

20th October, 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. 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, K.T., 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 6th October, 1948, were confirmed.

ANNOUNCEMENT.

H.E. THE GOVERNOR: —Honourable Members will recollect that on the 2nd June last a resolution was passed by this Council asking me to make representations to the Secretary of State with a view to the immediate termination of Treasury Control over the finances of the Colony. A despatch has now been received from the Secretary of State indicating that Treasury Control has ceased with effect from the 1st April last.

Arrangements for control of Hong Kong finances as from that date are as follows: —

(a) Approval of the Secretary of State is required for—

The Annual Estimates;

Supplementary expenditure not provided in the Estimates involving capital items exceeding a million dollars and recurrent expenditure exceeding a quarter of a million per annum;

Expenditure involving important points of principle as, for example, changes in salary structure; and

Terms of issue of Government Loans.

(b) The Secretary of State's authority will no longer be needed for the writing-off of losses or of assets; authority for such writings-off will rest with this Council. Similarly the approval of the Secretary of State is no longer required for the abandonment of claims, but Finance Committee must be consulted where substantial amounts or questions of principle arise.

(c) The Secretary of State is to be kept fully informed of the Colony's financial position and of the general trend of its financial policy at least quarterly.

(d) He will consult with His Majesty's Treasury from time to time on all important matters affecting Hong Kong's finances, and finally, he points out that the key-note of the proposed arrangements is consultation rather than control, and emphasizes the necessity of his being kept constantly informed of financial trends. He has indicated that he will review the situation again at the end of this present financial year, when it is possible that the principle of consultation, now adopted, may be further extended.

PAPERS.

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

The Emergency Registration of China Companies Proclamation —
Registration of certain China Companies.

The Companies (Cessation of Emergency Status) Ordinance, 1947—Re-registration of certain companies.

The Emergency Registration of China Companies Proclamation — Registration of certain China Companies.

The Marriage Ordinance, 1875—The Stanley Garrison Church licensed under section 3 as a place for the celebration of marriages.

Amendment to Schedule III to the Law Amendment (Transitional Provisions) Ordinance, No. 2 of 1946.

The Rope Company's Tramway Ordinance, 1901 (Duration of Rights) Order, 1947.

The Hong Kong War Memorial Fund (First Schedule Amendment) Order, 1947.

Removal of quarantine restrictions imposed against Saigon on account of cholera.

Amendments to the Schedule to the Price Control Order, 1946, dated 3rd December, 1947.

Rescission of the Fifth Schedule to the regulations made under the Nurses Registration Ordinance, No. 1 of 1931, and substitution of a new schedule.

Amendment to Table E in the Regulations made under the Merchant Shipping Ordinance, No. 10 of 1899.

Removal of quarantine restrictions imposed against Wenchow on account of plague.

Removal of quarantine restrictions imposed against Wenchow on account of cholera.

Amendments to the Schedule to the Price Control Order, 1946, dated 10th December, 1947.

The Public Health (Sanitation) Ordinance, No. 15 of 1935—Extension to the New Kowloon Cemetery No. 1.

Amendment to the by-laws under the heading "Cemeteries." and sub-heading "B. Chinese Cemeteries." in Schedule A to the Public Health (Sanitation) Ordinance, No. 15 of 1935.

Amendments to the Schedule to the Prohibited Exports Order, 1946, dated 10th December, 1947.

Amendment to the Schedule to the Price Control Order, 1946, dated 17th December, 1947.

The Dutiable Commodities (Dispensation) (No. 2) Regulations, 1947.

The Moratorium Proclamation—Order of Exemption.

Removal of quarantine restrictions imposed against Formosa on account of cholera.

Removal of quarantine restrictions imposed against Formosa on account of smallpox.

Amendments to the Export Control Order, 1947, dated 22nd December, 1947.

The Export Control Order, 1947—Open Export Licence No. 1.

The Protected Places Declaration Order, 1947.

Amendments to the Schedule to the Price Control Order, 1946, dated 23rd December, 1947.

Annual Report of the Harbour Master for the year 1946-47.

Annual Report of the Superintendent of Imports and Export for the year 1947-48.

Annual Report of the Superintendent of Gardens for the year 1947-48.

Annual Report of the Commissioner, Rating and Valuation Department for the year 1947-48.

Annual Report of the Custodian of Property for the year 1947-48.

Annual Report of the Commissioner of Inland Revenue for the year 1947-48.

Annual Report of the Registrar of the Supreme Court, Official Trustee, Official Administrator and Registrar of Companies for the year 1947-48.

Annual Report of the Commissioner of Police for the year 1947-48.

Annual Report of the Commissioner of Prisons for the year 1947-48.

Annual Report of the Postmaster General for the year 1947-48.

Annual Report of the Sand Monopoly for the year 1947-48.

Report of the Director of Audit, Hong Kong, on the audit of the Accounts of Hong Kong for the financial period ending 31st March, 1947.

PETITIONS.

HON. P. S. CASSIDY: —Your Excellency: I beg leave to lay upon the table a petition which has been presented by the residents of Lugard Road, the Peak, in protest against the delay in repairing and reconditioning Harlech Road which suffered grievous deterioration during the Japanese occupation of the Colony. A copy of this petition has been circulated to Honourable Members and the original forwarded by me to the Clerk of Councils.

I do not think it is necessary for me to amplify the terms of this petition which seem to me quite clear. I might remark that for twenty years my home was in the district referred to and I had intended to repair it two years ago, but was deterred by the absence of any means of transportation, and secondly, unlike the authors of the petition, I lack the pioneer spirit. I beg that the Petition be referred to a Select Committee.

HON. N. O. C. MARSH seconded.

H.E. THE GOVERNOR: —The question is that this Petition be referred to a Select Committee.

This was agreed to.

H.E. THE GOVERNOR: —I appoint as members of the Select Committee the members of the Public Works Committee, of which the Director of Public Works is Chairman.

MOTIONS.

THE ACTING ATTORNEY GENERAL moved the following Resolution: —

Resolved that under the power conferred by section 43 of the Police Force Ordinance, 1948, the retrospective effect as expressed therein of the proposed Regulation in the Schedule hereto be approved.

SCHEDULE.

THE POLICE FORCE ORDINANCE, 1948.

Regulations by the Governor in Council

(under section 43 of the Ordinance)

In exercise of the powers conferred by section 43 of the Police Force Ordinance, 1948, and with the prior approval of the Legislative Council signified by resolution, the Governor in Council hereby makes the following amendment of the Police Pensions Regulations made under the Police Force Ordinance, 1932, as published in the Gazette of the 20th October, 1933.

AMENDMENT.

Sub-regulation (1) of regulation 7 of the Police Pensions Regulations is hereby amended with effect from the 26th day of December, 1941, by the insertion of the words "abolition of office or other" between the words "by" and "temporary" occurring in the third line thereof.

He said: —Sir, the amendment is required to enable certain non-gazetted Police officers who have been re-employed after retirement on abolition of office to count their service before and after retirement as continuous for pension purposes. A number of such officers have already retired for the second time and they will therefore not be covered by the proposed new Pensions Ordinance even if it should be made retrospective to 1st January, 1947. In the meantime these

officers have been awarded alimentary allowances which cannot be converted into pensions until the proposed amendment is passed. Gazetted Police officers who come under the terms of Pensions Ordinance No. 21 of 1932 are already covered in this respect under that Ordinance.

Chinese, Indian and European officers are affected and since the retirements took place during the occupation of the Colony the amendment must be retrospective and the most convenient date would appear to be the 26th December, 1941.

THE COLONIAL SECRETARY seconded, and the Motion was carried.

DIPLOMATIC PRIVILEGES BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to make provision as to the immunities, privileges and capacities of international organisations of which His Majesty's Government in the United Kingdom and foreign governments are members; to confer immunities and privileges on the staffs of such organisations and representatives of member governments and in respect of premises and documents of such organisations: to assimilate the law of the Colony relating to the immunities and privileges as to person property or servants of sovereign diplomatic agents or the representatives of sovereign powers to the law of England; and for purposes connected with the matters aforesaid." He said: —Sir, legislation has been passed in the United Kingdom to enable diplomatic privileges to be granted to the United Nations organisation to the representatives of member Nations and to the officials of the organisation as well as to the judges and registrar of the International Court of Justice. Action in the United Kingdom was taken by Order in Council made in exercise of the powers conferred by the Diplomatic Privileges (Extension) Act, 1944, as amended by the Diplomatic Privileges (Extension) Act, 1946, and was intended to give effect to the obligations of His Majesty's Government in respect of the United Kingdom under the Convention on the Privileges and Immunities of the United Nations and also under certain provisions of the Statute of the International Court of Justice and a resolution of the General Assembly of the United Nations relating to the privileges and immunities of such Court.

The object of the present Bill is to enable the Governor by notification in the Gazette to take similar action in Hong Kong.

Objects and Reasons.

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

The object of this Bill is to provide for the granting of diplomatic privileges and immunities to international organisations, such as the United Nations Organisation, and to the officials of such organisations.

2. The Bill, which follows closely the Diplomatic Privileges (Extension) Acts, 1944 and 1946, of the United Kingdom, provides for the declaration, by notification in the Gazette, of the organisations to which it shall apply, and sets out, in the Schedules, the privileges and immunities which may be conferred upon such organisations and their officials.

3. Various incidental matters are dealt with in clauses 2, 3 and 5, such as the publication of lists of the persons who are to enjoy the privileges and immunities, and the withholding of such privileges and immunities in the case of countries which do not give corresponding privileges and immunities to British nationals, while clause 4 makes special provision with respect to the United Nations.

4. In view of the fact that the immunities and privileges granted are expressed by reference to certain privileges accorded in England (see e.g. Schedule Part I, para. 3, Part II, para. 1 and Part IV) it is desirable to assimilate the law of the Colony in such matters to the law of England. This is achieved by Clause 6 of the Bill.

PAWNBROKERS AMENDMENT BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Pawnbrokers Ordinance, 1930." He said: —Sir, as stated in the Objects and Reasons, the Pawnbrokers Amendment Ordinance, 1947, will cease to have effect on the 31st day of October, 1948. That Ordinance shortened the periods within which redemption of pawned goods is to be effected thus enabling pawnbrokers to safeguard themselves more effectively against loss. Conditions are still unchanged but it may be that the time will come when the periods for redemption will once again have to be extended in the interest of the public as a whole and of persons pawning articles. The present Bill will enable redemption periods to be prescribed by regulation so as to avoid in this respect further amendment of the Ordinance.

Objects and Reasons.

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

1. The Pawnbrokers Amendment Ordinance, 1946, as amended by the Pawnbrokers Amendment Ordinance, 1947, will cease to have effect on the 31st day of October, 1948. If nothing further is done the result will be that the periods within which under section 16 of the principal Ordinance pawned goods may be redeemed will once more be 12 months for goods pawned in the New Territories other than New Kowloon and eight months elsewhere in the Colony.

2. It is considered that these periods should continue to be six months and four months respectively but that provision should be made enabling the Governor in Council to prescribe the respective periods by regulation under section 3 of the principal Ordinance. The present Bill seeks to give effect to the above by—

(a) amending section 3 so as to enable regulations to be made (Clause 2);

(b) repealing and replacing section 16 so that reference is to the prescribed periods and not to the fixed periods;

(c) making consequential alterations in section 20 (Clause 4);

(d) amending the existing regulations by prescribing the respective periods of six months and four months (Clause 5).

DEPORTATION OF ALIENS (AMENDMENT) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Deportation of Aliens Ordinance, 1935." He said: —Sir, this Bill introduces an Ordinance to amend the Deportation of Aliens Ordinance. The amendments will confer power upon the Supreme Court and magistrates to order the deportation of aliens who have been convicted of an offence and who have not been in the Colony for a consecutive period of one year prior to the commission of the offence. Such persons have been flocking to the Colony in increasing numbers and it is considered that in this type of case the judiciary and the magistrates should not be confined, as they are at present, to recommending deportation but should have power to order it. This power is now exercised by the Governor in Council whose powers are preserved by sub-section (3) of the proposed new section 8. Sub-section (4) of the same section provides for appeal to the Governor in Council.

The other innovation introduced by the Bill is to alter the present practice whereby a fresh deportation order is made against a deportee who unlawfully returns instead of enforcing the original order of deportation, which is the more usual practice in other Colonies.

Objects and Reasons.

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

1. As the law now stands a court or a magistrate may recommend but may not order, in lieu or in addition to sentence, deportation of an alien.

2. There have always been times when a large exodus takes place from South China and elsewhere to Hong Kong, and quite a large proportion of the immigrant population is either incapable of being absorbed into useful occupation for any length of time or has no such desire. The result in both cases is that these immigrants commit crime very shortly after they have entered the Colony.

3. It is considered that in this class of case, a court or a magistrate should have power to order deportation, and this is effected by clause 2 of the Bill which substitutes a new section 8 for the present section.

4. A conviction may be set aside on appeal or on review by a magistrate of his own decision. It is, therefore, necessary to provide that the deportation order should not be carried into effect pending

such appeal or review, and to empower the appellate or reviewing authority to revoke or modify any such deportation order (sub-clause (7) of clause 2). It may, however, happen that an alien against whom a deportation order has been made, may only wish to plead that he be given another chance on the ground, for example, that the offence is trivial or that sureties can be found for his further good behaviour. Provision has, therefore, been made for appeal to the Governor in Council (sub-clause (4) of clause 2).

5. As an additional safeguard power has been taken to confine the new section 8 to convictions for offences of certain kinds or to exclude certain offences from its operation (sub-clause (8) of clause 2). The good sense of magistrates should make it unnecessary to exercise this power.

6. Without strict immigration control the deportation of an alien from the Colony is no guarantee against his return, and deported aliens are returning in increasing numbers, very often with the intention of committing fresh offences in addition to the offence of entering the Colony in breach of a deportation order. The present practice is to make a fresh order of deportation against such alien. It is considered preferable to provide that the original order of deportation should continue to be enforceable and to make consequential provision for ensuring that the alien shall leave the Colony. Provision is made by clause 4 of the Bill.

PUBLIC ORDER BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to facilitate the maintenance of Public Order and Safety." He said: —Sir, I would like to add a few words in explanation of the Bill. The principal object of good government must necessarily be not only to provide the means to deal rapidly and effectively with serious threats to law and order but also so far as possible to forestall the development of any such serious threat. To achieve these objects it is not sufficient merely to take special powers when an emergency occurs because then the situation may well be grave indeed. We have all seen, for example, the stern measures required in Malaya to deal effectively with acts of political terrorism. Quite apart, however, from extraordinary menaces of this nature which, in any event, call for exceptional measures, Hong Kong is geographically in a position peculiarly vulnerable to any form of lawlessness and unrest in the Far East.

In these circumstances, it becomes foolhardy to refrain from endowing the Courts and the Executive with certain powers which are no menace to the law-abiding and well-intentioned citizen and indeed give him some reason to hope that those who may seek to stir up trouble and menace public safety and good order will be dealt with before they prove too dangerous. I should add that with the exception of the powers contained in clauses 9 to 12 of the Bill, powers given have their counterpart in the peacetime legislation of the United Kingdom and Singapore. While the powers contained

in clauses 9 to 12 of the Bill are principally required because of the facts mentioned in paragraph 4 of the Objects and Reasons and for the reason I have now stated, experience has shown that power to order evacuation of an area is also necessary in the public safety if a danger to life or property is threatened by fire or explosives or a combination of the two.

Objects and Reasons.

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

1. The object of this Bill is to facilitate the maintenance of Public Order and Safety.

2. The past twenty years have witnessed the growth all over the world of political parties organised more thoroughly than has been the case before and prepared in some cases to enforce their views by forcible methods. Clauses 3-5 inclusive of the Bill, which are based on similar provisions in the United Kingdom, are designed to curb the activities of such political organisations while at the same time preserving and strengthening the right of public meeting of ordinary peaceful citizens.

3. Apart from political organisations of the kind referred to there is always a threat to public order and safety from persons who seek to incite disaffection or who commit or incite violence of various kinds. It is not unreasonable that persons of this character should be made to give security for their good behaviour. Clauses 6-8 inclusive of the Bill seek to achieve this object. They are based on provisions of the Code of Criminal Procedure of Singapore.

4. The proximity of Hong Kong to Chinese Territory both by land and sea has always made it tempting for pirates and bandits to operate from Chinese territory. This tendency has been aggravated by the rise of guerilla bands during the Japanese occupation and by the fact that there is now a state of Civil War in China. It is thought that some of these bands may also have supporters in the Colony and quite recently there have been incidents on the border which have been a serious threat to public order and safety. These incidents may well recur and it is not right to expect the police and the services to take action for which they have no legal sanction. In order to be able to take effective counteraction with the minimum danger to the person and property of inhabitants of the Colony it is considered necessary that the Governor should have power—

(a) to declare a curfew within a specified area;

(b) to close an area to all persons not having the requisite permit;

(c) to order the evacuation of any area or place;

(d) to prohibit the movement or anchorage of any craft or the use of the waters of the Colony by craft of a specified class.

The above powers are conferred upon the Governor by clauses 9, 10, 11 and 12 respectively. Each power may be enforced by the use of firearms.

SMUGGLING INTO CHINA (CONTROL) BILL, 1948.

THE COLONIAL SECRETARY moved the Second 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."

THE ACTING ATTORNEY GENERAL seconded.

HON. SIR MAN-KAM LO: —Your Excellency, the last sitting of this Council a fortnight ago is memorable for the introduction of this Bill which is now before us on its Second reading, and for the able and brilliant speech in support of its First reading by my Honourable Friend, the Colonial Secretary. As the whole subject has been dealt with comprehensively by the Colonial Secretary, its historical background, the effect and scope of the Customs Agreement, and, above all the spirit which animated the Hong Kong Government throughout, I should be more than content to abstain from making any remarks which must of necessity be superfluous. But in order to avoid any possibility of misunderstanding which may arise from the silence of the Unofficial Members on this occasion, I feel I must say a word even if only to emphasize that in my view, the voice of the Colonial Secretary in introducing the Bill, is the voice of the Colony. We do not want, and have never wanted, to profit by China's difficulties. We realise, and have always realised, that the healthy prosperity of China is the only foundation of a healthy prosperity in Hong Kong. We therefore must willingly forego easy profits as our small contribution to China's well-being. This is what this Agreement does; this is all that is in our power to do. We do it most willingly and with complete unanimity because it does make some small contribution to the financial stability and so, to the happiness of the industrious millions of our great neighbour.

Sir, a perusal of the Hansards for, say, the past quarter of a century will reveal that the desire of this Colony to maintain and, if possible, ever to increase the traditional friendly relations between Hong Kong and its great neighbour has been the theme in this Council of Your Excellency and your predecessors, as well as of the Unofficials on numerous occasions. I would fain hope that the conclusion of the Customs Agreement and of the passage of this Bill into law, may materially increase these friendly relations to which I have alluded, and create that atmosphere of mutual confidence and goodwill in which any questions can be settled as between two intimate friends. As the Honourable Colonial Secretary has reminded us, we are neither great nor powerful, but on however humble a scale, I would like to regard certain provisions of the Agreement and of this Bill as a temporary leasing of our Sovereign rights and some other of the provisions as a lending of our administrative services.

In short, I would like to feel that this Colony is following the great American lease and lend measure which has been described by Mr. Winston Churchill in his historic phrase as "the most unsordid act in the whole of recorded history." If it be presumptuous for us even to associate the conception of lease and lend with any action which we may be privileged to take in this tiny Colony, we can at least have the satisfaction of having done another truly unsordid act. For all we know, this may in itself be an example to others and perhaps the great and powerful. (Applause.)

The Bill was read a Second time.

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

Clause 6.

THE COLONIAL SECRETARY: —Sir, I wish to move an amendment to sub-section (3) of this clause by the insertion of the word "to" before the word "obstruct" in the third line thereof.

Clause 8.

THE COLONIAL SECRETARY: —Sir, I beg to move a small amendment to sub-section 1(c) by the insertion of a hyphen between the words "Kowloon" and "Canton".

Clause 9.

THE COLONIAL SECRETARY: —Sir, I beg to move that in sub-section (3) the words "in writing" be removed from their present position to the second last line after the words "three days' notice".

The amendments were agreed to.

Council then resumed.

THE COLONIAL SECRETARY reported that the Smuggling into China (Control) Bill, 1948 had passed through committee with three amendments and moved the Third reading.

THE ACTING ATTORNEY GENERAL seconded, and the Bill was read a Third time and passed into law.

POST OFFICE (AMENDMENT) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Post Office Ordinance, 1926."

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 Post Office (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.

SUPPLEMENTARY APPROPRIATION FOR 1946-47 BILL, 1948.

THE ACTING FINANCIAL SECRETARY moved the Second 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."

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 FINANCIAL SECRETARY reported that the Supplementary Appropriation for 1946-47 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.

ISSUE OF DUPLICATE BONDS BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the Second 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."

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 Issue of Duplicate Bonds 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.

HON. SIR MAN-KAM LO moved the Second reading of a Bill intituled "An Ordinance for the incorporation of The Hong Kong Anti-Tuberculosis Association." He said: Sir, I may say that my

attention has been drawn to the fact that a marginal note is missing from clause 5 of the Bill, and at the appropriate stage I will move an amendment to cure this omission.

DR. THE HONOURABLE G. H. THOMAS seconded, and the Bill was read a Second time.

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

Clause 5.

HON. SIR MAN-KAM LO: —Sir, I move that the word "Seal" be inserted as the marginal note to this clause.

This was agreed to.

Council then resumed.

HON. SIR MAN-KAM LO reported that The Hong Kong Anti-Tuberculosis Association Incorporation Bill, 1948 had passed through committee with one small amendment and moved the Third reading

DR. THE HONOURABLE G. H. THOMAS seconded, and the Bill was read a Third time and passed into law.

MOTIONS.

HON. SIR MAN-KAM LO moved the following resolution: —

That in the opinion of this Council, as regards matters which are not of emergency to the Empire or of imminent danger to the Colony, Government should not resort to or continue to exercise any Emergency Powers conferred otherwise than by Ordinances of this Legislature, but that any Emergency Powers which Government might consider it necessary to retain should as soon as practicable be replaced by legislation.

He said: Sir, I propose to commence the few remarks I have to make in support of this motion by reminding Honourable Members that this question was raised in this Council as long ago as March, 1947. In the Budget Debate held on 27th March, 1947, I had occasion to refer to the fishing industry and marketing of vegetable schemes and to complain that these schemes were being continued under Emergency Powers. I then said: "During the transitory period between War and Peace it is inevitable that certain emergency powers, such as those conferred by the Defence Regulations, 1940, should be continued in operation by appropriate enactments even though the Civil Government of the Colony was resumed on 1st May, 1946. But I feel very strongly that Government should not resort to such emergency powers if action could be taken without injury to public interests, through the ordinary constitutional.

"Sooner or later these Emergency Powers must lapse and Government, if it wanted to continue the schemes, would have to come to this Legislative Council for the necessary enactments. I therefore suggest to Government that such a step should be taken in the near future, and I urge, I repeat, that in matters of such grave importance affecting such large sections of the community, any future action should be taken by ordinary legislation, and not under Emergency Powers." (Hansard 1947, pages 72 and 73.)

H.E. Sir Mark Young, in the course of his reply in this Debate, said: "The Honourable Mr. M. K. Lo made an appeal to the Government to replace by ordinary legislation the Emergency Powers under which certain schemes are being operated. Naturally and necessarily the Government agrees with the view that as the period of emergency recedes any powers which are expected to be permanently required must be brought with the least possible delay on to the Statute Book. The matter has not been lost sight of in the past, but I shall see that in the light of what the Honourable Member has now suggested the question of what powers are to be made permanent shall be again examined in order that where legislation is necessary, it may be prepared forthwith or as soon as possible for the consideration of this Council." (Hansard 1947, page 95.)

In the Budget Debate held on 3rd March, 1948, I referred once again to the fact that these two schemes were being continued under Emergency Powers. (Hansard 1948, page 82.) This Debate was continued on 1st April, 1948. The Honourable J. B. Griffin, K.C., Attorney General, intimated that the matter was again under consideration to decide whether and, if so, what legislation should be enacted in regard to these two schemes, but did not go into the general question of Emergency Powers. (Hansard 1948, pages 108 and 109.)

I must assume, Sir, that in accordance with Sir Mark Young's statement, the question of what powers are to be made permanent have again been examined in order that where legislation is necessary, it may be prepared forthwith or as soon as possible for the consideration of this Council. I can only say, Sir, that the results of Government's labours in this direction have not been made apparent to the public. It may be noted that my motion does not contemplate either that the Emergency Powers should be repealed or that they should not be exercised in regard to matters which are of emergency to the Empire or of imminent danger to the Colony. If this were not so, I am the first to admit that this motion would not commend itself to this Council in view of the world situation which unhappily exists. This motion concerns itself only with matters of day to day affairs in the Colony. Take the question of Price Control. I believe there is a Price Control Committee, but what are its powers and functions, we do not know. What rights, if any, which an aggrieved person may have by way of appeal from a decision of the Price Controller, we do not know. Then take the case of the recent order prescribing hotel rates. Here I hasten to declare that as the Chairman of the Directors of the Hong Kong & Shanghai Hotels, Ltd., I am an

interested party. Perhaps I should confess to a further interest. According to the Press reports of a Police Court case in which the management of this Hotel was summoned by the competent authority under some Emergency Powers for having given some alleged false or inaccurate return, a summons was to be issued against all the Directors of the Hotel company for this alleged offence. But quite undeterred by this threat which my Honourable Friends may perhaps be relieved to hear, has not yet materialised, I am bound to say that the arbitrary way in which the competent authority exercised his powers in the matter of hotel rates has shown the grave risk to the public of untrammelled executive authority and the urgent and imperative need of having Emergency Powers in regard to day to day affairs of the Colony replaced by legislative measures which can openly be debated and appropriate safeguards can be introduced.

I therefore move the Motion standing in my name. (Applause.)

HON. LEO D'ALMADA: —I second this motion because obviously the only justification for emergency powers is where ordinary legislative process would be too tardy; and public expediency cannot call for the exercise of such powers except in an emergency.

Essential though such powers may be for the efficient prosecution of a war, however convenient or advisable for the conditions prevailing in Hong Kong during the first year or two after the liberation, they surely cannot be said to be necessary for the efficient prosecution of the peace, which is the object of present-day controls.

The danger of such powers lies in that they are practically free of judicial supervision. A long line of decisions since World War I has made it clear that Only where the act sought to be done under such powers is either *ultra vires* or not *bona fide* can the assistance of the Courts be effectively invoked. So long as the powers are not exceeded in this sense, there is no limit to what may be done in their name.

A classical illustration of this is furnished by a case which went to the Court of Appeal in 1943. In that case, the plaintiffs attempted to impugn an order of the Minister of Fuel and Power and in the course of the action, led evidence—and here I use the words of Lord Greene who delivered the judgment of the Court of Appeal—"the effect of which was said to be to show that there were no adequate grounds on which it could appear to the Minister that such an order was necessary as required by the regulation; that the case speaks for itself and that either the Minister was misled by inaccurate information or that he failed to make the enquiries which he should have made; or that the evidence on the face of it was insufficient; or that the order was made because somebody in the staff of the Minister had been frightened by an unsubstantiated bogey and he had made the order in a state or some sort of panic in the Ministry".

The Court held that it had no power to review the order in that case by reason of what I stated earlier, for which reason it did not examine the evidence or decide whether the case had, in fact, been

made out; but that the evidence made out by the plaintiffs was cogent, there can be no doubt by reason of two facts: first, the evidence was led by responsible counsel (Mr. Vaser, K.C., and Mr. Robert Fortune appeared for the plaintiffs) and secondly, the case was the subject matter of questions in the House of Commons and debated in the House where considerable dissatisfaction was expressed at the order of the Minister.

The result then, is that the excessive zeal of a competent authority, or a so-called competent authority, is not liable to that check which is so necessary where powers are vested in an individual who, to use the words of a distinguished judge, may be someone whose name you do not know, sitting at a desk in a Government office, who is very apt to be a despot if free from the interference of the Courts of Justice. To this the answer may be that if such a person were to act unreasonably or otherwise abuse his powers, representations would meet with the appointment of a Committee of Inquiry to report on the matter in question. But here again, however efficient and wisely chosen the Committee, the objection is the same—that from the decision or recommendation of such an *ad hoc* body there is no appeal, and a dissatisfied person or party can do nothing about it. I believe it to be eminently desirable that, unless conditions demand it absolutely, recourse to the judiciary, an independent body which for centuries has been the best guardian of the liberties and rights of the individual, should not be denied to the subject.

I do not wish it to be thought for one moment that I am against controls as such. For the Colony's economy and the welfare of the community it may well be that control in different spheres must continue for many years to come. But let us have a return to powers granted by legislative and constitutional methods, subject to scrutiny by the Courts, rather than continue to exercise those powers under an Act and Order in Council which have practically emasculated judicial control.

HON. N. O. C. MARSH: —Your Excellency, I rise to support the motion proposed and seconded by my colleagues, the Hon. Sir Man-kam Lo and the Hon. Leo D'Almada, for the good reason that I am perturbed by the loss of confidence in certain informed circles which has resulted from Government's use of these outmoded Defence Regulations.

I need not stress the importance to sound government of creating and preserving public confidence. Public confidence is a pre-requisite of stability. It is admitted there are times—for example, in war or in some national emergency—when trade, commerce and industry must be subordinated to the national cause. In such circumstances, bureaucratic measures, however wide-reaching, and however prejudicial to normal pursuits, will be accepted by the public with increased rather than diminished confidence in the Government. But in normal times, when any class of business or commercial

undertakings have to be carried on under the shadow of emergency powers conferred on a "Competent Authority" who, with dictatorial discretion, and with denial of any prescribed rights of appeal, can virtually destroy those undertakings, then the whole basis of confidence is destroyed.

In this regard there is no question but that the confidence of the community in the generally understood basis of constitutional government has already received a shock through the attempted application to times of peace of an arbitrary power designed and tolerated for the purpose of common defence in war. Any uncertainty in the methods of government that may be applied in future may undermine further the only basis on which a commercial and mercantile community can proceed to work on a long term policy. The texture of finance and commerce is far too delicate to be meddled with by any departmental authority that may not understand and respect the continuity of the threads which have taken a century to weave into the present comparative prosperity of the Colony.

There is another serious aspect of the policy of applying the arbitrary power of a competent authority under the Defence Regulations—and that involves a constitutional issue. Anglo-Saxon administration and government is based on the rule of law. The law in this Colony, as I understand it, is enacted according to a systematised process by a Legislative Council which, if not elected in the way Parliament is in England, still is deemed to be representative of the main interests of the Colony. If executive action is taken under orders made in pursuance of Regulations for the conduct of war and defence without their special application to peace-time conditions by the Legislature, it seems to me that the functions of the Legislative Council are being crushed or at least short-circuited. If this by-passing process is once established there is no knowing where it may stop. I cannot see that there is now any emergency or any good reason why the ordinary rule of law should be suspended, or why any measure which is to be applied as law in the Colony, and by which the residents are to be bound should not be submitted in the ordinary way to the Legislature. In the long run it does not pay to sacrifice principle, and any sacrifice for a temporary reason may cost dearly in the undermining of confidence.

In Hong Kong, despite the difficult times the Colony has faced, we have good reason to be proud of our post-war achievements, and it is no over-statement to say that throughout the Empire this Colony has been characterised as an outstanding example of enterprise and good government. One follows the other in that order, and I would earnestly express the hope that in the best interests of the Colony Government will use every means at its disposal to help initiative and enterprise and not hinder the march of progress by the application of arbitrary emergency powers to non-emergency conditions, the serious repercussions of which course, to my mind, are easy to visualise—I refer to the grave possibilities of the flight of capital, loss of purchasing power, diminishing trade, unemployment and with

it, lawlessness. We must surely guard against any policy that is other than constructive and in full accord with the ordinary constitutional process of good legislation—if not, I fear we will undermine our existence as a commercial community in which law, order, justice and stability prevail.

HON. P. S. CASSIDY: —Sir, I rise to support the motion which, in my opinion, is long overdue. This Colony rightly takes credit for a rapid return to normal life, although perhaps normal in that respect is a merely relative term. We do, however, consider that war-time conditions have come to an end despite the various trade and exchange controls which appear to us inevitable and what we expect in present times. What we do expect is that the powers granted under the Defence Regulations should be withdrawn as soon as possible and that, in future, recourse should be had to the regulations only in exceptional circumstances.

In my innocence I was quite under the impression that whenever those powers were invoked the sanction of this Council was previously sought. In fact, I rather accused my Unofficial colleagues of being responsible for a situation arising from the exercise of certain powers, when one and all turned on me and denied that they had anything to do with the matter. I realise now, of course, how much power can be wielded without the Legislature coming into the picture at all.

My friend, the mover of the motion, has already referred to Price Control. Perhaps I might claim to know a little more of the position than he does. Under these regulations the Director of Supplies, Trade & Industry has the power to control the price of every commodity sold here, although in practice he delegated those powers to another official. When goods were in short supply there was every justification for price control and I think most business people here were satisfied that the margins allowed to importer, wholesaler and retailer were fair. Personally, I feel (although my opinions are not generally shared), but I do feel that in its early stages price control was applied not unreasonably and that it has, on the whole, kept in check a tendency to profiteer. Now that there are ample supplies and in some respects actual glut, I think the time has come when the law of supply and demand should be allowed to operate. Importers are put to an enormous amount of trouble in digging out their invoices and supplying the Price Controller with details of all their inward shipments, and, of course, quite a great proportion of these shipments never reached the retailer, but are exported to other markets. In the case of luxuries, and particularly the seasonal goods, there is a considerable risk of having stocks left on one's hands for possibly some months and have to be carried on to next year. This is a contingency which the Price Controller seems to ignore. I am convinced that the powers of the Price Controller were intended to be applied to essentials only. It seems to me to be futile for the Price Controller to spend his time and that of his staff in working out ceiling prices for luxuries. Unless these prices allow a reasonable profit the chances are that they will be ignored because one must bear in mind that this is only because they are enforced that they are acceptable to the Price Controller's ruling.

Now, leaving price control for a moment, there is the ban on the export of various commodities. Some cases may be fully justified but if I might single out one case—that of steel—the effect is to stop a perfectly reasonable trade in certain lines of metal of which there is an ample supply in the Colony. The Chinese Chamber of Commerce, on behalf of the Metal Dealers' Association, and in connection with the General Chamber have brought the matter before the Department of Supplies, Trade & Industry, but I am afraid they are still awaiting a reasonable answer. In the meantime, certain firms are holding on to quotas which they have obtained for certain lines of metal into China where they are required and where they can do nothing. These particular lines are of no use to the Colony because they are below the grade insisted upon for local use.

I will not weary you with any further instances of the frustration, but I would like to say that there is a laudible desire on the part of the officials concerned to accommodate themselves to commercial requirements and although differences of opinion are sometimes sharp, relations generally speaking are quite harmonious. It is, of course, the system which is to blame.

Before I sit down I should like to suggest that if the motion is carried, Government should introduce an Ordinance to invest the Port Executive Committee with the various powers which at present are derived from the Defence Regulations. In the event of an emergency the Port Executive Committee will be required to act swiftly and it seems to me that this Committee having proved its worth since the liberation should be fully empowered to carry on its good work.

I hope that the motion before the Council will be accepted and that we can look forward to a resumption of the ordinary method of legislating by ordinance and not by decree.

THE ACTING ATTORNEY GENERAL: —Sir, as I understand the motion, it does not mean that Government should not exercise any Emergency Powers but that Government should shed itself of those Emergency Powers which are no longer required and should so far as practicable incorporate in permanent legislation Emergency Powers which it considers it still requires so that the question of the necessity of such powers and the safeguards against their abuse may be considered by this Council.

I hasten to say that if I have correctly interpreted the spirit of the motion it has not only the sympathy but the agreement of Government. Government dislikes emergency powers which have not been conferred by this Council just as much, if not more, than the public because such powers imply that the governmental machine cannot operate normally.

I would, however, be doing justice neither to the honourable members who have spoken in support of this motion nor to Government if I did not elaborate precisely how Government stands in the matter of Emergency Powers. First and foremost Government would rather

dispense with arbitrary or exceptional powers altogether if it could and paradoxically enough this desire leads to the powers being continued in regulation form precisely because it is considered that the controls will not be required long enough to warrant permanent legislation. To sound a personal note, this tends even more to be the case when there is shortage of staff and an incessant demand for legislation of a permanent character. As you know, Sir, we have already enacted this year 50 Ordinances apart from to-day's business and the total will probably be up to 75 before the end of the year. I can nevertheless offer some comfort. A Bill to deal with the fishing and marketing schemes has already been drafted by my department and is being now considered by interested departments before being presented to Government. My department has also, in consultation with other heads of departments, been considering the possibility of dispensing with certain defence regulations or incorporating them in more permanent legislation. Let us take Finance first. Hong Kong is a member of the sterling area and must fulfil the obligations imposed on members of the sterling area if she is to have the privileges which are accorded to members. An exchange control must therefore be maintained here and must be run in accordance with the wishes of the central authorities of the sterling area. The powers for exercising such control are conferred by the Defence Finance Regulations, 1940.

Up to fairly recently powers of exchange control in the United Kingdom were exercised under similar Defence Regulations but these regulations were recently repealed and replaced by permanent legislation in the form of an Exchange Control Act. I see no serious objection to similar action being taken here; it is merely a question of whether the powers are to be taken under Defence Regulations or under permanent legislation. In any event the application of these regulations has not been criticised by the honourable mover of this motion and I assume that he does not suggest there is any great urgency in this particular sphere.

Let us now turn to other forms of economic control.

Many commodities are still in short supply, some being under international or regional control, such as rice, oils and fats, tin. International control imposes certain obligations in relation to import, export and consumption policy, while the need to secure an equitable internal distribution, by direct rationing or by any other suitable method, entails controls on all transactions in these particular commodities. Again certain scarce commodities are only made available by the producing territories on certain conditions, which may make necessary controls on imports, distribution or re-export; (tinplate, for example, is supplied by the United Kingdom for the canning of food only); failure to implement these conditions would result in supplies being cut off. There are also some essential commodities, such as preserved milk and steel, which has been mentioned by one honourable member, which, while not subject to international control, are in short supply and must be subjected to export control if adequate supplies are to be reserved for local requirements. Again, while essential supplies are short or unreliable and inflationary tendencies exist, it is essential to retain power to control prices.

It is not possible to estimate how long there will be a continuing necessity for these controls, but they are kept under constant review and within their framework the greatest freedom possible is given to commerce. It may well be that price control will be relaxed in the not too distant future. Import and Export restrictions could, if certain ancillary powers were conferred, be dealt with under the Importation and Exportation Ordinance, 1915. This will be further considered.

The honourable mover of the motion has asked what the functions of the Price Control Advisory Board are. The Committee is a purely advisory body, as indeed appears from Government Notification No. 36 of 1947 under which it was set up and it is difficult to see how it could be anything else. Any person aggrieved by the decisions of the competent authority has his ordinary remedy by petition. I fully admit that it is only very indirectly and in very exceptional circumstances that he can be heard by the Courts.

Apart from control of commodities, it is still considered necessary in the public interest to retain power to control charges for services. I can assure Council that any exercise of these powers will be preceded by consultation with the bodies supplying them. In view of the variety of matters involved these powers are not, in my view, suitable for incorporation in permanent legislation. Even if they were I doubt whether they would differ substantially from existing powers. The Hon. Sir Man-kam Lo has commented on the control of hotel rates. As this matter has been referred by Government to a Committee, I prefer to make no comment except to say that it is the declared policy of my department in the case of offences committed by corporations not to launch proceedings against directors unless there are indications that they have been personally involved. (I hasten to say that there is no such indication in the case of the honourable mover of this motion.) (Laughter). Whatever the decision may ultimately be in the matter of hotel rates, Government cannot but regard the question of shortage of accommodation as one which necessitates the retention and indeed the strengthening of the power of requisitioning, though it may well be that in view of the troubled conditions elsewhere and the likelihood that the shortage will continue, that consideration should now be given to the desirability of dealing with this matter by Ordinance. It must not, however, be overlooked that many existing Defence Regulations, including power to requisition, will expire on the 31st of this month unless they are kept in force. The process of revision and incorporation in Ordinances cannot be completed before then and it will accordingly be necessary formally to keep these regulations in force and to exercise as I have indicated some of the powers so retained until the process of revision and incorporation is completed. (By revision I do not mean General Law Revision; I mean revision of Defence Regulations.) These qualifications are not, in my view, inconsistent with the spirit of the motion, which is welcomed by Government and which, I feel sure, will bring to the notice of all concerned the desirability of returning

at the earliest possible moment to normal peace-time conditions, and to clothe these Emergency Powers in ordinary legislative form so that they can be subjected where required to the control of the Courts.

I may also say that the Unofficial Members who have spoken in support of the motion and whose points I might not have dealt with specifically may rest assured that the observations they have made to-day will receive not only the consideration of Government but the consideration of the competent authorities affected.

There is one point that I may deal with now—the question of the Port Executive Committee. I am given to understand that the Port Executive Committee is not in fact resorting to any Emergency Powers, although they have, in fact, certain Emergency Powers which they could use. The powers given to the Director of Marine under the Merchant Shipping Ordinance are normally sufficient for their purposes.

HON. SIR MAN-KAM LO: —Sir, I desire merely to say a word of appreciation for the very fair and sympathetic manner in which the Attorney General, on behalf of Government, has replied to this motion. I would like to say, Sir, that the acceptance of this motion on the part of Government is a cheering matter of gratification to us, much more so than his observations on points of detail. Speaking for myself, I really do not know where we stand, but all I hope, Sir, is that this is yet another undertaking by Government to replace emergency legislation wherever possible as soon as possible. Having got that undertaking, we the Unofficials, will certainly keep the matter in mind and it may be that in 6 months, 9 months or two years time we may have to quote my friend the Hon. Attorney General (laughter). In the meantime, I do hope that by administrative action or otherwise you, Sir, will somehow see to it that the fiascos which we have seen lately will not be repeated. (Applause.)

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 seven days, Sir.

This was agreed to.

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