

*Thursday, 28th November, 1946.*

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

HON. MR. T. M. HAZLERIGG, C.B.E., M.C.

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

HON. DR. J. P. FEHILY, O.B.E., (Acting Chairman. Urban Council).

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

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

HON. MR. C. C. ROBERTS.

HON. MR. LEO D'ALMADA E CASTRO.

HON. MR. R. D. GILLESPIE.

HON. DR. CHAU SIK-NIN.

HON. MR. M. M. WATSON.

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

**MINUTES.**

The Minutes of the meeting of the Council held on November 21, 1946, were confirmed.

**PAPERS.**

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

Report of a Committee Appointed by His Excellency the Governor to Consider the Rule Regulating Traffic Driving on the Left of the Road.

**QUESTIONS.**

The HON. MR. R. D. GILLESPIE asked: —

With reference to the question asked by the Hon. Mr. D. F. Landale in this Council on the 19th July, has Government come to any decision as to whether or not the existing Traffic Regulation whereby vehicles must be driven on the left-hand side of the road should be amended?

The COLONIAL SECRETARY replied: —

Subsequent to a question asked in the Legislative Council on the 19th of July by the Hon. Mr. D. F. Landale, His Excellency the Governor appointed a small Committee, under the Chairmanship of the Commissioner of Police, to consider and advise Government whether the existing traffic regulation which requires that vehicles shall be driven on the left side of the road should be amended.

The report of the Committee has now been received and after giving careful consideration to the Committee's majority recommendation that the rule of the road should be changed as from 1st July, 1948, and to the arguments of the minority in favour of the continuance of the present practice, Government has decided to make no change in the present rule of the road.

The report of the Committee is being laid on the table at this meeting of the Legislative Council.

**MOTIONS.**

The FINANCIAL SECRETARY moved: —

Resolved that if an entertainment is provided by or on behalf of the organisation known as Combined Services Entertainment, duty shall be charged levied and paid in like manner as if the expression "admission to the entertainment" did not include admission of any member of His Majesty's Forces.

He said: —

I rise to propose the first Resolution standing in my name. Under the Provisions of Section 3 of the Entertainment Tax Ordinance, 1930, all payments for admission to any entertainment are liable to entertainment tax at the rates prescribed from time to time. Originally no charges were made for admission to entertainments organised by ENSA for the services but this organisation has now closed down and has been replaced by a new body known as Combined Services Entertainment.

Charges will henceforth be made for admission both for members of the services and for civilians but in the case of members of the services the charges will be maintained at specially low rates. The organisation will, therefore, run at a fairly considerable loss and will be subsidised by a grant from the Imperial Government. In these circumstances it has been represented to this Government that no entertainment tax should be charged on the admission tickets issued to members of the services and it has been ascertained that such a concession has already been granted by the Government of Singapore.

I feel sure that Hon. Members will agree that in the circumstances it will be only reasonable to waive entertainment tax here on tickets purchased by members of the services for admission to these Combined Services Entertainments.

The Resolution now before the Council is designed to give effect to this proposal for under Section 3(2) of the Ordinance it is lawful for the Legislative Council by resolution to increase, decrease, recast, abolish or vary to any extent or in any manner whatsoever any of the duties imposed under the Ordinance.

I should like to emphasise that it is only proposed that the concession should apply to tickets purchased by members of the services for themselves. Any tickets purchased by or on behalf of civilians, whether they are guests of service personnel or whether they are attending the entertainment by themselves, will be liable to tax at the normal rates.

### **DUTIABLE COMMODITIES ORDINANCE, 1931.**

The FINANCIAL SECRETARY moved: —

RESOLVED pursuant to section 4 of the Dutiable Commodities Ordinance, 1931, as follows:

A. That the DUTIES ON LIQUOR set forth in the Resolution of the Legislative Council published as Government Notification No. 193 in the Gazette of the 21st February, 1941, be revoked with

effect from 9 o'clock A.M. on Thursday, the 28th November, 1946, and that thereafter duty shall be payable on liquors at the following rates per gallon: —

**Part I**

On---	Hong Kong Origin	Empire Origin	Other Origin
	\$	\$	\$
Liqueurs, Champagne and other Sparklin gwines .....	—	36.00	44.00
Brandy .....	—	32.00	40.00
Gin, Whisky and other spirituous liquors .....	32.00	32.00	40.00
Port, sherry and madeira .....	—	20.00	25.00
Other still wines .....	-----	16.00	20.00
Cider and perry .....	-----	2.00	2.50
Concentrated beer in whatever form, whether ale basis, or malt and hops concentrate, or otherwise..... and in addition, for every degree by which the original gravity exceeds 1045 degrees .....	1.15 0.03	1.50 0.04	1.90 0.05
Other beer, except cider and perry, not exceeding 1055 degrees original gravity .....	1.00	1.50	1.90
and in addition, for every degree by which the original gravity exceeds 1045 degrees .....	0.03	0.04	0.05
Intoxicating liquors in this Part above the strength of 22 degrees under proof, for every degree above such strength, in addition to the duties specified above.....	0.40	0.40	0.50

**Part II**

On---	Hong Kong Origin	Empire Origin	Other Origin
	\$	\$	\$
Chinese type liquor .....	4.00	4.00	5.00
and in addition, for every one per cent. by which the alcoholic strength by weight exceeds 25 per cent. ....	0.16	0.16	0.20
Sake.....	4.00	4.00	5.00
and in addition, for every one per cent. by which the alcoholic strength by weight exceeds 25 per cent. ....	0.16	0.16	0.20

**Part III**

On---	Hong Kong Origin	Empire Origin	Other Origin
	\$	\$	\$
Liquors other than intoxicating liquors, but excluding spirits of wine or arrack ...	4.00	4.00	5.00
and in addition, for every one per cent. by which the alcoholic strength by weight exceeds 25 per cent. ....	0.16	0.16	0.20
Spirits of wine or arrack.....	4.00	4.00	5.00
and in addition, for every one per cent. by which the alcoholic strength by weight exceeds 25 per cent. ....	0.16	0.16	0.20

Provided that the Superintendent may assess the duty on intoxicating liquors, not specified in Part I or II, at the rate prescribed for liquor which in his opinion most nearly approximates to the liquor on which duty is to be assessed;

Provided also that the Superintendent may in his discretion assess the duty on any quantity of liquor of less than two gallons, imported at any time in one consignment at \$30 per gallon.

B. That the DUTIES ON TOBACCO set forth in the Resolution of Legislative Council published as Government Notification No. 1139 in the Gazette of the 18th October, 1940, be revoked with

effect from 9 o'clock A.M. on Thursday, the 28th November, 1946, and that thereafter duty shall be payable on tobacco at the following rates per lb.:

A. —On UNMANUFACTURED TOBACCO—

- (1) unstripped tobacco containing—
- (a) 10 per cent. or more of moisture by weight:
- (i) tobacco of Empire origin .....\$1.95
- (ii) other tobacco .....2.25
- (b) less than 10 per cent. of moisture by weight:
- (i) tobacco of Empire origin .....1.98
- (ii) other tobacco .....2.28
- (2) stripped tobacco containing—
- (a) 10 per cent. more of moisture by weight:
- (i) tobacco of Empire origin .....\$2.10
- (ii) other tobacco .....2.40
- (b) less than 10 per cent. of moisture by weight:
- (i) tobacco of Empire origin .....2.25
- (ii) other tobacco .....2.55

B. —On MANUFACTURED TOBACCO—

- (1) Cigars—
- (i) of Empire origin and manufacture .....\$4.50
- (ii) of Empire manufacture only .....5.25
- (iii) other cigars .....7.00
- (2) Cigarettes—
- (i) of Empire origin and manufacture .....\$3.30
- (ii) of Empire manufacture only .....3.90
- (iii) other cigarettes .....4.80
- (3) Other manufactured tobacco including snuff and cigar cuttings—

(i) of Empire origin and manufacture .....	\$3.30
(ii) of Empire manufacture only .....	3.90
(iii) Chinese prepared tobacco .....	3.00
(iv) Other varieties .....	4.80

He said: I rise to move the second resolution standing in my name. Honourable Members will recollect that in winding up the debate on the second reading of the Appropriation Bill, Your Excellency in announcing your intention to appoint a Taxation Committee referred to a paramount consideration on which the attention of each one of us should be fixed. This was the duty that we owed to use every effort to reduce as far as we might, both in extent and in duration of time, our dependence on His Majesty's Government for financial aid to meet the difference between our revenue and our recurrent expenditure.

Two proposals for the raising of additional revenue have already been laid before this Honourable Council. A more obvious method of closing part of the gap between expenditure and revenue was an increase in the duties levied on liquor and tobacco which, although increased in 1941, are still below the average level in other British Colonies.

For obvious reasons it is not possible to provide for prolonged discussions prior to the introduction of a measure of this sort and yesterday afternoon certain proposals which had been carefully considered by Your Excellency and your advisers were placed before the Taxation Committee.

These proposals are embodied in the draft resolution which has been circulated to Honourable Members. Your Excellency, as President of this Honourable Council, has given permission for its introduction with something less than the usual period of notice.

The proposals contained in the draft resolution were discussed by the Taxation Committee yesterday and met with the approval of that body. Thereafter, in order to bridge the gap until the necessary resolution could be introduced into this Honourable Council, I submitted to Your Excellency an order under the Revenue Protection Ordinance bringing the new duties into force with effect from 9 a.m. this morning. That order remains in force until this Honourable Council has dealt with the resolution now before it.

The proposals contained in the resolution represent in the main a doubling of the Empire rate of duty on liquor, with a corresponding increase in the full rate of duty so that the margin between the two rates is maintained. This sounds very formidable

but in actual fact it will only bring the duty on whisky to \$5.20 a bottle and on brandy of foreign origin to \$6.60 a bottle. It is the considered opinion of this Government that these increases in duty can and should in the main be absorbed by importers and retailers and that the prices of most sorts of liquor to the public should not be altered. A meeting will be held between the Price Controller and importers and retailers with a view to achieving this end.

It was felt that beer would not stand the same increase in duty as other forms of liquor. Malt, hops and bottles are hard to come by and can only be obtained in limited quantities at high prices. Both locally made and imported beer is expensive locally although prices are controlled and the conclusion was reached that only a 25 per cent. increase in duty would be justified.

I now come to the duties on tobacco which represent an increase of 50 per cent. though the duty on cigars not manufactured in the Empire has been increased by 75 per cent. This will to some extent assist local cigar factories when they are re-established but as in the case of liquor this Government is of the opinion that the increases in duty on tobacco can and should in the main be absorbed by the trade. It is estimated that the increases in duties now proposed will bring in about \$7,000,000 in a full year, four million of which would be derived from tobacco. Honourable Members will, I trust, agree that this will represent a very valuable contribution towards the goal which we all have in view, namely the balancing of our budget next year in so far as recurrent expenditure is concerned.

The COLONIAL SECRETARY seconded, and the motion was carried.

#### **TRAMWAY AMENDMENT BILL, 1946.**

The ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Tramway Ordinance, 1902." He said: I have nothing, Sir, to add to the Objects and Reasons except to remind Honourable Members that so far as I can ascertain the Tramway Company is the only utility the fares of which requires alteration by ordinance, as opposed to approval by the Governor in Council or control by means of licence. This is now rectified by Clause 4 of the Bill which you will observe gives power to the Governor in Council to alter the rates of fares authorised in respect of the whole or any portion of the Tramway.

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

### **Objects and Reasons.**

(1) The Company reports that the fines authorised by Section 37 of the Tramway Ordinance are inadequate and have little or no effect as a deterrent on offenders. Clause 2 of the Bill will, if enacted, authorise a fine not exceeding \$100 (instead \$10) for each offence, with or without further penalties for continuing offences not exceeding for any continuing offences \$50 (instead \$5) for every day during which the offence continues.

(2) The object of clause 3 of the Bill is to substitute the new scale of fares which came into force on 1st July, 1946, (see Government Notification 224 in the Gazette of 5th July, 1946) by virtue of an Order made by the competent authority under Regulation 50 of the Defence Regulations, 1940. That Order authorises the new scale of fares to be charged "for any one single journey over any of the Company's routes." The Company however now wishes to substitute the words---"From any point on the Tramway to the terminus indicated on the Tramcar," so as to prevent a passenger whose destination is for example, Shaukiwan, travelling part of the journey on a tram bound for Happy Valley and then changing to the tram he should have boarded originally.

(3) The Company reports that the provision of cheap tickets for workmen was found to be impracticable and was abandoned some thirty years ago. In consequence it is considered desirable to repeal Section 49, which provided for such tickets subject to conditions which it was found impracticable to enforce, and to take the opportunity of substituting a new Section 49 for the following purpose.

The Ordinance contains no provision whereby the Company, with the consent of the Governor in Council, can vary its scale of fares in any way. It is felt that should circumstances arise in the future justifying any such variation that such a power should be included in the Ordinance to avoid the more cumbersome process of having to amend the Ordinance.

(4) The object of Clause 5 of the Bill is to bring the Ordinance into line with present-day circumstances. Section 54 of the Ordinance with the Schedule thereto provides for the scale of charges which may be taken by the Company for the conveyance of animals and goods. The Company's trams are only designed for the carriage of passengers, there being no demand for the carriage of animals and goods as there are other and more convenient facilities for their transportation. Section 54 of the Ordinance should therefore be repealed, being no longer necessary.

(5) Clause 6 of the Bill merely effects a consequential adaptation to Section 55.

(6) Clause 7 of the Bill will if enacted, bring the penalty in Section 59 into line with the penalty in Section 37 (*vide* Clause 2 of the Bill).

(7) Clause 8 of the Bill is the clause saving the rights of the Crown required by the Royal Instructions in the case of Private Bills and is in conformity with the phrasing of Section 83 of the principal Ordinance (Ordinance No. 10 of 1902).

**HONG KONG POLICE RESERVE AMENDMENT  
BILL, 1946.**

The ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Hong Kong Police Reserve Ordinance, 1927."

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

On the motion of the ATTORNEY GENERAL, seconded by the COLONIAL SECRETARY, Council then went into Committee to consider the Bill clause by clause.

Council then resumed.

The ATTORNEY GENERAL reported that the Hong Kong Police Reserve Amendment Bill, 1946, 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.

**MERCHANT SHIPPING AMENDMENT BILL, 1946.**

The ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Merchant Shipping Ordinance, 1899."

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

On the motion of the ATTORNEY GENERAL, seconded by the COLONIAL SECRETARY, Council then went into Committee to consider the Bill clause by clause.

Council then resumed.

The ATTORNEY GENERAL reported that the Merchant Shipping Amendment Bill, 1946, 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.

**TALLYCLERKS (LICENSING) BILL, 1946.**

The ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to provide for the Licensing of Tallyclerks."

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

On the motion of the ATTORNEY GENERAL, seconded by the COLONIAL SECRETARY, Council then went into Committee to consider the Bill clause by clause.

Clause 8.

The ATTORNEY GENERAL:---Your Excellency, in printing the Bill the words "Suspension and Exemption" were left out of the marginal notes and I move that the Bill be amended by the inclusion of these words in the marginal notes.

This was agreed to.

Clause 9.

The ATTORNEY GENERAL: The same observation applies in this case and I move that the marginal notes be included.

This was agreed to.

Council then resumed.

The ATTORNEY GENERAL reported that the Tallyclerks (Licensing) Bill, 1946, had passed through Committee without amendment except as regards two marginal notes and moved that the Bill be read a Third time.

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

**SUMMARY OFFENCES AMENDMENT  
BILL, 1946.**

The ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Summary Offences Ordinance, 1932."

The COLONIAL SECRETARY seconded.

The HON. MR. LO MAN-KAM: —

Your Excellency: Before dealing with the objects of this Bill I feel it is important to keep clearly in mind the object which is not aimed at by the Bill. I take it to be common ground that what

I may term the illegal user of imitation firearms is not aimed at by the Bill, for it is already dealt with by the Arms and Ammunition Amendment Ordinance, No. 21 of 1946, Which makes it an offence for any person:

(1) To make use of any imitation firearms to resist arrest: and

(2) To be in possession of any imitation firearms at the time of his committing, or at the time of his apprehension for, any of the offences specified in the Schedule (unless he can prove that he had it in his possession for a lawful object).

This Bill is therefore solely concerned with innocent possession and innocent user.

What are the reasons for this Bill?

As far as I can make out there are two, and these are set out in paragraph 2 of the Objects and Reasons: —

(1) Imitation firearms have been used in the commission of robberies.

(2) Recently certain manufacturers have been making toy pistols which have every appearance of being a lethal weapon. One large cargo of these weapons was recently imported into the Colony and it is feared that if this measure does not become law more will be imported.

Dealing first with the second reason, I readily agree that Government should have the power to prohibit the importation into the Colony of such weapons. But surely this object can be attained by enacting a provision to the effect that no one shall import imitation firearms into the Colony except under licence from the Commissioner of Police. In this way, any prudent intending importer will supply samples and obtain the necessary licence before ordering the goods. There might be an added provision prohibiting the manufacture within the Colony of imitation firearms without a similar licence.

Coming now to the first reason, I must confess that to me it is singularly unconvincing. No details have been given as to the number of robberies in which imitation firearms have been used, as compared with the total number of robberies which have taken place. There is no hint that this measure is required by the police in dealing with robberies. Since the use of imitation firearms in connection with robberies has already been dealt with by legislation, the only justification for this measure, so far as robberies are concerned, must be that robbers may find it a little more difficult

in getting imitation firearms if they wanted to do so. In short, I doubt whether this measure will make any contribution to the grave and pressing problem of prevention of crime. In any case will it not be sufficient, since we are concerned only with innocent user, for the Police to have the power to apply for confiscation under a provision similar to Section 18A (3) of the Bill.

The Hon. the Attorney General stated in paragraph 3 of his Objects and Reasons that any cargo imported before this Bill becomes law, whilst it will not render the importer liable for an offence unless he were to remain in possession, must be submitted to destruction "as it would not be an act of comity to allow the weapons to be imported elsewhere." I hope he will forgive me if, in my profound ignorance of international law, I were to express surprise with this statement. In my ignorance I should have thought that whilst it might not be an act of comity for one country to allow the importation to another of cargo, the importation of which is prohibited by the latter, there can be no objection if the importation were legal according to the laws of the importing country. But if the Bill does involve the consequences mentioned by the Hon. the Attorney General, it seems to me to constitute an objection to the Bill. Whether there is any country in the world which has a law like the one envisaged by the Bill I do not know. I feel pretty safe in saying that there is no such law in England.

For the reasons I have stated I propose, Sir, to vote against the Bill in its present form.

The ATTORNEY GENERAL: Your Excellency, I think I explained at the previous reading of this Bill, and I do so now, that this Bill comes forward at the suggestion not only of Government but also of the Chief Justice and that His Honour made that suggestion following cases before him in which imitation firearms of a particularly realistic kind had been used in the commission of robbery. Now, it is true as the Honourable Member has informed Council that there is another Bill which was before Council and which has become law in which the use of imitation firearms in the course of a robbery or if found in the possession of persons when they are suspected of certain offences is in itself an offence and is punishable.

It should, however, be appreciated that that is not always possible and that if a serious attempt is going to be made to prevent these weapons being used in the commission of robberies or for that matter other crimes of violence, that it is necessary to make the possession of them an offence. Prohibiting the importation alone would not meet the bill because it would not deal with those cases where importation has already been effected. It will also have been observed that Government has in this Bill made concessions that it could exempt juveniles from the provisions of

the Bill and by the safeguard in relation to prosecution and in relation to forfeiture.

With regard to the observation made by the Honourable Member, as to permitting the weapon to be imported elsewhere, we do know that the Colony of Singapore has passed similar legislation. We are not aware whether other countries or colonies are contemplating legislation of this kind. It may be observed, however, that this legislation is new in Singapore and, if enacted, will be new in Hong Kong. The particular kind of toy pistol which gives rise to this legislation is also new. Nothing having the so nearly appearance of the real weapon, I venture to say, has so far been introduced on the market and it may well be that other colonies and countries will adopt similar legislation. Despite that I think I can give the assurance of Government that if it became possible to permit the exportation of the cargo which has been innocently introduced—if it becomes possible to do that rather than to proceed for destruction—that every consideration will be given to taking that course.

The Bill was given a Second reading with one dissentient.

On the motion of the ATTORNEY GENERAL, seconded by the COLONIAL SECRETARY, Council then went into Committee to consider the Bill clause by clause.

Council then resumed.

The ATTORNEY GENERAL reported that the Summary Offences Amendment Bill, 1946, 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.

### **MEALS AND INTOXICATING LIQUORS TAX BILL, 1946.**

The ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to impose a tax in respect of meals and intoxicating liquors sold in certain establishments."

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

On the motion of the ATTORNEY GENERAL, seconded by the COLONIAL SECRETARY, Council then went into Committee to consider the Bill clause by clause.

The ATTORNEY GENERAL: —I have an amendment to move in Clause 4 of the Bill. Before formally moving the amendment I would like to point out that the clause, as now drafted, levies tax on liquor consumed on the permises, but in the case of liquor which

by permission of the management is introduced and consumed in the premises there will be no tax on the corkage charge as the Bill now stands, and the result is that tax would only be paid on a very much reduced value, being the price of the liquor of a customer outside the establishment in which it is consumed. Moreover, if the Bill were to stand as it now stands, you will be imposing a duty on the hotel or other establishment to check the amount of intoxicating liquor actually consumed after the bottle or other receptacle had been introduced upon the premises. Now, there is, I understand, a shortage of certain kinds of liquor and hotels in the interests of their patrons permit them to introduce the kind of whisky or other liquor they prefer and charge them corkage on it and the custom is fairly prevalent. I accordingly propose that the words "including corkage" in brackets should be inserted after the words "retail cost" in line 2 of the clause, and that the following should be added at the end of the clause: —"In the case of intoxicating liquor upon which corkage is paid, the liquor shall be deemed to have been consumed at the time it becomes liable to corkage." I formerly move that the clause be amended in that way.

The COLONIAL SECRETARY seconded, and the amendments were agreed to.

Clause 10.

The HON. MR. LO MAN-KAM: May I ask a question, Sir. As I see it the penalty is merely a monetary penalty plus the value of the tax which is under Clause 9. Take the case of, say, the Hongkong Hotel. Is it seriously intended that every time a boy makes an infringement of the regulation a summons would be issued against the chairman and every director of the company and that they have to appear? I think that clause 10 is much too wide. Directors should be charged with the direction of policy, not to look after whether a bottle is opened or whether 20 cents duty is to be paid. I suggest that the clause should be omitted.

The ATTORNEY GENERAL: The answer to the Honourable Member is that every case will have to be taken on its merits, but it does lie within the power of the management of any hotel to take necessary precautions to see that the duties are collected and it is within the power for them to give proper instructions. If it appears to be an omission on the part of some subordinate we would not in effect take proceedings.

The HON. MR. LO MAN-KAM: Taking a concrete case, the only way in which one can see the objects carried out is to employ qualified managers and assistants. In a case of that kind when the bill comes into force the manager surely must be responsible to give those instructions. As far as I can see, without looking up the law, in any case of corporate liability, directors are liable only if they are knowingly a party to the offence, such as the making

of a false balance sheet, but in this case, on the commission of an offence, then every director is liable unless it is proved he is not. I have not seen a precedent like that. The only object is to see that the duty is paid plus a penalty not exceeding \$500 and I think a company which cannot pay the duty or fine is not a company in which you would have much interest. Surely a company you are interested in would be in a position to pay the penalty or amount and I cannot see the use of the clause.

The ATTORNEY GENERAL: The Honourable Member has cited the case of the Hongkong Hotel. He has, I think, forgotten that this Bill applies to a large variety of establishments.

The HON. MR. LO MAN-KAM: I know that, but in every case the corporation is liable under Clause 9. If a corporation cannot pay this small amount it would not give you much in the way of revenue. This is a revolutionary law to enforce a penalty of \$500. I speak with great deference because I am a director of the Hongkong Hotel, but in any case I would take objection on general grounds, Sir.

H.E. The GOVERNOR: I would like to hear whether the Attorney General can confirm or contradict the statement that this is a revolutionary provision of the law.

The ATTORNEY GENERAL: It has in fact been introduced in other laws in this Colony including quite recently the Cinematograph Bill.

HON. MR. M. M. WATSON: I support the Hon. Mr. Lo insofar as that section is concerned.

I remember the case of the Opium Ordinance.

There was a provision there that where the drug was found on board a ship the officers, unless they could prove they had taken every precaution to stop the smuggling, were liable to a penalty. It was quite impossible obviously in many cases to prove this fact and a working agreement with the magistrates was made which in effect ignored the law, and that, Sir, is my objection to this clause in which you are asking directors to prove a negative. There is not sufficient reason, in the case of a small offence, to bring up the whole of the Management and Staff of the hotel to prove something which they might be unable to prove. The magistrate will only be able to say "I am satisfied you had nothing to do with it" when in fact the defendant would not have been able to comply with the section.

H.E. The GOVERNOR: I think we are entitled to proceed on the assumption that a prosecution will not be taken against the chairman or director of a company unless there are reasonable grounds for believing that he has been conscious of the commission of the offence. Has any member any other point to add before I put this clause to Committee?

Approval to Clause 10 was given by Committee.

Council then resumed.

The ATTORNEY GENERAL then reported that the Meals and Intoxicating Liquors Tax Bill, 1946, had passed through Committee with immaterial amendments, and moved the Third reading.

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

#### **ADJOURNMENT.**

H.E. The GOVERNOR: That concludes the business before Council for to-day and Council will now be adjourned until the 12th December, 1946.

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