

11th August, 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. N. O. C. MARSH.

MR. ALASTAIR TODD (Deputy Clerk of Councils)

MINUTES.

The Minutes of the meeting of the Council held on 28th July, 1948, were confirmed.

PAPERS.

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

Annual Report of the Imports and Exports Department for the year 1946-47.

Annual Report of the Department of Supplies, Trade and Industry for the year 1946-47.

Annual Report of the Royal Observatory for the year 1946-47.

Annual Report of the Public Relations Officer for the year 1946-47.

Annual Report of the Quatering Authority for the year 1946-47.

Annual Report of the Labour Office for the year 1946-47.

Annual Report of the Hong Kong Fire Brigade for the year 1946-47.

Annual Report of the Agricultural Department for the year 1946-47.

Annual Report of the Fisheries Department for the year 1946-47.

Annual Report of the Forestry Department for the year 1946-47.

Annual Report of the Gardens Department for the year 1946-47.

Annual Report of the Assessment Department for the year 1946-47.

Annual Report of the Estate Duty Department for the year 1946-47.

Annual Report of the Custodian of Property for the year 1946-47.

Annual Report of the Registrar of the Supreme Court, Official Trustee, Official Administrator and Registrar of Companies for the year 1946-47.

Annual Report of the Land Officer and Registrar of Marriages for the year 1946-47.

Annual Report of the Prisons Department for the year 1946-47.

Annual Report of the Chairman, Urban Council, and Head of the Sanitary Department for the year 1946-47.

Annual Report of the Kowloon Canton Railway for the year 1946-47.

ANNOUNCEMENT.

THE COLONIAL SECRETARY: —I would like, Sir, with your permission, to refer at this stage to the question asked at the last meeting of the Council by my Honourable Friend, Mr. Marsh, referring to the tragic disaster of the Catalina aircraft flying between Macao and Hong Kong. Government had hoped to have the official report of that disaster before this, but it has unfortunately been delayed due to the indisposition of the Director of Civil Aviation who has been confined to hospital for a few days. It is hoped to have the report within the next few days.

MOTIONS.

THE ACTING ATTORNEY GENERAL: —Sir, I ask leave of Council to move, in lieu of the Motion standing in my name, a motion in the terms which are contained in the Paper which has already been supplied to Members of the Council.

H.E. THE GOVERNOR: —Is that agreeable, Gentlemen?

This was agreed to.

THE ACTING ATTORNEY GENERAL: —I accordingly move that the rescission of the by-laws contained in the Schedule of the Public Health (Food) Ordinance, 1935, under the heading Restaurants, Eating Houses and Food Stalls and the substitution therefor of the by-laws made by the Urban Council on the 3rd August, 1948, under Section 5 of the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, be approved.

The by-laws referred to in the resolution are intended to be in substitution for those at present in existence. They will enable the Council to license additional types of businesses and to exercise improved control on those at present in existence.

You will recollect, Sir, that the interpretation section (section 2 of the Public Health (Food) Ordinance, 1935), was recently amended so as to include new definitions of "cafe, food canteen, restaurant and marine restaurant". Previously, the distinction had been between restaurants where intoxicating liquor could be sold and eating houses where such liquor could not be sold. Now, the distinction is between "restaurants, food canteens, cafes and marine restaurants". A restaurant does not include a cafe or food canteen and a marine restaurant is a vessel used as a restaurant. In a cafe, no cooked food is to be sold and in a food canteen only specified items of food approved by the Council and at approved retail prices. The new by-laws made by the Council contain first, a general part dealing with licences generally and with provisions common to all the types I have mentioned and secondly, of separate sections dealing with each type.

THE COLONIAL SECRETARY seconded, and the motion was carried.

RENT (WAR PERIOD) RELIEF BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to relieve tenants from payment of rent in respect of the period of Japanese occupation and to adjust the rights of landlords and tenants." He said: Sir, the enactment of legislation which was considered necessary prior to lifting the Moratorium imposed by the Moratorium Proclamation brought to the fore the question how far Government should interfere in the normal contractual relationship of landlord and tenant. That relationship had as a result of the Japanese Occupation been in numerous cases subjected to contingencies not in the contemplation of either party at the commencement of the tenancy. This fact alone would not, however, in law be sufficient to enable the tenant to avoid his liability to pay rent. The circumstances were, however, in many cases, unprecedented and it was clear that relief would have to be given at all events to those tenants who through no fault of their own had been deprived of the beneficial enjoyment of the premises forming the subject matter of the tenancy. A bill on these lines was drafted and forwarded for comment to various associations in the Colony which it was thought would adequately represent the interests of both landlord and tenant, but in view of the fact that it was the rights of landlords that would be prejudicially affected, care was taken to see that landlords as a class, would have an opportunity of expressing their views.

I have been much impressed since my advent in Hong Kong by the realistic and sensible attitude which the various interests in the Colony have adopted in dealing with the problems presented by the Japanese Occupation, and in my opinion, nothing illustrates this more clearly than the attitude adopted by the landlords on the question of occupation rent. Rent collecting is at the best of times a difficult process and the task becomes formidable when arrears of many years have to be collected and when these arrears may have to be collected from tenants who are no longer in occupation of the premises or who may now be difficult to trace. If, at the same time, collection of rent in such circumstances were to entail a demand for Crown rent for the period of Japanese Occupation, the process might prove to be an unprofitable one. It should not, however, be thought because of the above consideration that the decision of landlords to waive claims for rent accruing due during the Japanese Occupation was based on purely utilitarian motive. I am sure that in some cases, at all events, it would have been an economic proposition to demand rent from tenants of substance who were known and who were, possibly, seeking a fresh lease of the premises. Let us say, therefore, that after the merits of the original draft Bill had been considered the landlords decided to let bygones be bygones and to make a fresh start if the Crown on its part were prepared to do likewise. In fact, Government had already limited its demands for Crown rent to the second half of 1945 and thereafter so that rent has only been collected for two of the months falling within the period of Japanese occupation. It would clearly cause a great deal of administrative inconvenience

without much corresponding advantage if Government were to be called upon to repay or forgo such portion of Crown rent as can be attributed to the two months in question. Subject to this, however, Government is willing to give the necessary undertaking and accordingly to present legislation on much broader lines than would have been possible had not the landlords made the offer that they have made. I am happy to say that they are lines which correspondence and articles in the Press have indicated are acceptable to the general public.

It is with this background that I have delineated in mind that the present Bill must be judged. The Bill deems that all claims for payment of rent payable for any premises in respect of any period comprised in the war period as defined by the Bill have been waived. (See clause 3).

In order to remove doubts it is provided that such waiver does not extend to any rent that has actually been collected. It is further provided that settlements arrived at between landlord and tenant shall not be reopened. (See clause 4(1), paragraphs (a) and (b) respectively).

It is conceivable that if no provision were made, tenants obtaining the benefit of the waiver of rent mentioned might be tempted to sue landlords for breach of the covenant to repair or for quiet enjoyment or for other covenants contained in the lease. In order to safeguard against this contingency sub-clause (2) of clause 4 provides that the waiver shall not apply if a claim of this nature is made by a tenant. In such event the parties will be left to the ordinary law.

There are known to be cases where valuable property of the tenant has been left on the premises and has, largely as a result of the care taken by the landlord, been salvaged for and subsequently restored to the tenant. It is considered that in such cases it is not unreasonable to expect the tenant to compensate the landlord. Provision is made by clauses 5 and 6.

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 was originally intended to relieve tenants from payment of rent in cases where their beneficial enjoyment of premises had been frustrated by an event attributable to the Japanese occupation. This was criticised partly on the ground that it was encouraging landlords to sue in other cases and also because it did not relieve from payment of rent either tenants who, in the absence of their landlords, had paid the Japanese Rent Office or tenants who had preserved premises from looters and who had been led to believe that no claims would be made against them by their landlords.

2. Meanwhile a representative meeting of property owners had already decided that, provided they were not called upon to pay Crown rent, they were prepared to waive all claims for rent accruing due in the period from the commencement of local hostilities until the liberation of the Colony. Such rent is hereinafter referred to as "War Rent".

3. Government is entitled to collect arrears of Crown rent though it must give credit for whatever was paid to the Japanese Occupation Authorities. In fact, the policy has been adopted of demanding and collecting Crown rent for the last six months of 1945 and thereafter without seeking to recover Crown rent due in respect of the period 8th December, 1941, to 16th September, 1945, generally. Government is, therefore, in a position to give the undertaking required by the landlords save that it is obviously convenient that rent for the months of July and August, 1945, should not be forgone. It is accordingly possible to legislate on much broader lines.

4. The object of this Bill is to give effect to the waiver by landlords of war rent and to make such rent irrecoverable (clause 3) save where there has been a settlement under which the tenant has expressly agreed to pay it or the tenant reopens the matter by suing the landlord for breach of covenant (clause 4 (1)(b) and clause 4 (2)). Rent already collected is not affected (clause 4 (1)(a)), and by clauses 5 and 6 the landlord is given a right to compensation, ascertainable in default of agreement by arbitration, in cases where the tenant's property has been stored on the premises subject to the tenancy and subsequently restored to the tenant.

PUBLIC HEALTH (SANITATION) AMENDMENT BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Public Health (Sanitation) Ordinance, 1935." He said: —Sir, I wish to add a few observations to the Objects and Reasons. The present Bill amends section 75 of the principal Ordinance and in particular subsections 3, 5, 8 and 9 of that section. It will probably be necessary to present to the Legislative Council another Bill making more comprehensive amendments to the Ordinance, but in view of the desirability of giving immediate effect to the scheme to remove squatters from the Central and Western Areas of Victoria it is proposed to proceed with the present Bill leaving other amendments to be made at a later stage.

It will be observed that notification in the Gazette of the intention to exhume from the Kennedy Town Cemetery has already been given in anticipation of this Bill being passed into law. If the Bill becomes law it will accordingly be possible to take action early next month.

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

Objects and Reasons.

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

1. It is desired to utilise the Kennedy Town Cemetery, which is considered the only suitable site, as an approved or licensed area for persons now squatting on Crown land and private premises in the Central and Western areas of Victoria. The cemetery is a closed cemetery and contains the bodies of persons who died of bubonic plague in 1894.

2. The Deputy Director of Health Services has declared that the threat to public health from the continued presence of squatters in insalubrious premises constitutes an emergency and the Board of Directors of the Tung Wah Hospital have advised that in their view there is no objection to the exhumation on short notice of the bodies and remains in Kennedy Town Cemetery.

3. Under section 75, sub-section (9) of the Public Health (Sanitation) Ordinance, 1935, six months notice of intention to make an order to remove bodies or remains from any grave or urn is required. In 1940 this provision was suspended by Defence Regulations and it is considered expedient to be able to dispense with such a long period of notice where the circumstances require more rapid action. A new sub-section (9) introduced by clause 2 of the Bill enables action to be taken by the Governor-in-Council after one month's notice. In order to have the Kennedy Town Cemetery available as soon as possible, notice was given by notification published in the Gazette of the 30th July, 1948; clause 3 validates the notification so given. In view of the limited space available in Government cemeteries exhumation after a short period is a matter of routine in Hong Kong and as such is discharged by the Urban Council. It is accordingly considered that the power to order exhumation and removal after six months' notice should be vested in the Chairman, Urban Council, rather than in the Colonial Secretary. The new sub-section (8) in clause 2 effects this.

4. It is also considered that all permits for the exhumation and removal of bodies should be granted by the Council under the hand of the Secretary; the new sub-sections (3) and (5) of clause 2 accomplish this.

POLICE FORCE BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend and consolidate the law relating to the Police Force."

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: —I suggest that, as this is rather a long Bill, we take the clauses in blocks of five just as we did with the Legal Practitioners Bill.

This was agreed to.

Clause 3.

THE ACTING ATTORNEY GENERAL: —I wish to move that clause 3 of the Bill be amended by deleting the interpretation given to “non commissioned officer” and substituting therefor the following: —

“ ‘non commissioned officer’ means a police officer below the rank of inspector down to and including corporal and also includes detectives of corresponding ranks.”

As the clause stands at present, an inspector is included in the term "non commissioned officer" and this is not the intention.

This was agreed to.

Clause 34.

THE ACTING ATTORNEY GENERAL: —Sir, there is an error which may be due to the typist, but I think it is preferable to make certain and amend it now, in line 5 of clause 34, sub-clause (1). The present word is "reverted" and I wish to move that it be amended to read "reversed".

The amendment was agreed to.

Clause 43.

THE ACTING ATTORNEY GENERAL: — Sir, I wish to move an amendment to clause 43 of the Bill. Under the Police Force Ordinance which is to be repealed, it is possible to make regulations having retrospective effect on pension matters and it may be some time before the Pensions Ordinance, 1932, is suitably amended so as to extend to members of the Police Force. It is therefore desirable that it should, in the interval, be possible to make regulations under Clause 43 with retrospective effect and I accordingly move that clause 43 be amended first by inserting a new sub-clause at the end of sub-clause (1) as follows:

"(2) Whenever the Governor in Council is satisfied that it is equitable that any regulation made under this section should have retrospective effect in order to confer a benefit upon or remove a disability attaching to any person that regulation may be given retrospective effect for that purpose. Provided that no such regulation shall have retrospective effect unless it has received the prior approval of the Legislative Council signified by resolution."

and secondly, by renumbering the present sub-clause (2) to read sub-clause (3). The form chosen follows the form which has been sanctioned for making regulations with retrospective effect under the Pensions Ordinance, 1932.

This was agreed to.

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the Police Force Bill, 1948, had passed through committee with four amendments and moved the Third reading.

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

**SEPARATION AND MAINTENANCE ORDERS (AMENDMENT)
BILL, 1948.**

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Separation and Maintenance Orders Ordinance, 1935."

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 Separation and Maintenance Orders (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.

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.