

5TH JUNE, 1891.

PRESENT : —

His Excellency Major-General DIGBY BARKER, C.B.,
Acting Governor.

Hon. W. M. GOODMAN, Acting Colonial Secretary.

Hon. A. J. LEACH, Acting Attorney-General.

Hon. J. H. STEWART-LOCKHART, Registrar General.

Hon. N. G. MITCHELL-INNES, Colonial Treasurer.

Hon. S. BROWN, Surveyor-General.

Hon. P. RYRIE.

Hon. HO KAI.

Hon. J. J. KESWICK.

Hon. T. H. WHITEHEAD.

Mr. A. M. THOMSON, Acting Clerk of Councils.

MINUTES.

The minutes of the last meeting were read and confirmed.

THE ACTING ATTORNEY-GENERAL.

Hon. A. J. LEACH, Acting Attorney-General. was sworn in as a member of Council.

FINANCE.

A number of votes recommended by the Finance Committee at its last meeting were passed.

THE PAYMENT OF THE ARREARS OF THE MILITARY CONTRIBUTION FOR 1890.

Hon. T. H. WHITEHEAD asked :—

With reference to the explanation given by His Excellency Sir G. William Des Voeux at the Council meeting held on the 30th April last, in connection with the payment of the arrears of the military contribution for 1890 without the sanction of the Council, will the Government lay upon the table a copy of the telegram or telegrams from the Secretary of State on the authority of which the money was paid?

In reply to the question the following telegram was laid on the table:—"London 13-2-91. Governor, Hongkong. Referring to my Despatch No. 241 last year increased contribution should be paid as soon as possible. Telegraph reply. KNUTSFORD"

THE INCREASE OF SALARIES.

Hon. T. H. WHITEHEAD asked—

Will the Government lay upon the table a copy of the despatches, referred to in the Acting Colonial Secretary's letter of 13th instant to the Honourable P. Ryrie, received from the Right Honourable the Secretary of State for the Colonies conveying His Lord-ship's views and instructions in regard to the increased salaries voted in the 1891 estimates, and state the date on which the same were received, also a copy of Governor Sir G. William Des Voeux's telegram dated 25th ultimo to the Secretary of State referred to in the said letter together with a copy of the telegram received from the Secretary of State in reply?

The ACTING COLONIAL SECRETARY replied as follows—Action on the despatches referred to

having been suspended, by order of the Secretary of State pending the receipt of further instructions, His Excellency does not consider it expedient to disclose their contents or any part of the correspondence by telegram relating to them.

THE SHARE SALE REGULATION BILL.

Hon. T. H. WHITEHEAD asked :—

Will the Government lay upon the table a copy of the despatch dated 2nd September last of His Excellency the Officer then Administering the Government to the Right Honourable the Secretary of State for the Colonies in connection with the proposed Share Sale Regulation Bill, and a copy of the Secretary of State's despatch in reply?

The papers asked for were laid on the table.

SURVEY OF STEAM LAUNCHES.

Hon. T. H. WHITEHEAD asked :—

Has the attention of the Government been directed to the result of the enquiry into the cause of the death of the engineer and fireman belonging to the steam launch which was blown up on the 7th May, and to the rider added to their verdict by the jury to the effect that all launches plying in Hongkong harbour whether for passenger traffic or otherwise should be compelled to undergo a periodical survey, and if so will the Government state whether it is intended to legislate rendering compulsory periodical surveys of all launches in Hongkong waters?

The ACTING COLONIAL SECRETARY—The attention of the Government has been so directed. The coroner's depositions and the rider attached to the verdict duly received at the time the attention of the Attorney-General, who at once communicated with the Harbour Master on the subject, with a view to incorporate in the new Merchant Shipping Bill provisions requiring a periodical survey of all steam launches in Hongkong waters.

THE SUSPENSION OF PUBLIC WORKS.

Hon. T. H. WHITEHEAD asked—

With reference to the telegram from Her Majesty's Government directing the Colonial Government to stop all public works not yet begun, and referred to in Sir G. W. des Voeux's speech. in this Council on 5th March last, will the Government lay on the table a copy of the despatch or despatches received from the Right Honourable the Secretary of State in confirmation of the said telegram, or having reference to the stoppage of public works to which the Colony is not already actually committed?

The despatch No. 39 of 27th February, 1891, was laid on the table.

THE UNOFFICIAL MEMBERS' MEMORANDUM ON THE ESTIMATES.

Hon. T. H. WHITEHEAD asked—

Will the Government state whether the Memorandum dated the 23th December, 1890, addressed to His Excellency the Officer Administering the Government of Hongkong, signed by all the Unofficial

Members of Council and dealing with the estimates for public works extraordinary for 1891 was forwarded to the secretary of State for the Colonies, and if so on what date? Have any communications been received from the Secretary of State on the subject of that Memorandum, and if so will the Government lay copies of them on the table?

The ACTING COLONIAL SECRETARY—The memorandum referred to was forwarded in Mr. Fleming's despatch No. 449 of the 22nd December, 1890. The reply to that despatch, No. 39 of 1891, is already laid on the table.

UNOFFICIAL MEMBERS OF COUNCIL AND THE SANITARY BOARD ELECTION.

Hon. J. J. KESWICK gave notice that at the next meeting of Council he would ask the following question:—Whether it is the fact that members of the Legislative Council are precluded from either voting for or nominating candidates for the Sanitary Board although such members are ratepayers?

THE REQUEST OF THE SHAREBROKERS TO BE HEARD BY COUNSEL AGAINST THE SHARE BILL.

Hon. T. H. WHITEHEAD moved the suspension of the standing orders in order to move a resolution of which the requisite notice had not been given.

Hon. HO KAI seconded.

The motion was carried and standing orders suspended accordingly.

Hon. T. H. WHITEHEAD—Your Excellency, I beg to move that the Stockbrokers' Association be heard by their Counsel on the second reading of the Bill entitled "An Ordinance to amend the law in respect of sales of shares in companies registered under the Companies Ordinances 1865 to 1886 and in other Joint Stock Companies." I would explain that my object in proposing the motion brought forward to-day is to save time. If the Council will agree to permit the Stockbrokers' Association to be heard by Counsel it will enable them to give the necessary instructions and so save time.

Hon. HO KAI—I beg to second the motion. I do so because I think when an Ordinance of such an important nature is being considered it is well that all affected by it should be freely encouraged. Although for that reason I second this resolution it is not to be understood my sympathy is with the opposition to the Bill.

The ACTING COLONIAL SECRETARY—As regards the motion of the hon. member, the usual rule is that it is only on certain exceptional Bills that Counsel are heard. The fifty-second rule says:—"In any case where individual rights or interests of property may be peculiarly affected by any proposed Bill, all parties interested may, upon petition for that purpose, and on motion made, seconded, and carried, be heard before the Council, or any Committee thereof, either in person or by Counsel." Now, I may say at once in my opinion this is not a private Bill, it is a public Bill brought forward by a private member, Leeman's

Act in England, a similar Act not going quite so far as this, was a public Bill. It was brought forward by a private member, but it was not suggested it was a private Bill, or a Bill, upon which Counsel should be heard in the House of Commons. I have referred to May's Parliamentary Practice, and I find that on some occasions, even in the case of public Bills the House has heard Counsel, but the cases in which Counsel are heard are very exceptional. Although a good many instances are given in a footnote, if looked carefully into they would be found of a very exceptional nature. At the same time I have not received His Excellency's instructions to oppose the motion, but I think the case should be regarded as an exceptional one. There is one point in the wording of the resolution which will require some consideration before it is carried. In its present form the question might arise when Counsel should be heard. It seems to me if Counsel is to be heard at all it should be immediately before the second reading is moved by the hon. member who has introduced the Bill. The Counsel is not a member of this House and it would not be exactly expedient, it seems to me, for him to intervene in a debate by a speech in favour of mitigating what he deems the hardships of this Bill or in favour of throwing the Bill out altogether. It seems to me when the order for the second reading is reached Counsel should then be allowed to address the House, and then it will be for the hon. member who has given notice of his intention to move the second reading to consider whether he will do so or not, and the Council will have the benefit of the learned Counsel's observations without any interposition of his speech in the debate. I would suggest the motion should read that Counsel be heard "immediately prior to the motion for the second reading of the Bill."

Hon. T. H. WHITEHEAD—I understand there is a precedent. When the Opium Ordinance came on for second reading Counsel was then heard on behalf of the opium merchants of Hongkong. Whether Counsel were allowed to take part in the discussion I do not remember, but I understand two Counsel appeared on behalf of the opium merchants.

The ACTING COLONIAL SECRETARY—I believe there was something of that kind, but I think it would be inexpedient for Counsel to intervene in the debate. I ought also to say, having received His Excellency's views on the matter, that this must not be considered to form a precedent for counsel being heard, because if on every Bill brought forward Counsel were to be heard debates would be very long. And of course it is the members of the Legislature who have to decide questions affecting the legislation of the colony, and those not in Legislature are able to bring forward whatever views they wish by petition.

Hon. T. H. WHITEHEAD said he might point

out what took place in the House of Lords lately in relation to Newfoundland and proceeded to quote the remarks of Lord Dunraven with reference to the hearing of representatives of that Colony.

The wording of the motion was amended as suggested by the Acting Colonial Secretary.

HIS EXCELLENCY—I think it is understood this is an open question, I wish every one to give his opinion entirely unbiased by what I have said. It is entirely for the Council to say whether they wish Counsel to be heard or not.

The motion was carried *nem. con.*

ORDINANCES 18 AND 19 OF 1884 VALIDITY BILL.

The ACTING ATTORNEY-GENERAL—I have to move the second reading of a Bill entitled an Ordinance to give the same validity to Ordinances Nos. 18 and 19 of 1884 as if they had been proclaimed to come into force on the 23rd day of September, 1884. The object is to cure what seems to have been some technical defect in these two Ordinances. They gave power to construct piers and wharves. There was the usual suspending clause, but in addition to that there was a provision that the Ordinance should not come into operation until a day to be proclaimed by the Governor. Her Majesty's confirmation was received and signified in the usual way in the *Gazette*, but either no notice of the date of the coming into operation of the Ordinances was proclaimed, or if the proclamation was made there appears to have been no record of it. Piers and wharves have been constructed under both Ordinances and under the first, rules and regulations have been made. Therefore, to save any doubt as to the operation of these Ordinances, it is necessary now to say, as this Bill does, that the Ordinances shall have the same effect as if they had been proclaimed to come into effect on the day they were published in the *Gazette* as having received Her Majesty's confirmation.

The ACTING COLONIAL SECRETARY—I second the motion. I may say I drafted this Bill myself at the time I was Attorney-General and I think it expedient we should have such an Ordinance. Mr. Leach and I have searched very carefully, but we cannot find any record of the Ordinances having been proclaimed. A great many things have been done under them, therefore it is thought only right, this apparent flaw having been discovered, that it should now be rectified.

The Council then went into Committee on the Bill.

In Section 2, which enacts that all acts done under the Ordinance shall be as valid as though the Ordinances had come into force on the 23rd September, 1884, the words "and all rules and regulations made under the Ordinances" were added.

No further amendments were made and the Bill passed through Committee.

THE FORTS PROTECTION BILL.

The ACTING ATTORNEY-GENERAL—I beg to move the second reading of the Forts Protection Bill. It will be in the recollection of most members of Council that two other Ordinances dealing with somewhat similar subjects have already been passed, namely the Sketching Prevention Ordinance, 1888, and the Stonecutters Ordinance, 1889. The Stonecutters Ordinance dealt with the forts on Stonecutters Island, forbidding people without permission or under certain circumstances visiting the island. This Ordinance is of more general purport, its purpose being to prevent any person not being a military officer in uniform, or under certain circumstances, from going into the forts. The Bill has been introduced by the direction of the Secretary of State.

The ACTING COLONIAL SECRETARY seconded. He added that when the Council went into Committee on the Bill there would be one or two slight amendments to be made.

Hon HO KAI—Would it not be better instead of having three Ordinances dealing with the same subject that the three should be thrown into one? It is extremely annoying at times when one wants to consult these Ordinances that one has to turn to three different Ordinances before one can find all that is to be known on the subject. I think as a general rule when a new Ordinance is brought in to amend or supplement previous Ordinances that it would be best to collect all together as one Ordinance.

Hon. T. H. WHITEHEAD—I may say that my views are quite in accord with those of the hon. member who has just spoken. I think it would be more satisfactory if all three Ordinances were embodied in one instead of having three different Ordinances on the same subject.

HIS EXCELLENCY—That question can be gone into when we get into Committee.

Bill read a second time.

The Council went into Committee on the Bill.

The ACTING COLONIAL SECRETARY—I fully agree with the principle of the remarks of the hon. member on my right that if possible it is better to have one Ordinance dealing with the whole subject and embodying all previous Ordinances but it must be remembered that this is a separate and definite Ordinance. Two Ordinances relating to this subject have been passed already and we are now passing a different one on another matter from the Ordinances already in force. The Stonecutters Ordinance deals with Stonecutters Island only, with a view of keeping the defences secret. The other Ordinance is a distinct matter altogether; it prevents people sketching the fortifications. That Ordinance was passed some time ago and has proved effectual on more than one occasion. This Ordinance is a separate matter altogether. It deals with all the forts and makes provisions similar to those of the Stonecutters Ordinance applicable to all the forts of the Colony. Of

course if we adopted the method suggested by the hon. member we should have now to start afresh. We should have to drop this Bill, and it would take time to consider how the three Bills could be made into one for the whole subject, and it would be probably be two or three months before we could pass the Bill and I do not think members would wish to sit during the hot season for the sole purpose of passing this Bill. We should have to introduce a clause repealing the other Bills and this Bill would have to be modified to meet all cases. I think if the hon. member considers the matter he will agree it is advisable to pass this Bill now. I quite agree with him as to the principle that it is better to have one Bill dealing with the whole subject, but we have now two Ordinances dealing with two branches of the subject and it is necessary to pass a third dealing with the third branch.

The REGISTRAR-GENERAL—If this Bill is meant to include the forts at Stonecutters Island I do not see the necessity of having two Ordinances.

The ACTING COLONIAL SECRETARY—So far as some of the clauses go they do include the forts at Stonecutters but there may be something in this Bill to which the Stonecutters Ordinance does not apply and therefore this Bill is necessary. In the first clause I propose to make an amendment. It states that no person shall enter a fortification unless he is the bearer of a written order from the Officer Commanding the force or " unless he is an officer or soldier of Her Majesty's regular troops employed on military duty in this Colony." I propose to strike out these words and instead of them to put the following "unless he be an officer or warrant officer of the Army, Navy, or Marine forces, in uniform, or a non-commissioned officer or man of the Army, Navy or Marine forces on duty." The reason why I make the alteration is that I have been furnished by His Excellency with a copy of the Army orders and these give what should be done in regard to these defences. I have therefore used in this amendment the exact words as given in the orders. You will observe also that the original clause did not include an officer of the Navy. That was a slip which is rectified in the amendment.

HIS EXCELLENCY—I would just mention that I do not think this is quite a repetition of the Stonecutters Ordinance. I think that Ordinance refers to the island only, not to the forts. There is a prohibition to landing on the island without a pass, but there is no prohibition as to entering the forts. I quite agree with Hon. Mr. Ho Kai that it would be very desirable that the three Ordinances should be amalgamated. I think it would be convenient for every one who has to refer to them and I have no doubt his suggestion will be borne in mind and carried out at the first opportunity,

but as we are situated new I think it would be undesirable to delay matters in order to do so.

Hon. T. H. WHITEHEAD—Will a naval officer be able to go over the forts at Stonecutters Island now?

The ACTING ATTORNEY-GENERAL—I might reply that you ought to give notice of that questions One cannot answer every question off hand. All I can say is that it appears he cannot land there and therefore it would be rather difficult for him to enter the fortifications (Laughter.)

The clause as amended was passed.

Clause 2 having been amended by the substitution of the same words as in clause 1 in lieu of the words " unless he be an officer or soldier of Her Majesty's regular troops, &c.," the Bill passed through Committee without further amendment.

PUBLIC LATRINES BILL.

The ACTING ATTORNEY-GENERAL—I beg to move the second reading of a Bill to provide against abuses connected with the erection of public latrines. This Bill is really a supplementary Bill to the Public Health Ordinance, which gives power to the Sanitary Board to make bylaws for the maintenance of latrines, but which gives no power to grant permission for the erection of latrines. This Bill accordingly provides that a public latrine shall not be erected until the previous sanction of the Board has been obtained. It then goes on to say that the Board shall incur no legal liability in respect of the permission given, nor shall any owner of a public latrine be protected from any injunction or other legal proceedings if the latrine proves to be a nuisance. It must be borne in mind that this Ordinance does not sanction the erection of a nuisance. In effect, it places the Sanitary Board in this position, that the Sanitary Board has to exercise a discretion as to whether it grants a licence or not and so long as the Sanitary Board acts with reason and caution so as not to sanction a nuisance the Courts will not interfere. but if it should so happen that the Sanitary Board without due enquiry and proper precaution should off-hand sanction a latrine in any place, that would not prevent any owners of property surrounding the place where the latrine was about to be erected applying to the Courts to interfere. It has been suggested to me that this Bill goes too far because it is said that if you give legislative sanction and grant a licence you are taking away the right of anybody to say, "We will go into Court and stop this thing from the beginning, before we really know whether it will be a nuisance or not." That is not the intention of this Ordinance. The intention of this Ordinance is this. The Sanitary Board has got to exercise a discretion whether it will or will not grant a licence. If it exercises that discretion properly the Court will not interfere; if it exercises it improperly then it is a question for the Court whether it

will or will not. I need not add more than to say that the Bill gives the Board power to make by-laws with regard to the erection of public latrines. To make this clause quite clear I propose to add "and with regard to applications for permission," so that the Sanitary Board may be able by by-law to regulate in what manner applications may be made and what notices shall be given.

The ACTING COLONIAL SECRETARY seconded. He said it appeared to him that the public were fairly protected under Section 4. If after permission was granted and the latrine built, it became a nuisance to any person or his property became affected he could go into Court and apply for an injunction.

The Bill was read a second time.

The Council went into Committee.

Section 5 was amended by adding the words "and with regard to applications for permission."

In the preamble which states that "Whereas it is desirable to prevent the evils arising from the erection of public latrines for private profit in places where they are not required or are objectionable and likely to become a nuisance,"

Hon. HO KAI said—I should move that the words "for private profit" be omitted, so that the extent of the Bill may be greater. The Bill in its present form will only apply to latrines erected for private profit. A latrine not erected for private profit may become just as much a nuisance as one that is and I should like to see all latrines placed in the same category. I think the Sanitary Board should be given control over all latrines, whether erected for private profit or public benefit.

The ACTING ATTORNEY-GENERAL—I do not think there is any serious objection to the alteration because the words "public latrine" are defined in the second section as meaning and including "any latrine to which the public are admitted on payment or otherwise."

Hon. HO KAI—Then there would be a contradiction between the preamble and the definition.

The ACTING ATTORNEY-GENERAL—Yes, but I think that the enacting words have greater force than the preamble.

Hon. HO KAI—I think it has been held that the preamble to a great extent limits the power of the enacting section.

The SURVEYOR-GENERAL—As regards public latrines erected by the Government, they are placed under the direct superintendence of the Sanitary Board, and I think it would be the duty of the Board to see that they did not become a nuisance.

Hon. T. H. WHITEHEAD—I agree with the remarks of the hon. member (Hon. Ho Kai) and I therefore second the amendment.

The ACTING ATTORNEY-GENERAL said there was no objection to the amendment, and he was quite willing to accept it.

The preamble having been passed as amended, the Bill passed through Committee.

PUBLIC HEALTH ORDINANCE AMENDMENT BILL.

The ACTING ATTORNEY-GENERAL—I beg to propose the second reading of a Bill to amend the Public Health Ordinance It is more the alteration of words than anything else. Section 64 provided that no urinal should be erected without the permission of the Sanitary Board, and the proposed section will extend to water closets. Under the Section proposed the Sanitary Board must give permission for the erection of water closets or urinals having connection with any public sewer or private drain. Section 4 will be also substituted for Sub-Section 13 of Sub-Section 18 of the Ordinance. This section gives the power to the Sanitary Board to make by-laws for the disposal of the dead, the disinfection of dead bodies, and the sanitary maintenance of mortuaries. The proposed section goes further and adds the regulation of cemeteries. The Bill has been brought forward at the wish of the Sanitary Board and I hope that it fulfils their wishes.

The ACTING COLONIAL SECRETARY seconded.

Bill read a second time.

The Council went into Committee on the Bill.

The ACTING COLONIAL SECRETARY proposed the insertion of an additional clause giving the Sanitary Board power to make and enforce bylaws for the construction of urinals, water closets, &c.

The ACTING ATTORNEY-GENERAL seconded.

THE LETTERS PATENT BILL.

The ACTING ATTORNEY-GENERAL moved the third reading of a Bill to provide for the making of a table of fees to be taken in connection with the grant of Letters Patent in this colony.

The ACTING COLONIAL SECRETARY seconded. He said that with regard to the questions asked at the last meeting with respect to these fees, he noticed that under the English Act sums had to be paid at the end of four, five or six years. This Bill only gave the power to make fees; what those fees would be was a matter for further consideration. He did not suppose they would be very excessive.

Bill read a third time and passed.

The Council then adjourned.