

25TH JUNE, 1908.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR — SIR
FREDERICK JOHN DEALTRY LUGARD,
K.C.M.G., C.B., D.S.O.

HIS EXCELLENCY MAJOR-GENERAL
BROADWOOD, (General Officer
Commanding).

HON. MR. F. H. MAY, C.M.G. (Colonial
Secretary).

HON. MR. W. REES DAVIES, K.C.,
(Attorney-General).

HON. MR. L. A. M. JOHNSTON (Colonial
Treasurer).

HON. MR. W. CHATHAM, C.M.G. (Director
of Public Works).

HON. MR. E. A. IRVING (Registrar-General).

HON. COMMANDER BASIL R. H. TAYLOR,
R.N. (Harbour Master).

HON. DR. HO KAI, M.B., C.M., C.M.G.

HON. SIR HENRY BERKELEY, K.C.

HON. MR. H. E. POLLOCK, K.C.

HON. MR. WEI YUK.

HON. MR. H. W. SLADE.

HON. MR. MURRAY STEWART,

MR. C. CLEMENTI (Clerk of Councils).

Minutes.

The minutes of the previous meeting were
read, and confirmed.

Papers.

THE COLONIAL SECRETARY, by the
direction of H. E. the Governor, laid on the table
"The Annual Report on the Hongkong
Volunteer Corps for the year ending April 1st,
1908."

Financial Minutes.

THE COLONIAL SECRETARY, by
direction of H. E. the Governor, laid on the table
Financial minutes Nos. 29 and 30, and moved
that they be referred to the Finance Committee.

Finance Committee.

THE COLONIAL SECRETARY, by
direction of H. E. the Governor, laid on the table
the report of the Finance Committee (No. 10).

THE COLONIAL TREASURER seconded,
and the motion was agreed to.

Public Health and Buildings Ordinance.

THE ATTORNEY -GENERAL moved that
the Council go into Committee on the Bill
entitled an Ordinance to amend the Public
Health and Buildings Ordinance, 1903, and The
Public Health and Buildings Amendment
Ordinance, 1903.

THE COLONIAL SECRETARY seconded, and the motion was agreed to.

THE ATTORNEY -GENERAL—In reference to clause 85 Your Excellency informed the Committee at the last sitting that a letter from the Chief Justice had raised points in regard to the Bill which required consideration. The representations of the Chief Justice were to the effect that, whilst it is sought to place the duty on the Court to hear and determine questions of law arising on a special case stated by the Governor-in-Council, there was no provision contained in the Bill requiring the decision of the Court to be enforced or given effect to. The Government, after giving full consideration to the matter, propose to insert express words in the Bill to meet the point, but we further propose to limit the power of stating a case by the Governor-in-Council to such questions of law as the Governor-in-Council may, in his discretion, direct, and to amend the clause in so far as directory words are concerned, that is the words requiring the Governor-in-Council to state a case if required by the appellant. In clause 84 words will be inserted to expressly preserve the Common Law remedy, although, as I have hitherto stated, I regard them as unnecessary. Also in clause 88 the rights by mandamus or injunction will be expressly preserved. The effect will be that all the common law remedies will be preserved and that the right of appeal to the Governor-in-Council will be given on all points with a power in the Governor-in-Council to state a case for the opinion of the Full Court, and when the Governor-in-Council invites, on his own initiative, the opinion of the Court there is nothing objectionable or unreasonable in providing, if it is so desired, for the finding of the Court to be acted upon.

HON. MR. POLLOCK—With regard to what has fallen from the hon. and learned Attorney General I think it is desirable that the letter of the Chief Justice should be laid on the table. As it has been quoted by the hon. Attorney General in his speech, it would be more satisfactory if the Council had the whole letter before them. The hon. Attorney General adopted an unusual course in taking clause 85 before 84. I venture to suggest it would be desirable to deal with clause 84 before we deal with 85. I take it the clauses were put together for the purpose of showing the general nature of the proposal put forward by the

Government. As regards 84 I have an amendment to move and I have another with regard to clause 85. I take it these amendments will be put s e p a r a t e l y ?

THE ATTORNEY -GENERAL — I only explained to the committee what the course was.

HON. MR. POLLOCK—With regard to clause 84 I would suggest that a clause be inserted to come before the proviso which I understand the Attorney General intends to move. It is to the effect that the expression "discretion" as used in this section shall include an expression of opinion by the Board or by any person to whom discretionary power is given as aforesaid as to the meaning of any provision of this Ordinance. The main object in moving this amendment is to make it quite clear that the discretion which is referred to in this section—and I understand the Government are willing that parties shall be at liberty to apply to the Supreme Court on a point of law—should refer to questions of fact as well as matters of law. I hope, Sir, the Government will accept this amendment. I think it is in accordance with the principle of the Bill. Before the Attorney-General proposed to add the present proviso, I think he intended "discretion" to cover points of law as well as questions of fact.

THE ATTORNEY -GENERAL—I cannot see how it amplifies the section.

HON. MR. POLLOCK—It amplifies the section in the way I have been endeavouring to explain during the last ten minutes.

THE COLONIAL SECRETARY—It seems to me the amendment you want to make is to clause 85.

HON. MR. POLLOCK—It is an amendment to clause 84.

HON. SIR HENRY BERKELEY—It seems to me all my learned friend desires can be obtained in the proviso which the Attorney-General proposes to add to the end of the clause. That proviso empowers any person to apply to the Supreme Court for "mandamus, injunction, p r o h i b i t i o n , "

all of which include applications on questions of law. No question of law can arise otherwise than on one of these three orders.

HON. MR. POLLOCK—I certainly intend to press my amendment.

THE ATTORNEY -GENERAL—You don't propose to state a case on a question of fact?

HON. MR. POLLOCK—Yes.

THE ATTORNEY -GENERAL—I cannot see how this carries the section in the slightest degree further. The words are so very general.

HON. MR. POLLOCK—I cannot consent to it being handed down to posterity that I was the author of this bit of work.

The COLONIAL SECRETARY—The point you are trying to get at is already covered.

HON. MR. POLLOCK—There might be inaction or indecision and the whole thing might be hung up. It is rather difficult, I admit, to frame an amendment.

THE COLONIAL SECRETARY—There must be a decision one way or the other. There may be a plan submitted to the Building Authority who says—According to my reading of the section it is proper. The other man says it is not proper. If the man is dissatisfied he thereupon takes it to the Governor-in-Council. The section has been fully considered by this Council, and the hon. member who questions it cannot draft an amendment to satisfy himself. I think the section ought to stand.

HON. MR. POLLOCK—I would move that the words "or inaction" be inserted after "action" and "expression of opinion" after "decision." The Building Authority may say—This is my view. The other man may say—This is my view. The Building Authority may decline to give a definite opinion one way or another.

HIS EXCELLENCY—He has to do so within a specified time under clause 69. Do you wish to press your amendment to a division?

HON. MR. POLLOCK—Yes.

THE ATTORNEY -GENERAL—The appeal must be from some decision.

HON. MR. POLLOCK—I am not going to be bound down by the technical use of the word "decision."

The motion was put to a division, and HIS EXCELLENCY declared that the Noes had it. Hon. Mr. Pollock was the only one to support the amendment.

HON. MR. POLLOCK—There is another amendment to clause 84.

THE ATTORNEY -GENERAL—I move to leave out the words in that clause "such order shall be final for all intents and purposes." The object of that is, that when a point has been raised, it is possible that the words might be construed as affecting the subsequent clause which gives powers to the Governor-in-Council to state a special case. The two clauses are intended to be read together, and the object is to get machinery to give effect to the decision of the Governor-in-Council whether it be based upon the order of the Governor-in-Council direct or whether it be based upon the direction obtained from the Supreme Court on the special case stated.

HON. SIR HENRY BERKELEY moved that the words in line 22 "deemed expedient" be struck out and the word "just" substituted.

Agreed to.

THE ATTORNEY -GENERAL moved the following proviso to clause 84: "Provided that nothing herein contained shall be deemed to prevent any person from applying to the Supreme Court for a mandamus, injunction, prohibition or other order instead of appealing to the Governor-in-Council under this section."

Agreed to.

THE ATTORNEY -GENERAL—I move in clause 85 that on line 4 the words "and shall at all times if requested by the appellant" be deleted.

HON. MR. POLLOCK—I am strongly opposed to this amendment. When the Bill was originally drafted this clause provided that the Governor-in-Council should state a case. Well, Sir, after some discussion the Government agreed that the appellant shall have power to require a case to be stated. Now for some reason which I am unable to fathom it is proposed to take away the right of an appellant—which we understood was conceded to him—of asking the Governor-in-Council to state a case. It seems to me that this amendment is of a most retrograde character, and I have not heard a single word by any member of the Government why these words should be omitted. I cannot conceive why an appellant should not have equal right when the Governor-in-Council has power to state a case of asking that a case should be stated for the opinion of the Full Court. I understand the Government were of opinion in the first instance that parties might be disposed to go to the Governor-in-Council rather than to rush into litigation, but now the appellant will have no say in the matter of whether the Governor-in-Council directs a case to be stated. I cannot see any reasons why these words should be deleted. I do not suppose that the deletion is in any way connected with the subsequent amendment to be proposed by the Attorney-General to clause 85. I strongly protest against this extremely retrograde movement by which it is proposed that the Government should withhold the concessions granted of allowing the appellant to require a case to be stated.

THE ATTORNEY -GENERAL—Undoubtedly the deletion of the words will somewhat minimise the original proposal. Still the discretion in the Governor-in-Council is absolute. Speaking for myself as the legal adviser of the Governor-in-Council, if I were satisfied that an appellant had sufficient grounds to leave any reasonable doubt as to the construction of the statute I should have no hesitation in advising the Governor-in-Council to acquiesce in the application of any appellant to state a case. When the words were originally inserted they were not accompanied by the express words to which I have taken exception, requiring the Governor-in-Council to give effect to the direction of the Court.

HON. MR. POLLOCK—With all due deference,

the Attorney-General has not answered my point. It is not the discretion which he himself would exercise, but whether the other incumbents of the office would uphold the public right. That is why I consider it necessary that this sentence which has been acquiesced in by the Government should remain in the Bill. I must press this matter to a division.

HON. SIR HENRY BERKELEY—I don't see any necessity, in view of the concessions made by the Attorney-General, for retaining the words. A person who goes to the Governor-in-Council should be prepared to abide by the decision of that body. It will multiply litigation to leave in these words, and I think my learned friend should be content with the concessions made in the matter.

HON. MR. POLLOCK—I must ask for a division.

On a division being taken there voted—

For the amendment:—Hon Sir Henry Berkeley, Harbour Master, Registrar-General, Director of Public Works, Colonial Treasurer, Attorney-General, Colonial Secretary and H. E. the General Officer Commanding.

Against—the Hon. Mr. Murray Stewart, Hon. Mr. Pollock, Hon. Mr. Wei Yuk, Hon. Dr. Ho Kai.

The amendment was therefore carried by eight votes to four.

An amendment by the Attorney-General that the words "who shall give effect to the finding" should be substituted for "with the opinion" was agreed to.

THE ATTORNEY -GENERAL moved a new section, 265b. The Committee would remember that they had deleted the words in the proviso to clause 84 "such order shall be final for all intents and purposes." It was proposed that "an order of the Governor-in-Council on an appeal shall be final and may be enforced by the Supreme Court as if it had been an order of that Court." This was based upon the Imperial precedent. It was desirable to have proper machinery in order to enforce the order of the Governor-in-Council.

HON. MR. POLLOCK—Suppose there is a reference to Full Court, what then?

HON. SIR HENRY BERKELEY — The Governor will not give his decision until the matter has been dealt with by the Full Court. If the appellant goes to the Governor-in-Council the decision shall be final, and if he elects to appeal elsewhere the decision will likewise be final.

HON. MR. POLLOCK — Supposing the Governor has come to a decision?

HON. DR. HO KAI—Then there is no need to refer to the Full Court.

The clause was then passed.

A proviso by the Attorney-general to be inserted at the end of the clause was passed as follows: "And by the addition at the end thereof of the words: Provided that nothing herein contained shall exempt any person from any proceeding by way of mandamus, injunction or prohibition."

Other amendments of a verbal nature were dealt with.

The ATTORNEY -GENERAL moved to add to the preamble at the end the words "and to make better provision for the preservation of the public health."

Agreed to.

Chemists and Druggists Ordinance

THE ATTORNEY -GENERAL proposed the third reading of the Bill entitled An Ordinance to provide for the registration of Chemists and Druggists and to regulate the Sale of Poisons.

The COLONIAL SECRETARY seconded and the bill was read a third time.

The Council was adjourned till next Thursday.

FINANCE COMMITTEE.

A meeting of the Finance Committee was held immediately after the Council. The Colonial Secretary presided. The following votes were passed:

The Governor recommended the Council to vote a sum of One hundred Dollars (\$100) in aid of the vote, Colonial Secretary's Department and Legislature, Other Charges, Hansard Reports.

The Governor recommended the Council to vote a sum of Seven hundred and forty-five Dollars (\$745) in aid of the vote, Observatory, Personal Emoluments, for the following items:

5th Grade Computer, (\$480 to \$660) by \$60 annually).....	\$505
Allowances for night duty to two 5th-grade Computers.....	240

Total.....	\$745