

14th April, 1948.

PRESENT: —

HIS EXCELLENCY THE GOVERNOR (SIR ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, K. C. M. G.)

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

THE COLONIAL SECRETARY (HON. D. M. MACDOUGALL, C.M.G.)

THE ATTORNEY GENERAL (HON. J. B. GRIFFIN, K.C.)

THE SECRETARY FOR CHINESE AFFAIRS (HON. R. R. TODD).

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

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

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

DR. HON. G. H. THOMAS, O.B.E. (Acting Director of Medical Services).

HON. D. F. LANDALE.

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

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

DR. HON. CHAU SIK-NIN.

HON. LEO D'ALMADA, K. C.

HON. R. D. GILLESPIE.

MR. ALASTAIR TODD (Deputy Clerk of Councils).

ABSENT: —

HON. M. M. WATSON.

MINUTES.

The Minutes of the meeting of the Council held on 1st April, 1948, were confirmed.

OATHS.

Dr. Hon. G. H. Thomas, O. B. E. (Acting Director of Medical Services) took the Oath of Allegiance and assumed his seat as a Member of the Council.

MOTIONS.

THE HON. LO MAN-KAM asked: —

With reference to the announcement in the Press of the 9th April of the appointment of a Bomb Damage Sites Committee, will Government state—

- (1) Is Crown Rent being collected in the case of properties destroyed or damaged as the result of the war?
- (2) Whether, having regard to the great hardship suffered by owners of such properties, Government has taken a decision to waive the performance of the usual covenants to repair and to maintain contained in Crown Leases of such properties, or to waive the Crown Rent in respect thereof? and
- (3) If the answer to (2) is in the negative, whether the question as regards waiver of such covenants, or waiver of Crown Rent, are within the terms of reference of such Committee?

THE COLONIAL SECRETARY replied as follows: —

First Question Yes.

Second Question No

Third Question Yes.

In view of the importance of the matter the following statement is made in elaboration of the answers given—

Shortly after the liberation of the Colony the usual demand notes for Crown rent were sent out to all Crown lessees irrespective of whether or not war damage had been incurred. In law such damage does not relieve the lessee from his liability to pay rent nor from his liability under the usual covenants to repair and maintain any buildings comprised in or subsequently built on the premises leased.

It must not be assumed, however, that in taking such action Government has prejudged the issue one way or the other. In fact Government has been considering the whole question mainly on the lines of public health and rehabilitation, though it cannot of course ignore that the contractual relationship of landlord and tenant exists between the Crown and the Crown lessee. In view of the fact that

the breaches of the usual covenants are continuing the acceptance by Government of Crown rent could not be construed as anything more than a temporary waiver, i.e., a waiver of breaches up to the time when rent was accepted, and in any event this would only be so if Government was aware at the time of the breaches. In this connection it is important to note that a survey of damaged property has only recently been completed, and that this may prove to be incomplete or inaccurate. In order, however, to preserve its legal rights Government does not propose to demand or accept Crown rent from those Crown lessees who have to its knowledge taken no steps to repair or clear their sites. Such lessees should accordingly clearly understand that such action is equivalent to a notification that there are breaches of covenant in respect of which Government is preserving its legal rights.

Government however has not yet decided, although various alternatives have been explored and considered, what a fair and practical solution to the problem would be. It appears likely that special legislation will have to be enacted, but Government is awaiting the recommendations of a Committee, whose terms of reference, though primarily directed to the clearance of war damaged sites which must naturally have priority, necessarily include the wider question of whether, and if so when and in what manner and with what modifications, Crown lessees of war damaged sites should be called upon to pay rent and to remedy the breaches of the covenants contained in their respective leases. The Chairman of the Committee has already received directions to this effect.

THE CHAIRMAN, URBAN COUNCIL moved: —

That the amendments made by the Urban Council under section 5(5) of the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, to the by-laws under the heading "Sale of Milk generally and Dairies and Milk Shops" in the Schedule to the said Ordinance, be approved. He said: Sir, the amendments made by the Urban Council on 16th March, 1948, require the sanction of this Council. The purpose of by-law 18(a) is to ensure the keeping of accurate records showing the composition of herds and the movements of dairy animals as this would assist the Urban Council in limiting the spread of infectious disease. In addition, the possibilities of illegal slaughter and also the disposal or sale for human consumption of the carcasses of animals which have died of disease would be considerably lessened. The purpose of by-law 19(a) is to provide for the medical examination of persons engaged or employed in dairies if and when a Health Officer considers this advisable or necessary.

THE COLONIAL SECRETARY seconded, and the motion was carried.

JURY (AMENDMENT) BILL, 1948.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Jury Ordinance, 1887". He said: Sir, the Jury Ordinance, 1887 was amended by Ordinance

37 of 1947 to add a section as Section 8(A). That section enables persons to be added to the jury lists after the lists have been settled in the manner required by Section 7 and Section 8 of the Ordinance. The existence of Section 8(A) therefore renders it no longer essential that every year a new list of special and common jurors be settled in the manner required by the Ordinance. The object of the Bill before council is, therefore, to empower the Governor to order that the settled jury lists of a previous year be adopted as the jury lists of the current year. It is expected that if this power be exercised, as and when the Governor deems fit, a considerable saving yearly of labour and expense in publication and in gazette space will be achieved.

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: —

1. The publication of a list of additional jurors as recently as the 12th December, 1947, (Government Notification No. 949) and the abnormal cost of printing at the present time, render it inadvisable to reproduce for the current year lists of special jurors and common jurors as required by section 7(1) of the Jury Ordinance, 1887.

2. From practical experience and, because of the power contained in section 8A of the Jury Ordinance, 1887, as amended by the Jury Amendment Ordinance, 1947, it is considered that henceforth the publication of annual lists of common and special jurors may be unnecessary.

3. Clause 2 of the Bill has, therefore, been designed to empower the Governor to adopt the list of special jurors and the list of common jurors of any past year as and for such lists of any current year. Consequently, it would be feasible to publish a list of special jurors and a list of common jurors every two years instead of annually thereby achieving a considerable saving

LANDLORD AND TENANT (AMENDMENT) BILL, 1948.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Landlord and Tenant Ordinance, 1947". He said: Sir, the Landlord and Tenant Ordinance, 1947, was enacted in May of last year. In the interval of time which has elapsed practical experience in the operation of the Ordinance has, of course, been obtained and, as a result, proposals for the amendment of the Ordinance have been under consideration. The Bill before Council, Sir, represents the amendments which it is considered should be made. The most important amendments are those which appear in clauses 4 and 5 of the Bill. Clause 4, amending Section 26 of the Ordinance, deals with the matter of appeals. Sir, at the present time an appeal is possible from the decision of a Tenancy Tribunal not only to the court constituted by one judge, but also beyond that to the Full Court. It is felt that the provision of such appeals has

the effect of causing delay in the disposal of tenancy disputes and thus a main object of the legislation is likely to be defeated, such object being that tenancy disputes should be expeditiously settled. The amendment for which clause 4 provides requires that in the future there shall be only one appeal possible from a decision of the Tenancy Tribunal, that is to say, either to a single judge or to the Full Court, but there is still the reservation that, upon a certificate of a single judge that a point of law of exceptional importance has emerged, an appeal can go to the Full Court, notwithstanding that there has been appeal to a single judge. Clause 5 seeks to amend Section 28 of the Principal Ordinance, which deals with the constitution of Tenancy Tribunals. As Honourable Members are aware, excellent work has been done by the Tenancy Tribunal in recent years. For a long time that work fell upon a comparatively small number of members of the panel from which Tenancy Tribunals can be constituted. Recently that number has been reinforced by the addition of a number of persons who have public-spiritedly volunteered for services on the Tribunal, but, even as so increased, the Tribunal has not been able to keep abreast of the work which comes before it, so that again recently the members of the Law Society made an offer which was gladly accepted by Government to give their services as individuals who would seat as magistrates for disposal of tenancy disputes. This procedure has suggested the desirability of amending Section 28 so as to enable individuals who are deemed suitable by qualification and experience to be appointed to sit as one-man Tenancy Tribunals.

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: —

1. The Landlord and Tenant Ordinance, 1947 (referred to in these Objects and Reasons as "the principal Ordinance") was intended *inter alia* to provide a simple and expeditious manner of settling disputes about standard rent between landlord and tenant.

2. Such intention has to a great deal been defeated by the possibility, as the law now stands, of appealing to the Supreme Court in its summary jurisdiction and of appealing further to the Full Court. This has not only increased delay in the final determination of a dispute but led in some cases to such delay when taken in conjunction with the delay in the original bearing before a Tribunal as to amount, in view of the temporary nature of the measure, to a denial of justice.

3. The delay in the original hearing of cases has been partially remedied by appointing as magistrates certain practising solicitors who volunteered to act temporarily in an honorary capacity and who have thus been able to exercise the powers of a Tenancy Tribunal. This course, though justified by the emergency, is clearly less satisfactory than making a provision in the Ordinance for the appointment of suitably qualified persons sitting alone to constitute a Tenancy Tribunal. To remedy this, Clause 5 of the Bill enables a Tenancy

Tribunal to be constituted by a person who, by reason of judicial, magisterial, legal or other similar qualifications, is deemed by the Chief Justice to be competent to sit alone as a Tenancy Tribunal.

4. The delay caused by multiplicity of appeals which, no less than the delay in the original hearing of cases, has been complained of by the Law Society, is sought to be remedied by Clause 4 of the Bill. The new sub-section (9) to section 26 introduced by this clause requires, for an appeal to the Full Court from the decision of the Supreme Court in its summary jurisdiction, a certificate by the presiding Judge that in his opinion, a point of law of such exceptional public importance arises from or in consequence of his decision that the opinion of the Full Court should be obtained on such point. This should limit the number of cases in which more than one appeal will lie and it would be dangerous to be more drastic.

5. The opportunity afforded by the necessity of amending section 26 of the principal Ordinance has been taken to confirm and clarify the procedure on appeal.

6. The amendment affected by clauses 2 and 3 of the Bill in the former case insert words omitted in error from the principal Ordinance and in the latter clarify the original intention which the Courts, not without some difficulty, have upheld.

HAWKERS (AMENDMENT) BILL, 1948.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Hawkers Ordinance, 1935". He said: Sir, by the Hawkers (Amendment) Ordinance, 1946, an amendment was made to the Ordinance of 1935, the Principal Ordinance, empowering the making of by-laws which would enable seizure, forfeiture and disposal of goods to be made where unlicensed hawkers are found. That provision was enacted as a measure in the solution of the problem of hawkers; in fact since that amendment was made no by-laws have been made, for the reason that it was considered that possibly the power to seize and forfeit and dispose of goods without recourse to Court was too arbitrary. It is therefore proposed by this Bill to repeal the provision made by the Hawkers (Amendment) Ordinance, 1946 and to provide a solution for the problem by way of amendment of the Magistrates Ordinance, an amendment which, it is expected, will shortly be before this Council.

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: —

1. The Hawkers (Amendment) Ordinance, 1946, was enacted because it was at that time considered necessary to authorise the making of by-laws under which it would be possible to order the seizure, forfeiture and disposal of perishable goods sold by hawkers without recourse to the courts. Provision was made by adding to section 2 of the Hawkers Ordinance, 1935.

2. In fact, however, no such by-laws have been made and it has been found possible to apply less drastic methods which can be put into effect by amendments to sections 43 and 96 of the Magistrates Ordinance, 1932. The amendment to section 43 will enable perishable commodities to be sold forthwith if the owner is unknown—which might occur when an unlicensed hawkker, upon seeing the police, escapes and abandons his stock in trade. The amendment to section 96 will, in the case of a known offender, enable a magistrate to order forfeiture not only of articles being hawked but also of the equipment used to hawk them.

3. In view of the foregoing, it is considered desirable to repeal the provisions added to section 2 of the principal Ordinance which empowered the making of by-laws of the somewhat arbitrary nature mentioned in paragraph 1. Such repeal is effected by clause 2 of the present Bill.

RATINC (AMENDMENT) BILL, 1948.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Rating Ordinance, 1901". He said: Sir, this is a short Bill which seeks to apply the Rating Ordinance to piers. This change is necessary, because in Section 2 of the Rating Ordinance, piers are excepted from the class of property upon which rates must be paid.

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: —

1. "Pier" as defined in the Piers Ordinance, 1899, includes every pier and wharf of whatever description, except a pier or wharf belonging to the Government or to the Naval, Military or Air Force Authorities.

2. By section 17 of that Ordinance, piers are exempt from payment of rates under the Rating Ordinance, 1901, and a corresponding exemption is contained in section 2 (i) of the Rating Ordinance, 1901.

3. It is intended to repeal the Piers Ordinance, 1899, but the rights, privileges, obligations or liabilities acquired, accrued or incurred by lessees or licensees under the Piers Ordinance, 1899, by virtue of leases or licences granted to them by the Crown before the date of such repeal will continue in force until 31st December, 1949, and thereafter cease and determine.

4. It is also intended that any pier which is the subject of a lease granted by the Crown after 1st January, 1948, shall be rateable.

5. Accordingly it is necessary to amend section 2 (i) of the Rating Ordinance 1901, to include piers. Clause 2 of the Bill effects this. Clause 3 of the Bill will ensure that any pier which is the subject of a lease granted by the Crown after 1st January, 1948, will be rateable.

PIERS (REPEAL) BILL, 1948.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to repeal the Piers Ordinance, 1899". He said: Sir, this short Bill is in a sense a companion measure to the Bill to amend the Rating Ordinance. Section 17 of the Piers Ordinance, 1899 provides for the exemption of piers from rates. It is desired, as I have indicated previously, that in the future piers should attract rates. Again it is proposed, because crown leases for piers all expire on the 31st December, 1949, to provide new crown leases which will themselves embody much of the material which is now in the Piers Ordinance, 1899. For this reason the Piers Ordinance becomes obsolete and the Bill before council is designed to effect its repeal, but the rights and liabilities of persons under the Piers Ordinance are saved and preserved until the 31st December, 1949.

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: —

1. All Crown leases and licences of piers (as defined in section 2(b) of the Piers Ordinance, 1899) expire on 31st December, 1949, and thereupon such piers become the property of the Crown.

2. The provisions of the expiring Crown leases and licences have been under consideration by Government with a view to the preparation of new Crown leases upon revised terms, to take effect from 1st January, 1950.

3. It is convenient to include in the new Crown leases some of the provisions of the Piers Ordinance, 1899, namely, sections 5, 6, 7, 10, 11 and 14. Other provisions of that Ordinance, namely, sections 8 and 13, will be enacted in the form of regulations in Table M (II) of the regulations made under section 25 (4) of the Merchant Shipping Ordinance, 1899. The remaining sections of the Piers Ordinance, 1899, are obsolete. Accordingly it is proposed to repeal the Piers Ordinance, 1899. Clause 2 of the Bill effects this.

4. Clause 3 of the Bill saves rights and liabilities incurred or accrued under the Ordinance repealed until the 31st December, 1949.

ADJOURNMENT.

H.E. THE GOVERNOR: — That concludes the business, Gentlemen. When is it your pleasure that we should meet again?

THE ATTORNEY GENERAL: —I suggest the 28th April, Sir.

H.E. THE GOVERNOR: — Council will adjourn until 2.30 p.m. on Wednesday, 28th April.