

27th October, 1932.

PRESENT:—

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

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

THE ATTORNEY GENERAL (HON. MR. C. G. ALABASTER, K.C., O.B.E.).

THE SECRETARY FOR CHINESE AFFAIRS (HON. MR. A. E. WOOD).

THE COLONIAL TREASURER (HON. MR. E. TAYLOR).

HON. MR. E. D. C. WOLFE, C.M.G., (Inspector General of Police).

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

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

HON. MR. R. M. HENDERSON, (Director of Public Works).

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

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

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

HON. MR. J. P. BRAGA.

HON. MR. J. J. PATERSON.

HON. MR. T. N. CHAU.

HON. MR. W. H. BELL.

MR. R. A. C. NORTH (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. MR. S. W. TS'O, O.B.E., LL.D.

MINUTES.

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

PAPERS.

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

Order made by the Governor in Council on the 20th day of October, 1932, under Regulation No. 25 of the Emergency Regulations published in the Government Gazette of the 2nd October, 1931, by Government Notification No. 621.

Rescission of the Order of the 6th July, 1932, published in the Gazette of the 8th July, 1932, as Government Notification No. 447, declaring Tientsin an infected place.

Rescission of the Order of the 18th July, 1932, published in the Gazette of the 22nd July, 1932, as Government Notification No. 475, declaring Newchwang an infected place.

Rescission of the Order of the 18th August, 1932, published in the Gazette of the 19th August, 1932, as Government Notification No. 533, declaring Dairen an infected place.

Resolution made and passed by the Legislative Council on the 20th day of October, 1932, under section 39 of the Liquors Ordinance, 1931.

FINANCE COMMITTEE'S REPORT.

THE COLONIAL SECRETARY, by command of H.E. The Officer Administering the Government, laid upon the table the report of the Finance Committee, No. 11 of October 20th, 1932 and moved that it be adopted.

THE COLONIAL TREASURER seconded and this was agreed to.

THE COMPANIES ORDINANCE, 1932.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to consolidate and amend the law relating to Companies." He said.—Sir,—I rise to move the first reading of a Bill to consolidate and amend the law relating to companies which has been prepared with a view to bringing the company law of the Colony into line with that prevailing in England.

This is in accordance with precedent. There have been three great consolidations of the company law in England in 1862, 1908 and 1929. The Acts of 1862 and 1908 were followed in 1865 and 1911 by Hong Kong Ordinances which corresponded generally with their provisions. As acting Attorney General nearly twenty-one years ago it fell to me to move the Third Reading of the latter Ordinance. The Act of 1929 repealed the Act of 1908 and the Acts amending it, particularly the Act of 1928, and re-enacted their net result though not exactly in the same language or according to the same arrangement. The object of the Act of 1929 as stated in Lord Hailsham's edition of Halsbury was to present the whole body of the subject in a complete form. This Bill has a similar object. It follows the Act very closely; but, as stated in the Memorandum of Objects and Reasons on page 187 it has been necessary to incorporate special local provisions taken from the existing Ordinances.

The introduction of this Ordinance will necessitate considerable study by auditors and company secretaries and directors. But, speaking generally, any one of such persons who is provided with a text book on the Act of 1929 should have little difficulty in ascertaining his duties under this Ordinance which, under section 357 on page 140 of the print, will not come into force until the 1st July next year. I now 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:—

This Ordinance enacts, with effect from the first of July, 1933, the provisions of the Companies Act, 1929, so far as they are applicable to local circumstances; and, to facilitate reference to text-books and cases on the Act, the corresponding section of the Act is given in the marginal note to the various sections.

In certain sections, however, it has been necessary to incorporate special local provisions taken from the enactments repealed by the Ordinance.

Thus it has been necessary to include provision for China companies within the limits of the China Orders in Council in sections 4, 19, 21, 33, 34, 79, 81, 92, 93, 103, 133, 174, 215, 275, 277, 279, 348, 349, 350, 351 and 352.

Express reference to the English language or to the Chinese characters which express terms in the English language are contained in sections 3, 11, 37, 93, 107, 130, 303, 319 and 336.

In sections 331 and 332 twenty is taken as the limit for banking as well as other partnerships as was the case in section 2 of the 1911 Ordinance.

In other sections the time limited for doing acts is extended to meet local conditions.

Two Tables are attached; the first shows the correspondence between the sections of this Ordinance and those of the Act and of the Companies Ordinance, 1911, (as amended in 1925, 1928, 1929 and 1930); and the second shows how the several sections of the 1911 Ordinance (as so amended) have been disposed of in the new Ordinance.

EMPIRE PREFERENCE ORDINANCE, 1932.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to secure an increased trade between the Colony and other parts of the British Empire." He said.— This Bill and the Resolution relating to a preference on Empire brandy which was passed last week represent the contribution the Colony has been asked to make to the success of the Ottawa Conference. It is understood that the various Dominion Agreements concluded at that Conference contain clauses excluding from preferences Colonies which (not being precluded by International Conventions) either accord no preferences, or accord to some other part of the Empire preferences not accorded to the contracting Dominion.

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 move the deletion of the words of "Great Britain and Ireland" in the definition of "British Empire." It is not necessary and is not customary to speak of the United Kingdom by these words.

THE COLONIAL SECRETARY seconded and the amendment was approved.

Upon Council resuming,

THE ATTORNEY GENERAL reported that the Bill had passed through committee with one immaterial amendment and moved the third reading.

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

**SUPREME COURT (ADMIRALTY PROCEDURE)
AMENDMENT ORDINANCE, 1932.**

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend the Supreme Court (Admiralty Procedure) Ordinance, 1896."

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

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

Upon Council resuming,

THE ATTORNEY GENERAL reported that the Bill had passed through committee without amendment, and moved the third reading.

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

MARRIAGE AMENDMENT ORDINANCE, 1932.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend the Marriage Ordinance, 1875."

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

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

Upon Council resuming,

THE ATTORNEY GENERAL reported that the Bill had passed through committee without amendment and moved the third reading.

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

DIVORCE ORDINANCE, 1932.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to confer on the Supreme Court Jurisdiction in Divorce and Matrimonial causes."

THE COLONIAL SECRETARY seconded.

THE HON. MR. BRAGA.—Your Excellency,—That I should rise to raise my voice, however feeble, in opposition to the second reading of the Bill entitled An Ordinance to confer on the Supreme Court Jurisdiction in Divorce and Matrimonial Causes is not surprising. And that I am conscious of the futility of my effort, however earnest, I fully recognise. Nevertheless, I feel that I should be wanting in my sense of the civic duty which I am called upon to perform in the position that I have the honour to hold in this Council, were I to refrain from giving expression to the thought uppermost in the minds of a large number of my fellow-citizens who are definitely and uncompromisingly opposed to the introduction of any law legalising divorce in Hong Kong.

It is not my purpose to argue against the provisions of the Bill in detail; it is to the principle of the Bill that I and those for whom I speak are opposed.

In this view I am supported by a great many people in the Colony who see, as I do, absolutely no reason why facilities for divorce should be afforded to a very small number of Hong Kong residents to whom the proposed enactment is designed to give, in legal phraseology, relief in matrimonial proceedings.

On several occasions it has been argued in this Council that the Government cannot be a party to class legislation. Yet Section 4 of the Bill specifically provides *inter alia* that "nothing herein shall authorise the Court to make any decree of dissolution of marriage except—(a) where the marriage was either a Christian marriage or the civil equivalent of a Christian marriage; and (b) where the domicile of the parties to the marriage at the time when the petition was presented was in the Colony."

In other words, the Bill is aimed at affording Christians permanently residing in the Colony facilities for a breach of the marriage vow the indissolubility of which both husband and wife agreed to take at the altar rail at the time they entered into the life-long engagement "for better for worse, for richer for poorer, in sickness or in health, till death do us part." These words Catholics and Anglicans alike have inherited from their pre-Reformation forefathers.

This line of thought brings me very near the mark of the controversial points that have formed the subject of heated debate for a long period of years. Different schools of thought entertain varying views on the main restrictions on liberty of divorce.

The conception of marriage which I and those of the same upbringing as I entertain is only one. It is that one which has been very aptly put by one writer that "Christianity has had no

greater practical effect on the life of mankind than in its belief that marriage is no mere civil contract, but a vow in the sight of God binding the parties by obligations of conscience above and beyond those of civil law." Such is my conception of the indissolubility of marriage.

It is no wonder either that I should hold tenaciously to a conception born in the atmosphere of the particular religion in which I was brought up and of whose teaching I am a professed adherent.

It is the opinion of a leading authority on divorce that "once the indissolubility of marriage is abandoned in principle, then matrimony becomes a mere experiment, or at best a contract voidable upon the non-fulfilment of certain conditions, and, in the idea of many, terminable at will."

The points dealing with dogmatic and spiritual reasons do not enter into the scope of my argument, which deals with the *social* consequences of the measure in its application to the local conditions of the Colony of Hong Kong.

Since the publication of the first draft of the Bill in the *Government Gazette* of the 26th August last, Government has produced a second draft of the Bill. This revised edition includes a material addition. The addition contains the definition, not included in the original draft, of the term "Christian marriage or its civil equivalent." It is borrowed from the definition of Marriage—the same principle holds in English law—laid down in the case *Hyde v. Hyde and Woodmansee* (1 P. and D. 130). A leading case in which this definition is applied is *In re Bethell, Bethell v. Hildyard* (38 ch. D. 220.) "Christian marriage," by the new section 2 of the Bill, is defined to mean:—"a formal ceremony recognised by the law of the place where the union was contracted as involving the voluntary union *for life* of one man and one woman to the exclusion of all others."

In the search for an acceptable definition of the insurmountable difficulty confronting the promoters of the Divorce Bill, the Government has furnished an expressed admission of the indefensibility of that part of the Ordinance providing for a dissolution of marriage. I ask for leave to lay special stress on the wording of this definition. A "Christian marriage" is a marriage in the eyes of the Law only if it is a voluntary union *for life* of one man and one woman to the exclusion of all others. If the contract is one binding *for life* in my humble opinion, no act of human agency can be valid to sanction the interposition of a subsequent arrangement destructive of the contract as between one man and one woman to the exclusion of all others. Granted,

as we must by the definition of a "Christian marriage," that the contract is a life contract, the very foundation for the Divorce Bill is wiped out.

The absence of the usual "objects and reasons" attached to the Bill fails to give any explanation for the introduction of this exceptional legislative measure. The deficiency has been rectified by the Honourable the Attorney General at the last meeting of the Council. The statement, on behalf of the Government, contains nothing, however, that can carry conviction as to the necessity for the new law. It only emphasizes the point that the proposed Ordinance is intended to affect persons domiciled in the Colony. The Bill is defended on the ground that Hong Kong has been made an Alsatia by peccant husbands, the inference being that to obtain divorce in the past the proceedings would necessarily have been costly. Divorce legislation in England has been defended on identical ground, that of costly proceedings before the Houses of Parliament which imposed great hardship on the mass of the population—a hardship which, in the case of divorce petitioners in England, is supposed to have been deeply felt.

Now let us examine the position in Hong Kong. Who form the mass of the Colony's population? The only source that one can reliably turn to for an authoritative answer is the admirable Report on the Census of the Colony of Hong Kong taken in March 1931. According to that Report the total population amounted to 849,751, of whom persons of Chinese race form 96.67% and of the civilian population 97.70%. The conclusion becomes irresistible that the Bill is framed for the infinitesimal proportion of 2.30% of the Colony's population. And if we consider the migratory nature of the population this small proportion is still further reduced. The proportion of 2.30% is assumed on the supposition that no Chinese residents in the Colony are of the Christian communion or have contracted a Christian marriage or its civil equivalent. This is not so, however, as we are all aware.

Yet it is permitted to infer, in the absence of statistics, that Christian Chinese do not form an appreciable number of the Colony's total civilian population. There are two tables in the Census Report detailing the conjugal condition of the Chinese and non-Chinese races, respectively. From those extremely interesting compilations it is gathered that, in March last year, there were in the Colony 397,355 Chinese men and women including 2,075 infant marriages. Of this large total only 2 men and 1 woman were divorced. Among the non-Chinese races we find 4,051 married males and 3,156 married females, or a total of 7,207 married persons. The following table gives the numbers of divorced persons and the respective percentages to the total number of inhabitants of each race:—

	Males	Females
British	12=.35%	4=.14%
Other Europeans and Americans	5=.63%	10=1.34%
Eurasians	Nil	Nil
Portuguese	1=.07%	1=.06%
Indians	1=.04%	Nil

These are very striking figures, indeed, and form an incontrovertible argument against the timeworn claim of the hardship suffered by the mass of the population when denied facilities for easy divorce. The validity of this claim I do not admit; its existence in Hong Kong by no stretch of imagination can be established.

The Census statistics do not give any information of the comparative numbers of the Colony's inhabitants classified under their respective religious beliefs. It is estimated that the number of Chinese Catholics in Hong Kong total in round numbers 14,000. I have no means of ascertaining the correct number of Chinese of other Christian denominations. On the assumption that it is equal to the number of the Catholics we find the total number of Christian Chinese to be 28,000.

If from this total we leave out of count men of the working classes, who in proportion form the larger number of Chinese Christians, there are left a comparatively small number to whom the doubtful benefit of divorce is sought to be granted by the proposed legislation. Divorce is a luxury resorted to usually by members of the leisured class. Chinese Christians in the Colony belonging to that class are so few in number that it is more than doubtful if they have ever hinted at a wish such as is implied by the introduction of the Divorce Bill. There is no denying the fact that a large proportion of the Chinese have embraced Christianity from conviction.

On the other hand, there must be a certain number, and women prevail in that number, who have asked to be received into the Christian fold and have subsequently contracted Christian marriages in order to escape the disabilities and the hardships to Chinese women inseparable from the practice of concubinage by their husbands.

They have sought under the protection of the tenets of the Christian religion the safety unobtainable through the caprice and vagaries permissible by the custom of concubinage according to the whims of the husbands in the acquisition of domestic

appendages in the home that do not always make for concord or happiness. Some Chinese women seek to close the door against conjugal inequality by recourse to Christian marriage; they endeavour to retain their consorts' fidelity to them.

Grant divorce facilities and Hong Kong's inevitable experience is bound to be the sad experience of other countries with divorce made easy, as Mr. Gilbert Chesterton says in his essay on "The Superstition of Divorce," p. 137, "the new liberty is taken in the spirit of licence, as if the exception were to be the rule The obvious effect of frivolous divorce will be frivolous marriage. If people can be separated for no reason, they will feel it all the easier to be united for no reason."

According to the most recent statistics from the U.S.A. more than 100,000 children are affected every year by the divorces of their parents. (The World 1932 Almanac and Book of Facts, p. 444) This appalling number is a tragic commentary on the advocacy of divorce.

Among the Chinese "the seven legal reasons for divorce," I quote S. Wells Williams, "Middle Kingdom," vol. I p. 794, "are almost nullified by the single provision that a woman cannot be put away whose parents are not living to receive her back again." Again, according to J. Dyer Ball in his "Things Chinese," "Divorce (among the Chinese) was not an official matter, but was left entirely to the husband. All these different expedients and restrictions nullify or render unnecessary, the provisions as to divorce, which, like everything Chinese, is theoretically easy of accomplishment, but in practice something very different No reliable statistics have been obtained on divorce in China; but, the opinion of many long resident among the people is that divorce is not any oftener resorted to than in England, probably less often by far."

I think I have quoted enough from authoritative opinion concerning the Chinese that divorce is not a characteristic of the Chinese race. We are told that "a girl is but once legally married in China; she rides in the bridal chair but once, and only if she is a legal, principal wife."

From the Hong Kong Census figures I have quoted among the European inhabitants of the Colony there is not even one-half of one per cent. of residents who are divorced. If, therefore, among the Chinese in their own country, divorce is practically unknown, how can it be shown that those of the Chinese race who have contracted a Christian marriage in Hong Kong should seek divorce to be released, under certain circumstances, from their marriage engagements.

Modernism might have introduced some changes into the social structure of life among the Chinese by their new Civil Codes adapted from foreign countries. There are many Chinese in Hong Kong, however, who, I feel sure, prefer to adhere to the traditions of their ancient civilisation that will permit of no laxity in matrimonial unions. This being the case it is very questionable whether the Chinese will avail themselves of the facilities offered them of relief in matrimonial proceedings.

One serious objection against divorce proceedings in a small Colony like Hong Kong is the opportunity that will present itself for domestic trials and tribulations to be publicly ventilated in the Court of Justice.

As it is, there are enough sorrows and unhappiness in life without their having to be accentuated in proceedings through divorce causes having to be heard in Court. There will be the unedifying spectacle of young men and women—indeed, of people of all ages and walks in life—crowding the Court precincts from curiosity to follow fruitlessly the recital of domestic differences and human frailties.

This morbid curiosity is indulged in at the expense of time that can be more profitably employed in one's own home or in the performance of duties paid for by employers to be discharged and which are neglected because of a morbidity impelling attendance in Court. This is a feature of life in Hong Kong of comparatively recent growth and that should not be given opportunity for development. If the Bill now before the Council is allowed to become law in its entirety it will, I fear, provide the incentive which it should be the duty of every citizen to check.

The London *People* hailed the Pope's Encyclical of 1930 on Christian Marriage in the following terms:—"We hold no brief for the Vatican But we know that the world wants a strong unwavering lead in these days. And, in that sense, we find it refreshing to see such resolute dogmatism hurled at the world from the seat of Christendom." It is not my purpose to read copious extracts from that remarkable document. I will, however, conclude by quoting not more than a very few lines from His Holiness's lucid and precise pronouncement addressed to three hundred and a half millions of Catholics of all nations and races. The words I wish to invite special attention to are: "Both for the private good of husband, wife and children, as likewise for the public good of human society, they indeed deserve well who strenuously defend the inviolable stability of matrimony." In defence of that inviolability I oppose the second reading of the Bill before the Council.

To sum up: I oppose the Bill on the principle already brought forward in our Council debates that the Government cannot be a party to mere class legislation.

I oppose the Bill, in the name of the majority of the small class, whose interests it is supposed to subserve, yet whose wishes it belies and whose ideals it travesties.

I oppose it in the name of the very justice, upheld by the British Constitution, which requires every Law to be for the good of the Community, and not a measure to open the door of unhappiness for the many in order to satisfy the demands of the few.

I protest with the cry of children, even yet unborn, against a measure calculated to break up their very homes.

THE HON. MR. PATERSON—I don't think a very great deal of the bill myself, to be quite candid, but from different motives from those my honourable friend has just revealed. I feel, as one of the newspapers in an editorial has stated, that the Bill merely perpetuates all the abuses of the Divorce system in England. I think it does not go nearly far enough but under the circumstances it is probably all we are going to get and therefore I am quite prepared to accept it. I have listened very patiently and with a great deal of interest to what my honourable friend has said and frankly I have been unable to understand the meaning of it. His arguments illustrate the enormous difference there is between the Churches and the ordinary lay thought of to-day. It is perhaps unfortunate but I cannot for the life of me see how anyone making an unfortunate contract should not get out of it.

THE ATTORNEY GENERAL.—Sir,—The first honourable member to address the Council has done so at considerable length without really dealing with any of the four points mentioned in my speech on the first reading and which I will now enumerate, restate and slightly elaborate.

Firstly a Bill to deal with divorce has been suggested to us by two successive Secretaries of State who must be presumed to be aware that, until implemented by an Order in Council under the Indian and Colonial Divorce Jurisdiction Act, 1926, it will affect very few persons.

Secondly an Alsatia in Hong Kong for persons domiciled here has become an anomaly, owing to the development by Civil Jurisdictions throughout the world of means of giving relief from Christian marriages, regarded as a civil contract. It is only with marriage so regarded that the Bill deals. The honourable member has pointed out that the definition of Christian marriage or its civil equivalent recognises the status as that of a voluntary union for life of one man and one woman to the exclusion of all others. Whilst stressing the words "for life" the honourable member has

missed the point that the definition cannot be split into its component parts, but must be taken as a whole and that the introduction of "others" into the exclusive union of two destroys the fundamental civil conception of that union. With religious conception of indissolubility of the union we are not concerned.

Thirdly—in its essentials the Bill follows a Straits Settlements precedent which is open to every one of the objections, if objections they be, which have been stressed by the honourable member. Yet the Straits Bill, which went further and required, what this Bill does not require, that petitioners should profess the Christian religion, has been approved and implemented by Order in Council under the Act of 1926.

Lastly.—This will not come into force until His Majesty's pleasure is known.

With regard to the remarks of the honourable member who secondly addressed the Council, I think that is all we are likely to get and that any attempt on behalf of this Council to move in advance of the legislative thought in England will not result in the Ordinance being allowed. I move the second reading.

THE HON. MR. BRAGA.—May I be allowed to say a few words?

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT.— No. It would be out of order.

The Bill was read a second time and passed.

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

THE HON. MR. BRAGA (on consideration of Clause 4).—I beg to propose an amendment—that Clause 4, sub-section one be struck out and Numbers 2 and 3 re-numbered.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT.— The Government is opposed to this amendment.

The amendment was defeated and the clause agreed to.

THE HON. MR. BRAGA (on consideration of Clause 5).—I wish to move an amendment to delete this clause. I am also opposed to Clauses 6, 7, 8, 9, 10 and 11, to which I will move amendments.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT.— You can vote against them. Special amendments to each clause are not required.

Clauses 6, 7, 8, 9, 10, and 11 were agreed to with one dissentient and the remainder agreed to unanimously.

Upon Council resuming,

THE ATTORNEY GENERAL reported that the Bill had passed through committee without amendment and moved the third reading.

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

ADJOURNMENT.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT.— Council stands adjourned until this day fortnight.
