

14th July, 1948.

PRESENT: —

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

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).

ABSENT: —

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS (MAJOR-
GENERAL F. R. G. MATTHEWS, D. S. O.)

MINUTES.

The Minutes of the meeting of the Council held on 30th June, 1948, were confirmed.

PAPERS.

THE COLONIAL SECRETARY, by command of His Excellency the Governor, laid upon the table the following paper: —

Sessional Papers, 1948: —

No. 4—Report of Interdepartmental Committee on the Squatter Problem.

He said: —I would like to apologise to this Honourable Council for the error by which this paper was published this morning. It should have been published, of course, to-morrow morning. The main recommendations of this Committee which have been proved to the point have been considered and accepted by the Government with the exception of the two sub-sections marked (xii) and (xiii) of paragraph 16. These two have been held over for further consideration. An approach will be made to the Finance Committee for the funds necessary to administer this Report in due course.

PREVENTION OF CORRUPTION BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the law for the Prevention of Corruption." He said: Sir, the present law as to bribery is contained in three sections of the Misdemeanours Punishment Ordinance which it is proposed to repeal by clause 13 of the Bill. This is to some extent supplemented by common law. The law is defective in that it does not make provision for the punishment of corruption by agents and in that the offence of corruption in office is not sufficiently comprehensive. Adequate provision is, it is thought, made in these respects by the law in the United Kingdom. The main object of the Bill is to incorporate with modifications the appropriate provisions of three different statutes of the United Kingdom.

So much for the substantive law. As Council knows, it is one matter to create and provide penalties for offences and another matter to discover offenders and to prove the case against them to the satisfaction of a judge and jury. In no realm of the law, perhaps, is this so true as in the case of corruption. A person may be considered, one might almost say known, to be corrupt according to public opinion, and yet his tracks have been so skilfully concealed that the law cannot bring him to book. Now, it is, of course, right and proper that a person should be proved to be guilty in a court of law and the Bill does not depart from that principle. What it

endeavours to do is to facilitate proof in three main ways. First, the Attorney General may order investigation of a suspect's bank account, share account or purchase account; see clause 10. Secondly, the court is authorised to receive in evidence the fact that the accused has suddenly become much richer than he should be or has been spending a lot of money; clause 12. Thirdly, by making it unnecessary for the judge to warn the jury that it is dangerous to convict on the evidence of an accomplice without corroboration in a material particular, implicating the accused. The jury have still, however, to be convinced beyond reasonable doubt that the evidence of the accomplice is worthy of belief; clause 9. Now these three main ways though they are distinct may hang together, that is to say, by means of an investigation which has been ordered the prosecution may get information of unusual enrichment and such enrichment, though it cannot be connected with any particular act of corruption, may, when taken together with the evidence of an accomplice which stands the challenge of cross-examination, be sufficient to warrant a conviction. These provisions of the Bill therefore should be considered in this light rather than as making any fundamental innovation in the law of evidence.

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 objects of the present Bill are—

(a) to assimilate the law of the Colony in relation to corruption to the law in force in the United Kingdom; and

(b) in view of the suspected prevalence of offences to lighten the respective tasks of investigating and proving offences.

2. In assimilating the law of the Colony to the law of the United Kingdom regard has nevertheless been had to the fact that the latter has grown up piecemeal and that it is considered desirable in Hong Kong that a public servant should be in at least as unfavourable a position as others and should be more severely punished. (See and compare the respective interpretations of public body in clause 2 of the Bill and section 1 of the Public Bodies Corrupt Practices Act, 1889, and the penalties provided by clause 5(2) of the Bill and by section 1(1) of the Prevention of Corruption Act, 1906).

3. Corruption is by no means an easy charge to bring home as those who practise it are normally skilful in covering up their traces. The task is rendered more difficult by the fact that it is the practice for the judge to direct the jury where the prosecution evidence is that of an accomplice and his evidence is not corroborated that it is dangerous to convict. The practice follows English law and has the obvious common sense foundation that such evidence should not lightly be accepted. It is however, believed that the word "dangerous" has

an unfortunate effect on the minds of juries in the Colony who tend to treat it as equivalent to a direction to acquit. Clause 9 of the Bill seeks to readjust the balance by substituting a direction which is still fair to the accused without giving the jury a wrong impression.

4. It is a rule of evidence that the evidence must be confined to the issues before the Court. This rule often leads in corruption cases to the exclusion of evidence which to the lay mind raises a strong presumption of corrupt dealing, namely the unexplained enrichment of the person accused. Such evidence is excluded unless it can be shown that it is connected with the charge before the Court, e.g. that an accused paid money into his bank at or shortly after the time he received some corruptly. The honest man whose sources of income are constant should have little difficulty in explaining any unexpected accretion to his finances. It is accordingly considered that in offences for which provision is made by the Bill evidence of general enrichment for which no satisfactory account is forthcoming, should be admissible. (See clause 12 of the Bill, following section 2 of the Evidence (Special Provisions) Ordinance, 1946 (Singapore) which in turn is based on the Indian Criminal Law (Amendment) Ordinance, 1946).

5. Although corrupt persons are very often not foolish enough to pay large sums into their bank yet the way in which their account has been operated may afford considerable indication of their financial affairs and occasionally material which would make clause 12 of the Bill applicable. The same may be said of share or purchase accounts. Accordingly clause 10 of the Bill enables the Attorney General to authorise the investigation of such accounts by the police.

LAND REGISTRATION (FEES AMENDMENT) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Land Registration Ordinance, 1844." He said: Sir, the registration under the Land Registration Ordinance is, in law, the registration only of deeds and documents. In practice, successive Land Officers and their staffs have given the public service not dissimilar from what one expects from systems for registration of titles. For this service the fees charged have always been moderate. Few of the fees have been altered since 1902 despite the intervention of two major wars. A general increase in fees is clearly necessary and the increases made by this Bill will not, I feel sure, be grudged.

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

Objects and Reasons.

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

1. It has been considered desirable to review the fees payable on registration of documents and other matters transacted at the Land Office. The consideration which changes hands on sale of

property has increased very greatly in recent years, but the fees in respect of registration have not been increased since 1902, although a variation was made in 1924 to provide for amelioration of the fees in the case of small properties under \$500. Few of the other fees have been altered since 1902, and the Search Fee in particular (one dollar) has remained the same since 1844.

2. Clause 2 of the Bill is designed to give effect to such revision by repeal and replacement of the Table of Fees contained in the Second Schedule to the Land Registration Ordinance 1844. The increases are not heavy.

3. The calculation of the fee on registration of deeds has been simplified by abolishing the increased fee where more than one lot is concerned, and the nominal fee of \$1 is proposed for assignments up to a value of \$1,000 in lieu of \$500 as before. The increased fee under this head only commences at \$2,000 and rises by another stage to \$60 on \$100,000 and over. Every transaction over \$5,000 previously attracted a fee of \$15.

4. The search fee is raised from one dollar to two, there are moderate increases in most other fees, and the legal charges for the issue of leases in which a considerable amount of work is involved, have been raised from \$30 to \$75. A provision whereby the Governor in Council in 1932 authorized an exemption from charges for a second lease in certain circumstances has been incorporated by a footnote to the Table.

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

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Emergency Powers (Extension and Amendment Incorporation) Ordinance, 1946."

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

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

Schedule.

THE ACTING ATTORNEY GENERAL: —Sir, I beg to move that item B of the Schedule be amended by inserting the words "the following provisions of" after the word "under" in the second line thereof. These words were omitted when the Bill was printed and they do not affect the modification made to Regulation 9, but in order to be strictly accurate these words should be inserted.

The amendment was agreed to.

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the Emergency Powers (Extension and Amendment Incorporation) 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.

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

THE ACTING ATTORNEY GENERAL moved the Second 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."

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 14.

THE ACTING ATTORNEY GENERAL: —I beg to move that sub-clause (3) of Clause 14 be amended by substituting the words "to the 30th June, 1948" for the words "to the 31st December, 1947" in the last line thereof. As explained at the First reading of this Bill this amendment is necessary owing to the delay of this Bill coming before Council.

The amendment was agreed to.

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the Airfield (Kai Tak) Extension and Reversion 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.

LAND TRANSACTIONS (ENEMY OCCUPATION) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to give effect to voluntary transactions affecting land during the Japanese occupation."

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 11.

THE ACTING ATTORNEY GENERAL: —Sir, I have just noticed in the marginal note the words "not carrying the true intention of the parties." It seems to me that the word "out" has been omitted and I move with your leave that the marginal note be amended to read "Provision for instruments not carrying out the true intention of the parties."

The amendment was agreed to.

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the Land Transactions (Enemy Occupation) 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.

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

THE ACTING ATTORNEY GENERAL moved the Second 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 subsection (9) of section 3 and section 6 of the Urban Council Ordinance, 1935, to hold office until the 24th of May, 1948."

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 Urban Council (Constitution) (Validation) 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.

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

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Celluloid and Cinematograph Film 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 Celluloid and Cinematograph Film (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.

LEGAL PRACTITIONERS BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to repeal and replace the Legal Practitioners Ordinance, 1871."

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

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

H.E. THE GOVERNOR: —As this is a long Bill I do not know if Members will agree to taking the clauses in blocks of five and then if any Honourable Member wishes to raise any point on any clause in each block, he would get up and say so. Is this agreeable to all?

This was agreed to.

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the Legal Practitioners 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.

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

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to extend the period during which legal proceedings may be instituted and rights may be exercised."

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 Enforcement of Rights (Extension of Time) 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 adjourn until this day fortnight.