

16th March, 1933.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR (SIR WILLIAM PEEL, K.C.M.G., K.B.E.).

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS (MAJOR-GENERAL O. C. BORRETT, C.B., C.M.G., C.B.E., D.S.O.).

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

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

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

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

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

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

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

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

HON. SIR WILLIAM SHENTON, K.T.

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

HON. MR. J. P. BRAGA.

HON. MR. C. G. S. MACKIE.

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

HON. MR. T. N. CHAU.

MR. R. A. C. NORTH (Deputy Clerk of Councils).

ABSENT:—

HON. COMMANDER J. B. NEWILL, D.S.O., R.N., (Retired) (Harbour Master).

HON. MR. J. J. PATERSON.

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:—

Rule under section 17 of the Prisons Ordinance, 1932.

Regulation made under section 3 of the Tobacco Ordinance, 1931, on 16th February, 1933.

Order made by the Chief Justice under section 115 of the Bankruptcy Ordinance, 1931, on 6th February, 1933.

Order made under section 2 of the Public Revenue Protection Ordinance, 1927, on 16th February, 1933.

Regulation under section 8 of the Dentistry Ordinance, 1914.

Amendment to Table T under section 39 (1) of the Merchant Shipping Ordinance, 1899.

Amendment to Table E under section 37 (2) of the Merchant Shipping Ordinance, 1899.

Rescission and substitution of Table P under section 32 (2) of the Merchant Shipping Ordinance, 1899.

Jurors List for 1933 (Sessional Paper No. 1 of 1933).

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. 2 of 16th February, 1933, and moved that it be adopted.

THE COLONIAL TREASURER seconded and this was agreed to.

MOTIONS.

THE COLONIAL SECRETARY.—The Resolution standing in my name, Sir, is in connection with extensions to the Tytam Tuk Catchwaters. These extensions are referred to on page 12 of the memorandum on the Public Works Estimates which was laid on the table when the Budget for 1933 was introduced. The total estimated expenditure is \$690,000, of

which it is proposed to spend \$300,000 this year. The work is necessary for the full development of the Tytam Tuk reservoir and has been frequently discussed only to be postponed for lack of funds. Provision is made in the current year's Estimates on page 114 along with the other loan works, resolutions for which were approved by Council at the meeting on 6th October last immediately after the 1933 Budget had been passed. The reason for not at the same time moving a resolution to cover the Tytam Tuk Catchwaters was that the sanction of the Secretary of State had first to be obtained to charge the cost to loan funds. This sanction has now been given.

I now move:—

- (a) that this Council approves the construction of the Tytam Tuk Catchwaters at an estimated cost of \$690,000.
- (b) That this Council authorises the said sum of \$690,000 to be charged to a future loan and sanctions an advance of a sum of \$300,000 to be spent during the financial year 1933 from the surplus balances of the Colony.

THE COLONIAL TREASURER seconded.

THE HON. SIR HENRY POLLOCK.—When are the Works to be completed?

THE HON. DIRECTOR OF PUBLIC WORKS.—They should be completed next year.

The motion was agreed to.

TOBACCO DUTIES.

THE COLONIAL TREASURER.—The resolution I am about to move is one of the results of the Ottawa Conference, and is already in force by virtue of the order made by Your Excellency under the Revenue Protection Ordinance and published in the Gazette of the 17th February, 1933. In Part A of the Table, Empire Tobacco is given a preference of 7 cents per pound if unstripped and of 8 or 9 cents per pound (according to the degree of moisture) if stripped.

In Part B, preferences are also given as shown in the Table. To counterbalance the preferences the duty on non-Empire cigarettes is raised from 90 cents to 99 cents per pound and the duty on snuff, cigar cuttings and manufactured tobacco which is neither of Empire manufacture nor Chinese is also raised from 90 cents to 99 cents per pound.

An amendment is, however, going to be moved making minor adjustments in the figures.

I now move that the duties on Tobacco set forth in the Resolution passed by this Council on the 22nd October, 1931, and published in the Government Gazette of the 23rd October, 1931, by Government Notification No. 666 be varied and subject to the provisions of subsection (2) of section 6 of the Tobacco Ordinance, 1931, (Ordinance No. 39 of 1931), the duties payable:—

1. upon all tobacco imported into the Colony after the coming into operation of this resolution, and
2. upon all dutiable tobacco already in the Colony at the coming into operation of this resolution

shall be as stated in the following table per pound weight: Provided that the dollars and decimals thereof stated in the table shall be conventional dollars reckoned as the equivalent of one shilling and eight pence sterling; and that consequently to arrive at the actual amount payable in Hong Kong currency the conventional dollar stated in the Table shall be multiplied by 20 and divided by a figure settled by the Colonial Treasurer from time to time representing the average opening selling rates for the previous month of the Hong Kong & Shanghai Banking Corporation for demand drafts on London and until so settled the figure shall be 15.40.

TABLE.

For the purpose of this Table tobacco shall be deemed to be of "Empire Origin" if it is proved to the satisfaction of the Superintendent of Imports and Exports to have been grown and consigned from the British Empire, which for the purposes of this Table shall be deemed the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, Newfoundland, India including Burmah, any British Colony, any territory under His Majesty's protection, the Mandated territories of Tanganyika, or Cameroons under British Mandate, or Togoland under British Mandate; and tobacco shall be deemed to be of "Empire Manufacture" if it is proved to the satisfaction of the Superintendent of Imports and Exports to have been substantially manufactured in and consigned from the British Empire, as defined above: Provided that no tobacco shall be deemed to be substantially manufactured within the British Empire unless, in the opinion of the Superintendent of Imports and Exports, at least one quarter of its value is the result of labour within such Empire.

Scale of Tobacco Duties.*per pound weight.*

A.—On unmanufactured tobacco:

(1) If unstripped:—

- (a) containing 10 pounds or more of moisture per 100 pounds weight thereof:
- | | | |
|-----|---------------------------|-----------|
| I. | If of Empire Origin | 63 cents. |
| II. | Other tobacco | 70 cents. |
- (b) containing less than 10 pounds of moisture per 100 pounds weight thereof:
- | | | |
|-----|---------------------------|-----------|
| I. | If of Empire Origin | 72 cents. |
| II. | Other tobacco | 79 cents. |

(2) If stripped:—

- (a) containing 10 pounds or more of moisture per 100 pounds weight thereof:
- | | | |
|-----|---------------------------|-----------|
| I. | If of Empire Origin | 76 cents. |
| II. | Other tobacco | 84 cents. |
- (b) containing less than 10 pounds of moisture per 100 pounds weight thereof:
- | | | |
|-----|---------------------------|-----------|
| I. | If of Empire Origin | 84 cents. |
| II. | Other tobacco | 93 cents. |

B.—On manufactured tobacco:

(1) Cigars:

- | | | |
|------|---|--------|
| I. | If of Empire Origin and manufacture | \$1.60 |
| II. | If of Empire manufacture only | \$1.80 |
| III. | Other cigars | \$2.00 |

(2) Cigarettes:

- | | | |
|------|---|--------|
| I. | If of Empire Origin and manufacture | \$0.81 |
| II. | If of Empire manufacture only | \$0.90 |
| III. | Other cigarettes | \$0.99 |

(3) Other manufactured tobacco, including snuff and cigar cuttings:

- | | | |
|------|---|--------|
| I. | If of Empire Origin and manufacture | \$0.81 |
| II. | If of Empire manufacture only | \$0.90 |
| III. | Chinese prepared tobacco | \$0.90 |
| IV. | Other varieties | \$0.99 |

THE COLONIAL SECRETARY seconded.

AMENDMENT OF TABLE.

THE HON. ATTORNEY GENERAL.—Since that resolution was published, the Superintendent of Imports and Exports has said that five of these figures involve difficulty in calculation and I therefore move, as an amendment, that the final figure in paragraph A (1) (b) (79 cents) be raised to 80 cents. In paragraph (2) of B I move that 81 cents be reduced to 80 cents and 99 cents be raised to \$1; and in paragraph (3) of B similarly, that 81 cents be changed to 80 cents and 99 cents to \$1.00.

THE HON. SECRETARY FOR CHINESE AFFAIRS seconded and this was agreed to.

H.E. THE GOVERNOR then put the original motion, as amended, and this was agreed to.

CRIMINAL PROCEDURE AMENDMENT ORDINANCE, 1933.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Criminal Procedure Ordinance, 1899." He said:—This Bill implements the replies given in this Council on the 4th December, 1930, to the questions of the Hon. Mr. J. P. Braga by providing for the establishment of a Court of Criminal Appeal on the lines generally of the English Act of 1907 and of the Straits Settlements Ordinance of 1931. The provision in section 78 of the principal Ordinance, No. 9 of 1899 which enabled the trial judge to reserve questions of law for the consideration of the Full Court is retained as it is a useful power to retain and in certain cases will prove more convenient than resort to the provisions for appeals which are to be provided by the new sections 78A, B and C to be added to the principal Ordinance by this Bill. Under these sections the Full Court will have power in a proper case to order new trials as well as to quash convictions and alter sentences. The new section 10 will enable the Chief Justice, with the approval of this Council, to make rules for the assigning of legal aids in capital cases, appeals and cases reserved. At present such aids are only assigned in capital cases.

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 10 of the Criminal Procedure Ordinance, 1899 (No. 9 of 1899) provides that the procedure of the Court under

that Ordinance shall be, as nearly as possible, the same as the practice and procedure in criminal causes and matters in the High Court of Justice and the Courts of Assize in England.

2. It contains no provision for special rules of practice in criminal cases, though a limited power to make such rules is given by section 32 of the Supreme Court Ordinance (No. 3 of 1873).

3. Other Ordinances, notably the Probates Ordinance (No. 2 of 1897, s. 74), dealing with special classes of court procedure, make provision for the making of such rules in respect of proceedings to which the Ordinances relate.

4. As the principal object of this amending Ordinance is to make provision for criminal appeals in this Colony on the lines of the Criminal Appeal Act, 1907, in England and the Criminal Appeal Ordinance, 1931, in the Straits Settlements, both of which have provisions relating to rules of court, it appears desirable to amend section 10 of the Criminal Procedure Ordinance. This is done by section 2 of the Amending Ordinance. A feature of the new section 10 is the provision for assigning counsel and solicitors as legal aids in capital cases, cases reserved and appeal cases. It has been the practice to so assign them in capital cases only. Provision is now made for some extension of the practice so as to correspond with the provision made in England by section 10 of the Criminal Appeal Act, 1907, and in the Straits Settlements by section 12 of Ordinance No. 5 of 1931.

5. Section 3 of the amending Ordinance introduces new headings and sections 78A, 78B and 78C into the principal Ordinance. Section 78, which provided for reservation of questions of law, is retained as it enables the judge to reserve a question either on his own motion or at the request of either party. The new sections 78A and 78C enact, generally, the provisions of sections 3, 4, 5, 6 (2), 7, 9, 11 and 14 of the Criminal Appeal Act, 1907, except that the Full Court is given, as under section 78, power to direct a new trial and that the provision against separate judgments is derived from section 3 (6) of the Straits Settlements Ordinance, No. 5 of 1931. Another material variation from the model appears in the new section 78A (1) (c) where the words "or upon the certificate of the judge who tried him" have been inserted at the suggestion of the judges who consider that the trial judge should have the power to issue such a certificate.

6. The Court which will hear the criminal appeal will be the Full Court as defined and constituted by the Full Court Ordinances No. 27 of 1912 and No. 35 of 1931 which are being consolidated and amended, under another bill which has been approved by the Secretary of State in his despatch of the 24th August, 1932.

7. Section 4 of the amendment Ordinance repeals sections 68 and 109 of the principal Ordinance the effect of which has been preserved in the new sections 10 and 78B.

SUMMARY OFFENCES AMENDMENT ORDINANCE, 1933.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Summary Offences Ordinance, 1932." He said: Hitherto fortune telling outside temples has been dealt with by proceedings under the Vagrancy Act of 1924. It seems better to deal with the practice, as is done in the Straits Settlements, under a local Ordinance passed by the Legislative Council. This Bill adds, accordingly, a new section to the recent Summary Offences Ordinance.

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. Fortune telling in the Colony is recognised to some extent by the provisions of the Chinese Temples Ordinance, 1928, which provides for the registration of places where in accordance with the religious principles governing Miu, Tsz, Kun, To Yuen or Om, worship of gods, or communication of spirits, or fortune telling, is practiced.

2. In the Straits Settlements any person who pretends to tell fortunes, or uses any subtle craft, means or device by palmistry, divination, sortilege, or otherwise to deceive or impose on any one is punishable under section 30 of Ordinance No. 96 (Minor Offences) by fine and imprisonment and by the forfeiture of any book or other article used as an implement of fortune telling.

3. Fortune telling outside temples has hitherto been dealt with in the Colony by having recourse to section 4 of the Vagrancy Act of 1824 providing for the punishment of rogues and vagabonds some of the provisions of which have already been included in section 21 of the Summary Offences Ordinance, 1932.

4. This Amending Ordinance deals with the practice by making it a summary offence and adding astrology, phrenology and physiognomics to the list of subtle crafts, means or devices set out in the Straits Settlements Ordinance. Prosecution is made subject to the consent of the Secretary for Chinese Affairs.

NEW TERRITORIES REGULATION AMENDMENT ORDINANCE, 1933.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the New Territories Regulation

Ordinance, 1910." He said: The effect of this short Amending Ordinance is explained in the Memorandum of Objects and Reasons attached to it.

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. By section 267 (1) of the Public Health and Buildings Ordinance, 1903, Part II of that Ordinance, which relates to Public Health, does not apply to any part of the New Territories, except New Kowloon, unless the Governor in Council shall otherwise direct.
2. But by section 6A (1) of the New Territories Regulation Ordinance, 1910, the Governor in Council is empowered to make rules to take effect within the New Territories, except New Kowloon, in any matter with regard to which the Sanitary Board may for the time being have power to make by-laws under the Public Health and Buildings Ordinance, 1903, to take effect within that part of the Colony to which Part II of the Public Health and Buildings Ordinance, 1903, applies.
3. The powers of the Sanitary Board to make such by-laws are contained in section 16 of the 1903 Ordinance, under paragraphs (21) to (24) of which certain by-laws relating to cattle, sheep, goats, swine and other animals may be made. But these powers do not appear to be wide enough to provide for the prohibition of the keeping of such animals in specified localities where such prohibition is considered desirable.
4. Such prohibition is provided for in section 52 of the 1903 Ordinance which is also in Part II thereof.
5. Section 2 of the Amending Ordinance adds this power to section 6A of the 1910 Ordinance.
6. Section 3 of the Amending Ordinance corrects an oversight of the draughtsman of the Law Revision Ordinance, 1924, when in paragraph 99 of the Schedule to Ordinance No. 5 of 1924, he provided for the renumbering of sub-sections 6 (2) and 6 (3) of Ordinance No. 34 of 1910 as sub-sections 6A (1) and 6A (2) respectively, but made no consequential provision for any reference to the new section 6A in sections 7 and 8 where section 6 is mentioned.

FULL COURT ORDINANCE, 1933.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend and consolidate the Full Court Ordinances." He said: Some change in the provisions of the existing Full Court Ordinances is necessitated by the establishment of a Court of Criminal Appeal. Other changes result from a decision that in the Colony and in Shanghai the Chief Justice of Hong Kong and the Judge of His Majesty's Supreme Court for China should respectively preside in their local Full Courts. The opportunity has been taken to revise the whole of the provisions of the existing Full Court Ordinances and to consolidate them in the manner indicated in this Bill.

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 Full Court Ordinance (No. 27 of 1912) made provision for a third member of the Full Court by the inclusion in certain cases of the Judge of His Britannic Majesty's Supreme Court for China or a barrister of not less than seven years standing temporarily appointed by the Governor.
2. The Judge from His Majesty's Supreme Court for China is necessarily unavailable for appeals and other applications to the Full Court which require to be promptly heard and suitable members of the local bar are frequently themselves engaged in the appeals and applications in question. Ordinance No. 27 of 1912 made provision for the determination of such appeals and applications by a Full Court of two judges.
3. Section 2 of the new consolidation Ordinance places a limitation on the practice by providing that, except in certain specified cases, the trial judge or a judge whose judgment or order is appealed from shall not be a member of a Full Court of two judges only. He may, however, be a member of a Full Court of three judges.
4. In future therefore appeals from a judge in the summary jurisdiction will be heard either by three judges or by a court of two other judges. Magisterial appeals may be heard by either two or three judges as the Chief Justice may determine. Circumstances now obtain which makes a court of three local judges possible whenever it is deemed necessary.

5. Sections 2, 3 and 4 of the new Ordinance replace sections 2, 3, 4 and 5 of Ordinance No. 27 of 1912 as amended by Ordinance No. 35 of 1931. But all these sections have been redrafted and revised to meet present conditions. In particular it should be noted that the proviso to section 3 of Ordinance No. 27 of 1912 has been omitted. That proviso required that the Judge of His Britannic Majesty's Supreme Court for China should preside, when present, in the Full Court if his appointment as such judge was earlier in date than the appointment of the Chief Justice as such Chief Justice. A reciprocal provision was contained in Article 22 (2) of the China Order in Council, 1925. It is considered now, by the judges of both Courts, more suitable that the Chief Justice and Judge should each preside in his own Court.

6. Section 5 re-enacts section 5A of the principal Ordinance (repealed by No. 35 of 1931) so as to make provision for pending appeals and motions.

7. Section 6 effects the necessary repeals.

ADJOURNMENT.

H.E. THE GOVERNOR.—Council stands adjourned until Thursday, March 23.

FINANCE COMMITTEE.

Following the Council, a meeting of the Finance Committee was held in the Council Chamber, the Colonial Secretary presiding.

Votes totalling \$94,649, contained in Message No. 3 from H.E. the Governor were considered.

Item No. 11.—Expenses in connection with the Empire Fair—\$2,000.

THE HON. SIR WILLIAM SHENTON.—I should like to say that before very long we shall have to ask the Government for a larger grant and I think Mr. Braga will tell you that practically the whole space for the British Empire Fair is entirely taken up and we have to go to the other side of the road which will mean some other site and structure involving further expense.

HON. MR. J. P. BRAGA.—I will state briefly the necessity for a larger grant at a later stage, as indicated by Sir William Shenton. At a meeting of the organising committee held on the 13th instant a statement was prepared in which it was shown that already 80 allottees had been granted space within the large area—three times as large as last year—for the Fair. Not another inch of ground is available even though the hotel management has done its best to accommodate the organising committee. It was

unanimously decided by the committee to apply to the Director of Public Works for the grant of an extensive site on Nathan and Salisbury Roads. This new site will occupy the whole of the frontage of Nathan Road and 80 feet deep on Salisbury and Middle Roads. The intention of the organising committee is to erect there a large matshed, subject to the approval of the Hon. Inspector General of Police and the Fire Brigade in order to accommodate the overflow. I think it would be interesting for this Committee to learn that even before application was actually sent in, because it took a day or two to prepare a plan after proper survey, one leading firm of British merchants in Hong Kong applied for seven of its departments quite a quarter of the enlarged space. It is all very satisfactory from the point of enthusiasm shown by those participating in the Fair.

Speaking on behalf of the organising committee, I think it will be money very well spent when it is learned that seven firms representing British cars are actually on the register to date, applying for space for the exhibition of British cars alone. That, as you know, takes up a lot of space.

Several new features will be introduced this year and I hope if the Committee should have to approach the Government for an additional grant that the Finance Committee will approve of it readily.

Interest has been aroused in the Dominions. Canada has telegraphed to find out what space is available; Australia has done similarly and the local demand goes on increasing every day. The New Territories will be very adequately looked after by the subcommittee.

THE HON. SIR HENRY POLLOCK.—I take it that the Director of Public Works has no objection to the space being allocated.

THE HON. DIRECTOR OF PUBLIC WORKS.—No objection at all.

THE CHAIRMAN.—The Government, Mr. Braga, is very gratified to know of the enthusiasm the Empire Fair is arousing. The Government is naturally very interested in making the Empire Fair a success; any request for additional funds will, I am sure, receive the most sympathetic consideration from His Excellency. Meanwhile, if you will pass the existing vote and will apply to the Government for such further funds as may be considered necessary the matter will come before the Finance Committee again in due course.

HON. MR. BRAGA.—Thank you.

All the votes were approved.