

2nd June, 1948.

PRESENT: —

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

THE HONOURABLE THE OFFICER COMMANDING THE TROOPS (BRIGADIER H. A. SKONE, D. S. O.)

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

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

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

THE FINANCIAL SECRETARY (HON. A. G. CLARKE, *Acting*).

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

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.

HON. LEO D'ALMADA, K. C.

HON. C. C. ROBERTS.

HON. N. O. C. MARSH.

MR. ALASTAIR TODD (Deputy Clerk of Councils).

ABSENT: —

HON. E. HIMSWORTH (Acting Superintendent of Imports and Exports).

DR. HON. CHAU SIK-NIN.

MINUTES.

The Minutes of the meeting of the Council held on 26th May, 1948, were confirmed.

QUESTIONS.

THE ACTING FINANCIAL SECRETARY replied to the supplementary question standing in the name of the Honourable D. F. Landale arising out of the question asked by the Honourable Leo D'Almada, K.C., at the meeting held on 26th May, 1948, namely: —

Arising from the answers given to question 3, I notice the items set out made no reference to the claims against the War Supplies Board. Will Government state what the position is about these claims?

He said: Consequent on the cutting of the Mediterranean route in the summer of 1940, an Eastern Group Supply Council was set up in India to devise methods and means of supplying the large British Forces east of Suez with their requirements from Far Eastern countries as far as practicable, in order to save shipping round the Cape.

2. Hong Kong's industries presented the possibility of securing a variety of different types of goods needed for the forces, and to facilitate His Majesty's Government in making the fullest use of these sources the Hong Kong Government in 1940 was asked to set up the War Supplies Board to act as agent for the Eastern Group Supply Council and for other Government organizations which might require supplies from local sources. The War Supplies Board operated with funds advanced by this Government.

3. Briefly the claims made against the Board fall into three main categories:

- A. Goods actually shipped or delivered to a godown against orders placed by the War Supplies Board in its capacity as agent for the purchaser;
- B. Goods ordered which were in course of manufacture but were not delivered at the outbreak of hostilities;
- C. Advances made by War Supplies Board contractors to manufacturers to finance the manufacture of War Supplies ordered on behalf of the various purchasers.

4. Only category "A" claims are legally enforceable, as under the terms of the standard War Supplies Board contract there could be no liability until shipment had been effected or delivery had been made to a godown. Government's view is that the legal liability in this category lies with the purchaser, but in that Government had

incurred a moral responsibility by the fact of its having been responsible for setting up the War Supplies Board, it agreed to forward category "A" claims to the purchasers and to press for payment on behalf of the claimants. In actual fact out of the total of \$1,495,100.73 for such claims, only \$170,074.07 has not yet been recovered from purchasers. Government is not prepared to meet any claim out of public funds in view especially of the fact that it is also in the position of a claimant in respect of the disbursement of its monies advanced to the Board.

5. With claims under categories "B" and "C" no legal liability exists but there may be a valid claim against reparations. The whole situation has been placed before the Secretary of State for the Colonies.

6. Apart from these contractors' claims there is a number of claims against the War Supplies Board in respect of transport material which was urgently required for the Middle East Campaign in 1941, and which the War Supplies Board secured locally and shipped on behalf of the Middle East Command. Certain of these claims have been settled by the War Office, and others are still under consideration. This Government is one of the unsatisfied claimants.

DEBTOR AND CREDITOR (OCCUPATION PERIOD) BILL, 1948.

THE ACTING FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to determine the degree of validity to be accorded to money payments made and debts incurred during the period of enemy occupation of the Colony and matters related thereto." He said: Sir, this Bill has been before the public for over two months and as it has aroused some degree of public interest I might perhaps add to the very full explanation given by the Attorney General in the Objects and Reasons, a brief explanation, in non-technical terms, of Government's policy on this controversial matter, and of the purpose which it is hoped to achieve. It might be well for me first to recapitulate the situation which gave rise to the problem.

When the enemy overran the Colony at the end of 1941, one of his first steps was to introduce a currency of his own. It was a paper currency which was issued without backing. The "Military Yen," as the new currency unit was called, was first circulated at the rate of one Military yen to two Hong Kong dollars, and was subsequently revalued at the rate of one Military yen to four Hong Kong dollars. In May 1943 the rate of exchange against the Hong Kong dollar was entirely abolished and the use of the Hong Kong dollar was made illegal. This meant that after that date the value of the Military yen depended entirely on the confidence which it could command; it depended in fact on the military prestige of the enemy who issued it. The following figures for the value of Military yen notes in circulation during the occupation period may perhaps be of interest—

December 1942—MY 20½ million
” 1943—MY 42 ”
” 1944—MY 309 ”
August 1945—MY 1,963 ”

Another early step that the enemy took, after his occupation of the Colony, was to take over the firms of those countries with whom he was at war. He appointed liquidators and endeavoured to wind them up. A necessary step of the winding up was to collect debts owing to these concerns.

Now in collecting these debts, the Japanese were anxious to secure repayment in Hong Kong currency, the currency in which the debts had been incurred, for they knew just how much their occupation currency was worth. The debtors, who were equally well informed, if they had to pay, tried to repay in Military yen, but were not at all anxious to part with their Hong Kong dollars. These points are very relevant in view of the terms of this Bill.

I do not propose to go into any detailed analysis of the transactions that took place. Suffice it to say that Government is aware that there have been cases of hardship; of individuals who had to sell the houses in which they lived, in order to satisfy the demands of the Japanese liquidators for repayment of bank mortgages.

The point, however, which must be borne in mind in considering these debt payments is that the money did not go to the creditors to whom it was due, but to the liquidators whom the enemy had placed in charge.

The question of whether the payments made to the Japanese liquidators constitute, in law, legal discharges of the debts, is one that can only be decided by the courts. Were it left to be thrashed out in the courts, two possibilities might eventuate. Either the payments might be held to be legal, in which case the creditors would suffer the full loss; or the payments might be held to be illegal, in which case the debtors would have to pay the full sum over again. I cannot say what view the courts might take, but, whatever may be the decision, it is certain that the loss would fall completely on one side or completely on the other. Government cannot envisage without concern the possibility of the creditors being successful, with the result that the debtors would have to pay in full over again, nor does it feel that a decision in favour of the debtors would be altogether just to creditors.

After much anxious consideration, and after consultation with His Majesty's Government, this Government feels therefore that to avoid lengthy litigation which must result in inequitable treatment for one side or the other, the only possible course is to enact special legislation to provide a compromise. This compromise is expressed in the Bill now before the Council and its terms are as follows—

First; where a debtor repaid his debt during the occupation in Hong Kong currency, he is regarded as having validly discharged his debt, regardless of the fact that his creditor may not have received the money. That is, if the Japanese liquidator received the payment, the creditor suffers the full loss. Thus if the individual, to whom I referred a moment ago as selling his house to repay the mortgage on it, made the repayment in Hong Kong dollars, he has nothing more to worry about.

Second; where a debt, incurred before the occupation, fell due for repayment either before or during the occupation period, and payment was demanded and received by the creditor himself, or by his agent, that debt is deemed to have been validly discharged, even if payment were made in occupation currency, unless payment in occupation currency were accepted under duress.

Third; where a debt, incurred before the occupation in Hong Kong currency, was repaid to the liquidator during the occupation period in occupation currency, such repayment shall be regarded as a partial discharge of the debt.

It is particularly over this last provision that controversy has arisen.

The Creditors say in effect—"we lent Hong Kong dollars before the enemy came. We have not been repaid a cent either in Hong Kong dollars or in any other currency, and we want repayment in full.

The Debtors reply—"We admit having borrowed Hong Kong dollars before the occupation. But the enemy came along and liquidated our creditors, as we believe they were entitled to do. We paid them the full amount they demanded. If our creditors have got nothing of that money, we are very sorry, but that is not our fault. They should look to Japan for reimbursement."

If ever a case for compromise existed, this is surely one. The debtor who paid the liquidator undoubtedly parted with value, but his creditor did not receive that value. Bearing in mind the point I mentioned earlier on, that the liquidators tried to collect in Hong Kong currency, a suitable compromise would be to split the difference and to give the debtor credit, against his debt, for half the value with which he parted, and to require him to make up the full balance to his creditor.

This brings me to the real difficulty encountered in proceeding to make the compromise effective. Just what was the value with which the debtor parted? What was a "Military yen" worth during the occupation?

The Japanese valued it at either two Hong Kong dollars or four Hong Kong dollars. Nevertheless relief payments from the United Kingdom to internees in Hong Kong were converted by the Japanese into yen at 17.10 to the pound, which made it worth rather less than a Hong Kong dollar.

There are various ways of trying to arrive at a value in terms of Hong Kong currency. We could take the black market exchange rate which existed throughout the occupation; we could take the price of gold; we could take the cost of such necessities of life as rice, fuel, oil and vegetables. Investigations have been made along all these lines, and the table in the schedule is the result. It does not reflect the value of the yen during the occupation period, nor yet does it represent the half-value which I suggested as the suitable compromise a moment ago. I should be foolish if I made any such claim for it, as I should promptly be given specific examples to prove how wrong I was. But what I think it does provide is a reasonably fair means of revaluing payments in occupation currency. I do not claim that it is perfect, but perhaps the fact that it is opposed by both creditors and debtors as being against their interests may be taken as indicating that it represents a reasonable compromise.

If we accept this table the result is like this. A pre-occupation debtor, who has made payment in occupation currency to a liquidator during the occupation, will be held not to have discharged his debt. But the amount which he has paid the liquidator will be converted into Hong Kong dollars in accordance with the table in the Schedule. This sum will be deducted from the original amount due at the beginning of the occupation, and he will have to pay the difference.

In giving this brief and very inadequate explanation of the purpose of this Bill, I have deliberately restricted myself to the all-important point of how far payments made during the occupation period are to be regarded as valid. The other points in the Bill may all be regarded as subsidiary to this one, and it is on the solution proposed here that the Bill must stand or fall. I cannot but feel that the situation which has arisen as a result of the enemy occupation is one which cries out for compromise. Government has worked out a compromise in terms that it considers fair and equitable, and now presents it to this Council in the form of this Bill.

Finally, I would urge that it is beside the point to argue whether the Japanese liquidators had any right under International Law to act as they did.

This Bill arises out of the fact that they did so act, and seeks to present a solution of the problems that have been occasioned thereby; a solution which, if accepted by this Council, will at last enable Government to lift the Moratorium which has been with us so long.

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. It is considered necessary that before the Moratorium imposed by Proclamation No. 6 is lifted, legislation should be enacted to determine the degree of validity to be accorded to money payments made and debts incurred during the period of enemy occupation of the Colony. The object of this Bill is to provide such legislation.

2. The Bill (Clause 2) provides for the interpretation of a number of terms necessarily employed in legislation of this character. Notably, interpretation is given of the terms "duress or coercion", "Hong Kong currency", "occupation currency", "occupation period" and "occupying power".

3. The essential features of the Bill are contained in Clauses 3, 4, and 5.

Clause 3—This Clause deals with the discharge during the occupation period of pre-occupation debts. The Clause provides that where during such period a payment was made in respect of a debt which—

(a) was payable by virtue of an obligation incurred prior to the commencement of the occupation period and

(b) accrued due either prior to or after the commencement of the occupation period

such payment to the extent provided in the Clause shall be a valid discharge of such debt. Such validity is, however, by sub-clause (2), made conditional because—

(a) where duress or coercion was present in acceptance of payment in occupation currency, or

(b) where such payment was made in occupation currency in respect of pre-occupation capital debt which

(i) was not due at the time of such payment, or

(ii) if due was not demanded by the creditor or by his agent and was not payable under a contract expressly stipulating that it should be the essence of such contract that payment be made on a date certain, or

(iii) if due and demanded was not made within three months of such demand,

the sub-clause provides that any such payment taking place during the occupation period shall be re-valued in accordance with the scale, and in the manner prescribed, in the Schedule to the Bill and that such payment shall thereupon constitute a valid discharge of such debt only to the extent of such re-valuation.

Clause 4—This Clause deals with the discharge during the occupation period of debts incurred during such period. It provides that any such payment made during the occupation period by a debtor or his agent to a creditor or his agent shall be a valid discharge of such debt to the extent therein provided.

Clause 5—This Clause deals with occupation debts remaining unsatisfied at the commencement of this Bill upon enactment. The Clause provides that in any such case a debt, unless expressly made payable otherwise than in occupation currency, shall be re-valued in accordance with the scale, and in the manner prescribed, in the Schedule to the Bill and shall be payable to the extent determined by such scale.

4. Other clauses which deal with matters related to the central problem of the validity to be accorded to money payments made and debts incurred during the period of enemy occupation of the Colony are Clause 6 dealing with the liability of banks to customers, Clause 8 relating to the application of payments to and withdrawals from banks occurring during the occupation period, Clause 9 which creates rebuttable presumption that payments made during the occupation period were made in occupation currency and renders entries in bankers' books receivable as *prima facie* evidence in all proceedings for the purposes of the Ordinance.

5. Clause 7 of the Bill is designed to ensure that no bank derives any profit as a result of the operation of the Bill upon enactment by the establishment of a surpluses fund to be controlled by a Board.

6. The question of interest unpaid on pre-occupation debts is dealt with in the Bill by Clause 10 which provides for application to the Supreme Court by any person who contends that interest at a higher or lower rate than 4 per centum per annum should be payable in respect of interest accumulating during the occupation period.

7. Clause 11 of the Bill provides for the reinstatement of securities which had secured debts purporting to have been discharged in whole or in part by payment in occupation currency but deemed by virtue of the provisions of the Bill to be wholly or partially un-discharged at the commencement of the Bill upon enactment.

8. The Bill does not contemplate that there should be disturbance of any agreement made between a debtor and a creditor at any time after the end of the occupation period for the purpose of—

(a) valuation of any payment made during the occupation period in respect of a debt payable under an obligation incurred prior to or after the commencement of the occupation period, or

(b) providing for the payment or other settlement of any debt incurred during the occupation period and still unpaid at commencement of the Bill upon enactment, or

(c) determining a rate for the payment of interest in respect of the occupation period on a debt payable by virtue of an obligation incurred prior to the commencement of the occupation period and unpaid at the commencement of the Bill upon enactment. Consequently Clause 12 of the Bill provides specifically for the saving of any such agreement or settlement.

OCCUPATION MARRIAGES (VALIDITY) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to remove doubts as to the validity of certain marriages celebrated in the Colony of Hong Kong after the outbreak of hostilities with Japan". He said: Sir, the Objects and Reasons contain a very full statement as to why this Bill is before Council. It suffices for me to say that the Bill is necessary first to remove doubts as to the validity of marriages other than non-Christian customary marriages celebrated during the Japanese occupation and, secondly, to provide the necessary machinery for recording and proving such marriages. In view of its importance the Bill has been discussed with the Secretary of State who has agreed to the present form of the Bill subject to two very minor amendments which it is hoped to introduce into committee.

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 Marriage Ordinance, 1875, section 3, provides that the Governor may license any place of public worship to be a place for the celebration of marriage and by section 5, one of the parties to any intended marriage is requested to give notice thereof to the Registrar in a prescribed form. Under section 8, the Registrar issues a certificate to the effect that such notice has been duly entered in the marriage book and by section 10, the proceedings are void if the marriage does not take place within three months after giving of such notice. Prior to the issue of the Registrar's certificate, an affidavit of no impediment to the marriage is also required under section 12.

2. The above provisions may, to some extent, be derogated from if the special licence of the Governor is obtained, but in any event, a party under 16 cannot lawfully marry and a party between 16 and 21 requires the consent of parent or guardian, and, failing such consent, the consent of the Registrar. See sections 12A to 14 inclusive and section 22.

3. Under section 19, marriages may be celebrated in any licensed place of worship by a competent minister, but no marriage shall be celebrated by such minister without the Registrar's certificate or the Governor's special licence. Penalties are prescribed by section 29.

Under section 20, books of marriage certificates are issued to the several licensed places of worship and the certificate must be signed in duplicate by the parties, the officiating minister and two witnesses. One certificate is handed to the parties and the other transmitted by the officiating minister to the Registrar for filing. Under section 21, if the parties are married in the Registry, the same procedure is followed save that the copy is retained by the Registrar and filed.

Under section 24, such certificate as aforesaid or a certified copy is admissible as evidence of the marriage. Finally, by section 26—

"(1) No marriage shall be valid which would be null and void on the ground of kindred or affinity in England or Wales.

(2) A marriage shall be null and void if both parties knowingly and wilfully acquiesce in its celebration in any place other than the office of the Registrar of Marriages or a licensed place of worship (except when authorised by a special licence), or under a false name or without a certificate of notice or licence duly issued, or by a person not being a competent minister or the Registrar of Marriages or his deputy, or if either party to the marriage is at the time of its celebration under the age of sixteen years.

(3) But no marriage shall, after celebration, be deemed invalid by reason that any provision of this Ordinance, other than the foregoing, has not been complied with".

4. During the Japanese occupation, the Registrar of Marriages ceased to function, and no special licence could be granted by the Governor nor did the Japanese set up any alternative machinery to fill the vacuum. Parties nevertheless continued to get married in licensed places of worship and also in internment camps. It is believed that in some cases, parties were married in hotels which, like internment camps, were not licensed places of worship. Altogether over 500 marriages to which the Ordinance would apply took place and in none of these cases was it possible to comply with all the requirements of the Ordinance, particularly, the vital necessity of obtaining either a certificate of notice or a special licence. There is, however, considerable authority for saying that where statutory requirements become impossible of fulfilment, the right to marry in accordance with the common law revives, so that a marriage celebrated in compliance therewith is valid. It is not altogether clear what the common law requirements are in colonial territories, but again, there is authority for saying that the requirement applicable in England and Wales, that the officiating minister must be a priest of the Church of England, does not apply in the Colonies, and that in the Colonies, a valid marriage could, at common law, be contracted *per verba de proesenti* where compliance with local forms is impossible.

5. It is, in any event, clearly right that doubts as to the validity of such marriages should be removed, except in cases where the defect was a defect which went to the root of the marriage, i.e., which

would have invalidated the marriage even if all the requirements of the Marriage Ordinance had been complied with. It may be, however, that in some cases parties have altered their position by remarrying or that their marriage has been dissolved by a court of competent jurisdiction. In such cases, the *status quo* should be preserved, i.e., the marriage should not be validated by legislation but either party should be free to argue that it was nevertheless valid at common law.

6. (a) The object of the present Bill is to give effect to the principles stated in paragraph 5 of these Objects and Reasons and also to make provision for relief from penalties applicable under the Ordinance and, so far as possible, for the furnishing of marriage certificates and their admissibility as evidence;

(b) Clauses 3, 4 and 5 of the Bill seek to carry out the first of these objects;

(c) by Clause 6, an officiating minister is relieved from penalties if he complies with Clause 7, under which he is under a duty to supply on request of either party a marriage certificate on the form prescribed by the Ordinance, or alternatively, after satisfying the Registrar that he cannot comply, to give a certificate in a modified form;

(d) Clause 8 makes both forms of certificate given under Clause 7 admissible in evidence.

7. The Registrar of Marriages has already collected a considerable amount of information about occupation marriages, including a register of marriages celebrated at Stanley and particulars of marriages celebrated elsewhere in the Colony. It is appropriate that this information should be available to interested parties who may now, or at a later date, be seeking evidence of a marriage. This is provided for by clause 9 which also authorises the moderate fee of \$5 for supplying the information.

8. In the normal course of events, an officiating minister should be able to comply with the provisions of clause 7, but it is conceivable that a case may arise in which a minister cannot comply, and ought nevertheless, to be relieved from penalties. Clause 10 accordingly enables the Governor in Council to provide for this by regulations. It is also desirable to be able to expand by regulation the procedure for an officiating minister to obtain the Registrar's consent to a substituted certificate and for applications by the public to the Registrar. Provision has been made by clause 10.

LAW REFORM (FRUSTRATED CONTRACTS) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the law relating to frustration of contracts". He said: Sir, Honourable Members have

been supplied with notes on the Act of the United Kingdom Parliament upon which the Bill is based. That makes it unnecessary for me to explain the Bill in detail, but the following brief observations may, however, assist. Under the law as it now stands where a contract has become frustrated because the basis of it has failed and the purposes are accordingly discharged from further performance, any right or liability which has already accrued is not readjusted. Perhaps I can illustrate this in more popular language by giving examples of the Coronation cases. When Edward VII's coronation was announced a number of people not unnaturally booked seats or premises from which to view the ceremony and procession. Some people paid in advance; others agreed to pay after the event. The king fell ill and the coronation was postponed. It was held that the contracts were frustrated because their basis had failed, but the law left the parties exactly where they were. In other words money already paid was not recoverable nor, in the cases where no money had been paid, was anything payable towards any expenses to which the other party had been put in making preparations. Under the present Bill, this principle is reversed, but the contract is still frustrated and the parties are still discharged from further performance. But anything paid becomes recoverable and anything payable ceases to be payable. Both parties may, however, recover expenses properly incurred in the performance of the contract and may be made to pay for any benefit they have received. That is contained in clause 3 of the Bill. The innovation introduced by the Bill appears to be so fair and reasonable that it is just that the provisions should be retrospective. If it were not it would not govern the contracts frustrated by the war and it would have little effect for some time to come. In considering this question of retrospective effect it is not to be overlooked that the Colony was deprived of a legislature between December, 1941 and May, 1946, and that it was not a problem which the British Military Administration could have been expected to tackle.

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 object of the Bill is to bring the law of the Colony into line with English Law by reproducing with the necessary modifications the Law Reform (Frustrated Contracts) Act, 1943.

2. The reasons for the enactment of the English Act are set out in the notes to the Act in Halsbury, Complete Statutes of England, Volume 36, page 50. These notes are too extensive to reproduce here but will be circulated to members of Executive and Legislative Council.

3. It will be noted that in Hong Kong it is proposed that the Ordinance shall have retrospective effect. The reason for this is that there were many contracts in Hong Kong to which the Ordinance will apply if made retrospective and in respect of which, by reason of the Moratorium, accounts have not yet been adjusted between the parties. The provisions introduced by the Bill will in the case of a frustrated contract adjust the accounts between the parties in a more equitable manner than is the case under existing law.

ENFORCEMENT OF RIGHTS (EXTENSION OF TIME) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to extend the period during which legal proceedings may be instituted and rights may be exercised". He said: Sir, the latin maxim *vigilantibus et non dormientibus lex succurrit* which I may render as the law comes to the assistance of the watchful and not of the unawake has led in the course of history to the fixing of a time limit during which legal remedies may be exercised. Equity has by analogy applied the time limit or refused to assist a person who has stood by and done nothing, though not ignorant of his rights. These principles, excellent as they may be, in normal times would cause injustice if applied in respect of the time when hostilities, absence, internment and numerous other circumstances including the Moratorium Proclamation have rendered it difficult, if not impossible, to have recourse to the Courts.

The object of the present Bill is to exclude these principles so far as the occupation period is concerned and to modify them so far as concerns the period between the end of the occupation period and the commencement of the Ordinance introduced by the Bill. This Bill has been introduced to-day to call the attention of the public to the fact that normality will, it is hoped, soon be restored and that then the ordinary principles will apply once more. In fact it is not intended to proceed with the other stages of the Bill until the Bill referred to in clause 5 of the present Bill has been considered by this Council and, indeed, it will be necessary either to postpone such stages until after the repeal of the Moratorium Proclamation or to provide that the commencement of the Ordinance introduced by the present Bill shall be some date after such repeal. If this were not done, actions barred by the Moratorium Proclamation might conceivably still stand.

For the benefit of such persons as have read the leader in yesterday morning's *China Mail* I may add that any argument that interest should not run because of the provisions of this Bill is fallacious. This Bill merely extends the time during which rights can be exercised; it does not purport to alter or affect the substance of such rights.

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. It may be that certain courts set up by the Japanese may have conformed sufficiently to the standards required by International Law as to make it necessary to deem them a proper forum of litigation for the class of cases there entertainable. Whether or not this may prove to be the case it should clearly not operate to bar the rights of even those claimants who could, if they chose, have had recourse to those courts, merely on the ground that their cause of action is stale and has become extinguished or barred by lapse of time.

2. The legal and equitable provisions which extinguish a right or bar a remedy are based on the principle that "the public have a great interest in having a known limit fixed by law to litigation, for the quiet of the community and that there may be a certain fixed period, after which the possessor may know that this title and right cannot be called in question" or the similar principle that the law will not assist those who are not vigilant in protecting their rights. The fact remains, however, that these provisions presuppose a normal state of society when the courts are always open to the litigant, the courts are the ordinary courts of the land and the litigant knows his remedies and is able to pursue them.

3. Looking back on the history of the Colony since 1941, we find—

(A) a period during which no civil courts were functioning;

(B) a period during which the Japanese set up some courts dealing with some civil matters;

(C) a period of Military Administration during which civil courts were suspended but it was possible e.g., to obtain a grant of probate or to invoke the assistance of a Tenancy Tribunal;

(D) a period in which the ordinary courts were prepared to function but during which a moratorium was in force in relation to certain claims and during which some of the complication and confusion induced by Japanese occupation and interference could be resolved.

4. It may, therefore, be said that the conditions necessary to the application of the principle stated in paragraph 2 could never be wholly present until the repeal of the Moratorium Proclamation. This Bill seeks accordingly to rectify the position by providing that in applying such principle no account shall be taken of the period between the 7th of December, 1941 to the commencement of this Ordinance.

5. Certain debts were by article 6 of the Moratorium Proclamation expressly exempted from the operation of the Moratorium Proclamation. With the restoration of Civil Government there was nothing to prevent normal legal action being taken in respect of these

debts. By way of exception, therefore, clause 4 of the Bill provides that in the case of these debts the period of which no account shall be taken in applying the principle aforesaid shall end with the 1st of May, 1946.

6. "Right" is by clause 2 of the Bill widely interpreted and under such interpretation when applied in the context of the Bill, once the Japanese occupation ceased, certain rights might well have been exercised notwithstanding that civil courts had not been restored. Moreover, it is arguable that, despite the intention, such rights as a power of sale relating to a debt, to which the Moratorium Proclamation applied, could have been lawfully exercised. It is also disputable what would have been the effect of a "Japanese assignment" as interpreted by the Land Transactions (Enemy Occupation) Ordinance, 1948, if that Ordinance had not been enacted. At the same time it is not desired to penalise a person who refrained from exercising a right while awaiting clarification by legislation of certain problems. Clause 5 of the Bill accordingly seeks to adjust the various equities by giving the court a discretion in applying equitable doctrines to take into account, with certain exceptions the fact that a person was able during the period of Military Administration or subsequently, effectively to exercise certain rights.

REVISED EDITION OF THE LAWS BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to make provision for the preparation and publication of a revised edition of the law of the Colony".

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

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

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the Revised Edition of the Laws Bill, 1948, 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 into law.

PENICILLIN BILL, 1948.

THE ACTING DIRECTOR OF MEDICAL SERVICES moved the Second reading of a Bill intituled "An Ordinance to control the sale and supply of penicillin and certain other substances".

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

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

Schedule.

THE ACTING DIRECTOR OF MEDICAL SERVICES: —Sir, I beg to move that the words "prepared for parenteral injection" in the Schedule under "Penicillin—Definition of Substance", be deleted. Penicillin is now used extensively not only in the form of injections but also in the form of lozenges, and it is desirable to remove any element of doubt from the definition of the substance.

The amendment was agreed to.

Council then resumed.

THE ACTING DIRECTOR OF MEDICAL SERVICES reported that the Penicillin Bill, 1948, had passed through Committee with one amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded, and the Bill was read a Third time and passed into law.

HONG KONG CHINESE CHRISTIAN CHURCHES UNION INCORPORATION BILL, 1948.

HON. LO MAN-KAM moved the Second reading of a Bill intituled "An Ordinance to provide for the incorporation of the Hong Kong Chinese Christian Churches Union".

HON. CHAU TSUN-NIN seconded, and the Bill was read a Second time.

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

Clause 5.

HON. LO MAN KAM: —Sir, I beg to move that the word "Seal" be deleted from the marginal reference to this section.

The amendment was agreed to.

Clause 6.

HON. LO MAN-KAM: —Sir, I move that the word "Seal" be inserted as a marginal note in this section.

The amendment was agreed to.

Council then resumed.

HON. LO MAN-KAM reported that the Hong Kong Chinese Christian Churches Union Incorporation Bill, 1948, had passed through Committee with two minor amendments and moved the Third reading.

HON. CHAU TSUN-NIN seconded, and the Bill was read a Third time and passed into law.

**THE CANTON TRUST COMPANY LIMITED
(CAPITAL CONVERSION) BILL, 1948.**

HON. LEO D'ALMADA moved the Second reading of a Bill intituled "An Ordinance to authorise the Canton Trust Company Limited to convert the currency of its capital".

HON. C. C. ROBERTS seconded, and the Bill was read a Second time.

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

Council then resumed.

HON. LEO D'ALMADA reported that The Canton Trust Company Limited (Capital Conversion) Bill, 1948, had passed through Committee without amendment and moved the Third reading.

HON. C. C. ROBERTS seconded, and the Bill was read a Third time and passed into law.

MOTIONS.

HON. D. F. LANDALE moved: —

(1) That having regard to the financial difficulties with which the United Kingdom is itself faced as a result of losses incurred during the war, and having regard to the heavy burden which the United Kingdom taxpayer is Galled upon to bear, this Council, on behalf of the Colony, accepts the proposals contained in His Majesty's Government announcement of the 27th April, 1948, which this Council regards as representing a great effort and a very real proof of sympathy and goodwill of His Majesty's Government towards the Colony.

(2) That this Council respectfully requests His Excellency, the President, to acquaint the Secretary of State with the above resolution and at the same time to make the necessary representations to him with a view to: —

(a) The immediate termination of Treasury control over the Colony:
and

(b) Ensuring the speedy examination and decision on the part of the Services concerned in respect of the 'denial' claims.

He said: Sir, in rising to move the motion standing in my name on the Order Paper I do so not so much on the merits of the terms offered by His Majesty's Government but because my Unofficial Colleagues and I believe there is considerable desire locally to assist the Home Government in their present financial difficulties, and it is solely for this reason that we do not wish to press for what might crudely be expressed as our 'pound of flesh'.

Frankly, Sir, the terms offered are in our opinion the least that we were entitled to expect.

As to His Majesty's Government's decision not to ask us to pay any contribution towards the cost of the Military Administration, I need hardly elaborate on my reasons for saying that this decision is one which the Colony had every right to expect; more particularly in view of the frequent statements made by responsible Ministers of the Crown during the war 'that the cost of the war as far as the Colonial Empire was concerned would not lie where it fell'. And further, as regards His Majesty's Government's decision to treat as a free grant advances made before and after the establishment of Civil Government, amounting to three and a quarter million pounds, I consider that such advances fall within the same category as the cost of the Military Administration. And again, as to His Majesty's Government's further offer of £ 1,000,000 as a free grant to assist the Colony in resolving the problems arising out of expenditure connected with the war, it seems clear from Government's replies to my Hon. Friend Mr. Leo D'Almada's questions, that the whole of this sum and more will be absorbed by expenditure arising out of the war, and accordingly I consider that this sum too falls within the same category as the other two items.

On the other hand, it is also clear that the Colony's finances, with the help given by His Majesty's Government will be able to meet the additional items of expenditure which this Government will be called upon to bear and which are given, in the answers to my Hon. Friend Mr. D'Almada.

In view of the desire, to which I have already referred, to seek ways and means whereby Hong Kong can help the United Kingdom in her present troubles, it has occurred to my Unofficial Colleagues and to me that, by accepting the offer which under the circumstances we regard as representing a very great effort and a real proof of sympathy and goodwill on the part of His Majesty's Government towards the Colony, and not pressing for a fuller settlement, we are in fact making no mean contribution towards alleviating the home country's difficulties.

I would hate my remarks to be interpreted as being ungrateful, but it must be borne in mind that in addition to the sums set out in the answers to my Hon. Friend Mr. D'Almada's questions, there will be the added burden of rehabilitating Government buildings and

installations, and constructing new ones to replace those destroyed—all as a result of the war. This burden will fall directly on this Government and is estimated to cost, I reckon, something of the order of \$150,000,000.

As to the second half of my motion, Item (a), this is a natural corollary to the first half. No grown-up member of a family likes being tied too tightly to its mother's apron strings, while I admit that should such a member of a family start sowing an undue amount of wild oats, the parent has to bring its influence to bear in putting matters right. Before the war the Colony had reached the age of discretion and had achieved a certain degree of financial autonomy, but as a result of the war—not I might add of sowing wild oats—our finances deteriorated. However, during the two years since the war I submit that we have proved that we are capable of being re-instated to that same degree of financial autonomy that we enjoyed before the war, and it is the sincere hope of all my Unofficial Colleagues that our request will be acceded to.

I now formally move the motion standing in my name on the Order Paper.

HON. CHAU TSUN-NIN: —Sir, I beg to second the Motion. My Honourable friend having so well and exhaustively dealt with the various points raised in this Motion that there remains practically nothing further which I can usefully add to his remarks. It can truly be stated that by accepting His Majesty's Government's proposals and not pressing for a fuller settlement, this Colony is really doing its very best to assist the Home Government in their present financial difficulties, and we sincerely hope that His Majesty's Government will appreciate the gesture and accede to our requests contained in the Motion now before Council.

HON. LO MAN-KAM: —Sir, in the ordinary course of events I should be content to let my vote on the resolution now before this Council indicate my sentiments on this matter. Having regard, however, to the views which I expressed in this Council on the 27th March, 1947 and in the last Budget Debate regarding War Expenditure, I feel that it is due to this Council that I should say a word today in explanation of my apparent change of attitude.

Sir, on the issue as to whether War expenditure as set out in items (a) to (i) in Government's reply to my Honourable Friend Mr. D'Almada's questions on the 26th May, 1948, is properly the liability of Hong Kong Government, my views have not changed. The Chinese attitude towards such an item as (b) (Repatriation passages for non-officials) remains the same.

But to-day we are not concerned only with the financial incidence of any particular War expenditure, but rather with the much more general question of a broad settlement of War expenditure as between

Hong Kong and His Majesty's Government. And the question before this Council is whether the proposals contained in His Majesty's Government's official announcement afford a reasonable basis for such an overall settlement. On such a question I feel quite sure that although dollars and cents must have their say in this mundane world, sentiment cannot altogether be excluded from our consideration.

Personally, I have been very much impressed by the final paragraph of His Majesty's Government's statement which is as follows: —

“Having regard to the financial difficulties with which the United Kingdom is itself faced as a result of losses incurred during the war, and having regard to the heavy burden which the United Kingdom taxpayer is called upon to bear, the above proposals represent a great effort and a very real proof of sympathy and goodwill.”

Had the circumstances been different in the United Kingdom, the Colony could reasonably expect, and would undoubtedly have received, more favourable financial proposals. But we cannot forget that three years after the conclusion of a world-war in which the United Kingdom took such a vital part in making possible, and in bringing about, final victory, her people are still on a war austerity basis of living and have to fight for her economic survival. The following is part of a Reuter's message which I read in the *South China Morning Post* of May 26th: —

“Mr. R. G. Casey, wartime British Minister Resident in the Middle East and President of the Australian Liberal Party, told a Liberal Party Empire Day rally to-night that 'Britain's people are now hungry and ill-clad and are suffering austerity measures Australians have not yet realised.'

There should be written up on every wall in the land: 'What can we do to help Britain?' Mr. Casey declared.”

Again had the circumstances in the Colony been different we might not be in a position to accept the proposals however much we wished so to do. Happily an acceptance of His Majesty's Government's proposals presents no serious financial difficulties to the Colony. Excluding item (i) (Claims in respect of requisitioned material) such acceptance merely means that our surplus for 1947-1948 of \$30,000,000 will be reduced to approximately \$10,000,000 and even if item (i) should result in an actual liability of the Colony to the full amount—a contingency which, in the light of what actually occurred, is frankly unthinkable to me—we would only have to meet a deficit of another \$15,000,000.

Sir, I can think of no better method of showing the Colony's sympathy with United Kingdom in her financial stress than for this Colony to accept the proposals of His Majesty's Government in the spirit in which they were made, without argument or bickering.

THE COLONIAL SECRETARY: — Government supports this motion. With reference to the issue of Treasury Control, that is to say paragraph 2(a) of the motion, it may interest members to know that a few hours before this meeting was convened we had a communication from the Secretary of State indicating that in principle he favours the relaxation of Treasury Control and we were given to understand that methods of achieving that end are now already in hand.

The question was put and the motion was carried.

ADJOURNMENT.

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

This was agreed to.

H.E. THE GOVERNOR: —Council will adjourn until this day fortnight.