

30th 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.

DR. HON. CHAU SIK-NIN.

HON. LEO D'ALMADA, K.C.

HON. C. C. ROBERTS.

HON. N. O. C. MARSH.

MR. ALASTAIR TODD (Deputy Clerk of Councils).

**MINUTES.**

The Minutes of the meeting of the Council held on 16th June, 1948, were confirmed.

**PAPERS.**

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

Sessional Papers, 1948: —

No. 3—Geological Survey, Water Supply, and Mining Control.

**MOTIONS.**

THE ACTING ATTORNEY GENERAL moved: —

"That the Rules of Procedure (Landlord and Tenant) (Amendment) Rules, 1948, made by the Acting Chief Justice on 7th June, 1948, under section 30 of the Landlord and Tenant Ordinance, Ordinance No. 25 of 1947, be approved." He said: Sir, the amendment in Rule 2 is consequential upon the amendment of the Landlord and Tenant Ordinance, 1947, effected by section 5 of the Landlord and Tenant (Amendment) Ordinance, 1948, whereby any person who by reason of possessing judicial magisterial or legal or other similar qualification or experience is deemed to the Chief Justice to be competent to sit alone as a tenancy tribunal and shall exercise the functions of a tenancy tribunal.

The new Rule 28A introduced by Rule 3 of the present rule is principally designed to assist the court in determining appeals and is necessary if effect is to be given to sub-section 8 of section 26 of the 1947 Ordinance as amended by section 4 of the 1948 Amendment Ordinance.

The new Rule 47A introduced by Rule 4 of the present rules gives effect to the practice of the court in the matter of costs.

THE COLONIAL SECRETARY seconded, and the motion was carried.

THE ACTING FINANCIAL SECRETARY moved the following resolution: —

"Resolved pursuant to the proviso to section 3 of the Note-issuing Banks Extension of Powers Ordinance, 1939, as modified by the Law Amendment (Transitional Provisions) Ordinance, 1946, that this Legislative Council hereby extends the powers of all the note-issuing banks to make, issue, re-issue and circulate notes until and including the 12th day of July, 1949." He said: Sir, under section 3 of Ordinance 21 of 1939 the Note-issuing Banks were only authorised to continue to make, issue, re-issue and circulate notes until and including 12th July, 1940, and it was provided that this Council could

by resolution extend these powers for any period not exceeding 12 months at a time. By resolution passed on the 3rd July, 1947, these powers were extended to the 12th July, 1948, and it is now necessary to extend them for a further period of one year to the 12th July, 1949.

THE COLONIAL SECRETARY seconded, and the motion was carried.

#### **LAND TRANSACTIONS (ENEMY OCCUPATION) BILL, 1948.**

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to give effect to voluntary transactions affecting land during the Japanese occupation." He said: Sir, the Japanese interpretation of the doctrine that all land of the Colony belongs to the Crown was that the land itself belonged to the Crown and that what was erected upon it belonged to the Crown lessee. They accordingly instituted not a Land Office but a House Registration Office and made various regulations to govern registration of assignments and form of assignments. The form of assignment authorised was inoperative to pass the legal estate as the assignment was not under seal and by reason of the misconception mentioned failed in many cases to describe correctly what it was really intended to assign, namely the house, the land held with it together with and subject to rights of way and other rights. The primary object of the Bill is to make it possible for a purchaser or his successor in title to put the matter right by enabling him to call upon the vendor for an assignment in the normal form in use in the Colony—see clauses 5 and 6 of the Bill.

When we returned to the Colony and recovered the Land Office Registers they naturally contained no record of transactions affected during the Japanese occupation. It was doubtful how far dealings were going to be recognised and if permission to deal in land was to be given a method had to be found to put the purchaser on guard against suspect transactions. The method adopted was to enter up the occupation transactions in our own registers but in a different coloured ink, namely green ink. Under clause 4 of the Bill these entries will constitute actual notice to a purchaser for a period of two years. During this period the parties will be able to determine their rights and if any of the occupation transactions are successfully challenged they will be deleted or modified as the case may be. Moreover, as a result of the Debtor and Creditor Ordinance, 1948, enacted at our last session, the creditor becomes entitled in certain cases to have his securities restored. Where the security was a mortgage of land this would entail a deletion of the green ink entry showing discharge of the mortgage or payment off. Quite apart from this it is not to be thought that the Bill will validate the occupation transactions. Where those transactions can be challenged on grounds of duress or other legal or equitable ground the Bill preserves a right to do so—see clause 9. The Bill provides the machinery to cure defects of form and simplifies procedure—see clause 7.

Finally, I must explain clause 11 which is not dealt with in the Objects and Reasons. There were a number of assignments during the occupation period which were not for various reasons registered in the Japanese House Registration Office; a number of these were still executed in the Japanese Assignment Form and were therefore effected not according to our law. These fall principally into three categories: —

1. Assignments of land only, i.e. unbuilt on land or where a house stood on one lot and undeveloped ground on another lot, or where the undeveloped ground is a Garden Lot. In these cases there will be two assignments, one the Japanese Assignment duly registered of the lot on which the house stood and one of the around which is not registered.

2. Where the property was subject to a mortgage which for any reason, e.g. the absence of the mortgagee from the Colony could not be paid off, then the property was sold subject to the mortgage and as the property so sold could not be registered under the Japanese Rules the assignment would not be registered in their Registration Office.

3. Sometimes, after completion, owing to the frequent changes of regulations the assignments could not be registered because, e.g. one of the parties had to leave the Colony and could not attend at the Japanese House Registration Office for identification. There may be other cases of a similar nature in which the form of document was defective. Under clause 11 the provisions of the Bill which apply to Registered Assignments will also apply to those Unregistered Assignments. The Bill has been discussed with and approved by the Hong Kong Law Society.

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 measure, which has been approved in principle by the Hong Kong Law Society, is to give effect to voluntary transactions in land made during the Japanese occupation.

2. The Japanese Authorities did not interfere with the registers kept in the Land Office but adopted and ordered a new system of registration of their own based on the registration of houses and not of land. House owners were called upon to register with the Japanese House Registration Office. Particulars were entered into the Japanese Registers which also recorded all subsequent transactions.

3. The forms of assignment and reassignment used by the Japanese were inadequate in at least four respects:

- (a) They were not by deed and therefore did not convey the legal estate;
- (b) In a number of cases, they purported to convey the house only and not the land normally enjoyed with the house;
- (c) Parcels were not properly described, and rights of way, etc., were in many cases ignored;
- (d) In the case of the discharge of mortgages there was only payment of the mortgage debt and a receipt by the mortgagee. In most cases, no form of reassignment was employed.

4. After the re-occupation the Land Officer entered in the Land Office Registers in the place where such entries would have been made had they occurred in normal times the dealings occurring during the Japanese occupation as shown by the Japanese Registers. In order to enable the person investigating the title to see at once that the dealing was one which occurred during the occupation such entries were made in green ink which is not used in any other connection. On the completion of the task, property not dealt in during the occupation was exempted from the restriction imposed by Article 8—Dealings in land—of the Moratorium Proclamation. The dealings entered in green ink were still subjected to the ban but permission to deal was given in individual cases where the parties were willing to confirm the occupation transaction. The action taken was clearly necessary not only to enable the restriction to be partially lifted but to have some record on our own Registers of the transactions. Clause 3 of the Bill validates the action taken and carries it to its logical conclusion by making the entries actual notice, for a period of two years, of the transactions thereby recorded. At the end of this time the entries will be deleted (clause 4).

5. The reason for setting a time limit to the operation of the green ink entries is that the Bill contains other more satisfactory provisions for righting the title and it is considered that two years will be ample to give effect to those other provisions.

6. The effect of clause 5 of the Bill is to treat the assignments recorded in the Japanese Registers as agreements to assign on demand in proper form and free of cost of a person lawfully requiring such assignment. This may be the assignee or his successor in title and where there have been successive assignments special provision is made by clause 6 for a direct assignment by the original assignor to the last assignee with confirmation by intermediaries.

7. Any such agreement is made enforceable in the Courts and in order to save time and expense clause 7 gives the Court discretion to transfer any such proceedings from the original to the summary jurisdiction. In order to guard against the contingency that by reason of death or otherwise there may be no person against whom

an order for specific performance may be made or that such person cannot be ascertained sub-clause (2) of the clause enables a plaintiff to apply to the Court by petition *ex parte*. Sub-clause (3) provides the machinery for executing any necessary deed in the case of a recalcitrant or unascertained defendant.

8. It is not the object of the Bill to validate transactions which were illegal because made under duress or by persons without the necessary authority or for any other cause unrelated to matters of form. In order to remove doubts this is clarified by clause 9 of the Bill.

9. Clause 8 provides machinery for correcting errors in the green ink entries, including the rectification of entries affected by the provisions of clause 11 of the Debtor and Creditor (Occupation Period) Ordinance, 1948 and for making new entries where they should have been made.

10. By clause 10 the usual power is taken for the Chief Justice with the approval of Legislative Council to make rules of practice and procedure and to provide for forms and fees.

11. While clauses such as clause 10 are based on other ordinances most of the provisions made by the Ordinance are necessarily new and a comparative table would not be of assistance.

### **EMERGENCY POWERS (EXTENSION AND AMENDMENT INCORPORATION) AMENDMENT BILL, 1948.**

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Emergency Powers (Extension and Amendment Incorporation) Ordinance, 1946." He said: Sir, there are two main objects of the present Bill.

First, to revive the Compensation (Defence) Regulations, 1940, which were permitted to lapse in the circumstances stated in the Objects and Reasons.

Secondly, to modify such regulations so as to permit them to be applied notwithstanding the exercise of Emergency Powers by the British Military Administration and so that undue difficulty should not be experienced in selecting appropriate tribunals.

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

#### **Objects and Reasons.**

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

1. The Compensation (Defence) Regulations, 1940, provide for the assessment of compensation for claims arising from the exercise of Emergency Powers contained in Defence Regulations. Such Regulations were continued for certain purposes until the 31st of

December, 1947, for the purposes set out in Article 2 of Proclamation No. 30 of the B.M.A. until October, 1948, which period can however be extended till the 10th of December, 1950.

2. Clearly it will take some time after the exercise of Emergency Powers has ceased to settle consequent claims and the Compensation provisions must be kept in force until all such claims have been settled.

3. In Hong Kong, however, there is the additional difficulty that Emergency Powers were also exercised during the period of British Military Administration, and acts done thereunder could not be deemed to have been done on behalf of the Governor, which under the Compensation (Defence) Regulations, 1940, is a condition precedent to the applicability of the regulations. When the transitional legislation was being prepared, the Compensation (Defence) Regulations were continued only till the 31st December, 1947, in the hope that before that date it would be possible to incorporate them into the law of the Colony by Ordinance which would make provision at the same time for the settlement of claims arising from the B.M.A. period. Such provision required the consent of the War Department and the Services Ministries and the Secretary of State was accordingly asked to approach them.

4. Another difficulty arises from the constitution of the tribunals. Regulation 10 provides that the president and one of the members of the Shipping Tribunal shall be respectively members of the legal profession who appear to the Governor to have a special knowledge of commercial and admiralty law, and that the General Claims Tribunal should include a judge of the Supreme Court. The former requirement cannot be fulfilled and the latter only by increasing the already heavy arrears in the Supreme Court. In view of the fact that under Regulation 9 a case may be stated for the opinion of that Court and that questions arising on claims are rarely questions of law, it seems preferable to allow the Governor to appoint such tribunals as he may think fit, so that some tribunal can be set up to which claims could be referred.

5. While these questions were being considered, the Compensation (Defence) Regulations, 1940, have expired, and although no definite decision has yet been reached about the reference of disputed B.M.A. claims to such tribunals as may be set up thereunder, it is necessary to provide for their continuance and to provide for tribunals which could make a start with claims arising from the exercise of Emergency Powers clearly made on behalf of the Governor. The present Bill accordingly amends the Emergency Powers (Extension and Amendment Incorporation) Ordinance, 1946, which provided for the permanent incorporation of amendments to the ordinary law affected by Defence Regulations and the temporary continuance of other Defence Regulations by providing for the continuance with modifications of the Compensation (Defence) Regulations, 1940 and provides for further modification in the future by Order of the Governor.

6. The modifications are set out in the Schedule to the Ordinance introduced by the present Bill. In addition to those relating to the constitution of tribunals (modifications B and C), the addition of a new paragraph to Regulation 3, effected by modification A, enables the Governor to place Acts done in pursuance of Emergency Powers by other authorities on the same footing as acts done on his behalf. It will thus be possible to bring within the scope of the Regulations, requisitions by Civil Affairs during the B.M.A. period and, if and when the necessary consents are obtained and an indemnity given, the requisitions by other services not made on behalf of the Governor.

7. Modification D is necessary because payment cannot be effected until an owner has established his claim and, in the case of enemy property, is legally permitted.

#### **AIRFIELD (KAI TAK) EXTENSION AND REVERSION BILL, 1948.**

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to provide that land employed by the occupying power in extension of the Kai Tak Airfield shall be deemed to have reverted to the Crown with effect from the 1st September, 1945, and to provide for the payment of compensation in respect of such reversion." He said: Sir, during the occupation the Japanese considerably enlarged the Airfield of Kai Tak at the expense of neighbouring landowners. It is estimated that 1,638 lots have been affected. While accurate information is not forthcoming it would appear that no compensation was paid for agricultural land, though some compensation was paid for houses. This appears to accord with the misconception on the part of the Japanese to which I previously referred that the Crown by granting the lease did not divest itself of any interest in the land.

When the Colony was liberated use continued to be made of the extended airfield and it is in fact evident that in present-day conditions such use will have to continue until, at all events, a new airfield is constructed. The site value of the land differs considerably principally in relation to the suitability and value as a building site and it is accordingly proposed that, after the plan had been prepared under clause 3 of the Bill, such lot should be specified and graded in a schedule and that its value should then be determined by the Government Valuation and Resumption Officer, in accordance with the value specified in the First Schedule which has been assessed on a generous basis. An interested party alleging any errors in the plan or schedule will be allowed to appeal to the Governor in Council who may decide the matter finally or to refer the matter to an Arbitration Board—see clause 7.

Compensation will be paid on the site value of the land if sold in the open market as at the 1st September, 1945, when use of the airfield was first made by the British Military Administration (see clause 5). 8% interest until 31st December, 1947 is provided for in clause 14, but it is proposed to move in committee an amendment making interest payable until the 30th June, 1948. In addition to

claims under the Ordinance, the right of the former owners to claim against the Occupying Power is preserved by clause 4 which, as a necessary corollary to the foregoing, vests in the Crown the land comprised in the extension.

Although the Bill makes no provision for the allocation of land in lieu of compensation, I am authorised to say that, in accordance with the usual practice, every endeavour will be made to allocate land to those claimants who prefer this to compensation in cash.

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 occupation an extension was made by the Japanese occupying forces to the area of the Kai Tak Airfield. Accurate information is not available but such information as is available indicates that no compensation was paid by the occupying power to the owners of agricultural land, but that limited compensation was paid, though not invariably, in respect of houses in the area though such compensation was not always paid to the true owner of the house. Owners absent from the Colony received nothing.

The main portion of the extension was effected in Survey Districts 1 and 2. Such area mainly comprised agricultural land but it included the village of Po Kong. But land of a more valuable character in the area of Kowloon Inland Lots and New Kowloon Inland Lots was also affected. Additionally Sai Kung Road was diverted so as to form a part of the perimeter of the extension, and buildings in the neighbourhood of the extension were demolished to provide a flight approach area.

2. At the date of the liberation of the Colony the extension to the Airfield had, in essentials, been completed and it was not feasible to reinstate buildings or the persons dispossessed. From such date the extended area has continued in use and application for compensation by a number of the former owners has been received.

3. Considerable enquiry, research of all available records and inspection of the area, have enabled the Government Valuation and Resumption Officer to determine what land has been absorbed and to ascertain that a total of one thousand six hundred and thirty eight lots is affected.

4. The object of this Bill is twofold—

(a) to provide compensation for dispossessed owners in respect of land which is now being used as part of the airfield, and

(b) as a necessary corollary to provide machinery for the legal re-vesting of such land in the Crown.

5. The machinery provided by Clause 3 of the Bill is that a Plan shall be prepared showing the area, on which it will be possible in most cases to locate and identify the individual lots. From the Plan a Schedule will be prepared which will give the lot number and other details, and which can be the basis of claims, since it is provided that copies of the plan will be available for inspection at the Land Office, Victoria, and the District Office, Kowloon.

6. Clause 4 provides for the reversion to the Crown of the land included in the extension with effect from the 1st September, 1945, but reserves to the former owners any right or claim against the occupying power and a right to compensation in respect of land (but not buildings) under the Bill upon enactment.

7. Clause 5 provides for the mode of assessment of compensation. Because the Bill contemplates the payment of compensation in respect of land only, it has been possible to assess compensation at values obtaining on the 1st September, 1945, and define graded values per square foot, grades being assigned to each class of lot mentioned in the Schedule available for inspection by the public. Such graded values have been assessed on a generous basis. Sub-clauses (iv), (v) and (vi) of Clause 5 follow the precedent of the Crown Lands Resumption Ordinance, 1900.

8. Clause 6 provides for rendering of claims in a standardised form, for their scrutiny by the Land Officer in accordance with the registers of pre-war transactions, and for notification to the claimant of acceptance or rejection. The Assistant Land Officer, New Territories will carry out these functions in respect of land in Survey Districts 1 and 2.

9. Clause 7 empowers the Governor in Council upon application to amend the Schedule or the Plan from which it is prepared, and for reference to a Board of Arbitrators to make recommendation upon such application.

10. Clause 8 provides for a standing Board of Arbitrators to consider references. Since problems are likely to be all of a similar nature, a standing Board is considered preferable to the procedure set out in the Crown Lands Resumption Ordinance, 1900.

11. The following clauses with little variation follow the precedent of the Crown Lands Resumption Ordinance, 1900: —

Clause 9—Powers of the Board;

Clause 10—Execution of process of the Board;

Clause 11—Majority decision of the Board;

Clause 12—Filling of vacancy on the Board;

Clause 13—Power for Crown to deal subsequently with the land re-vested.

12. Clause 14 provides the machinery for payment, and authorises payment of interest at 8% in respect of the period 1st September, 1945, to 31st December, 1947.

13. A time limit of two years is imposed on claims by Clause 15.

**URBAN COUNCIL (CONSTITUTION) (VALIDATION)  
BILL, 1948.**

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to validate the continuance in office of the six members of the Urban Council appointed by the Governor under the provisions of sub-section (9) of section 3 and section 6 of the Urban Council Ordinance, 1935, to hold office until the 24th of May, 1948." He said: Sir, as mentioned in the Objects and Reasons the aim of the Bill is to validate the continuance in office for another year of the present members of the Urban Council. It is regretted that it should be necessary to trouble the Legislative Council with this matter, but it may be stated in explanation that the Chairman of the Urban Council departed on leave shortly before the crucial date for making the appointments in the normal manner.

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: —

Under sub-section (9) of section 3 of the Urban Council Ordinance, 1935, six members of the Urban Council are appointed by the Governor and under sub-section (1), as amended by the Urban Council Ordinance (Transitional Provisions) Ordinance, 1946, such persons hold office for a year from the date of the notification of their respective appointments in the *Gazette*. In the case of five of the members now serving on the Council this date was the 25th of May, 1947, and they should accordingly have ceased to act on the 24th of May, 1948. A sixth member was appointed under section 6 in place of an absent member and he was also unable lawfully to act after the 24th of May, 1948. Owing to inadvertence it was not appreciated that the terms of office of such members had expired and they have continued to act. It is in fact desired to appoint the persons at present serving to serve for another year. Unfortunately the Ordinance does not permit appointment with retrospective effect. The aim of the present Bill is to place such persons in the same position as they would have been in if they had been lawfully appointed under the Ordinance and their appointments had been notified in the *Gazette* of the 25th May, 1948.

**CELLULOID AND CINEMATOGRAPH FILM  
(AMENDMENT) BILL, 1948.**

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Celluloid and Cinematograph Film Ordinance, 1923." He said: Sir, it is only necessary for me to state in explanation of the Objects and Reasons that the Ordinance which the Bill seeks to amend makes better provision for the prevention of fire in premises where raw celluloid and cinematograph film are stored or used. It is therefore appropriate for the functions of control and inspection given by the Ordinance to be exercised by the Chief Officer of the Fire Brigade rather than by the Commissioner of Police.

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. In view of the establishment of the post of Chief Officer of the Fire Brigade it has been considered that the person performing the duties of this office is the more appropriate authority to deal with matters under the Celluloid and Cinematograph Film Ordinance, 1923, hereinafter referred to as the principal Ordinance.

2. Clause 2 of the Bill has therefore been designed to effect a substitution of the words "Chief Officer of the Fire Brigade" for the words "Commissioner of Police" wherever they occur in the principal Ordinance.

**LEGAL PRACTITIONERS BILL, 1948.**

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to repeal and replace the Legal Practitioners Ordinance, 1871." He said: Sir, the present law relating to Legal Practitioners is contained in the Legal Practitioners Ordinance, 1871. The object of the present Bill is to repeal and replace that Ordinance by a new and more comprehensive Bill. The history of the Bill is outlined in the Objects and Reasons, and, in this connection, I need say no more than that so far as its provisions affect solicitors it is being introduced at the request and by the approval of the Hong Kong Law Society which is almost entirely responsible for drafting the Bill and which considers that the provisions of the Bill are what Hong Kong requires. But I would, however, draw your attention to paragraph 17 of the Objects and Reasons from which appears that though the Bill can claim to have modernised the law relating to Legal Practitioners it may well be necessary at a later date to supplement our law by the introduction with modifications of other legislation affecting solicitors which is in force in the United Kingdom and which is not at present considered appropriate for Hong Kong. Although the Bill deals primarily with solicitors, provision is also

made for barristers and notaries public. The provisions relating to barristers have been approved by the recently formed Hong Kong Bar Association. As far as notaries public are concerned I believe I am right in saying that no one in Hong Kong is entitled to practise as a notary public who is not also a solicitor.

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 Legal Practitioners Ordinance, No. 1 of 1871, which is the only enactment governing the qualification and enrolment of, and other matters relating to, solicitors and barristers in the Colony, was, for many years prior to the recent war, considered as entirely out of date. Amending Ordinances in 1925 and 1931 made no material difference to the practice and principles on which the Ordinance was based, and which in the main related to provisions of Solicitors Acts dating back to 1843.

2. Controversy on the question of amalgamation of the branches of the legal profession was, no doubt, partly responsible for the delay and failure to keep the law, particularly as regards solicitors, abreast of the progressive enactments which in England culminated in the consolidating Solicitors Act of 1932.

3. Although the claims for "fusion" were, from both official and unofficial sources, periodically advanced they had not, by 1932, secured the favourable opinion of the majority of those affected. The new Act of that year however, threw anachronisms of the existing Ordinance into such high relief, that the Incorporated Law Society of Hong Kong itself drafted a Bill, based on the Act, which was subjected to full and detailed consideration by its members as well as being submitted for the opinion of the Law Society in London.

4. This original Bill was necessarily concerned, in the main, with solicitors, but as the provisions relating to barristers are too few to warrant a separate Ordinance, these as well as those affecting notaries public, were included. Thus the distinctive fields of practice were, in the urgent need for progressive reform, retained for new legislation.

5. The two outstanding innovations in the original Bill were the raising of the standard of legal training and examination for locally articled clerks, and the vesting of disciplinary powers over solicitors in a special committee selected from members and former members of the Committee of the Law Society in Hong Kong.

6. Having reached the stage of the First Reading in 1941 progress was suspended by the hostilities and occupation period and although all local copies were lost a printed copy was retrieved from the secretary of the Law Society in London, after the liberation.

7. The present Bill is based on a draft submitted by the local Law Society after yet further consideration of the original provisions.

8. A noticeable departure from the original Bill is that the provisions for a disciplinary committee are discarded and special powers, limited to enquiry investigation and report by the Law Society's Committee, substituted. Disciplinary powers are therefore exclusively retained in the Court which may, however, at any stage of the proceedings, refer the matter or any question concerned, for enquiry and report by the Society's Committee. For the purposes of any such enquiries the Committee will practically be in the position of Commissioners under the Commissioner's Powers Ordinance, 1886.

9. As regards qualification for local candidates for admission as solicitors the system of only two examinations—preliminary and final—is retained. The former has the usual alternatives such as local Matriculation, etc. It is not considered practical to introduce either an intermediate or a bookkeeping examination. But the final will consist of papers set by experienced examiners in England and this examination may be taken in that country or here. Whilst the standard and syllabus will, broadly, conform to the requirements of the Law Society in England, considerable restrictions and modifications will be ensured by a special advisory committee of local practitioners who will indicate the essential limitations to the examiners. Thus laws wholly inapplicable to Hong Kong will be excluded and local legislation substituted in the syllabus.

10. It is recognized that the local facilities for legal training, study and coaching are very poor indeed; there is no Faculty of Law at the University and no official provision is made in the Colony for a school of law or legal training. This is partially remedied in the case of solicitors by the fact that under the new Bill as under existing law part of the articles may be served in Great Britain or Northern Ireland, and by the provision in section 17 of the Ordinance introduced by such Bill that there may be counted in the prescribed term any period not exceeding a year spent by a candidate in England or travelling to and from England for the purpose of preparing for the final examination, and further by giving a candidate the option to sit for such examination in England or in Hong Kong.

11. Under the present Bill, females are no longer excluded from any branch of the profession. See the last interpretation in section 2 of the Ordinance introduced by the Bill.

12. The local admission and enrolment of persons qualified in England, Scotland and Northern Ireland, in either branch of the profession, has been retained.

13. Part II of the Bill is wholly concerned with offences committed by persons (which now includes bodies corporate) who act or attempt to act as barristers or solicitors without proper qualifications and with certain offences by solicitors. In most cases severe penalties are prescribed.

14. Further provisions relate to notaries public, remuneration of solicitors, taxation of bills, the making of rules and regulations and miscellaneous matters.

15. Although it is intended that all the provisions of the Ordinance shall be immediately effective on its coming into force, a saving proviso enables a local candidate for the final solicitors' examination, whose articles have already expired or will within six months expire, to choose the old or the new syllabus.

16. There are five schedules which deal respectively with (1) periods for service under articles; (2) Universities whose degrees qualify for reduction of service; (3) Regulations for final examination; (4) Fees to be paid to Registrar; (5) Fees to be paid to the Law Society.

17. Whilst the Bill can claim to have modernized the local law relating to legal practitioners, it does not include several matters affecting solicitors which have been the subject of legislation in England in recent years. In some instances, these matters are regarded by the Law Society as inapplicable or inappropriate to local conditions; in others, however, they are reserved for further review and consideration.

18. A comparative table is annexed to these Objects and Reasons.

#### **DANGEROUS GOODS (AMENDMENT) BILL, 1948.**

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance further to amend the Dangerous Goods Ordinance, 1873."

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 Dangerous Goods (Amendment) 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.

#### **FRAUDULENT TRANSFERS OF BUSINESSES (AMENDMENT) BILL, 1948.**

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Fraudulent Transfers of Businesses Ordinance, 1923."

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 Fraudulent Transfers of Businesses (Amendment) 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.

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

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Companies (Re-Construction of Records) Ordinance, 1947."

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 8.

THE ACTING ATTORNEY GENERAL: —Sir, I would like to move an amendment of clause 8 by substituting for the existing clause of the Bill the following clause: —

8. The Principal Ordinance is hereby amended by the insertion after section 25 of the following: —

"Part IIA

Modification of effect of section 6 of Ordinance 39 of 1932. 25A. Notwithstanding section 6 of the Companies Ordinance, 1932, whereby in the Memorandum of Association the registered office of the Company is required to be situate in some particular part of the Colony, it shall be lawful for the Company: —

(a) until the 31st December, 1948 to have its registered office in any part of the Colony, and

(b) by special resolution passed at any time before the 31st December, 1948, to provide that the registered office shall be situate anywhere in the Colony and upon the passing of such special resolution the Memorandum shall be deemed to be altered accordingly and it shall be unnecessary to make any application to the court."

It will be recollected, Sir, that I stated at our First reading of the Bill that the Ordinance is intended to be of a temporary nature. It has, however, been called to my attention that this particular stumbling-block, i.e. that by the Memorandum of Association of certain Companies, the registered office has to be situate in a particular part of the Colony, is a difficulty that will continue indefinitely, and it is therefore proposed to give Companies an opportunity, by special resolution, to alter their Memorandum of Association thereby removing once and for all that difficulty.

The amendment was agreed to.

H.E. THE GOVERNOR: —In connection with this amendment, I think it would probably be useful if the person who moves a Bill with amendments should in future supply all Members of the Council with written copies in advance. That gives time for more consideration.

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the Companies (Re-Construction of Records) (Amendment) 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.

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

THE ACTING ATTORNEY GENERAL moved the Second 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."

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 2.

THE ACTING ATTORNEY GENERAL: —Sir, I apologise for not having previously given Council a copy of the amendment, but I would like to move a short amendment to the definition of the prescribed officer in sub-clause 4 of clause 2. Since the Bill was drafted the title "Assistant District Officer" no longer applies, and there is a District Office in each section of the New Territories, and a District Officer of the New Territories, and the amendment I wish to propose is that the sub-clause be amended by the substitution of the words "Any District Officer" for the words "Any Assistant District Officer, New Territories."

The amendment was agreed to.

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the Lands (Ping Shan) Re-Vesting 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.

#### **DUTIABLE COMMODITIES BILL, 1948.**

THE ACTING SUPERINTENDENT OF IMPORTS AND EXPORTS moved the Second reading of a Bill intituled "An Ordinance to amend the Dutiable Commodities Ordinance, 1931."

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 SUPERINTENDENT OF IMPORTS AND EXPORTS reported that the Dutiable Commodities 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?

This was agreed to.

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