

Friday, 19th July, 1946.

PRESENT: —

HIS EXCELLENCY THE GOVERNOR (SIR MARK AITCHISON YOUNG, G.C.M.G.).

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS (MAJOR-GENERAL F. W. FESTING, C.B., C.B.E., D.S.O.).

THE COLONIAL SECRETARY (HON. MR. R. R. TODD, Acting).

THE ATTORNEY GENERAL (HON. MR. G. E. STRICKLAND, Acting).

THE SECRETARY FOR CHINESE AFFAIRS (HON. MR. T. MEGARRY, Acting).

THE FINANCIAL SECRETARY (HON. MR. C. G. S. FOLLOWS, C.M.G., Acting).

HON. MR. C. H. SANSOM, C.M.G., C.B.E., (Acting Commissioner of Police).

HON. DR. J. P. FEHILY, O.B.E., (Acting Director of Medical Services).

HON. MR. V. KENNIFF (Director of Public Works).

HON. MR. D. F. LANDALE.

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

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

HON. MR. LEO D'ALMADA E CASTRO.

HON. MR. R. D. GILLESPIE.

HON. DR. CHAU SIK-NIN.

MR. D. R. HOLMES, M.B.E., M.C., (Deputy Clerk of Councils).

MINUTES.

The Minutes of the meeting of the Council held on Thursday, 20th June, 1946, were confirmed.

PAPERS.

The COLONIAL SECRETARY. —By Your Excellency's command, I lay upon the table certain papers, copies of which are in the hands of Honourable Members.

The Papers laid were as follows: —

Amendment to the Port Executive Committee Order, No. 9 of 1946.

Notice given by the Acting Director, Supplies, Trade & Industry, under Regulation 3 of the Miscellaneous Commodities Control and Price Regulations (British Military Administration), 1946, fixing the maximum retail price of certain commodities, dated 10th May, 1946.

Notice given by the Acting Director, Supplies, Trade & Industry, under Regulation 7 of the Miscellaneous Commodities Control and Price Regulations (British Military Administration), 1946, prohibiting the export of bread and timber, dated 10th May, 1946.

Notice given by the Acting Director, Supplies, Trade & Industry, under Regulation 3 of the Miscellaneous Commodities Control and Price Regulations (British Military Administration), 1946, fixing the maximum retail price of Canadian flour, dated 17th May, 1946.

Notice given by the Acting Director, Supplies, Trade & Industry, under Regulation 3 of the Miscellaneous Commodities Control and Price Regulations (British Military Administration), 1946, fixing the maximum retail price of ovaltine, dated 17th May, 1946.

order made by the Govern or-in-Council under Section 18 of the Quarantine and Prevention of Disease Ordinance, 1936, Ordinance No. 7 of 1936, declaring Foochow an infected place, dated 18th May, 1946.

Amendment made by the Hong Kong Tramways Ltd., and approved by the Governor-in-Council under Section 36 Of the Tramway Ordinance, 1902, Ordinance No. 10 of 1902, to the Tramway Rules, dated 18th May, 1946.

Amendment made by the Governor-in-Council under Section 8 of the Quarantine and Prevention of Disease Ordinance, 1936, Ordinance No. 7 of 1936, to the Quarantine (Measures on Arrival) Regulations, 1939, dated 21st May, 1946.

Amendment made by the Governor-in-Council under Section 8 of the Quarantine and Prevention of Disease Ordinance, 1936, Ordinance No. 7 of 1936, to the Quarantine (Measures on Departure) Regulations, 1939, dated 21st May, 1946.

Order made by the Governor-in-Council under Section 2 of the Quarantine and Prevention of Disease Ordinance, 1936, Ordinance No. 7 of 1936, amending Section 2 of the said Ordinance, dated 27th May, 1946.

The Trading with the Enemy (Specified Persons) (Amendment) (No. 2) Order, 1946, made by the Governor with the prior approval of the Secretary of State under Section 3 Sub-section 2 of the Trading with the Enemy Ordinance, 1914, Ordinance No. 25 of 1914, dated 24th May, 1946.

Notice given by the Acting Director, Supplies, Trade & Industry under Regulation 3 of the Miscellaneous Commodities Control and Price Regulations (British Military Administration), 1946, fixing the maximum retail price of jam, dated 27th May, 1946.

Notice given by the Acting Director, Supplies, Trade & Industry, under Regulation 7 of the Miscellaneous Commodities Control and Price Regulations (British Military Administration), 1946, prohibiting the export of sheet glass, dated 25th May, 1946.

Notice given by the Acting Director, Supplies, Trade & Industry, under Regulation 7 of the Miscellaneous Commodities Control and Price Regulations (British Military Administration), 1946, prohibiting the export of Government biscuits, dated 12th June, 1946.

Notice given by the Acting Director, Supplies, Trade & Industry, under Regulation 3 of the Miscellaneous Commodities Control and Price Regulations (British Military Administration), 1946, fixing the maximum retail price of certain commodities, dated 12th June, 1946.

Proclamation No. 1. —The Urban Council (Transitional Provisions) Ordinance, 1946, Ordinance No. 6 of 1946, to come into force and operation on 25th May, 1946.

Proclamation No. 2. —The Hongkong and Shanghai Banking Corporation (Re-Transfer) Order in Council, 1946, to come into operation on 20th June, 1946.

QUESTIONS.

The HON. MR. D. F. LANDALE asked: —

1. Will Government make a statement as to its policy and what steps it is taking to provide the Colony, as soon as possible, with an adequate airport capable of handling the most modern types of four engine land planes.

2. Will Government state—

- (1) Why the Pingshan Aerodrome project was abandoned.
- (2) Whether an alternative site has been found and if so when construction work will commence, and how long it is estimated it will take to complete.
- (3) If an alternative site has not been found what steps are being taken to find such a site.

3. Is Government aware that, in order that Hongkong may not lose its rightful place as an important link in the chain of National and International Air Lines now being organised, it is essential that it should be equipped with the most efficient and up-to-date facilities for air transport without any delay?

The COLONIAL SECRETARY replied: —

1. Government appreciates the importance of providing the Colony as early as possible with an airfield suitable for use by aircraft of transcontinental type. It is realized that if this task is not undertaken in the near future it may well be that Hong Kong will cease to be included in any main air route and will be dependent on subsidiary routes from airfields situated in places where the nature of the terrain presents fewer difficulties of construction. Active consideration is being given to the siting of such an airfield and the best technical advice is being sought. A detailed report is being prepared and will shortly be forwarded to London setting forth the potentialities of Hong Kong as a focal point of an international civil airways network and emphasizing the urgent need for an early decision and announcement on this matter.

2. The decision to abandon the Pingshan Airfield project was made for the following reasons: —

- (A) His Majesty's Government decided in March that the heavy expenditure on the project could not be justified on military grounds. There was no longer any necessity for a service of four-engined military transport planes to Japan, and the requirements of the British Commonwealth

Occupation Force in Japan could be met by a Dakota squadron based on Kai Tak airfield.

- (B) The Pingshan site was investigated in February 1946, by a mission headed by Air Commodore Darley, President of the Airfield Board of the Air Ministry, and including representatives of the Ministry of Civil Aviation and the British Overseas Airways Corporation. The mission compiled a full report on the possibilities of the Pingshan site and came to the conclusion that an airfield there could not be brought up to present international civil aviation standards.

A possible alternative site has been found within the boundaries of the Colony. It is estimated that the cost of constructing an airfield which will meet all requirements will be three to four million pounds and that construction will take up to thirty months. It is at present impossible to state, when construction of such an airfield will be commenced in view of the fact that the apportionment of the costs of construction between the Imperial Government and the Hongkong Government is still a matter for discussion with the Secretary of State for the Colonies.

3. Government is aware of and endorses the view that it is of the first importance that the Colony should be provided as soon as possible with the most up-to-date and efficient air transport facilities. Government has not overlooked the fact that air-line companies are anxious to abandon the use of flying boats in general and that if Hongkong is to be a main link in the network of international airways a modern land aerodrome must be established without delay.

The HON. MR. D. F. LANDALE asked: —

With the opening of the Kowloon Canton Highway, and the resulting link-up of the road systems of the Colony and China, will Government consider altering the present traffic regulation whereby vehicles proceed on the left side of the road, to conform with that in force in China.

The COLONIAL SECRETARY replied: —

Government is prepared to consider the amendment of the existing traffic regulation which requires that a driver shall drive

on the left side of the road and proposes to set up immediately a committee to consider and report on the implications of such an amendment and on the date on which, if decided upon, it should be brought into effect.

The HON. MR. T. N. CHAU asked: —

In view of the improvement in trade and general economic conditions, will Government state whether they will lift the Moratorium on the financial institutions in the Colony; and if not, will they give their reasons?

The FINANCIAL SECRETARY replied: —

It is regretted that it is not possible for this Government to lift the Moratorium until a decision has been reached on Debtor Creditor Relationships which is now under consideration in London. It is pointed out, however, that the Moratorium does not in any way prevent the voluntary payment of any debt. It merely means that for the time being no steps can be taken to enforce the payment of any debt by any process of law.

The HON. DR. S. N. CHAU asked: —

In view of various complaints voiced in the Press regarding Government's pronouncement on its policy respecting the reconstruction of demolished properties, will Government state:

- (a) Whether they would undertake the reconstruction of all demolished properties and charge the cost to the owners such cost to be refunded by reasonable instalments?
- (b) Or, as an alternative, whether Government would consider advancing funds to owners of properties on condition that their properties are to be repaired, as soon as possible and the advances are to be repaid by such instalments as are mutually acceptable?
- (c) Whether Government are prepared to purchase building materials in mass quantities and release them to builders at cost, thus reducing the cost of rebuilding.

The COLONIAL SECRETARY replied: —

1. —With regard to (a) Government has neither the staff nor the resources to enable it to undertake the reconstruction of all demolished property. Government is, however, prepared to consider an application by any owner of demolished property to reconstruct on his behalf and charge him with the cost, but each case would have to be considered on its merits. It has already

been stated that where the owner is not in a position to repair a damaged property the Government will be prepared in selected instances to lease and repair or to resume for a public purpose.

2. —As regards the alternative (b) suggested by the Honourable Member, Government was advised in the earlier part of this year that there was no demand for a rebuilding loan at a low rate of interest. Nevertheless the Government, which has not itself the machinery or facilities to undertake the administration of a loan of the nature proposed, would be prepared in suitable cases to approach the Banks with a view to the issue of such a loan and to consult this Council on the question whether any form of subsidy might be paid, with the Secretary of State's approval, for the purpose of reducing the rate of interest paid by the borrower.

3. —In regard to (c), the Government adheres to the view already expressed that building materials should in the main be imported through normal commercial channels. Government is always prepared to consider bulk purchases of materials where these can be obtained under more favourable terms through official channels. In actual fact, however, the world demand for building materials is such that it is rarely possible to purchase anything in quantities which are greater than those normally handled by commercial firms.

ARMED FORCES (LEGAL AID) BILL, 1946.

The ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to provide legal aid in criminal proceedings for members of the Armed Forces."

He said: The object of the Bill is to provide legal defence in criminal proceedings before a Magistrate or before the Supreme Court of members of the services who are too poor to pay the fees payable in these days to legal practitioners in the Colony. The Bill does not expressly refer to means. Government considers that it can rely administratively on the Commanding Officers of members of the forces not to make use of this Bill in cases where officers could afford to pay legal practitioners to conduct their defence in the ordinary way. The Bill draws a distinction between proceedings in the Supreme Court and proceedings before a Magistrate. It is considered that in proceedings before the Supreme Court where the prosecution is represented by a legal officer and the points of law which are likely to arise might be difficult, that only those members of the services who are themselves duly qualified should appear as defending counsel. That is provided by Clause 2. Clause 3 of the Bill, on the other hand, provides that in proceedings before a Magistrate, with the consent of a Magistrate, members of the Services may appear as defending counsel although not either solicitors or barristers. As members of this Council are probably aware, there are not many legally qualified officers in

the services present in the Colony and in the case of the Royal Navy, His Excellency has been informed that there are at present no legally qualified officers. There are, on the other hand, both in the Royal Navy, Royal Air Force and in the Army, many officers who although not legally qualified have had experience as defending officers or prosecuting officers in disciplinary proceedings and it is felt that rather than leave members of the services without defence, they could be represented by persons with this experience. Provisions as to the consent of a Magistrate have been inserted so as to have some check on persons who are not competent to appear. There are no reasons in fact to believe Commanding Officers would require persons who are in fact not competent to appear and conduct the defence. Clause 4 of the Bill provides that a certificate under the hand of the Attorney General that in his opinion a member of the, armed forces possesses the qualifications required by Clause 2 should be accepted until the contrary be proved. The object of that clause is that members of the services here, who have not had their necessary papers, their certificates of admission or enrolment to show they are in fact qualified but other service papers and forms will show that and it will therefore be possible to give the necessary certificates. The Bill has been introduced at the request of the General Officer Commanding acting on behalf of all services and he has offered in cases where like that of the Royal Navy they themselves have not got legally qualified officers to make legal officers on his staff available to other services---to the Navy as well as the Army. Despite the very good reasons which have been urged in support of the Bill, it is a somewhat unusual subject and it is considered that it should be brought into force for one year only when the matter will be reconsidered with a view to considering whether public funds or any other funds should be made available to provide for defence in the more normal manner.

The COLONIAL SECRETARY seconded and the Bill was read a First time.

Objects and Reasons.

1. The object of this measure is to provide legal aid to those members of the Armed Forces who are too poor to instruct legal practitioners to appear on their behalf.

2. The object is achieved by authorising legally qualified service personnel to undertake the defence in criminal proceedings of service personnel without the necessity of complying with the Ordinances referred to in Clause 5 of the Bill. Under the Legal Practitioners Ordinance, 1871, it is an offence to practise as a barrister or solicitor without having been duly enrolled (Section 27) and formalities and fees are required for enrolment. It would be impracticable to insist upon these provisions in the case of serving officers who have no interest in enrolling themselves here.

3. As enrolled solicitors have already been authorised to appear and act as advocates by the Supreme Court, (Emergency) Ordinance, 1946, it is considered reasonable to permit officers who are qualified as solicitors also to appear as advocates provided that they are entitled to appear as an advocate in some Court in England, Scotland, Northern Ireland or in some other part of His Majesty's Dominions having unlimited jurisdiction in criminal matters. This is effected by Clause 2 which however provides that this provision shall only remain in force during the continuance in force of the Supreme Court (Emergency) Ordinance, 1946.

4. There are not many serving officers who are advocates and none are available in the Royal Navy. There are however a number of officers in all services who are accustomed to appear as prosecuting or defending officers in disciplinary proceedings in which the rules of English Criminal Law and Procedure are observed. Such officers would be quite competent to defend service personnel in proceedings before a Magistrate. Clause 3 of the Bill enables any officer of the services to act as a defending counsel before a Magistrate. The consent of the Magistrate is made necessary as a safeguard against officers appearing who are not in fact competent. It is thought undesirable that persons who are not qualified advocates should appear before the Supreme Court.

5. Officers would have some difficulty in formally proving to a Court that they are qualified advocates as time will not normally permit the production of certificates of call or admission. Particulars of their qualifications are however recorded on their Personal History sheets or other Service Forms and they should be able to produce sufficient data to enable the Attorney General to give the certificate provided for by Clause 4 of the Bill.

6. Although the Bill contains no reference to means it is hoped with co-operation from the Services to ensure that service personnel will only be employed as defending counsel where the accused cannot afford to engage the services of local practitioners.

7. The Law Society has been consulted and has agreed to the Bill as an Emergency measure justified by there being no provision for Poor Persons Defence except in capital charges, by the shortage of legal officers and the present strength of the Services. Clause 6 of the Bill accordingly provides for the Bill ceasing to have effect after a year before the expiration of which the whole question can be reconsidered.

8. A Comparative Table is attached.

TABLE OF COMPARISON.

**Armed Forces (Legal Aid)
Ord., 1946.**

1. Short title.
2. During the continuance in forces of the Supreme Court (Emergency) Ordinance, 1946, any member of the Armed Forces of His Majesty
 - *who **is entitled to practise as a barrister, solicitor or advocate in England, Scotland, Northern Ireland or in some other part of His Majesty's Dominions may appear and act as an advocate** for the defence of a member of the Armed Forces of His Majesty in any criminal proceedings before a Magistrate or before the Supreme Court.
 - *(Cf. Section 10A (i) of the Supreme Court Ordinance, No. 3 of 1873).
3. New Sections.
4. New Sections.
5. Such provisions of the following Ordinances as may conflict with the provisions
 - Section 3 of the Supreme Court (Original Jurisdiction) Emergency Ordinance, 1922: —
 - It shall be lawful for the Chief Justice to authorise any duly enrolled solicitor of the Supreme Court to appear and act as a barrister in any cause in the Original Jurisdiction of the Supreme Court in any case in which he may think it desirable to do so having regard to all the circumstances.
 - Section 2 (1) (a) of the Supreme Court (Emergency) Ordinance, 1946: —
 - It shall be lawful for the Chief Justice in the exercise of his discretion
 - (a) to authorise any duly enrolled solicitor of the Supreme Court and any person duly appointed Crown Solicitor or Assistant Crown Solicitor to appear and act as an advocate in any cause trial motion matter or other proceeding in the Supreme Court;
 - Section 3 of the Supreme Court (Emergency) Ordinance, 1946: —

of this Ordinance are suspended during the operation of this Ordinance:

- (a) The Legal Practitioners Ordinance, 1871;
- (b) The Supreme Court Ordinance, 1873;
- (c) The Magistrates Ordinance, 1932.

Such provisions of the following Ordinances as may conflict with the provisions of this Ordinance are suspended during the operation of this Ordinance:

- (a) The Legal Practitioners Ordinance, 1871;
- (b) The Supreme Court Ordinance, 1873;
- (c) The Supreme Court (Summary Jurisdiction) Ordinance, 1873;
- (d) The Code of Civil Procedure.

6. Duration.

PEAK DISTRICT (RESIDENCE) REPEAL BILL, 1946.

The ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to repeal the Peak District (Residence) Ordinance, 1918."

He said: As Honourable members are aware, Government desires to do what it can to encourage the rebuilding and reconstruction of the Peak district. Under the Ordinance which will be repealed by the Bill, it is unlawful to reside on the Peak without the consent of the Governor-in-Council. There are certain exemptions. Government considers that the repeal of this measure would tend or might tend to encourage rebuilding and reconstruction and that it would be out of harmony with the spirit of the times to retain it

The COLONIAL SECRETARY seconded and the Bill was read a First time.

Objects and Reasons.

1. Under section 3 of the repealed Ordinance it is unlawful to reside on the Peak without the consent of the Governor in Council. Certain exemptions were provided for by Section 4.

2. It is considered that the repeal of the Ordinance might tend to encourage building and reconstruction in the Peak District and that it would be out of harmony with the spirit of the times to retain the Ordinance.

CHEUNG CHAU (RESIDENCE) REPEAL BILL, 1946.

The ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to repeal the Cheung Chau (Residence) Ordinance, 1919."

He said: The reasons 'for introducing this Bill, Honourable Members, are very much the same as the reasons for the previous Bill. In this case, the town of Cheung Chau on Cheung Chau or Dumb-bell Island is developing and it is considered that the maintenance of the restrictions would unduly retard that development. It is also felt that the maintenance of such a restriction is out of harmony with the spirit of the times.

The COLONIAL SECRETARY seconded and the Bill was read a First time.

Objects and Reasons.

1. The development of the town of Cheung Chau on Cheung Chau or Dumb-bell Island is unduly hampered by the provisions of Section 2 of the repealed Ordinance which makes residence in a neighbouring area, defined by reference to a plan, unlawful without the consent of the Governor in Council.

2. The maintenance of such a restriction is also considered out of harmony with the spirit of the times.

ADJOURNMENT.

H.E. THE GOVERNOR. —Council now stands adjourned until Thursday, July 25.
