

9th September, 1936.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR (SIR ANDREW CALDECOTT, Kt., C.M.G., C.B.E.).

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

THE COLONIAL SECRETARY, (HON. MR. R. A. C. NORTH, *Acting*).

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

THE SECRETARY FOR CHINESE AFFAIRS (HON. MR. W. J. CARRIE, *Acting*).

THE COLONIAL TREASURER (HON. MR. E. TAYLOR, C.M.G.).

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

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

HON. MR. T. H. KING, (Inspector General of Police).

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

HON. MR. J. J. PATERSON.

HON. MR. J. P. BRAGA, O.B.E.

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

HON. MR. T. N. CHAU.

HON. MR. M. K. LO.

HON. MR. A. W. HUGHES.

HON. MR. E. DAVIDSON.

MR. D. M. MACDOUGALL (Deputy Clerk of Councils).

ABSENT:—

HON. MR. M. T. JOHNSON.

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.

Amendment made under section 5 of the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, to the by-laws under the heading "Markets" set forth in the Schedule to that Ordinance, dated 21st July, 1936.

Administration Reports, 1935:—

Part I.—General Administration:—

Report to the Director of Colonial Audit on the Audit of the Accounts of Hong Kong, 1935, with copy of forwarding despatch to Secretary of State for the Colonies.

Part II.—Law and Order:—

Report of the Police Magistrates' Courts.

Report of the Inspector General of Police.

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. 7 of 26th August, 1936, and moved that it be adopted.

THE COLONIAL TREASURER seconded, and this was agreed to.

LIQUORS DUTIES RESOLUTION.

THE COLONIAL TREASURER.—Your Excellency—Before moving this resolution, I would ask permission to make a small amendment in the first paragraph. That is to say to delete the words "that on and after the coming into operation of this resolution" and to insert the words "with effect from Monday, 14th September, 1936, and that thereafter."

The Superintendent of Imports and Exports told me to-day that measuring is always taken weekly, and for a period from Monday to Saturday. If the resolution comes into operation to-day,

it will make it rather difficult in assessing duty and the Superintendent asked if it could possibly be made operative from Monday, 14th September. I therefore move that this amendment be made.

THE COLONIAL SECRETARY seconded, and this was agreed to.

THE COLONIAL TREASURER.—We have published a whole table of the Liquor Duties Resolution. The alteration we propose to make is in respect of locally brewed beer. It has been decided to grant a preference to beer brewed in the Colony of ten cents. The rates will therefore be 70 cents per gallon on beer brewed in the Colony and 80 cents on beer not brewed in the Colony. I therefore move the following resolution which will bring this new duty into effect:—

Resolved pursuant to section 39 of the Liquors Ordinance, 1931, Ordinance No. 36 of 1931, that the Liquors Duties Resolution of the 22nd April, 1936, published in the *Gazette* by Notification No. 375 of the 24th April, 1936, be rescinded with effect from Monday, the 14th day of September, 1936, and that thereafter the duties to be paid upon intoxicating or spirituous liquors imported into, or distilled, made or prepared in, the Colony shall be assessed in Hong Kong currency as in the following Table.

Table.

Part I.

EUROPEAN TYPE LIQUOR.

	<i>Per gallon.</i>
On all liqueurs, and on all champagnes and other sparkling wines	\$13.00
On all brandy consigned from and grown or produced in the British Empire	5.00
On all other brandy and on gin, whisky and other spirituous liquors	10.00
On all port, sherry and madeira	6.00
On all other still wines	5.00
On cider and perry	0.80
On beer (as defined in the Ordinance, but exclusive of cider and perry) not exceeding 1055 degrees original	

Per gallon.

gravity, that is to say the specific gravity of the worts before fermentation,

- | | |
|---------------------------------------|-----|
| (a) if brewed in the Colony | .70 |
| (b) if not brewed in the Colony | .80 |

with the addition of \$0.02 per gallon for every degree by which the original gravity of the worts for such beer exceeds 1055 degrees as measured by the "Bates" standard saccharometer.

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|---|------|
| On all other beer (as defined in the Ordinance, but exclusive of cider and perry)
whether in concentrated form, or as ale basis, or malt and hops concentrate,
or otherwise | 0.80 |
|---|------|

with the addition of \$0.02 per gallon for every degree by which the original gravity exceeds 1045 degrees as measured by the "Bates" standard saccharometer.

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|--|------|
| On all intoxicating liquors above the strength of 20 degrees under proof, for every
degree above such strength in addition to the appropriate duty as above | 0.12 |
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Part II.

CHINESE TYPE LIQUOR.

Per gallon.

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|--|---------|
| On all Chinese type spirits distilled in the Colony and containing not more than 25
per cent. of alcohol by weight | \$ 1.50 |
| On all Chinese type spirits not distilled in the Colony and containing not more
than 25 per cent. alcohol by weight | 1.75 |
| On all Chinese type spirits containing more than 25 per cent. alcohol by weight,
for every one per cent. of additional alcoholic strength by weight | 0.06 |

Part III.

JAPANESE TYPE LIQUOR.

Per gallon.

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|--|---------|
| On all sake containing not more than 25 per cent. of alcohol by weight | \$ 1.50 |
| For every one per cent. of additional alcoholic strength by weight | 0.06 |

Part IV.

OTHER LIQUORS.

Per gallon.

On all spirituous liquors other than intoxicating liquors, but including spirits of wine or arrack, containing not more than 25 per cent. of alcohol by weight ..	\$ 1.50
For every one per cent. of additional alcoholic strength by weight	0.06

Provided that it shall be lawful for the Superintendent of Imports and Exports, in his discretion, to assess the duty on any intoxicating liquor not specifically mentioned in Part I, II and III above at such rate as is provided in any such Part for the liquor which the said Superintendent shall deem to approximate most nearly to such intoxicating liquor; and Provided also that it shall be lawful for the said Superintendent, in his discretion, to assess the duty on any spirituous liquors, imported in a consignment of less than two gallons at one time, at \$10.00 per gallon.

THE COLONIAL SECRETARY seconded.

HON. MR. E. DAVIDSON.—I wish to make a vote against the resolution, and respectfully ask that I be allowed to address the Council.

H.E. THE GOVERNOR.—Certainly.

HON. MR. E. DAVIDSON.—Your Excellency,—I address the Council against this motion with some regret. Although any measure for the reduction of taxation would normally meet with my support, I feel the financial result of this resolution would be very small and its importance lies in a principle. I suggest that it really means the adoption for this Colony of the principles of protection. It means that a preference is extended to certain industries here at the expense of the revenues of the Colony and that, of course, is flat protection.

If ten cents were collected from the local brewery and then handed back to them it would mean a subsidy without any question. I am safe in saying that the principles of protection have never been adopted in this Colony so far, and no thoughtful man would dream of applying them. Therefore, it is unnecessary for me to go into any economic arguments. As far as this Colony is concerned, protection is unthinkable. This particular measure is indefensible except on the assumption that the principles of protection are adopted. If this resolution is adopted there will be no answer to

any other industries which approach us saying "You have helped beer, help us." I have spent some time trying to find an answer to the question. I have been unable to find one. I submit, although in only a small degree, it is practically adoption of the principle of protection, and for that reason I vote against the motion.

THE COLONIAL TREASURER.—I look upon this as preference rather than protection. I might say that this Council previously approved of preference being given on Empire brandy and also on all Chinese Type Spirits distilled in the Colony of 25 cents per gallon as against all Chinese Type Spirits not distilled in the Colony.

The motion was put to the vote.

Hon. Mr. E. Davidson was the only dissentient, and the resolution was passed.

COINAGE OFFENCES (NO. 2) AMENDMENT ORDINANCE, 1936.

THE ATTORNEY GENERAL.—I ask permission to postpone the first reading of the Bill. Postponement has been asked to give Dr. Ts'o an opportunity of studying the Bill further and explaining it to members of the District Watch Committee. It is a short Bill which provides for raising the maximum penalty under two sections of the Ordinance from one to three years. I would add to what is stated in the Objects and Reasons that it is only intended to apply to serious cases which go to the Sessions. The maximum penalty which a magistrate can impose in dealing with a case summarily under Section 84 of the Magistrate's Ordinance will still be six months' imprisonment.

THE COLONIAL SECRETARY seconded, and the motion for postponement was carried.

PUBLIC RECLAMATIONS VALIDATION AND CLAUSES ORDINANCE, 1936.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to validate certain undertakings which have been constructed or commenced over and upon unleased Crown foreshores and sea bed; and to enact certain general provisions which shall be deemed incorporated, unless expressly varied or excepted, in future Ordinances authorising reclamation or other works of a public nature over and upon such foreshores and sea bed." He said: Members of this Council will recollect that a Bill with this title was read for the first time on 16th January of this year. Since then the Bill has been discussed with the Chamber of

Commerce and submitted to the Secretary of State. Certain changes were made in Clauses 6, 7 and 10 and it seemed desirable to have the Bill reprinted in its new form. I therefore move the first reading of the Bill in the form in which it now stands.

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. It is a recognised principle of English law that owners of land may be required by the Legislature to surrender some or all of the rights they possess in or over their land for purposes of public utility. It is an equally recognised principle that (save in certain exceptional cases of emergency with which we are not now concerned) it is unjust to require that surrender without making provision for due compensation to those whose private rights are affected. When the land itself has to be surrendered it is said to be compulsorily taken or purchased; but if some only of the rights in or over the land are required to be given up the land is commonly said to be injuriously affected.

2. In England the necessary authority to take or injuriously affect land is obtained from Parliament, either directly by an Act passed for the purpose, or indirectly under Acts containing general powers which may be exercised for particular purposes and upon certain conditions. The former class of Act usually specifies the land which may be taken and limits the time within which the acquisition must take place. The latter class contains no such limitations but in many cases some form of order is required before the powers can be put into force.

3. In this Colony both the direct and the indirect have been adopted in the past. Examples of such local Legislation are the Praya Reclamation Ordinance, 1889, the Praya East Reclamation Ordinance, 1921, the Harbour of Refuge Ordinance, 1909, the Foreshores and Sea Bed Ordinance of 1901 and 1932, and the Crown Lands Resumption Ordinance, 1900. Under some of these Ordinances, subject to the payment of compensation, private land can be taken for public purposes. Under others while the land itself is not taken provision is made for compensation where it has been injuriously affected by the loss of access to the sea where leases of foreshore and sea bed are granted.

4. But it seems that, unless the land itself is required or unless a Crown Lease of property is to be granted, our Legislature has not so far provided for the cases where private land is not required but may nevertheless be injuriously affected by a reclamation or other improvement which is to be retained for

public use as a roadway, pier approach or other work which the Government undertakes in the interests of the Colony generally.

5. The works set out in the Schedule to this Bill belong to this category. They have been undertaken over and upon unleased Crown foreshores and sea bed without complaint but at the same time without legislative authority, other than that which is contained in the Annual Appropriation Ordinances which have justified expenditure on the undertakings but have contained no provision for the extinction of rights or for compensation where compensation is due.

6. The possibility of enacting a Bill which while validating past works would give the Government general power to undertake similar works in the future has been carefully explored and been found open to serious objection. It has therefore been abandoned.

7. The objects of this Bill are different. They are first to validate the extinction of any public or private rights which might be considered to subsist in the works enumerated in the Schedule, which, as has been stated, have been undertaken without complaint; and, secondly, to make provision for a scheme of notice and compensation which is to be applied in the case of future Ordinances authorising undertakings of this nature.

8. Clause 1 is the Short title.

9. Clause 2 validates the undertakings enumerated in the Schedule.

10. Clause 3 applies the provisions of clause 10 to the Pipe Lines and other undertakings set out in the Schedule.

11. Clause 4, which is derived from section 1 of the Lands Clauses Consolidation Act, 1845, enacts that the clauses which follow shall, unless expressly excepted or varied, be deemed to be incorporated in any future Ordinance authorising any undertaking for reclamation or other works of a public nature over and upon unleased Crown foreshore and sea bed provisionally and subject to the definitive approval of the Governor in Council.

12. Clause 5 deals with the notification of the authorised undertaking, the hearing of objections, the publication of definitive approval and the commencement of the execution of the work. It may be compared with section 2 of Ordinance No. 26 of 1932.

13. Clause 6 provides, subject to the provisions of clauses 7, 8 and 9, for the extinction of rights upon the publication of the definitive approval. It is derived from section 8 of Ordinance No. 39 of 1909.

14. Clause 7 makes provision for the payment of compensation where private rights are affected. It is derived from section 12 of Ordinance No. 39 of 1909 and from section 2 of Ordinance No. 26 of 1932; but express provision is made for pleadings and discovery where necessary for the proper determination of the issues, and an appeal as of right to the Full Court is given from any award or decision of a judge under the clause.

15. Clause 8 deals with the powers of the judge in claims for compensation and is identical with section 13 of Ordinance No. 39 of 1909.

16. Clause 9 makes it clear that the authorising Ordinance will not create new rights; and that to obtain compensation under the clauses of this Ordinance claimants must prove that enforceable rights existed independently of either Ordinance.

17. Clause 10 (1) is derived from section 74 of the Harbours, Docks and Piers Clauses Act, 1847, (10 and 11 Vict. c. 27). It is designed for the protection of the undertakings authorised or validated by Ordinance and is considered necessary especially for the Cross-Harbour Pipe Lines. The proviso to section 74 of the Act of 1847 is omitted as pilotage is not compulsory in the Colony (*cf.* Ordinance No. 11 of 1930, ss. 11 and 28). But a new proviso has been added exempting owners from liability, in the absence of negligence by themselves or their employees, where the damage was occasioned through stress of weather conditions at a time when typhoon signals No. 9 or 10 are displayed by the Royal Observatory.

18. Clause 10 (2) provides for claims and other proceedings by the Government under this section being brought in the name of the Attorney General (*cf.* Ordinance No. 10 of 1899, s. 17 (7)).

19. Clause 10 (3) makes it clear that proceedings *in rem* cannot be taken against a British or foreign warship (see Hailsham's Halsbury Vol. I paragraphs 121 and 122).

20. Clause 11 saves the rights of the Crown and is derived from section 9 of Ordinance No. 39 of 1909.

21. Clause 12 saves the rights of the Admiralty in respect of the Royal Naval yard area (v. Despatch No. 130 from the Secretary of State dated 7.5.32).

22. The Bill was submitted to the Secretary of State, who has approved of proceeding with its enactment in its present form.

**SISTERS OF THE PRECIOUS BLOOD ORDER
INCORPORATION ORDINANCE, 1936.**

HON. MR. M. K. LO moved the first reading of a Bill intituled "An Ordinance to provide for the incorporation of the Superioress

in Hong Kong of the Congregation of the Sisters of the Precious Blood". He said: The Congregation has been in existence for about 50 years working in conjunction with the Canossian Sisters.

For the last 13 years or thereabouts the late Bishop Pozzoni arranged that the work of the Congregation should be independent of the Canossian Sisters.

The Congregation maintains at Shamshuipo a free Hospital for Chinese Children, a Secondary School for Girls, Primary Schools in different parts of the Colony; and a school for Novices intending to enter the Congregation at Shamshuipo.

The premises at Shamshuipo are now held by the Congregation under a lease from the Vicar Apostolic for the residue of the term of the Crown Lease, free of rent.

HON. MR. S. W. TS'O 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 Superioress in this Colony of the Congregation of the Sisters of the Precious Blood is the lessee for the residue of its term of the Crown Lease of New Kowloon Inland Lot No. 1114 which is used for the education of Aspirants of the Congregation and the maintenance of a preparatory School for the same and of the Novices of the Congregation, as well as for the maintenance of a Girl's School to be conducted by the said Congregation for day scholars of the inhabitants of the Shamshuipo District, Kowloon, in this Colony and for the maintenance of a Hospital for the reception of sick, infirm, paupers, foundlings and others or for infected persons in the said District.

2. The Bill for this Ordinance follows the usual lines of such incorporation Ordinances, particularly Ordinances Nos. 18 of 1933, 6 of 1925 and 26 of 1915.

PENSIONS AMENDMENT (NO. 3) ORDINANCE, 1936.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend again the Pensions Ordinance, 1932."

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

Council then 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.

SUMMARY OFFENCES AMENDMENT (NO. 2) ORDINANCE, 1936.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend further the Summary Offences Ordinance, 1932."

THE COLONIAL SECRETARY seconded.

HON. MR. M. K. LO.—Your Excellency,—My Honourable friend the Attorney General states, in his Objects and Reasons, that "the object of this amending Ordinance is to bring the distribution of handbills *again* within the mischief against which the paragraph is aimed." It therefore becomes necessary to consider the history of the legislative enactment in question in order to ascertain, from the language of the enactment, whether it was ever intended to apply to the distribution of handbills. If it was intended to apply to the distribution of handbills, then I agree that the second magisterial decision referred to by the Attorney General, in holding that distribution of handbills was not covered by the enactment, was wrong. I hope I may state the logical corollary of this, namely, that if the legislation was not intended to apply to the distribution of handbills, then obviously the magisterial decision mentioned above was correct—which disposes of the only reason advanced for this Bill.

I accordingly turn at once to the source and origin of the enactment in order, if possible, to extract its intention. As the Attorney General has pointed out, paragraph 17 of Section 3 of the Summary Offences Ordinance, 1932 (hereinafter referred to as "paragraph 17"), was taken from paragraph (13D) of Section 2 (*b*) of Ordinance No. 22 of 1930 (hereinafter referred to as "paragraph (13D)"), which is in the following terms:—

"(13D) in any public street, road or place posts up or exhibits, or causes to be posted up or exhibited any notice or proclamation in the Chinese language without the permission of the Secretary for Chinese Affairs or a District Officer. This paragraph is not to apply to Government Notices;"

It will be seen that this language is substantially the same as that of paragraph 17, the only difference being that in paragraph 17 the phrase "public place" (which by statutory definition includes all piers, thoroughfares, streets, roads, lanes, etc.), is used instead of the words in paragraph (13D) of "public place road or places."

Now we know that paragraph (13D) was not a new enactment, (nor was it considered and passed as such by this Council), for we have the Attorney General's authority for saying that it was in turn taken from Section 50 of the Regulation of Chinese Ordinance, 1888, which is in the following terms:—

"50. (1) No person shall post up or exhibit, or cause to be posted up or exhibited, in or near any street, any public notice or proclamation in the Chinese language without the permission of the Secretary for Chinese Affairs.

(2) The Secretary for Chinese Affairs may refuse such permission whenever he considers that the publication of such notice or proclamation would be prejudicial to peace or good order: Provided that this section shall not apply to Government notices."

In moving the first reading of the Summary Offences Amendment Ordinance, 1930, under which paragraph (13D) became law, the Attorney General said:—

"In the first part of this Ordinance amendments are made to the Summary Offences Ordinance in respect of firecrackers, processions, notices and things of that kind which were formerly dealt with under Ordinance No. 3 of 1888, and it is considered desirable that they should be transferred to a general one, so they are transferred to the Summary Offences Ordinance of 1845. *Subsequent sections are amendments which have been suggested from time to time under the principal Ordinance and all of them are explained in the memorandum of Objects and Reasons attached to the Bill.*"

I desire respectfully to emphasise the last paragraph of the Attorney General's remarks.

I should point out at once that paragraph (13D) is one of the "subsequent sections" mentioned by the Attorney General.

THE ATTORNEY GENERAL.—Don't you mean "is not one?"

HON. MR. M. K. LO.—No.

Now, was it intended that paragraph (13D), so far as concerns its scope and ambit, should differ materially from Section 50 of the Regulation of Chinese Ordinance, 1888? If so, we should naturally expect to find such amendment explained in the memorandum of Objects and Reasons attached to the 1930 Bill.

In what way were the amendments of the 1888 Ordinance "explained" in the memorandum of Objects and Reasons attached to the 1930 Bill? The only words in the Objects and Reasons relevant to our discussion are as follows:—

2. Clause 2 transfers with amendments certain provisions of Ordinance No. 3 of 1888 to this general Ordinance.

The new paragraphs (13A), (13B), (13C), (13D) and (13E) are derived respectively from sections 25 and 27, 22 and 27, and 23 and 27 and 50 and 51 of that Ordinance."

Surely it cannot be suggested that any material amendment of Section 50 of the 1888 Ordinance was ever intended; certainly no explanation of the effect of any amendment was given in the Objects and Reasons.

I submit very strongly that, alike under the 1888 legislation, under the 1930 legislation, and, finally, under the 1932 legislation, the mischief aimed at was and is "posting up or exhibition," and not "distributing."

The Attorney General has referred to two conflicting magisterial decisions, but I submit that on the wording of the legislation from 1888 to 1932, mere "distributing" was wrongly held in 1931 to be, and rightly held in 1932 not to be, an offence under the enactment. I notice that the Attorney General does not suggest that, from 1888 to the first magisterial decision in 1931, it had ever been regarded by anyone in authority in the Colony that distributing was an offence under the enactment.

Notwithstanding the officially avowed object of this Bill, I submit therefore that the effect of the proposed amendment is not to get rid of an erroneous magisterial decision given contrary to the spirit and intent of the enactment, but to enlarge the scope and ambit of that enactment. And I feel I can hardly crave in aid of my submission a more cogent support than that furnished by the circumstance that the Law Officers of the Crown did not appeal from the 1932 magisterial decision to the Full Court. If the magistrate's decision were wrong, it is inconceivable to me that the Law Officers of the Crown should have refrained from exercising their obvious legal remedy of appeal. And I may incidentally remark that it seems to me to be a somewhat novel proceeding that the Executive should seek the reversal of a magistrate's decision by legislation.

Paragraph 17 is, to us Chinese, an unhappy relic of an Ordinance which was frankly racially discriminative in character, and which was always repugnant to us—the Regulation of Chinese Ordinance, 1888. We rejoiced in its repeal in 1930. As a representative of the Chinese I cannot, Sir, lightly acquiesce in the enlargement of any of its surviving provisions.

We get handbills daily—handbills by way of reminders of meetings of public companies, announcing deaths and funerals, and of *bona fide* trade advertisements and circulars. If it is

considered necessary that all such documents, if written in the Chinese language, should have received the approval of the Hon. the S. C. A. before distribution, why should it not be considered necessary that such documents, if written in the English language, should also have been censored, prior to distribution, by some other appropriate authority, say, my Honourable friend the Inspector General of Police? Frankly, Sir, I cannot see what good such an enactment can do in practice. If anyone were minded to distribute objectionable handbills he would not go to the S.C.A. for approval, any more than a thief would invite a policeman to accompany him on his thieving expedition. And the only people to suffer under the law, if this Bill is passed, would be the poor and ignorant lads employed to do the distributing—either knowingly in defiance of the law by those who want objectionable handbills distributed, or unknowingly and in ignorance of the law by those who want unobjectionable and *bona fide* circulars distributed.

I shall therefore propose an amendment in Committee.

THE ATTORNEY GENERAL.—Sir,—The object of clause 2 of this Bill is to maintain the practice of censorship of handbills in the Chinese language which has been carried on as long as anyone in the Secretariat of Chinese Affairs can remember, but which a recent magisterial decision has held not to be authorised by paragraph (17) of section 3 of the Summary Offences Ordinance. What we have to consider is not whether the magistrate was right or wrong in the construction he placed on the enactment, but rather what is the mischief against which the provision was aimed. Having ascertained that, we should then amend the law so as to make the matter clear.

The Hon. Member has traced the origin of the provision back to section 50 of Ordinance No. 3 of 1888. It goes back even further than that, certainly as far back as section 10 of Ordinance No. 22 of 1884, which was intituled "The Peace Preservation Ordinance."

When the enactment was transferred to Ordinance No. 13 of 1888 (later renumbered as No. 3 of 1888) express provision was made that the Registrar General (now the Secretary for Chinese Affairs) could refuse permission for the posting up or exhibiting whenever he considered that the publication of the notice or proclamation would be prejudicial to peace or good order.

These facts, I submit, indicate clearly that ever since 1884, if not before that date, the Legislature has considered that in the interests of peace or good order a censorship of proclamations and notices in the Chinese language was essential.

That being so, is it reasonable to suppose that the Legislature in 1884 thought that a notice or proclamation prejudicial to peace

and good order would be objectionable if posted up, but unobjectionable if distributed by hand. At any rate, as I have stated, the practice of the Secretariat of Chinese Affairs has been to censor hand bills as well as posters.

We know from our histories of the Colony that when the Peace Preservation Ordinance, 1884, was passed it was rendered necessary by the occurrence of a serious riot in a certain small section of our population, the leaders of which, by the issue of subversive and threatening placards, sought to stir other sections of the community into open revolt, so that troops had to be called out in aid of the police. It may well have been that fifty-two years ago the disseminators of subversive literature favoured posters instead of handbills, but we know from the troubles of ten years ago that these disturbers of the peace still exist and that for a long time they have made use of handbills as well as posters to cause trouble.

I am sorry the Honourable Member has thought fit to suggest that there is any racial discrimination in the Bill. There is none. Offenders against the enactment are to be punished whatever their race or nationality and the enactment appears rightly now, where it was put in 1930, and where the Legislature of 1884 originally put it, in an Ordinance of general application.

In transmitting to Your Excellency a copy of his speech the Hon. Member omitted to enclose a copy of the amendment he proposed to move in Committee. I understand it was sent to another office and delayed in transmission.

If his amendment is designed to preserve the existing censorship and merely to clarify it by the addition of a paragraph on the lines of subsection (2) of section 50 of the repealed Ordinance No. 3 of 1888, which sets out that the Secretary for Chinese Affairs may refuse permission whenever he considers that publication would be prejudicial to peace or good order, I think the Government might accept the amendment. It would only state more clearly the existing practice. But if, as I have been told, his amendment is designed to abolish the censorship provided by paragraph (17) of section 3 of Ordinance No. 40 of 1932, the amendment could not be accepted by the Government and would be out of order as a Committee Amendment after this Council has decided, by passing the motion for the second Reading, that the principle of censorship is necessary.

I have only to add that the only Chinese who have come to my office to discuss this Bill have assured me that they approve of its provisions.

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

Clause 2:

HON. MR. M. K. LO.—I wish to move the amendment which I sent in advance, but if Your Excellency adheres to the Attorney General's dictum it is useless for me to read it out. However, the amendment I wish to propose is "That paragraph 17 (of Section 3) of the Summary Offences Ordinance 1932 be amended by the substitution of the following words for the words set out in the said paragraph:—

"In any public place distributes posts up or exhibits, or causes to be distributed posted up or exhibited, any handbill notice or proclamation which is or may be calculated to be prejudicial to peace or good order, or to the friendly relations between the Colony and any place outside the Colony."

I do not think I can say anything more in support of my amendment except that in his answer to me the Attorney General has not, in my submission, dealt with one of the chief points of objection to such an amendment as the proposed one. That is to say that people who wish to distribute objectionable literature would do so without going to the S.C.A. It is only people that do not know the law that get into trouble.

In any case, while I am speaking on the amendment I would like to point out one small clerical error. I can never appreciate why the words "this paragraph is not to apply to Government notices" should be inserted at all. These words must have been taken out of the Ordinance of 1884 without really appreciating their significance. I think these words are unnecessary.

I wish to move my amendment unless Your Excellency, for some reason which I cannot understand, rules it out of order.

H.E. THE GOVERNOR.—You wish to substitute a penal sanction for prevention by censorship?

HON. MR. M. K. LO.—I feel that the law should say that certain things cannot be done at all if they are objectionable.

THE ATTORNEY GENERAL.—That would come under the enactment governing seditious literature.

HON. MR. M. K. LO.—Then this section is unnecessary. I do not see why all handbills, many of which are merely reminders should have to have the S.C.A. chop on them simply because they

are in the Chinese language. That is why I am moving a general amendment. I am not introducing a new amendment. I am taking advantage of the proposed amendment.

H.E. THE GOVERNOR.—You are really proposing to repeal the law?

HON. MR. M. K. LO.—I would rather say amend, or repeal a section of it.

H.E. THE GOVERNOR.—You are for repealing the censorship clause and introducing a penal clause. I gather that having read a Bill a second time for amending a preventive clause we cannot have an amendment in Committee to substitute a merely penal clause.

THE ATTORNEY GENERAL.—The matter is governed by Standing Orders 27 (4) and 31 (1). I submit that an amendment which goes to the root of the Bill is, in effect, the same as is a vote against the motion for the second Reading which has just been passed.

HON. MR. M. K. LO.—It is an important question of principle. I have not seen anything in Constitutional Law where, when a member's amendment of a section of a Bill is before the Council, the member cannot move a repeal of that section. That is what I am practically doing. I submit my amendment is important and going to the root of the Bill.

H.E. THE GOVERNOR.—I am not standing on the strict interpretation of Standing Orders of the Council in this case. That of course does not mean that I am in sympathy with your amendment. Do you call for a division, Mr. Lo?

HON. MR. M. K. LO.—I would like a division.

The amendment was put to the vote and defeated by 15 votes to one, Hon. Mr. Lo being the only supporter.

H.E. THE GOVERNOR.—Your amendment is defeated, Mr. Lo.

HON. MR. M. K. LO.—I am in a minority of one, Sir.

THE ATTORNEY GENERAL.—With reference to the inclusion of the words "This paragraph is not to apply to Government notices" mentioned by the Hon. Mr. Lo, I do not think these words do any harm. They have been in this Bill for more than fifty years. The matter can be dealt with in future amendments or in the Revision of the Ordinance.

H.E. THE GOVERNOR.—The Attorney General will take a note.

Clause 3:

HON. MR. J. J. PATERSON.—It does not seem to me that this clause as it is cast goes far enough. From the wording, it appears that if an advertisement is placed on a hill which has no rock underneath it, it is not violating the Ordinance. I was thinking of the brick works on the Castle Peak Road which is not on rock. It is a most horrible thing.

THE ATTORNEY GENERAL.—Is it an advertisement?

HON. MR. J. J. PATERSON.—Not quite. It is just the initials of the concern. It seems to me that in the framing of this Bill as long as the advertisement is not on rock it is perfectly in order. This one is certainly not in a road cutting.

THE ATTORNEY GENERAL.—I have no objection to the word "hillside" being included. Would you like to have it added after the word "rock."

HON. MR. J. J. PATERSON.—I leave it to the law. Regimental Arms on the hillsides can also be dealt with then by this Bill. I do not think the Regimental Arms on some of the hills add to the beauty of the scenery. They will not be affected by the Clause as it stands. However, there is a big difference between the arms of, say, the Scots Guards and the advertisement on the Castle Peak Road which I referred to just now. They would both be covered if the word "hillside" were added. At present there seems to be no limit to the powers of advertisement.

THE COLONIAL SECRETARY.—Advertisements on the hillside are covered by another enactment.

THE ATTORNEY GENERAL.—What we propose to deal with here is self-advertising by hiking parties.

H.E. THE GOVERNOR.—If we have powers under any other Ordinance, it does not matter.

THE ATTORNEY GENERAL.—We have powers to make regulations concerning advertisements. If the Castle Peak advertisement which Mr. Paterson mentioned is not controlled by any existing regulation we can control it by a new one.

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.

STAMP AMENDMENT ORDINANCE, 1936.

THE ATTORNEY GENERAL moved second reading of a Bill intituled "An Ordinance to amend the law relating to stamp duty."

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

Council then 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.

**PUBLIC HEALTH (SANITATION) AMENDMENT
ORDINANCE, 1936.**

THE ATTORNEY GENERAL moved second reading of a Bill intituled "An Ordinance to amend the Public Health (Sanitation) Ordinance, 1935."

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

Council then 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.

**PUBLIC HEALTH (ANIMALS AND BIRDS) AMENDMENT
ORDINANCE, 1936.**

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend the Public Health (Animals and Birds) Ordinance, 1935."

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

Council then 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.

PUBLIC HEALTH (FOOD) AMENDMENT ORDINANCE, 1936.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend the Public Health (Food) Ordinance, 1935."

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

Council then 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.

ADJOURNMENT.

H.E. THE GOVERNOR.—Council stands adjourned until Wednesday, 16th September.
