

**OFFICIAL REPORT OF PROCEEDINGS****Meeting of 6th July, 1955.****PRESENT:**HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

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

THE HONOURABLE THE COLONIAL SECRETARY

MR. EDGEWORTH BERESFORD DAVID, C.M.G.

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR RIDEHALGH, Q.C.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. BRIAN CHARLES KEITH HAWKINS, C.M.G., O.B.E.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE, C.M.G.

THE HONOURABLE THEODORE LOUIS BOWRING, C.M.G., 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 HAROLD GILES RICHARDS, O.B.E.

*(Director of Urban Services).*

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

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY, O.B.E.

THE HONOURABLE NGAN SHING-KWAN, O.B.E.

THE HONOURABLE DHUN JEHANGIR RUTTONJEE.

THE HONOURABLE KWOK CHAN, O.B.E.

DR. THE HONOURABLE ALBERTO MARIA RODRIGUES, M.B.E., E.D.

THE HONOURABLE RICHARD CHARLES LEE, O.B.E.

THE HONOURABLE JOHN ARTHUR BLACKWOOD.

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

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

COMMODORE ANTHONY HENRY THOROLD, O.B.E., D.S.C., R.N.

**MINUTES.**

The Minutes of the meeting of the Council held on 22nd June, 1955, were confirmed.

**LANDLORD AND TENANT (AMENDMENT) BILL, 1955.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Landlord and Tenant Ordinance, Chapter 255."

He said: Honourable Members may recollect that when the Landlord and Tenant Ordinance was extensively amended in 1953 as a result of the Report of the McNeill Committee, power was taken to impose conditions in orders exempting premises from the application of the Ordinance, and a provision was introduced which made conditions enforceable as though their performance had been ordered by the Supreme Court. Although no case has arisen in which it has become necessary to proceed under this provision, it is thought desirable that a more direct and compelling sanction for performance of conditions should be introduced, and a right of re-entry for breach of condition is therefore provided for in this Bill. At the same time, it is provided that a building condition will be enforceable not only against the landlord who has obtained the exemption order but also against persons deriving title from him.

The Landlord and Tenant Ordinance is primarily designed to protect tenants from eviction and to control rents. The authors of the original Ordinance were clearly aware that this protection might lead to abuse, that it might become a weapon in the hands of tenants for enriching themselves at the expense of their landlords; and the legislature sought to provide against this by a section in the Ordinance which makes it an offence to demand or receive money or any other consideration as the price of giving up possession. Unfortunately, however, there is no clear indication in the Ordinance of the extent to which this provision goes. Sir, Section 31 of the Ordinance provides for the exemption of premises from the further application of the Ordinance and gives both the tribunal and the Governor in Council absolute discretion in the matter. Nothing is laid down in the Ordinance about the matters which are to be taken into account, but over the last few

years, at any rate, tribunals have proceeded on the basis that one of the matters to be taken into consideration is the hardship suffered by tenants who will be turned out if an exemption order is made. Many landlords have made payments of compensation for disturbance to their tenants, no doubt with a view to easing their position in persuading the tribunal that the public interest outweighed any hardship on the tenants, and in one recent case, a tribunal has recommended the imposition of a condition for the payment of compensation. Whilst it is desirable to preserve the position that the protection afforded by the Ordinance should not be used by tenants to extract money from their landlords as the price of surrendering possession, it seems equally desirable, in view of the practice which has grown up, that express provision should be made in relation to the payment of compensation for disturbance where exemption is sought under section 31.

Sir, I have referred to the most important features of this Bill, and I think I need say no more at this stage in view of the explanations given in the statement of objects and reasons.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

*Objects and Reasons.*

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

Section 31 of the Landlord and Tenant Ordinance empowers the Governor in Council in his absolute discretion by order to exclude from the further application of the Ordinance any premises; but in the case of particular premises the power is only exercisable on the recommendation of a tenancy tribunal. The tribunal may make such recommendation subject to conditions.

2. A practice has grown up in recent years whereby landlords seeking exemption orders under section 31 frequently undertake to pay compensation to tenants who will be disturbed if an order is made, and in a recent case a tenancy tribunal has

recommended the imposition of a condition for payment of compensation by a landlord to a tenant. These payments are, of course, in the nature of compensation for disturbance, but it is arguable that they fall within section 10(1) of the principal Ordinance which prohibits the payment of money for giving up possession of premises. In these circumstances it is considered desirable on the one hand to make specific provision for the award by a tenancy tribunal of compensation for disturbance, and on the other to amend section 8 of the Ordinance to remove any doubt that it is an offence for any person to demand or receive any consideration for the surrender of a protected tenancy. If the amendment to section 8 is accepted, section 10 will be redundant and its repeal is provided for in clause 3 of the Bill.

3. Subsection (6) of section 31 of the principal Ordinance is to be repealed and replaced by a subsection which (*inter alia*) will enable a tenancy tribunal, notwithstanding section 8, to recommend the imposition of a condition for payment of compensation for disturbance. A new subsection (6A) provides that the amount of such compensation shall be in the discretion of the tribunal, but shall in no case exceed a sum equal to sixty times the standard rent per month of the premises occupied by the tenant. The proviso to this subsection provides for compensation for improvements made by a tenant in addition to the compensation for disturbance. In this connexion it is to be observed that the Governor in Council may also impose a condition for the payment of compensation for disturbance.

4. Another important feature of this Bill is the provision of a sanction for the fulfilment of conditions incorporated in an exemption order. Under a new section 31B (see clause 7) a breach of any such condition will entitle the Crown to re-enter upon the premises concerned and thereby to determine the tenancy. In order that this provision may be fully effective, a new section 31C (also in clause 7) enables an exemption order to be registered in the Land Office, and where it contains a condition requiring premises to be re-built, such condition will be binding upon and may be enforced against any executor, administrator, successor or assign of the landlord.

5. A further provision designed to secure compliance with a condition that premises shall be rebuilt is contained in new section 31D (also in clause 7). It is there provided that until the

Building Authority has certified fulfilment of such condition, it shall be unlawful, notwithstanding the exemption, to charge any rent in excess of the rent permitted for such premises under the Ordinance.

6. Subsection (7) of section 31 of the principal Ordinance provides that the costs of an application for exemption shall be borne by the applicant. Cases have occurred where applications have been opposed at unnecessary length, and in order to discourage such opposition the tribunal should have a discretion to deprive any opponent of his costs in whole or in part. This is the purpose of the new proviso to subsection (7) (see paragraph (d) of clause 5).

7. Sections 31(6) and 31A(1) are amended so as to clarify the law relating to appeals to the Governor in Council by persons who are dissatisfied with a decision of a tenancy tribunal in an exemption case. The effect of these two amendments is to set a clear time limit within which such appeals must be made and to put it beyond doubt that only persons who were parties to the proceedings before the tribunal have a right of appeal. Parties to the proceedings must appeal within fourteen days of the tribunal's decision.

8. Other proposed amendments not specifically referred to above are of a minor character or are consequential upon the major ones.

### **KADOORIE AGRICULTURAL AID LOAN FUND BILL, 1955.**

THE COLONIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to provide for the establishment and administration of a trust fund to be known as the Kadoorie Agricultural Aid Loan Fund and for purposes connected therewith."

THE ATTORNEY GENERAL 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.

Clauses 1 to 3 were agreed to.

Clause 4.

THE COLONIAL SECRETARY: —I move that clause 4 be amended by the additional paragraph, copies of which have been circulated to honourable Members and for which the reasons are self-evident.

*Proposed amendment:* —

(2) For the purposes of this Ordinance the office of the Director of Agriculture, Fisheries and Forestry shall have perpetual succession and all monies, stocks, and securities and land which may be vested in the trustee under this Ordinance shall be deemed to be vested in the Director of Agriculture, Fisheries and Forestry for the time being, without any further transfer or conveyance.

Clause 4, as amended, was agreed to.

Clauses 5 to 13 were agreed to.

Council then resumed.

THE COLONIAL SECRETARY reported that the Kadoorie Agricultural Aid Loan Fund Bill had passed through Committee with one amendment and moved the Third reading.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

### **GAMBLING (AMENDMENT) (No. 2) BILL, 1955.**

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Gambling Ordinance, Chapter 148."

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: —Sir: I beg to move the amendment standing in my name, which is purely formal and a copy of which is in the hands of honourable Members.

*Proposed amendment:* —

leave out the following—

"(No. 2)".

Clause 1, as amended, was agreed to.

Clause 2 was agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Gambling (Amendment) (No. 2) Bill, 1955 had passed through Committee with one 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.

**LAND TRANSACTIONS (ENEMY OCCUPATION)  
(AMENDMENT) BILL, 1955.**

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance further to amend the Land Transactions (Enemy Occupation) Ordinance, Chapter 256."

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.

Clauses 1 to 3 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Land Transactions (Enemy Occupation) (Amendment) Bill, 1955 had passed through Committee without 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.

#### **URBAN COUNCIL (AMENDMENT) BILL, 1955.**

MR. H. G. RICHARDS moved the Second reading of a Bill intituled "An Ordinance to amend the Urban Council Ordinance, 1955."

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.

Clauses 1 and 2 were agreed to.

Council then resumed.

MR. H. G. RICHARDS reported that the Urban Council (Amendment) Bill, 1955 had passed through Committee without 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.

### **CHUNG CHI COLLEGE INCORPORATION BILL, 1955.**

DR. CHAU SIK NIN moved the First reading of a Bill intituled "An Ordinance to provide for the incorporation of the members of Chung Chi College."

He said: Chung Chi College is a Christian institution established some 4 years ago by the representatives of the various Protestant churches in Hong Kong. It is a college of liberal arts and science for post-secondary school graduates. Its financial support comes mainly from the U.S.A., Canada and England.

The College is embarking on the erection of a permanent campus on a site near Shatin that has been donated by Government.

It is desirable that the College should now be incorporated to ensure perpetual succession and for convenience in dealing with the property and funds of the college.

MR. NGAN SHING-KWAN seconded.

The question was put and agreed to.

The Bill was read a First time.

#### *Objects and Reasons.*

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

1. Chung Chi College was founded in 1951 by representative members of the Christian churches in Hong Kong to provide higher education in accordance with Christian traditions, using in the main the Chinese language as the medium of instruction.

2. The Board of Governors of the college now desires to incorporate the college to ensure perpetual succession and for convenience in dealing with the property and funds of the college.

3. Clause 3 incorporates the chairman and members of the college.

4. Clause 4 defines the members of the college.

5. Clause 5 defines the powers of the corporation.

6. Clause 6 deals with the vesting in the corporation of properties belonging to the unincorporated college on the coming into operation of this Ordinance.

7. Clause 7 provides for the existing constitution of the unincorporated college to become the constitution of the corporation.

8. Clause 8 provides for the registration with the Registrar of Companies of the registered address, the constitution, the names and addresses of the members of the Board of Governors and of any person authorized to sign deeds, documents and other instruments on behalf of the corporation and any changes in respect thereof.

9. Clause 9 provides against payment of moneys belonging to the corporation to its members.

10. Clause 10 defines the constitution, powers and duties of the Board of Governors, the College Council and the Faculty Board.

11. Clause 11 provides for the execution of deeds and other documents.

12. Clause 12 contains provisions saving the rights of the Crown.

### **ADJOURNMENT.**

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

THE ATTORNEY GENERAL: —May I suggest this day fortnight?

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