

**OFFICIAL REPORT OF PROCEEDINGS****Meeting of 5th July 1961****PRESENT:**HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT (*PRESIDENT*)

MR CLAUDE BRAMALL BURGESS, CMG, OBE

THE HONOURABLE THE COLONIAL SECRETARY

MR EDMUND BRINSLEY TEESDALE, MC (*Acting*)

THE HONOURABLE THE ATTORNEY GENERAL

MR ARTHUR RIDEHALGH, QC

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR JOHN CRICHTON McDOUALL

THE HONOURABLE THE FINANCIAL SECRETARY

MR JOHN JAMES COWPERTHWAITTE, OBE

THE HONOURABLE ALLAN INGLIS

*(Director of Public Works)*

DR THE HONOURABLE DAVID JAMES MASTERTON MacKENZIE, CMG, OBE

*(Director of Medical and Health Services)*

THE HONOURABLE KENNETH STRATHMORE KINGHORN

*(Director of Urban Services)*

THE HONOURABLE PETER DONOHUE

*(Director of Education)*

THE HONOURABLE HUGH DAVID MacEWEN BARTON, MBE

THE HONOURABLE DHUN JEHangIR RUTTONJEE, OBE

THE HONOURABLE FUNG PING-FAN, OBE

THE HONOURABLE KWAN CHO-YIU, OBE

THE HONOURABLE KAN YUET-KEUNG, OBE

THE HONOURABLE LI FOOK-SHU

MR ALASTAIR TREVOR CLARK (*Clerk of Councils*)**ABSENT:**

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL SIR RODERICK WILLIAM McLEOD, KCB, CBE

THE HONOURABLE KWOK CHAN, OBE

## MINUTES

The minutes of the meeting of the Council held on 21st June 1961 were confirmed.

## PAPERS

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

<i>Subject</i>	<i>GN No</i>
Public Services Commission Ordinance.	
Public Services Commission (Amendment) Regulations, 1961.	A. 73
Registration of Persons Ordinance, 1960.	
Registration of Persons (Re-registration) (No. 7) Order, 1961 .....	A. 74

## QUESTIONS

MR DHUN J. RUTTONJEE asked the following question: —

In the light of recent public comment on banking affairs, does Government consider it desirable to conduct a thorough review of the Colony's existing Banking Ordinances, particularly with a view to establishing minimum liquid reserve holdings and uniform standards in other matters relating to sound banking practice?

In posing the foregoing question, I wish, however, to make it clear that I do not subscribe to the current suggestion for the establishment of a Central Bank.

THE FINANCIAL SECRETARY replied as follows: —

Your Excellency, the brief answer is "yes"; although Government would not wish at this stage to say precisely what changes it thinks should be made.

This question of control of banks has been of concern to Government for a considerable time. The banking system has expanded very rapidly in recent years and one special feature of its development has been the growth of the banking habit among the general public, as is evidenced by the rapid rise in savings deposits. This is a sign of economic progress but it brings dangers with it and makes the provision of adequate safeguards all the more necessary.

For these reasons Government recognizes the force of recent public comment directed towards the imposition of a greater degree of control on banking operations than is provided by the present Banking Ordinance. It is proposed to refer the matter first to the Banking Advisory Committee set up under the Ordinance, and meetings of that Committee to consider the problem will be convened shortly.

### **BANK NOTES ISSUE ORDINANCE, CHAPTER 65**

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, 1962.

He said: Sir, the Bank Notes Issue Ordinance, Chapter 65, lays down that the powers of the note-issuing banks lapse automatically unless renewed by this Council from time to time. The present powers of these banks expire on the 12th July, and it is proposed in this Resolution that they should be renewed for the maximum permissible period of one year.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

### **NURSES REWARDS AND FINES FUND**

DR D. J. M. MACKENZIE moved the following Resolution: —

WHEREAS the Nurses Rewards and Fines Fund established by Resolution of this Council dated 24th May, 1950, has been discontinued:

NOW THEREFORE be it Resolved by this Council that the said Nurses Rewards and Fines Fund be wound up.

He said: Sir, prior to 1956 it was customary for probationer nurses to enter into an agreement with Government whereby a deposit of \$200 was forfeited if the student nurse concerned gave up, without good reason, the course of training at any time during the first two years of the four year course. Any deposits forfeited were paid into the Nurses Rewards and Fines Fund established by Resolution of this Council in May 1950. The purposes of this Fund were to buy prizes for nurses who gained credit or honours in the Nursing Examinations,

subject to a limit of \$50 for each prize, to defray the expenses of the annual prizegiving and to purchase books for the library in the School of Nursing or to provide recreational or other facilities for the general welfare of the Government nurses.

When the system of deposits for new entrants to the nursing course was abolished in 1956, there was a surplus in this Fund which has since been used according to the terms of the 1950 Resolution. In March of this year the Fund was exhausted and provision for the purposes approved by Council in 1950 has now been made under Head 49, Subhead 20 of the Estimates. Accordingly the need for a special Fund no longer exists and it is proposed that the Nurses Rewards and Fines Fund should be wound up.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

#### **PUBLIC SERVICES COMMISSION (AMENDMENT) BILL, 1961**

THE COLONIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to amend the Public Services Commission Ordinance, Chapter 93."

He said: Sir, as Honourable Members are aware one of the principal functions of the Public Services Commission is to advise Your Excellency on the filling of prescribed offices in the public service, and the confirmation and promotion of public officers. By the provisions of section 6(2) of the Ordinance and Schedule to it, certain offices have always been excluded from the purview of the Public Services Commission. Among these are the Judges of the Supreme Court. It is considered that the factors which have justified the maintenance of this special position for Judges of the Supreme Court apply with equal force to District Judges and Magistrates, and the principal purpose of the present Bill is to include District Judges and Magistrates among the offices excluded from the operation of the Public Services Commission Ordinance.

The opportunity has been taken, at the same time, to make two minor corrections in the wording of the principal Ordinance.

THE ATTORNEY GENERAL 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 measure is to amend the Public Services Commission Ordinance—

- (a) by adding to those posts exempted from the purview of the Public Services Commission by section 6 the posts of district judges and magistrates;
- (b) by correcting an erroneous reference to the Government of Hong Kong in section 9; and
- (c) by amending the reference in the First Schedule to "Cadet Officers, Staff Grade" to read "Administrative Officers Staff Grade A" which is now the correct title.

**DEFAMATION AND LIBEL (AMENDMENT) BILL, 1961**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Defamation and Libel Ordinance, Chapter 21."

He said: Sir, the law of defamation in Hong Kong is basically the common law of England. The principle is that the law recognizes in every man a right to have the estimation in which he stands in the opinion of others, unaffected by false statements to his discredit; and any disparagement of his good name is an infringement of this right and a wrongful act for which civil, and sometimes criminal, proceedings will lie. The common law has, however, been modified from time to time, beginning in early Victorian days, by English statute law, and similar statutory modifications applicable to Hong Kong are contained in the Defamation and Libel Ordinance.

The Bill now before Council proposes further statutory modifications based on the Defamation Act of 1952 of the United Kingdom and the effect of these modifications is summarized in the statement of Objects and Reasons. In a case such as this, which is very much as we call it "lawyer's law", it is impossible to do more than summarize unless one is to make a statement or speech of inordinate length, and that I do not propose to do. But I will invite particular attention to what, I think, are the two most important alterations in the law which this Bill proposes to introduce.

The first is the new section 14 contained in clause 8 of the Bill which places the law relating to qualified privilege of newspapers on a new basis. At common law, fair and accurate reports of Judicial and Parliamentary proceedings, and of a limited category of other public proceedings where the publication is in the public interest, are

privileged unless malice is proved; and that privilege is not confined to newspaper reports. The privilege was however extended in England by the Law of Libel Amendment Act, 1888, to reports by newspapers of a wider range of proceedings of a public character; and similar provision is now embodied in section 14 of our Defamation and Libel Ordinance. This qualified privilege of newspapers is to be extended further, and the proceedings and matters to which it will extend are set out in a new Schedule to the principal Ordinance which will be found in clause 12 of the Bill. As Honourable Members will see, that Schedule is divided into two Parts, the first Part is headed "Statements privileged without explanation or contradiction", and the second "Statements privileged subject to explanation or contradiction". In relation to those matters referred to in the first Part, the defence of qualified privilege will be available as heretofore, that is to say, unless the publication is proved to be made with malice. In relation to the matters referred to in the second Part, qualified privilege will not be a defence if it is proved that the defendant has been requested by the plaintiff to publish a letter or statement by way of explanation or contradiction, and has refused or neglected to do so or has done so in an inadequate manner.

The other provision to which I would invite attention is the new section 25 which appears on page 4 of the Bill and which deals with unintentional defamation. There it is provided that in a case of unintentional defamation a person who claims that he published the alleged defamatory words innocently in relation to the person defamed may escape liability for damages, if, and only if, certain conditions are satisfied. A person claiming innocent publication must prove—

*First:* that he did not intend to publish the alleged defamatory words of and concerning the person making complaint, and did not know of circumstances by virtue of which the words might be understood to refer to him; or

that the words were not defamatory on the face of them, and that he did not know of circumstances by virtue of which they might be understood to be defamatory of the complainant; and

*Second:* in either of those cases, that he exercised all reasonable care in relation to the publication.

He must also make an offer of amends, that is to say, he must offer—

to publish a suitable correction and a sufficient apology; and

where a defamatory document has been distributed by him or with his knowledge, to take reasonable steps to notify the recipients of that document that the words are alleged to be defamatory of the party aggrieved.

In conclusion, I would commend the Bill to this Council, and beg to move that it be read a First time.

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 measure is to incorporate into the law of the Colony relating to defamation the substance of the Defamation Act, 1952, of the United Kingdom.

2. The principal amendments to the law which it is sought by this Bill to introduce are as follows—

Clause 8 seeks to repeal and replace section 14 of the principal Ordinance. The effect of the new section 14 will, broadly speaking, be to extend the qualified privilege which attaches by common law to reports published in newspapers of judicial and certain other proceedings held in public in the Colony to such reports of similar proceedings held in public in places outside the Colony.

Clause 9 seeks to repeal and replace section 17 of the principal Ordinance. The effect of the new section 17 will be to extend the scope of the old section 17, which curbs the activities of persons who bring a number of actions in respect of what is essentially the same libel, to include actions in respect of slander.

Clause 10 extends the provisions of section 19 of the principal Ordinance, which permits of the consolidation of actions in certain cases in respect of libel, to include consolidation of actions in respect of slander.

Clause 11 adds to the principal Ordinance a number of new provisions the effect of which will be—

- (a) to relate the law of defamation to the broadcast word in the same manner as it relates at present to the written word;
- (b) to enable actions in respect of slander calculated to disparage a person in any office, profession, calling, trade or business to lie in the absence of proof of special damage;
- (c) to enable actions in respect of slander of title or slander of goods to lie in certain cases in the absence of proof of special damage;
- (d) to mitigate the rigour of the law in certain cases of unintentional defamation;

- (e) to modify the need for strict proof of all of the counts pleaded in justification, where a defendant pleads justification in answer to an action for defamation;
- (f) to modify the degree of proof required to establish the common law defence of fair comment to an action for defamation;
- (g) to exclude statements made by or on behalf of candidates at elections from the scope of the common law defence of qualified privilege in answer to actions for defamation; and
- (h) to define with precision the cases in which agreements for indemnity against civil liability for libel are void as being contrary to public policy.

3. Opportunity has been taken to delete from sections 5 and 6 reference to hard labour which is no longer applicable in the Colony, and certain other minor amendments consequential to the purpose of this Bill have also been inserted.

### **CHINESE TEMPLES (AMENDMENT) BILL, 1961**

THE SECRETARY FOR CHINESE AFFAIRS moved the Second reading of a Bill intituled "An Ordinance to amend the Chinese Temples Ordinance, Chapter 153."

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 was agreed.

Clause 2.

THE SECRETARY FOR CHINESE AFFAIRS: —I beg to move that clause 2 be amended as set forth in the paper before Honourable Members.

*Proposed Amendment.*

*Clause*

- 2 In paragraph (b), in the new subsection (1A) —
- (i) re-letter paragraph (c) as paragraph (a); and
  - (ii) re-letter paragraphs (a) and (b) as paragraphs (b) and (c) respectively.

Clauses 2, as amended, was agreed to.

Clause 3 was agreed to.

Council then resumed.

THE SECRETARY FOR CHINESE AFFAIRS reported that the Chinese Temples (Amendment) Bill, 1961, 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 into law.

### **NURSES REGISTRATION BILL, 1961**

DR D. J. M. MACKENZIE moved the Second reading of a Bill intituled "An Ordinance to repeal and re-enact, subject to amendment, the Nurses Registration Ordinance, Chapter 164."

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 22 were agreed to.

Council then resumed.

DR D. J. M. MACKENZIE reported that the Nurses Registration Bill, 1961, 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.

### **ADJOURNMENT**

HE THE OFFICER ADMINISTERING THE GOVERNMENT: —That concludes the business for to-day, gentlemen. When is it your pleasure that we should meet again?

THE ATTORNEY GENERAL: —May I suggest this day two weeks, Sir?

HE THE OFFICER ADMINISTERING THE GOVERNMENT: —Council stands adjourned until this day two weeks.