

20TH JULY, 1925

PRESENT:—

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

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS (MAJOR-GENERAL C. C. LUARD, C.B., C.M.G.).

THE COLONIAL SECRETARY (HON. SIR CLAUD SEVERN, K.B.E., C.M.G.).

THE ATTORNEY-GENERAL (HON. SIR HENRY POLLOCK, K.C.).

THE COLONIAL TREASURER (HON. MR. C. MCI. MESSER, O.B.E.).

HON. MR. H. T. CREASY (Director of Public Works).

HON. MR. D. W. TRATMAN (Secretary for Chinese Affairs).

HON. DR. J. B. ADDISON, M.B.E. (Principal Civil Medical Officer).

HON. MR. P. H. HOLYOAK.

HON. MR. A. O. LANG.

HON. MR. CHOW SHOU-SON.

HON. MR. H. W. BIRD.

HON. MR. R. H. KOTEWALL.

HON. MR. C. G. ALABASTER, K.C., O.B.E.

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

Minutes

The minutes of the meeting held on July 15th were confirmed.

Finance

THE COLONIAL SECRETARY, by command of H.E. The Governor laid upon the table reports of Finance Committees Nos. 8 and 9 and moved that they be adopted.

THE COLONIAL TREASURER seconded,

and this was agreed to.

June Settlement

THE ATTORNEY-GENERAL—I beg to move the third reading of the Bill intituled, An Ordinance relating to the postponement of the June Settlement.

THE COLONIAL SECRETARY seconded.

HON. MR. ALABASTER—Sir, I do not know whether one can speak on the third reading or whether it is proper to move that the Bill be referred back to the Committee to be further discussed.

H.E. THE GOVERNOR—If you desire to make an amendment to any clause, the proper course to take is to move that the Bill be referred back to Committee.

Council then went into Committee.

HON. MR. ALABASTER—The point I wish to make is that it is not clear from Clause 3 that the buyer who repudiates his contract now will be placed in the same position as he would have been if he had repudiated his contract on June 23rd when the Stock Exchange did not open as it should have done. If it is the policy of the Council, as I think rightly, that there should be as little interference as possible with the law of contract in this matter, it is desirable that we should put the buyer if he repudiates now in exactly the same position as he would have been if he had repudiated on June 23rd, that is he should pay the difference between the contract price and the rate ruling on June 22nd. The non-opening of the Stock Exchange on June 23rd was not due to either the buyers' or sellers' fault. It was entirely an operation of the

brokers, and the brokers should not gain by a postponement of the Settlement. Naturally everyone waited to see what would happen, but now I think we must anticipate that certain of the buyers will repudiate and for their repudiation they will have to pay damages, but it seems fair they should have to pay the same rate of damages as if they had repudiated at once. I therefore move that a proviso be added to clause 3, the wording of which is in the hands of the hon. Attorney-General, which will make it clear that the measure of damages will be the damages which would have been possible for repudiation on June 23rd.

H.E. THE GOVERNOR—Does anyone wish to support the hon. member's remarks.

THE ATTORNEY-GENERAL—May I be allowed, Sir, to read the proviso suggested to clause 3, which is as follows:

"Provided that the measure of damages for any breach of any such contract shall be the difference between the contract price of any such shares and the closing price for the same on the 22nd day of June, 1925, together with interest on such difference at the rate aforesaid from the 23rd day of June, 1925, until payment."

With reference to my own views on this subject, I must say that they are in agreement with those of the hon. and learned member. I feel, Sir, with him, in dealing with the actual principal, that the position of that person may possibly be made worse by the postponement of the date for ascertaining the measure of damages from the 23rd June to the 23rd July, and undoubtedly, Sir, as the hon. and learned member has pointed out, the effect of Clause 3 of this Bill would be to postpone the date for ascertaining the measure of damages from the 23rd June to the 23rd July. I think, Sir, that it is obvious that so far as the buyer, who is the principal, is concerned, that he had absolutely no control whatsoever over the action of the different Stock Exchanges in closing these various exchanges, and that therefore he ought not to be damnified, assuming he is damnified, by the date for the ascertainment of damages being postponed for a month without his being consulted and without his consent. That is the view, Sir, which I personally take of this matter.

Another point which I would urge in favour of making some definite date like the closing price of 22nd June, is that otherwise it is possible we may have an almost endless sea of

litigation, because if everybody knows they are going by a certain rate—say the buyer knows he is going by a certain rate and he will have to bear a certain difference, if he cannot fully perform his contract, at all events, Sir, that buyer, even although he is repudiating in the sense that he cannot carry out his full contract, is in this position: that hard up as he may be, he knows that he has some fixed and definite standard by which he can get rid of his liabilities. If you leave the Bill in its present shape now, the buyer will not have a chance of saying, "I want to get quit of this; here you are, I pay you so much," because the seller may say, if he is an unreasonable and hard man, "I am not going to let you off; I am going to thrash this out in a Court of Law." It appears to me that it will be extremely difficult for any Court of Law or any jury, when the 23rd July comes, to state what is the fair market rate of the shares. It seems to me, Sir, from the point of view of certainty alone, that it is desirable we should adopt in this Council the only rate practically that we have to adopt, which is a very definite rate, and that is the closing rate at which the market finished on the 22nd June, which was the last date the Stock Exchange was open. In that way Sir, the parties, both buyers and sellers, will know where they stand.

There would not be, as there will be if we leave the date for ascertainment of differences as it now stands to the 23rd July, all the uncertainties and disputes, but we shall have the prospect of setting up a settlement on definite lines instead of being involved in an enormous sea of unsettlement. Then everybody will know where they stand, and we shall be able, instead of having as it seems to me a protracted course of litigation, a settlement of the June Settlement, because all parties will know where they are. I think, Sir, it will be generally conceded by the members of this Council, that certainty is of the greatest importance in a matter of this sort, where we are all of us convinced that buyers will have to repudiate in the sense I have mentioned, namely, not being able to take up shares and pay the full price for them. We knew even before Mr. Zeitlyn told us on Saturday that that is certainly what will happen. It is far more likely that the money will be got in and a number of disputes will be settled if we lay down in this Council a fixed and definite date. I submit, Sir, again that the only reasonable date is the last quotation of the Stock Exchange for actual shares bought and sold on the 22nd June.

Really, Sir, that does seem to me the only way of arriving at the solution of the disputes between the parties. I think it is only reasonable to suppose that under present circumstances the Stock Exchange will not be open again until some time after the July Settlement has been more or less got out of the way, and as I say, Sir, it seems to me that this course which is suggested is fair to both parties—the buyer and the seller.

Let us consider now, Sir, the case of the seller. Supposing the seller argues that certain things would happen between the 23rd June and the present date—that the market rate of the shares would go down—I think it is quite a fair answer to that to say that he is not really entitled to take any advantage of that fact. Assuming it to be a fact, so far as the buyer is concerned he has not got a chance of settling up or repudiating as the case may be on the 23rd June—that was put out of his power by the action of the Stock Exchanges.

I would point out further, before I sit down, that we are, in order to validate these contracts, using very strong language in this Bill. In Clause 3 there are words to this effect: That these contracts of the June Settlement day shall be construed in every Court of Law as if, prior to the June Settlement day, a duly stamped agreement for valuable consideration had been made between all the parties to every such contract *inter se* for the extension of the time for the performance of the said contracts until and including the 23rd day of July, 1925. In other words, Sir, the parties are to be presumed to have made contracts which we all know they never have made, for the postponement of a settlement for a whole month. I think that drafting was necessary in order to prevent parties who wished to repudiate on the ground that the June Settlement had not been carried out on the 23rd June, from contending they were released. I do not think we should go further than to say that the parties are deemed to have entered into such contract for the purpose of keeping the contract alive. I think we should fix for them the measure of damages which would have been the measure assuming the Settlement had taken place on the normal date. Of course, I may be told that on the 23rd June there might have been an awful slump. That is purely a matter of conjecture. The only thing of any certainty we have to go on as regards the value of these shares, is their value on the 22nd June, and I think it is known to all members of

this Council that on a normal Settlement day—and certainly it would have been the case on this heavy Settlement day no transaction would have taken place for the buying and selling of shares, for the brokers are too busy going round carrying through the settlement; and therefore, I think this date, the 22nd June, is a reasonable measure of damages to take. At all events, Sir, I submit it is the most reasonable measure of damages that we can take in this Council under the very exceptional circumstances, because there are extraordinary circumstances, not merely in the share market but the native banks, and the extraordinary general position which has occurred in the Colony.

Therefore, Sir, I think that from every point of view that I should support the amendment which has been suggested by the hon. and learned member.

H.E. THE GOVERNOR—It seems to me that the introduction of this amendment goes perilously near getting back to the Bill which we decided not to proceed with on Saturday. As regards taking the date of the 22nd June, I must say I am not familiar with the practice of the local Stock Exchange, but I find it difficult to believe that if the Stock Exchange had been able to open on the 23rd June, which it could not do, people would have carried through their bargains at the prices ruling on the 22nd. I was informed, I imagined rightly, that if any attempt had been made to open the Stock Exchange on the 23rd June, there would have been a position which can mildly be described by the word "slump." Shares would have been thrown on the market, and we should probably have had some very serious financial setbacks.

I would like, as a matter of interest, to mention that it appears to have been assumed that the postponement of the Settlement was an act, in some way, of the Government. I have not seen the advertisement myself, but I am told that an advertisement issued by the Stock Exchange runs somewhat to the effect that the postponement was with the approval of the Government. What actually happened was that I was informed late on June 22nd that the brokers said it was impossible to carry through the Settlement and that any attempt to do so would result in the consequences I have mentioned. I assumed, it appears wrongly, that the Stock Exchange was entitled to postpone the Settlement. I do not apologise for that error because it appears

to have been shared not only by the members of the Stock Exchange, who definitely informed me that they had taken legal advice on the subject, but also by their legal adviser who allowed them to think that they were entitled to postpone. Afterwards the legal adviser discovered he was wrong. Lawyers in this Colony sometimes are wrong. Judging the position as it was described to me I said I had no objection to postponement That completes the extent of my interference until the question of legislation came up. As I said on Saturday, I think the Government should interfere in this matter to the smallest extent possible and I think the best course we could have taken would have been to say in one clause "the postponement of the June Settlement is authorised," and leave all persons to discover what exactly the result was. The measure of damages, under these contracts, is a matter which I consider should be decided by the Law Courts if any one is so unwise as to wish to decide the matter in that way. But I cannot suppose that any one will be anxious to throw good money after bad in carrying on litigation in connection with these agreements, many of which, as we know, were not "duly stamped agreements for a valuable consideration." I should imagine the brokers and their clients would have the good sense to compromise in a reasonable manner, or if the matter could not be dealt with in that way I think one test case would be sufficient to decide the lines on which damages might be assessed. For these reasons I do not advise the acceptance of the amendment now proposed.

THE ATTORNEY-GENERAL—One test case might decide the question in one particular class of shares. But there might be disputes over six or seven classes of shares.

H.E. THE GOVERNOR—As I have already observed, I am not familiar with the operations of the Stock Exchange, but I am inclined to give the brokers the benefit of assuming that they are reasonable men and men of common sense. And I do not think anyone is going to throw away good money on legal questions if they can find in any judgment of the Court any reasonable method of compromise which might be regarded as typical of what should be done. Actions might be started in regard to different classes of shares but it is more likely that the Stock Exchange will rather go on with its normal business than spend its money on litigation.

Quite apart from the difficulties caused by the strike I think it is notorious that there would have been great difficulty over the June Settlement owing to the amount of gambling that takes place. I think it is high time the Stock Exchange business in this Colony should be put on a sounder footing than it has been.

In 1922 the Government considered this matter with some care and suggested to the Chamber of Commerce that the time had come when it was desirable to put the Stock Exchange on a reasonable footing and to bring it as near as possible into line with the London Stock Exchange. The Chamber of Commerce for reasons which I have forgotten, if I ever knew them, objected and the proposal was not proceeded with. I think the experience of the last two or three years has shown that a certain amount of regulation is required and I propose, when we have leisure to think about it, that we should take the matter again into consideration.

HON. MR. R. H. KOTEWALL—Sir, I am in a small way interested in this Settlement, and therefore I desire, with your Excellency's permission, to refrain from voting.

HON. MR. HOLYOAK—May I ask whether this amendment does not represent the precise terms which the Brokers Associations stated before the Council on Saturday, they were prepared to accept?

THE ATTORNEY-GENERAL — It corresponds to the terms agreed by the brokers in a letter.

HON. MR. HOLYOAK—If the brokers have agreed to meet the Settlement in this way I do not see the need for legislation.

H.E. THE GOVERNOR—If they have agreed there is no necessity to put the matter into the Ordinance. If they have not agreed it seems to me the difficulties would remain in any case.

THE ATTORNEY-GENERAL—The brokers have agreed, but not necessarily the principals.

The amendment was put to the vote and lost, only the mover and seconder voting for it.

Council then resumed and the ATTORNEY-GENERAL moved the third reading of the Bill.

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

Council then adjourned *sine die*.