

17th January, 1951.

PRESENT:

HIS EXCELLENCY THE GOVERNOR

SIR ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, K.C.M.G.

THE HONOURABLE THE COLONIAL SECRETARY

MR. JOHN FEARNIS NICOLL, C.M.G.

THE HONOURABLE THE ATTORNEY GENERAL

MR. JOHN BOWES GRIFFIN, K.C.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. RONALD RUSKIN TODD.

THE HONOURABLE THE FINANCIAL SECRETARY

SIR CHARLES GEOFFREY SHIELD FOLLOWS, C.M.G.

DR. THE HONOURABLE ISAAC NEWTON

(Director of Medical and Health Services).

THE HONOURABLE PATRICK CARDINALL MASON SEDGWICK

(Acting Chairman, Urban Council).

THE HONOURABLE THEODORE LOUIS BOWRING, O.B.E.

(Director of Public Works).

THE HONOURABLE CHAU TSUN-NIN, C.B.E.

DR. THE HONOURABLE CHAU SIK-NIN, C.B.E.

THE HONOURABLE MAURICE MURRAY WATSON.

THE HONOURABLE PHILIP STANLEY CASSIDY.

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY.

THE HONOURABLE LO MAN WAI, O.B.E.

MR. ROBERT MARSHALL HETHERINGTON *(Deputy Clerk of Councils).*

ABSENT:

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

MAJOR GENERAL GEOFFREY CHARLES EVANS, C.B., C.B.E., D.S.O., *Acting.*

THE HONOURABLE LEO D'ALMADA E CASTRO, K.C.

MINUTES.

The Minutes of the meeting of the Council held on the 3rd January, 1951 were confirmed.

OATHS.

The HON. P. C. M. SEDGWICK and the HON. T. L. BOWRING, O.B.E., took the Oath of Allegiance and assumed their seats as Members of the Council.

PAPERS.

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

<i>Subject.</i>	<i>G.N. No.</i>
Sessional Papers, 1951: —	
No. 1—Annual Report by the Custodian of Property and Custodian of Enemy Property for the year 1949/50.	
No. 2—Annual Report by the District Commissioner New Territories for the year 1949/50.	
The Emergency Regulations Ordinance, 1922.	
Emergency (Merchant Shipping Ordinance, 1899) (Amendment) Regulations, 1951	A. 1
The Industrial and Reformatory Schools Ordinance, 1932.	
Reformatory Schools Regulations, 1951	A. 2
The Quarantine and Prevention of Disease Ordinance, 1936.	
Declaration under section 18	A. 5
The Emergency Regulations Ordinance, 1922.	
Emergency (Registration of British Subjects) Regulations, 1951	A. 6
The Emergency (Requisition) Regulations, 1949.	
Appointment of Competent Authority under Regulation 2(4)	A. 7
The Quarantine and Prevention of Disease Ordinance, 1936.	
Declaration under section 18	A. 8
The Defence Regulations, 1940.	
Price Control Order, 1946—Amendment of Schedule	A. 9

SUPPLEMENTARY PROVISIONS FOR THE YEAR 1949—50.

THE FINANCIAL SECRETARY moved—

That the additional supplementary provisions for the fourth quarter ended 31st March, 1950, Schedule No. 5 of 1949/50 be approved.

He said: Your Excellency, this schedule sets out the final excesses on the various heads and sub-heads of the Estimates at the close of the financial year 1949/50, and thus clears the way for the final disposal of the finances for that year by a Supplementary Appropriation Ordinance.

All the items in the Schedule have been approved by Finance Committee and only in a few cases are large amounts involved. Two of these, for \$592,509 and \$2,949,372 respectively, relate to Unallocated Stores held by the Kowloon Canton Railway and the Stores Department. In the former case, equipment arrived in large quantities at the end of the financial year and there was not sufficient time to charge it off to expenditure subheads. In the latter case, the large balance on the Unallocated Stores account was due to a failure to cancel certain indents for re-inforcing steel which, owing to delays in delivery, had to be duplicated by local purchases. This resulted in the holding of an excessive stock of re-inforcing steel at the end of the financial year, but this stock has since been considerably reduced as it is always being drawn upon for construction work, and a quantity surplus to foreseeable requirements has been disposed of at a profit.

The only other large special warrants include one for \$1,481,600, which is in respect of stores and ammunition ordered in 1948 to serve as initial equipment for the Defence Force. The accounts for this were not presented until the last quarter of 1949/50. The special warrant for \$224,600 under the Medical Department Head, in respect of medicines and instruments, became necessary because stores which were expected to arrive before the end of the financial year 1948/49 were not finally delivered until 1949/50. The special warrant for \$213,000, in respect of works executed on private account, is of course balanced by recoveries which have been credited to revenue.

THE COLONIAL SECRETARY seconded, and the Motion was carried.

DIPLOMATIC PRIVILEGES (AMENDMENT) BILL, 1951.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "an Ordinance to amend the Diplomatic Privileges Ordinance, 1948". He said: Sir, the Diplomatic Privileges Ordinance, 1948 was enacted in that year to provide for the granting of diplomatic privileges and immunities to international organizations such as the United Nations Organization and to the officials of those Organizations.

Sir, that Ordinance of 1948 followed closely the Diplomatic Privileges (Extension) Acts, 1944 and 1946 of the United Kingdom, but those Acts were, in turn, repealed and replaced by a further Act of 1950 intituled the International Organizations (Immunities and Privileges) Act, 1950. Sir, that Act enlarged the field of privilege as granted by the previous Acts, and as granted as at this date by our Ordinance of 1948 in that it extended privilege to any persons who are representatives of an organization or who are members of any such Organization.

Now, Sir, it is necessary that the legislation of this Colony keep in step with the United Kingdom on this subject of immunities and privileges extended to International Organizations. It is with this objective that this Bill is introduced. In this Bill, the principal amendment is embodied in clause 2 which provides for the repeal and replacement of subsection (1) of section 2 of the Ordinance of 1948.

The other clauses of the Bill are consequential on this main amendment which, as I have mentioned, is necessary to be made in order to attain the objective of uniformity to which I have referred.

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: —

The introduction of this Bill is necessitated by the enactment in the United Kingdom of the International Organizations (Immunities and Privileges) Act, 1950, which consolidated and amended the Diplomatic Privileges (Extension) Acts, 1944 and 1946, on which the Diplomatic Privileges Ordinance, 1948, (the principal Ordinance) was based. The purpose of this Bill therefore is to ensure that the law of the Colony relating to diplomatic privileges and immunities is kept in accord with the law pertaining in the United Kingdom.

2. The principal amendment sought to be achieved is contained in clause 2, amending section 2 of the principal Ordinance, which enlarges the field of privilege in that "any persons who are representatives (whether of governments or not) on any organ of the organization or are members of any committee of the organization or of an organ thereof" come within the scope of the Ordinance, instead of governmental representatives alone being covered as in the principal Ordinance. In another respect, the Bill may reduce the field of privilege in that notifications made by the Governor will in future have to be framed so as not to confer privileges or immunities greater than are required "to give effect to any international agreement in that behalf".

**LAW REVISION (MISCELLANEOUS AMENDMENTS)
BILL, 1951.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend miscellaneous Ordinances for the purpose of facilitating the preparation of the revised edition of the laws." He said: Sir, Honourable Members have by now become well familiar, perhaps too familiar, with legislation which it has been necessary to present to this Council during the past year for the purpose of general law revision. This bill represents further legislation within the same category. It will be seen, Sir, that the Bill, by clause 2, seeks to amend some six separate and distinct Ordinances which are itemised in the Schedule to the Bill. With regard to the majority of these Ordinances the amendments perhaps are of a small and formal nature. It suffices, I feel, Sir, to mention in particular only items 5 and 6 which provide for amendments to the Mercantile Bank Note Issuing Ordinance, 1911 and the Currency Ordinance, 1935. The amendments are fairly extensive and important, but nevertheless, important as they may be, they are in fact only amendments which will remove anomalies from these two Ordinances, and make the Ordinances operative in accord with present facts and requirements.

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: —

It is provided by section 6 of the Revised Edition of the Laws Ordinance, 1948, that amendments to Ordinances which are not were matters of form or which cannot be carried out under

the powers vested in the Commissioners for Law Revision, may be collected and submitted to Legislative Council in the form of one or more Ordinances. In accordance with such provision Ordinances 9, 22, 24, 28, 30 and 37 of 1950 were enacted.

2. This Bill shortly entitled the Law Revision (Miscellaneous Amendments) Ordinance, 1951, proposes legislation analogous in character to the Ordinances above quoted. It is proposed that the amendments should be effective only from a date to be notified by proclamation of the Governor, in order to avoid unnecessary notation of the existing editions of Ordinances, the intention being to incorporate these amendments in the Revised Edition.

3. The items in the Schedule affect six Ordinances, and detailed explanation of the items, numbered to correspond with the numbering of the Schedule to the Bill, is as follows—

1. The present section 26 of the Supreme Court (Summary Jurisdiction) Ordinance, 1873 (Ordinance No. 4 of 1873), provides that the Code of Civil Procedure (now Ordinance No. 3 of 1901) shall apply to actions brought under the former Ordinance. The Code of Civil Procedure will, however, in the revised edition become rules of court under the Supreme Court Ordinance, 1873 (Ordinance No. 3 of 1873) and power is being given by other legislative provision for such rules of court to be amended where necessary by a rules committee. The authority of such rules committee is derived under the Supreme Court Ordinance, and might be held not to extend to matters concerning the Supreme Court (Summary Jurisdiction) Ordinance. The purpose of this proposed amendment is to enable such rules committee to make any further rules of court that may be necessary for the Supreme Court sitting in its summary jurisdiction.
2. The object of this amendment is to achieve uniformity in the saving clause in the Peak Tramway Ordinance, 1883, having regard to the form of such clause in other ordinances of the same nature.
3. Section 58 of the Probates Ordinance, 1897, permits the Court to make an order limiting the time for creditors and others to make claims against personal

representatives in respect of an estate undergoing administration, and to that extent affords some protection to such personal representatives, while permitting such claimants to follow the assets of the estate into other hands should they neglect to claim in time. In 1934 however supplementary provisions were made by section 29 of the Trustee Ordinance, 1934, obviating the necessity of an application to Court but stipulating certain other safeguards. Such provisions however apply to all trusts and are not restricted to cases of the winding up of estates of deceased persons. It is understood that there has been reluctance to follow this procedure, in case it should be held that the specific provisions of the Probates Ordinance alone are applicable. The history of the United Kingdom legislation, upon which both procedures were founded, makes it clear that these provisions of the Trustee Ordinance were meant to apply to the estates of deceased persons. Amendment to the Probates Ordinance is therefore proposed to confirm that the procedure available under either or both of the Ordinances named may be adopted.

4. The Small Tenements Recovery Ordinance, 1897, provides a simple means of recovering possession of premises by summary proceedings before a magistrate where a right to such recovery exists at law. The limits however of \$20 a month and \$240 a year on the value of property which may be so dealt with have existed since 1897 and have not been varied. In view of the increase in the summary jurisdiction of the Supreme Court from \$1,000 to \$5,000, it is proposed that \$75 per month and \$900 per year be substituted for the present limits in this Ordinance.
5. When the Currency Ordinance, 1935, was enacted, changes were effected in the structure of the note-issue legislation of the Colony; for example, bank notes lawfully issued became for the first time unlimited legal tender in the Colony. Moreover, by Proclamation No. 5 of 1937, the British dollar which before the Currency Ordinance, 1935, had been the only unlimited legal tender in the Colony, ceased to be legal tender at all after the 1st August, 1937. Consequentially upon these changes, amendments

dealt with in the succeeding paragraphs are necessary (*inter alia*) to the Mercantile Bank Note Issue Ordinance, 1911.

Amendment (1) deletes from section 2 the definition of current coin as no longer being necessary, and deletes from the definition of notes as being payable to bearer on demand in current coin, the words "in current coin".

Amendment (2) repeals subsection (5) of section 3, which is the provision, since superseded as stated, that bank notes issued under the Ordinance should not be legal tender.

Amendment (3) removes from section 4 the provision that a portion of the note issue could at the option of the bank be secured by the deposit of unlimited legal tender coin instead of securities, as no such coin now exists. The old section was so worded that it would be difficult to effect this purpose by mere excision, and subsection (1) repeats the portions of the old section which remains effective, the old section being repealed. A new subsection (2) gives expression to the power of the bank to issue further notes if, by means of the issue of certificates of indebtedness under the Currency Ordinance, such further notes are fully secured by the assets of the Exchange Fund. This addition merely reflects the current position.

Amendments (4) remove from section 5 further references to deposit of coin.

Amendment (5) repeals section 6, which provides that in emergency the bank could be authorized to issue notes in excess of the paid up capital of the bank if legal tender dollars were deposited as security. The bank's note issue is in fact far below its paid up capital, and the only legal tender dollars are now notes themselves.

Amendments (6) and (7) repeal and re-enact the subsisting provisions of sections 7 and 7A of the Ordinance, as they are affected by the subsequent enactment of the Note-Issuing Banks Extension of Powers Ordinance, 1939.

6. Section 5 of the Currency Ordinance, 1935, performed in subsections (1), (2) and (3) the dual purpose of permitting the Financial Secretary to issue certificates

of indebtedness against the Exchange Fund in respect of silver surrendered in accordance with the requirement imposed by section 7 of that Ordinance, and to issue further certificates in respect of foreign exchange or gold purchased for the transactions of that fund. The provision for the surrender of silver has long since become spent and may be omitted, and the issue of other certificates of indebtedness is better expressed as being as cover for bank notes lawfully issued, which is the purpose of item (1) of this amendment which repeals subsections (1), (2) and (3) and replaces them by two subsections phrased to provide for this, while retaining the effect of paragraph (ii) of subsection (3) which is a convenient link with section 6(4).

Amendments to the principal Ordinance were made in 1936 to make it clear that any security previously required to be held in silver or bullion might be held in certificates of indebtedness issued against the Exchange Fund. This declaratory provision is not now appropriate since silver or bullion are no longer required under any Ordinance as security. It is therefore proposed by item (2) of this amendment to restore section 5 to the form it took before the 1936 amendment.

RATING (AMENDMENT) BILL, 1951.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Rating Ordinance, 1901". He said: Sir, administration of the Inland Revenue Ordinance and of the Rating Ordinance has, within recent times, afforded a contrast in that Property Tax, which carries with it a surcharge of 5% if tax be not paid on the due date, has resulted in the fact that 92½% of Property Tax due has been paid on time, whereas over the same period only 60% of Rates were paid. This contrast has resulted in the view being taken that the administration of the Rating Ordinance and the collection of rates payable under that Ordinance would be greatly assisted if provision for surcharge were attached to and embodied in the Rating Ordinance.

The object of this short Bill is, therefore, Sir, to make provision for surcharge in regard to rates whether these be payable to the Treasury or whether, as in the case of the New Territories, they be payable to the relevant District Offices.

It will be noted, Sir, that the capacity to attach a surcharge upon rates in default is made discretionary as it is in the Inland Revenue Ordinance. Thus it can happen that surcharge will not attach even if rates be not paid on due date if in fact hardship or other satisfactory explanation attaches to failure to pay as at due date.

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: —

The primary object of this Bill to be achieved by clause 2 (repealing and replacing section 32 of the principal Ordinance) is to enable the Accountant General to impose a surcharge of 5% of the amount of rates which have not been paid by the proper date. Such provision would bring the procedure for recovery of rates into conformity with that obtaining for the recovery of tax and fees payable respectively under the Inland Revenue Ordinance, 1947, and the Waterworks Ordinance, 1938, to secure the enforcement of prompt payment of rates and avoidance of administrative inconvenience and expense entailed by delay in payment.

2. Provision for the recovery by action of unpaid rates at the suit of the Accountant General is contained in the Crown Remedies Ordinance, 1875. Section 34 of the principal Ordinance which contains a similiar provision is therefore considered to be unnecessary and opportunity is taken by clause 3 of this Bill to propose its repeal. Additionally clause 2 (3) provides that sums added as a surcharge may be recoverable by action under the Crown Remedies Ordinance, 1875, in the same way as rates in default.

3. Clause 4 (amending section 49 of the principal Ordinance) enables a District Officer to impose a similar surcharge in the New Territories.

PUBLIC ORDER (AMENDMENT) BILL, 1951.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Public Order 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.

Clause 1.

THE ATTORNEY GENERAL: —Sir, I move that in clause 1, for the figures "1950" there be substituted the figures "1951".

This was agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Public Order (Amendment) Bill, 1951, had passed through the Committee stage with one 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: —When it is your pleasure that we should meet again?

THE ATTORNEY GENERAL: —Sir, I propose adjournment to this day fortnight.

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