16th June, 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 F. R. G. MATTHEWS, 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. E. HIMSWORTH (Acting Superintendent of Imports and Exports).

HON. D. F. LANDALE.

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

HON. SIR MAN-KAM LO, KT., 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: —

DR. HON. CHAU SIK-NIN.

MINUTES.

The Minutes of the meeting of the Council held on 2nd June, 1948, were confirmed.

OATHS.

His Excellency the General Officer Commanding the Troops (Major-General F. R. G. Matthews, D.S.O.), took the Oath of Allegiance and assumed his seat as a Member of the Council.

DANGEROUS GOODS (AMENDMENT) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Dangerous Goods Ordinance, 1873." He said: Sir, the Objects and Reasons do not state the offences which are being dealt with in the various clauses of the Bill and I therefore propose to call the attention of the Council very briefly to the offences concerned.

Clause 2: —Failure to give notice that dangerous goods are carried on a ship or failure to supply a manifest to such goods.

Clause 3: —Conveying or selling dangerous goods without the prescribed label being attached to the receptacle in which they are being carried or sold.

Clause 5: —Delaying or obstructing any detention, arrest, search, inspection, seizure or removal which is authorised by the Ordinance.

Clause 6: —Failure where the goods are delivered to the warehouse owner or carrier to mark the goods dangerous or failure to give written notice of their character.

Clause 7: —The maximum fine for such failure as I have just mentioned is halved where an accused satisfies the court that he did not know the nature of the goods.

Clause 8: —(*a*) is a general penalty clause for offences not specially provided for and for breach of regulations or conditions;

(*b*) deals with the penalty for possessing or storing of dangerous goods without the licence of the Chief Officer of the Fire Brigade.

Apart from that I have no further comments on the Objects and Reasons.

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. Owing to the increase in the value of goods and the consequent decrease in the purchasing value of money, the maximum penalties laid down in the penalty sections of the Dangerous, Goods

Ordinance, 1873, the principal Ordinance, are no longer sufficiently deterrent. It is therefore proposed by this Bill to amend the principal Ordinance to raise all the maximum penalties by 300%.

2. Under the principal Ordinance, (section 10(1)), the power to grant licences, e.g., for the possession or storage of dangerous goods is placed with the Commissioner of Police. It is considered that the Chief Officer of the Fire Brigade should more appropriately and conveniently be the licensing authority for such purposes. Clause 4 of the Bill therefore provides for the amendment of section 10(1) of the principal Ordinance so as to transfer the power to grant licences from the Commissioner of Police to the Chief Officer of the Fire Brigade. Powers of search and seizure under section 11 of the principal Ordinance, would, however, remain with the Commissioner of Police and officers authorised by him.

FRAUDULENT TRANSFERS OF BUSINESSES (AMENDMENT) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Fraudulent Transfers of Businesses Ordinance, 1923." He said: Sir, the Bill is a very short one and I have nothing to add to the Objects and Reasons.

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. Section 3(3) of the principal Ordinance requires that notice of the transfer of business be given in the *Gazette* and in two of such Chinese newspapers circulating in the Colony as may from time to time be approved by the Secretary for Chinese Affairs. Doubt has arisen as to whether the provision quoted enables the Secretary for Chinese Affairs to withdraw approval.

2. The purpose of this Bill is to amend section 3 of the principal Ordinance to provide specifically that an approval may be withdrawn.

COMPANIES (RE-CONSTRUCTION OF RECORDS) (AMENDMENT) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Companies (Re-construction of Records) Ordinance, 1947." He said: Sir, there is nothing fundamental in the Bill. It merely improves the existing machinery for enabling companies to comply with the law and generally to put their house in order. When the original Bill was drafted certain time limits were purposely made a little on the short side in order to impress upon companies the importance of reverting to normality at an early date. The view is still held that companies must, in the interest of the public and of their shareholders, return

to normality as early as possible, but it is appreciated that in some cases either more time is required or complete compliance with the law is not possible.

Clause 8 of the Bill is required to make it unnecessary for a company to apply to the court in order to change its registered office. In some cases a registered office may have been destroyed and in others a company may be unable to obtain accommodation at the place specified in the memorandum. If the memorandum specifies Victoria and the company is now unable to obtain premises in Victoria, it would necessitate an application to the court. Here again companies should realise that the provision is a temporary one and should not expect to disregard permanently the provisions of their Memorandum of Association without an application to court.

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 amend the Companies (Re-construction of Records) Ordinance, 1947 (the principal Ordinance), in order to remove difficulties which have been encountered in practical operation of the Ordinance since its enactment.

2. Clauses 2, 3, 4 and 5 amend respectively sections 11, 12, 13 and 14 of the principal Ordinance to avoid difficulty which has been presented in practice by time limitation for applications and the performance of certain acts respectively imposed by such sections.

3. Clause 6 of the Bill amends section 17(1) of the principal Ordinance by the addition of a proviso which gives the Registrar of Companies discretion to accept an annual return other than that specified in section 17(1) in cases where he is satisfied of the necessity for so doing.

4. Section 24 of the principal Ordinance does not contain a limitation of time for companies incorporated outside the Colony and which had complied with section 319 of the Companies Ordinance, 1932, to re-establish a place of business in the Colony. Such being the case companies which have not yet re-established a place of business in the Colony will find it impossible to file the necessary documents within the time mentioned in the said section. Clause 7 of the Bill has therefore been designed to enable such companies to comply with the provisions of section 24.

5. Clause 10 amends the Schedule to the principal Ordinance as doubt has arisen as to whether the forms as they stand make it imperative for the numbers of certificates and distinguishing numbers of shares to be inserted therein. In some cases, neither a company nor its shareholders are in possession of the numbers owing to the loss of share certificates and records.

6. The opportunity presented by the need to amend the principal Ordinance in manner above described has been taken (Clause 8) to amend by addition of section 25A. The purpose of such section is to empower a company registered under the Companies Ordinance, 1932, to have its registered office at any place in the Colony notwithstanding that its Memorandum of Association may specify a particular place, e.g. Victoria or Kowloon within the Colony.

It is necessary that such flexibility of choice be given because owing to the shortage of suitable office accommodation now prevailing in the Colony it is not possible in practice to conform with any such specific requirement of a Memorandum of Association.

7. The principal Ordinance contains limitations of time which were considered necessary in order that records might be re-constructed as expeditiously as possible. It has been found in practice that it is not always possible for companies to comply with some of the provisions. To overcome the difficulty limitations of time have been removed. As it is not intended that companies should be allowed unlimited time to perform their obligations under the principal Ordinance, clause 9 has been designed to empower the Governor by proclamation to declare that any section or sections shall cease to have effect from a specified date and such cessation shall have the same effect as if the section or sections to which it relates had been repealed.

STAMP (AMENDMENT) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Stamp Ordinance, 1921." He said: Sir, section 5(*a*) of the Stamp Ordinance was introduced by the Stamp (Amendment) Ordinance, 1946. It charged an excess stamp duty on the appreciation in the value of consideration on sale. In an endeavour to avoid injustice this appreciation was reckoned on 1938 values unless there had been a subsequent conveyance and provision was also made for discounting damage since that date and taking improvements into consideration. So far so good, but where as a result of this provision the collector had to estimate what I may term a fictitious value, considerable delay was experienced. The object of the present Ordinance is to revert to the normal practice of charging only *ad valorem* duty on the sale of consideration, but in order to avoid loss of revenue consequent upon excess duty, the *ad valorem* which was previously one per cent has been raised to five per cent.

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 this Bill is to replace the 10% excess duty on a conveyance on sale now provided for under section 5A of the Stamp Ordinance, 1921, with a 5% *ad valorem* duty. (See clauses 2 and 3 of the Bill).

2. The reason for making the change is that certain provisions relating to excess duty which were inserted to produce equity, proved complicated and a cause for delay in practice. The increase in *ad valorem* duty should maintain revenue without these disadvantages.

3. In view of the fact that it is always customary, mainly in order to prevent evasion, to ascertain duty on other conveyances and instruments by reference to a conveyance on sale duties on voluntary assignments *inter vivos*, conveyances by way of exchange, leases granted for a premium, etc., will increase correspondingly. This would be the case even if no provision were made. Clause 4(1) is therefore declaratory and 4(2) amends the Schedule so as to avoid conflict between Number 44 in the Schedule and the express provisions of section 23(1) of the principal Ordinance.

4. Clause 5 is required to make certain amendments in the references in the first column of the Schedule consequential on the enactment of the Stamp (Amendment) Ordinance, 1947.

LANDS (PING SHAN) RE-VESTING BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to provide for the re-vesting in the former owners of certain land in the region of Ping Shan resumed during the period of the British Military Administration, and for the payment of compensation in certain cases in respect of the user thereof." He said: Sir, the Ping Shan airfield scheme commenced soon after the British Military Administration was abandoned in March, 1946 following the report of a joint commission of the Air Ministry and the Ministry of Civil Aviation that the site was unsuitable for an airfield of international character. Legal sanction of this scheme had been given by the commencement of resumption proceedings in respect of land required but it had, in fact, proved unnecessary to eject the majority of the tenants and discontinue their agricultural pursuits. Others who had been disturbed by the commencement of work were, in April, 1946, encouraged to return to their holdings. Somewhat less than eleven acres of land had been rendered permanently unsuitable for agriculture by road making and about twelve houses, some of which had been requisitioned, were damaged. Other houses have also been requisitioned and compensation for requisition has, in many cases, already been made, as has also compensation for the land used in road making. It remains now to provide the necessary legal machinery to give effect to the practical solution whereby owners remain on or return to their land either by themselves or by their tenants, notwithstanding the resumption proceedings and to provide for compensation for such damage and disturbance as may have been caused.

The present Bill provides (1) for re-vesting the land of the former owners, Clause 3; (2) for compensation, Clause 4; and (3) for interest, Clause 5. The rest of the Bill may not inaptly be described as procedural. Points to be noted in connection with compensation are that although compensation is under Clause 4(1) payable both for

damage and for disturbance, crown rent is remitted throughout the period, Clause 4(3) and that compensation for taking possession of the land in exercise of Emergency Powers is brought into account and deducted from the compensation payable under the Bill, Clause 4(4). Although under Clause 14 payment of what is due under the Bill will be made out of the general revenue of the Colony, His Majesty's Forces have agreed to pay their share.

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. During the period of the British Military Administration a reconnaissance was made for a site for the construction of an air field more suitable for large aircraft than existing facilities and an area of some 800 acres in the region of Ping Shan in the New Territories was chosen. It was desirable to make urgent decision while the highly organised and mechanised rapid construction facilities of the Royal Air Force were available. Resumptions of land necessary for the preliminary work were therefore effected by a notice published as early as the 22nd October, 1945, followed by a notification relating to further areas on the 20th March, 1946.

2. Road-making work proceeded at once, but apart from the land immediately affected thereby no objection was taken to the owners and tenants of land not within the immediate ambit of such operations remaining in occupation and continuing with their agricultural occupations. Many in fact did so and are still in occupation; others have been tacitly permitted to re-fake possession where their land has not been greatly affected, and in April 1946 verbal permission was given them to do so. There were in addition some twelve houses which were damaged in the process of levelling or use by construction personnel.

3. While the preliminary work was proceeding it was decided by the Air Ministry and the Ministry of Civil Aviation of the United Kingdom that a joint mission should examine the various problems connected with the construction of the airfield, and the mission was accordingly appointed on the 23rd January, 1946.

4. The result of consideration by the joint mission showed amongst other recommendations that while the Royal Air Force were satisfied with the projected site, there were considerations which made the site unsuitable for an airfield of international standard. It was therefore decided to release the R.A.F. Airfield Construction Unit from the work in March, 1946, for return to the United Kingdom and work on the site ceased.

5. The result of the preliminary work which was done and in particular the road making, has been that 10.87 acres of land have been rendered permanently unfit for agriculture and a Compensation

Board, appointed in September, 1946, under the provisions of the Crown Lands Resumption Ordinance, 1900, has made its award, and claimants in respect of such 10.87 acres are in the process of being paid. The machinery of the Crown Lands Resumption Ordinance is not, however, applicable to the land resumed other than this 10.87 acres, since such other land is available for return to the owners and in the majority of cases such other land has either already been returned to them or they have never in fact been dispossessed.

6. The object of this Bill is to re-vest in the former owners all land and buildings which can still be utilised for their former purpose, and to provide an equitable means of compensating owners who were dispossessed or whose land or buildings were damaged.

7. The interpretation clause (clause 2) provides *inter alia* that the prescribed officer to examine claims under the Ordinance shall be the District Officer or any Assistant District Officer, New Territories, and that the resumption referred to in the Ordinance shall be the process that was initiated in the Gazette Notifications of 22nd October, 1945, and 20th March, 1946, although such notifications were not followed by the application of the subsequent procedure contemplated by the Crown Lands Resumption Ordinance, 1900.

8. Clause 3 provides for the re-vesting of the land in the former owners and that there shall accrue to them in appropriate cases rights to compensation provided in the clause which follows. Clause 4 provides for payment as compensation of the cost of making good damage occasioned as a result of the resumption and of an equitable sum for rent during that period, which will be assessed according to the terms customary in the neighbourhood of Ping Shan in the New Territories. It is further provided in clause 4 that Crown rents shall be remitted for all land which it was purported to resume until the date of coming into force of the Bill upon enactment, since it would seem anomalous to collect them when there had been formal notice to resume, although the owners in most cases remained in occupation.

9. Important provision is made in clause 4(4). A number of the houses situate on the land resumed were requisitioned during the period of British Military Administration for varying periods, in some cases before the date of resumption and in some cases after that date and payments for requisition have in some cases been made, and in others will be, but have yet to be made for such requisition. It is equitable that such financial burden shall fall on the requisitioning authority and it is accordingly provided that the purported resumption shall not over-ride liability to pay compensation for such requisitions and that payments for requisition shall be set off against any compensation under the Ordinance.

10. Clause 4 sub-clauses (6) (7) and (8) are formal provisions relating to assessment of compensation, precedents for which are to be found in the Crown Lands Resumption Ordinance, 1900.

11. Clause 5 provides for interest at the rate of 5% on any sums payable as compensation under the Ordinance, and clause 6 provides that claims shall be made within six months of the coming into force of the Ordinance, after which date interest will no longer accrue.

12. Clause 7 provides that the prescribed officer shall receive and scrutinise claims. It is anticipated that when he has called for all necessary details it will be possible in the great majority of cases for the prescribed officer to recommend an agreed settlement to the Governor for approval, but where no such agreement can be arrived at claims will be referred to arbitration.

13. The method of arbitration provided for in the Bill follows in general the precedent of the Crown Lands Resumption Ordinance except that a standing Board shall consider all doubtful or disputed claims. It is also provided that an officer of the Royal Air Force or other of His Majesty's Forces may be a member of the Board. Clauses 8 and 9 provide the machinery for the appointment and the powers and duties of the Board, and that representation shall be allowed to parties.

14. It is provided (clause 14) that payments for compensation and interest and costs (if any) shall be made out of the general revenues of the Colony although in practice actual apportionment of cost as between the Colony and His Majesty's Forces will be made.

DUTIABLE COMMODITIES (AMENDMENT) BILL, 1948.

THE ACTING SUPERINTENDENT OF IMPORTS AND EXPORTS moved the First reading of a Bill intituled "An Ordinance to amend the Dutiable Commodities Ordinance, 1931." He said: Sir, the purpose of this short Bill is, I believe, adequately set out in the Objects and Reasons and requires no further explanation.

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

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

The object of this Bill is to give effect to the recommendation of the Salaries Commission that the Governor should be exempted from payment of duties imposed by or under the Dutiable Commodities Ordinance, 1931.

DEBTOR AND CREDITOR (OCCUPATION PERIOD) BILL, 1948.

THE ACTING FINANCIAL SECRETARY moved the Second 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."

THE COLONIAL SECRETARY seconded.

HON. D. F. LANDALE: —Your Excellency: I rise to speak in support of the motion and, because it seems to be of a somewhat controversial nature, I feel I must explain my reasons for supporting it.

I propose to touch only briefly on the legal niceties of the problem—these are better left to lawyers to argue, but from the layman's point of view these seem to fall under two main heads. First the question as to whether the Japanese were entitled to liquidate the banks. Views on this seem to differ, but Professor Lauterpacht, probably the highest legal authority on International Law as applied and interpreted in England, in his latest edition of Oppenheim's International Law definitely states that an occupant may not liquidate the businesses of enemy subjects in enemy occupied territory although he can control them. Whether the Japanese were entitled to liquidate the banks in the Colony or not, I am impressed by the fact that they did riot do so in the accepted sense. By that I mean that they did not proceed to collect debts and to pay creditors and reserve the balance for ultimate disposal, they appropriated all the money they collected into a pool of their own and never paid it to the banks and at the end of the occupation period there was no balance for the ultimate disposal although collections from debtors exceeded payments to creditors.

And secondly, the question as to whether the payments to the liquidators were valid or invalid. Here again I am impressed not only by the weight of legal opinion but by my sense of commercial law and the usage of merchants to the extent that payments were not made to the creditors themselves, or to their agents and, moreover, as the creditors did not benefit from such payments, the payments could not have been valid. And at this point I am further impressed by the emphatic language used by President Truman and his State Advisers in withholding his approval from a proposed Bill of the Philippine Congress in 1946 when he said that to validate payments made to the Japanese liquidators in occupation currency would give official sanction to acts by Japanese officials in forcing the liquidation of the business and accounts of loyal citizens, and that he could not sanction measures which in his opinion and that of his advisers would give validity to the acts of our common enemy. This declaration of the American President was in harmony with the joint declaration of the Allied Powers in 1943 which gave warning that they would not recognise the systematic spoliation of occupied or controlled territories by means of inflationary measures adopted solely for the benefit of the enemy.

I would like to pass on from these two legal aspects of the problem with the expression of my conviction that it would not be in the interest of the debtors to have their individual cases thrashed out in open Court, and that it is not in the interest of the community in general that the settlement of this issue, which has already been hanging over the community for nearly three years, should be further delayed by protracted litigation.

My support of the Bill is further based on certain facts which as the result of my inquiries I am satisfied are correct.

The Hongkong dollar was in circulation as the legal tender of the Colony—and the only legal tender of the Colony—until May 31st, 1943. Thereafter Military Yen only was allowed to be used as currency. It was wholly unbacked and rapidly depreciated until it became worthless. The notes were printed at will, so much so that at the end of the occupation they amounted to nearly two thousand million. It was not as if there were not ample amounts of Hongkong dollars circulating in the Colony at the time of the occupation as there was a note issue of two hundred and forty-six million dollars and in addition to this the Japanese issued, illegally, a further one hundred and twenty million Hongkong dollars' worth of bank notes which the banks subsequently honoured.

The case therefore of those debtors who liquidated their debts in Military Yen before May 31st, 1943 is slightly different from those who paid after this date. Those who paid Yen before that date were permitted to pay in dollars if they chose to do so. Indeed the Japanese were so keen on accumulating Hongkong dollars in order to purchase supplies from China and Macao that they were prepared and did agree to the payment of a part of debts in Yen provided a part was paid in dollars. In many cases they no doubt exerted pressure in order to get dollars. But there is no evidence whatsoever that anyone was forced to pay in Yen. It was natural that debtors should board dollars and pay out as few as possible, as they had no confidence in the Yen. But where they did pay Yen instead of dollars they did so voluntarily. There is evidence that several large debtors in the latter part of 1942 and the first half of 1943 paid as little as about 20% to 25% in dollars and got away with paying the remainder in Yen.

After May 31st, 1943 although debts were paid in Yen there was no inducement for the Japanese to compel any debtor to pay his debt as it could only be paid in Yen, which the Japanese were printing freely. Their object in collecting debts obviously had been to lay their hands on dollars; they never collected for the benefit of the banks because they paid all the dollars into a pool of their own, and not to the banks. There is no justice in giving credit to any debtor who paid his debts in Yen of his own voluntary choice when he must have known in his own conscience as an honourable man that he was not repaying to the creditor the money he had borrowed and the benefits of which he had received.

I would like to draw attention to the fact that the number of debtors affected by this Bill is not large. In one report I have seen the figure of 300,000 mentioned. This I think must be an exaggeration as it would mean that not only did one person in every five or six of the men, women and children of the pre-war population of the Colony have a bank account, but that they were all debtors of the banks and partially or wholly liquidated their overdrafts during the occupation. However, be all that as it may, my information

is that of all the pre-war indebtedness to the liquidated banks, only about 20% to 25% was liquidated during the Japanese occupation, and of this percentage, four-fifths is represented by about one hundred debtors.

I merely mention this point in order to put the matter in its proper perspective, but no matter whether the number is large or small it is none the less important that the treatment meted out should be scrupulously fair to both debtor and creditor.

The Bill now before this Council seeks to compromise on all this on the principle that there may have been some individual cases of hardship which call for compromise. It provides that where debtors claim to have paid their debts in Hongkong dollars they will get full credit, regardless of whether the banks received the money or not. As to the payments that were made in Military Yen, these payments are recognised in accordance with the rates set out in the schedule to the Bill.

Both these compromises seem to me very much in favour of the debtor. In the ease of the Hong Kong dollar payments, the liquidated banks never received the cash, therefore, by accepting these in full the banks stand to lose very considerably; and in the case of the Yen payments, here again the liquidated banks never received the Yen and even if they had done so they could have done nothing with them because they had ceased to function and their executives were interned or in custody under duress.

As it is an established fact that the liquidated banks never received any Yen payments there seems to be no justice in suggesting that they should allow value to be given to what they never received and therefore could not use. There have been suggestions that the Yen payments should be given some value according to the rate of exchange prevailing in the black market, or according to some other measure of their purchasing power. Such suggestions might have something to commend them if the creditor banks had received Yen and been in a position to derive some value from them in purchasing commodities or property at the time. The degree of validity which should therefore be given to the Yen as a concession to debtor can hardly be based on any value which the Yen had to the debtor but could never have had to the creditor. The scale of valuations of the Yen given in the schedule to the Bill seems to me a compromise weighted very much in favour of the debtor.

A point has been raised about the provision of interest. In the Bill simple interest at 4% is the maximum allowed when the stipulated rate was higher, or the stipulated rate if it was lower. Either party is at liberty to apply to the Court for a variation in cases of hardship, and the Court has a very wide discretion and can take into consideration the benefits received by a debtor from the possession and use of the property bought with the loan or lodged as security. Merchants who bought goods on credit given by the banks before the war and sold the goods during the occupation, realised big profits. Those whose property, stocks and shares were

before the war purchased on bank overdrafts have seen their property appreciate after the war in the most astounding way, whilst generous dividends have been paid which in themselves in the main have much exceeded the interest on the loans. The banks on the other hand had in the meantime been deprived of the use of the money advanced by them and not only had to maintain their organisation in being throughout the war, and rehabilitate their branches after the reoccupation of the liberated territories, but they are now required to forego a substantial part of the principal sums while they on their part have discharged their obligations to their customers in full.

This Bill, Sir, in its published form, has now been before the public for three months and both creditors and debtors have had an opportunity to present their views to Government. The Chinese Chamber of Commerce, on behalf of those debtors whom they represent, claim that they should be free to exercise their right of recourse to the Courts of the Colony. On the other hand, the Exchange Banks Association of Hong Kong including British, American, Dutch, Belgian, French and Chinese banks both private and Government, have placed themselves on record that whilst they cannot approve of the principles of the Bill, nevertheless in their desire to assist Government and the community to remove the restrictions of the Moratorium they are prepared to relinquish their objections thereto provided that the Bill is enacted without alteration or delay.

As long ago as August, 1946 the whole matter of debtor/creditor relationships was ventilated in this Council on the Motion of the Hon. Sir Man-kam Lo.

The likelihood of legislation to provide a compromise between the conflicting points of view was then foreshadowed, particularly in an address of the Acting Attorney General. I cannot do better than conclude by quoting from the words of the Hon. Sir Man-kam Lo on that occasion—

> "I observe that the Government's position is that it is not possible for this Government to lift the Moratorium until a decision has been reached on debtor/creditor relationships which is now under consideration in London. I do not deny—indeed it is too obvious—that it is essential to come to a decision on the debtor/creditor relationships question before the whole of the Moratorium can be lifted . . . I appreciate that in any final solution of a problem of this complexity absolute justice to all parties can hardly be expected. But surely it is better to come to a decision, imperfect though it may be, than to wait indefinitely for a perfect solution."

It seems to me, Sir, that this Bill does provide a solution to this complex problem with as much justice to all parties as has been humanly possible.

HON. CHAU TSUN-NIN: —Your Excellency, as a representative of the Chinese community who are the ones most seriously affected and the majority of whom strenuously oppose the Bill now before Council, I must vote against it.

The Bill would be a good compromise if it were almost a certainty that a Court of Law would declare that payments made to the Banks during the Japanese occupation were wholly invalid. But if not, then the Bill is not a good compromise. A very large number of people still maintain that payments made to the Japanese were valid, and are prepared to accept the consequences of having to pay in full again, should the courts decide in favour of the creditors. That being the case, I submit, Sir, that Government should not force the Bill on them against their wishes.

HON. SIR MAN-KAM LO: —Sir, the Bill before this Council is a general Bill dealing with the whole subject of Debtor and Creditor relations during the Japanese occupation. In regard to such relations two important points arise: —

(1) Were payments made to liquidators (appointed by the Japanese Authorities of "enemy" banks) in Hong Kong currency valid according to International Law, and

(2) was payment made during the Japanese occupation in Military Yen by any debtor to any creditor in respect of a pre-war debt valid according to International Law?

The first point applies only to liquidation Banks; the second applies to all debtors-creditors, and it is obvious that the liquidation Banks' case must cover both points.

Reference has been made to the majority and minority judgments in the Court of Appeal in the Philippines as deciding what is the International Law in regard to matters dealt with by this Bill.

Sir, I express no opinion on the question of International Law in this matter. In fact I have no qualification to do so. But I feel that the following quotations from the recent booklet of Professor J. H. Morgan, K.C., entitled "The Great Assize: an examination of the Law of the Nuremberg Trials" will clear the atmosphere on this aspect of the case: —

The learned author at page 37 says:

“ . . . Even in the realm of civil litigation, as distinct from criminal law, International Law is not law at all except in so far as it is 'adopted' by the courts of each particular country and there is no compulsion upon them so to adopt it. Writers on international Law even if they all agree, and they often disagree, ‘cannot’ in the words of Cockburn, ‘make the law’. Nor, as the same Judge observed, would 'even the unanimous assent of other nations be sufficient to authorise the tribunals of this country to apply, without an Act of Parliament, what would amount to a new law'. Even the Hague Conventions, it has been authoritatively held, cannot, although ratified by our own Government, alter the law of this country in the absence of an Act of Parliament to that effect. Nor can a convention agreed to by our Government modify any principle of International Law

> once that principle has been 'adopted' by the Courts of this country unless and until Parliament has legitimised such a modification. Many, indeed, of what are regarded as the most fundamental principles of International Law are recognised only to a limited extent by some of the nations which otherwise subscribe to them. In fact, except for that small portion of it which has been expressly adopted by the courts of each nation, International Law is nothing more than international etiquette . . . . ”

Then Viscount Maugham, formerly Lord Chancellor, in his preface at page vii, says: —

> “ . . . Anyone who reads for the first time the proceedings of jurists at meetings of societies, such as the Grotius Society, engaged in the study of International Law, will be surprised at the differences of opinion which are often very emphatically expressed on some vital questions. The question which arises in a court where a rule of International Law is in question is not which of two opposing opinions of Jurists and others is to be preferred, but whether one of those opinions has been accepted and applied between civilised states. The basis of International Law is the consent of the states, which no doubt can be established in a number of ways; but the consent must be established. The fact that some or even many jurists, including judges and Ministers of State, think that states should follow a particular rule is interesting, and may help in the development of International Law; but jurists cannot impose a law on states . . . . ”

In dealing with the unprecedented situation confronting the Colony after the Japanese occupation, I have no doubt that this Council has the right to legislate what should be the municipal law of the Colony on the points covered by the Bill, in order to render justice to all parties and remove uncertainty, and I should have no hesitation in voting for the Bill if I thought that it represents a fair compromise, based on intelligible data, under which the "loss" is fairly distributed between the two parties.

But the compromise is quite unintelligible to me. It is accepted with grudging reluctance by one and hotly opposed by the other party and I therefore cannot vote for it.

As I understand the position, the Liquidation Banks claim that, according to the English Law as applicable to the Colony, and, in accordance with such law, applying such part of International Law as may be applicable, payments made to the Liquidators in Hong Kong currency or Military Yen in respect of pre-war debts were utterly null and void and that if this Bill were not passed into law, they could legally enforce through the local Courts repayment in full of the amounts due together with interest for the whole period at contractual rates and in accordance with contractual terms.

On this basis, this Bill substantially restricts the liquidation Banks' legal rights; they therefore can have no complaint if the Bill were not proceeded with, and if the Moratorium were lifted, so that their rights can be tested and enforced in the local Courts.

On the other hand the Chinese Chamber of Commerce and other Chinese commercial bodies object to the Bill on grounds which are precisely the reverse of the Banks' contentions namely, that legally, and if this Bill were not passed, and if the Moratorium were lifted, all payments made by debtors to creditors during the Japanese occupation and whether in Hong Kong currency or in Military Yen in respect of pre-war debts would be held by the local Courts to be legally valid payments.

On this basis the Bill is obviously unjust because in certain events the debtors would be called upon to pay again if they had paid in Military Yen except to the extent in which certain Yen payments are to be revalued in accordance with the Schedule.

Here again the debtors can have no complaint if the Bill were withdrawn and if the Moratorium were lifted.

In these circumstances, I submit that the only fair way in which to reconcile the opposing views is to withdraw the Bill and to lift the Moratorium forthwith.

As I understand the Government's case, the Bill is a fair compromise as between the conflicting claims; it is a matter of "give and take," and it is designed to remove uncertainty so that both parties may know at once what are their real legal rights.

Dealing with the last point first, I must remark that one of the most striking features of this controversy is that both parties profess equally emphatic and confident certainty of their legal position. To them there is no uncertainty for the Bill to remove in regard to their rights.

Coming then to the question of treating the Bill as a "compromise". I submit that it is impossible for anyone to express an impartial view on the fairness of a compromise without a pre-estimate of the merits of the rival claims. Government has not indicated any views in this regard, based on expert advice; on the contrary, I have derived the impression that Government regards both claims quite impartially as merely conflicting claims.

Undoubtedly the Bill does offer substantial relief in regard to interest during the occupation period, and I think it could be argued with force that the contractual rights of the parties in regard to interest should not be modified except as a part of an overall settlement of debtor and creditor relations during the occupation period.

Apart from the question of interest, the other substantial concession given by the Bill relates to repayment of debts in Hong Kong currency. In so far as the liquidation Banks are concerned, without knowing the total of such repayment in relation to the total of the

repayment in Yen, it is not possible for anyone to judge the magnitude of this concession or its implication to the Liquidation Banks. On the other hand, there is no question but that the value of Yen set in the Schedule in terms of Hongkong Dollars is utterly unrealistic, and bears no relation whatever to the rate of exchange in the black market as between Yen and Hongkong Dollars, or to value of Yen in relation to gold, during the Japanese occupation.

I listened with attention and, if I may say so, admiration, to the speech of my honourable Friend the Acting Financial Secretary in this Council on 2nd June. Undoubtedly he made out the best possible case for the Bill. But what he failed to do, and what I venture to think nobody could have succeeded in doing, was to explain two points: (1) How the value of the Yen as set out in the Schedule was in fact arrived at and (2) Why should it be considered necessary to force a compromise against two unwilling parties.

Sir, it may be desirable and indeed necessary in the exigency of war for a legislature to modify the contractual rights of parties. This desirability or necessity may apply in the exigency of post-war peace but in this event I submit a much stronger case has to be made out. In this case both parties are prepared to leave their rights to be adjudicated upon by the Courts in accordance with law and the only conceivable justification for Government to prevent this being done is the plea that such a course must involve further delay before the rights of the parties can be ascertained. But it should be remembered that the Bill has been before the public for only a matter of a few months, while Government took some two years after the establishment of Civil Government to bring in this measure. Moreover, once the Moratorium is lifted, it is for the parties themselves to decide whether a dispute should be settled by mutual agreement or left to be decided by the Courts.

I submit therefore that this Bill should not be proceeded with, and that the Moratorium should be lifted forthwith.

Before I sit down, may I say that I felt flattered that any remarks on the subject of the Moratorium which I made in this Council in August, 1946 should have been considered worthy of quotation by my Honourable Friend Mr. Landale. May I also say, Sir, that I do not wish to withdraw one word from what I then said. The tragedy of it is that, nearly two years after I made those remarks, a solution should be produced which, so far from doing "absolute justice to all parties" is closely related to a Schedule of Yen values which seems to be divorced from all reality, and to be based on no intelligible data.

HON. C. C. ROBERTS: —Sir, this is a Bill which has become the cause of unfortunate controversy among sections of the community and there has been more than usual expression of opinion for and perhaps more vociferously against it.

It has also been somewhat widely asserted that some of those who would be affected by this Bill, if passed into law, have not been given an opportunity beforehand to represent their point of view

and that they should have been given such an opportunity. In my opinion in the case of this Bill, which, I believe, affects definite if relatively small sections of the Community, it would be unfortunate if the representations of those sections had not received due consideration. I have every reason to believe, however, that Government has only introduced this Bill after the most probing and extensive examination of all relative facts and after freely consulting the most competent advisers. Although it should be unnecessary, I feel that a specific assurance from Government on this point, might go a long way to satisfy the vast majority of the public who are not affected directly by the Bill, but whose interest has been focussed upon it, that no imposition, unfair or otherwise, upon any section is being attempted. For my part, I am satisfied upon this point and it does not, therefore, constitute a reason for withholding support from the motion now before this Honourable Council.

I mentioned previously the controversy which this Bill has aroused and I have therefore been at pains to seek information and advice regarding both the principle and details of this Bill. I have also listened carefully to views and arguments expressed to me by persons who I have every reason to believe properly represent both sides.

I have come to the conclusion that there is a great deal of misunderstanding and confusion regarding the objects of, reasons for and subject matter of this Bill. In the first place, apart from the question of interest with which Mr. Landale has dealt, it does not concern itself with all pre-occupation debts, but only with those of which some form of discharge payment was made during the occupation and I understand that these latter form but a small proportion, probably not more than one-fifth of the whole. Then again, I am led to believe that the total amount involved is relatively small and that only very few persons are concerned. This does not in any way lessen the importance of ensuring that the interests of those few receive fair and equitable treatment. On that score, the more information I have received, the more I have been driven to the conclusion that if there is a balance of unfairness, it lies against the creditors and in favour of the debtors, and yet if one is to believe one's ears and eyes it is the latter who are complaining of harsh and unfair treatment. There can be few, if any, whose payments in discharge of their debts amounted in real value to more than a fraction of the value which they borrowed and of which they received the benefit. Without regard to the interests of the creditors this Bill seeks, by fair compromise, to establish and to give credit to the Debtors for the value of their payments and only lays upon them an obligation to pay to their creditors the difference between the value they received and the value they have paid. The creditors have not received the latter and, if the Bill succeeds in its object, they alone bear such real loss as has in fact occurred. On all the facts which have been placed before me, I have been unable to find any evidence that, broadly speaking, the Bill fails in its purpose in this respect. There may be exceptional cases, but generally it is

in my view a just and equitable solution of one of the problems arising out of the occupation.

The alternative to this Bill is lengthy and costly litigation and I cannot see that that would ultimately turn out to the advantage of anyone. Additionally, it would mean the diversion of a vast amount of time and energy which can far better be spent on present and future needs and developments. There is, in my view, in this community far too much concentration on the past and an unfortunate tendency on the part of sections of the community to complain that they have borne the weight of the losses of this war. Let us all recognise the fact that all, without exception, have suffered loss. Let us, in the shortest space of time in which it can be done fairly, clear away the problems and confusion with which the occupation has left us. Then let us forget them and as a united community set our faces to the needs of the present and the future.

This Bill now before us is one of the means to that end. I have endeavoured to show something of the reasons why I believe that it provides a fair and equitable solution of one particular problem and because that is my belief I shall cast my vote in favour of this motion.

HON. N. O. C. MARSH: —Sir, considerable legal argument has been ventilated on the merits and demerits of this Bill and I would like to remark briefly on the moral side of the controversy as I see it.

From the point of view of the layman and merchant the whole principle of contractual and commercial relations and morality is that if a man borrows money he should repay it to the creditor, or his authorised agent in the same coin or currency as was agreed between the parties. When a man has no money of his own available but because he is regarded as an honest man and has the confidence of the bank, or has good security, he borrows money from the bank. Where does the bank get the money? It is the money of other customers of the bank which the bank must repay in full, so it behoves the bank to be diligent in seeking repayment of loans made.

Money is borrowed to buy goods and commodities for use, or re-sale to others at a profit, or it is borrowed to buy real property and to build houses. The customer gets the benefit of the goods or property he has bought and of any profit or any appreciation in value that has accrued, and it is the duty of the customer as an honest and honourable man to pay back the loan in the currency agreed upon together with interest for the use of the other people's money.

In the case of debtors in this Colony who borrowed money before the war and for whom the banks in many cases advanced sterling, and U.S. dollars for the purchase of goods abroad, some debtors—apparently a minority in number—claim that they repaid their loans to the Japanese liquidators appointed by the Occupation Authorities. The creditor banks claim that they were not functioning, their officers were kept in duress, or in captivity and their agency was broken.

In principle, therefore, unless the debtors can prove, and it is for them to discharge the burden of proof, that the liquidators had either by law, or by the consent of the creditors authority to receive money, the debts cannot be regarded as having been discharged; they remain unimpaired.

The Bill under discussion, however, on the principle that there may have been some individual cases of hardship provides a compromise. It provides that where debtors purported to pay their debts in Hongkong dollars they will get full credit whether or not the banks received the money, and the banks will stand the loss.

The main controversy arises from the fact that many of the debtors purported to pay either a part, or the whole of their debts in Military Yen at an exchange rate arbitrarily fixed by the Japanese at HK$4 to Yen 1. If a creditor asked for repayment of a debt and voluntarily accepted Yen the debt is regarded as paid. The creditor could use his Yen and get value for them. But where debts were not due or demanded by the banks themselves and the debtors paid the liquidators in Military Yen the case is very different. It raises not only questions of law but of morality; indeed certain unscrupulous debtors took the opportunity to discharge their debts at the entirely fictitious rate fixed by the Japanese, such payments being made to a third party and not to the rightful creditor, or his authorised agent.

In these questions it is natural to stress that the Hongkong dollar was in circulation as the legal tender of the Colony until May 31, 1943. Thereafter Military Yen only was allowed to be used as currency. It was wholly unbacked and rapidly depreciated until it became useless.

So far as I am aware the Japanese never made any pretence that the Military Yen had any backing whatsoever or any link with the Yen that was legal tender in Japan. It was nothing more than Military pass money. It was never even given the designation of the currency of the Colony as was the case of the Japanese peso in the Philippines, the dollar in Malaya and the guilder in the Netherlands East Indies. Although circumstances compelled the acceptance by the public of the Japanese paper, no confidence was ever imposed in it, and gradually Gresham's law started to operate—bad money driving out good—and while the dollar became a prized medium for hoarding and speculation for which purchasers were willing to pay a high and increasing premium against the invasion money, the Yen tumbled into practically worthless paper.

There is a clear distinction between the circumstances before and after May 31, 1943, when the circulation of the dollar was prohibited. Before that date debts were in theory payable in dollars or in Yen. When the Hon. Acting Financial Secretary in introducing this Bill said that the Japanese were anxious to obtain dollars, he gave a very modest version of the truth. The Yen they could print by the million by the turn of a handle but so anxious were they to

obtain dollars that they forcibly and irregularly issued about 120 million dollars' worth of Hong Kong dollar bank notes which were subsequently honoured at much sacrifice on the part of the banks concerned. Those who paid their debts before May 31st, 1943 had at least the choice of honouring the debts in dollars—the currency which they borrowed. Many, however, succumbed to the temptation of paying in Yen, which so far as I can discover, were of no particular value to the Japanese and for the payment of which no evidence of any pressure has been adduced. I have no reason to disbelieve that in some if not in many cases pressure may have been brought to bear on debtors to pay their debts when there was a possibility of their paying a portion in dollars, but no evidence has so far come to my notice that any pressure was applied for payment to be made specifically in Yen and I cannot conceive that the Japanese had any reason or inducement to trouble to get Yen especially after May 31st, 1943. Judging the issue therefore from the point of view of commercial morality I cannot see justice in the claim of a debtor to have discharged a debt incurred in dollars when all he can urge is that the Japanese liquidators were willing to accept Yen but did not insist on his repaying in Yen.

In one respect this Bill gives what debtors and I believe creditors also regard as their right. It gives them the right of recourse to the Courts of the Colony in the matter of interest. Interest on mortgages, bills and other forms of contract is to be replaced by a maximum of 4% simple interest per annum or a lower rate if specifically stipulated but any variation of the 4% is to be decided by the Courts according to the degree of enjoyment and advantage which the debtor has derived from the borrowed money. This seems to me to be an eminently equitable provision, and there seems to be no possible ground of complaint against reference to a Court of law as it would be impracticable in a Bill to lay down conditions which would apply to all cases of hardship. Moreover, from my experience of the Colony in the last two years it would be difficult to show that property, goods, stocks and shares have not shown abundant profits and dividends which have largely been realised on money borrowed before the war which has remained to the use and benefit of the borrower ever since.

In the course of the controversy on this Bill 1 have given careful consideration to all representations made orally or in writing and I have no less carefully studied the re-actions of public opinion as they have appeared in the press. I must admit that such opinion as I have seen in the press represented mainly that of the interested parties, and that the public including the majority of pre-war debtors who did not purport to make any payments during the occupation have shown little or no interest in the controversy.

The Bill has been the matter of the most careful consideration by the competent officers—legal and others—of the Home Government in consultation with the officers of the Colony. The greatest tribute to its impartiality is probably that it does not satisfy either side.

But it appears to me to achieve as nearly as possible a balance of equities between the conflicting interests and on these grounds I beg to support the Motion before the Council.

THE ACTING ATTORNEY GENERAL: —Sir, before passing to the question as to whether this Bill should be proceeded with I should like to state the background both of law and fact which would apply if it were not proceeded with. By International Convention signed at The Hague on 18th October, 1907, certain nations undertook to observe in the conduct of land warfare the laws and usages contained in the annex to the Convention. The contracting parties also undertook to issue instructions to the commanders of their armed forces which should be in conformity with such laws and usages. That Convention was ratified by Japan as well as by Great Britain, Japan making one reservation which is immaterial in the present connection. Section 3 of the annex deals with enemy occupation, that is, occupation by the military authorities of the hostile state. I may say straight away that there is no article in this section which deals expressly with the question of liquidation of banks or the making of payments to absent creditors or to creditors who are present, but in a currency introduced by the occupier. The problem is not as simple as that, but under Article 43 the occupying Power must respect, unless absolutely prevented, the laws in force in the country it occupies, and under Article 46 private property may not be confiscated and under Article 53 an army of occupation should only take possession of cash, funds and realisable securities which are strictly speaking the property of the state, that is, the Japanese in occupying Hong Kong would be entitled to seize cash, funds and securities of His Majesty's Government in the United Kingdom or of the Government of Hong Kong, but no others. The instructions issued to British commanders in the form of Chapter XIV to the Manual of Military Law have been supplemented considerably since they were written in 1914, and in the occupied territories in which I have served, banks were invariably closed by an order of the British Authorities and permitted to open after a time only on certain conditions. These included usually a limit on the amount that could be drawn on pre-occupation deposits and a freezing of certain assets, assets of the enemy state and assets—which, though not strictly belonging to it, were controlled by it, also assets belonging to enemies not in the Occupied Territory. No attempt, however, was made in any of these cases to put the Banks into liquidation, and in fact, in each territory a Moratorium was proclaimed which prevented debts being recovered by process of law. The general effect of this was that although payment of pre-occupation debts was not forbidden the only obligations enforceable in the courts were those incurred after the occupation. There were certain exceptions of which the most important were debts due to the enemy State—these were recoverable. As far as currency was concerned, we did issue our own and fixed a rate of exchange between this currency and the currency of the territory occupied, but it is important that we never let the enemy's currency go out of circulation. In some cases we prohibited the circulation of notes of the higher denomination but this was for fear of forgeries.

I have sketched the British practice in Occupied Territory because if the question of the legality of the Japanese actions in Hong Kong had to be determined by British Courts such Courts would obviously be influenced, if not determined, in arriving at a decision by the action of British Armies of Occupation.

Now let us turn to the Japanese practice. I have here a number of official Japanese documents which we seized shortly after the liberation of Hong Kong and which are vouched for by a Japanese official and have been translated carefully and are exhibited to a statutory Declaration made by the Japanese official. The first document to which reference will be made are notes on the disposition and management of Enemy Property forwarded from Heitaro Kimura, Under-Secretary, War Department, and Moritake Tanabe, Acting Chief, General Staff to Arisue, Governor-General of Hong Kong.

The covering letter contains a postscript as follows: “Most scrupulous care should be taken against leakage before enforcement.” In the document proper under the head "General Principles" appears the following: —"The properties of Enemy States as well as Nationals (termed hereinafter "Enemy Properties") in the Fields of Operation of the Imperial Army shall, should occasion arise, be radically disposed of so as to increase our fighting strength and at the same time to check Enemy Post-war restoration. Reducing them into the Empire's possession, we are to establish an adequate Administrative system thereof, whereby to concentrate the entire strength of the Empire with the aim of successfully concluding the present war, and safeguarding ourselves against damages caused to the Empire by Enemy actions.

Those Enemy Properties in Thailand, French Indo-China, and China shall be given special consideration from the political angle," and under the head "Essentials" the following is stated: —1. Enemy Properties in the Japanese operation Territories shall be seized whenever necessary.

2. Out of the seized enemy properties, those State-owned properties, public movables and those private movables that have been used for hostile activities (including those purposely demolished at the hands of the enemy) shall be confiscated.

3. Enemy Properties other than those confiscated according to the provisions of the preceding clause, shall one and all be brought under the Empire's custody, and value realised (nominal price) will finally become the property of the Empire. The cash from realisation shall be kept separately."

I emphasize, Sir, that enemy property was to be sold at a nominal price. In the same document it is stated "Enemy Properties will be managed so far as possible according to International Law," but the general principle which I quoted above is immediately repeated in a slightly different form and a Note amplifies.

"The acquisition of Enemy Properties in Occupied Territories amounts to the acquisition of what accumulations the Enemy have made for the last few hundreds of years, and thus such accumulations increase the Empire's capital, with the result that the Imperial economic strength, especially financial power, will be so much enriched that it will further smooth the way to the easy digestion of national loans as well as the dissolution of any gloomy view on inflation, thus greatly contributing towards the enrichment and stability of wartime economy. However, the present provision which will render enemy properties into the Empire's possession, may have a far-reaching influence both in and out of home. Therefore, while externally, care should be taken not to give any needless excitement, it should be made clear that these measures quite agree with established International Law; internally, efforts shall be made so that this may have profound effect on the establishment of war-time regime, and at the same time actually set every policy into operation for strengthening our fighting power. The present decision has been arrived at with dauntless volition as its bed-rock, that it strengthens our confidence in final victory and increases our war-waging strength", and finally, "The foundation principles shall be decided in strict secrecy by the Government."

Annexed to the documents are extracts from the Rules of War on Land. "Any of the Enemy Private Real Estate shall not be confiscated; neither shall they be brought under the power of occupied forces that they may use or reap profit from them as with the case of State owned Real Estates. (Ref. Art. 46, The Hague Regulations of Land Warfare). However, when pressed by urgent need for waging war, which really cannot be helped, seizure may be the case with those Enemy Private Real Estates (Ref. Art. 23 of The Hague Regulations of Land Warfare.)"

In this connection Article 23 reads—"it is particularly forbidden to destroy or seize enemy property unless such destruction or seizure is imperatively demanded by the necessities of war." Now, Sir, this Article was obviously intended to refer to measures taken in the course of military operations or in order to facilitate military operations. The Japanese quote it as a justification for measures after military operations have ceased.

Second document: —This is a directive for the disposal and management of properties in Hong Kong owned by enemy nations and nationals. The following appears under the head "General Principles": —"Properties owned by enemy states or nationals (cited hereinafter as Enemy Properties) shall, whenever necessary, be radically disposed of, in order to increase the fighting strength of the Empire, and shall be brought into the Empire's possession. The management of the remainder will be determined later, in accordance with the final determination on the forms of management which is to be made according to concrete instructions from the Central Authorities (Tokyo). In the meantime arrangements shall be made to regulate, as a temporary measure, such forms of management suitable to the situation in Hong Kong. Regarding properties owned

by Chinese Nationals, only those belonging to ardent adherents of the Chungking Regime will be considered as Enemy Property, after considering the possible grave influence upon the Chinese inhabitants. As for those owned by Corporations of joint undertaking by the third and enemy nations the investments, their backing as well as their conducting power (which I take to mean power of management) shall be taken into consideration and if more than 50 per cent of the shares are found to be of enemy character, then and only then shall they be regarded as enemy properties."

Dealing in a more particular manner with the disposal, it is said that money seized and enemy property which is privately owned and used for hostile activities shall be confiscated. Seized enemy properties, except those confiscated, will be placed under custody and be brought into possession of the Empire by being realised at a nominal price. We have here again that emphasis on realisation at a nominal price. That, in fact, is no more than a disguised confiscation.

The third document deals with the point which is more closely connected with the present Bill, and that is the instructions issued by the Finance Department of the Japanese Government on the principle of disposal of enemy banks and the detailed regulations for the enforcement of that liquidation.

I cannot take you right through the document, but I have summarised certain parts of the principle. So far as is possible there was to be (*a*) complete realisation of assets and other unredeemed securities; (*b*) confiscation of state-owned funds and funds belonging to hostile persons; (*c*) book credits with trustees of funds of persons classed as enemies; (*d*) limited withdrawals by persons not classed as enemies; (*e*) avoidance of any claims by persons not in Japan or Japanese occupied territory; (*f*) full payment to Japanese; (*g*) every effort to be made during realisation to acquire either with cash obtained or by forced realisation of the assets commodities required by the Japanese; and there was to be preferential acquisition by the Japanese. In other words this principle, the principle of spoilation, was to be a governing feature. It is of interest to compare the treatment of those banks with the banks that were not liquidated and which carried on under supervision. The document containing instructions relating to those banks and non-liquidated banks is also in this schedule and it was issued by the Economy Department of the Japanese Military Government. These instructions impose control only and not liquidation and the only doubtful instruction is that the deposits of every bank with the Hong Kong & Shanghai Banking Corporation or other British, U.S., Dutch or Belgian banks are to be kept in custody at the Yokohama Specie Bank, but even this becomes legitimate when read with the instructions to advance money to these banks against the deposits aforesaid. Well, Sir, if it were not a military necessity to put the Chinese banks into liquidation, why was it necessary to put other allied banks into liquidation? I think the answer is fairly plain. Even Japan, greedy as she was, realised that she could not confiscate the whole of the assets in occupied territory, so on a principle of expediency she discriminated

and treated the mass of the inhabitants more or less according to International Law while she despoiled the rest. Obviously she could not intern the whole of the Chinese population while she helped herself to their property and that, Sir, is not to detract from the very real sufferings of the Chinese population or from their loyalty, but merely to illustrate that Japan was not acting according to International Law but merely according to expediency. For another instance of the Japanese disregard for International Law, I refer to another document which is translated as "a notification concerning the regulation for the special army properties," and it was issued as a secret order of the Asia Department of the Army on 23rd February, 1944. This is the quotation. "According to present International Law, immovable properties cannot be confiscated nor disposed of as enemy property. Therefore, the army of occupation may only utilise them as far as they remain entire and without causing damage. Considering such a state of affairs as a great obstacle to the full utilisation of enemy properties which are essential for the economic and financial war activities, as previously mentioned it has been decided to disregard the traditional way of dealing and to put these enemy properties under proper administration as Japanese properties by paying the equivalent value which is to be kept separately under custody." This I submit shows their complete disregard for international law.

Now, it may be asked how all this concerns the Bill before Council. Well, Sir, if this Council is satisfied, and I think it is undisputed that according to the law of this Colony, a debtor must discharge his obligation by paying his creditor or his authorised agent, and secondly, apart from any express agreement, discharge his debt in the currency in which the credit was afforded him, then the onus would lie upon those who allege that they effected a valid discharge to show that these rules of law were departed from by some military necessity. Now, the mere necessity to introduce the military yen currency which, in the opinion of most, would be justifiable by International Law, would not justify its user to satisfy pre-occupation debts against the wishes of the creditor and, of course, if that creditor were unable, through absence from the Colony or other circumstances, to obtain any benefit from the disbursement, how could military necessity justify this? It may be said, perhaps, that modern warfare is a matter of finance and economics, and that it has long been recognised that an enemy can take financial and economic measures against the assets of enemies within its own territory, why not, therefore, in territory which it occupies? There is, however, no authority for this proposition. Indeed, in the Treaty of Versailles, the Allies, while affording recognition to measures taken by Germany in German territory against the property of allied nationals denied recognition to measures of a similar nature in German occupied territory, and any such principle would, in my opinion, conflict with The Hague Convention, and you cannot, in common sense, despoil all the inhabitants of a temporary occupation. It is true that in the occupation of European countries the Germans resorted to inflationary measures and the exploitation of the available resources of the occupied

territory for the benefit of the Central Reich Authorities and it may be that some argument on the basis of a change in the nature of modern warfare might be advanced to justify the Japanese policy in Hong Kong. My personal opinion of such argument is that it is fallacious and I would like to cite in support Feilchenfeld on the International Law of military occupation. He says, "Such measures (refering to the German methods) can only have the effect of enriching the occupant financially at the expense of the occupied state and its inhabitants. Manipulations of this kind are not needed either for the maintenance of law and order or for the needs of the occupying armies. Despite the silence of The Hague Regulations on the specific points it appears clearly that under these Regulations compulsory shifts in wealth from the occupied state to the occupant are meant to be limited to requisitions and other specific measures."

I will quote the opinion of another international jurist. He says: "There can be no doubt that the Japanese measures (refering to the measures taken to liquidate the banks) exceeded the normal functions of an occupant. From that the consequence follows that payment made in occupation currency is null and void. It is, of course, as pointed out in Professor Brierly's observations for the local Government after the restoration to its authority to decide what, if any, exceptions should be made to this principle. But so far as no such exceptions have been made, payments made in occupation currency remain null and void." Now, Sir, I think I have indicated sufficiently what difficult problems our courts would be faced with if this Bill were not passed and also sufficient to show that the onus of proving the validity of the Japanese actions would lie on those attempting to claim lawful discharge of pre-occupation debts, an onus which they will find hard to discharge. I emphasise that when it appears to a returning Government that International Law has been exceeded, it is, in the words of Professor Brierly, the function of that Government to decide how far it will recognise the actions of the occupant and in that connection I think it is legitimate when so many inhabitants of the occupied territory have been involved, for Government to lean a little on their side. The ordinary man is expected to know the law, but can he be entirely blamed for saying "How can I be expected to know International Law when so many eminent writers disagree about it?" I would therefore, Sir, disagree with the Hon. Sir Man-kam Lo when he urges that we should leave the parties to litigation which is bound to be expensive and impracticable, and which would plunge all once more into uncertainty. I submit that legislation is the only sensible course. The Hon. Acting Financial Secretary has already explained that the Bill is a compromise. In my opinion it is a fair compromise, particularly if one considers that the main objective must necessarily be to lay down a few simple rules, otherwise one would defeat one's own object, the avoidance of litigation. It may be that hardship will be caused in some cases, but I am of opinion that it will be considerably less hardship if we failed to legislate at all.

Before closing I would like to make a brief observation on the question of interest. On this point, as in the question of the yen

payments the Bill makes a substantial concession to the debtors. It is clear law that if a debt is such that it carries interest it continues to do so until it is validly discharged, notwithstanding that circumstances may intervene to make the finding of the creditor difficult or impossible. Indeed, when a foreigner, to whom a debt was due in England, became an enemy alien, the opinion was expressed in the House of Lords that the debt did not cease to carry interest during the continuance of the war.

THE ACTING FINANCIAL SECRETARY: —Sir, There has been so much said both by opponents and supporters of this Bill, and the case has been so closely argued that there seems to be very little that I can add.

My Honourable Friend, Mr. Roberts asked for an assurance from Government that representations against this Bill have received consideration. I can give him that assurance that representations, whether from debtors or creditors, have been most carefully considered. There have been arguments by the opponents of the Bill that the compromise is unrealistic. This has largely been answered by the supporters of the Bill, but I can only say that compromise is always unrealistic as it comes somewhere between two opposing points of view, and I think, as the Attorney General and other Honourable Members have pointed out, it is somewhat in favour of the debtors. The plea that the Bill should not be proceeded with and the Moratorium lifted and the parties left to fight it out in the courts is one that I am sorry that Government cannot accept. As I pointed out in my opening speech, it can only result in the losses which have been occasioned, falling entirely on one side or entirely on the other, and Government cannot be justified in allowing this to happen.

The Bill was read a Second time.

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

Clause 10.

THE ACTING ATTORNEY GENERAL: —Sir, I would like to move that the Clause be amended by the addition of a new sub-clause (6) to read as follows:

"If the debt is payable by virtue of an obligation incurred by an enemy the provision of this section with regard to payment of interest at a rate other than the due rate shall not apply and the interest shall be payable on the due rate. For the purposes of this sub-section enemy means: —

(*a*) any state or sovereign of a state which was at any time during the Occupation Period at war with His Majesty;

(*b*) any body of persons constituted in or incorporated in or under the laws of any such state; and

(*c*) any individual who possessed during the Occupation Period the nationality of any such state and has not since divested himself thereof."

The object in moving this amendment, Sir, is that, under clause 10 of the Bill provision is made for reducing the due rate of interest, and I can see no good reason why this benefit should be extended to the enemy debtor. In the definition of enemy under the last heading provision is made for persons such as Koreans, Formosans, who have since divested themselves of their Japanese nationality. Such persons will be able to take advantage of the Bill and to avoid difficulties as regards interest. I think this is reasonable now that they no longer can be considered Japanese, for the purpose of this amendment.

This was agreed to.

Council then resumed.

THE ACTING FINANCIAL SECRETARY reported that the Debtor and Creditor (Occupation Period) 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.

OCCUPATION MARRIAGES (VALIDITY) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the Second 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."

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

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

Clause 1.

THE ACTING ATTORNEY GENERAL: —Sir, I move that the words "The Marriages (War Period) (Validity) Ordinance, 1948" be substituted for the words "Occupation Marriages (Validity) Ordinance, 1948." The reason for making the amendment in the short title is that "Occupation" is not defined in the Bill and "War Period" is.

This was agreed.

Clause 8.

THE ACTING ATTORNEY GENERAL: —Sir, I move that in line 3 the word "or" be substituted for the word "and." The certificates are clearly intended to be mutually exclusive and "or" is therefore correct.

This was agreed to.

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the "Marriages (War Period) (Validity) Bill, 1948, had passed through committee with two amendments and moved the Third reading.

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

LAW REFORM (FRUSTRATED CONTRACTS) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the law relating to frustration of contracts."

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 Law Reform (Frustrated Contracts) 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.

ADJOURNMENT.

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