

13th October, 1927.

PRESENT:—

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

THE COLONIAL SECRETARY (HON. MR. E. R. HALLIFAX, C.M.G., C.B.E.).

THE ATTORNEY-GENERAL (HON. SIR JOSEPH HORSFORD KEMP, KT., K.C., C.B.E.).

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

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

HON. MR. E. D. C. WOLFE (Captain Superintendent of Police).

HON. SIR SHOU-SON CHOW, KT.

HON. MR. R. H. KOTEWALL, C.M.G., LL.D.

HON. MR. A. C. HYNES.

HON. MR. J. OWEN HUGHES.

HON. MR. W. E. L. SHENTON.

MR. E. W. HAMILTON (Deputy Clerk of Councils).

ABSENT:—

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT (HON. MR. W. T. SOUTHORN, C.M.G.).

HON. MR. R. A. C. NORTH (Secretary for Chinese Affairs).

HON. MR. D. G. M. BERNARD.

MINUTES.

The minutes of the previous meeting of the Council were confirmed.

PAPERS.

THE COLONIAL SECRETARY, by order of H.E. The Officer Administering the Government, laid upon the table the following papers:—

Regulations under the Public Places Regulation Ordinance, 1870, on 15th, September, 1927.

Order under section 7 of the Rating Ordinance, 1901, on 15th September, 1927.

Regulation under sections 25 (4) and 33 (2) of the Merchant Shipping Ordinance, 1899, on 21st September, 1927.

Rule under section 18 of the Prisons Ordinance, 1899, on 28th September, 1927.

Rescission of the Order of 2nd September, 1927, declaring Macassar to be an infected place, on 29th September, 1927.

Regulation under section 3 (1) of the Opium Ordinance, 1923, on 29th September, 1927.

Order under section 4 of the Asylums Ordinance, 1906, on 4th October, 1927.

Regulation under section 47 of the Protection of Women and Girls Ordinance, 1897, on 4th October, 1927.

Bias Bay Piracies (Supplement to Sessional Paper No. 7 of 1927). (Sessional Paper No. 9).

Report from the Secretary for Chinese Affairs for 1926.

QUESTIONS.

HON. MR. W. E. L. SHENTON asked:—

Are the Government prepared to deal with motor-cars plying for public hire in the public streets of the Colony by—

- (a) Fixing a scale of fares, or
- (b) Insisting that each motor-car so plying carries with it a meter registering an approved scale of charges.

THE COLONIAL SECRETARY—"As at present advised the Government does not propose to deal with motor-cars plying for public hire in the public streets of the Colony by— (a) fixing a scale of fares, or (b) insisting on each car so plying being provided with a taximeter. The varying classes, types, makes and sizes of cars plying for public hire preclude the fixing of a general rate for all public cars. Uniformity of design of car is essential for the use of taximeters and the variety of public hire cars makes a general taximeter scheme impracticable. It is, however, hoped that the proposals now before the Government for a new Taxicab Service will mature shortly and that the Companies concerned will be in a position to start the service early in the New Year."

HON. MR. W. E. L. SHENTON—Arising out of the answer to my question, is it a fact that two concerns have recently applied for licences to run taxis in this Colony?

THE COLONIAL SECRETARY—There are negotiations proceeding with the Government for private licences in the Colony.

HON. MR. W. E. L. SHENTON also asked:—

Have any of the appointments, referred to in the Honourable Colonial Secretary's Budget Speech of the 1st September, for the purpose of dealing with Malaria, yet been made?

If yes, have the officers commenced their duties?

THE COLONIAL SECRETARY—The answer is in the negative. The recommendations must first receive the approval of the Secretary of State for the Colonies and in any case funds will not be

available until January 1st, 1928. If the recommendations are approved by the Secretary of State the appointments will be made as soon as possible after January 1st next.

FINANCE.

THE COLONIAL SECRETARY moved that the report of the Finance Committee No. 11 dated September 12th, 1927, be adopted.

THE COLONIAL TREASURER seconded, and this was agreed to

HONG KONG TRAMWAYS.

THE COLONIAL SECRETARY moved:—

That whereas by the provisions of section 7 of the Tramway Ordinance, 1902, it is provided that subject to the approval of the Governor in Council after timely and adequate notification by public advertisement or otherwise of the intention of the Company referred to in the said Ordinance to apply for such approval, and after such approval has been confirmed by a resolution of the Legislative Council, the Company may construct and maintain, subject to the provisions of the said Ordinance, and in accordance with plans previously deposited in the office of the Director of Public Works, all such lines, crossings, passing places, sidings, junctions, turn-tables and other works in addition to or as extensions of those particularly specified in and authorized by the said Ordinance as may be approved of by the Governor in Council, and may work and use the same:

And Whereas, timely and adequate notification having been given by public advertisement of the intention of the Company to apply for the approval of the Governor in Council to the construction and maintenance, in accordance with plans to be deposited in the office of the Director of Public Works, of a double tramway line, in place of the then existing single line, on the sections of the tramway from Causeway Bay to Shaukiwan described in section 3 of the said Ordinance as sections Nos. 6 and 7 of the tramway, the Company duly applied for the approval of the Governor in Council to the construction and maintenance of the said double lines:

And Whereas the Governor in Council did on the 19th day of June, 1924, approve of the construction and maintenance of the said double line:

Now it is hereby resolved that the approval of the Governor in Council so given as aforesaid is hereby confirmed.

THE ATTORNEY-GENERAL seconded, and this was agreed to.

CHINESE EXTRADITION.

THE ATTORNEY-GENERAL moved the first reading of a Bill intituled, "An Ordinance to amend the Chinese Extradition Ordinance, 1889." He said—Extradition to China which for us means, practically extradition to Kwangtung has been suspended now for several years, not through our desire for its suspension and not owing to anything we have done. The suspension is due solely to certain technical legal difficulties which have affected the subject of recent years. We are anxious, Sir, and we have always been anxious to co-operate with our neighbours in preventing and punishing crime in their borders and in ours, and in particular we are anxious, and always have been anxious, to hand back to China persons who have committed crimes in China and have fled for refuge here. That policy would be dictated to us by our own self-interest, but it is also dictated to us by the friendly feelings we entertain towards the neighbouring State of China. The difficulties, the technical legal difficulties, arise entirely from the present abnormal situation or state of China. One of the fundamental conceptions of international law is that of the State, the international person, the self-contained entity, the body politic with an organised government able to control the whole of the territory of the State, with a head or central authority entitled to speak, and in fact able to speak, for the whole country in relation with other Powers. That conception is very different from the State of China to-day. The present state of China constitutionally is no doubt only temporary, and I am sure we all hope that the period during which this present international law confusion exists will last as short a time as possible. But while it does last it is very difficult for us to amend our law so as to make it square with a state of affairs which is quite unknown to international law. We have been for some time trying to find some way out of the difficulty, and this Bill is an attempt now to get over that difficulty by altering our law in a special and unusual way to meet the points of difficulty which have arisen from the peculiar situation of China at the moment. The amendment of our law to meet these difficulties is far from easy. One can only hope that this attempt now being made will be successful and that the extradition to China of fugitive criminals from China will be successfully resumed. The details of the Bill are explained fully in the "Objects and Reasons."

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

OBJECTS AND REASONS.

The "Objects and Reasons" of the Bill are:—

1. The main object of this Bill is to remove certain doubts that have arisen in the construction of the Chinese Extradition Ordinance, 1889.

2. As the law stands at present, a requisition for the extradition of a fugitive criminal who is a subject of China, is required to be made by "some officer of the Chinese Government," and a fugitive criminal

cannot be surrendered unless a certain engagement is given by the "Chinese Government": see sections 6 and 4 (3) of the Chinese Extradition Ordinance, 1889.

3. In section 2 of that Ordinance "Chinese Government" is defined as including the Viceroy or other officer administering a Provincial Government. Doubt has arisen as to the applicability of this phrase to the present Government of the province of Kwong Tung, as it might be argued that a Provincial Government which does not admit the authority of the Central Government which was contemplated by the Ordinance is not a Provincial Government within the meaning of the Ordinance. It is, therefore, considered advisable to amend the Ordinance so as to remove the above doubt.

4. Accordingly, the Bill substitutes the term "Chinese authority" for the term "Chinese Government" throughout. The new term "Chinese authority" is defined by paragraph (a) of clause 2 of the Bill as meaning "any person declared by the Governor to be or to represent the person or persons actually exercising authority in any province or other territory which, in the opinion of the Governor forms or at any time has formed part of the Republic of China."

5. The persons who may be surrendered under the principal Ordinance are "any subject of China accused of an extradition crime committed within the jurisdiction of China or on board a Chinese ship on the high seas": see paragraph (a) of section 2 of the principal Ordinance. The present constitutional condition of China makes it necessary to define the term "jurisdiction of China." This is done by paragraph (b) of clause 2 of the Bill which defines the term in question as including the jurisdiction of any Chinese authority as defined above.

6. Another definition is also added by paragraph (b) of clause 2 of the Bill, *i.e.*, a definition of the term "subject of China," which is defined as meaning "every person who, not being a national of any other state, possesses Chinese nationality."

7. Paragraph (3) of section 4 of the principal Ordinance provides that a fugitive criminal shall not be surrendered unless a certain engagement in the interests of the fugitive criminal is given "by the Chinese Government." Clause 3 of the Bill amends that paragraph so as to provide that the engagement must be given by "the Chinese authority to whom he is to be surrendered." The term "Chinese authority" is substituted for the term "Chinese Government" for the reasons given above. The reference to "the Chinese authority to whom he is to be surrendered" is inserted because, by reason of some constitutional change, the actual authority at the time of the surrender might not be the same as the actual authority at the time of the requisition.

8. Section 6 of the principal Ordinance requires the requisition to be made "by some officer of the Chinese Government." Clause 4 of the Bill amends that section so as to make it possible for the requisition to be made by any Chinese authority as defined above.

9. Section 6 of the principal Ordinance also provides that when the Governor has received a requisition he may, by order, signify to a magistrate that the requisition has been made, "and require him to issue his warrant for the apprehension of the fugitive criminal." The fugitive criminal may, however, already be in custody as such by virtue of a warrant issued by a magistrate under section 8 of the principal Ordinance before the receipt of the Governor's order. In such a case a second warrant of apprehension by the magistrate is obviously unnecessary and this is recognised by section 7 of the principal Ordinance. Section 7 of the Extradition Act, 1870, is similar on this point in its wording to that of section 6 of the principal Ordinance, and it appears that the practice in England, when a fugitive criminal is already in custody as such, is for the Secretary of State to issue his order to the magistrate, not to issue a warrant of apprehension, but "to proceed in conformity with the provisions" of the Extradition Acts. Paragraph (b) of clause 4 of the Bill, therefore, amends section 6 of the principal Ordinance so as to give the Governor express power to adopt a similar practice. On the question of the English practice *Reg. v. Weil* (1882) 9 Q.B.D. 701. may be referred to. It should be noted that, in view of *Re Iu Ki Shing* (1908) 3 H.K.L.R. 20, the magistrate's warrant of apprehension will still be necessary if the fugitive criminal is in custody only on some other ground and not under the principal Ordinance. Paragraph (c) of clause 4 of the Bill makes a technical amendment in the marginal note to section 6 of the principal Ordinance.

10. Section 12 of the principal Ordinance gives the Governor power to hand over the fugitive criminal after the necessary judicial proceedings to such person as the Governor considers to be authorised to receive him on behalf of "the Chinese authorities." Clause 5 of the Bill amends this section so as to give the Governor authority to hand over the fugitive criminal to such person as the Governor considers to be authorised to receive him on behalf of "the Chinese authority to whom the Governor considers that he should be surrendered." The reason for this alteration is the same as that given in paragraph 7 above.

11. Clause 6 of the Bill adds to the principal Ordinance a new section 19 which provides that a certificate by the Colonial Secretary shall be conclusive evidence on any question relating to any declaration, opinion, or discretion which the Governor is authorised by the Ordinance to make, form, or exercise, respectively.

12. Clause 7 of the Bill makes two alterations in Form No. 1 in the Second Schedule to the principal Ordinance, which is the form of order by the Governor to the magistrate. Paragraph (a) of that clause requires the insertion in the order of a reference to the province or territory within the jurisdiction of which the extradition crime is alleged to have been committed. This seems advisable because the Governor will have to issue a declaration in each case to the effect that the requisitioning authority has been declared by him to be or to

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the person or persons actually exercising authority in the province or territory within the jurisdiction of which the extradition crime is alleged to have been committed. The order and the declaration will thus be connected with the requisition. Paragraph (b) of clause 7 of the Bill alters the form of order so as to make it agree with the new form of section 6 of the principal Ordinance.

SUPPRESSION OF PIRACY.

THE ATTORNEY-GENERAL moved the second reading of a Bill intituled, "An Ordinance to amend the law relating to the Suppression of Piracy."

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

Council went into Committee consider the Bill clause by clause, when the ATTORNEY-GENERAL moved that a clause be added, *viz.* :

"This Ordinance shall come into operation on such date as may be fixed by the order of the Governor-in-Council."

He said—The reason for such a clause is this. The regulations which are proposed to be made under this Ordinance when it is passed will have to be made after the passing of the Ordinance and before it comes into operation. Also the question of ships' guards, with which the present piracy regulations are concerned, has not yet been fully discussed, and until that matter has been further discussed it will not be possible to bring the new Ordinance and regulations into force.

The addition of the clause was approved and upon Council resuming,

THE ATTORNEY-GENERAL moved the third reading of the Bill

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

LIQUORS CONSOLIDATION ORDINANCE.

The second reading of the Bill intituled, "An Ordinance to amend the Liquors Consolidation Ordinance, 1911," was not proceeded with.

Council adjourned *sine die*.

FINANCE COMMITTEE.

A meeting of the Finance Committee followed, the COLONIAL SECRETARY presided.

The votes of supplementary expenditure (Nos. 90 to 96 of 1927) totalling \$46,617 were approved.