

*6th October, 1948.*

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**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. J. P. FEHILY, O.B.E. (Chairman, Urban Council).

DR. HON. G. H. THOMAS, O.B.E. (Acting Director of Medical Services).

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 22nd September, 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 Secretary for Chinese Affairs for the year 1946-47.

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

### **SMUGGLING INTO CHINA (CONTROL) BILL, 1948.**

THE COLONIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to give effect to an agreement negotiated by His Majesty's Government in the United Kingdom and the Chinese National Government on behalf of the Hong Kong Government and the Chinese Maritime Customs, respectively." He said: Sir, the purpose of this legislation is to give effect to the Customs Agreement which has recently been negotiated between the Chinese and British Governments with a view to preventing smuggling so far as Hong Kong is concerned.

For many years owing to the high customs duties prevailing and more recently to restrictions on imports, smuggling into China from various points outside has been a tempting and a profitable business. The Hong Kong authorities and the established and law abiding traders who comprise the overwhelming bulk of our commercial community have always looked with disfavour on what part of this illegal traffic came their way and as early as the end of last century negotiations were opened with the Chinese Government with a view to creating machinery whereby smuggling, at least as regards Hong Kong, could be kept to a minimum if not wholly eliminated. These negotiations were not successful, nor were later attempts made in 1911 and 1929 to reach an agreement between the two Governments on this very thorny question. Approaches were again made to this Government shortly after the defeat of Japan in order to help in restricting the activities of smugglers which had become more prevalent by virtue of the import restrictions imposed in China. Hong Kong is by no means the only point from which attempts are made to run goods into China; and the control of smuggling is in all respects properly a matter for internal arrangement within the country affected. Nevertheless, China's difficulties were very great and we were anxious to help; we met these advances in a co-operative spirit and after considerable negotiation a Customs Agreement was finally concluded in Nanking on the 20th day of January this year. There remained one or two outstanding points of interpretation to be settled but agreement on all issues has now been provisionally reached and the Customs Agreement is ready to go into full operation.

The gist of the legislation now before Council undertakes to limit the possibilities of smuggling into China in three ways: —

First, it limits the loading of vessels under 200 tons nett to two points within the harbour, one at West Point and the other at the Yaumati Typhoon Shelter. Vessels under 200 tons may also load at Taipo but there they will be cleared only to a Chinese port at which a Chinese Maritime Customs station is in operation. At the same time the Chinese Maritime Customs will be permitted to set up stations in close proximity to the two designated points in the harbour and there persons exporting goods to China may, if they so choose, pay Customs duty. At these harbour stations the Chinese Maritime Customs will be permitted to maintain officers who will tally on to ships under 200 tons any cargo which has paid Chinese duty in Hong Kong. Exporters shipping on ships above 200 tons may also pay Chinese duty in Hong Kong and the Chinese Maritime Customs may keep a number of officers on board ocean-going ships for the purpose of tallying this cargo.

It is hoped that this system will benefit the Hong Kong exporters who, by paying Chinese duty in Hong Kong, will be enabled to clear their cargo at the point of arrival in China with a minimum of trouble and delay. Ships leaving for China will be cleared only to designated ports and, on their return to Hong Kong, they will be required to show proof that they did in fact proceed to the port for which they were cleared in Hong Kong originally. This will of course mean that small boats leaving Hong Kong will not be able to slip in at some small port in China where there are no Customs officials and this should in turn mean that the Chinese Maritime Customs will have complete control over goods from this Colony when they arrive in China.

Secondly, the Chinese Maritime Customs are given permission to patrol certain waters in Hong Kong in Mirs Bay and Deep Bay. In these areas, known as prohibited areas, any vessel which has no proper clearance papers issued in Hong Kong may be detained by the Chinese Maritime Customs and handed over to the Hong Kong authorities for prosecution in the courts of Hong Kong. This provision will prevent small craft surreptitiously using British waters for the purpose of landing contraband cargo on the Chinese shores of Mirs Bay and Deep Bay when no Customs officers are in the vicinity.

Thirdly, the transportation of commodities from Hong Kong to China across the land frontier is limited to four points opposite Chinese Customs stations on the Chinese side. This will mean that goods which cross our frontier will be directed by us on to Chinese Customs stations where the Chinese authorities will be able to control them.

So much for the main provisions of the Agreement originally signed in Nanking. It will be recalled that that agreement was brought into force as from January 20th this year so far as that was possible without legislation by this Council. It was expected at that time that the necessary legislation, then being urgently prepared, could be submitted to Council within at the very most a few weeks.

Government owes this Council an explanation of the delay which has since ensued. More particularly, I think, in view of the tone of some of the reports and statements which have appeared in the press in China from time to time throughout Spring and Summer. These reports, generally speaking, have charged us at the best with taking an unreasonably long time to submit to this Council the legislation without which the provision of the Agreement lacked all sanction. In a word, to put the matter frankly, we have been accused of stalling and I would be departing from the truth if I did not tell you that we resented these charges very bitterly indeed.

What happened was quite simple; the Agreement as it emerged in Nanking under the joint signature of the Governments of China and Great Britain contained by some unhappy accident a map showing the prohibited area in Deep Bay which was different from the prohibited area agreed on the spot in Hong Kong. This need not in itself have been a very serious matter for I should imagine that there are several hundred mutually acceptable demarcation lines other than the one actually chosen and agreed which would have served the purpose of both parties equally well. But the astonishing fact is that the line which appeared on what I may call the Nanking map, out of all the possible lines was the one we were totally unable to accept. It cut our sea communications within the Colony so that you could not sail from Yuen Long to Castle Peak without crossing the demarcation line and entering a forbidden area.

All this took some time to straighten out and there were misunderstandings on both sides; but a solution was never really in doubt and the issue was happily clinched by the very distinguished Director General of the Chinese Customs Service, Dr. Chang, who visited us this week. Nevertheless, both parties had had their eye on January 20th as an effective starting date of the Agreement which was to run initially for one year and if Council accepts the present Bill it will at the best be near the end of October before it passes into law. The Chinese Government have therefore suggested—and the suggestion seems to us very reasonable—that we might fairly take account of the time lag represented by the two dates, January 20th and the end of October. Subject to Council's approval we proposed to give an undertaking that we will not exercise our right to give three months' notice of termination of the Agreement until one year after the present Bill has had its third reading and been passed into law. In other words, we undertake to give the Agreement a minimum trial period of fifteen months beginning with the date on which this Bill has its third reading. I should explain that the Customs Agreement contains a provision which enables either side to give three months' notice of termination should the operation of the Agreement be found working to that party's disadvantage. So what is proposed is that as from the date of the third reading the Agreement will run for one year, at any date after which either side may terminate at three months' notice.

The line in Deep Bay now mutually agreed with Dr. Chang Fu-yun and designated in the present Bill is subject to final confirmation by

the Governments of China and Great Britain by means of letters to be exchanged in Nanking by the appropriate representative authorities. The First reading of this Bill is therefore being moved to-day on the understanding that that confirmation will be forthcoming and, that is to say, in order to avoid further loss of time. But the Second and Third readings, which would normally be moved a fortnight hence, must await the actual confirmation in Nanking of the new Deep Bay line. If, as I hope, Council votes in favour of the First reading of the Bill to-day, the dates of the Second and Third readings will depend on the speed with which the exchange of letters to which I have referred can be completed in Nanking.

Having dealt with the main provisions of the Agreement and with some of the technicalities surrounding them I would like now to turn to the broader issues. The proposed Customs Agreement is the latest in a series of steps we have taken to help China in this difficult and dangerous post-war era. Perhaps because she was in the war longer than any of us and longer endured occupation and plunder of her economic nerve centres by the common enemy, she emerged on the day of victory with her economy strained and all but exhausted. To this was then added civil war and inflation and communication difficulties undreamt of in Europe and an adverse balance of payments leading to restrictions on imports. And the whole thing has built up to the present economic situation of which this Council is only too well aware. This is the time above all when China needs and is entitled to ask all the help her friends can give. Her problems will certainly be solved primarily by her own efforts but by the support also of great and powerful friends. We are neither great nor powerful but we are a friend and we have done to the utmost what lay within us to do to help. Over the last eighteen months in a series of measures both legislative and administrative we have set our face resolutely against those who would seek to feed upon our neighbour's distress. We are a free trade port and by freedom of trade our citizens earn their daily bread. Yet ships leaving Hong Kong for Chinese ports must have their manifests chopped by our Marine Department prior to their departure in order to ensure that a true manifest is presented to the Chinese Customs at the port of arrival. Our laws against unmanifested cargo loading in Hong Kong for the purpose of smuggling into China have been ruthlessly exercised in China's favour. Smuggled goods cannot be recorded on ship's manifests and therefore have been confiscated by us before leaving for Chinese ports. The Chinese Maritime Customs are permitted to maintain examination officers at the Kowloon Railway Station and they are in addition supplied daily with a list of planes leaving for certain Chinese cities in order to prevent smuggling activities on those planes. Recently also a measure was introduced whereby all manifests of ships are chopped by the Imports and Exports Department before leaving for China.

Under the financial agreement, again with an eye solely to our moral responsibilities to our neighbour, we have imposed an export control over eight major Chinese exports and these commodities cannot

be exported from Hong Kong unless the exporter can produce a certificate of origin issued by the Chinese authorities showing that the foreign exchange proceeds have been surrendered to the Central Bank of China. In recent weeks we have taken steps in Hong Kong to lend all possible support to the new Chinese Gold Yuan currency. Banks have been forbidden to remit to China or to purchase from China Gold Yuan except through banks authorised by the Chinese Government to undertake such transactions in China. A recent regulation also has prohibited persons bringing into Hong Kong from China or taking into China from Hong Kong more than 20 Gold Yuan and where persons have been found carrying a sum in excess of this figure it has been confiscated in the local courts. So far an amount of about 10,000 Gold Yuan has been so seized. With regard to the 10,000 Gold Yuan, I might add that confiscations by us are passed over to the Chinese authorities.

The foregoing is an indication of the formidable list of restrictions which a free trading community has inflicted on itself as a voluntary act to assist a neighbour. It is, I venture to say, unprecedented. But the climax is reached with the legislation now before Council. It is worth while examining what the present Bill gives to China and what it does not, for there have appeared in the press from time to time a number of suggestions that the powers of the Chinese Customs in Hong Kong are to be wider than is in fact actually contemplated and provided for in this Bill. Let me say straight away that the Customs Agreement will not stop smuggling. No agreement and no legislation yet devised by the wit of man has been able to do this. It has not stopped it in Europe, it has not stopped it in America and it will not stop it in China. Nor does the Agreement or this present Bill give the Chinese Maritime Customs power to search ships in Hong Kong, although if they have reason to suspect that unlawful contraband is on a ship about to sail for China they will be able to draw the attention of the Hong Kong Revenue Officers to this fact and the Hong Kong Officers will take action accordingly. The Chinese Maritime Customs will not have the privilege of setting up stations in the New Territories although all traffic leaving the New Territories for China will be directed to points where Chinese Customs stations exist. What the Agreement does do is to institute a system of control compatible with Hong Kong's sovereign status which will limit the movement of commodities from Hong Kong to China to those channels of which Hong Kong has control at this end and the Chinese Customs have control at the other. The effect must be to reduce smuggling to a minimum and to make it a yet more precarious operation, yet more unprofitable.

The measures which I have outlined have imposed a great burden on our administrative staff. I estimate the cost to the taxpayer in administering these various acts at over a quarter of a million dollars annually. We have placed at the disposal of China our administrative capacity. We have temporarily surrendered some of our sovereign rights at a time when sovereign rights are being ever more jealously hoarded in other parts of the world. But yet we have undertaken

all these measures willingly and it is reasonable to ask what we in Hong Kong receive in return for all of this. We, whose life is in free trade, have tied our ships and ourselves up in regulations and all but smothered our long-suffering traders with piles of forms in triplicate, quadruplicate and, I understand, even quintuplicate. The answer is that materially we gain exactly nothing in return; but two priceless non-material things we do gain. First, the satisfaction of standing by a neighbour and of doing what is right and decent. And the second is the knowledge that by our present actions we are contributing to the possibility of re-establishing in the Far East the conditions of peaceful and ordered trade without which our Colony has no real future and no useful future at all. We are in truth one world with Asia and in these days of economic difficulties which overshadow so many countries it has become in some measure fashionable for those who have to share with those who have not. We are, as I have said previously, only a small Colony and we have not largesse to distribute on a scale comparable with more richly endowed continents. Yet what we can do we have done. We are making our contribution to China with the faith and the hope that she will surmount the difficulties with which she is now beset. In her long history she has done so before and she will surely do so again. By this measure now More Council we shall have played our part. (Loud Applause).

THE ACTING ATTORNEY GENERAL seconded, and the Bill was read a First time.

### **Objects and Reasons.**

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

1. As appears from the preamble the object of the Bill is to carry out the agreement therein mentioned.
2. Clause 9(2) which gives a power of forfeiture of goods or cargo in respect of which an offence against the Ordinance is shown to have been committed, is based on section 13 of the Importation and Exportation Ordinance, No. 32 of 1915.

### **POST OFFICE (AMENDMENT) BILL, 1948.**

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Post Office Ordinance, 1926." He said: Sir, this Bill introduces a short amending Ordinance, the object of which is explained in the Objects and Reasons. Briefly, the amendment is required because the charges made for postal services locally include charges made by countries of transit and delivery. The latter charges are subject to alteration at too short a notice to permit the alteration of local rates by the Governor in Council. It is accordingly necessary to authorise the fixing of such rates by the Postmaster General, who will, nevertheless, be subject to the directions of the Governor in Council.

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. Under a number of agreements the Colony has to bear certain charges imposed by other administrations through whom postal articles are transmitted or by whom they are delivered.

2. These charges are liable to variation on notice but the notice given frequently does not enable the Governor in Council to determine under section 4 of the principal Ordinance a new rate of postage before the increased charges become operative.

3. The postage rates which the public in Hong Kong have to pay are inclusive rates which comprise the charges referred to in addition to a charge made for the services rendered locally. Unless this inclusive charge is raised simultaneously and in correspondence with the raising of charges which this Colony has to pay to other administrations, revenue will suffer and the inclusive charge will not cover fully the services rendered locally.

4. It is accordingly desirable that authority to determine postal rates in the first instance should be given to the Postmaster General while retaining power to revise such rates in the Governor in Council. In practice the Postmaster General will be directed to confine the exercise of his powers to those occasions where variation is necessary because of alteration of charges by other administrations leaving it to the Governor in Council to determine charges made for local services.

### **SUPPLEMENTARY APPROPRIATION FOR 1946-47 BILL, 1948.**

THE ACTING FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to authorise the appropriation of a supplementary sum of four million three hundred and thirteen thousand eight hundred and seventy-four dollars and nineteen cents to defray the charges of the financial year ending 31st March, 1947." He said: Sir, the financial report for the financial year 1946/47 was laid before this Council on the 19th March this year, and to-day there has been distributed to Honourable Members the detailed statement of expenditure for the same period.

For 1946/47, expenditure was estimated at \$167,854,576, but in actual fact the total expenditure only came to \$85,622,391 or about half the estimate. The reasons for this big difference are shown in the paper which is in the hands of Honourable Members. Despite the fact that expenditure over the whole sphere of Government was so much less than expected, six heads of expenditure showed excesses over the estimate at the end of the year, and it is accordingly necessary formally to approve these excesses by the Bill which is now before Council. They have already been agreed to by resolution in this Council.

I should like, with Your Excellency's permission, to take this opportunity of informing Council as to our financial position at the close of the financial year 1947/48.

The accounts for that year have just been finally closed, and I think it is probably safe to say that after charging to expenditure the total of the first four items of war expenditure on the list of outstanding liabilities which I enumerated in this Council in reply to a question on the 26th May last, the surplus on the year's working will be approximately \$35,000,000.

This satisfactory result should not lead us to think that we are yet out of the financial wood. We are still faced with very heavy liabilities, and there is a big programme of essential work which must be done as soon as it can be undertaken.

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

### **ISSUE OF DUPLICATE BONDS BILL, 1948.**

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to authorise the Accountant-General to issue duplicate bonds in lieu of bonds issued under the Public Works Loan Redemption Ordinance, 1933, and the Hong Kong Dollar Loan Ordinance, 1934, which have since been lost or destroyed." He said: Sir, as stated in the Objects and Reasons, the object of this Bill is to authorise the Accountant-General to issue fresh bonds in lieu of bonds, issued under the Public Works Loan Redemption Ordinance, 1933, and the Hong Kong Dollar Loan Ordinance, 1934, which were destroyed in order to prevent them falling into enemy hands, or were lost or destroyed during the Japanese occupation.

The bonds fall into two main classes—

first, those for which a written acknowledgment of Government's indebtedness was given to the holder upon destruction of the bonds; and

second, those for which the holder did not obtain any such acknowledgment. It is clear that in the former case fresh bonds can safely be issued, whereas in the latter case it is conceivable that the original bonds may have fallen into improper hands or that they may not, in fact, have been lost or destroyed in the manner alleged by the pre-war holder. This distinction is recognised by clause 4 of the Bill and also by sub-clause 3 of clause 5. Under clause 4 where there is no written acknowledgment, the Accountant-General may make the issue of any fresh bond conditional upon such indemnity and guarantee being entered into as he may in his absolute discretion require and under sub-clause 3 of clause 5, upon production of the original bond, the fresh bond ceases to have any validity. In order, however, to enable a good title to be ultimately made even in the case of bonds in respect of which no written acknowledgment is held, clause 6 provides that sub-clause 3 of clause 5 shall cease

to apply upon the expiration of 6 months after Gazette notification by the Accountant-General of his intention to issue a fresh bond. This means that after this period the holder of a fresh bond need not fear the production of original and by virtue of clause 7 Government will be protected against claims in respect of the original bond.

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 1940 and 1941 certain holders of bonds issued under the Public Works Loan Redemption Ordinance, 1933, and the Hong Kong Dollar Loan Ordinance, 1934, in order to prevent them falling into enemy hands destroyed them in the presence of a Government representative and were given a written acknowledgment of Government's continued indebtedness.

2. Other bonds were lost or destroyed during the Japanese occupation without any acknowledgment of Government's continued indebtedness but Government has on the production of satisfactory evidence paid interest and has authorised payment in cases where the bonds have been drawn for redemption.

3. While the bonds were negotiable to bearer the acknowledgment of indebtedness is not and it is desired to issue duplicate bonds in lieu of those lost or destroyed. The object of this Bill is to make the necessary legal provision.

4. Under clause 3 a discretion is vested in the Accountant-General to issue a fresh bond on satisfactory evidence that the original was lost or destroyed. Unless a written acknowledgment of indebtedness is held the Accountant-General may call for indemnity and guarantee. (clause 4).

5. Despite the fact that so far there have been no conflicting claims the Accountant-General does not propose to issue fresh bonds in cases where there has been no written acknowledgment of indebtedness until six months after *Gazette* notification of the intention to issue them. After the lapse of this period the original will cease to have any validity. See clause 5(3) and clauses 6 and 7.

### **BANKING (AMENDMENT) BILL, 1948.**

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Banking Ordinance, 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 Banking (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.

**THE HONG KONG ANTI-TUBERCULOSIS ASSOCIATION  
INCORPORATION BILL, 1948.**

THE HON. SIR MAN-KAM LO moved the First reading of a Bill intituled "An Ordinance for the incorporation of The Hong Kong Anti-Tuberculosis Association." He said: Sir, I do not think I can usefully add anything to the Objects and Reasons which accompany this Bill.

DR. THE HON. G. H. THOMAS 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 necessity of incorporation of The Hong Kong Anti-Tuberculosis Association arises from the fact that the Association will in due course acquire leasehold property in connection with its Sanatorium and it is most important that as Crown lessees they should be a body with perpetual succession.

2. It is also desirable that the Association should be incorporated and become a permanent body in view of the responsibility for the administration of the substantial grants which have been and may in future be made both from private sources and by the Hong Kong Government. In one case such grant is made conditional on the incorporation of the Association by Ordinance. It is the object of this Bill to effect such incorporation.

**BRITISH CIGARETTE COMPANY LIMITED  
(CAPITAL CONVERSION) BILL, 1948.**

THE HON. D. F. LANDALE moved the Second reading of a Bill intituled "An Ordinance to authorise the British Cigarette Company Limited to convert the currency of its capital."

THE HON. CHAU TSUN-NIN 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 HON. D. F. LANDALE reported that the British Cigarette Company Limited (Capital Conversion) Bill, 1948 had passed through Committee without amendment and moved the Third reading.

THE HON. CHAU TSUN-NIN seconded, and the Bill was read a Third time and passed into law.

#### **ADJOURNMENT.**

H. E. THE GOVERNOR: —That concludes the agenda for to-day. 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.