

6TH JUNE, 1912.

PRESENT:—

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT, HON. MR. CLAUD SEVERN.

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS, MAJOR-GENERAL C. A. ANDERSON, C.B.

HON. MR. C. CLEMENTI (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. E. R. HALLIFAX (Registrar-General.)

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

HON. SIR KAI HO KAI, M.D. C.M.G.

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

HON. MR. E. OSBORNE.

HON. MR. MURRAY STEWART.

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

Absent

HON. MR. C. H. ROSS.

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

Minutes

The minutes of the previous meeting were read and approved.

Financial Minutes

THE COLONIAL SECRETARY, by command of His Excellency the Officer Administering the Government, laid on the table Financial Minutes Nos. 24 to 28, and moved that they be referred to the Finance Committee. In connection with

No. 25, he also laid on the table a printed paper giving details of the vote.

THE COLONIAL TREASURER seconded.

The Contribution to the University

HIS EXCELLENCY—As regards vote 28 the Council will remember that the original estimate of \$9,000 was supplemented by \$5,000, making a total of \$14,000. Since then the Secretary of State has not seen his way to approve of the \$14,000, but has approved of \$10,000 as the Government contribution to the University. The vote of \$5,000 must therefore be cancelled, and this supplementary vote of \$1,000 inserted in its place. I propose that the whole sum of \$10,000 should be paid over to the University this year. In his speech on the Estimates last October, in referring to this subject, Sir Frederick Lugard said:—"The University vote, should the Council approve, will be paid in full in order to cover cost of passages, etc. I propose that the sum shown in the Estimates shall annually be paid over to the funds of the University, as a recognition by Government on the one hand of the large amount subscribed by voluntary contributions towards this project, and on the other hand because the University will greatly benefit the taxpayers of the Colony by affording a means of completing the education of the pupils in the highest classes of our secondary schools." Therefore, I propose, that the sum of \$10,000 should be paid to the University as the contribution for this year, and thereafter the same sum every year.

The motion was agreed to.

Financial

THE COLONIAL SECRETARY, by command of His Excellency the Officer Administering the Government, laid on the table the report of the Finance Committee (No. 6), and moved its adoption.

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

Advertising Regulations

THE COLONIAL SECRETARY—I beg to lay upon the table "Regulations made by the Officer Administering the Government-in-Council under section 2 of the Advertisements' Regulation Ordinance, 1912 (Ordinance No. 19 of 1912), on the 4th day of June, 1912," and move that they be adopted.

THE ATTORNEY-GENERAL seconded.

HON. MR. OSBORNE—I beg to move that the words "or occupier" be omitted from the fourth line in paragraph 1. It seems to me that it will cause confusion if the owner and the occupier both have a right to allow posters to be placed on buildings. I think that right should rest only with the owner.

HON. MR. MURRAY STEWART seconded.

HIS EXCELLENCY—The owner of the property might not be in the Colony.

HON. MR. OSBORNE—His representative would be.

HON. SIR KAI HO KAI—I think the paragraph should stand as it is. The occupier should have the right of saying whether he would allow his walls to be disfigured for the benefit of the landlord. It is hard if a tenant should rent a house and then find that the landlord has given permission for the walls to be plastered with advertisements.

HON. MR. OSBORNE—I will put it the other way. Suppose I am the owner of a house and object to the walls being covered with advertisements. I let my house to a Chinaman who does not object. In that case the object of the regulations would be defeated.

HON. SIR KAI HO KAI—The owner can make his arrangement with the tenant.

HON. MR. MURRAY STEWART—Would it do to say "owner and occupier"?

THE ATTORNEY-GENERAL—These words

"without the consent either of the owner or occupier previously given in writing" are modelled on the English Act.

HIS EXCELLENCY—The amendment is "without the consent of the owner or his representative and the occupier"?

HON. MR. OSBORNE—Yes.

THE ATTORNEY-GENERAL—I understand the resolution is that the regulation be referred back to His Excellency in Council with these suggestions?

HON. MR. OSBORNE—Yes.

It was agreed that the regulations should be referred back to Executive Council.

Sanitary Regulations

THE COLONIAL SECRETARY—I beg to lay on the table Amendments of Byelaws made under section 16 of the Public Health and Buildings Ordinances, 1903 to 1909. These byelaws were made by the Sanitary Board on 4th June and reached me yesterday. The Head of the Sanitary Department requested that they be laid before the Council to-day as the epidemic of plague is severe and he wishes that the regulations should come into operation with as little delay as possible. I therefore move, if no member objects, that the byelaws be approved.

THE ATTORNEY-GENERAL seconded.

HON. SIR KAI HO KAI—I do not propose to oppose the adoption of the byelaws, but I see that some amendments have been introduced in the last lines in regard to compensation being given. These words would take away the benefit of the previous compensation to be given in any case, because if the Board ordered destruction or removal of any structure that structure would be unlawful as soon as the byelaws were passed and in no case would compensation be given. I propose that the byelaws be amended accordingly.

THE CAPTAIN SUPERINTENDENT OF POLICE—We have no power to amend.

THE COLONIAL SECRETARY—You wish to refer the byelaws back to the Sanitary Board with a recommendation that they should be amended?

HON. SIR KAI HO KAI—Yes.

THE DIRECTOR OF PUBLIC WORKS —I think the hon. member is under a misapprehension. What the words refer to is the sanction which has been necessary since the passing of the Public Health and Buildings Act of 1903 for the erection of such ceilings or hollow walls in the case of buildings in every district other than in the European and Hill district. In the Ordinance power was taken to prohibit the construction of these except with the special permit of the Building Authority. I take it that is what is referred to as requiring the Board to prove that the maintenance of the ceiling or wall was at the time of its removal or destruction unlawful, and that it had been unlawfully erected.

The byelaw was referred back to the Sanitary Board.

Report

THE ATTORNEY-GENERAL—I have to lay upon the table the report of the Standing Law Committee on the Full Court Bill, 1912.

Airships Ordinance, 1912

THE ATTORNEY-GENERAL moved the first reading of a Bill entitled, "An Ordinance to regulate the ascents, descents and flights of balloons, airships, aeroplanes and parachutes."

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

The Objects and Reasons attached to the Bill are:—Section 8 of Ordinance No. 2 of 1895 as amended by section 4 of Ordinance No. 3 of 1911 contained certain regulations for the control of aviators which was justified by the full title of the latter Ordinance, namely, "An Ordinance to amend The Defences (Sketching Prevention) Ordinance, 1895, and to control balloonists and others who have special opportunities for obtaining information respecting the defences of the Colony." As the latter part of this full title will disappear with the incorporation of Ordinance No. 3 of 1911 in

Ordinance No. 2 of 1895 in the New Revised Edition, and as the relation of aviation to the defences of the Colony (required by Article XXI (3) of the Royal Instructions) will therefore become somewhat obscured, and as the recent development of the aeroplane industry has rendered practicable flights from neighbouring countries to and over the Colony and its waters, it seems desirable that all regulations respecting aviation should be grouped together in a fresh Ordinance relating to that subject alone.

Full Court Ordinance, 1912

THE ATTORNEY-GENERAL moved that the Council go into Committee on the Bill entitled, "An Ordinance to make provision for the reconstitution of the Full Court."

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

HON. SIR KAI HO KAI—As there are certain amendments proposed to be made to the preamble, I propose that the preamble be read first so as to save time.

THE ATTORNEY-GENERAL — In the preamble the majority of the Law Committee recommended the deletion of the words after "Supreme Court," and, stated shortly, the effect of the other amendments proposed by the unofficial majority of the Law Committee is that all references to the appointment of a temporary Judge should be deleted.

HON. MR. OSBORNE—I beg to move as an amendment that the following words be omitted from the preamble and that the whole of the recommendations of the majority of the Law Committee of this Council be adopted. These words are:— "And to make provision for the appointment of a temporary judge in cases where a sufficient number of permanent judges are not available." For several years past it has been increasingly evident that the system of appeal now in vogue by which the Chief Justice may be called upon to review his own decisions is unsatisfactory, and this feeling of dissatisfaction as to the existing state of affairs has culminated in the Bill before Council. As to the necessity for some reform in the constitution of the Appeal Court there is, I believe, no difference of opinion, and it is only when

we come to consider the means by which reform shall be effected that disagreement arises. The Government's proposal, as I understand it, is that the Judge of the Supreme Court for China, that is to say, the Chief Justice at Shanghai, shall attend in Hongkong for two periods of 15 days in each year, to sit with our own Judges as a Court of Appeal. The alternative proposal, admitted on all sides to be a superior one, is that a third judge should be permanently appointed to our Courts. It is, I understand, the generally accepted opinion that the first proposal will be unsatisfactory and unworkable; whilst the alternative proposal of a third judge is eminently suited to meet the end we all have in view. The existing constitution of our Appeal Court was formed in the year 1873, nearly 40 years ago, and to illustrate to what an extent its business has increased, it appears that in 1874 there were 1,016 Summary cases as against 1,868 last year; whilst cases in Original Jurisdiction rose during the same period from 50 to 200; that is to say, minor cases have nearly doubled, whilst important cases, heard by the Chief Justice, have quadrupled. And yet our staff of judges has not increased in the slightest degree. The point to which I desire to direct attention is this: Will the appointment of a temporary judge from Shanghai in any way tend to solve this problem of increased work? Will his presence in this Colony for 15 days twice in a year enable appeal cases to be disposed of in a manner that will satisfy the growing requirements of the Colony? A large appeal case might last, as it has done in the past, longer than 15 days, in which event I would like to ask what becomes of the other appeal cases remaining to be heard? Is their hearing to be postponed for five months waiting for the Judge's next visit from Shanghai? And even though the Shanghai Judge did manage to dispose of all the cases within 15 days, it is not probable he would have to so rush his work that he could not give the time he might rightly regard as necessary for a matured judgment and for discussion with his fellow judges; is it not conceivable that he would frequently find himself involved in the facts and points of law of a new case before he had properly digested those of its predecessor? Then, again, what are the qualifications of a Shanghai judge to sit in the Courts of Hongkong? Litigation in Hongkong is mostly between Chinese; cases where Chinese customs and Chinese methods of accounting are frequently involved; intricate cases which for their disentanglement may need

a comprehensive knowledge of local Chinese custom and character. The jurisdiction of the Shanghai judge on the other hand is confined entirely to British subjects or where British subjects are defendants, and I submit that it is open to question whether a judge whose experience is thus limited is qualified to sit for two short periods a year upon the Bench of Hongkong. On the other hand, the advantages of a third permanent judge are manifold. We should have the work of the Courts carried on continuously by three men instead of two; we should have a Court of Appeal available during 12 months in the year instead of one month; in the event of one of the judges being indisposed we would still have two to continue the work; in the Court of Appeal, cases would be taken immediately they become ready for hearing instead of having to wait five months for the judge from Shanghai; and there would be adequate time for a judge to arrive at a decision on one appeal case before having to consider the details of the next. To illustrate the possible hardships which might arise under the system of bringing in a judge from outside for 15 days in every six months, I will take two instances out of many that might be quoted. Take the case of a man convicted of murder and a point being reserved for consideration by the Full Court. Is it justice, would it be humane, for such a person to be subjected in the event of our two local judges differing, to five months' torture of suspense, pending decision by the Shanghai judge whether he shall or shall not be hanged? Or take the instance of a receiver being appointed in a partnership dispute where the Chief Justice's decision is appealed against and there ensues an interval of five months' waiting for the Shanghai judge; is it not probable that during this period of waiting, the appellant's business might be seriously jeopardised, even though, in the end, his appeal is successful? Whatever may have been the reasons which prompted the suggestion of such a make-shift arrangement as bringing a judge from Shanghai, whatever such reasons may have been in the past, they do not hold good to-day. Our late

Governor has stated that the appointment of a third judge would be most desirable and he hoped that when the new Courts were finished the Colony would be in a position to incur the expense involved. The legal fraternity are unanimously in favour of a third judge, the unofficial members of this Council support the proposal, and the community is, I feel sure, prepared to pay the expense. For these reasons then I bring forward this amendment.

HON. MR. MURRAY STEWART — Your Excellency, I rise to second the proposed amendment. The arguments put forward in support of it are substantially those which influenced the majority of the Law Committee, of which I was one, to recommend those alterations and additions to the Bill which the hon. member now moves should be accepted, as a whole, by the Government. I do not intend to attempt any amplification of those arguments. I do not think they require any amplification. I am content that they should be left to appeal, simply, as they stand, to whomsoever they may concern. If their appeal were direct to the full court of the commonsense of this Council — if the commonsense of this Council were free to decide the case here and now—I should have little doubt about the verdict. But I apprehend that this simple matter cannot be so simply settled. I imagine that the proposal to enlist the services of the Shanghai Judge can hardly have been embodied in this Bill without an arrangement having been previously come to between the Colonial Office and the Foreign Office. Assuming this, I fear that the Government's attitude may be fettered by past utterances on the subject in previous correspondence with the Home Authorities. There are certain other pronouncements which may have a hampering effect upon the present decision. At our last meeting I referred to one, made in 1908 on behalf of the Chamber of Commerce, expressing approval of the idea, embodied in this Bill, of enlisting the services of the Shanghai Judge. The Committee of the Chamber of Commerce desire me on this occasion to say that its members are now unanimously of the opinion that it is desirable to proceed at once to the appointment of a third Judge. Opinion has not undergone any change as to the desirability of having one. The desirability of that was recognised four years ago. In October, 1908, Sir Frederick Lugard wrote to

the Chief Justice as follows:— "We are all agreed that the appointment of a third Judge would be most desirable—but it is my duty to examine the comparative urgency of a number of extremely desirable requirements in relation to the finances of the Colony— and I have come to the conclusion, so far as my personal view is concerned, that in the coming year the Colony cannot afford a third Judge." No funds for a third Judge being available, the problem was to find a substitute for a third Judge, and the solution offered by this Bill met with general approval. It was understood at the time that it would effect a considerable saving. The Shanghai Judge was to receive £300 a year and expenses— estimated at £50 per annum, as against £1,300 a year for a second Puisne Judge of our own. But, sir, I understand that now, the Government, realising the necessity of relieving the pressure of work referred to by the proposer of this amendment, has it in mind, in the event of this Bill being passed as drafted, to create a third Magistrate whose salary could hardly be less than £800 or £900 a year, say, £850 for argument's sake. Adding this sum to the £350 required for the Shanghai Judge the Colony would, under the proposed scheme, be paying £1,200 for services not nearly so efficient as those which, I submit, my hon. friend and colleague has shown can be rendered by a third permanent Judge of our own at a cost of £1,300. Even if the rumour that the Government intends to create a third Magistrate as a part of the Shanghai scheme is not authentic, I venture to predict that it is prophetic of what will happen if you go on with the scheme. The natural growth of the work of administering Justice in this Colony will force some such expedient upon you and you will find that, at great inconvenience, you will be effecting a saving of £100 or £200 a year. Therefore, I think that the argument of economy, on which was based the justification of the Shanghai scheme, when it was originally proposed, breaks down. It was the only argument in its favour, and with its disappearance the scheme appears to have no rational justification whatsoever. Accordingly, I oppose it, and I beg the Government to accept, if possible, the proposed amendment.

HON. MR. POLLOCK—I should like to add only a few words to those which

have fallen from my hon. friends opposite. I may say I am entirely in accord with every word they have uttered. As you are aware, sir, the hon. senior unofficial member of this Council and myself are both upon the Law Committee and have recommended the appointment of a permanent third Judge. I myself have been practising in this Colony for the past 24 years, and my hon. friend, the senior unofficial member, for a considerably longer period. Therefore I think the senior unofficial member and myself may claim to be experts in this matter, and when we say we consider a permanent third Judge should be appointed, I think we may safely say we are speaking with some knowledge of the problem.

His EXCELLENCY — The Council has listened with great interest to the remarks made by the mover and seconder of the amendment to the preamble and to the other portions of the Bill. They have put forward the views expressed by the majority of the Law Committee so clearly, and their reasons for the proposals to cut out certain lines in the preamble and other parts of the Bill, that I propose to send a copy of the remarks made to the Secretary of State, and to leave the Bill in Committee for the present. (Applause.)

His EXCELLENCY—Council will adjourn until this day week.

FINANCE COMMITTEE.

A meeting of the Finance Committee was held afterwards, the COLONIAL SECRETARY presiding. The following votes were passed:—

Sanitary Charges

The Officer Administering the Government recommended the Council to vote a sum of Seven thousand five hundred Dollars (\$7,500) in aid of the vote Sanitary Department, Other Charges, Sanitary Staff, for the following items:—

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| Ambulances, coffins, dead vans and dead boxes..... | \$2,500 |
| Compensation for damages by disinfection..... | 2,000 |

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| Coolie labour..... | 3,000 |
| | \$7,500 |

THE CHAIRMAN—There has been a severe epidemic of plague and additional work has been cast on the Sanitary Department necessitating additional expenditure.

SIR KAI HO KAI—May I ask in connection with this vote whether any amount has been provided for pumping sea water for the people to use in cleaning their houses?

THE CHAIRMAN—I believe we shall have a full supply of fresh water almost immediately.

THE DIRECTOR OF PUBLIC WORKS — Yes, from to-day.

Kowloon-Canton Railway

The Officer Administering the Government recommended the Council to vote a sum of One million four hundred and seventy-two thousand three hundred and ninety Dollars (\$1,472,390) in aid of the vote Kowloon-Canton Railway, Extraordinary Expenditure, Resumption of land for terminal station site.

THE CHAIRMAN — At the meeting of Council I laid on the table a paper which gives details of this vote, and I believe every member of this Council is conversant with the negotiations which have been carried on between the Wharf and Godown Co. and the Land Reclamation Co. on the one hand, and the Government on the other, for the acquisition of property at Tsim-sha-tsui, on which the terminal station is to be built. I shall be glad to answer any questions which hon. members may wish to ask.

In reply to Sir Kai Ho Kai,

THE CHAIRMAN explained that the railway came round in a sweep, north of Holt's godown, down to the seafront, where the terminal station was to be built.

SIR KAI HO KAI—Is it necessary to pass this vote now?

THE CHAIRMAN—Yes, it is desirable to pass it now; the whole transaction has been approved by the Secretary of State for the Colonies, and Messrs. Stewart and Pollock have negotiated on behalf of the Government, and they, after scrutinising the details, have recommended that these resumptions should be made.

The vote was agreed to.

Stores Depreciation

The Officer Administering the Government recommended the Council to vote a sum of One thousand five hundred and sixty-four Dollars (\$1,564) in aid of the vote Public Works, Recurrent, Miscellaneous, Stores Depreciation.

The vote was agreed to.

Post Office

The Officer Administering the Government recommended the Council to vote a sum of Five hundred and twenty-five Dollars (\$525) in aid of

the vote Public Works, Extraordinary, Buildings, Post Office.

THE CHAIRMAN—It is represented to me by the Postmaster-General that one of his clerks should reside permanently on the premises to receive and deal with mails at all hours of the day and night, and representations have also been made by the Police that it is necessary to have a custodian on the premises. Accordingly on the top floor of the building arrangements have been made to adapt several rooms as living quarters.

The vote was agreed to.

University Charges

The Officer Administering the Government recommended the Council to vote a sum of One thousand Dollars (\$1,000) in aid of the vote Miscellaneous Services, Grants in aid of other Institutions, University of Hongkong, Government Professorship.

The vote was agreed to.