

5th December, 1929.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR (SIR CECIL CLEMENTI, K.C.M.G.).

THE COLONIAL SECRETARY (HON. MR. W. T. SOUTHORN, C.M.G.).

THE ATTORNEY GENERAL (HON. SIR JOSEPH KEMP, K.T., K.C., C.B.E.).

THE SECRETARY FOR CHINESE AFFAIRS (HON. MR. E. R. HALLIFAX, C.M.G., C.B.E.).

THE COLONIAL TREASURER (HON. MR. M. J. BREEN).

HON. MR. H. T. CREASY, C.B.E., (Director of Public Works).

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

HON. COMMANDER G. F. HOLE, R.N., (Retired) (Harbour Master).

HON. SIR HENRY POLLOCK, K.T., K.C.

HON. SIR SHOU-SON CHOW, K.T.

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.

HON. MR. S. W. TS'O, O.B.E., LL.D.

MR. E. I. WYNNE-JONES, (Deputy Clerk of Councils).

ABSENT:—

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS (MAJOR GENERAL J. W. SANDILANDS, C.B., C.M.G., D.S.O.).

HON. DR. A. R. WELLINGTON, (Director of Medical and Sanitary Services).

HON. MR. J. P. BRAGA.

MINUTES.

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

PAPERS.

THE COLONIAL SECRETARY, by command of H.E. The Governor, laid upon the table the following papers:—

Regulation under Section 3 of the Post Office Ordinance, 1926, on 21st November, 1929.

Regulation under Section 39 (8) of the Merchant Shipping Ordinance, 1899, on 28th November, 1929.

By-law under Sections 6 (43) (b) and 16 of the Public Health and Buildings Ordinance, 1903, on 28th November, 1929.

Standing Orders of the Legislative Council of Hong Kong.

THE COLONIAL SECRETARY said:—I invite special attention to the paper entitled "Standing Orders of the Legislative Council of Hong Kong," and would inform honourable members that the adoption of these new Standing Orders will be moved at the next meeting of the Council.

FINANCE COMMITTEE'S REPORT.

THE COLONIAL SECRETARY, by command of H.E. the Governor, laid upon the table the report of the Finance Committee No. 17 of 28th November, 1929, and moved that it be adopted.

THE COLONIAL TREASURER seconded and this was agreed to.

PUBLIC HEALTH AND BUILDINGS ORDINANCE.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend further the Public Health and Buildings Ordinance, 1903." He said: Clause 2 of this Bill when it becomes law will place on the Sanitary Board the Director of Medical and Sanitary Services. He will there take the place of the Medical Officer of Health. The object of that is to give the Director of Medical and Sanitary Services first hand knowledge of the working of the Board and the Department in order to assist him in the recommendations which he will make later to the Government on the question of public health administration in the Colony.

Clause 3 of the Bill deals with a subject which has already been partly dealt with in a recent Ordinance. That Ordinance transferred from the Imports and Exports Department to the Sanitary Board the control of eating houses but it failed to give the Sanitary Board power to prescribe licence fees. That omission is now being supplied by section 3 of this Ordinance.

The next two clauses of the Bill—clauses 4 and 5—are rather technical but I shall try to explain them, or rather the main points, as shortly as possible. These two clauses amend two sections in the principal Ordinance, sections 188 and 189. These two sections deal with the question of the height of buildings. It has long been recognised that these two sections are defective. In the first place there is a very unfortunate confusion between the use of the word "front" and the use of the word "abut." Abut of course means to touch. A house may front on a street but may not abut on it. On the other hand, a house may abut on a street but may not front on that street but on some other street. Another defect of these two sections is that they contain no specific provision for houses on corner sites and houses which adjoin more than one street.

First of all, as regards the confusion between the two ideas of fronting and abutting, Section 188 of the principal Ordinance contains the rules dealing with the limitation of the height of buildings. For example, no building on land leased from the Crown after the commencement of the principal Ordinance may be erected to a height exceeding the width of the adjoining street. I use the word "adjoining" as being a more or less colourless word, and I am purposely avoiding the words "abut" and "front." That section then gives the rules for the height of buildings. Section 189 provides for the method of measuring their height, not always a simple or easy matter. Now section 188, which deals with the height of buildings, speaks of buildings fronting on streets. Section 189, which gives the method of measuring height, speaks only of buildings abutting on streets, and one effect of that is this, that if you have a house merely fronting and not abutting on a street you have got no method at all of measuring the height of that building. You have rules of height if you could only measure it but you have no means of measuring it.

The first proposal was to use the same word "front" in both these sections, but it was found that that was not practicable because, for example, on the Peak a house may front on a very narrow road or a very narrow path, which is technically a street, and may have plenty of light and air all round it, but it would be limited in its height by the width of that very narrow Peak road or path. We decided therefore to use in both sections the word "abut," so that we shall have in future, after these two clauses become law, one section giving the rules for the height of buildings abutting on streets and the other section giving the means of measuring the height of buildings abutting on streets. That, of course, will still leave unprovided for the case of houses which do not abut on streets at all, and the method which has been adopted in these two sections to deal with that case is to give discretion to the Building Authority to determine the height of the building in such a case. That is not so drastic or dictatorial as it sounds because it is provided that in exercising that discretion the Building Authority must not insist on a lower height than would be possible if the house had actually abutted and not only fronted on the street, so that the discretion

given to him will be one exercised in the interests of the building owner and will be in the direction of allowing a greater height than would have been possible if the house had actually abutted on the street.

These two clauses, Sir, also deal with other defects of the existing sections in that they provide for the special cases of buildings on corner sites and buildings which adjoin more than one street. Rules are given for the calculation of the height in both these cases.

The other provisions of the Bill are not, I think, of general importance. I beg to move the first reading.

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

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows:

1. With a view to the reorganization of the medical and sanitary services of the Colony, it is considered desirable to associate the Director of Medical and Sanitary Services more closely with the working of the Sanitary Department, and in order that he may have the opportunity of acquiring first-hand knowledge of the working of that department it has been decided to place him on the Sanitary Board instead of the Medical Officer of Health. When the Director of Medical and Sanitary Services has replaced the Medical Officer of Health as a member of the Sanitary Board the Government will await such recommendations from him in the public health administration as his experience of the working of the Sanitary Department may prompt him to make. Section 2 of this Ordinance accordingly amends section 8 of the principal Ordinance so as to make the Director of Medical and Sanitary Services a member of the Sanitary Board in place of the Medical Officer of Health.

2. The control of eating-houses has been transferred from the Superintendent of Imports and Exports to the Sanitary Board. Section 4 of Ordinance No. 19 of 1928 gave the Sanitary Board power to make regulations with regard to eating-houses, but it failed to give the Sanitary Board power to prescribe licence fees. The omission is supplied by section 2 of this Ordinance.

3. It has long been recognised that sections 188 and 189 of the Public Health and Buildings Ordinance, 1903, are not entirely satisfactory. One defect is that while section 188 limits the height of buildings according to the width of the streets upon which they *front*, section 189, which prescribes the method of measuring the height of buildings, deals only with the case of buildings which actually *abut* upon streets and makes no provision for the case of buildings which *front*, but do not *abut*, upon a street. Sections 4 and 5 of this Ordinance assimilate sections 188 and 189 of the principal Ordinance on this point, and provide for the

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"abut" in both those sections. The special case of buildings which front, but do not abut, upon a street has still to be provided for. The two sections in the principal Ordinance as amended by this Ordinance will deal with this special case by giving discretion to the Building Authority, but this discretion is carefully limited in the interests of the building owner by the provision that in the case of a building which does not abut upon a street, but is built on land abutting upon a street, the Building Authority shall have no power to require such building to be of a less height than if it abutted upon the street.

4. Two of the provisions to be inserted at the end of section 188 of the principal Ordinance deal with the special cases of buildings on corner sites and buildings on sites abutting upon more than one street.

5. The third proviso to be inserted at the end of section 188 of the principal Ordinance lays down that the height of a building shall not be regulated by the width of any scavenging lane, or other lane, or open space, upon which such building may abut, if such lane or open space is not to be used as a means of access to some domestic building (other than servants quarters).

6. Paragraph (5) of section 188 of the principal Ordinance provides that no domestic building shall exceed four storeys in height, including the ground storey. Storey is defined in section 6 (53) of the principal Ordinance as meaning a space which has a height of at least 9 feet. Attempts are sometimes made to evade section 188 (5) by making a ground floor of about 8 feet in height. This floor is not technically a storey and the practical result is that the house is five storeys high, using storey in the non-technical sense. This of course leads to overcrowding. An attempt is made in this Ordinance to check this evasion by providing that for the purpose of section 188 (5) a storey shall include any space having a clear height of more than 5 feet. This will still allow the provision of a basement. It may be mentioned that paragraph (5) of section 188 of the principal Ordinance is now to become paragraph (6).

7. The paragraph repealed by paragraph (b) of section 3 of this Ordinance is repealed because it is spent.

COMPANIES ORDINANCE.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend further the Companies Ordinance, 1911." He said: The principal object of this Bill is to enable China companies—that is companies registered under our Companies Ordinance but having their principal places of business in China—to keep branch registers in the United Kingdom or in any British possession, although they carry on no business in that place where the branch register is to be kept. This privilege was asked for by the commercial community in S h a n g h a i a n d h a s b e e n a p p r o v e d b y

the British authorities in China and by the Secretary of State for the Colonies.

This Bill also provides for something which has already existed in practice in the Colony. It provides for the list of authorised auditors of companies' accounts being divided into two parts, one for persons qualified to audit accounts kept in English and the other for persons qualified to audit accounts kept in Chinese. It also provides that if a company keeps its accounts partly in English and partly in Chinese, it must have its English accounts audited by an English auditor—an auditor in the section dealing with accounts kept in English—and its Chinese accounts audited by a Chinese auditor. I beg to move the first reading.

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

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows:

1. The main object of this bill is to enable China companies to keep branch registers in the United Kingdom or in any British possession, although they carry on no business in the place where the branch register is to be kept. This privilege was asked for by some very prominent members of the Shanghai mercantile community and the proposal has been approved by the British authorities in China and by the Secretary of State for the Colonies.

2. This amendment is effected by section 3 of this Ordinance, which is based on section 37 of Ordinance No. 155 (Companies) of the Ordinances of the Straits Settlements. That precedent has been departed from in one respect. The section in the Straits Settlements Ordinance gives power only to keep a branch register "of members resident in" the place where the branch register is kept. This would appear to be an undesirable limitation, as it would be difficult to ensure that the shares on the branch register should always be held by persons resident in the place where the register was kept, especially as residence is sometimes a difficult question.

3. Section 2 of this Ordinance gives statutory authority to a practice which already exists in Hong Kong and which is obviously necessary. It provides for the list of authorised auditors being divided into two parts, one for persons qualified to audit accounts kept in English and the other for persons qualified to audit accounts kept in Chinese.

4. It may be mentioned that an order of His Majesty in Council made on the 5th July, 1929, enables companies registered in the United Kingdom to keep branch registers in China. This Order in Council was published in the London Gazette of the 12th July, 1929, and in the Hong Kong Gazette of the 30th August, 1929.

ARMS AND AMMUNITION ORDINANCE.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Arms and Ammunition Ordinance, 1900." He said: This Bill deals with a number of separate points. Clauses 2 and 3, which amend the definitions of the terms arms and ammunition, have been introduced chiefly in order to deal with the subject of gas ammunition and weapons intended for discharging gas ammunition.

Clause 4 alters considerably the present definition of exempted persons. That class of exempted persons who are entitled to carry arms without a licence is a large one at present and the result is that the police have no record at all of a great quantity of firearms kept in the Colony. Unfortunately persons entitled to possess firearms do not always keep them with sufficient care. Arms get stolen and may be used for unlawful purposes. It is desirable to keep the control of firearms as strict as possible and one way in which that policy will be pursued will be by limiting the number of exempted persons. The new list of exempted persons is contained in clause 4 of the Bill.

Clause 5 is an attempt to carry out the same policy of greater restriction in the number of persons entitled to possess arms and in the formation of the register of persons who are allowed to have arms. Clause 5 deals with the question of arms on board ship, amongst other things. At present the general provision with regard to arms on board ship is that the owner or master of any vessel may have on board such arms and ammunition as are reasonably necessary for the protection of such vessel, which, of course, is sufficiently vague. Sub-section (9) of the proposed new section 4 will take out of that exemption vessels which regularly ply within what one may call the possible piracy area, between Singapore and Vladivostok. Such vessels will not be allowed to carry arms at pleasure but only will be allowed to carry such arms as they may be licensed to have by the head of the police force here. That prohibition, of course, will apply while the vessel is in the waters of the Colony and until it leaves those waters. That, I think, will not be found to be a burden on shipping or inconvenient, because a similar control was exercised during the currency of the Piracy Prevention Ordinance when the arms supplied on board were all registered and known to the police.

The Bill also makes certain alterations in the principal Ordinance in order to introduce the new title of Inspector General of Police which is to be given to the head of the Hong Kong Police Force, and as it introduces that new title and certain other new titles of subordinate police officers into the principal Ordinance, clause 10 proposes to postpone the commencement of this Ordinance until the 1st of January when the new titles to which I have referred will come into use under the Police Force Ordinance recently passed. I beg to move the first reading.

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

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows:

1. Section 2 of this Ordinance amends the definition of the term "ammunition" in the principal Ordinance. The main object of the amendment is to include gas ammunition, but the definition is made more comprehensive in other ways also.

2. Section 3 of this Ordinance amends the definition of the term "arms" in the principal Ordinance, so as to include weapons intended for discharging gas ammunition.

3. Section 4 of this Ordinance amends the definition of the term "exempted person" in the principal Ordinance. The list of exempted persons at present is very large, and the result is that there are a great many firearms in the Colony of which the police know nothing. No doubt many of the persons exempt at present keep with the greatest care any firearms which they may possess, but others may be more careless, and their firearms may be stolen and may get into the hands of armed robbers and other criminals. The control of firearms is very strict in England now, and it seems desirable that we should follow that example here. The new list of exempted persons will be a very restricted one, except of course that members of the naval, military, air, volunteer, police and district watch services will be exempted in respect of the arms and ammunition used by them in connection with their duties.

4. Section 5 of this Ordinance amends section 4 of the principal Ordinance in order to carry out the same policy of greater restriction in the number of persons entitled to possess firearms. The section deals *inter alia* with the question of firearms on board vessels. The present general provision on this subject is that the owner or master of any vessel may have on board "such arms and ammunition as are reasonably necessary for the protection of such vessel." Sub-section (9) of the proposed new section 4 will take out of this exemption vessels which regularly include in their ports of call any place on the East Coast of Asia between Vladivostok and Singapore, or any place on any river flowing into the sea on the East Coast of Asia between Vladivostok and Singapore, or any place in Formosa, provided that the usual extreme trading limits of such vessels do not extend beyond the places specified above. Such vessels will not be allowed to carry arms while within the waters of the Colony except under licence from the Inspector General of Police, which is to be the new title of the Captain Superintendent of Police. The vessels in question are those which trade in regions where the risk of piracy exists. This control of the arms on vessels trading within the piracy zones will not be a new thing, as it was applied during the currency of the Piracy Prevention Ordinance, and gave rise to no inconvenience. Junks and other similar vessels have a special provision to

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They are allowed to have their arms and ammunition on board if such arms and ammunition are enumerated in the licence or clearance, and are reasonably necessary for the protection of the vessel.

5. Section 6 of this Ordinance amends section 8 of the principal Ordinance by the substitution of the word "similar" for the word "Chinese" in the third line. The section in the principal Ordinance deals with the case of arms or ammunition found on board "any steam launch or motor boat, or junk or other Chinese vessel," and it throws a certain onus in that event on the master and other persons on board. The amendment is made because it is not a question of whether the vessels in question is Chinese or non-Chinese but whether it is of a certain type.

6. The title of the office of Captain Superintendent of Police is about to be changed to that of Inspector General of Police. Section 7 of this Ordinance substitutes the new title throughout the principal Ordinance.

7. Section 8 of this Ordinance deletes in section 28 of the principal Ordinance the references to the Deputy and Assistant Superintendents of Police, because the matter will be dealt with generally in the new section referred to in the following paragraph.

8. Section 9 of this Ordinance inserts in the principal Ordinance, a new section 33 which provides that the various officers of the police force not below the rank of Assistant Superintendent shall have all the powers conferred on the Inspector General of Police by or under the principal Ordinance.

9. The commencement of the Ordinance is postponed until the 1st January, 1930, because that is the day when the new title of the Captain Superintendent of Police will come into use.

CROWN LANDS RESUMPTION ORDINANCE.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Crown Lands Resumption Ordinance, 1900." He said: At present the Crown Lands Resumption Ordinance of 1900 provides that any compensation awarded for land taken under the Ordinance shall bear interest at the rate of 8 per cent. per annum from the date of the resumption of the land until payment. It is quite reasonable that the owner of the land who has been excluded from his land and has not yet received his compensation money should receive interest until he is able to collect the compensation money. It does not seem reasonable that by the simple expedient of not applying for his money or through some carelessness, he should be able to make that interest at the liberal rate of 8 per cent. run on against the Government indefinitely. The object of this Bill is to fix a time after which interest will not run. It provides

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an award is made a *Gazette* notice shall specify a time within which the compensation is to be paid. If the claimant fails to apply within that time, the money will be paid into the Treasury and will cease to bear interest. The owner of the land will still be able to apply for the money but interest will not run against the Government after that date. I beg to move the first reading.

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

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows:

Section 16 of the Crown Lands Resumption Ordinance, 1900, Ordinance No. 10 of 1900, provides that compensation and costs awarded under the Ordinance "shall bear interest at the rate of eight per cent. per annum from the date of the resumption of the land until payment." It is reasonable that the former owner of land resumed under the Ordinance should receive interest during such period as he is kept out of his land and also out of any compensation in respect of the land. It is, however, not reasonable that this interest should run on indefinitely, and that the inaction, or intentional delay, of the person entitled to the compensation should oblige the Crown to go on paying interest indefinitely. Apparently the effect of the Ordinance is that the claimant can make the interest run on indefinitely by simply not demanding payment. The object of this Ordinance is to fix a time after which the interest will not run. It provides that when an award is made a *Gazette* notice shall specify a time within which the compensation is to be paid. If the claimant fails to apply for the money within that time, it will be paid into the Treasury and will cease to bear interest.

DEPORTATION ORDINANCE.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Deportation Ordinance, 1917." He said: The object of this Bill is to amend sub-section (2) of section 3 of the principal Ordinance so as to make it agree with the form of the corresponding provision in the Aliens Order, 1920, which is in force in the United Kingdom. It makes certain consequential alterations in the principal Ordinance, one being the provision of a new form of Deportation Order which shall not include any statement of the grounds on which the order has been made, but which does contain a statement of the particular sub-section of section 3 under which it has been made. That new form will apply to the whole of the new sub-section 3 and not only to sub-section (2). I beg to move the first reading.

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

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows:

1. The object of this Ordinance is to amend section 3 (2) of the Deportation Ordinance, 1917, so as to make it agree with the form of the Aliens Order, 1920, which is in force in the United Kingdom. In future the sub-section will read:—

3.—(2) The Governor in Council may at any time summarily issue a deportation order against any person who in his opinion is an alien, if he deems it to be conducive to the public good that such an order should be issued.

2. It has been held in various cases that the Secretary of State when making a deportation order under the Aliens Order is not required to justify in a court of law his reasons for making the order, and is not bound to hold any inquiry or even to give the person concerned an opportunity of being heard. In *Ex parte Bressler* (1924) 88 J.P. 89 (C.A.), however, the Court of Appeal expressed the opinion that it is desirable that the deportation order in such a case should contain a reference to show under what particular statutory provision it was made. This point is dealt with in the new Form No. 7A inserted in the principal Ordinance by section 5 of this Ordinance. Sections 3 and 4 of this Ordinance dealt with the same point.

THE STAMP ORDINANCE.

THE ATTORNEY GENERAL moved the second reading of the Bill intituled "An Ordinance to amend further the Stamp Ordinance, 1921."

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

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

THE ATTORNEY GENERAL.—In the second last line of the proposed new sub-section 4 of clause 6, I beg to move that the word "beneficial" be substituted for the word "registered."

THE COLONIAL SECRETARY seconded and the amendment was approved.

No further amendment to the Bill was made in Committee, and upon Council resuming,

THE ATTORNEY GENERAL moved the third reading.

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

THE LIQUORS ORDINANCE.

THE ATTORNEY GENERAL moved the second reading of the Bill intituled "An Ordinance to amend the law relating to intoxicating liquors."

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

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

THE ATTORNEY GENERAL.—I should like to mention that there are several amendments I propose to move. The amendments are proposed in order not to obscure the distinction between the Government Analyst, who is the principal analyst in the service of the Government, and other analysts in Government employ. In clause 2, I propose that paragraph (a) be omitted and the following paragraph substituted:—

- (a) by the deletion in paragraph (8) of the words "or the Government Analyst" and by the substitution therefor of the words "or of the Government Analyst or of any analyst in the employment of the Government."

THE COLONIAL SECRETARY seconded and the amendment was approved.

THE ATTORNEY GENERAL.—In clause 12, in the tenth line of the proposed section 62A, I propose the deletion of "a Government Analyst" and the substitution of "the Government Analyst or any analyst in the employment of the Government."

THE COLONIAL SECRETARY seconded.

HON SIR HENRY POLLOCK.—Is there no Assistant Government Analyst?

THE ATTORNEY GENERAL.—There are Assistant Government Analysts—at least there is one and may be two. There is also a Monopoly Analyst.

HON. SIR HENRY POLLOCK.—Does the word "analyst" cover Assistant Government Analyst?

THE ATTORNEY GENERAL.—The intention is to distinguish between the Government Analyst and other analysts in the employment of the Government.

HON. SIR HENRY POLLOCK.—The term analyst employed by the Government, is not intended to cover any casual outside person?

THE ATTORNEY GENERAL.—I think what is contemplated is an analyst in the employment of the Government. Of course the Government may employ an analyst for a short time.

The amendment was approved.

THE ATTORNEY GENERAL.—I beg to move the deletion of clause 17 and the substitution of the following clause:—

17. Section 79 of the principal Ordinance is amended as follows:—

- (a) by the insertion of the words "or any analyst in the employment of the Government" immediately after the words "the Government Analyst" in the second line;
- (b) by the substitution of the word "analyst's" for the words "Government Analyst's" in the fourth line.

THE COLONIAL SECRETARY seconded and the amendment was approved.

THE ATTORNEY GENERAL.—I beg to move the deletion of clause 18 and the substitution of the following clause:—

18. Section 80 of the principal Ordinance is amended as follows:—

- (a) by the insertion of the words "or by the Monopoly Analyst or by any other analyst in the employment of the Government" immediately after the words "the Government Analyst" in the third line;
- (b) by the substitution of the word "analyst" for the words "Government Analyst" in the fifth, sixth and ninth lines.

THE COLONIAL SECRETARY seconded and the amendment was approved.

HON. MR. R. H. KOTEWALL.—Sir, I beg to move that the proposed new section 87A be deleted. I submit that this section is contrary to the spirit of English jurisprudence. As I understand it, no person, except as a witness in a properly constituted tribunal, is compelled by law to give information. According to Halsbury, volume 13, page 574, even a witness before such a tribunal "may refuse to answer a question on the ground that the answer may tend to incriminate him, that is, may tend to expose the witness or the husband or wife of the witness, to any kind of criminal charge or to any kind of penalty or forfeiture."

The proposed section takes no cognisance of this well-known law of privilege extended to witnesses. Very often the man who is

asked for information in these matters is the man who is likely in the end to get into trouble. He is here compelled to answer any question, even though the answer may tend to incriminate him. Again, as the section is worded, any person not in the liquor trade, who the Superintendent may believe to be in possession of information required by him, would be liable to give such information on pain of a penalty. To my mind, the system is open to serious objections.

The hon. the learned Attorney General, in introducing the Bill, pointed out that though the proposed power is perhaps a little unusual, it has a precedent in the Tobacco Ordinance which has apparently worked satisfactorily for the last thirteen years. It seems to me that the fact that the power already exists in another Ordinance is not sufficient reason for its multiplication. I hope that when the Tobacco Ordinance comes to be amended, opportunity may be taken to repeal the relevant section. The existence of such a law on our Statute Book is, to say the least of it, very undesirable.

The Hon. Attorney General also said that in the proposed Bill two restrictions have been added which ought, in his opinion, to relieve anyone of the fear that the section might have an injurious effect. The first restriction is that the power is given only to the Superintendent and to such revenue officers as the Superintendent may authorise in writing for the purpose. The second restriction is that the power shall not extend to the questioning of any person who has been charged under the Ordinance with any offence, or in whose case the Superintendent has decided to prosecute under the Ordinance. I submit, with due deference, that these restrictions do not remove the objections. Whether the power is restricted to certain officials or not, the fact remains that it violates the fundamental principle of British law and British justice. The second restriction is no sufficient protection to the public because even though the Superintendent may not have decided to prosecute at the time when he puts the questions, the answers to his questions may incriminate a person, which may lead to his prosecution. I beg, therefore, to propose that the section be deleted.

HON. SIR HENRY POLLOCK.—Sir, I much regret to say that I do not agree with the view which has been expressed by my hon. friend, Dr. Kotewall. Perhaps it may be said that in a certain sense I am prejudiced in this matter because, unless my recollection fails me, as acting Attorney General last year, I was the draughtsman of this new section 87A., without the beneficent provisos at the end which have been recently added by my hon. friend, Sir Joseph Kemp. I think, Sir, that in cases of trying to prevent frauds on the revenue, the great object which one should bear in mind is the question of making the law efficient and, I think, that this clause 87A tends in the direction of making the law more efficient and, therefore, I submit that as the clause stands it should be passed by this Council. It has been pointed out by the Attorney General in moving the first reading of this Bill that a precedent actually exists for such a clause in the Tobacco Ordinance of 1916. In fact the provision in 87A of

this Bill is in a sense less drastic than that in the Ordinance of 1916, which has apparently worked well for the past 13 years. I therefore regret I cannot agree with the remarks of the hon. Dr. Kotewall.

H.E. THE GOVERNOR.—The amendment has not yet been seconded.

HON. SIR SHOU-SON CHOW.—I beg to second it.

H.E. THE GOVERNOR.—Do you wish to press the amendment?

HON. DR. R. H. KOTEWALL.—I do, Sir. I am very sorry to find myself in disagreement with such a champion of the rights of the people as the senior unofficial member, but I sincerely hold the section is unnecessary and is not in accord with the ordinary rule of British law. I therefore ask for a division.

On a division, the votes were recorded as follows:—

For the amendment:—Hon. Dr. S. W. Ts'o, Hon. Mr. W. E. L. Shenton, Hon. Mr. J. Owen Hughes, Hon. Mr. R. H. Kotewall, Hon. Sir Shou-son Chow.

Against:—Hon. Mr. A. C. Hynes, Hon. Sir Henry Pollock, the Harbour Master, the Captain Superintendent of Police, the Director of Public Works, the Colonial Treasurer, the Secretary for Chinese Affairs, the Attorney General, the Colonial Secretary.

The amendment was, therefore, lost by nine votes to five.

THE ATTORNEY GENERAL.—I move that clause 27 be deleted. This matter is dealt with in the Public Health and Buildings Ordinance, which was read a first time this afternoon. It is dealt with more appropriately there because it is an amendment of the Public Health and Buildings Ordinance.

THE COLONIAL SECRETARY seconded and the amendment was approved.

THE ATTORNEY GENERAL.—Before I move that the Council resume, I should like to say it is not proposed to take the third reading of this Bill until the next meeting of this Council.

The Council resumed.

JESUIT ORDER (PORTUGUESE PROVINCE) INCORPORATION ORDINANCE, 1929.

HON. MR. W. E. L. SHENTON moved the second reading of the Bill intituled "An Ordinance to provide for the incorporation of the

Procurator in Hong Kong of the Portuguese Province of the Jesuit Order."

HON. SIR HENRY POLLOCK seconded and the Bill was read a second time.

Council went into Committee to consider the Bill clause by clause. No amendment was made in Committee, and upon Council resuming,

HON. MR. W. E. L. SHENTON moved the third reading.

HON. SIR HENRY POLLOCK seconded and the Bill was read a third time and passed.

JESUIT INCORPORATION AMENDMENT ORDINANCE, 1929.

HON. MR. W. E. L. SHENTON moved the second reading of the Bill intituled "An Ordinance to amend the Jesuit Order Incorporation Ordinance, 1927."

HON. SIR HENRY POLLOCK seconded and the Bill was read a second time.

Council went into Committee to consider the Bill clause by clause. No amendment was made in Committee, and upon Council resuming,

HON. MR. W. E. L. SHENTON moved the third reading.

HON. SIR HENRY POLLOCK seconded and the Bill was read a third time and passed.

ADJOURNMENT.

H.E. THE GOVERNOR.—The Council will adjourn until Thursday, the 19th December.
