

23RD FEBRUARY, 1922

PRESENT:—

HIS EXCELLENCY THE GOVERNOR, SIR REGINALD EDWARD STUBBS, K.C.M.G.

HON. MR. CLAUD SEVERN, C.M.G. (Colonial Secretary).

HON. MR. J. H. KEMP, K.C., C.B.E. (Attorney-General).

HON. MR. C. MCL. MESSER, O.B.E. (Colonial Treasurer).

HON. MR. E. R. HALLIFAX, O.B.E. (Secretary for Chinese Affairs).

HON. MR. E. A. IRVING (Director of Education).

HON. MR. T. L. PERKINS (Director of Public Works).

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

HON. MR. LAU CHU PAK.

HON. MR. E. V. D. PARR.

HON. MR. A. G. STEPHEN.

HON. MR. A. O. LANG.

HON. MR. CHOW SHOU-SON.

MR. A. G. M. FLETCHER, C.B.E. (Clerk of Councils).

ABSENT:—

H.E. MAJOR-GENERAL SIR JOHN FOWLER, K.C.M.G., C.B., D.S.O. (General Officer Commanding the Troops in China).

Minutes

The minutes of the last meeting was approved and signed by the President.

Finance

THE COLONIAL SECRETARY, by command of H.E. the Governor, laid on the table the report of the proceedings of Finance Committee, No. 2 and moved that it be adopted.

HE COLONIAL TREASURER seconded, and the motion was approved.

Jurors' List for 1922

THE COLONIAL SECRETARY laid on the table the Jurors List for 1922.

H.E. THE GOVERNOR—It will be more convenient if we leave the discussion of the list to the end of the meeting, and proceed with the Orders of the Day.

This course was agreed to.

Police Supervision Ordinance

THE ATTORNEY-GENERAL moved the second reading of the Bill intituled, An Ordinance to provide for police supervision of certain persons.

THE COLONIAL SECRETARY seconded, and the second reading was approved.

The Council went into Committee to consider the Bill clause by clause: it was approved in Committee without amendment and on the Council being resumed,

THE ATTORNEY-GENERAL moved, and the COLONIAL SECRETARY seconded, the third reading, which was approved.

The Bill passed accordingly.

Amendment of Opium Ordinance, 1914

THE ATTORNEY-GENERAL moved the second reading of a Bill intituled, An Ordinance to amend further the Opium Ordinance, 1914.

THE COLONIAL SECRETARY seconded, and the second reading was carried.

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

On Clause 3, the HON. MR. LAU CHU PAK said—In connection with this section, there is a point I should like to be made clear. In all the Chinese hotels, business firms and private clubs, very often, more than two or three persons are

found smoking opium and the dross is left as a perquisite to the servants. Will such places be treated as opium divans in future?

THE ATTORNEY - GENERAL — This section proposes only to provide a certain presumption; it is always open to the defendant to prove the contrary. In the case of a genuine club or business premises, I think it would be quite easy for the defendant to prove that such a place was not a "divan" in the ordinary sense, but a club or a place of business. In the case of restaurants, I understand that the dross is collected by someone and sold to the S.I.E. Whether it is collected by the keeper or by servants, I do not know, but the proposed new section does not alter the definition of an opium divan in any way, and if the dross in the restaurant is collected by the keeper the restaurant is now, and has been, ever since the 1914 Ordinance, technically within the definition of an opium divan. It is not intended, I understand, that there should be any change in policy with regard to restaurants, clubs or business premises, but that this section should be some assistance to the police and the S.I.E. in the case of a prosecution for keeping premises purely as an opium divan and nothing else. The two points I would like to make clear are first, that the definition of an opium divan is not changed at all; and, secondly, no change of policy is intended.

HON. MR. LAU CHU-PAK — Practically, things will come to this: that in future no visitors will be allowed to smoke opium in restaurants.

H.E. THE GOVERNOR — Has there been any difficulty hitherto on this definition.

THE ATTORNEY-GENERAL — No, Sir, no difficulty. The danger of putting in words excepting clubs, for example, would be that on a prosecution for keeping a divan, which is purely a divan and nothing else, the keeper would no doubt produce some signboard, or some other evidence prepared beforehand, to say the place was a club. In the case of a genuine club there would be no difficulty in proving that it was a club.

HON. MR. LAU CHU-PAK — What I am afraid of is that, in future, the police, by virtue of this section, will overstep this.

HON. MR. POLLOCK — Do restaurant keepers get a sum of money for allowing people to smoke opium on the premises?

HON. MR. LAU CHU-PAK — No; they only get the benefit of the dross which goes to the *employés* as a perquisite.

H.E. THE GOVERNOR — Who provides the opium in such cases? Do people take it in with them?

HON. MR. LAU CHU-PAK — Some do but most of them send out for it.

HON. MR. POLLOCK — The question is if it is done for profit. Section 4 of the 1914 Ordinance says:—

"Opium Divan" means and includes any place opened, kept, or used:—

- (1) for the sale of prepared opium or dross opium where a fee or its equivalent is charged for such smoking or where any direct benefit or advantage whatever, direct or indirect, is derived by the keeper of place in consequence of the smoking of prepared opium or dross opium in such place; or where the opium dross or halan produced by any person smoking in such place is collected, received or retained by any person other than the smoker.

The only difficulty is on the last sentence—"Collecting opium dross"—all the rest obviously refers to keeping an opium divan as a paying proposition. What is the meaning of "halan"?

HON. MR. LAU CHU-PAK — Smoked dross.

THE ATTORNEY-GENERAL — My point is that this proposed new section does not alter the substance of the law in any way, but merely alters the law of evidence, and that any genuine club, or restaurant, or office, can easily prove that the place was not an opium divan in the ordinary sense of the term.

HON. MR. POLLOCK — Can they prove that opium dross is not "collected, received or retained by any person other than the smoker?"

H.E. THE GOVERNOR — It would be very difficult to prove that in any case. I

you are smoking in business premises the caretaker would probably collect the dross. Under the existing law no case has ever been brought against a restaurant for keeping an opium divan?

THE ATTORNEY-GENERAL—We have never had a case. The Bill only makes a presumption. It does not make a place a divan; it only alters the burden of proof. The burden can be easily discharged.

HON. MR. LAU CHU-PAK—I only want that to be understood by the Chinese.

H.E. THE GOVERNOR — We are not creating any new difficulty.

HON. MR. POLLOCK — If there is a difficulty it may be well to remove it.

H.E. THE GOVERNOR—That would mean altering a definition in the 1914 Ordinance, and before doing that it would be desirable to find out exactly why the clause was put in. If it is desired to postpone the third reading there is no objection that I can see, but, as there is no intention of making any change of policy, perhaps that would be unnecessary.

THE ATTORNEY - GENERAL — That Ordinance has been in force for seven years, and I do not know of any difficulty having arisen on this definition, and we are not altering it now.

HON. MR. POLLOCK — It would be well to have the matter looked into now.

THE COLONIAL SECRETARY—It is a matter for the police.

HON. MR. POLLOCK—It is a matter of drafting.

H.E. THE GOVERNOR — Shall we complete the Committee stage and recommit the Bill if necessary?

The Bill then passed the Committee stage, subject to the amendment of Clause 3.

The Council then resumed.

H.E. THE GOVERNOR—The third reading will be taken at a subsequent meeting of the Council. That completes the business and I will ask the representatives of the Press to withdraw while the Council considers the Jurors List.