

26th June, 1941,

PRESENT: —

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

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

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

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. R. R. TODD, *Acting*).

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

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

HON. MR. W. J. CARRIE (Chairman of the Urban Council).

HON. MR. J. P. PENNEFATHER-EVANS (Commissioner of Police).

HON. MR. J. J. PATERSON.

HON. MR. S. H. DODWELL.

HON. MR. LO MAN-KAM, C.B.E.

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

HON. MR. A. L. SHIELDS.

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

HON. MR. T. E. PEARCE.

HON. MR. LI TSE-FONG.

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

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 by the Governor in Council under section 3 of the Essential Commodities Reserves Ordinance, 1939, Ordinance No. 38 of 1939, to the Schedule, dated 13th June, 1941.

The Hong Kong Daylight-Saving Regulations, 1941, made by the Governor under the Emergency Powers (Defence) Acts, 1939 and 1940, as applied to this Colony by the Emergency Powers (Colonial Defence) Orders in Council, 1939 and 1940, dated 13th June, 1941.

Order made by the Financial Secretary under regulation 4A of the regulations in the Schedule to the Miscellaneous Licences Ordinance, 1933, Ordinance No. 25 of 1933, prescribing the premium of exchange for one-cent notes, dated 13th June, 1941.

Amendments made by the Governor in Council under section 56 of the Trade Marks Ordinance, 1909, Ordinance No. 40 of 1909, to the Trade Marks Rules, dated 18th June, 1941.

Amendments made by the Urban Council under section 5 of the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, on 20th May, 1941, and approved by the Legislative Council on 19th June, 1941, to the by-laws under the heading "Restaurants, Eating Houses and Food Stalls" contained in the Schedule to the said Ordinance.

Amendment made by the Urban Council under section 5 of the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, on 20th May, 1941, and approved by the Legislative Council on 19th June, 1941, to the by-laws under the heading "Food Factories" and sub-heading "A. General" contained in the Schedule to the said Ordinance

Amendment made by the Urban Council under section 5 of the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, on 20th May, 1941, and approved by the Legislative Council on 19th June, 1941, to the by-laws under the heading "Food Factories" and sub-heading "D. Food Preserving Establishments" contained in the Schedule to the said Ordinance.

Amendment made by the Urban Council under section 3 of the Public Health (Sanitation) Ordinance, 1935, Ordinance No. 15 of 1935, on 20th May, 1941, and approved by the Legislative Council on 19th June, 1941, to the by-laws under the heading "Dangerous and Offensive Trades" contained in Schedule A to the said Ordinance.

Amendment made by the Urban Council under section 4 (xii) of the Public Health (Sanitation) Ordinance, 1935, Ordinance No. 15 of 1935, on 20th May, 1941, and approved by the Legislative Council on 19th June, 1941, to the by-laws under the heading "Mosquito Prevention" contained in Schedule A to the said Ordinance.

Amendments made by the Urban Council under section 4 (1) (xxiv) of the Public Health (Sanitation) Ordinance, 1935, Ordinance No. 15 of 1935, on 20th May, 1941, and approved by the Legislative Council on 19th June, 1941, to the by-laws under the heading "Cemeteries" contained in Schedule A to that Ordinance.

Additional regulation (Temporary registration of certain medical practitioners) made by the Governor under the Emergency Powers (Colonial Defence) Orders in Council, 1939 and 1940, to the Defence Regulations, 1940, dated 19th June, 1941.

NOTICE OF QUESTIONS.

HON. MR. LO MAN-KAM. —I desire to give notice that at the next meeting of the Council I will put the following questions: —

Will Government make a statement on the appointment of a Lady Assessor from England for the War Revenue Department, with particular reference to the following points: —

- (1) In view of the evacuation, why it was considered necessary to send a lady officer out from England to Hong Kong?
- (2) Whether any efforts were made to secure a suitable candidate locally or from among the evacuees?

CROWN RENTS (APPORTIONMENT) AMENDMENT BILL, 1941.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Crown Rents (Apportionment) Ordinance, 1936."

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: —

The principal Ordinance, No. 4 of 1936, makes no suitable provision for determination of rent on the application of the owner of the Remaining Portion of a section, in cases in which the rent of such section has already been determined.

The Object of this Bill is to make such provision.

ANNOUNCEMENT.

H.E. THE GOVERNOR. —Honourable Members, —Before calling upon the Honourable the Financial Secretary to move the second reading of the bill to amend the War Revenue Ordinance I wish to mention one important point in it, upon which I regret that I failed to touch when I spoke on the subject on May 29th.

It will not have escaped notice that the Bill still provides only two rates of taxation, the lower of which recognizes that the lowest taxable incomes cannot afford to pay the full rate, the result being that all other incomes, however great, are taxed at the rate which is considered to be fair to the business which earns any profit exceeding \$50,000 per annum and to the salaried individual who earns anything more than \$5,000 per annum, after deduction of due allowances.

Quite obviously this crude grading does not completely fulfil the Colony's obligations as a unit of the British Empire in war time, and equally obviously, I hope you will agree, we are in duty bound to see that those obligations are so fulfilled.

For this inadequacy of the present measure I myself take the responsibility. By the time I had returned to this Colony and had been able to look round, the Reconstituted War Revenue Committee was well on the way to its conclusions, and in view of the War Taxation Department's need for a statute on which to assess and collect during the current year, I decided not to add to the Committee's terms of reference any instruction to consider the addition of higher basic or super-tax rates. That would have meant a delay that would have held the Department up seriously. The preferable course of action appeared to be to get the amended War Revenue Ordinance on to the statute-book and then to appoint a committee of very similar composition to consider the advisability either of replacing in 1942-43 the War Revenue taxes by an Income Tax, supplemented possibly by an Excess Profits Tax, or, alternatively, if that proves undesirable, of developing the rate scales of the War Revenue Ordinance so as to tax higher profits and salaries according to their full ability to pay. This I may say is my present intention.

WAR REVENUE BILL, 1941.

THE FINANCIAL SECRETARY moved the second reading of a Bill intituled "An Ordinance to amend and consolidate the War Revenue Ordinances of 1940."

THE ATTORNEY GENERAL seconded.

HON. MR. LO MAN-KAM. —Your Excellency, —in view of the very comprehensive statement made by the Hon. the Financial Secretary when he moved the First Reading of this Bill at the last meeting of this Council, I propose to say very little upon its provisions. But I would like to say that since the Report of the Reconstituted War Revenue Committee was published I have received representations regarding the Profits Tax. These representations point out that whilst under the Salaries Tax a man with a wife and two children can deduct \$8,000, by way of allowance, under the Profits Tax a man with a wife and children, carrying on a business, has to pay tax on profits in excess of \$5,000 at 7 per cent. up to the first \$50,000. Moreover, as these representations point out, the position of a firm consisting of two or more partners with children is more aggravated, the disadvantage being proportional to the number of partners. But, as the Hon. the Financial Secretary has pointed out, the reduction of exemption limit from \$10,000 to \$5,000 under the Profits Tax is to remove or reduce the temptation to evasion by splitting up businesses into two or more firms, and I feel that the disadvantages mentioned above must be regarded more or less as the consideration for treating firms as taxable entities. No taxing measure can be expected to give universal satisfaction, and I therefore do not propose to move any amendment in this matter to-day. But I do feel that this question should be reviewed in the light of the working of the tax during the coming year, and I reserve the right to bring up this question in due course.

The reasons which prompted the Reconstituted War Revenue Committee to recommend the basic rates of tax of 6 per cent. and 12 per cent. are fully set out in its Report. Your Excellency, speaking in this Council on May 29th, stated that by way of general intensification of our war effort Government had decided that the general increase of the present rates should be 7 per cent. and 14 per cent.

Sir, I venture to think that there is not a single person in the Colony who does not agree heartily with Your Excellency's observations. I have no doubt that the general public will be gratified if, as the result of the increased basic rates, the Colony can be put in the position of making a more effective contribution to the war effort; but what I believe the general public to be anxious about is this: will the prospect of a substantial surplus accentuate the tendency, which is so much deplored by the public, of extravagant expenditure on the part of Government. I feel sure, Sir, that any assurance which Your Excellency can give that any surplus will be faithfully safeguarded

and used only for the furtherance of the Colony's war effort, or for essential local services, will give general satisfaction.

Whatever trials and tribulations may lie before this Colony we are, at the moment, living in security and comfort. It may therefore seem presumptuous on our part even to refer to the terrible ordeal which is being undergone by civilians in battered Britain, or to refer to the unparalleled heroism displayed by the Fighting Forces in the various theatres of war (Hear, Hear). But I know that everyone in the Colony feels these things deeply, and with such assurance from Your Excellency as I have indicated I am certain that the public of Hong Kong will cheerfully bear the burden of increased rates. (Applause).

H.E. THE GOVERNOR. —I am very glad to give the assurance which the Honourable Mr. Lo has asked for. The prime objects of increasing the war revenue taxation are to enable our war effort to become stronger and at the same time to increase, if possible, our reserves so that we can face the post-war period. I regard that as coming properly within the scope of the war measure. I am very glad that the Honourable Member has included in the list of objects of expenditure of war revenue taxation which he mentioned, the possibility at any rate of some of the money going to an improvement of local social services. I feel sure I can give an assurance in this Council which my successor will have no difficulty in fulfilling.

The Bill was read a second time.

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

Clause 13.

THE FINANCIAL SECRETARY. —I wish to move an amendment in this Clause. At the last meeting of this Council I stated that I had been authorised to say that further consideration would be given by Government to the allowances for the third and fourth children. As a result of such further consideration I now move that in sub-paragraph (1) (c) the words "seven hundred and fifty" be substituted for "five hundred" in the fifth and sixth lines. It is felt that in present circumstances it is justifiable to give this further slight relief to the medium-salaried tax-payer who has a wife and three or four children. It means that such a tax-payer will not pay more in Salaries Tax than he did last year unless his income is over \$16,000 per annum. A man with a wife and three children and an income of \$10,000 a year will pay only \$15, while a man with a wife and four children will pay nothing unless his income exceeds \$10,500 a year. The loss to revenue involved in this concession will be trivial. I move that this amendment be made.

THE ATTORNEY GENERAL seconded, and the amendment was approved.

Clause 18.

THE FINANCIAL SECRETARY. —I wish to say a few words on this Clause. Government received yesterday a letter from the Hongkong General Chamber of Commerce suggesting that the words in sub-paragraph (a) be deleted and that the words “an allowance for reasonable depreciation” be substituted therefor. This would be a reversion to the wording of the corresponding section (Section 16 (a)) of the War Revenue Ordinance, 1940. As explained in the Table of Correspondence attached to the Bill, this Clause has been re-drafted so as to put the question of the meaning of depreciation on a clear basis. The re-draft was drawn up by a Sub-committee of the reconstituted War Revenue Committee and was accepted by the full Committee. Government has noted the representations of the Chamber of Commerce on this matter but does not consider that a case has been made out for an amendment of the clause as it now stands.

H.E. THE GOVERNOR. —What is the amendment, if any?

THE FINANCIAL SECRETARY. —There is no amendment. I am explaining the representations made by the Chamber of Commerce and that Government has decided that no amendment should be made.

HON. MR. A. L. SHIELDS. —I am sorry, Sir, that this Clause is going through to-day. The Chamber of Commerce had last year's Bill in mind in which a scale had to be brought in, and an amendment was made. It was agreed that the matter was subject to appeal; it was only as a guide and had no statutory effect. What the Chamber of Commerce feels is that it is impossible to draw up any scale of depreciation to cover all businesses and factories in a town of this kind with varied occupations. I would point to the case of factories who put in plant to make materials for war purposes. I will not mention any specific materials or cases, but it is obvious that the plant must be written off and provision must be made for heavy depreciation during the currency of the war, as when it is over no orders for such materials can be expected in Hong Kong if the British Working Man (God bless him!) is able to supply them. Factories may be left with expensive plant, so I think this Clause deserves serious consideration. Any scale of depreciation will now be mandatory and as no provision is made for appeal I prefer the Clause in last year's Bill.

H.E. THE GOVERNOR. —Does the scale appear in the Bill?

THE ATTORNEY GENERAL. —No. The Chamber's proposal is to go back to last year's War Revenue Ordinance which was considered

unsatisfactory because it was so vague. But it was to some extent clarified by the Board of War Revenue Taxation. As regards this Bill, the Reconstituted War Revenue Committee submitted the whole Bill to a very competent sub-committee consisting of the Commissioner, the Chief Assistant Commissioner, Mr. Bryden, a leading accountant, and Mr. Lawrence Kadoorie, who has devoted a Mat deal of time, both last year and this, to the subject of depreciation, and who last year wanted us to define reasonable depreciation for wear and tear, but we were unable to do it then. The sub-committee considered it and they agreed to substitute for last year's very sketchy provision, this new one. The new one came before the whole War Revenue Committee and, although there was something to be said for and against, it was agreed that in a temporary measure of this nature there should not be any definition of depreciation as you may have in a proper Income Tax Bill. They accepted the sub-Committee's recommendation, and it was only yesterday that this proposal for an amendment was received. This proposal was accompanied by one other proposal and shortly afterwards another proposal was received by Government. We have had very little time to consider that one. This present proposal has been considered fully by the Committee and the Committee decided that we should change last year's clause.

I suggest that Government should not accept this amendment at this stage as it is proposed. The last Reconstituted Committee is against this point, but can be brought up again before the third Committee.

H.E. THE GOVERNOR. —I gather that the question has been considered but can you give the Committee of this Council the reasons for the objection which led the Committee to refuse this?

THE ATTORNEY GENERAL. —If you look at the Table of Correspondence attached to the Bill, Sir, you will see, in the "Remarks" column that this clause has been re-drafted to put the question of the meaning of depreciation, for which reasonable allowance is allowed, on a clearer basis. Before it was "reasonable allowance for depreciation." This rather expands that definition and therefore that is one of the reasons.

H.E. THE GOVERNOR. —Mr. Shields' point was that there is no appeal from what the War Taxation Committee might rule. There is an appeal to the Commissioner, I see.

THE ATTORNEY GENERAL. —There is a special provision which enables the Commissioner to prescribe and calculate things at rates prescribed by the Board.

H.E. THE GOVERNOR. —As I read it, the Board of War Taxation will prescribe rates but the Commissioner, if appealed to, may allow a higher rate. It provides for further consideration.

THE ATTORNEY GENERAL. —That is to the advantage of the tax-payer.

H.E. THE GOVERNOR. —It goes some way towards meeting Mr. Shields.

HON. MR. A. L. SHIELDS. —I would like to quote from the letter of the Chamber to the Attorney General, which states that “The reason for asking for the amendment to Section 18 (a) is that, under the wording of the 1940 Ordinance, the reasonableness or otherwise of the depreciation rates laid down 'for guidance' in Government Notification 1015 appearing in the *Gazette* of 13th September, 1940, can and has been argued against successfully.”

HON. MR. LO MAN-KAM. —In the absence of details of objections from the Hongkong General Chamber of Commerce, which I only heard for the first time just now, I really would not like to give a decided view, but I am not sure if this is due to some misunderstanding. What Mr. Shields was referring to was that under the old Ordinance the rates were not specified in any part of the Ordinance at all. Then the Board of Taxation drew up a Schedule, based on precedents in other parts of the Empire, as rates of depreciation with a sort of omnibus clause that anything not within that schedule is under the discretion of the Commissioner who can give higher rates of depreciation than those set out.

That was the actual working of the 1940 Ordinance, and under Section 18 of this new Ordinance there is no change either the letter or the practice; it merely clarifies the word depreciation. In other words the scale published by the Board of War Taxation last year may not be legal because it is not part of the Ordinance but was made under delegated powers of the Ordinance only. This Section 18 clarifies what is meant by depreciation, namely, wear and tear of the assets out of use by the owners and provides that such allowances are to be calculated at rates prescribed by the Board of War Revenue Taxation. The Chamber of Commerce apparently feels that the rates prescribed are part of the statutory provisions, therefore there is no appeal. You cannot appeal against rates specified but the Clause gives the Commissioner the right to allow a higher rate but not a lower rate. That is the same position as in 1940 because until the rule made by the Board of War Taxation is challenged there can be no appeal. I can see no real objection to the Clause.

H.E. THE GOVERNOR. —Do you agree Mr. Shields?

HON. MR. A. L. SHIELDS. —May I again quote from the letter?

H.E. THE GOVERNOR. —You will have to move an amendment.

HON. MR. A. L. SHIELDS. —I did not have any idea of Government's intention. I have had no time to draft an amendment.

THE ATTORNEY GENERAL. —The Chamber of Commerce had drawn up one.

HON. MR. A. L. SHIELDS. —The point I want to make is that the report of a special committee of the Chamber which considered the proposed Schedule containing these depreciation rates records on August 23, 1940, that "The Commissioner of War Taxation made it clear that the Schedule would not have statutory force, but would be used as a guide: any reasonable deviation from the schedule will be accepted." I would like to be sure that any appeal for deviation from the Schedule will be accepted.

THE ATTORNEY GENERAL. —The Schedule is not part of the Bill, nor was it a part of the original Ordinance.

HON. MR. LO MAN-KAM. —That is the present position because deviation is allowed insofar as it is in favour of the public. This Government cannot say I will allow you only two per cent. depreciation if the rates specified are five per cent. but if you think you are entitled to more than five per cent. you can say "I don't think that is enough."

H.E. THE GOVERNOR. —Where is the Schedule?

THE ATTORNEY GENERAL. —It is in the ruling of the Board. This section preserves the right of the Board not only to stand by the old Schedule but also to provide a new one.

HON. MR. S. H. DODWELL. —One of the points raised by the Chamber of Commerce was that there was only one person on the Committee of sufficient experience to lay down what the scale of depreciation should be.

H.E. THE GOVERNOR. —Are you supporting Mr. Shields then?

HON. MR. S. H. DODWELL. —No.

H.E. THE GOVERNOR. —I think the matter has been closely considered by the expert committee which went into this Bill, so the point has had full consideration.

HON. MR. A. L. SHIELDS. —I have a proposed amendment here but as the meeting is against me I will not bring it up.

H.E. THE GOVERNOR. —Thank you, but if the matter arises in the Committee which deals with this Ordinance again it should be given further consideration.

THE ATTORNEY GENERAL. —Yes.

Clause 30.

THE ATTORNEY GENERAL. —I am not proposing an amendment here. At 5 p.m. yesterday I received something from the Chamber of Commerce, an afterthought which emanated from some member of the Reconstituted Board. He had forgotten some point in dealing with this section. He sent his afterthought in and we have done our best at a few hours' notice to consider it. The point is that certain customers of certain public utility companies make deposits—I suppose as guarantee that they will pay their bills in due course—and receive interest on their deposits. The deposits and interest are small but it causes a great deal of time and trouble to collect these small amounts. He asked if something could be done about it. It might be dealt with if we had time to deal with it by adding another exemption to the proviso. It may also be necessary to revert to Clause 2 by putting in a definition of a public utility company. Some of the companies do find it difficult to collect very little and it is possible under Clause 74 for them to put up their case to the Governor-in-Council and say, for instance, "We have deposits, the tax on which amounts to \$1,000 and we ask that the interest on the deposits paid to us to our customers should be exempted." It is possible to deal with it in that way without amending the Ordinance. I do not want to suggest that they send numerous petitions to the Governor-in-Council but that is one way of meeting that point.

HON. MR. J. J. PATERSON. —There are these small deposits and they mean a great deal of book-keeping and give very little result in taxes.

H.E. THE GOVERNOR. —It only applies to money supplied to utility companies?

HON. MR. J. J. PATERSON. —Yes, Sir.

H.E. THE GOVERNOR. —The Attorney General's suggestion seems to meet the case. If the procedure is abused we can reconsider the matter.

Clause 39.

THE FINANCIAL SECRETARY. —I wish to move an amendment to this Clause. It is proposed that the words "within twelve months after the death of the deceased person" be added at the end of proviso (iii) (b). Representations on this proviso have been received from the Hongkong General Chamber of Commerce. The purpose of proviso (iii) (b) is to forestall the executor who wishes to evade taxation by distributing an estate before a notice is given to him that liability to tax will arise. Government is of the opinion that the point raised by the Chamber of Commerce, namely, that hardship may be occasioned to executors who may have to pay interest on legacies remaining unpaid twelve months after the death of the deceased person, will be met by the proposed addition.

THE ATTORNEY GENERAL. —I second the amendment. The amendment proposed by the Chamber of Commerce asks that the whole of paragraph b be deleted. I may say that paragraph b as it stands is identical with Section 27 of the Ceylon Income Tax Ordinance as amended by Ordinance No. 21 of 1932 which has been in existence for nine years without any trouble. However, there is something in that point and I think we have met it by protecting the Government in the first year and the executor against paying interest except on undistributed estate after 12 months are up.

The amendment was approved.

Upon Council resuming,

THE FINANCIAL SECRETARY. —Sir, I have to report that the Bill has passed through Committee with two amendments, namely, the substitution of the words "seven hundred and fifty" for the words "five hundred" in Clause 13, subparagraph (1) (c), and the addition of the words "within twelve months after the death of the deceased person" at the end of proviso (iii) (b) to Clause 39.

If Your Excellency will rule that the amendments are not material I can move the third reading of the Bill at this meeting.

H.E. THE GOVERNOR. —I do so rule.

THE FINANCIAL SECRETARY. —I move the third reading of a Bill intituled "An Ordinance to amend and consolidate the War Revenue Ordinances of 1940."

THE ATTORNEY GENERAL seconded, and the Bill was read a third time and passed.

**THE TRUSTEES OF THE CHATER (CATHEDRAL AND ST.
ANDREW'S) ENDOWMENT FUNDS INCORPORATION
BILL, 1941.**

HON. MR. S. H. DODWELL moved the second reading of a Bill intituled "An Ordinance to incorporate Trustees capable of holding property and empowered to administer two trust funds known as The Chater (Cathedral) Endowment Fund and The Chater (St. Andrew's Church) Endowment Fund for the purpose of assisting in the maintenance of St. John's Cathedral and St. Andrew's Church in this Colony."

HON. MR. J. J. PATERSON seconded, and the Bill was read a second time.

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

Upon Council resuming,

HON. MR. S. H. DODWELL reported that the Bill had passed through Committee without amendment and moved the third reading.

HON. MR. J. J. PATERSON seconded, and the Bill was read a third time and passed.

ADJOURNMENT.

H.E. THE GOVERNOR. —Council stands adjourned until this day week, at 2.30 p.m.