convenient speed and to restore the road to good condition to the satisfaction of the Director of Public Works. The powers of the Government depend upon the terms of the agreement, the conditions of the permit issued by the Director of Public Works, or the provisions of the Ordinance affecting the case.

(3) The Tramway Ordinance 1902, section 12, provides such a penalty; other cases must depend upon the terms of the agreement or permit.

(4) No; but where it is brought to my notice that the crossings are inadequate I call upon the Company to provide increased facilities. The responsibility for any accident, damages or injuries rests with the Tramway Company (vide S. 79 of Ordinance No. 10 of 1902)

UNDESIRABLE IMMIGRANTS.

The Council went into Committee on the Bill entitled An Ordinance to Provide for the Recovery of Charges

incurred by the Colony on account of certain undesirable persons introduced into the Colony.

Hon. Mr. POLLOCK moved that in the 4th line of Section 3, sub-section 1, the words "Health Officer of the Port" be substituted for "Medical Officer of Health." His reason for moving this amendment was that it was the Medical Officer of the Port who ordinarily went off to board vessels, and therefore it would be convenient that permission in such cases should emanate from him as well as from the P.C.M.O.

The ATTORNEY-GENERAL accepted the amendment and it was agreed to.

Hon. Mr. POLLOCK next moved that in the 5th and 4th lines from the end of the same sub-section the words "became lunatic, idiotic or imbecile after" be deleted and the words "was apparently sane at the time of" be substituted. It occurred to him that there were a good many cases of people who became violent during the course of a passage although when they came on board they were apparently sane. It might happen that such persons had been previously imbecile. There were a good many cases of lunacy in which the periods of sanity would last sometimes for some years, sometimes only for a few days. Therefore it was very important that this matter should be placed on a clear basis, because it might be suggested thereafter that if it was proved that a person who was apparently sane at the time of embarkation and became violent during the voyage had at some prior period been a lunatic, idiot or imbecile, the shipowner could not escape liability. He wanted it made clear that the shipowner was not to be held liable in such cases.

The ATTORNEY-GENERAL thought the suggestion was hardly one that could be accepted. The words of the Bill were quite clear and specific. The hon. member wanted them to substitute the words "apparently sane at the time of," "Apparently" to whom—to the shipowner or to some other person on board not named? To substitute these words would be to defeat the whole intention of the Bill. It was intended that the onus should be thrown upon the ship of excusing itself for bringing here a lunatic and making him a charge upon the Colony, and such excuse was to be proof of the fact that the man became lunatic after embarkation.

Hon. Mr. POLLOCK replied that the party deposing that a person was "apparently sane" would be liable to cross-examination in a court of justice as to why and under what circumstances he said so; it was a matter that could be investigated.

The ATTORNEY-GENERAL remarked that the principle of the Bill was that the person who brought an imbecile here was liable; but there was a just exception made, in order to prevent hardship upon the shipowner, that provided the lunatic so brought was not a lunatic at the

time he embarked, but became so on the voyage, then the owner would be held excused.

Hon. Mr. POLLOCK said that was quite reasonable if it was defined what was meant by becoming a lunatic. If it meant when any person was embarked who was apparently absolutely sane that the shipowner was not to be held liable merely because such person had been subject to periods of lunacy prior to embarkation, that would get rid of his objection.

The ATTORNEY-GENERAL contended that "became lunatic" was a very explicit phrase.

Hon. Mr. POLLOCK said the party might have been out of his mind five or six times prior to the voyage in question.

His EXCELLENCY did not think there was a great deal in that point; the words the hon. member wished to substitute were really too indefinite.

Hon. Mr. POLLOCK asked whether it was intended to make shipowners liable supposing the party had been a lunatic before?

His EXCELLENCY said it certainly was. Only recently a case occurred in which a man who had been in a lunatic asylum here was sent back; he had become a lunatic again.

Hon. Mr. POLLOCK argued that that was a case in which the shipowner had no knowledge of it, and he thought the Attorney-General would agree that it was a general principle of English law which was founded on the most elementary principles of justice that no person or body of people should be subject to a penalty unless they had got criminal intention. Why should a shipowner be liable when a person embarked, simply because he might at some previous stage, absolutely unknown to the shipowner, have been a lunatic?

His EXCELLENCY said there was a law which said you were not to bring a person suffering from leprosy into the Colony. If you were to qualify it by saying "apparently not suffering" you would never reach prohibition at all. There were several precedents for the principle of this Bill. There was the Vagrancy Ordinance in this Colony. If you had to qualify it by saying that the shipowner would be exempt if the person was "apparently not destitute" the object of the Ordinance would be defeated.

The ATTORNEY-GENERAL added that the Bill did not go so far as the Alien Immigration Commission. He read a cutting from the *Daily Mail* quite recently, in which the recommendations were stated and among others they recommended that all immigrants becoming undesirable and destitute within two years after landing in England shall be liable to expulsion and repatriation at the cost of the shipowners who brought them there.

In reply to His EXCELLENCY.

Hon. Mr. POLLOCK said he wished to press his motion if the Government intended that the shipowner should be held liable if he took a passenger in good faith without any knowledge of his being out of his mind or there being any

reason to suppose that he was so at some previous stage long before his embarkation.

The ATTORNEY-GENERAL replied that what they said was that if the man was at the time he landed a lunatic and became within three months thereafter chargeable to the Colony then the shipowner was liable unless he could prove that the man he brought here was not lunatic when he came on board the ship but became lunatic on the voyage. The real principle of elementary justice was that where two persons were equally innocent—in this case the shipowner and the public of the Colony—he who was the proximate cause of any cost arising should bear it. The Colony owed no duty to a stranger brought here by the shipowner, who got his passage money and brought him here.

On a division being taken the amendment was defeated by a majority of 11 to 1 (Hon. Mr. Pollock).

Hon. Mr. POLLOCK next moved that in the last and second last lines of the same sub-section the words "five thousand dollars" be altered to "one thousand dollars." He thought \$5,000 was a very heavy penalty in view of the interpretation being put upon this section. In the case of the Opium Farm the maximum penalty was \$1,000.

The ATTORNEY-GENERAL said this was not a penalty.

Hon. Mr. POLLOCK replied that they were practically penalising the shipowner.

The ATTORNEY-GENERAL suggested they might strike out the proviso altogether.

Hon. Mr. POLLOCK said it seemed to him that the hon. member was entirely flippant and out of order. \$1,000 was quite a sufficient penalty.

The ATTORNEY-GENERAL thought the hon. member misconceived the meaning of the proviso to the clause. It was put in by way of limiting the liability of the shipowner, not of imposing any liability upon him. If a lunatic was brought here and kept for 40 years the shipowner would have to pay the whole of the cost of his maintenance for that period, but it was thought that a maximum might be fixed and limited, and so the Government on the proposition of Mr. Dickson put it that the liability should not exceed \$5,000. So far from his remarks being frivolous and out of order he thought they were extremely necessary and to the point.

Hon. Mr. POLLOCK remarked that this was a limitation of liability and he was asking for a further limitation. When he was asking for this it was entirely flippant and out of order on the part of the Attorney-General to ask the deletion of the clause restricting the liability to \$5,000.

His EXCELLENCY pointed out that the average cost of a lunatic was about \$700 a year, so that \$1,000 would cover little

over one year's expense. When a lunatic came to the Colony, too, he was generally a very difficult person to get rid of and stayed a good long time. He thought \$5,000 was not unreasonable. In the original Bill there was no limitation at all; they limited it in deference to the representations made by certain unofficial members.

On a division the amendment was defeated by 11 to 2 (Hon. Messrs. Dickson and Pollock). (Mr. Dickson was not present at the previous division.)

The ATTORNEY-GENERAL moved a verbal amendment of lines 5 and 6 of the same sub-section so as to make that part read as follows:—"Any person who being at the time of landing lunatic, idiotic or imbecile shall become within a period of three months," etc., so as to clear up a misapprehension that the effect of the section as printed was to make the shipowner liable for bringing here a man who was not a lunatic at the time he landed but became such within three months after landing.

The amendment was agreed to.

With reference to section 3, sub-section 2 Hon. GERSHOM STEWART thought it seemed to confer on the captain of a ship absolute control of any person on board. He moved that in line 1, before the word "Every," the words "In case such permission as aforesaid is refused" be inserted; and that in the 3rd and 4th lines the words "without such permission as aforesaid" be deleted.

This was agreed to.

Hon. Mr. POLLOCK proposed an addition to that sub-section making it compulsory on the P.C.M.O. or the Medical Officer of the Port to give a certificate to the master of a vessel to the effect that he had refused to land such a person in the Colony.

The ATTORNEY-GENERAL said he had no objection to that.

After some discussion it was agreed that this amendment should take the form of a sub-section, No. 3, as follows:—"In every case in which permission to land from any vessel is refused under the authority of this Ordinance the officer refusing such permission shall give a certificate to the master of said vessel if so required by him."

The ATTORNEY-GENERAL moved that the short title of the Bill be altered to "The Imbecile Persons Introduction Ordinance, 1903."

This was agreed to.

The Committee then reported the Bill with amendments.

His EXCELLENCY said it would be printed and be ready for next meeting.

The Council adjourned *sine die*.

FINANCE COMMITTEE.

A meeting of the Finance Committee was held immediately after the Council—the Acting Colonial

Secretary (Hon. A. M. Thomson presiding).

The following votes were passed:—

CABLE AND TELEPHONES.

The Officer Administering the Government recommended the Council to vote a sum of \$7,000 in aid of vote No. 19, "Cable for Observatory and other Telephone lines to Kowloon,—Public Works, Extraordinary."

LEPERS AT AUTAU.

The Officer Administering the Government recommended the Council to vote a sum of \$300 in aid of the vote "Police—Other Charges" on account of rations for Lepers in the Asylum at ~~Autau~~ in the New Territory.

EDUCATIONAL VOTE.

The Officer Administering the Government recommended the Council to vote a sum of \$3,600 in aid of the vote "Education, Inspector of Schools—Other Charges" to meet the cost of participating in a scheme for the visual instruction of children as regards the geographical features, life and industries of the various parts of the Empire.

POLICE VOTE.

The Officer Administering the Government recommended the Council to vote a sum of \$42,845 for the following:—

POLICE.

Personal Emoluments.

50 Chinese constables at \$150 each	\$ 7,500
Ration allowances	600
23 3rd class constables promoted to 2nd class; difference	690
Allowances for 6 detectives	360
Increased ration allowances	1,675
8 1st class constables promoted to be 4 1st class Sergeants and 4 2nd class Sergeants; difference	720
Increases to 52 seamen	624
2 Barrack Sergeants at \$240 instead of \$168 each; difference	144
2 Station Sergeants at \$168 each instead of \$144 and \$156; difference	36
16 3rd class engineers and coxswains at \$216 to \$240 each instead of \$216, and 8 stokers at \$144 to \$168 instead of \$144 each (previous service to count); difference	96
Total Personal Emoluments	\$ 12,445

Other Charges.

Clothing, &c.	\$ 1,900
Lodging allowances during alterations to Central Police Station	500
Total Other Charges	\$ 2,400

Public Works Extraordinary.

Addition of Storey to Central Police Station	\$ 28,000
Grand Total	\$ 42,845

TRAINING NULLAHS.

The Officer Administering the Government recommended the Council to vote a sum of \$9,500 in aid of the vote Public Works, Extraordinary, to meet cost of training nullahs in the vicinity of the Bay View Hotel, and filling up water-holes, &c.

SANITARY DEPARTMENT.

The Officer Administering the Government recommended the Council to vote a sum of \$4,623.90 in aid of the vote Sanitary Department under Personal Emoluments:—

1. Assistant Secretary (from 11th January to 31st December, 1904)	\$2,335.50
Assistant Secretary, Exchange Compensation	1,868.40
2. Correspondence Clerk (additional Salary)	420.00
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Total	\$4,623.90

The Officer Administering the Government recommended the Council to vote a sum of \$25,395.24 in aid of the vote Public Works, Extraordinary, for the following items:—

1. Extension of Inspectors' Quarters at Kennedy Town	\$ 1,250.00
2. Tai Po Road	5,000.00
3. Extension of Wanchai Market	645.24
4. Cattle Dépôt Extension	15,000.00
5. Public Mortuary, Extension and Reconstruction	3,500.00
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Total	\$ 25,395.24

This was all the business.