

1st June, 1938.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR (SIR G. A. S. NORTHCOTE, K.C.M.G.).

THE COLONIAL SECRETARY (HON. MR. N. L. SMITH, C.M.G.).

THE HONOURABLE THE OFFICER COMMANDING THE TROOPS (COL. G. C. GOWLLAND).

THE ATTORNEY GENERAL (HON. MR. J. A. FRASER, M.C., *Acting*).

THE SECRETARY FOR CHINESE AFFAIRS (HON. MR. R. A. C. NORTH).

THE FINANCIAL SECRETARY (HON. MR. S. CAINE).

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

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

HON. MR. T. H. KING (Commissioner of Police).

HON. DR. P. S. SELWYN-CLARKE, M.C., (Director of Medical Services).

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

HON. MR. CHAU TSUN-NIN, C.B.E.

HON. MR. S. H. DODWELL.

HON. MR. LEO D'ALMADA E CASTRO, JNR.

HON. MR. A. L. SHIELDS.

MR. T. MEGARRY (Clerk of Councils).

ABSENT:—

HON. MR. J. J. PATERSON.

HON. MR. LO MAN-KAM.

HON. DR. LI SHU-FAN.

MINUTES.

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

NEW MEMBER.

The Honourable the Officer Commanding the Troops (Colonel G. C. Gowlland), took the Oath of Allegiance and assumed his seat as a Member of the Council.

PAPERS.

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

Resolution made and passed by the Legislative Council under the Public Officers (Changes of Style) Ordinance, 1937, Ordinance No. 25 of 1937, on the 12th May, 1938.

By-laws made by the Urban Council under sections 5 and 6 of the Public Health (Food) Ordinance, 1935, on the 26th day of April, 1938, amending the by-laws in the Schedule to that Ordinance under the heading "Dairies and Milk Shops."

Order made by the Governor in Council under section 2 of the Prisons Ordinance, 1932, Ordinance No. 38 of 1932, discontinuing the use of "The Prison Ward" in the Kowloon Hospital and the Queen Mary Hospital for the purposes of a prison, dated 13th May, 1938.

Declaration under section 18 of the Quarantine and Prevention of Disease Ordinance, 1936, Ordinance No. 7 of 1936, dated 18th May, 1938.

Amendments made by the Governor in Council under section 3 of the Adulterated Food and Drugs Ordinance, 1935, Ordinance No. 8 of 1935, to the regulations, dated 13th May, 1938.

Declaration under section 18 of the Quarantine and Prevention of Disease Ordinance, 1936, Ordinance No. 7 of 1936, dated 19th May, 1938.

Administration Reports, 1937:—

Part I.—General Administration:—

Report of the Director of the Royal Observatory, Hong Kong.

Part II.—Law and Order:—

Report of the Official Receiver and Registrar of Trade Marks and Patents.

Report of the Land Officer and Registrar of Marriages.

Report of the Superintendent of Prisons.

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. 4 of 12th May, 1938, and moved that it be adopted.

THE FINANCIAL SECRETARY seconded, and this was agreed to.

MOTIONS.

THE FINANCIAL SECRETARY moved the following resolution:—

It is hereby resolved that the resolution of this Council adopted on the 2nd August, 1902, requiring that pensions paid in England from the Widows' and Orphans' Pensions Fund be paid at the rate of 3/-to the dollar shall not apply to any pension granted on or after the 1st June, 1938.

He said: This Resolution is required because, by a resolution of this Council adopted in 1902, a fixed rate of exchange of 3/-to the dollar was prescribed for pensions paid in England from the Widows' and Orphans' Pensions Fund and this rate is obviously no longer appropriate to present conditions. The special rate applies of course only to pensions calculated on dollar salaries but while the majority of pensions now granted to persons living in England are calculated on sterling salaries there is no reason why any pensions which may be granted hereafter on the basis of dollar salaries should be artificially increased by payment at a rate of exchange of more than twice the current rate. If this resolution is adopted all such pensions granted in future will be paid at the current rate of the day.

THE COLONIAL SECRETARY seconded, and this was agreed to.

PREVENTION OF EVICTION ORDINANCE, 1938.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to prevent unreasonable eviction of tenants, and to make provision as to the rent and recovery of possession of premises in certain cases, and for purposes in connexion therewith." He said: Your Excellency,—As it is the intention to pass at this meeting a Bill intituled "Prevention of Eviction Ordinance, 1938" I wish to ask Your Excellency's consent that notice of this motion, which has been circulated to Members, stand good. It has not been possible to give the required notice within the usual time. As this measure is essential and an emergency one, and as it might be said that the reasons for its passage through all its stages are also pertinent to this application to dispense with the usual notice, I may perhaps be permitted to deal with that at the same time.

I shall also deal with the purposes of this Bill. It was forecast some time ago by the Rents Commission that some form of legislation in the matter of rents might be necessary, and though, in the majority of cases examined by that Commission, it appeared that the landlord was raising the rent merely in order to get a proper return on his money such as he was getting in 1934—that is to say in order to get back to pre-depression rates—and much of the opposition to that increase was due to the fact that tenants had been enjoying tenancies at rents far below the economic level, even at that time there were cases where the rents had been raised above the economic level.

The position has been growing more acute and housing capacity is now at saturation point. There are little more than 200 vacant floors in the whole Colony and most of them are uninhabitable. When I speak of the Colony I mean Victoria and Kowloon.

The Court has no power beyond its normal powers in relation to possession; that is to say if a man wants his own house back and if he has not given away his power of taking possession by entering into a lease, he has the right to it and the Court must enforce that right. That is a terrible weapon in a congested Colony where a tenant who is evicted has nowhere to go, and though the cases of unscrupulous use of that weapon which have come to light are few they are not entirely unknown. There was a recent case to which some publicity was given in which a landlord increased his rent, evicted his tenant and was subsequently prosecuted and tried for making a false statement of his rent to the Assessor—the latter action of course being in a Magistrate's Court.

This Bill gives power to the Court to refuse delay of an order for ejectment or possession. That power exists in England in the Rent Restriction Acts which are remaining in force there until some time this month, that is June 1938, and even after those Acts have come off, it is recognised that there will be some need for such a power in England. That power is contained in Part 2 of the Rent and Mortgage Restriction Act of 1923 which is to come into operation after the Rents Restrictions Acts have been removed. They contain a method of preventing hardship and may be described as precautionary measures after rent restriction. Here, in this case, it is proposed to use this precautionary measure as a preliminary step to rent restriction in the hope that rent restriction may really be unnecessary. In addition to delaying the power of eviction to which I have already referred, there is also a power to refer cases for a report to a Committee, a Statutory Committee, and there is also a further power of reference direct to the Committee by landlord and tenant who agree to arbitration, by which they may avoid going to Court at all. There is an appeal from that Committee's decision in the matter to the Court.

I have said that this is essentially a temporary measure, and in order that its nature shall be clearly understood and that it be retained, provision is made in Clause 6 that this Ordinance, if passed, shall remain

in force only until June 1, 1939. Like all temporary measures, its greatest usefulness would be secured only if it is applied quickly for an emergency and removed when that emergency is past. There is no reason if that emergency ceases at any time before June 1, 1939 why the Ordinance should not be repealed before that date.

I hope I have said enough to show the present and pressing need for such legislation, and if it is to be passed at all I suggest, with deference, that it is the only measure of its kind in English legislation which appears to cover the present emergency. I suggest that this is a case not only for Your Excellency to allow this notice to stand valid for this meeting but also to allow suspension of Standing Orders to enable the Bill to pass through all its stages under Standing Order 29.

H.E. THE GOVERNOR.—I understand the Attorney General wishes my consent under Standing Order No. 15 to dispense with notice other than that given. That consent I give. He has also asked the Council to agree to allow suspension of Standing Order 29 (2). That will enable this Bill to pass through all its stages.

Council approved.

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

HON. SIR HENRY POLLOCK.—Your Excellency,—I fully approve of the principles contained in this Bill and am glad that it is to be passed into Law forthwith at this Meeting of Council.

I have had the advantage of studying for several days past, the provisions of this measure, and I am satisfied that, whilst restraining unreasonable evictions, it is fair to landlords, and that it does not contain any clause to which any decent landlord could reasonably object.

I understand that my Unofficial Colleagues present here to-day are in favour of the principles in this Bill.

I congratulate the Honourable Attorney General upon having, by working through English legislation, discovered this useful and suitable precedent.

H.E. THE GOVERNOR.—It is not without reluctance that I caused this Bill to be submitted to this Council. It is in its nature repugnant to the ordinary principles of British legislation but of course it can be justified, and in my opinion, is justified, by the special circumstances now existing. Until quite recently, until the quite recent intensification of warfare in South China, I was of the opinion that a measure of this nature would not be justifiable, but the events of the last few days have caused me to alter my view and I may say that the Executive Council has agreed with me in so doing. As the Honourable and Learned

Member, the Attorney General, has pointed out, the Ordinance, if passed, is intended as a temporary measure to tide us over an emergency, and I very much hope that I shall be able to submit before long a Bill repealing these few clauses, thus bringing us back to normal conditions: but that will not be possible until more normal economic conditions prevail in Hong Kong.

THE ATTORNEY GENERAL.—I rise to move the second reading of the Bill.

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.

Objects and Reasons.

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

1. The influx of refugees from Canton as a result of recent air raids there has, despite administrative measures to cope with and restrict it, so increased a population already swollen by immigrants seeking safety from disturbance in China that the housing accommodation of the Colony is no longer sufficient to contain the numbers of those who desire to occupy it and are in many cases willing to pay exorbitant prices for doing so.

2. The object of this Bill, which is based on sections 12 and 15 of the Rent, etc., Restrictions Act, 1923 (13 and 14 Geo. 5), reproduced in clauses 3 and 4 of the Bill, is, by restricting the landlord's right to possession in certain cases, to prevent hardship to tenants now in occupation.

3. The housing problem and prevalent charges for rent were the subject of inquiry by a Commission appointed on 9th March, 1938, and since the report of that Commission a careful watch has been kept upon the situation. It is now considered necessary to deal with that situation by the means contained in this Bill.

ADJOURNMENT.

H.E. THE GOVERNOR.—Council stands adjourned *sine die*.