

OFFICIAL REPORT TO PROCEEDINGS.**Meeting of 6th April, 1960.****PRESENT:**HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT (*PRESIDENT*)

MR. CLAUDE BRAMALL BURGESS, C.M.G., O.B.E.

THE HONOURABLE THE COLONIAL SECRETARY

MR. DAVID CLIVE CROSBIE TRENCH, 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 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).

THE HONOURABLE ROBERT MARSHALL HETHERINGTON, D.F.C.

(Commissioner of Labour).

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

THE HONOURABLE KWOK CHAN, O.B.E.

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

THE HONOURABLE DHUN JEHANGIR RUTTONJEE, O.B.E.

THE HONOURABLE FUNG PING-FAN, O.B.E.

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

THE HONOURABLE KWAN CHO-YIU, O.B.E.

THE HONOURABLE GEORGE MACDONALD GOLDSACK.

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

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

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

MINUTES.

The minutes of the meeting of the Council held on 23rd March, 1960 were confirmed.

OATHS.

MR. G. M. GOLDSACK took the Oath of Allegiance and assumed his seat as a Member of the Council.

H. E. THE OFFICER ADMINISTERING THE GOVERNMENT: —I should like to congratulate you on your appointment and to welcome you to this Council. I am sure that your long and distinguished commercial experience will be a great help to us in our work.

PAPERS.

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

Subject. *G.N. No.*

Sessional Papers, 1960: —

No. 8—Annual Report by the Director of Medical and Health Services for the year 1958/59.

No. 9—Annual Report of the Grantham Scholarships Fund Committee for the period 1.9.58 to 31.8.59.

Report of the Director General of the Overseas Audit Service on the accounts of Hong Kong for the year ended 31st March, 1959.

Waterworks Ordinance.

Waterworks (Amendment) Regulations, 1960 A. 24.

Importation and Exportation Ordinance.

Exportation (Imperial Preference Certificates) (Amendment) Regulations, 1960 A. 25.

Road Traffic Ordinance, 1957.

Road Traffic (Taxis and Hire Cars) Regulations, 1960 A. 27.

Merchant Shipping Ordinance, 1953.

Merchant Shipping (Control of Ports) (Amendment) Regulations, 1960 A. 28.

Colonial Air Navigation Order, 1955.

Hong Kong Air Navigation (Airport Fees) (Amendment) Regulations, 1960 A. 29.

**SUPPLEMENTARY PROVISIONS FOR THE QUARTER
ENDED 31ST DECEMBER, 1959.**

THE FINANCIAL SECRETARY moved the following resolution: —

Resolved that the Supplementary Provisions for the quarter ended 31st December, 1959, as set out in Schedule No. 3 of 1959/60, be approved.

He said: The total supplementary provision required for the third quarter of last year shown in the schedule is \$21 millions against which savings are insignificant.

The feature of the schedule is the number of additional provisions required for Public Works Non-recurrent. For nineteen items which were in the estimates, additional provision is required because the schemes progressed much better than was expected, and a great deal of money is required for another twenty schemes which were initiated since the estimates were finalized. I would emphasize that the sums shown in the schedule do not represent the full cost in each case; they represent the amount of money which the Public Works Department believed it could spend during the financial year 1959/60.

Among the Public Works items are two of particular interest. One requires the provision of over one million dollars for work necessitated as a result of the takeover of the Naval lands, the road and the straightening of the Albany Nullah; the other involves the provision of almost one and a half million dollars for work on the Plover Cove and Hebe Haven schemes. There are large additional provisions for the reclamations at Kwun Tong and at Tsuen Wan and also for resettlement housing.

Three items under the Medical and Health Department cover the cost of furniture and equipment for three new clinics which are being built for us by the Jockey Club and which will be handed over to us for operation.

All the items have already received the approval of Finance Committee, and the schedule now requires the covering approval of this Council.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

MAGISTRATES (AMENDMENT) BILL, 1960.

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

He said: Sir, two of the amendments contained in this Bill propose innovations to the law of Hong Kong, namely, provision for

the hearing of triad cases in camera and for appeals by the Attorney General to the Supreme Court against sentences passed by magistrates, with a view to their increase.

Sir, I think it is generally agreed that it is desirable that the administration of justice should be open to the scrutiny and reasonable criticism of members of the public, and that therefore the general rule should be that persons charged with criminal offences should be tried in public. However, I think it is also generally agreed that, although in most cases considerations of public interest require that trials should be in public there are nonetheless occasions when further considerations of the public interest outweigh this requirement and that when these further considerations are present, exceptions to the right of public trial may properly be made. Such further considerations include national security, protection of public morals, protection of the interests of juveniles, protection of the interests of victims of and witnesses to certain crimes, and in some cases protection of the interests of the accused himself. We already have in our law instances where the general public may be excluded for some of these reasons.

As is well known, one of the principal threats to law and order in this Colony is that presented by the triad societies whose influence is such that witnesses are frequently reluctant to give evidence in public against their officials and members. The result, Sir, is that many gangsters of this type are not brought to book in the Courts as they deserve and as justice requires. This Bill therefore proposes that magistrates should have power to order the hearing in camera of triad offences. The decision as to this in any particular case will be in the discretion of the magistrate hearing the case. Sir, it is considered that this exception to the general right of public trial is justified by the interests of public order and is in accordance with the principles I have endeavoured to outline.

Sir, the second major amendment proposed by this Bill is, as I have indicated, to empower the Crown to appeal against what is considered to be an inadequate sentence imposed in a magistrate's court. Sir, I appreciate full well that the imposition of an appropriate sentence can be a matter of great difficulty and is frequently an unenviable task. It indeed may be a matter of particular difficulty in this Colony by reason of the large number of offences now heard by magistrates and the diversity of the nature of those offences. It is considered that the adequacy or otherwise of a sentence can only be fairly and properly determined by a judicial review of the factors and the circumstances which should have been taken into account by the Court imposing it, and the only way of securing such a review is by means of an appeal. Sir, it is true that in England so general right of appeal against sentences is given to the Crown, but such a right has frequently

been conferred in British territories overseas, and the existence of this right can, I think, be claimed to have contributed to the proper administration of justice in those territories.

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: —

This Bill seeks to amend the Magistrates Ordinance in four ways.

Firstly, it amends section 11 to provide for the hearing in camera, at the discretion of the magistrate, of offences against the Societies Ordinance relating to triad societies. The reluctance of witnesses to give evidence in public has made such provision necessary. This amendment also provides that where evidence is heard in camera verdict and sentence or other order be given in public.

Secondly, it amends section 35(1) in order—

- (a) to eliminate confusion arising from reference to probation retained in that subsection since the enactment of the Probation of Offenders Ordinance, 1956, and
- (b) to enable magistrates, in suitable cases, in their discretion, to record convictions notwithstanding the fact that, having regard to the circumstances, they may think it inexpedient to impose any or any but nominal punishments upon finding charges proved.

Thirdly, it amends section 95 so as to increase from two hundred and fifty dollars to five hundred dollars the amount of compensation which a magistrate may award for injury or loss to person or property. The present limit is too low adequately to compensate many of those entitled to compensation.

Fourthly, it amends sections 111, 112, 114 and 118 to provide for appeals by the Attorney General against magistrates sentences on the ground of inadequacy. The large number of petty offences now heard by magistrates and the diversity of the nature of those offences has made necessary this further provision for judicial review of sentences. A similar provision exists in other British territories overseas.

CRIMINAL PROCEDURE (AMENDMENT) BILL, 1960.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Criminal Procedure Ordinance, Chapter 221."

He said: Sir, this Bill proposes the inclusion in our law of certain safeguards for protected prisoners of war and protected internees in criminal proceedings. These provisions are modelled on a similar provision contained in the Geneva Conventions Act, 1957.

The Bill also expands and brings up to date the provisions of the principal Ordinance relating to the powers of the Court in relation to fines and forfeited recognizances. These new provisions follow closely upon similar provisions contained in the Criminal Justice Act, 1948.

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: —

The Geneva Conventions Act, 1957 has now been applied to Hong Kong. Amongst its provisions are certain safeguards for prisoners of war and internees who are tried for offences. Section 4 of that Act provides that the period within which such a person had to give notice of his intention to appeal should be extended so that it would not expire until ten days after the time when such person had been informed that the country acting as the protecting power under the Act had been notified of his conviction. This section has not been applied to the Colony because it was considered that its terms were not apt for all the territories to which the remainder of the Act has been applied.

2. Clause 2 of this Bill makes the necessary amendment to section 82 of the Criminal Procedure Ordinance (Chapter 221) so as to enact this provision.

3. Clause 3 deletes from section 108 the reference to probation with the object of removing doubts which have arisen since the enactment of the Probation of Offenders Ordinance, 1956.

4. Clause 4 repeals and replaces section 115. The new provisions follow closely those in the Criminal Justice Act, 1948.

**FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT)
BILL, 1960.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to make provision for the enforcement in the Colony of Hong Kong of Judgments given in other parts of Her Majesty's dominions, certain other territories and foreign countries which afford reciprocal treatment to judgments given in the Colony of Hong Kong, for facilitating the enforcement in such dominions, territories or countries of judgments given in the Colony of Hong Kong and for matters connected therewith."

He said: Sir, our existing law contains provision for the regulation, when specified conditions are satisfied, in the Supreme Court of the Colony, of judgments obtained in the superior courts of the United Kingdom and of the Commonwealth outside the United Kingdom, and for the enforcement in the Colony of those judgments. This Bill proposes to extend similar facilities to judgments obtained in the superior courts of those foreign countries to which the Governor in Council by order directs that the provisions of this Bill shall apply. Such order may, however, only be made where the Governor in Council is satisfied that substantial reciprocity of treatment will be assured in the enforcement in that foreign country of judgments given in the Supreme Court of this Colony. Further such order may be revoked if it subsequently appears that substantial reciprocity of treatment is not accorded in that foreign country.

Sir, the Bill is modelled upon the Foreign Judgments (Reciprocal Enforcement) Act, 1933, as modified by the Administration of Justice Act, 1956.

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: —

The purpose of this Bill is to introduce in the Colony provisions similar to those pertaining in the United Kingdom by virtue of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, as modified by section 51 of the Administration of Justice Act, 1956, for the enforcement of judgments obtained in foreign countries.

2. The effect of the proposed measures will be to enable the Governor in Council, where he is satisfied that reciprocal treatment will be accorded for the enforcement of judgments obtained in the

superior courts of the Colony, as defined in clause 2 of the Bill, to extend the provisions for the registration and enforcement of foreign judgments proposed in this Bill to any foreign country or any part of Her Majesty's dominions or territories outside the Colony which accords such reciprocal treatment; and, where the provisions of the Judgments (Facilities for Enforcement) Ordinance, (Chapter 9) already apply to any such dominion or territory, to substitute therefor the provisions proposed by this Bill, subject only to the transitional limitations specified in proviso (a) to clause 9 of the Bill.

3. A detailed Comparative Table is annexed hereto showing, with notes, the corresponding provisions of the United Kingdom legislation which this Bill seeks to introduce.

MEDICAL REGISTRATION (AMENDMENT) BILL, 1960.

DR. D. J. M. MACKENZIE moved the First reading of a Bill intituled "An Ordinance further to amend the Medical Registration Ordinance, 1957."

He said: Experience of the working of the disciplinary functions of the Medical Council has made it clear that the present membership of nine is not adequate for the purposes of a disciplinary inquiry. Such an inquiry entails a preliminary investigation of the circumstances by a Committee of three members of the Council. It is desirable that the three members of the Preliminary Investigating Committee should not participate in any subsequent inquiry. As a quorum of the Council is five members there is, therefore, at present little margin within the membership of nine to allow of absence due to illness or other unavoidable causes. Accordingly, it is proposed to increase the membership by two thus bringing the total membership of the Council to eleven.

Should this Bill become law it will come into operation on a day to be appointed by Your Excellency by proclamation. This will give time to make the necessary administrative arrangements for new appointments before its provisions come into force.

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: —

It is considered desirable to enlarge the Medical Council. This Bill accordingly proposes the amendment of section 3 of the principal Ordinance which provides for its composition.

JUVENILE OFFENDERS (AMENDMENT) BILL, 1960.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Juvenile Offenders Ordinance, Chapter 226."

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 4 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Juvenile Offenders (Amendment) Bill, 1960 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 into law.

**POK OI HOSPITAL INCORPORATION (AMENDMENT)
BILL, 1960.**

DR. D. J. M. MACKENZIE moved the Second reading of a Bill intituled "An Ordinance to amend the Pok Oi Hospital Incorporation Ordinance, 1954."

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.

Clause 4.

DR. D. J. M. MACKENZIE: —I beg to move that clause 4 be amended as set forth in the paper before honourable Members.

Proposed Amendment.

4. (1) In the new subsection (3), leave out the word "of" in the penultimate line.
- (2) In the new subsection (5), after the word "delegate" in the last line, insert the following—
"to such committee."

Clause 4, as amended, was agreed to.

Clause 5.

DR. D. J. M. MACKENZIE: —I beg to move that clause 5 be amended as set forth in the paper before honourable Members.

Proposed Amendment.

5. Leave out the word "hereof." and substitute the following—
"of the principal Ordinance enacted hereby."

Clause 5, as amended, was agreed to.

Council then resumed.

DR. D. J. M. MACKENZIE reported that the Pok Oi Hospital Incorporation (Amendment) Bill, 1960 had passed through committee with certain 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.

ADJOURNMENT.

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

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

H. E. THE OFFICER ADMINISTERING THE GOVERNMENT: — Council stands adjourned until this day fortnight.