

8TH JUNE, 1911.

**PRESENT:—**

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

HON. MR. WARREN BARNES (Colonial Secretary).

HON. MR. C. G. ALABASTER (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. CAPTAIN F. W. LYONS (Captain-Superintendent of Police).

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

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

HON. MR. E. A. HEWETT.

HON. MR. C. MONTAGUE EDE

HON. MR. C. H. ROSS.

MR. R. H. CLEMENTI (Clerk of Councils).

**Minutes**

The minutes of the last meeting were read and confirmed.

**New Member**

MR. WARREN BARNES took the oath, and assumed his seat as a member of the Council.

**The Military Contribution**

THE HON. MR. C. H. ROSS, in the absence of the Hon. Mr. Pollock, asked the following questions standing in the name of the latter:—

1 Is it not a fact that, if the scheme of His Excellency the Governor for devoting half of the margin (*i.e.*, half of the excess of Ordinary Revenue over Ordinary Expenditure exclusive of Military

Contribution and Volunteers) to Military Contribution had come into force on the 1st January, 1904, the average annual saving to the Colony on such a scheme for the 7 years from 1904 to 1910 inclusive would only have amounted to about \$75,380? If not, what other figure does the Government suggest as being correct?

2 Is it not the fact that, if the Colony had paid a fixed annual contribution of \$1,000,000 during the said period of seven years, the average annual saving to the Colony would have been about \$285,940? If not, what other figure does the Government suggest as being correct?

3 Is it not the fact that there is no prospect of the Expenditure of the Colony being decreased during the next few years if our necessary Public Works are to be begun and or proceeded with with reasonable despatch?

4 Will not such Expenditure involve the raising of a corresponding Revenue and the payment of a corresponding Military Contribution, if the present method of assessing the latter remains unaltered?

5 If the answer to Questions 3 and 4 is in the affirmative, must not the fixed contribution proposed by the Unofficial Members necessarily be advantageous to the ratepayers from a pecuniary point of view, both as compared with the present system and as compared with the half-margin scheme suggested by His Excellency the Governor?

6 Will the Government forward the above five Questions and Answers thereto to the Right Honourable the Secretary of State for the Colonies for his consideration in connection with the proposal of the Unofficial Members that the Military Contribution should be fixed at an annual sum of \$1,000,000?

THE COLONIAL SECRETARY replied:—

- 1 The exact figure of the annual average saving should be \$75,339.43.
- 2 The exact saving is \$286,001.75.
- 3 and 4 The reply is in the affirmative.
- 5 Since the average Military Contribution for the past 7 years is stated by the hon. member to have been \$1,285,940, its reduction to \$1,000,000 would obviously be a pecuniary gain to the taxpayers. The proposal made by His Excellency to devote half the margin between Ordinary Revenue and Ordinary Expenditure to the Military Contribution was based on the assumption of the Military Contribution remaining practically at its present amount. The principle, however, that the Military Contribution should be a percentage of this margin instead of a percentage of gross revenue was suggested by His Excellency in order to give effect to Mr. Chamberlain's intention that the amount of the contribution should rise and fall according to the prosperity of the Colony, and in order that it should not increase in consequence of increased taxation to meet increased expenditure. If therefore it were desired that the average contribution should be decreased by the sum named by the Honourable Member, viz., \$285,980, this result could be obtained by devoting about 38 or 39 per cent. of the margin to Military Contribution instead of 50 per cent.
- 6 The questions and replies will be forwarded to His Majesty's Secretary of State as desired.

#### **Sale of Food and Drugs Amendment Ordinance**

THE ATTORNEY - GENERAL moved that Council resolve itself into a Committee of the whole Council on the Bill entitled, "An Ordinance to amend the Sale of Food and Drugs Ordinance, 1896."

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

Clause 10 (a)—

THE ATTORNEY-GENERAL—Since the last meeting the Registrar-General and the Chinese unofficial members of this Council have settled on the Chinese characters to be used, but in consequence of a suggestion made to me by the hon. member on my immediate left (Hon. Mr. Wei Yuk) I beg leave to move an amendment which affects slightly the form on which we then agreed.

HIS EXCELLENCY—The Bill has been read clause by clause, and the Committee adjourned, as members will recollect, in order to give the Registrar-General and the Chinese members of this Council an opportunity of discussing the Chinese translation of the words the Committee had agreed upon. You will see that the printed Bill as presented to-day differs slightly from the original Bill in the words in inverted commas as well as in the Chinese characters. They are recommended by the Registrar-General and the Chinese members as being the best way to explain to a Chinese purchaser the full meaning of the phrase "machine-skimmed milk." The motion is that the clause stand as printed in the Bill now before the Council, but with the omission of the word "therefore" and the sixth Chinese character.

The amendment was approved.

THE ATTORNEY - GENERAL — With regard to the latter part of the same clause, an alteration has been made to meet an objection raised by the hon. and learned member who is not here to-day. I have put in the words "For sale and consumption in the Colony."

The clause as amended was agreed to.

On Council resuming,

THE ATTORNEY-GENERAL reported that the Bill had passed through Committee with only two 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.

#### **Larceny (Amendment) Ordinance**

THE ATTORNEY-GENERAL moved the first reading of a Bill entitled "An Ordinance to amend the Larceny (Amendment) Ordinance 1909."

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

The objects and reasons are:—Section 4 of Ordinance No. 7 of 1909 was intended "to bring into force in this Colony certain provisions in the Imperial Larceny Act of 1901" (*see* Hongkong Hansard, 1909, page 27). The Imperial Act imposes penal servitude for a term not exceeding seven years or imprisonment with or without hard labour for a term not exceeding two years. It is the practice in this Colony to substitute imprisonment with or without hard labour for penal servitude, but to make the term equal in duration to the term of penal servitude, when the provisions of Imperial penal statutes are introduced into the Colony. The departure from this practice was not pointed out when the Ordinance, which this Bill amends, was before the Council in 1909, and was evidently due to an oversight in drafting because the punishment provided by Section 62 of Ordinance No. 5 of 1865, replaced by Section 4 of Ordinance No. 7 of 1909, was seven years' hard labour, and because Sections 64, 65, 67, 68, 69, 70 and 71 of Ordinance No. 5 of 1865, which are not referred to in Ordinance No. 7 of 1909 (and which were not referred to when the Bill was before the Council), are thereby affected to the extent of cutting down the punishment from seven years to two. This Bill is therefore intended to correct what was evidently a mistake.

#### **Trade Marks Amendment Ordinance**

THE ATTORNEY - GENERAL—I rise to move the second reading of the Bill entitled, "An Ordinance to amend the Trade Marks Ordinance, 1909." This is a very short amending Ordinance, and I think that the objects and reasons state exactly why it has been introduced. The Registrar of Trade Marks has a seal, and the inscription on that seal does not tally with the inscription required by the Principal Ordinance. As we are amending the Ordinance it is easier to validate the existing seal than to have a new seal, especially as we would have to have an Ordinance to validate documents sealed with the existing seal, in any event. The other amendments are stated in the objects and reasons.

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

Council then went into Committee to consider 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.

#### **Patents Amendment Ordinance**

THE ATTORNEY-GENERAL—I rise to move the second reading of a Bill entitled, "An Ordinance to amend the Patents Amendment Ordinance, 1909." The intention and scope of this are fully stated in the objects and reasons attached to the Bill, which have been already printed in Hansard. I do not think there is anything further I need add.

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

Council then went into Committee to consider 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.

#### **Foreign Offenders' Detention Ordinance Amendment**

THE ATTORNEY - GENERAL moved the second reading of a Bill entitled, "An Ordinance to amend the Foreign Offenders' Detention Ordinance, 1872." In doing so he said—The preamble of Ordinance 1 of 1872 says: "Whereas subjects of foreign Governments resorting to China and Japan who have been accused or convicted of crimes committed there are frequently brought within this Colony in the course of their transmission to their respective countries for trial or punishment on such

charges or convictions, and it is expedient to provide for the temporary detention and custody in this Colony of such offenders, pending the necessary arrangements for their transmission as aforesaid." At the time when that Bill was passed people who committed crimes in China were generally taken to their own countries for trial. Since then consular jurisdiction has grown, and it is more common nowadays to be taken back to China and tried by their own Consul at the place where the crime was committed. It is just as important to temporarily detain prisoners being taken East as it is to temporarily detain prisoners being taken West. Therefore, and in order to remove any possible doubt as to whether or not the consular courts of a country are to be treated as part of that country, by the first two sub-sections of section 2 of this Bill, *a* and *b*, I propose to delete the words "to their respective countries" in the preamble and the words "to his own country" in section 3 of the Principal Ordinance. The other amendments have been inserted at the suggestion of his Honour the Chief Justice, who has been looking through the Ordinances of the Colony with a view to revision. Section 5 provides that offenders must be brought before a Magistrate and that certain conditions must be complied with. By sub-section (4) of that section an offender must be asked if he has any valid cause to show why he should not be committed to gaol to await the order of the Governor. Apparently that clause is put there owing to the extradition precedent. This is not an Extradition Ordinance. A man does not come here as to an asylum. He is brought here in lawful custody. The Chief Justice has suggested that the clause ought not to be there, and I am entirely in the hands of Council with regard to that and the subsequent amendment which is consequential on it. I shall suggest in Committee, if the Council approves of the principle of *c* and *d*, that these shall be slightly recast, but I submit that *a* and *b* should in any event be passed into law.

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

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

On clause 2,

THE ATTORNEY - GENERAL — With

regard to *c* and *d*, I would suggest that the matter be left in Committee so that members may have an opportunity of considering whether or not we ought to leave sub-section (4) of section 5 in. It takes away apparently a right which a defendant seems to have. I have stated in the Objects and Reasons why that right should be taken away, but it is quite possible that members of Council may take an opposite view.

HIS EXCELLENCY—I see no reason for leaving the Bill in Committee unless a general wish is expressed that that course shall be adopted.

THE COLONIAL TREASURER — A criminal has no rights at all. He comes here conditionally. He does not come as a free man. Why should he be entitled to the rights of a free man?

HON. MR. EDF—Can we have time to study the previous Ordinance?

HIS EXCELLENCY—Certainly; we will leave the Bill in Committee if you wish it. The persons affected by this Bill are, generally speaking, Europeans who are being taken through this Colony in custody. Instead of being sent for trial to their native countries it often happens that their national authorities desire that they should be tried in the Consular Courts. The Bill authorises the detention of such persons, and omits the clause giving to them an opportunity of showing cause why they should not be committed. They have already been committed elsewhere and are in custody. The Chief Justice thinks this sub-section should be omitted.

THE ATTORNEY-GENERAL — I might add that there is a clause in the Principal Ordinance which this Bill does not touch, to the effect that a Magistrate must be satisfied as to the identity of the defendant.

HIS EXCELLENCY—There seems to be no object in allowing a prisoner to show cause to the satisfaction of a Magistrate why he should not be committed because he has already been committed. The Bill allows a Magistrate to authorise the detention of a prisoner pending the order of the Governor under section 8.

HON. MR. EDE—I don't think after that explanation that I desire a postponement.

HON. MR. HEWETT—Why should a man, who is to be sent to Austria or the United States for trial, be allowed to have the choice of being tried by a consular official?

THE ATTORNEY - GENERAL — He does not. Cases occasionally arise where, say, a man commits an offence in Canton and is not caught there. He gets to Bangkok or some other place, where he is arrested and brought back in custody to Canton to be tried where all the witnesses are.

HON. MR. HEWETT—Where the offence is committed.

THE ATTORNEY-GENERAL—Where the offence is committed, and where all the witnesses might be. The moment he arrives in a British Colony if it were not for the Principal Ordinance he would be a free man.

THE COLONIAL SECRETARY — If a man is brought before the Court the Magistrate is bound to commit him, but the Governor is not bound to issue an order. The discretion of the Governor in issuing an order is not interfered with.

THE ATTORNEY-GENERAL — No one knows what cause would justify a Magistrate in discharging him. In the last case which arose the man was asked to show cause, and he said he had been two months in custody and he thought that was enough. (Laughter.) A Magistrate might think that, too.

HIS EXCELLENCY — There have been several cases lately of Europeans passing through in custody where the desire of their Government was to transmit them to be tried by their consular officers, but unless the Ordinance is amended it may be argued that we can only detain them for transmission to Europe.

The clause was agreed to and Council resumed.

THE ATTORNEY - GENERAL moved that the Bill be read a third time.

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

HIS EXCELLENCY—Council will adjourn *sine die*.