

*18th April, 1940.*

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**PRESENT:—**

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

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS, (MAJOR GENERAL A. E. GRASETT, D.S.O., M.C.).

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

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

THE FINANCIAL SECRETARY (HON. MR. H. R. BUTTERS, *Acting*).

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

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

HON. MR. A. B. PURVES (Director of Public Works).

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

HON. MR. J. J. PATERSON.

HON. MR. LO MAN-KAM.

HON. MR. S. H. DODWELL.

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

HON. DR. LI SHU-FAN.

HON. MR. W. N. T. TAM.

MR. C. B. BURGESS (Deputy Clerk of Councils).

**ABSENT:—**

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

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

HON. MR. A. L. SHIELDS.

**ANNOUNCEMENT.**

THE PRESIDENT.—Gentlemen,—I have to announce that His Excellency the Governor is unfortunately indisposed to-day and has appointed me, in accordance with Article XXI of the Royal Instructions, to preside at this meeting.

**MINUTES.**

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

**PAPERS.**

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

Certificate made by the Governor in Council under section 3 of the Industrial and Reformatory Schools Ordinance, 1932, Ordinance No. 6 of 1932, dated 30th March, 1940.

Additional by-law made by the Urban Council under section 3 of the Public Health (Sanitation) Ordinance, 1935, Ordinance No. 15 of 1935, under the heading "Dangerous and Offensive Trades" set forth in Schedule A to that Ordinance, dated 27th February, 1940, and approved by Legislative Council on 5th April, 1940.

The Trading with the Enemy (Specified Persons) (Amendment) (No. 5) Order, 1940, made by the Governor, with the prior approval of the Secretary of State, under section 3 (2) of the Trading with the Enemy Ordinance, 1914, Ordinance No. 25 of 1914, as amended by regulation 2 of the Trading with the Enemy Ordinance, 1914, Amendment Regulations, 1939, dated 2nd April, 1940.

Order made by the Controller of Food under the Defence Regulations, 1939, with the consent of the Governor, fixing the standard prices of certain articles of food, dated 4th April, 1940.

Additional Defence Regulations made by the Governor under the Emergency Powers (Colonial Defence) Order in Council, 1939, dated 10th April, 1940.

Administration Reports, 1939:—

Part I.—General Administration:—

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

Part II.—Law and Order:—

Report of the Land Officer and Registrar of Marriages.

### **MOTIONS.**

THE ATTORNEY GENERAL.—I rise to move that the Trade Marks (Emergency) Rules, 1940, made by the Chief Justice pursuant to the Trade Marks (Emergency) Ordinance, 1940, section 8, be approved. These Rules correspond with Rules made under corresponding enactments in the United Kingdom, and were drafted by the Registrar of Trade Marks and have been approved by the Chief Justice, but the Ordinance requires the approval of this Council as well.

THE FINANCIAL SECRETARY seconded, and this was agreed to.

### **SUMMARY OFFENCES AMENDMENT BILL, 1940.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Summary Offences Ordinance, 1932." He said: For more than 30 years the question of the control of spitting in the Colony has been discussed and the policy adopted is a gradual one. As stated in the second paragraph of the "Objects and Reasons," this present Bill extends the prohibitions which are already contained in a large number of by-laws and regulations. If this Bill is passed it will be a summary offence to spit in or into a public place or vehicle or any building to which the public have access, except into a receptacle or channel for sewage, sullage or waste water. It is hoped that gradually the habit of indiscriminate spitting will be eliminated, but it is not intended to be severe on people who are ignorant in this matter.

THE FINANCIAL 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. Clause 2 of this bill adds to section 3 of the principal Ordinance a paragraph including indiscriminate spitting in public places, vehicles and buildings in the category of nuisances punishable on summary conviction by fine or imprisonment.

2. Pulmonary tuberculosis is a serious menace to health and life in Hong Kong and indiscriminate spitting, a habit unfortunately prevalent among certain classes in this Colony, is an important factor in spreading the disease. The present measure extends to public places the prohibition against indiscriminate spitting now enforced, in dairies, milk shops, eating houses, restaurants, food factories, food shops, markets, slaughter-houses and laundries, by by-laws made by the Urban Council. It is recommended by the Urban Council as necessary in the

interests of public health and supported by the District Watch Committee and by a large body of public opinion in this Colony.

3. The gradual enforcement of the provision introduced by this bill is regarded by the local health authorities as urgently necessary if the spread of tuberculosis is to be checked.

### **INTERPRETATION AMENDMENT BILL, 1940.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Interpretation Ordinance, 1911." He said: The Governor is required by legislation to sign a very large number of documents which he has to sign really on the advice of department heads who have to deal with them. In accordance with the precedent in other Colonies, especially in Uganda, this Bill, if passed, will give him a certain amount of relief, which is further explained in the Memorandum of "Objects and Reasons."

THE FINANCIAL 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 45 of the principal Ordinance permits orders of the Governor to be signified under the hand of the Colonial Secretary or the Principal Assistant Colonial Secretary. Clause 2 of this Bill, which replaces section 45, is somewhat wider in its scope, extending the permission to signify to such matters as the grant of exemptions, the remittance of fees and the exercise of any other power whatsoever. Clause 2 is identical with section 10 of the Interpretation and General Clauses Ordinances, Cap. 87 of the 1935 Revised Edition (amended by Ordinance No. 21 of 1938) of the Laws of the Uganda Protectorate, except that the words "Colonial Secretary" and "Principal Assistant Colonial Secretary" are substituted for the words "Chief Secretary to the Government" and "Deputy Chief Secretary" respectively.

2. Clause 3 of the Bill which is taken from section 14 of the Interpretation and General Clauses Ordinance, Cap. 87 of the 1935 Revised Edition (as amended by Ordinance No. 21 of 1938) of the Laws of the Uganda Protectorate, gives the Governor power to delegate authority to the holders of various offices. This power is very desirable in order to avoid the unnecessary delay and trouble involved in forwarding documents for the perusal and signature of the Governor where the matters in question are of a routine nature, easily determinable by the head of a department. This power to delegate is practically universal in the Colonies.

### **FIRE INVESTIGATION AMENDMENT BILL, 1940.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Fire Investigation Ordinance,

1895." He said: This makes a minor amendment which is explained in the Memorandum of "Objects and Reasons," and it suits the administration of the Police Department which has grown with the Colony.

THE FINANCIAL 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 of the Fire Investigation Ordinance, 1895, requires, *inter alia*, the Commissioner of Police to make or cause to be made a full and minute inspection and a detailed report of premises where a fire has taken place or where attempted arson is suspected and it requires that he shall do this "either personally or by some officer of police of grade not lower than inspector."

2. The growth of the Colony and of the Police Force since 1895 as well as the establishment of police stations in outlying districts has rendered it necessary and convenient for the inspections and reports to be made by the police officer in charge of the districts concerned, some of whom have not reached the rank of inspector, or by some other officer deputed for the purpose by the Superintendent in charge of the Division.

3. Clause 2 of the Bill substitutes accordingly the words "by the police officer in charge of the district or by such police officer as shall be deputed by the Superintendent in charge of the Division."

4. Similarly section 4 of the Ordinance which deals with subsequent magisterial investigations as to the causes of fires gives certain rights of audience to "any police officer not below the rank of inspector."

5. In some cases it is more convenient and desirable to give the exercise of these rights of audience to the officer who had personally inspected the premises and made the report.

6. Clause 3 of the Bill adds accordingly the words "or the police officer in charge of the district or such police officer as shall be deputed by the Superintendent in charge of the Division" after the words "rank of inspector."

### **PREVENTION OF EVICTION AMENDMENT BILL, 1940.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Prevention of Eviction Consolidation and Amendment Ordinance, 1939." He said: The reason for this Bill is stated in the Memorandum of "Objects and Reasons" and is in accordance with an undertaking made by the Financial

Secretary at the introduction of the War Revenue Bill with regard to the passing on of property taxes. It may not be the best way of doing it but the object is quite clear—to prevent this property tax being passed on to tenants.

THE FINANCIAL 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. In its application the principal Ordinance No. 44 of 1939, was limited to dwellings (other than dwellings in respect of which the rent included payments in respect of board, attendance or use of furniture) in Hong Kong, Kowloon and New Kowloon held by tenants who had been sitting tenants thereof on the 3rd June, 1938.

2. It is considered necessary to extend, for the duration of the War, the scope of the Ordinance to all tenements in the Colony except furnished dwellings let at a rent which includes payments in respect of board and residence.

3. The reason for this extension is to prevent landlords passing on to their tenants the War Taxes or anticipated War Taxes imposed on them under the War Revenue Ordinance, 1940.

4. In introducing the Bill for the latter Ordinance to the Legislative Council the Financial Secretary said "I am authorized to state that if any attempt is made generally to pass on the Property Tax to tenants Government is prepared to introduce such legislation as may be considered necessary to prevent this."

### **WAR REVENUE BILL, 1940.**

THE FINANCIAL SECRETARY.—I rise to move that the Council go into Committee to consider this Bill clause by clause.

THE ATTORNEY GENERAL seconded, and this was agreed to.

Clause 2.

THE ATTORNEY GENERAL.—I have to move amendments in two parts of this Bill which were suggested in the report of the Standing Law Committee. In the definition of "Owner", in the first and second lines, I move that "and/or" be substituted for "and" in both cases; and after the definition of profits the following be added "'profits made from transactions in the Colony' means the whole profits except such portion thereof as is properly attributable to the transactions of an office situated outside the Colony."

## Clause 5.

THE ATTORNEY GENERAL.—I have to move an amendment in this clause which is later than the report of the Standing Law Committee, and results from further consideration and discussion, and that is the addition at the end of the proviso of the following: "Provided further that where the owner of the land is not the owner of buildings thereon a separate assessment shall be made for the land and for the buildings."

## Clause 6.

THE ATTORNEY GENERAL.—I wish to move two amendments in this clause. The first is by the Standing Law Committee and calls for the deletion of the word "normally" at the end of the second line. The second amendment is a new sentence added as a result of further discussion. The new sentence will be "Where such payment is made by any person other than the owner of the land or buildings then the amount so paid by way of Property Tax shall be a debt due from the person assessed under Clause 5."

## Clause 8.

THE ATTORNEY GENERAL.—I am not moving an amendment to this clause, but I have a statement to make regarding the first paragraph of the proviso—exemption of the official emoluments of the Governor. I have to state, on His Excellency's behalf, that he will not benefit by that exemption and that he is not intending in any way to avail himself of it, nor is it inserted to protect him. It is inserted in accordance with the instructions received from two successive Secretaries of State, the present one and his predecessor, requiring such exemption of His Majesty's representative in legislation of this kind, and it is a common thing in the majority of Crown Colonies and also in the Dominions. These instructions were known to the General Committee which produced this Bill and which sat for a considerable time. As they may not be known to the general public I now make this statement. I can assure the general public that His Excellency has no intention of deriving any personal benefit as a result of that Clause.

## Clause 9.

THE ATTORNEY GENERAL.—I wish to move in this clause that after the word "salary" in the first line of sub-paragraph (1) "leave pay" be added. This is a recommendation of the Standing Law Committee.

## Clause 11.

THE ATTORNEY GENERAL.—After the second sub-paragraph of the proviso I suggest deletion of the word "and" and the addition at the end of paragraph (III) of a semi-colon and the word "and"

instead of a fullstop. I also move that addition of a fourth paragraph recommended by the Standing Law Committee. This paragraph reads as follows: "(IV) in the case of a married woman no allowance shall be made for a child in respect of whom such allowance has been made in favour of her husband."

Clause 13.

THE FINANCIAL SECRETARY.—Certain apprehension appears to have arisen as a result of the new definition in Clause 2, which reads "'profits made from transactions in the Colony' means the whole profits except such portion thereof as is properly attributable to the transactions of an office situated outside the Colony," that where there exists a branch in this Colony, as distinct from a head office, the books of the whole concern will have to be produced disclosing all transactions throughout the world. This is not intended and opportunity will be taken to avoid any such wholesale requirement by submitting the matter for regulation to the Board of War Taxation under Clause 58. These remarks will apply also to Clause 14.

Clause 16.

THE ATTORNEY GENERAL.—It has been suggested in recent discussions that paragraph (a) at the top of page 8 should be reduced very considerably and read "(a) an allowance for reasonable depreciation." That means deletion of all the words after "depreciation" in the first line. Another amendment, suggested by the Standing Law Committee, is the addition of the words "for the purpose of producing the profits" at the end of paragraph (e).

THE FINANCIAL SECRETARY.—It has been suggested that royalties payable to Government should be specially excluded under this section. It has always been understood that such royalties should be deductible from profits before profits are assessable for war taxation, and it has always been the intention to avoid double taxation, as I explained when introducing the Telephone Amendment Bill, 1940. Owing to this general understanding and to the special nature of the royalties under the Telephone Ordinance, which are calculable after and not before Profits Tax under this Bill will be assessed, it is considered unnecessary to insert what would require to be somewhat complicated provisions in this Bill; but I am authorised, on behalf of Government, to give an undertaking that royalties other than those paid by the Telephone Company, for which provision has already been made, will not be included in the profits subject to tax under this section.

Clause 18.

THE ATTORNEY GENERAL.—The marginal note to this clause seems to be a little high. I will bring it to the notice of the printers.

## Clause 21.

THE ATTORNEY GENERAL.—In paragraph (3), in the third line, the Standing Law Committee suggests substitution of "the manager or" for the word "any". I move that this amendment be made.

## Clause 24.

THE ATTORNEY GENERAL.—I have to move certain amendments to this Clause. In sub-paragraph (1), in two places, in the third line and the sixth line, it is suggested that "one-half" be substituted for "three-fourths." These amendments have resulted from discussions and correspondence since the Standing Law Committee met. They will remove objections which have been made.

In sub-paragraph (2), it is suggested that after the word "association" in the third line the words "chamber of commerce, or similar institution" be deleted to make it clear that it is not intended to bring *bona fide* chambers of commerce into the scope of this Bill. I move that the three amendments be made.

## Clause 25.

THE ATTORNEY GENERAL.—It has been suggested by the Standing Law Committee that the words "the amount of" be deleted in the third line, after the word "business" and the word "owned" in the last line be deleted. I move that these amendments be made. I also move that commas be inserted after "Ordinance" in the fourth line and after "buildings" in the last line.

## Clause 40.

THE ATTORNEY GENERAL.—A small amendment has been suggested by the Standing Law Committee, namely, that in the fifth line of paragraph (4) the word "three" be substituted for the word "two" in connection with the quorum of members. I move that it be adopted.

## Clause 44.

THE ATTORNEY GENERAL.—I suggest that in the marginal note the words "on a question of law" be deleted and an "s" be added to the word "Appeal". I also suggest that a second proviso be added to paragraph (1), namely, "And provided also that the appellant or the Commissioner may appeal to the Supreme Court on a question of fact with the leave of such Court". The object of this and the following amendment is that appeals on fact be allowed by leave of the Court and appeals of all kinds be governed by the ordinary rules.

The Standing Law Committee suggests a new paragraph at the end. This paragraph reads "(7) Appeals from decisions of the Supreme Court under this section shall be governed by the provisions of the Supreme Court Ordinance, 1873, the Code of Civil Procedure, the Full Court Ordinance, 1933, and the Orders and Rules governing appeals to the Privy Council."

Clause 60.

THE ATTORNEY GENERAL.—I move that this clause be renumbered as clause 61 and a new clause be inserted as number 60, The new Clause reads: "60. Taxes under this Ordinance shall, subject to the provisions of this Ordinance and notwithstanding anything contained in any other written law or in any convention grant or agreement, be charged at the rates specified in Chapters II, III and IV for the year of assessment commencing on the first day of April, 1940, and for each subsequent year of assessment in respect of the property, income and profits of every person for the year preceding the year of assessment, but without prejudice to any provisions of this Ordinance which enact that tax is to be charged in particular cases in respect of property, income and profits for a period other than the year preceding the year of assessment," and was suggested by the Standing Law Committee.

The marginal note for this clause will read "Incidence of taxes under this Ordinance."

Upon Council resuming,

THE FINANCIAL SECRETARY reported that the War Revenue Bill had passed through Committee with certain amendments which he submitted were material, and moved that the Bill, as amended, be published in the *Government Gazette* before being read a third time.

THE ATTORNEY GENERAL.—That is in accordance with Standing Orders, and I beg to second the motion. I will endeavour to get the amended Bill published in to-morrow's *Gazette*.

The motion was carried.

#### **ADJOURNMENT.**

THE PRESIDENT.—Council stands adjourned until 2.30 p.m. on April 25th.

#### **FINANCE COMMITTEE.**

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

The Director of Medical Services attended by invitation.

Votes totalling \$484,035 under Estimates 1939, and \$272,336 under Estimates 1940-41, were considered.

Item 316.—5, Charitable Services:—Tung Wah and Associated Hospitals, \$199,000.

HON. MR. PATERSON.—I suppose the money is controlled now and there is no nepotism.

THE DIRECTOR OF MEDICAL SERVICES.—It is now under satisfactory control. There is a Finance Committee which meets monthly to decide payments. The question of nepotism is rather a wide one and I do not feel competent to give a considered opinion on the matter now. I know several of the Directors personally. Perhaps Mr. Lo has a personal knowledge of the Committee members.

HON. MR. M. K. LO.—The necessity and reasons for the grant have been very thoroughly discussed and under the agreement between the Hospitals and the Government all medical matters are now under the control of the medical committee which had been appointed as an Executive Committee in regard to all medical matters. I cannot see anything happening without it being detected.

Item 317.—6, Defence. A.—Volunteer Defence Corps. Special Expenditure:—Two armoured cars, \$14,199.

HON. MR. DODWELL.—I see these cars were to cost \$12,000 each, yet they cost us \$14,000 for the two of them.

THE FINANCIAL SECRETARY.—There is provision for local construction after the chassis arrive in the Colony.

HON. SIR HENRY POLLOCK.—I don't see how we have to pay \$14,199 more for two cars costing \$12,000 each. We voted \$12,000 each for the cars and now they are costing us over \$28,000.

THE CHAIRMAN.—In the 1940-41 estimates provision was made to the extent of \$24,000 for two armoured cars. In May, 1939, it was decided to provide the Volunteers with four new cars, two as soon as possible and two early this year. We got the chassis through the Crown Agents and \$7,595 was needed for the armoured plating, which comes from the Stores Department. There were additional charges for the chassis and the construction locally.

THE FINANCIAL SECRETARY.—This money is what was actually expended last year.

Item 54.—30, Public Works Extraordinary:—5, Central Government Store, \$16,500.

HON. MR. LO.—Is it intended to make some part of the Store a bomb-proof shelter?

THE FINANCIAL SECRETARY.—That, I think, will come up under a supplementary vote applied for under A.R.P. It will be some \$8,000. The shelter is to be used as an oil store in times of peace.

HON. MR. LO.—Are we making some provision for housing this priceless porcelain in some sort of bomb-proof store?

THE CHAIRMAN.—It doesn't seem to be mentioned in the files. I will take the matter up for you.

HON. MR. PATERSON.—I think we might make provision for our mortal selves first. The only difference is we can run and the porcelain can't.

All the votes were approved.

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