

OFFICIAL REPORT OF PROCEEDINGS.**Meeting of 24th June, 1959.**

PRESENT:HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR ROBERT BROWN BLACK, K.C.M.G., O.B.E.

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL SIR EDRIC MONTAGUE BASTYAN, K.B.E., C.B.

THE HONOURABLE THE COLONIAL SECRETARY

MR. EDMUND BRINSLEY TEESDALE, M.C. (*Acting*).

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR HOOTON, Q.C. (*Acting*).

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. JOHN CRICHTON McDOUALL.

THE HONOURABLE THE FINANCIAL SECRETARY

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

THE HONOURABLE PATRICK CARDINALL MASON SEDGWICK

(Commissioner of Labour).

THE HONOURABLE ALLAN INGLIS

(Director of Public Works).

DR. THE HONOURABLE DAVID JAMES MASTERTON MACKENZIE, C.M.G., O.B.E.

(Director of Medical and Health Services).

THE HONOURABLE COLIN GEORGE MERVYN MORRISON

(Director of Urban Services).

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

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

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

THE HONOURABLE KWOK CHAN, O.B.E.

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

THE HONOURABLE JOHN DOUGLAS CLAGUE, C.B.E., M.C., T.D.

MR. ANDREW McDONALD CHAPMAN (*Deputy Clerk of Councils*).**ABSENT:**

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

THE HONOURABLE HUGH DAVID MacEWEN BARTON, M.B.E.

MINUTES.

The Minutes of the meeting of the Council held on 3rd June, 1959, 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>
Report on Roads and Traffic in the Urban Areas of Hong Kong, June 1958, by G. Charlesworth.	
Pharmacy and Poisons Ordinance.	
Poisons List (Amendment) (No. 2) Regulations, 1959	A. 35.
Pharmacy and Poisons Ordinance.	
Poisons (Amendment) (No. 2) Regulations, 1959	A. 36.
Public Order Ordinance.	
Military Installations Closed Areas (Amendment and Consolidation) (Amendment) Order, 1959	A. 37.
Protected Places (Safety) Ordinance.	
Protected Places Declaration (Amendment) Order, 1959	A. 38.
Pensions Ordinance.	
Pensions (Amendment) Regulations, 1959	A. 39.

He said: Sir, among these is a Report on Roads and Traffic in the Urban Areas of Hong Kong by Dr. Charlesworth of the Road Research Laboratory on which, Sir, if I may, I would like to make a few remarks.

Honourable Members will recall that in June last year Dr. Charlesworth visited the Colony to advise on its traffic problems. It was hoped that he would stay here for several months but, in the event, he was able to stay for only one month and the Report thus deals mainly with general principles rather than with detailed solutions to local problems. There is much of interest in the Report, which shows that the road development plans already prepared by the Public Works Department have generally been along the right lines. Not all the recommendations in the Report, however, are necessarily acceptable to Government and some will need further detailed examination.

In the meantime Your Excellency has appointed a Committee under the chairmanship of the Director of Public Works with both official and unofficial representation, in the former case drawn from the Government departments mainly concerned, and has given the

committee appropriate terms of reference covering a wide field. This Committee will shortly commence a study of one major question which Government has been considering and which also emerges from the Report, and that is whether some single organization or authority should be established to regulate matters of roads and road transport. It is, furthermore, intended that the Committee will advise Government on the desirability of establishing some such organization or authority, and will make recommendations on its composition and on the scope and nature of its powers and functions.

BANK NOTES ISSUE ORDINANCE—RESOLUTION.

THE FINANCIAL SECRETARY moved the following resolution: —

Resolved, pursuant to the proviso to section 5 of the Bank Notes Issue Ordinance, Chapter 65, that this Council hereby extends the powers of all the note-issuing banks to make, issue or re-issue and circulate notes until and including the 12th day of July, 1960.

He said: The Bank Notes Issue Ordinance provides that the powers of the note issuing banks lapse unless renewed from time to time by this Council. It is the practice to renew these powers for the maximum period of one year and the present powers expire on the 12th July next. This Resolution provides that the powers shall again be renewed for the maximum period of one year.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

INTERPRETATION (AMENDMENT) BILL, 1959.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Interpretation Ordinance, Chapter 1."

He said: Sir, the Interpretation Ordinance makes provision as to the meaning to be assigned to terms used in other Ordinances and in subsidiary legislation. Any amendment to it accordingly affects the interpretation henceforth to be attributed to those terms in the other laws of the Colony. An explanation has therefore been given in the statement of Objects and Reasons appended to the Bill of each of the amendments proposed by this Bill and I do not think I can add anything material to that explanation at this stage.

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: —

1. "Hard labour" is no longer a form of punishment: the work to be done by any prisoner being a matter for the Commissioner of Prisons under the Prison Rules, 1954. It is intended therefore, to remove from our legislation all references to "hard labour". Clause 2 deletes the definition of "imprisonment" which had imported "hard labour" into sentences of imprisonment in certain circumstances.

2. Clause 2 also extends the definition of the term "Colonial Secretary" so as to include not only the Deputy Colonial Secretary but also new posts of Principal Assistant Colonial Secretary and Assistant Colonial Secretary.

3. Enactments which did not stipulate the particular day on which they were to come into operation were required by the implications of subsection (2) of section 8 to be published in the *Gazette*. The new section 8 substituted by clause 3 incorporates this provision expressly into every such enactment.

4. Clause 4 substitutes for subsection (2) of section 9 a similar provision which has been adapted from the Interpretation Acts of Northern Ireland and Canada and which is considered to be clearer.

5. Clause 5 is intended to clarify the provisions of section 18, which deals with the exercise of powers between the passing and the coming into operation of the enactment granting such powers.

6. Section 19A, enacted in 1955, made provision for appointment to an office while the holder of the same is on leave pending relinquishment. The section is now amended by clause 6 to make it clear that it includes those offices the emoluments of which are provided for by resolution of Legislative Council, and includes cases where the retiring officer remains on leave of absence in the Colony.

DISTRICT COURT (AMENDMENT) BILL, 1959.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the District Court Ordinance, 1953."

He said: Sir, this Bill, although brief, is important for future litigants in the District Court as, if enacted, it will mean that in civil cases within their jurisdiction, the District Judges will be able to give effect to that part of our law known as equity as well as that part known as the common law. Without this provision cases may arise in which they may be unable to do justice between parties in the full sense of the word. I will not attempt any explanation as to the

difference between the rules of the common law and the rules of equity: suffice it to say that equity grants relief upon broader principles than does the common law, and indeed came into existence to mitigate the narrowness and the severity of the common law. Equity has prevailed in cases of conflict over the common law in England since 1875; it has similarly prevailed in such cases in the Supreme Court of this Colony since 1901; so if this Bill finds favour it will also prevail as from 1959 in the last stronghold of the common law, the District Court of this Colony.

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: —

Doubt has arisen as to the jurisdiction of the District Court to give effect to equitable remedies and principles in common law proceedings within its jurisdiction. This Bill seeks to remove this doubt by introducing into the District Court Ordinance, 1953, provisions modelled upon section 71 of the County Courts Act, 1934, and section 10 of the Supreme Court Ordinance, Chapter 4.

**LAND TRANSACTIONS (ENEMY OCCUPATION)
(JURISDICTION) BILL, 1959.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to make provision touching the jurisdiction of the Supreme Court and the District Court respectively in relation to proceedings under section 7 of the Land Transactions (Enemy Occupation) Ordinance, Chapter 256."

He said: Sir, this Bill, like the one which has just passed its First reading, has for its subject the jurisdiction of the Courts of the Colony. Unlike the previous Bill, however, it is limited to defining the jurisdiction of the Courts in one particular matter, namely their jurisdiction to make orders for the execution of confirmatory assignments of land the subject of transactions during the period of enemy occupation of the Colony.

It will be recalled that after the re-occupation the Land Transactions (Enemy Occupation) Ordinance was enacted, which enabled persons who claimed title to land as a result of transactions during the period of enemy occupation, to regularize their legal position in

respect of that land. That Ordinance provided for the execution and registration of assignments in confirmation of the Japanese assignments. Section 7 authorized persons to seek from the Courts orders for the execution of confirmatory assignments in cases of disputed liability and in cases where the person alleged to be liable to execute such confirmatory assignments could not be found.

Numerous proceedings under this section have been determined in the District Court since its inception in 1953, and many orders for the execution of confirmatory assignments have been made by that Court. However, in a case heard at the end of last year, the District Court held that on a proper construction of the section it had no jurisdiction to entertain proceedings where the person alleged to be liable to execute a confirmatory assignment could not be found, and the Court further declared that there were strong reasons for thinking that it had no jurisdiction to entertain applications for orders transferred to it by the Supreme Court in cases where liability was disputed.

It follows from this decision that any orders made in the past by the District Court for the execution of confirmatory assignments are, to say the least, of dubious validity and so are titles to land created by virtue of those orders. The position is complicated by the fact that property in respect of which a confirmatory assignment was executed years ago may now be held by *bona fide* purchasers for value who assume, not without cause, that they have good titles whereas in fact those titles could, in the light of the decision of the District Court to which I have referred, be strongly disputed.

So it is considered that the only course open in the circumstances is to introduce legislation to rectify the position. This is the purpose of this Bill, which proposes that jurisdiction should be granted retrospectively to the District Court to make orders for confirmatory assignments and to remove doubt retrospectively as to the power of the Supreme Court to transfer proceedings of this type to the District Court. If this Ordinance is enacted, those titles to land, the validity of which are now suspect, will once again be recognized as good titles.

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: —

In a recent case in the District Court it was held that that Court had no jurisdiction to entertain proceedings under subsection (2) of section 7 of the Land Transactions (Enemy Occupation) Ordinance,

Chapter 256, which were transferred to the District Court from the Supreme Court, and doubt was expressed about the power of the Supreme Court to transfer cases under subsection (1) of section 7. It has been the practice in the past to transfer cases under both subsections, and it is considered desirable that the Supreme Court should have that power and that the District Court should be vested with jurisdiction to hear such cases. Furthermore, as title to land is involved in these cases, it is essential to validate previous transfers. This Bill is designed to achieve these objects.

**COMPANIES (PREVENTION OF EVASION OF THE
SOCIETIES ORDINANCE) BILL, 1959.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to prevent circumvention and evasion of the Societies Ordinance, Chapter 151, and to provide for measures to be taken with respect to companies registered under the Companies Ordinance, Chapter 32, and companies to which Part XI of the Companies Ordinance applies which would, if they were societies registered under the Societies Ordinance, be liable to have their registration under that Ordinance cancelled by the Registrar of Societies on any of the grounds specified in subsection (5) of section 5 of that Ordinance, and for purposes connected with the matters aforesaid."

He said: Sir, the Societies Ordinance was enacted in 1949 because it was considered that the maintenance of law and order in the Colony would be assisted by enhanced control over societies. Powers were then granted to refuse registration of societies likely to be used for unlawful purposes or for purposes incompatible with good order in the Colony. Powers were also granted for the dissolution of societies which, after registration, turned to such subversive activity. That Ordinance goes on to provide that societies which continue in being after they have been refused registration or after they have been the subject of orders for dissolution are unlawful, and their office-bearers and members become liable to prosecution.

The Societies Ordinance, however, leaves a loophole for persons who wish to associate together for purposes inimical to the peace; they can, by registering under the Companies Ordinance, take advantage of the exemption from the provisions of the Societies Ordinance, granted to companies registered under the Companies Ordinance. Under this cover they are in a position to carry on their nefarious activities. The purpose of the Bill now before Council is to close this loophole by authorizing the Governor in Council to forbid registration under the Companies Ordinance where he is satisfied that the purpose of the

formation of the company is the frustration of the provisions of the Societies Ordinance, and by further authorizing him to order the striking off from the register a company which would justify dissolution were it a society registered under the Societies Ordinance.

The proposed powers are strong ones, but the menace to law and order posed in present times by unlawful societies is such that strong measures are considered to be essential. It is proposed that these powers should repose solely in the Governor in Council. I will add that no *bona fide* commercial concern or charitable organization has anything to fear from this proposed measure; it does not affect them. Only associations which are enemies of law and order in the Colony will have cause for further thoughts if this Bill becomes law.

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: —

A company registered under the Companies Ordinance (Cap. 32) is outside the purview of the Societies Ordinance (Cap. 151) by virtue of the definition of the word "society" in the latter Ordinance, and it is possible therefore to evade the requirements of the Societies Ordinance by registration under the Companies Ordinance. The purpose of this Bill is to prevent such evasions, and its provisions are designed to enable the Governor in Council—

- (i) to order the Registrar of Companies to refuse registration under the Companies Ordinance if the Governor in Council is satisfied that the company is being formed to circumvent or evade the Societies Ordinance (clause 3);
- (ii) to order the Registrar of Companies to strike a company off the register on grounds which would justify cancellation of the registration if it were a society registered under that Ordinance (clause 4);
- (iii) to order a company incorporated outside the Colony, but carrying on business within it, to cease to carry on business within the Colony, whereupon such company will be deemed to be an unlawful society within the Colony (clause 15).

2. Clauses 6 to 14 make provision for the winding up by the Official Receiver of a company struck off the register by order of the Governor in Council.

3. Clause 16 provides that the Ordinance shall remain in force until the end of 1959 and thereafter for such extended period, not exceeding one year at a time, as may be authorized by the Legislative Council.

4. A comparative table is attached.

ADDRESS BY GOVERNOR.

Gentlemen, at our next meeting of Legislative Council four of our present Members, Dr. S. N. Chan, Mr. M. W. Lo, Mr. Terry and Dr. Rodrigues, will no longer be with us as members.

Dr. Chau has served on Legislative Council for thirteen years now and throughout that exceptionally long period he has rendered great service to the public of Hong Kong. He has given us in Council and in Finance Committee which carries through so much important work, all the benefit of his wisdom and experience. This has been to our great advantage.

Mr. Terry has served on Council for nine and a half years, and Mr. Lo Man Wai for nine years. These again are long periods, and again these gentlemen have records of public service and devotion to the needs of the community of which they may justly be proud. As honourable Members know, Mr. Terry received recognition of his public service on the occasion of the official birthday of Her Majesty the Queen.

Dr. Rodrigues has served on Council for six years and in the best traditions of the Unofficial Members of this Council, he has at all times been ready to assist in Council and Committee work in full measure, and he has brought his own high standard of conduct and his ability to help us in our work. I am sure that the other Members of Council will wish to join me in placing on record appreciation of the public service of our four colleagues, and in offering them our best wishes for the future. (*Applause*).

ADJOURNMENT.

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

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

H. E. THE GOVERNOR: —Council stands adjourned until this day fortnight.