

HONG KONG LEGISLATIVE COUNCIL.
OFFICIAL REPORT OF PROCEEDINGS.
Meeting of 14th January, 1953.

PRESENT:

HIS EXCELLENCY THE GOVERNOR

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

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL SIR TERENCE AIREY, K.C.M.G., C.B., C.B.E.

THE HONOURABLE THE COLONIAL SECRETARY

MR. ROBERT BROWN BLACK, C.M.G., O.B.E.

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR RIDEHALGH, Q.C.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. RONALD RUSKIN TODD.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE.

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

(Director of Medical and Health Services).

THE HONOURABLE KENNETH MYER ARTHUR BARNETT, E.D.

(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, C.B.E., Q.C.

THE HONOURABLE MAURICE MURRAY WATSON.

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY.

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

THE HONOURABLE NGAN SHING-KWAN.

THE HONOURABLE HUBERT JOHN COLLAR, C.B.E.

MR. RONALD THOMPSON *(Deputy Clerk of Councils).*

MINUTES

The Minutes of the meeting of the Council held on 31st December, 1952, were confirmed.

ANNOUNCEMENTS.

THE COLONIAL SECRETARY:—By Your Excellency's direction I rise to announce the appointment of the Standing Law Committee for 1953. The following members have been appointed and have agreed to serve:—

The Hon. Attorney General (Chairman)

The Hon. CHAU Tsun-Nin

The Hon. Leo D'Almada e Castro

The Hon. Maurice Murray Watson

The Hon. Lo Man Wai.

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, 1953:—	
No. 1—Annual Report by the Director of Hong Kong Government Office in London for the year 1951-52.	
No. 2—Annual Report by the Commissioner of Rating and Valuation for the year 1951-52.	
No. 3—Annual Report by the Registrar General for the year 1951-52.	
No. 4—Annual Report by the Custodian of Property for the year 1951-52.	
No. 5—Annual Report by the Government Stores and Sand Monopoly for the year 1951-52.	
The Royal Hong Kong Defence Force Ordinance, 1951. The Royal Hong Kong Defence Force (Pensions) Regulations, 1952	A. 221
The Deportation of Aliens Ordinance, Chapter 240. The Deportation of Aliens (Amendment) (No. 2) Regulations, 1952	A. 222
Removal of quarantine restrictions imposed against Phnom-Penh on account of plague	A. 223

<i>Subject.</i>	<i>G.N. No</i>
The Dogs and Cats Ordinance, Chapter 167.	
The Dogs and Cats (Amendment) Regulations, 1953.	A. 1
The Dogs and Cats Ordinance, Chapter 167.	
Inoculation Fees	A. 2
The Dogs and Cats Ordinance, Chapter 167.	
Observation and Quarantine Fees	A. 3
The Importation and Exportation Ordinance, Chapter 50.	
The Exportation (Certificate of Origin) Regulations, 1953	A. 4
The Importation and Exportation Ordinance, Chapter 50.	
Fees prescribed by the Governor in Council	A. 5
The Trading with the Enemy Ordinance, Chapter 188.	
The Trading with the Enemy (Enemy Territory Cessation) (Germany) Order, 1953	A. 6

DISTRICT COURT BILL, 1953.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled

“An Ordinance to establish a new court, having limited civil and criminal jurisdiction, to be known as the District Court of Hong Kong, and to make provision for the jurisdiction, procedure and practice thereof and for purposes connected with the matters aforesaid.”

THE COLONIAL SECRETARY seconded.

HON. H. J. COLLAR, C.B.E.:— Sir, in this Bill no provision is made which would give the defendant a right to be tried by jury if he so wishes. Reference is very properly made to this in paragraph 5 of the Objects and Reasons, but I feel that a fuller explanation is called for and would be welcomed. The statement is made that to provide for trial by jury would introduce something which is not at present available to an accused person. This is true in respect of those cases which will be tried by the District Court instead of by Magistrates, but not in respect of those cases which but for the setting up of the District Court, would continue to go to the Supreme Court. It has also to be remembered that the Judge sitting alone in District Courts will have substantially greater powers of punishment than the Magistrates Court.

Whilst I am anxious to support any measures which will contribute to the speeding up of judicial processes, I am equally concerned to ensure the maintenance of the traditional rights of the individual to trial by jury, unless it can be shown that other and adequate safeguards are provided. I should be grateful if the Hon. Attorney General can satisfy us on this point.

I should also like to ask whether consideration has been given to the desirability of raising the limit for civil jurisdiction to above the existing Summary Court Maximum of \$5,000. It appears to me that this jurisdiction could usefully be enlarged so as to take more of the civil court cases off the shoulders of the Supreme Court Judges, and this would accord with the objects of this Bill.

THE ATTORNEY GENERAL:—Your Excellency, my Honourable Friend, Mr. Collar, was good enough to forewarn me that he would raise these points and I am very grateful for the opportunity to say something briefly on the two points which he has raised.

So far as the first point is concerned, that is the absence of provision in this legislation for trial by jury, I would like to say that the view is taken that such a provision is unnecessary. I would like to point out that trial by jury is not an end in itself but is a means to an end and a means which was particularly devised in England. I would like also to say that juries are not infallible even where they are composed of twelve persons and unanimity is essential to their verdict. I would interpolate that here a jury is composed of seven persons and a majority verdict of five to two is allowable in any but capital cases. As I have said, juries are not infallible and those who have had experience in the practice of the law have seen them err on both sides of the line. There are cases in England where the Court of Criminal Appeal has upset a verdict of guilty by a jury on the ground of unreasonableness. On the other side of the line, the practitioner who has been in practice for any length of time must have come across cases where a verdict of not guilty has been either a stupid or perverse one.

Now, I would say this in relation to trial by jury, that it is much more difficult to upset a verdict on fact than it is to upset a finding by a judge on a question of fact, and the reason for that is this, that you cannot go behind a verdict of a jury and start inquiring into the reasons why they arrived at their verdict. Now, in this legislation provision is made whereby a judge on coming to a decision that a person is guilty of an offence shall give a short statement of his reasons for his finding and that finding will therefore be subject to scrutiny if an appeal is taken to the Full Court.

It is suggested, Sir, that that provides an adequate safeguard against miscarriages of Justice which, of course, is the due end of the processes of law. So far as juries in civil cases are concerned there is provision at the moment whereby cases taken in the Summary Jurisdiction of the Supreme Court may be tried by a jury of three. The section which provides for that is permissive; it says that the Court may, on the application of either party, call a jury but of course it is unthinkable that, except for a very good reason, where application was made, a judge would refuse it. On the other hand, it does seem to me that a jury of three cannot really contribute very much to the administration of justice on the civil side of the new District Court, and I would say further that it would seem to be unnecessary to make any provision for such trial because my information is that only one jury trial has been had on the Summary Jurisdiction side of the Supreme Court since 1946.

So far as the second point which the Honourable Member has raised is concerned, consideration has not yet been given to the increase of the Civil Jurisdiction of the new Court, but as explained in the Objects and. Reasons this question of the jurisdiction of the Court will be kept under review this year, and if it is thought desirable that the limit of \$5,000 should be raised, I am sure that the Government will give close consideration to the matter in consultation with the judiciary and members of the legal profession.

The question was put and agreed to.

The Bill was read a second time.

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

H.E. THE GOVERNOR:—Gentlemen, I suggest that we take these clauses in lots of five and then if any Honourable Member wishes to raise a point in these clauses he would raise it at the appropriate moment.

Clause 1.

THE ATTORNEY GENERAL:—Sir, I beg to move that the date “1952” appearing in this clause be amended to read “1953”.

The clause, as amended, was agreed to.

Clauses 2 to 16 were agreed to.

Clause 17.

THE ATTORNEY GENERAL:—Sir, there are two proposed amendments. The first is to delete all the words in subclause (1) down to the word “action” in the fifth line and to substitute the following words:—

“Where an action or matter commenced in the District Court involves matter beyond the jurisdiction of that court,”

The second amendment is that the word “judge” at the end of the penultimate line should be deleted and that there be substituted therefor the words “District Judge”.

The clause, as amended, was agreed to.

Clause 18.

THE ATTORNEY GENERAL:—Sir, I beg to move an amendment to subclause (1). The amendment is that the word “before” in the first line be deleted and that the words “commenced in” be substituted therefor.

The clause, as amended, was agreed to.

Clause 19.

THE ATTORNEY GENERAL:—I beg to move an amendment to subclause (1) and the amendment is that all the words in that subclause be deleted and that there be substituted therefor the words appearing on the table of amendments which is now before Honourable Members.

The clause, as amended, was agreed to.

Clauses 20 to 26 were agreed to.

Clause 27.

THE ATTORNEY GENERAL:—Sir, I beg to move an amendment to subclause (2) of this clause. The amendment is that the word “may” in the first line be deleted and that the word “shall” be substituted therefor.

The clause, as amended, was agreed to.

Clauses 28 to 30 were agreed to.

Clause 31.

THE ATTORNEY GENERAL:—I beg to move an amendment to subclause (2) paragraph (a) of this clause. The amendment is that the word “that” in the second line of paragraph (a) be deleted.

The clause, as amended, was agreed to.

Clauses 32 to 37 and the First schedule were agreed to.

Second schedule.

THE ATTORNEY GENERAL:—I beg to move an amendment to the Second schedule, and that is in the form of Charge Sheet on page 16 of the Bill. The amendment is that after the words which begin with the brackets and read “(Begin as above) that the following charges are preferred against A..... B.....” there should be added the expression “by the Attorney General”.

The schedule, as amended, was agreed to.

Third schedule.

THE ATTORNEY GENERAL:—Sir, I beg to move an amendment to this schedule, and the amendment is that paragraph (2) thereof be deleted and that the words appearing on the table of amendments be substituted therefor.

The schedule, as amended, was agreed to.

Fourth schedule.

THE ATTORNEY GENERAL:—Sir, I beg to move amendments to this schedule. These amendments will, in effect, replace the schedule as it is now drafted and the amendments are set out in the table which is now before Members. I regret, however, to have to point out that there are two typographical errors which I think ought to be corrected. The first is in the amendment to the Distress for Rent Ordinance, the second amendment, that should read “In each of Forms 2, 3 and 4”. The other typographical error appears under the third amendment to the New Territories Ordinance where the quotation marks at the beginning of the expression “Supreme Court” have been omitted.

The schedule, as amended, was agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the District Court Bill, 1953, had passed through Committee with amendments and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed into law.

MAGISTRATES (AMENDMENT) BILL, 1953.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Magistrates Ordinance, Chapter 227".

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

Clause 1.

THE ATTORNEY GENERAL:—I beg to move an amendment and the amendment is that the two dates in this clause "1952" be deleted and that the dates "1953" be substituted.

The clause, as amended, was agreed to.

Clause 2.

THE ATTORNEY GENERAL:—I rise to move an amendment to this clause and that is that the date "1952" be deleted and the date "1953" be inserted.

The clause, as amended, was agreed to.

Clause 3 was agreed to.

Clause 4.

THE ATTORNEY GENERAL:—I beg to move an amendment of the seventh paragraph appearing under Part III. The words "except as provided by section 16 of the Defamation and Libel Ordinance" should be omitted and I beg to move that they be omitted. I should explain that this section of the Defamation and Libel Ordinance enables trivial cases to be dealt with by a Magistrate if the accused person consents and that provision is inapplicable in this paragraph.

The clause, as amended, was agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Magistrates (Amendment) Bill, 1953, had passed through Committee with amendments and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed into law.

SUPPLEMENTARY APPROPRIATION (1951-52) BILL, 1953.

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled “An Ordinance to authorize a supplementary appropriation to defray the charges of the financial year ended the 31st day of March, 1952”.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

Clause 1.

THE FINANCIAL SECRETARY:—I rise to move that the figures “1952” be deleted and substituted by the figures “1953”.

The clause, as amended, was agreed to.

Clause 2, the Schedule, and the Preamble were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that the Supplementary Appropriation (1951-52) Bill, 1953 had passed through Committee with an amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed into law.

UNDESIRABLE MEDICAL ADVERTISEMENTS BILL, 1953.

DR. YEO KOK CHEANG moved the Second reading of a Bill intituled “An Ordinance to restrict certain advertisements relating to medical matters”.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

Clause 1.

DR. YEO KOK CHEANG:—Sir, I beg to move an amendment to clause i by the deletion of the figures “1952” and the substitution therefor of the figures “1953”.

The clause, as amended, was agreed to.

Clauses 2 to 6 and the Schedule were agreed to.

Council then resumed.

DR. YEO KOK CHEANG reported that the Undesirable Medical Advertisements Bill, 1953 had passed through Committee without material amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed into law.

ADJOURNMENT.

H. E. THE GOVERNOR:—That concludes the business, Gentlemen. When is it your pleasure that we should meet again?

THE ATTORNEY GENERAL:—I would suggest this day fortnight, Sir.

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