

20TH MAY, 1909

PRESENT:—

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

H. E. COLONEL DARLING, R. E. (General Officer Commanding).

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

SIR HENRY BERKELEY, K.C. (Acting Attorney-General).

HON. MR. A. M. THOMSON (Colonial Treasurer).

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

HON. MR. A. W. BREWIN (Registrar-General).

HON. MR. F. J. BADELEY (Captain-Superintendent of Police).

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

HON. MR. E. A. HEWETT.

HON. MR. E. OSBORNE.

HON. MR. W. J. GRESSON.

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

HON. MR. WEI YUK, C.M.G.

MR. C. CLEMENTI (Clerk of Councils).

Minutes

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

HON. DR. HO KAI—Sir, I beg to point out that the resolution proposed by the Colonial Secretary was not seconded by me but by Mr. Wei Yuk.

Financial Minutes

THE COLONIAL SECRETARY, by command of His Excellency the Governor, laid on the table Financial Minutes Nos. 18 to 20 and moved that they be referred to the Finance Committee.

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

Financial

THE COLONIAL SECRETARY by command of His Excellency the Governor, laid on the table the report of the Finance Committee (No. 3) and moved its adoption.

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

Appropriation Bill

THE COLONIAL SECRETARY, moved the first reading of a Bill entitled an Ordinance to Authorize the Appropriation of a Supplementary sum of Five hundred and twelve thousand and two hundred Dollars and thirty-four cents, to defray the charges of the year 1908. In doing so he said:—In connection with this Bill I beg to lay on the table the draft Appropriation Account for the year 1908. This Bill Sir, when it has been read a second time, will be referred to the Finance Committee and any further information that hon. members may desire on the Bill I shall be happy to furnish in Finance Committee. I think the only item which the attention of hon. members need to be called at the present stage is that appearing on page 32—the item for the Canton-Kowloon Railway, which in accordance with the new colonial regulations has been transferred from railway construction Suspense Account temporarily to Expenditure.

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

Demonetization of Postage Stamps

THE ATTORNEY - GENERAL moved the second reading of the Bill entitled an Ordinance to Demonetize Postage Stamps bearing the Head of Her late Majesty Queen Victoria. In doing so he said—This Bill is introduced in order to bring us into line with the mother country in respect of the use of postage stamps bearing the head of her late most gracious Majesty the Queen. This Government has taken action upon the suggestion of the Postmaster-General, who was moved in that direction by the proper authorities.

THE COLONIAL SECRETARY seconded, and the Bill was read a second time.

Council then went into Committee and considered the Bill clause by clause.

On resuming, the ATTORNEY-GENERAL reported that the Bill had passed through Committee without amendment, and moved that it be read a third time.

THE COLONIAL SECRETARY seconded, and the Bill was read a third time and passed.

Children's Ordinance Amendment

THE ATTORNEY-GENERAL moved the second reading of the Bill entitled an Ordinance to amend the Law with respect to Children and Young Persons. In doing so he said—This Bill has been introduced by the Government on the suggestion of the Imperial Authorities. Its object is to bring our law with respect to punishment for capital offences into line with the law in England. Quite recently Statute 8, Edward 7th, has been passed in England exempting persons under sixteen from death sentence. Why that Act was passed one does not definitely understand because in practice this sentence in recent years has not been passed on young persons, but still the law is that it can be passed on persons under the age of sixteen who are amenable to the law. It has been considered advisable in England that capital punishment should not be passed on offenders under the age of sixteen, and the object of that Bill is to bring that law into force in this Colony.

THE COLONIAL SECRETARY seconded, and the Bill was read a second time.

Council then went into Committee to consider the Bill clause by clause.

HON. DR. HO KAI—The age of 16 European reckoning would be 18 Chinese reckoning.

THE ATTORNEY-GENERAL—This means sixteen according to the computation of the Court.

THE COLONIAL TREASURER—Trouble often arises through the interpreters. When a Chinese child says he is sixteen, the interpreter should say he is in his sixteenth calendar year. It is up to the Court to find out the age of any child.

THE ATTORNEY-GENERAL — It means sixteen from the date of birth, according to English reckoning.

THE COLONIAL TREASURER—Age must be considered according to English reckoning.

HON. DR. HO KAI—I only wish to point this out because the Chinese youth of sixteen is a totally different person from the European boy of sixteen.

HIS EXCELLENCY—You would make the age twelve and fourteen?

HON. DR. HO KAI—Yes, at the age of sixteen most Chinese youths are men.

After discussion it was agreed that the words should stand as in the Bill.

HON. MR. POLLOCK—With reference to clause 2, I don't see why a distinction is drawn between a child and a young person, I take it that the object of the Bill is to secure that no one under sixteen years of age shall have the death sentence passed upon them. These provisions are taken from a very long English Act of Parliament.

HIS EXCELLENCY—These are the words in the draft from England which has been sent to all colonies. I do not see any need for the distinction here; it probably refers to definitions made for other reasons in the English Act, from which this section is taken.

HON. MR. POLLOCK—It seems to me unnecessary.

HIS EXCELLENCY—Do you propose to omit the words "Young persons" or the word "Children"?

HON. MR. POLLOCK—I propose that clause 2 be taken out altogether and that instead of child or young person there should be submitted "a person under the age of sixteen years," these words to be added to clause 3.

This was agreed to.

On Council resuming, it was reported that the Ordinance had passed through Committee with slight amendments.

THE ATTORNEY-GENERAL — With the permission of the Council, moved that the Bill be read a third time.

THE COLONIAL SECRETARY seconded, and the Bill was read a third time and passed.

Larceny Ordinance Amendment

The ACTING ATTORNEY-GENERAL moved the second reading of the Bill entitled an Ordinance to amend The Larceny Ordinance, 1865. In doing so he said—The object of this Bill is to bring into force in this colony certain provisions in the Imperial Larceny Act of 1901, which Act repeals sections 75-76 of the English Act of 1861. The corresponding sections in the local Ordinance are 62 and 63, and under the law as it stands, before an agent can be convicted of having committed an offence he must have acted contrary to directions in writing. As money and property are seldom entrusted to agents with such directions the result has been that 99 agents out of 100 went free from punishment for misappropriating funds given into their hands. We propose to amend our Larceny Ordinance so as to make it coincide with the Imperial Act of 1901.

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

The Council then went into Committee to consider the Bill clause by clause.

On Council resuming the Bill was read a third time.

Public Health and Buildings Amendment Ordinance

THE ATTORNEY-GENERAL moved the second reading of the Bill entitled an Ordinance to amend The Public Health and Buildings Ordinances 1903-1908. In doing so he said—This Bill has as its object to effect certain desirable amendments to the Public Health and Buildings Ordinance 1903 and 1908. Since the last Bill was passed the control of the market building has been transferred from the Registrar-General's Department to the Sanitary Department, and this necessitates an alteration of the law. Clause 4 makes the required amendment and places the authority in the right hands. Some difference of opinion existing as to the best way of serving notices the Bill contains a provision which I hope the Council will approve. The first part will probably pass without challenge but I will propose in Committee to alter the second part by the insertion of a new proviso which I hope will meet with the assent of the Committee. The Bill also deals with question of the

exhumation of bodies interred in Chinese cemeteries.

THE COLONIAL SECRETARY seconded.

HON. MR. HEWETT — Your Excellency, there are one or two points which we wish to discuss, particularly I think with regard to section 6 dealing with section 335 of the principal Ordinance. I think, with regard to that clause, that the unofficial members are all agreed as to a certain change made in the proposed Bill, and perhaps it would be better if the whole thing were allowed to stand over to be dealt with in Committee.

HIS EXCELLENCY — The Attorney-General has already intimated that we propose to amend the proviso to the section to which the hon. member has alluded and I think we can very well leave that open till the Committee stage.

HON. MR. HEWETT—I merely wished to keep the point open, Sir.

Council then went into Committee to consider the Bill clause by clause.

HON. DR. HO KAI — I understand the learned Attorney-General says that the control of the markets has been transferred from the Registrar-General's to the Sanitary Department. But for sometime past, since the transfer was made, the letting of the stalls was entrusted to the Registrar-General, and the Attorney-General has not given any reason why it was considered necessary by Government to take away the letting of stalls from the hands of the Registrar-General and transfer the work to the head of the Sanitary Department. Unless he can give good reason for the change, I venture to think it is a mistake, because the Registrar-General is the officer who comes into most intimate contact with the Chinese, and he is also able to exercise supervision over the letting of stalls and prevent any possible abuse or corruption. He would be able to secure a much larger revenue for the Government, besides securing the confidence of the Chinese, and it would not take away from the Sanitary Department the control of the markets, therefore the officer most competent to lease these stalls should be kept doing that duty which he has done so well and efficiently during many years past.

THE COLONIAL TREASURER—This is only a question of a change of what is described as a sub-accountant. The Treasurer is responsible for seeing that the proper amount is collected, and I am perfectly satisfied that the head of the Sanitary Department can do it.

HIS EXCELLENCY — The Sanitary Department is responsible, generally speaking, for the whole control of the markets, and we thought it better that this one item should also go into their hands. The Registrar-General is fully employed with Emigration and other such questions, and we wish to give him as much time as possible to devote to Chinese matters. The proposal originated with him.

HON. DR. HO KAI—If the Registrar-General has not the time I can see no help for it.

THE REGISTRAR-GENERAL — I don't think I can admit that the head of another department would be able to do this work less efficiently than the Registrar-General, and being a member of the Sanitary Board The Registrar-General would always be at hand to give any advice or assistance called for.

Hon. Mr. HEWETT—It appears to me that it would be much better not to divide the authority over the market, and that it would be very much better that the letting of the stalls should be left to the Sanitary Board, not to the Sanitary Department, so that any question could be discussed at the Board. I suggest that instead of head of the Sanitary Department it should be Sanitary Board.

THE COLONIAL TREASURER—In that case you will make that particular part of finance in the Colony independent of the Treasurer. According to my hon. friend there is a suggestion that if we give it to the Board it would be impossible for me to lecture the Board. I can lecture the head of the Department, but not the Board.

Hon. Mr. HEWETT—You can lecture the Board if you wish to, but of course we have the right to reply.

THE COLONIAL TREASURER—It is a subordinate function entirely.

HON. MR. HEWETT—I don't press the point, but think it ought to come before the Sanitary

Board.

THE ATTORNEY-GENERAL—It has been suggested that section 82 of the Public Health and Buildings Ordinance, which deals with selling and bringing into the market food which is unfit for human consumption, should be amended. The section reads: "No person shall sell or expose for sale or bring into the colony or into the market any food," etc. It is silent as to the person who has in the colony, but not in the market, food unfit for human use. It has been suggested that it would be wise to add the words "or in his possession" to that clause. It is somewhat wide, but I think we may trust to the discretion of those who have to enforce the law that they will only proceed where they believe there is an intention to offer it for sale. A case has actually arisen where a man was found in the streets with meat in a putrid state, and there was every reason to believe he was going to sell it. The object of the provision is to protect persons from having tainted food given to them, and there seems sufficient justification for such a clause.

HON. MR. POLLOCK—What class of man was the man?

THE ATTORNEY-GENERAL — A full grown man (laughter).

HON. MR. POLLOCK—Was he a hawker?

THE ATTORNEY-GENERAL — I don't know.

HON. DR. HO KAI — It is extremely dangerous to give so much power. A man might have meat which he intended to throw away.

THE COLONIAL SECRETARY — When you arrest a hawker with such meat he says— "I was just going to throw it into the harbour."

HON. DR. HO KAI—I think it better to give the discretionary power to the magistrate. Let him decide whether the man intended to sell it or not.

HIS EXCELLENCY—It is difficult to prove intent to sell and we want to get some words which will make it easier to deal with the man with diseased meat in his possession when there is reasonable cause to believe that he intends to sell.

The following words were inserted after the word "market" in the 2nd line of the section:—"or have in his possession without reasonable excuse, the onus of proving which shall lie on him."

With reference to clause 4—

THE DIRECTOR OF PUBLIC WORKS said—In some cases plans have been submitted and approved, and without any action having been taken on them another set of plans has been sent in for the same premises which had certain divergences from the original plan. It was difficult to deal with the second set of plans before the original plans had been disposed of, as the Building Authority had no power to refuse plans if they were in accordance with the Ordinance.

The clause was agreed to.

On the clause as to the manner of serving notices—

HON. MR. HEWETT—The service of such notices should be by registered letter. I don't wish to cast any reflection on a very important branch of the Government service but it is well known that letters posted in the ordinary way do not always reach their destination.

HIS EXCELLENCY—In that part of the amendment we have adopted the words of the English Act.

HON. MR. HEWETT—I am talking of registered letters, Sir, in view of the fact that we have to deal with Chinese letter carriers and native servants. It is very important that notices of this kind should be registered. I hold that opinion very strongly because it is not an uncommon experience that letters sent through the post are not delivered.

HIS EXCELLENCY—I agree to the amendment.

HON. MR. HEWETT—I think it would be better to adopt the change which was introduced in the amending Ordinance last year and that the notice be served on "the person affected by the document."

HIS EXCELLENCY—The first part of the sub-section stands unaltered. The amendment now proposed by the Hon. Attorney-General is in substitution for the proviso, and has been

drafted in order to give effect to a resolution of the Sanitary Board, which referred to notices served on the owner only.

HON. MR. HEWETT—The point we want to make clear is that we find in practice that notices for removing nuisances, which ought to have been served on the tenant have been served on the owner and that notices which ought to have been served on the owner have been served on the tenant. We want to make sure that they are served on the proper person.

THE ATTORNEY-GENERAL—You will find that covered in the next paragraph.

Finally it was agreed to substitute the following for the Proviso to the section:—Provided that any notice, summons or order required by this Ordinance to be given, issued or made to the owner of any premises shall be served either by leaving the same at the place of business or residence within the Colony of such owner or of his authorised Agent or if the whereabouts of such owner or of his authorised Agent be unknown, by post by a registered letter addressed to such owner or to his authorised Agent, at his last known place of residence or of business in the Colony.

On the clause relating to exhumation of bodies—

HON. MR. HEWETT—Does the cost of re-interment of bodies mean re-interment in the Colony? I do not suppose the Government means to re-inter Chinese outside the Colony.

THE COLONIAL TREASURER—Why not? We want to encourage them to inter outside the Colony.

HON. MR. HEWETT—I want to know if it is the policy of the Government?

HIS EXCELLENCY—Interment must be in an authorised cemetery. If exhumation is in consequence of orders issued by Government, the Revenue provides the reasonable cost of re-interment in the Colony. It was not the intention to provide for the expenses of exporting bodies out of the Colony.

The provision for exhumation of bodies was then approved with certain amendments, and the Bill was left in Committee, the Clerk of the Council being instructed to have the sections renumbered throughout the Bill.

Civil Procedure Ordinance Amendment

THE ATTORNEY-GENERAL—I do not intend to proceed with the next order of the day, the third reading of the Bill entitled on Ordinance to amend the Code of Civil Procedure. I move that it stand over.

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

Life Insurance Companies Ordinance Amendment

THE ATTORNEY-GENERAL moved that Council go into Committee on the Bill entitled an ordinance to amend the Life Insurance Companies Ordinance 1907.

THE COLONIAL SECRETARY seconded, and Council went into Committee and considered the Bill clause by clause.

On resuming, the ATTORNEY-GENERAL reported that the Bill had passed through Committee with slight amendments, and moved that it be read a third time.

THE COLONIAL SECRETARY seconded, and the Bill was read a third time and passed.

Merchant Shipping Ordinance Amendment

THE ATTORNEY-GENERAL moved that the Council go into Committee on the Bill entitled An Ordinance further to amend the Merchant Shipping Ordinance, 1899. In doing so he said—This Bill was before the Council sometime ago, when it was passed with the exception of two clauses which were left over for the consideration of myself and my friend Mr. Pollock. We came to certain conclusions on those clauses, but subsequently the Bill received re-consideration generally. I have a number of amendments to move which will not affect the principle of the Bill or its details, but will improve its phraseology.

THE COLONIAL SECRETARY seconded, and Council went into Committee to consider the Bill clause by clause.

On Council resuming the ATTORNEY-GENERAL reported that the Bill had passed through Committee with sundry amendments and he moved that it be read a third time, and that the title thereof be deemed sufficient.

THE COLONIAL SECRETARY seconded, and the Bill was read a third time and passed.

The Tramway Bill

THE ATTORNEY-GENERAL moved that Council resolve itself into a Committee of the whole Council on the Bill entitled an Ordinance for authorising the construction of a tramway within the Colony of Hongkong.

THE COLONIAL SECRETARY seconded.

HIS EXCELLENCY—Gentlemen, on 17th December last the hon. Attorney-General moved that the Council resolve itself into Committee to discuss this Bill for a new tramway. The Council then heard a petition by the Rt. Rev. Bishop Pozzoni, and I addressed the Council. The hon. member who represents the Chamber of Commerce proposed that the discussion should be adjourned in order that hon. members might consider the circumstances both of that petition, and of the speeches which had been made on the question. The discussion was accordingly adjourned, and question of the rival routes for this tramway was referred to the Public Works Committee of this Council on 30th December last. Their report was presented to the Council on 11th March, and was adopted. The Public Works Committee condemned the trestle scheme, and they recommended the adoption of the scheme of an open cutting, or alternatively, if that was not approved, the adoption of the third route, which was for a tunnel under the public gardens. The Company who are promoting this scheme were therefore told that the Government would not be able to support the project for carrying the tramway on trestles up Glenealy Valley, and they were asked which of the two other schemes they preferred. They replied, that they preferred the second viz; the open cutting through the gardens.

But in order that the Company should not be put to undue expense in preparing detailed plans before this Council had finally approved that proposal, I suggested that the Company should prepare sketch plans only. These will be circulated to members of Council in order that they may see roughly what the proposals involve with

regard to the public gardens, and how far it will injure them. I propose to adjourn the discussion of this motion to-day in order that hon. members may have time to study the plans, and also in order that the petitioners may have an opportunity of investigating them and stating whether or not they have any objection to the route now suggested. I also propose to circulate to members of Council before our next meeting, a statement by the Superintendent of the Botanical and Forestry Department describing the effect on the public gardens of this scheme. At our next meeting we will discuss the question as to whether the general proposal is accepted and whether the Bill is to be referred to Committee.

THE COLONIAL TREASURER — To a special Committee? I may say that I don't think the tunnel will ever be made.

HIS EXCELLENCY — That will be discussed at next meeting.

THE COLONIAL TREASURER—They are only haggling over the matter.

HIS EXCELLENCY—The plan to which I alluded will be left on the table for hon. members to consult if they wish to do so. Council will adjourn until Thursday next.

FINANCE COMMITTEE.

A meeting of the Finance Committee was then held—the Colonial Secretary presiding. The following votes were passed:

The Governor recommended the Council to vote a sum of One hundred and thirty-two dollars and fifty cents (\$132.50) in aid of the vote, Registrar-General's Department, Emigration Sub-Department for the following items:—

Sergt., Allowance for Fuel and Light	\$42.50
Sergt., Language Allowance (Ch'ese)	\$90.00
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Total	\$132.50
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Office Charges

The Governor recommended the Council to vote a sum of Two hundred and sixty-nine Dollars (\$269) in aid of the vote, Governor, Other Charges, Typewriter.

Typhoon Refuge

The Governor recommended the Council to vote a sum of Twenty-five thousand Dollars (\$25,000) in aid of the vote Public Works Extraordinary, Causeway Bay Typhoon Refuge, Deepening shallow area to one foot below *Ordinance Datum*.

THE CHAIRMAN—The sum appearing on the estimates for the year for this service is \$20,000, and the Public Works Department made more rapid progress than was anticipated, therefore this extra item is now required.

HON. MR. POLLOCK—When is this work likely to be completed?

THE DIRECTOR OF PUBLIC WORKS—Before the end of the current year (applause).