

10th October, 1951.

PRESENT:

HIS EXCELLENCY THE GOVERNOR

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

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL SIR ERIC CARDEN ROBERT

MANSERGH, K.B.E., C.B., M.C.

THE HONOURABLE THE COLONIAL SECRETARY

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

THE HONOURABLE THE ATTORNEY GENERAL

MR. G. E. STRICKLAND, *Acting.*

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. RONALD RUSKIN TODD.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE, *Acting.*

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

(Director of Public Works).

THE HONOURABLE DOUGLAS JAMES SMYTH CROZIER.

(Director of Education).

DR. THE HONOURABLE YEO KOK CHEANG

(Acting Director of Medical and Health Services).

THE HONOURABLE KENNETH MYER ARTHUR BARNETT

(Chairman, Urban Council).

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

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

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

THE HONOURABLE PHILIP STANLEY CASSIDY.

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY.

THE HONOURABLE NGAN SHING KWAN

MR. ROBERT WILLIAM PRIMROSE *(Deputy Clerk of Councils).*

ABSENT: —

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

THE HONOURABLE LAWRENCE KADOGRIE.

MINUTES.

The Minutes of the Meeting of the Council held on 19th September, 1951, were confirmed.

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>
<i>Papers laid by the Colonial Secretary.</i>	
Sessional Papers, 1951: —	
No. 20—Annual Report of the Rating and Valuation Department for the year 1950-51.	
Defence Regulations, 1940.	
Price Control Order, 1946—Amendments to the Schedule	A.172
Merchant Shipping Ordinance, 1899.	
Order by the Governor in Council under subsection (19A) of Section 4	A.173
Defence Regulations, 1940.	
Price Control Order, 1946—Amendments to the Schedule	A.174
Ferries Ordinance, 1917.	
Excluded Ferries (To Kwa Wan and Cha Kwo Ling) Regulations, 1951	A.176
Widows' and Orphans' Pension Ordinance, 1908.	
Notification under Section 3A (2)	A.177
The Stamp Ordinance, 1921.	
Stamp (Bank Authorization) No. 3 Order, 1951	A.178

Papers laid by the Attorney General.

Laws of Hong Kong. (Revised Edition 1950) Vols. I-XI.

LAW REFORM (MISCELLANEOUS PROVISIONS)**BILL, 1951.**

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the law as to the effect of death in relation to causes of action, as to the doctrine of contributory negligence and as to the doctrine of common employment". He said: Sir, as the Objects and Reasons explain this Bill is intended to effect three measures of reform in the application of the common law of England in Hongkong. These reform have already been effected in England and the Bill seeks to assimilate the law of the Colony in these matters to the law of the United Kingdom. In England reform was effected by three separate measures but these measures all concern the law of tort and partly for that reason and also for the reason that it is not unusual to include in the same Bill different matters of law reform they are presented to Council in one Bill.

The first measure which is contained in clause 2 reverses the rule which disentitled the personal representatives of a deceased person to recover damages for wrongful harm done to the person or property of the deceased during his lifetime. The reform does not enable damages to be recovered on account of the death. See subclause 2 (c) of clause 2. That question will still be regulated by the Fatal Accidents Ordinance, 1889, though minor amendments to the assessment of damages under that Ordinance are also proposed by clause 3 of the Bill. The reform will, however, according to the decision of the House of Lords in the case of *Rose and Ford* enable damages to be recovered in respect of the loss of expectation of life resulting from an injury which in fact eventually caused the death—in other words, the right of a person who has been injured by the negligence of another to claim damages for loss of expectation of life survives for the benefit of that person's estate if he or she dies. Moreover, such action will be maintainable against the estate of the wrongdoer if he dies before the action can be brought. This is a matter which of course is of the greatest importance in the sphere of fatal accidents. The reform will not apply to certain causes of action of which defamation and claims for damages for adultery are perhaps the most important and although it does apply to an action for breach of promise the damages recoverable are strictly limited. See subclause 2(b) of clause 2. Moreover, where by reason of the reform the action does survive damages recoverable will not include exemplary damages.

The second reform modifies the law of contributory negligence. As the law stands at present if an accident is caused by the negligence of two persons it is the party who has the last effective opportunity of saving the situation who is liable if he fails to take advantage of that opportunity. That last effective opportunity includes, however, an opportunity which would have occurred but for one's negligence. Thus, let us suppose A steps into the roadway without noticing that B is approaching in his motorcar. B is some distance away and could easily avoid A. However, B may not be keeping a proper lookout and may not see A until it is too late for him to stop. Both parties in this example have been negligent but in the eyes of the law as it exists to-day B is responsible and A can recover damages from him, whereas B can get nothing from A. Under clause 4 of the Bill this rule will be altered. A will no longer be entitled to recover in full from B and the court or the jury, if the action is tried with a jury, will be entitled to apportion responsibility. Similarly, B's right to recover against A will not be completely barred. Although I have spoken of "negligence" the Bill speaks of "fault" which is interpreted by subclause 10 of clause 4 to mean negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would apart from clause 4 give rise to the doctrine of contributory negligence.

Finally, the Bill proposes in clause 5 to abolish the doctrine of common employment. That doctrine is perhaps best illustrated by an example. X is engaged by a company as an accountant to keep books in a dynamite factory. If he is killed or injured as a result of an explosion due to the negligence of another employee of the company, the company will escape liability. The explanation given is that X must be deemed to have agreed to run the risk of a fellow servant being negligent. This, however, is a legal fiction and an unjust one at that. The effect of clause 5 is to prevent an employer in the future from setting up this particular defence in an action by the employee.

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: —

This Bill has three main objects—

(1) to assimilate the law relating to the effect of death on causes of action to that existing in the United Kingdom;

(2) to modify as has been done in the United Kingdom the doctrine of contributory negligence; and

(3) to follow the United Kingdom in abolishing the doctrine of common employment.

2. The common law rule as to the effect of death on causes of action was that no executor or administrator could sue or be sued for any tort or civil wrong committed against or by the deceased in his lifetime. So far as wrongs against a deceased person were concerned, this rule has already been largely derogated from by statute—in the United Kingdom by the Fatal Accidents Acts, 1846-1908 and in this Colony by the Fatal Accidents Ordinance, 1889, under which it became in effect a civil wrong, actionable by or on behalf of the near relatives of the deceased, to cause the death of a human being, if the deceased himself would have had a right of action had he been merely injured and not killed, and if those relatives have suffered a pecuniary loss in consequence of the death. Legislation did not however go so far even in the United Kingdom to preserve for the benefit of the deceased's estate the right of action which he would have had if he had survived.

3. Moreover, although legislation in the United Kingdom had gradually enabled actions to be brought against the personal representatives of a deceased person for injuries committed by him against the property of others, it was not until 1934 that legislation enabled proceedings to be brought in respect of personal injuries committed by the deceased. In Hong Kong no action has yet been taken to remedy the anomaly. Proposals to make third party insurance compulsory in Hong Kong have recently emphasized the anomalous position here in two main respects: Firstly the estate of a motorist who dies after negligently causing injury to person or property would escape liability and secondly if a person were to die from injuries received through the negligent driving of another relief would be limited within the scope of the Fatal Accidents Ordinance, 1889. While these are only two illustrations of the defects in the law here they demonstrate the need for reform.

4. In the United Kingdom anomaly was removed by the Law Reform (Miscellaneous Provisions) Act, 1934. That Act declared the general rule that on the death of any person all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of the estate. This Bill seeks to remove in Hong Kong the anomaly above described

by the making of provision analogous to the Law Reform (Miscellaneous Provisions) Act, 1934, see clause 2 of the Bill.

5. The opportunity has been taken by paragraph (a) of clause 3 to provide that in assessing damages under the Fatal Accidents Ordinance, 1889, sums paid by way of assurance shall not be taken into account. This provision would bring the law on this aspect into line with that contained in the Fatal Accidents (Damages) Act, 1908, of the United Kingdom. Further, paragraph (b) of clause 3 which would allow funeral expenses to be taken into account in assessing damages under the Fatal Accidents Act, 1889, would apply to the Colony a similar provision of the Law Reform (Miscellaneous Provisions) Act, 1934.

6. The doctrine of contributory negligence was in force in England prior to the passing of the Law Reform (Contributory Negligence) Act, 1945, which was the outcome of a report of the Law Revision Committee under the presidency of Lord Wright. Briefly the doctrine may be explained as follows—If the defendant could show that the plaintiff had himself contributed to an accident by his own negligence, and that negligence was the proximate cause of the accident, then the plaintiff could recover no damage. If, however, the defendant could be proved to have had the last opportunity of avoiding the damage, or it would be shown that he would have the last opportunity if he had not deprived himself of it by his own negligence, then he would be liable. The proof of such matters is difficult and many cases were decided adversely for the plaintiff because of some negligence on his part even were the defendant had also and perhaps to a greater extent been negligent. If for example, a man stepped into the road without looking where he was going, and was knocked down by a car travelling at an excessive speed, he might under the rule of contributory negligence, fail to recover damage. This doctrine of the common law was modified in the case of accident at sea by the Maritime Convention Act, 1911, which enables the Court to apportion the damage or loss in proportion to the degree in which the respective vessels concerned were at fault. The main object of section 1 of the Law Reform (Contributory Negligence) Act, 1945, which is reproduced with the necessary modifications by Clause 4 of this Bill, was to apply this rule to accident on land. It is clearly desirable that the law of Hong Kong, the common law of which in these matters is the common law of England, should be brought into harmony with the statutory modification of such law effected in the United Kingdom. Attention to this necessity has been drawn both by proposals to introduce compulsory insurance against third party

risks and by the review of an employer's liability for injuries to his employees in the course of employment undertaken in connexion with the proposals for the introduction of workmen's compensation.

7. The doctrine of common employment made its first appearance in England in 1837 in the case of Priestly and Fowler. The doctrine was founded on the implied fictitious agreement of the servant to run the risk of injury by fellow servants. By 1860, it was already meeting with wide-spread condemnation as working injustice on the servant and the Court had begun to narrow its interpretation with the consequence that the doctrine had become difficult to apply. Criticism in England led eventually to the Employers Liability Act, 1880, which mitigated to some extent the severity of the doctrine in the case of "workmen". Finally the doctrine was completely abolished by the Law Reform (Personal Injuries) Act, 1948, which implemented in this respect the unanimous recommendation of the Departmental Committee on Alternative Remedies known as the Monckton Committee. In Hong Kong, the harshness of the doctrine has not so far been mitigated, a fact to which perhaps attention has not been drawn because of the rare cases in which proceedings against employers for injuries suffered in the course of employment have in the past been taken or threatened. Examination of proposals to introduce provisions for workmen's compensation in Hong Kong has, however, called attention to the serious defects in the law of the Colony and it has accordingly been decided to bring it into line with the law of the United Kingdom by abolishing the doctrine of common employment. Clause 5 of the Bill effects this.

PLACES OF PUBLIC ENTERTAINMENT REGULATION (AMENDMENT) BILL, 1951.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Places of Public Entertainment Regulation Ordinance, 1919". He said: Sir, the Bill makes a number of amendments to the Places of Public Entertainment Regulation Ordinance, 1919, which are explained in the Objects and Reasons. The amendment in which perhaps Honourable Members will be most interested is that it is proposed to effect in the definition of "entertainment". The new definition includes inter alia any sporting exhibition which of course would include football matches and tennis exhibitions. A sporting exhibition has always been an entertainment for the purposes of

Entertainment Tax and it is of course common knowledge that the public are frequently drawn in large numbers to the place where such exhibitions are being held and that such places not only become therefore more dangerous as fire hazards but that often big crowds collect. Such crowds can on occasion become a menace to law and order when inflamed by the wrong sort of partisan spirit or when they are unable to secure admission and it seems obviously right that the places where these entertainments are held should be subjected to control by way of licence and the making of regulations which by their conditions or provisions can substantially reduce the hazards and dangers. In the course of amendment attention was drawn to the fact that although both the Ordinance and the regulations confer discretionary powers the exercise of which might cause serious prejudice to the affairs of persons owning or managing places of public entertainment no provision has been made for appeal. Clause 7 of the Bill seeks to rectify this by adding a new section providing for appeal to 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: —

The main object of this Bill is to enable the provisions of the Places of Public Entertainment Regulation Ordinance, 1919, (the principal Ordinance) to be applied more precisely to modern conditions in the Colony. The repeal and replacement of the definition "entertainment" and an interpretation for "place of public entertainment" are proposed in clause 2 which have the effect of widening considerably the places and forms of entertainment subject to the control imposed by the Ordinance. Consequential amendments of the regulating powers contained in the principal Ordinance are proposed in clause 5.

2. Increase in the practice of display of cinematograph films makes it desirable to extend the control over the exhibition of cinema films in places which, though not places of public entertainment, are places where considerable numbers of people may assemble to see film exhibitions. Provision is made accordingly in clause 4. That clause additionally provides for the increase of the maximum fine for contravention of the requirements of section 4 of the principal Ordinance.

3. The opportunity has been taken (by clause 6) to amend section 7 of the principal Ordinance to constitute the Commissioner of Police as sole authority to grant permits for advertisement, presentation or carrying on of a public entertainment instead of being one of three authorities as now provided by such section. The clause additionally provides for increase from 500 dollars to 2,000 dollars of the maximum fine payable upon summary conviction for contravention of section 7.

4. It has also been considered desirable to provide for appeal to the Governor in Council (by clause 7). Certain regulations dealing with censorship of cinematograph films have been excluded partly because provision is already made for appeal from an individual censor to a board of censors and partly because it is proposed to include the censorship of cinematograph films in a separate Ordinance.

VERANDAHS AND BALCONIES (INCLOSURE FOR OFFICE ACCOMMODATION) (AMENDMENT) BILL, 1951.

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Verandahs and Balconies (Inclosure for Office Accommodation) Ordinance, 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 ATTORNEY GENERAL reported that the Verandahs and Balconies (Inclosure for Office Accommodation) (Amendment) Bill, 1951 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.

SALVATION ARMY BILL, 1951.

HON. LEO D'ALMADA E CASTRO, K.C. moved the Second reading of a Bill intituled "An Ordinance to incorporate The General of The Salvation Army as a corporation sole having perpetual succession".

HON. P. S. CASSIDY seconded, and the Bill was read a Second time.

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

Council then resumed.

HON. LEO D'ALMADA E CASTRO, K.C. reported that the Salvation Army Bill, 1951 had passed through Committee without amendment, and moved the Third reading.

HON. P. S. CASSIDY seconded, and the Bill was read a Third time and passed into law.

ADDRESS BY THE GOVERNOR.

Honourable Members: In a few days' time General Mansergh will be leaving the Colony, so this is the last occasion on which he will sit in Legislative Council.

General Mansergh, right from the start inspired confidence—a confidence that has been fully justified. He has in fact proved to be a most excellent Commander of British Forces; not only has he proved to be a good soldier while in Hongkong, but he has also proved himself to be a very good friend of Hongkong, and it is he and no one else to whom we all owe our thanks for the good relationships that exist between civilians and servicemen.

It is not a matter of surprise that he has been promoted to a higher post, but it is a matter for sincere regret that this promotion has come so soon. I am quite sure that I can speak on behalf of all of you gentlemen, as well as of everyone else in the Colony when I say that I wish him every success and every happiness in the future. (applause).

HIS EXCELLENCY THE COMMANDER BRITISH FORCES: —I thank you, Sir, and may I thank Honourable Members for everything I have received at your hands and at the hands of Honourable Members. (applause).

ADJOURNMENT.

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