

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 14th November 1962**

PRESENT:HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT (*PRESIDENT*)

MR CLAUDE BRAMALL BURGESS, CMG, OBE

HIS EXCELLENCY LIEUTENANT-GENERAL SIR REGINALD HACKETT HEWETSON,

KCB, CBE, DSO

COMMANDER BRITISH FORCES

THE HONOURABLE EDMUND BRINSLEY TEESDALE, MC

ACTING COLONIAL SECRETARY

THE HONOURABLE MAURICE HEENAN, QC

ATTORNEY GENERAL

THE HONOURABLE JOHN CRICHTON McDOUALL

SECRETARY FOR CHINESE AFFAIRS

THE HONOURABLE JOHN JAMES COWPERTHWAITTE, OBE

FINANCIAL SECRETARY

THE HONOURABLE ALLAN INGLIS, CMG

DIRECTOR OF PUBLIC WORKS

THE HONOURABLE KENNETH STRATHMORE KINGHORN

DIRECTOR OF URBAN SERVICES

THE HONOURABLE PETER DONOHUE

DIRECTOR OF EDUCATION

THE HONOURABLE DHUN JEHANGIR RUTTONJEE, OBE

THE HONOURABLE FUNG PING-FAN, OBE

THE HONOURABLE RICHARD CHARLES LEE, OBE

THE HONOURABLE KWAN CHO-YIU, OBE

THE HONOURABLE KAN YUET-KEUNG, OBE

THE HONOURABLE WILLIAM CHARLES GODDARD KNOWLES

THE HONOURABLE SIDNEY SAMUEL GORDON

THE HONOURABLE LI FOOK-SHU

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

DR THE HONOURABLE DAVID JAMES MASTERTON MacKENZIE, CMG, OBE

DIRECTOR OF MEDICAL AND HEALTH SERVICES

MINUTES

The minutes of the meeting of the Council held on 24th October, 1962 were confirmed.

PAPERS

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

Subject *GN No*

Sessional Papers, 1962: —

No. 19—Annual Report of the Hong Kong Housing Authority for the year 1961-62.

No. 20—Annual Summary of the Education Department for the year 1961-62.

No. 21—Annual Report by the Commissioner of Labour for the year 1961-62.

No. 22—Annual Report by the Director of Social Welfare for the year 1961-62.

No. 23—Annual Report by the Commissioner of Mines for the year 1961-62.

No. 24—Annual Report by the Commissioner of Inland Revenue for the year 1961-62.

No. 25—Annual Report by the Commissioner for Resettlement for the year 1961-62.

No. 26—Annual Report by the Postmaster General for the year 1961-62.

No. 27—Annual Report by the Administrator of Japanese Property for the year 1961-62.

No. 28—Annual Report by the Controller, Public Enquiry Service for the year 1961-62.

Immigration (Control and Offences) Ordinance, 1958.

Immigration (Control and Offences) (Amendment) (No. 2) Regulations, 1962 A 105

Cremation Ordinance.

Cremation (Cape Collinson) Order, 1962 A 106

Cremation Ordinance.

Cremation and Gardens of Remembrance (Amendment) Regulations, 1962 A 107

Registration of Persons Ordinance, 1960.

Registration of Persons (Re-registration) (No. 17) Order, 1962 A 108

**SUPPLEMENTARY PROVISIONS FOR THE QUARTER ENDED
30TH SEPTEMBER 1962**

THE FINANCIAL SECRETARY moved the following resolution: —

Resolved that the Supplementary Provisions for the Quarter ended 30th September, 1962, as set out in Schedule No 2 of 1962-63, be approved.

He said: Sir, the Schedule before Council is the second list of supplementary provisions on 1962-63 account. The total supplementary vote required amounts to some \$24¾ million, against which savings of rather over \$900,000 are recorded on the Schedule.

Public Works Non-Recurrent is as usual the largest item, accounting for \$22¼ million of the total. Of this amount, \$7 million relates to additional sums required for projects already under way and progressing faster than expected and the balance is in respect of priority upgradings in the Public Works Programme or the insertion of new items in the Programme. The largest single item is \$4 million for Stage II of the Integrated Water Scheme, to enable contract drawings to be prepared. In connexion with these Public Works items, I have in the past been able to say that the total amount provided in the Estimates for Public Works as a whole would not be exceeded by reason of the supplementary provision required for individual schemes. My honourable Friend the Director of Public Works, assisted by unusually dry weather, is, however, spending at such a rate this year that I cannot, with any great confidence, say the same on this occasion.

One other item of some interest is the provision of \$1.2 million for the acquisition of new premises in Pall Mall for the Hong Kong Government London Office. Additional provision of \$53,500 is also necessary for the running expenses of this office.

All the items in the Schedule have been approved by Finance Committee and the covering approval of this Council is now sought.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

MAGISTRATES (AMENDMENT) BILL, 1962

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

He said: Sir, under the existing provisions of section 21 of the Magistrates Ordinance delays occur in the hearing of cases because witnesses, either for the complainant or the defendant, who are

expected to appear voluntarily at the appointed time and place in fact fail to appear; thus an adjournment of the hearing becomes necessary. In order to avoid these unnecessary delays this Bill seeks to remove from section 21 of the principal Ordinance the requirement that before a magistrate can issue his summons to a witness it must be made to appear to the magistrate by a credible person on oath that the witness will not voluntarily appear to testify. If this Bill is enacted, it will be sufficient for a magistrate's summons to issue if it is made to appear to the magistrate that any person is likely to give material evidence concerning the matter of the complaint or information.

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 former requirement that before a magistrate could issue a summons it was necessary for him to have evidence on oath of the likelihood that a witness would not voluntarily appear breaks down in practice since the expectation of the prosecutor may be that the witness will voluntarily appear and when the witness fails to appear an adjournment is necessary to invoke section 21(1). Moreover such a provision is not in line with the practice in the Magistrates Courts in England.

ESTATE DUTY (AMENDMENT) BILL, 1962

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to amend the Estate Duty Ordinance, Chapter 111."

He said: Sir, the amendments proposed in the Bill are designed to raise the minimum value at which estates become liable to duty, to mitigate the severity of some of the existing provisions and to bring up to date the powers for recovery of duty, interest and penalties due to the Crown, without however adding any new powers.

The Bill raises the minimum value of estate liable to duty from \$50,000 to \$100,000. This proposal arises not so much from any consideration that estates between \$50,000 and \$100,000 cannot reasonably be required to pay the very small rate of 2% at present applicable, as from the smallness of the tax yield in relation to the time and trouble involved in assessing and collecting it. In the financial year ending 31st March, 1962, 230 or 47% of the estates liable to duty were in this range but they produced only \$200,000 or 2½% of the tax collected.

In the Budget debate last year my honourable Friend Mr R. C. LEE spoke of two provisions which he said gave rise to hardship in the administration of the Ordinance. The Bill covers one of these but not the other, as that other, arising from section 9(2), is not so much a matter of legal provision as of administrative practice and I am assured that the Commissioner uses the legal discretion given him by section 12(3) to ensure that the law does not operate harshly.

There are two main provisions in the Bill for mitigating possible hardship. The present section 9(6) provides for 4% interest on duty assessed for a period of six months from the date of death or up to the date of delivery of the affidavit, whichever is the shorter, and thereafter 8% interest until duty is paid. This provision can unfairly penalize early lodgement of an affidavit if there is then a gap between lodgement and payment of duty. Clause 5(c) substitutes for this the simple provision that, until duty is paid, interest is payable at 4% up to six months from the date of death and 8% thereafter.

The second amendment is contained in clause 8. At present, under section 13 of the Ordinance, where an account is delivered more than twelve months after death, duty is chargeable at three times the normal rate unless the Commissioner is satisfied that all reasonable diligence has been used to ascertain the estate. The amendment reduces this penalty to twice the normal rate.

Three other minor concessions are worth mentioning. Section 11(10) of the Ordinance provides that the Commissioner may refund excess duty paid to him but there is no provision for refund of interest paid on the excess duty. Power to refund such interest is provided by clause 7(6). Secondly, by section 29 of the Ordinance the Commissioner has discretion to reduce duty, so long as he does not reduce it below the standard rate, but has no power to remit interest. It can happen on occasions that the strict application of the interest provisions is as harsh and excessive as would be the imposition of a penalty, where, for example, an estate has been left unattended for years for reasons which cannot be imputed to anyone's blame. Clause 10 gives the Commissioner power to reduce or remit interest. Finally, clause 6 amends the provision in section 10(1) for the deduction of reasonable funeral expenses by raising the maximum allowance from \$1,000 or 2½% of the estate, whichever is smaller, to \$2,000, in the case of persons dying after 1st December, 1962.

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 principal object of this Bill is to make the following concessions, relating to the payment and remission of estate duty—

- (a) By clause 13 the minimum value, at which an estate becomes liable to estate duty, is raised from fifty thousand dollars to one hundred thousand dollars for persons dying after the 1st day of January, 1963.
- (b) By clause 8 the severity of the penalty, imposed by section 13 of the Ordinance for failure to deliver an account within twelve months, is considerably mitigated.
- (c) By clause 5(c) section 9(6) of the Ordinance has been revised so that during the period from the lodging of an affidavit or account to the expiration of six months from the death of the deceased, four per cent interest will be charged on any duty remaining unpaid instead of eight per cent, as was previously the case.
- (d) By clause 7(b) provision is made for the Commissioner to refund interest in addition to duty, in cases where it is discovered on the final assessment that he has been overpaid.
- (e) By clause 10, provision is made in section 24 of the Ordinance for the Commissioner to remit or reduce interest; and
- (f) By clause 6, the allowance which may be made for reasonable funeral expenses has been increased.

2. A further object of this Bill is to bring up to date the provisions for the recovery of duty, interest and penalties due to the Crown. Clause 7(a) repeats in substance the provisions of section 10 of the now obsolete Supreme Court (Summary Jurisdiction) Ordinance, Chapter 5, and does not give the Commissioner any new powers.

3. The opportunity is also being taken to make a few minor amendments to the principal Ordinance.

TRAMWAY (AMENDMENT) BILL, 1962

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to amend the Tramway Ordinance, Chapter 107."

He said: Sir, this Bill is designed to bring the Tramway Ordinance up to date, to remedy certain defects in it and to make various provisions to facilitate the operation of the tramway and to regulate some matters of public interest arising from its operation.

I shall not go through the Bill in detail, but there are certain matters which I might explain rather more fully than they are explained in the Objects and Reasons attached to the Bill.

First of all royalty, which is dealt with in clause 20. The present Ordinance sets royalty at 25% of net profit; but this provision was enacted before the advent of Profits Tax and it was therefore necessary to define profits (never an easy matter) and this was done in certain supplementary agreements. A difference of opinion between Government and company as to the proper interpretation of these agreements in connexion with depreciation suggested that it would be appropriate now to adopt instead, as a basis of royalty, profits as assessed for Profits Tax. This is the basis now normally used for new franchises. The rate of 23% combined with certain qualifications in respect of some special sources of income, is designed to have approximately the same incidence as the present 25% rate, on certain assumptions as to the proper method of calculating profits under the current agreement. The change is retrospective to the 1st January, 1958, in order that it may apply from the year of operation in respect of which the issue first arose.

There have been difficulties in the past about the respective rights and obligations of Government and company in connexion with moving the tram-tracks when that is, for any reason, necessary or desirable. Clauses 8 and 9 are designed to re-define these rights and obligations, roughly on the basis that the company pays the net cost to it of such removals as may be ordered by the Governor in Council. These new provisions are defective in one point, in that they do not enable the company to be required to re-route its tram tracks completely, as distinct from altering their position in the road they already lie along. It has not yet been possible to reach a satisfactory agreement with the company on this point, but it is considered undesirable to hold up the remainder of the Bill.

Clause 3 gives a new compulsory power, exercisable by order of the Director of Public Works, to affix attachments to buildings for the carrying of wires; the exercise of this power is subject to appeal to the Governor in Council. It is desirable in the public interest to minimise the need to set up separate standards in our crowded thoroughfares to carry the company's wires, and this is a common provision in utility legislation.

The present provisions in sections 32 and 33 for subsidiary legislation are unsatisfactory. The company's powers are too wide and are unfettered in that the approval of the Governor in Council is not required; while the powers of the Governor in Council are not wide enough to permit the exercise of proper control. The two sections have been re-cast in clauses 17 and 18 to provide separately for

the regulation-making powers of the Governor in Council on matters affecting the general public; and for the rule-making powers of the company on matters more particularly connected with the behaviour of passengers and the administration of the tramway. Rules made by the company are to be subject to approval by the Governor in Council.

The Bill has been the subject of long and detailed negotiation with the Hong Kong Tramways, Ltd. who have now accepted its terms.

THE COLONIAL SECRETARY seconded.

MR LI FOOK-SHU: —Sir, I wish to state that I am a Director of the Tramway Company and I now declare my interest.

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT: —Thank you, Mr LI, a note will be made in the minutes accordingly.

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 principal objects of this Bill are—

- (a) to revise the royalty provisions of the Tramway Ordinance, Chapter 107 (the principal Ordinance);
- (b) to make amended provision for the moving of tram tracks; and
- (c) to enable the tramway company to affix brackets and wires to houses in streets through which the tramway passes and thereby reduce the number of tram standards necessary.

2. By clause 20, section 43 of the principal Ordinance is replaced by a new section providing that royalty shall be based on the net profits of the company as ascertained for the purpose of Part IV of the Inland Revenue Ordinance, Chapter 112, such royalty to be payable annually in arrears within three months after the end of each calendar year. By clause 22 the effect of this change is made retrospective to 1st January, 1958, and it is provided that the company shall pay to the Government, on or before 1st July, 1963, such amount as represents the difference between the royalty already paid and the royalty payable in accordance with the amended provision.

3. By clause 8, section 13 of the principal Ordinance is amended to delete therefrom that part of the section relating to the movement of a tram track. By clause 9, two new sections are added, the effect of

which is to empower the Governor in Council, on the application of the Director of Public Works, to order that a tram track shall be moved. The cost of such removal is to be repaid by the Government to the company after the deduction therefrom of the value of certain items representing the benefit accruing to the company by reasons of such removal and the relaying of the tram track and the addition thereto of the cost of any additional burden placed on the company by such removal.

4. By clause 3, a new section 5A is added to the principal Ordinance, enabling the company to affix to houses in streets through which the tramway runs, such brackets, rosettes, wires and apparatus as may be necessary, with the consent of the owner or, in default of such consent, by order of the Director of Public Works, with appeal to the Governor in Council in the event of the owner of the property being aggrieved by the affixing of any such apparatus.

5. The opportunity has been taken to make a number of minor amendments—

Clause 2 amends section 3 of the principal Ordinance by the addition to subsection (2) of a new provision enabling a new plan of the tramway system to be substituted for any out-of-date plan and by the deletion of subsection (5), relating to the power of the Director of Public Works to approve minor alterations of tram tracks, such power having been incorporated in the new section 13A.

By clauses 5 and 15, the penalties specified in sections 10 and 31 are increased to bring them into line with the present value of money.

By clauses 4, 6, 7, 10, 11, 13, 14 and 19, minor amendments are made to various sections of the principal Ordinance to facilitate the management and control of the operations of the company.

By clause 12, an error in section 26 is corrected.

By clause 16, three new sections are inserted in the principal Ordinance, creating in respect of the driver of a tramcar offences relating to dangerous driving, dangerous driving causing death, careless driving and driving while under the influence of drink or drugs corresponding to certain provisions of the Road Traffic Ordinance, 1957.

By clauses 17 and 18, sections 32 and 33 of the principal Ordinance are replaced by two new sections. By section 32, the Governor in Council is given wider powers to make regulations governing the running of tramcars and the general operations of the company including the power to apply appropriate regulations

made under the Road Traffic Ordinance, 1957, with power to impose higher penalties. By section 33, the company is given wider powers of making rules relating to the management of the tramway service and the conduct of passengers while travelling in tramcars, all rules so made being subject to the approval of the Governor in Council.

By clause 21, the word "Chinese" in section 46 of the principal Ordinance, relating to third class passengers, is deleted as being inappropriate.

ADJOURNMENT

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT: —Well, that concludes the business for today, gentlemen. When is it your pleasure that we should meet again?

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

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