

8th September, 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. N. O. C. MARSH.

HON. P. S. CASSIDY.

MR. ALASTAIR TODD (Deputy Clerk of Councils).

ABSENT: —

DR. HON. CHAU SIK-NIN.

MINUTES.

The Minutes of the meeting of the Council held on 25th August, 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 Director of Air Services for the year 1946-47.

Annual Report of the Hong Kong Police Force for the year 1946-47.

MOTIONS.

THE COLONIAL SECRETARY moved: —

That this Council endorse the Draft International Declaration of Human Rights annexed to the Order of Business.

He said: Sir, the endorsement of this Honourable Council is sought for the draft Declaration on Human Rights which was produced at the Third Session of the Human Rights Commission held at Lake Success in the late spring of this year. This body is a Commission of the Economic and Social Council of the United Nations and its membership is worth recording. The following countries are represented on it: —Australia, Belgium, Byelo-Russia, Chile, China, Egypt, France, India, Lebanon, Panama, Philippines, Ukraine, United Kingdom, United States of America, U.S.S.R., Uruguay, Yugoslavia.

At Lake Success this spring the draft Declaration on Human Rights emerged after a full and thorough public debate. Whether this draft will go forward in due course to the General Assembly of the United Nations depends on the attitude of the Economic and Social Council to which it will be submitted after the comments of all member states have been received.

Honourable Members have in front of them a copy of the Draft Declaration. They will see that there are 28 articles, 26 of them stating rights, two conveying a warning. And that warning in Nos. 27 and 28 is worth repeating—no man may use any of these rights at the expense of his neighbour's freedom, or of public order or of the general welfare.

Looking at the document as a whole, the first thing to notice is that it is a statement not of things as they are but of things as they ought to be. It would be useless to pretend that, with large areas of Europe and Asia seduced by a political creed in which individual human rights and individual human freedom play an inconspicuous part, the aspirations set out in this Declaration can be realised overnight. But these aspirations here stated with simple clarity are at once a challenge and a pledge. By adhering to this draft Declaration, civilised man promises, in the words of proclamation in the

preamble, to "strive by teaching and education to promote respect for these rights and freedoms". I submit that is a promise he must either make or surrender his title to be called civilised.

In case anyone should think that the whole onus in promoting these human rights lies with some other country, let us look at Article 23 for example, in relation to our community of Hong Kong. This article states the right to free elementary education. This right is one we cannot fulfil now or next year, or I venture to say, in ten years. We must as practical men face that fact: but it does not prevent us from acknowledging that elementary education should be free and universal and from so ordering our affairs that some day, though not in ours, it will be so. It is in that spirit that I commend to this Council the Draft Declaration on Human Rights.

THE ACTING ATTORNEY GENERAL seconded.

HON. SIR MAN-KAM LO: —Sir, for at least two reasons, to-day's sitting is an unique and will become a historic occasion in the annals of this Council. First I think I am right in saying that this is the first occasion on which an International Declaration has ever been referred to this Council, and if I may do so, I would like to congratulate Government on taking this step. Secondly because of the nature and implication of this Declaration itself.

Sir, there can be no doubt that this Declaration, when ratified by the General Assembly of the United Nations—like the Atlantic Charter, the United Nations Declaration, and some other post-war International Declarations—will become an important milestone in human progress. It could only have been conceived by men who, having gone through the testing time of the second World War, have come to realise the global unity of war and peace; to appreciate as they have never done before the meaning of freedom and the need for orderly human progress under democratic institutions. It postulates, as an ideal, human rights which are realisable in time by human beings. It sets a goal to which we should ever strive to attain.

But just as Mr. Cordell Hull, in his statement on U.S. Foreign Policy (March 214, 1944) points out with reference to the Atlantic Charter, that the pledge it offers to every Nation involves an implied obligation "for each Nation to demonstrate its capacity for stable and progressive Government, to fulfil scrupulously its established duties to other Nations, to settle its international differences and disputes by none but peaceful methods and to make its full contribution to the maintenance of enduring peace", so this Declaration must involve implied reciprocal obligations. I do not pause to consider what these obligations are. Some of them are clearly implicit in Article 27. As far as Hong Kong is concerned, many of the rights are ours already; some of them may not be realisable for many years to come whilst the world in general is in such a turmoil and unrest. It may be that the full implementation of this Charter cannot take place until the existing international tensions are resolved, and conditions of

stability, peace and order, and orderly social progress under free democratic institutions, prevail. In any case, one of the obvious reciprocal obligations is that each individual should do his part in bringing to pass this state of affairs.

But because this Charter is an ideal whose full realisation within a given period of time cannot be predicted with any degree of certainty, it is no reason for us not to regard it seriously. On the contrary, it is all the more reason why we should regard it as a challenge—a challenge to each of us to do his utmost to work for and deserve such realisation as soon as possible. In this connection and as a fitting conclusion to my few remarks on this occasion, I would like to quote some words from the late President Roosevelt in his address in Ottawa on August 25th, 1943: —

"I am everlastingly angry only at those who assert vociferously that the Four Freedoms and the Atlantic Charter are nonsense because they are unattainable. If those people had lived a century and a half ago, they would have sneered and said that the Declaration of Independence was utter piffle. If they had lived nearly a thousand years ago, they would have laughed uproariously at the ideals of Magna Carta. And if they had lived several thousand years ago, they would have derided Moses when he came from the Mountain with the Ten Commandments.

We concede that these great teachings are not perfectly lived up to today, but I would rather be a builder than a wrecker, hoping always that the structure of life is growing—not dying." (Applause).

The Motion was carried.

RAILWAYS (AMENDMENT) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Railways Ordinance, 1909." He said: Sir, the necessity for this Bill is fully explained in the Objects and Reasons. It is required to enable a procedure to be prescribed for examination of the person, baggage or goods of passengers. The opportunity has been taken to sanction payment of a reward to persons laying information in connection with goods on a train which are neither *bona fide* passengers' luggage nor have been declared for freight. This should assist in the control of smuggling. The opportunity has also been taken to increase penalties for the various offences under the Ordinance.

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 recent agreement in connection with controlling smuggling into China, concluded between His Majesty's Government in the United Kingdom and the Chinese National Government, did not deal

with smuggling on the Kowloon Canton Railway. It is, however, obvious that in the interests of *bona fide* passengers it is preferable that search and examination should be conducted either before departure from Kowloon or in transit rather than that the train should be detained at the frontier while search and examination is carried out. This has in fact been the practice for some years but the great increase in smuggling has made it desirable to prescribe procedure. In order to remove doubts clause 2 of the present Bill amends subsection (2) of section 32 of the principal Ordinance so as to enable this procedure to be prescribed by way of conditions under which tickets are issued.

2. The amendments made to section 35 of the principal Ordinance by Clause 3 of the Bill are considered to be more in harmony with present salaries and disciplinary procedure than the provisions they replace.

3. Section 45A of the principal Ordinance though primarily designed to penalise attempts to deprive the railway of freight charges should also assist in controlling smuggling as its application frequently leads to the forfeiture of goods which it was clearly intended to smuggle. The location of such goods is often established on information supplied by officials of the Chinese Maritime Customs and if action were not taken in this territory the train would again be delayed while search and confiscation proceeded at the frontier. It is accordingly thought desirable to authorise the administrator to reward handsomely persons giving information leading to forfeiture under this section and where the information has been supplied by an official of the Chinese Maritime Customs to pay such reward to the proper authority of the Chinese Maritime Customs. Clause 4 of the Bill provides for this.

4. The penalties provided for by the Railways Ordinance, 1909, for various offences are hopelessly inadequate. Clause 6 of the Bill seeks to remedy this by substituting new penalties. The following Table shows the nature of the Offence.

TABLE.

<i>Section</i>	<i>Short description of Offence.</i>
30	Station master or railway official omitting to give notice of accident.
38(1)	Offences in connection with fares.
39	Entering carriage in motion or riding on the steps.
40	Riding on engine, cab or tender, luggage van, goods wagon or other vehicle.
41(1)	Smoking, chewing or spitting in forbidden place.
42	Intoxication or commission of any nuisance or act of indecency.

- 44 Entering without lawful excuse any special carriage, etc.
- 47 Refusal to give written account of goods or giving a false account.
- 48(2) Carriage of dangerous or offensive goods without distinctly declaring the nature of same.
- 49 Travelling while suffering from leprosy, smallpox or other contagious or infectious disease.
- 50
 - 1. Trespassing upon a railway, etc.
 - 2. Refusal to leave when requested to do so by any railway official.
- 51 Driving an animal upon or across a railway if it is not appointed place for that purpose.
- 52 Defacing pass or ticket.
- 53 Obstructing railway servant in discharge of his duties.
- 54 Using occupation crossing without notice or causing the cattle to cross without halter.
- 55(1) Animal trespassing upon any railway or upon any railway lands.
- 56 Wilfully damaging railway property or imitating any railway signal.
- 57 Opening or not properly shutting gates or chains.
- 58
 - 1. Being drunk or under the influence of drugs or negligent on duty.
 - 2. Endangering the safety of any person by negligent performance of duty.
- 59 Negligence or rashness of a person likely to endanger his own safety or that of any other person.
- 60 Breach of rules.
- 68 Removing, defacing or in any way injuring any copy of rules, or any notice or document posted up.

STAMP (AMENDMENT) BILL, 1948.

THE ACTING FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to amend the Stamp Ordinance, 1921" published in Supplement No. 3 to the Gazette on 20th August, 1948.

THE COLONIAL SECRETARY seconded.

HON. SIR MAN-KAM LO: —Your Excellency: When the Taxation Committee recommended the imposition of a ten per cent. tax on excess duty on property which resulted in the enactment of the amendment to the Stamp Ordinance which this Bill now seeks to repeal, I feel quite sure it was not because the Committee considered that the one dollar *ad valorem* duty on conveyance was too low in relation to the incidence of taxation on other forms of property, but rather because of the enormous profits from property transactions which were then obtained. It was indeed realised that the ten per cent. excess duty would be a temporary measure and that it should be withdrawn when these excessive profits disappeared. The machinery for carrying out the imposition of the ten per cent. duty has proved to be cumbersome and to involve intolerable delay, hence this Bill. Since the carrying out of this imposition has proved, in practice, to involve delay, and I can assert definitely that such delay exists, I agree that it should be repealed, but to replace a temporary tax based solely on profits by a tax of three per cent. on the consideration of a new conveyance of property which has already borne the ten per cent. excess tax, and irrespective of whether there will be any profits or not in respect of such conveyance, is quite another matter. It amounts, in effect, to a capital levy of three per cent. on sale of property.

My colleagues and I consider that this new tax is wrong in principle, but as the difference in property values between pre-war and post-war periods is still considerable, it can, perhaps, to be justified as a temporary rough and ready expedient to compensate Revenue for the loss involved in the repeal of the ten per cent. tax. I therefore do not propose to oppose this three per cent. tax, but on the understanding that, as far as I am concerned, I regard this tax, like the ten per cent. excess duty, only as a temporary expedient. But my colleagues and I cannot see any reason for increasing the *ad valorem* duty at all. If Government requires more Revenue, there must obviously be new taxation, but the incidence of such new taxation should be carefully considered and equitably distributed. I cannot extract from the Objects and Reasons that such consideration has, in fact, been given. In the hope, however, that Government may accept an amendment the Unofficials intend to introduce, we propose to agree to an increase in the *ad valorem* duty from one dollar to two dollars per cent. It is the unanimous view of the Unofficial Members that the *ad valorem* duty should not be increased to more than two dollars and accordingly, I shall, at the appropriate stage, move in committee that the symbol and figure "\$3" be replaced by "\$2".

HON. D. F. LANDALE: —Your Excellency: I agree with the remarks of my Honourable Friend Sir Man-Kam Lo as far as they go, but in my opinion they do not go far enough.

For my part I am not prepared to accept the principle of a capital levy, no matter how temporary, and I would prefer to see the present tax of ten per cent. on excess values remain in force. I admit that the collection of this imposition has proved unsatisfactory

in practice, but the remedy to this does not, in my opinion, lie in altering the very nature of the tax from one on excess values to an *ad valorem* one. I would rather see the Department whose duty it is to collect this tax, re-inforced in order to meet the shortcomings.

Nor can I willingly agree to the duty on all conveyances being trebled, or even doubled. There is no equity, in my view, for the transfer duty on one class of assets being out of line with that of any other type of asset.

I therefore, in the first instance, intend to cast my vote against the motion.

HON. T. N. CHAU: —Your Excellency: I hold no brief for property owners, nor am I a property owner myself except for the little house I am living in, but it seems to me that Government is always trying to mulct property owners. While a transaction on shares only pays one per cent. stamp duty *ad valorem*, I do not see why property transactions should pay three. We must also remember that property owners are already bearing two other taxes—they are the 17 per cent. for Rates and 10 per cent. Property Tax. I am therefore opposed to the proposed increase of three per cent. and I support My Honourable Friend Mr. Landale's remark that it should not be trebled or even doubled.

HON. P. S. CASSIDY: —Your Excellency: I hope I may count on the indulgence of this Council in addressing it for the first time. I had not intended to intervene in this debate, but I feel that I should be neglecting my duty to those whom I represent if I were to remain silent. To what my Unofficial Colleagues have said, there is little to add beyond, perhaps, a remark which an obscure Member of Parliament for Bristol a century and a half ago was reported to have said—"Ditto to Mr. Burke". There is, however, one point I should like to clear up, and that is the question of the three dollars excess duty. Neither section 3, 5A(1) nor the Objects and Reasons are at all clear as to whether the three dollars is payable as excess duty on every new conveyance of a particular property in addition to the increased duty of three dollars, or whether the excess duty is only levied on the first conveyance in the event of ten per cent. not having been deducted already. I should be glad if My Honourable Friend would remove what seems to me to be an ambiguity. As it reads at present, it almost suggests that the duty is virtually one of six per cent.

I should like to add a word or two to what my Unofficial Colleagues have already said on introducing what amounts to a capital levy in the guise of an increase in the existing duty. It is, perhaps, not unnatural for Government to view with a jealous eye the fat profits which have been derived from property itself during the past year or so. The ten per cent. excess duty to which most of the property deals of recent months have been subjected will have brought into Revenue a windfall which is not likely to be repeated now that the

boom in property seems to have subsided. Revenue derived from property transactions is bound to fluctuate, and from a budgetary point of view it cannot be relied upon as a steady source of income. There are already available to Government means of soaking the rich, and I should have thought that nothing would be done to discourage transactions which assist in that housing development which the Colony is clamouring for. (Applause).

THE ACTING ATTORNEY GENERAL: —Sir: I leave it to My Honourable Friend the Acting Financial Secretary to deal with the attack which has been made on the Bill on the aspects of taxation and the aspects of finance. I would like, however, to deal with the point raised by Mr. Cassidy in relation to whether, on the construction of the Bill, it is or is not clear in what circumstances the excess duty of three per cent. is payable. In my submission, the proviso to the new section 5A makes it quite clear that if the ten per cent. excess duty has already been paid, or if after the coming into force of this Ordinance, the three per cent. excess duty has been paid on one occasion, it shall not thereafter become payable, but on the first occasion it is, in fact, intended that six per cent. should be paid, that is, three per cent. by reason of clause 5A and three per cent. by reason of the amendment of the Schedule effected by clause 4 and I think My Honourable Friend will agree that it is clear if he considers that the duties in the Schedule are imposed by clause 5 of the principal Ordinance and that clause 5A which will follow clause 5 imposes duties in addition to any stamp duty payable by reason of the last preceding section. I do not think there is any ambiguity on the Bill as it stands.

THE ACTING FINANCIAL SECRETARY: —Sir, I might perhaps re-emphasise the point that in introducing this Bill, Government is not endeavouring to raise additional Revenue. The Bill has had its origin in the complaints by members of the public that delay was being experienced in getting through property transfers. The complaints by the public were re-inforced even more strongly by the Commissioner of Rating and Valuation who complained that his normal work of assessment was being held up by this additional work. Government therefore set about seeing how it could meet these complaints without losing revenue. We went into various methods. The Commissioner took from his records at random a number of cases and he worked out various expedients of increasing the *ad valorem* duty and substituting for the excess duty an additional *ad valorem* duty. He took (he assures me quite at random) a total of 57 cases of first sales. He took 39 cases of second sales. Under the existing system which we ask should be repealed to-day, the tax paid on the 57 first cases was \$344,677, i.e., duty at one per cent. *ad valorem* and ten per cent. excess. Now, had those cases been subject to the tax now proposed, six per cent. *ad valorem*, the duty would have been \$339,383, that is, Revenue would have suffered by \$5,294. Now, under the 39 cases of second transfer which he took out, on the old system—one per cent. *ad valorem* plus ten per cent. excess—the actual duty paid was \$67,775. Under the system now proposed,

with three per cent. *ad valorem*, the duty payable would have been \$69,883, that is, in this case, Revenue would have gained by \$2,113. Taking the whole 96 cases together, the proposals in the present Bill would mean that Revenue would have suffered to the extent of \$3,187.

I trust that these figures are sufficient evidence that Government, in introducing this Bill, had no plans for trying to increase the burden of taxation. It is probable that if this new system were to remain in force for some time, it would, in fact, help Revenue very considerably, but I think I should say now, that in any event, a full review of our taxation will have to be undertaken for the purpose of raising additional revenue very soon. In elaboration of this, I might give a brief explanation of what our financial position is. A few weeks ago in this Council, there was approved a supplementary vote of nine million dollars to meet the cost of what is now known as Occupation Period Pay. Since that date, the Finance Committee has further recommended for approval a sum of \$8,500,000 to meet the cost of back pay falling due under the recommendations of the Salaries Commission. Yet more sums have been approved, which brings the supplementary expenditure to a little short of \$20,000,000. Honourable Members will remember that in our Budget for the current financial year, we estimated for a surplus of \$1,500,000, so that we now face a deficit of \$18,500,000. So far, Revenue has been maintained, but at least one important head of revenue—tobacco duty—has proved extremely disappointing. The deficit, so far, has been met by surpluses on other heads, but the situation is not one which could make a Financial Secretary feel very pleased. It is therefore necessary to save on expenditure to the utmost. This we are doing. Moreover, if we do not increase taxation, at least we should not decrease it. This, in effect, is what the amendment which is to be proposed will mean. As proposed in the Bill, the duty on first transfer was six per cent. and three per cent. thereafter. It is now proposed that the duty on the first will be five per cent. and on the second and subsequent transactions, two per cent. Working out the effect of this on the basis of the 96 cases I have mentioned, we may expect a reduction in Revenue of 22 per cent. I am most reluctant to sacrifice any revenue in the circumstances, but in view of the unanimous opinion of the Unofficial Members, I am prepared to accept the proposed amendment.

The Bill was read a Second time.

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

Clause 3.

THE ACTING ATTORNEY GENERAL: —Sir, I would like to move that clause 3 be amended by the insertion immediately after the interpretation "new conveyance" of the following: —

“ ‘property’ means any estate or interest in land.”

It has been the intention that the new duty, like the old duty, should be limited to estates or interest in land; otherwise it would extend to such items as the sale of goodwill or the sale of an interest in a partnership. That is the intention. This definition, or rather this interpretation, also appeared in Clause 5A which is repealed by the present Clause.

The amendment was agreed to.

Clause 4.

HON. SIR MAN-KAM LO: —Sir, I beg to move that the symbol and figure of "\$3" mentioned in Clause 4(1)(a) and (b) be replaced by the symbol and figure of "\$2".

The amendment was agreed to.

Council then resumed.

THE ACTING FINANCIAL SECRETARY reported that the Stamp (Amendment) 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.

TRADE COMMISSIONERS' PRIVILEGES BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to provide for the remission of taxes, duties and fees to which trade commissioners and assistant trade commissioners may be subjected when payment of such moneys is inconsistent with the privileges of that office."

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 Trade Commissioners' Privileges 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?

THE ACTING ATTORNEY GENERAL: —I suggest two weeks hence, Sir.

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