

*15th June, 1933.*

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**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. D. W. TRATMAN, C.M.G.).

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. M. J. BREEN).

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

HON. MR. A. G. W. TICKLE, (Director of Public Works).

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

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

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

HON. MR. J. P. BRAGA.

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

HON. MR. J. J. PATERSON.

HON. MR. T. N. CHAU.

HON. MR. PAUL LAUDER.

MR. A. W. G. H. GRANTHAM, (Deputy Clerk of Councils).

**MINUTES.**

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

**NEW MEMBERS.**

The Colonial Secretary (Hon. Mr. D. W. Tratman, C.M.G.) and the Colonial Treasurer (Hon. Mr. M. J. Breen) took the oath of allegiance and their seats as members of the Council.

**PAPERS.**

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

Order under section 4 (1) of the Tobacco Ordinance, 1931.

Report of the Hong Kong and Kowloon Magistracies for the year 1932.

Report on the New Territories for the year 1932.

Report of the Inspector General of Police for the year 1932.

Report of the Head of the Sanitary Department for the year 1932.

Report on the Botanical and Forestry Department for the year 1932.

Report of the Director of Education for the year 1932.

**QUESTIONS.**

HON. MR. J. P. BRAGA asked:—

Will the Government appoint a small Committee to consider and submit recommendations on ways and means for marketing New Territories produce in Hong Kong and at Kowloon, including such questions as (a) transport facilities, (b) receiving depots, (c) distribution, (d) vendors' licences, (e) marketing, and (f) any kindred matters?

THE COLONIAL SECRETARY replied:—

A similar proposal was considered by Government in 1931, when the question of facilities for the transport and marketing of New Territory products was very thoroughly examined, and the conclusion was that existing facilities in this direction appeared, generally speaking, to be adequate.

Government is, however, prepared to accept the Honourable Member's suggestion, and appoint a Committee further to investigate the question.

### MOTIONS.

THE COLONIAL SECRETARY.—The Resolutions standing in my name are in connexion with the building of a new civil hangar and slipway at the aerodrome. Until recently the position was, as Honourable Members will be aware, that the Air Ministry and the Colonial Government each paid half the cost of the existing hangar which they jointly occupy. It was found to be too small for both parties, and it was agreed that the Air Ministry should refund to this Government the other half of the cost of the hangar together with the whole cost of the seaplane slipway adjoining it, and that the Government should build a new civil hangar and slipway at the western end of the aerodrome. With the refund, the total sum paid by the Air Ministry to this Government amounts to \$570,937.50 which has been credited the loan account and the difference between this sum and that mentioned in the resolution is attributable to the necessity, now considered to have arrived, for constructing a fully equipped air port capable of dealing with an air mail service.

Details of the estimated cost are as follow:

Steelwork for hangar and R.P.M. Roofing.....	£18,500	
Steelwork for annexes and R.P.M. Roofing .....	4,500	
		£23,000 @ \$16 \$368,000
Erection of Hangar.....		40,000
Erection of Annexes .....		110,000
Drainage .....		10,000
Water Supply.....		3,000
Lighting, Telephones to hangar and annexes only .....		19,000
Roads and Apron.....		15,000
		<u>Total</u> \$565,000

Add 10% for C/A charges, Miscellaneous works and contingencies .....	56,500
	<u>56,500</u>
	\$621,500
	<u>\$621,500</u>
Say	\$622,000
To the figure of \$622,000 has to be added:	
(a) the cost of constructing a seaplane slipway .....	110,000
(b) the cost of raising and regrading the western area of the Air Port.....	18,000
(c) salaries .....	50,000
	<u>178,000</u>
Total	<u>\$800,000</u>

The new hangar will be five feet higher than the existing one, to allow for air mail planes, and will include an administration block. Otherwise the cost of the two hangars will be practically the same.

The figure for salaries allows for one engineer, one overseer, two foremen, whom it is anticipated will be engaged on the work. It is necessarily an approximate figure, as the number of staff and the individual officers may vary slightly during the period of construction.

It is anticipated that the work will take about two years to complete.

I now move "That this Council approves the construction of a Civil Hangar and slipway at the Kai Tak Aerodrome and the raising and regrading of the western area of the air port at an estimated cost of \$800,000."

THE COLONIAL TREASURER seconded and the motion was agreed to.

THE COLONIAL SECRETARY.—I also move "That this Council authorises the said sum of \$800,000 to be charged to a future loan, and sanctions an advance of a sum of \$520,000 to be spent during the financial year 1933 from the surplus balances of the Colony."

THE COLONIAL TREASURER seconded and the motion was agreed to.

**SHING MUN VALLEY WATER SCHEME.**

THE COLONIAL TREASURER.—I rise to move the resolution standing in my name: "That the Council authorises the expenditure of a further sum of \$10,597.93 in respect of the year 1932 on works connected with the Shing Mun Valley Water Supply Scheme (Second Section; Gorge Dam) to be met from a future loan, and meanwhile to be charged as an advance from the surplus balances of the Colony." With regard to this resolution, I would explain that this Council, by a resolution dated 4th August, 1932, approved expenditure on these works to the extent of \$75,000. That sum was necessarily a rough estimate as the Resident Engineer had not then arrived in the Colony. The actual expenditure during 1932 exceeded the sum authorised by \$10,597.93 and the present resolution will regularise it.

THE COLONIAL SECRETARY seconded and the resolution was agreed to.

THE COLONIAL TREASURER.—I rise to move the resolution standing in my name: "That the Council approves the further expenditure during 1932 of \$27,041.62 on the Shing Mun Valley Scheme (Second Section: Preliminary Works) which sum shall be met from a future loan, and shall meanwhile be charged as an advance from the surplus balances of the Colony." With regard to this resolution I would explain that by a resolution dated 6th October, 1932, expenditure on the preliminary works of the second section of the Shing Mun Valley Scheme was authorised to the extent of \$50,000, spread over three years in the following manner:—

1931.....	\$30,399.17
1932.....	\$ 9,600.83
1933.....	\$10,000.00

Actually, the 1931 expenditure was originally charged against the first section but a transfer was made in 1932 correctly debiting the second section causing that year's quota to be exceeded. The present resolution, therefore, merely authorises a simple accounting adjustment.

The difference between the amount so transferred and the sum named in the resolution now before you is accounted for by the original 1932 allocation being in excess of actual 1932 expenditure.

THE COLONIAL SECRETARY seconded and the resolution was agreed to.

THE ATTORNEY GENERAL moved that the amendment of the Order dated the 10th day of July, 1931, made by the Chief Justice under section 32 of the Supreme Court Ordinance, 1873, be revised and approved.

He said: Under section 32 of Ordinance No. 3 of 1873 the Chief Justice makes general rules and orders relating to Court fees which however cannot become operative until they have been revised and approved by the Legislative Council and published in the Gazette.

The existing rules dated the 10th July, 1931, were approved by this Council on the 16th July, 1931 and published in the Gazette of the 17th July, 1931.

His Honour the Chief Justice has made recently an amending Order, dated the 11th May, 1933, to take effect on the first of July 1933, and the proposed amendment is now submitted to this Council for its approval. The effect of the amendment will be to reduce the Bailiff's fee for each man in possession from \$2 a day to \$1 a day.

THE COLONIAL SECRETARY seconded and the motion was agreed to.

### **SUPREME COURT AMENDMENT ORDINANCE, 1933.**

THE ATTORNEY GENERAL moved the first reading of a bill intituled "An Ordinance to amend further the Supreme Court Ordinance, 1873" He said:—This Bill substitutes three revised sections, explained in the Objects and Reasons, for three sections of the principal Ordinance dealing with the method and effect of the appointment of permanent and temporary Judges of the Supreme Court.

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. This Bill repeals sections 9, 10 and 11 of the principal Ordinance, No. 3 of 1873, as amended by Ordinance No. 1 of 1929, and re-enacts them in a redrafted form which clarifies the procedure and effect of the appointment of permanent and temporary judges of the Supreme Court.

2. In the new section 9 the old sub-sections (2) and (3) as amended in 1929 are redrafted and consolidated as sub-section (2).

3. In the new sub-section 10 (1) the words "In case the office of the Chief Justice or of any Puisne Judge" are substituted for the words "In case the office of any judge in the permanent service of the Colony", and correspondingly alterations have been made in sub-section 10 (2).

4. The old sub-section 10 (3) was added in 1929 to enable the Governor to appoint temporary judges in addition to the judges in the permanent service of the Colony and contemplated such appointments "to relieve from or in his judicial duties a judge who may be engaged at the time in other public work, or to appoint an additional judge for the purpose of dealing with a pressure of judicial work," (see Objects and Reasons in 1929 Hong Kong Hansard p. 14) and gave power to the Governor to appoint a temporary judge in any case not covered by the previous sub-sections. In redrafting the sub-section it has been considered desirable to provide for more than one temporary additional judge, to make express reference to the temporary members of the Full Court, and to omit, as in case of sub-section (1), the words "in the permanent service of the Colony".

5. Sub-section 10 (4) is new. It appears from the Objects and Reasons of the 1929 Ordinance (1929 Hansard p. 14) that the intention of the saving in section 9 (2) was to provide that temporary judges need not be appointed in the formal manner in which permanent judges are appointed. The new sub-section (4) added to sub-section 10 clarifies the method of appointment of temporary judges.

6. Section 11 of the principal Ordinance which avoids the office of a judge of the Supreme Court taking or performing any other place of profit or emolument not authorised by law has been redrafted and made inapplicable to judges temporarily appointed under section 10. The section in the principal Ordinance evidently contemplated the situation of a permanent judge accepting or performing the duties of another office and not the situation of the holder of another position being required temporarily to assist as a judge in the Supreme Court.

### **CODE OF CIVIL PROCEDURE AMENDMENT (NO. 2) ORDINANCE, 1933.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance for the further amendment of the Code of Civil Procedure." He said: This Bill introduces into our Code a provision taken, with a slight addition, from the Bankruptcy and Deeds of Arrangement Act, 1913, which was not repealed by the Bankruptcy Act, 1914, on which our Bankruptcy Ordinance, 1931, was based. This provision helps to perfect the title of innocent purchasers of goods taken in execution and sold by the bailiff.

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 adds a new section to the Code of Civil Procedure on the lines of section 15 of the Bankruptcy and Deeds of Arrangement Act, 1913 (3 and 4 Geo. 5, c. 34) with the following modifications:—

(a) the expression "bailiff or other officer" has been substituted for "sheriff, high bailiff or other officer", as there are no sheriffs or high bailiffs in Hong Kong,

(b) the words "except as provided by section 46 of the Bankruptcy Ordinance, 1931" have been substituted for the words "except as provided by the Bankruptcy Acts, 1883 and 1890." The Act of 1913 referred to sections 145 and 146 of the Act of 1883, and to section 12 of the Act of 1890. The local section is section 46 of the 1931 Ordinance which is based on section 41 of the Act of 1914.

(c) the words "or purchaser" have been added after "bailiff or other officer" at the end at the suggestion of the Incorporated Law Society of Hong Kong. As the editor of Chitty's Statutes (Vol. 17, p. 590, note (j)) points out, if the claimant can recover the goods from the purchaser the provision in the earlier part of the section that the purchaser of the goods shall acquire a good title is of no avail.

### **PROBATES AMENDMENT ORDINANCE, 1933.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend further the Probates Ordinance, 1897." He said: This Bill makes a number of amendments, explained in detail in the memorandum of Objects and Reasons, in the Principal Ordinance dealing with the administration of estates, which have been suggested by the Official Administrator and approved by His Honour the Chief Justice.

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 adds two sub-sections to section 11 of the principal Ordinance. The new sub-section (3) authorising the Official Administrator to employ a solicitor or other agent with the sanction of the Court is derived from section 24 (10) and 61 (c) of Ordinance No. 10 of 1931. The new sub-section (4), regulating applications to the court by the Official Administrator, follows the procedure laid down for such applications by the Official Receiver under Bankruptcy Rule No. 156 published in the Hong Kong Government Gazette of the 18th November, 1932.

2. Section 3 substitutes for sections 18 and 19 of the principal Ordinance redrafted sections making it clearer that an intestate's estate in the Colony is to vest in the Official Administrator, until administration is granted, whether the intestate died in the Colony or elsewhere and that the limit of \$250 referred to in section 19 of the principal Ordinance applies to the value of the whole estate in the Colony and not to the whole estate wherever situate.



3. Section 4 corrects a typographic error in section 20 (1) of the principal Ordinance as printed in the edition of the Ordinances authorised as the only proper statute book of the Colony for the Ordinances 1844-1923 by section 12 of Ordinance NO. 18 of 1923.

4. Section 5 substitutes for section 24 of the principal Ordinance a section in which, instead of the fixed 5% commission, a scale corresponding with the scale allowed in practice under section 59, is enacted. The words "or such lower rate or rates as the court may approve on the application of the Official Administrator" are added to provide for cases where the scale may be excessive, as where the Official Administrator temporarily takes possession of a large estate pending a grant under section 18 and does not actually administer it.

5. Section 6 substitutes for section 29 of the principal Ordinance a section in which it is re-enacted with the substitution of the words "vested in him by this Ordinance, or for anything done by him in the exercise or the intended exercise of his office as administrator under any grant of letters of administration made to him under this Ordinance, if it was done *bona fide*;" for the words "vested in him by section 14 or section 19". The amendment whilst limiting the operation of the section to acts done in good faith, extends the protection it affords to the Official Administrator and makes a similar extension of the summary remedy afforded to persons aggrieved.

6. Section 7 repeals the last two and a half lines of section 33 of the principal Ordinance and re-enacts them with the addition of the words "as may be required under this Part or." Under sections 40 and 41 which are, like section 33, in Part III of the principal Ordinance, the security is by way of bond unless the court otherwise directs.

7. Section 8 repeals the proviso to section 40 of the principal Ordinance which in conjunction with section 64 might be deemed to imply that the Inspector General of Police is bound to take out letters of administration for deceased members of the police force.

8. Section 9 repeals sections 55 and 56 of the principal Ordinance and the heading thereto. The practice of preparing and distributing calendars of grants fell into disuse many years ago and it is not considered necessary to revive it.

9. Section 10 repeals section 59 of the principal Ordinance and re-enacts it with the addition of the words in brackets, as doubts had arisen as to whether attorneys for executors or administrators under Part VI of the principal Ordinance were within the section. In the re-enactment the words "or attorney" are added to the first proviso and a second proviso is added providing a maximum scale as in the case of section 24.

10. Section 11 amends section 61 (1) and 61 (3) of the principal Ordinance to make it clear that the limit of \$500, as in the case of the \$250 under section 19, applies to the value of the whole estate in the Colony and not to the whole estate wherever situate.

11. Section 12 substitutes for section 64 of the principal Ordinance a revised and redrafted section in which estates of subordinate officers of the Prisons Department are included and the Superintendent of Prisons is appointed their administrator. In sub-section (1) the expression "not above the rank of sub-inspector" is substituted for the expression "under the rank of inspector" for greater clarity and because the former expression is used in the Police Force Ordinance (see No. 37 of 1932, ss. 14 and 15). Also the expression "without any legal formality" is inserted in sub-section (2), which represents the latter part of the old sub-section (1), to conform with section 19. In sub-section (3), which represents the old sub-section (2), the words "in his discretion" have been inserted, to conform with the old section 65 (1) (ii).

12. Section 13 adds two new sub-sections to section 65 of the principal Ordinance. The new sub-section (2) gives to the Official Administrator, with respect to larger estates of passengers dying on voyages to the Colony, like powers to those given with respect to small estates to the Harbour Master under section 65 (1); but the period of holding is extended to six months. The new sub-section (3) applies the provisions of the Unclaimed Balances Ordinance, 1929, to estates dealt with under section 65. That Ordinance, under section 4 thereof, already applies to estates dealt with under section 19 of the Probates Ordinance. It often proves impossible to trace the relatives in these cases.

### **PUBLIC WORKS LOAN REDEMPTION ORDINANCE, 1933.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to make provision for the redemption of the bonds issued under the authority of the Public Works Loan Ordinance, 1927." He said: The bonds issued under the Public Works Loan Ordinance, 1927, were made redeemable at any time after the 31st October, 1932. This Bill makes provision for the redemption of all outstanding bonds on the 1st August, 1933. Bondholders exercising the option the Bill gives them may exchange their bonds for 4% bearer Conversion bonds. Those who do not exercise that option are to be paid off. The new Conversion bonds will be made a Trustee investment.

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 Public Works Loan Ordinance, No. 14 of 1927, authorised the issue of bonds for the purpose of raising a loan of \$5,000,000 at 6 per cent. for waterworks, aerodrome, and harbour development and other public works.

2. The loan was redeemable at par on the 1st November, 1938, but provision was made for the redemption by purchase or for drawings at any time or times after the 31st October, 1932, as the Governor may from time to time determine.

3. It is now considered desirable to make provision for the redemption of the bonds at par on the 1st August, 1933, in the case of all bond holders who do not before the 11th July, 1933, or such later date as the Colonial Treasurer may approve, express their desire to exchange their bonds for a new issue of Conversion bonds bearing interest at 4 per cent. The method proposed in this Ordinance avoids the necessity for a formal drawing by lot, prescribed by section 5 (3) of Ordinance No. 14 of 1927, as it is intended to redeem all bonds not exchanged for the new Conversion bonds.

4. These Conversion bonds will be redeemable at par on the 1st August, 1953, and will not be redeemable before that date otherwise than by purchase in the open market which is authorised by section 9 (2).

5. The principal moneys and interest represented by the Conversion bonds, which like the Public Works Loan bonds will be bearer bonds transferable by delivery, will be charged on and secured by a sinking fund and the revenue and assets of the Colony.

6. The Conversion bonds will be authorised investments in which any trustee, not expressly forbidden by the terms of the instrument creating the trust, may invest funds in his hands.

7. The moneys appropriated for the payment of interest on the Conversion bonds and for the formation of the sinking fund and all dividends, interest or produce of any investments which represent any portion of the sinking fund, will be exempted from the defence contribution payable under Ordinance No. 1 of 1901.

#### **THE (1932 SUPPLEMENTARY) APPROPRIATION ORDINANCE, 1933.**

THE COLONIAL TREASURER moved the second reading of a Bill intituled "An Ordinance to authorize the Appropriation of a Supplementary Sum of Five hundred and seventeen thousand and fifteen Dollars and thirty Cents to defray the Charges of the year 1932."

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 COLONIAL TREASURER reported that the Bill had passed through the 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 GOVERNOR.—Council stands adjourned until June 22nd.

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