

25TH JANUARY, 1893.

PRESENT : —

His Excellency the Governor, Sir WILLIAM ROBINSON, K.C.M.G.

Hon. G. T. M. O'BRIEN, C.M.G., Colonial Secretary.

Hon. W. M. GOODMAN, Attorney-General.

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

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

Hon. F. A. COOPER, Director of Public Works.

Hon. R. M. RUMSEY, R. N., Harbour Master.

Hon. C. P. CHATER.

Hon. HO KAI.

Hon. T. H. WHITEHEAD.

Hon. E. R. BELLIOS.

Hon. J. J. BELL-IRVING.

Mr. F. H. May, Acting Clerk of Councils.

MINUTES.

The minutes of the last meeting were read and confirmed.

PAPERS.

The COLONIAL SECRETARY—I have the honour to lay on the table a copy of a memorial by certain members of the Chinese community respecting the question of gaol extension; also a copy of a correspondence with the Secretary of State respecting the proposed loan; also a copy of the report of the Government Central School for Girls for 1892; and a copy of the report of the Finance Committee. No. 1 of 1893, on the financial minute of your Excellency recommending the Council to vote the sum of £500 in aid of the representation of the resources of the colony at the Imperial Institute. I may mention that the Committee agreed, without dissent, that the vote should be passed.

## THE VOLUNTEER FORCE.

The ATTORNEY-GENERAL—I have the honour to move the first reading of a Bill entitled "An Ordinance to provide for the establishment of a Volunteer Force and to empower the Governor to raise a special force of Coast Defence Volunteers in the event of anticipated war." I do not purpose in making that motion to make any speech with reference to this Bill; any remarks I have to make will come more properly at the second reading of the Bill.

The COLONIAL SECRETARY seconded.

Bill read a first time.

## CODE OF CIVIL PROCEDURE.

The ATTORNEY-GENERAL—I have the honour, sir, to move the first reading of a Bill entitled "an Ordinance to amend the Hongkong Code of Civil Procedure." The Bill is purely a technical one, and has been approved by the judges. I reserve my remarks until the occasion of the second reading.

The COLONIAL SECRETARY seconded.

Bill read a first time.

## THE PRAYA RECLAMATION.

The ATTORNEY-GENERAL—I have the honour to move the second reading of the Bill entitled "An Ordinance to provide means for ascertaining the amounts to be paid by way of compensation in respect of the Wharves and Piers along the line of the Praya Reclamation, to fix the periods for the payment thereof, and for other purposes in connection therewith." I think, it well, sir, that I should place upon record the history of what has passed previously to this Bill, so that we should understand what is the wisest course to pursue in regard to the Bill itself. When the Praya Reclamation Ordinance, which is No. 16 of 1889, was about to be brought forward the case of the owners and occupiers of wharves and piers along the line of the proposed reclamation was taken into consideration. I should like to point out what their position was at that time. When the wharf owners and pier owners were allowed to put their piers on the foreshore of the reclamation they undertook that they would take them down, when required so to do by the Government, at short notice. It has often been observed that when people wish for some special privilege they are always very willing to undertake that they will put things as they were before, very speedily, when required, so that their having this privilege granted will not cause inconvenience to the public. It was not in this case found, however, that when asked to remove these piers—or to put things into the same condition as they originally were—they were equally willing to do so. The owners of the piers, having undertaken to take them down at short notice, there was brought before the attention of the Government a most important scheme, a scheme for the improvement and development of the Colony. In the second Section of the Act—the Praya Reclamation Act of 1889—it is stated that "the

works authorized by this Ordinance and all works for the effectual and convenient carrying out of the same are declared to be works for the improvement of the Colony and for a public purpose within the meaning of that term as contained in the Crown leases of lands in the colony" Now from a purely legal point of view as soon as these piers and wharves became an obstacle to the carrying out of this great public work, that moment it became the duty of the wharf and pier owners to remove them as soon as they were asked to do so. They had no legal claim in any way, but they said, "We have at least some sort of moral claim. If this was a purely public work we should not have any claim at all, but the persons who will benefit mostly by this Praya Reclamation are persons who have frontage lots," and to that extent they grumbled very much—at least a certain number did, at the cost of removal falling on those who had piers and wharves. They might have been fairly and justly met by the words of the Ordinance, which declared the works to be for "the improvement of the colony, and a public purpose" and the Government might have said. "The time has now come for you to carry out your promise." But they were dealt with, I think, in a very fair and equitable way. Their case was considered very fully and it was thought that there was something in what they said, and that perhaps they did suffer for the general good of the colony. The matter was referred to the Secretary of State, and the Secretary of State instructed that they should be considered as in an exceptional position. Part of his despatch has been already quoted, but I will read it again in order that it may be quite clear. On December 19, 1888, five months before the passing of the Bill, the Secretary of State wrote as follows: — "With respect to the demand of the wharf owners for the expense of the removal and reerection of their wharves, although these gentlemen are not entitled to compensation if the Government require the removal of the wharves, yet they represent, as I think with some reason, that they may fairly claim some consideration seeing that the removal of their wharves is to be enforced in pursuance of an undertaking the benefits of which will fall principally to private persons. They admit, as I understand, that they could make no claim in respect of that part of the reclamation which is in front of the Government property, and it seems to me that, if you decide to allow the wharf holders to re-erect their wharves in front of the new Praya on conditions similar to those affecting the existing sites. a fair solution of the matter might be arrived at by charging the marine lot holders with a part of the cost of removing and re-erecting the wharves, proportionate to the share which each holder has in the reclamation, thus leaving the wharf owners liable to the rest of the cost." I read that to show that it was never intended at any time that there should be full compensation

just as if this removal was a wrongful removal or such a removal as would take place in England under the Lands Clauses Act of 1845. It was not contended by the owners and occupiers of wharves and piers that they were entitled legally to any compensation whatever. It was thought to be a hard case, however, and it was agreed by the Secretary of State that they might have part compensation—part of the cost of removal—leaving the wharf owners liable for the rest of the cost. Now that being the state of things in May, 1889, the Ordinance was passed, and in Section 7 the words are these:—"it has been agreed that the cost of the said works shall also include.... a sum not exceeding \$180,000 by way of compensation to owners and occupiers of wharves and piers along the line of the proposed reclamation." So there was \$180,000 allowed. What for? Not for full compensation, but for part compensation which was to be given to them. It is a thousand pities that someone in the Council, at the time the Bill was passed, did not suggest that there should be added to those words, "Such sum to be apportioned by the Surveyor-General." Somebody must do the work of apportioning, and he certainly at that time would have been the best man to do it. Those words unfortunately were not added, and the result has been that the \$180,000 to be distributed remains untouched; people are very anxious to receive their money, and yet no means have thus far been arrived at whereby this sum of \$180,000 can be paid to the persons entitled to their respective shares, although the Government is perfectly willing to pay it and the persons interested are very anxious to receive it. I was acting Colonial Secretary in September, 1891. I had been in receipt of several letters from different wharf owners each of them asking me how much they were going to get of the \$180,000. You will observe that it is impossible to give any one man a certain sum without knowing how much the others are to get, because when you have added up the whole of the claims which are to be paid by way of part compensation, the total must not exceed \$180,000. Therefore I sent out with the approval of the Officer Administering the Government at the time a circular, which I will refer to. It is to be found in the Government *Gazette* No. 391 of 1891, and says this—"Wharf owners and occupiers claiming to be entitled to compensation in respect of their wharves and piers under Section 7 of Ordinance 16 of 1889 are hereby requested to appoint a representative to confer with the Surveyor-General on the subject of the principle of apportioning the sum specified as not exceeding \$180,000 appropriated for that purpose by the above Ordinance." As they did not seem satisfied with the Director of Public Works apportioning this sum of money as to him seemed fair and right, the next course, I thought, would be to name some one, in whom they had implicit confidence, to meet the Director

of Public Works. They could then discuss together as technical men and arrange some principle to regulate this apportionment, all litigation and heart-burning might stop, and the thing would be done as quickly as possible, fairly and equitably, without resort to litigation and its consequent costs. But to my surprise, for I thought there was more public spirit and less personal feeling in these matters, it appeared that they could not find any one in whom they had implicit confidence. It exemplifies the old adage that "confidence is a plant of very slow growth." Here are people who have been, may be, a long time in the colony and yet have confidence in no one. They said in reply to my letters that the interests were very diverse, and that was why they were unsuccessful in nominating any gentleman to meet the Surveyor-General. Thus a fair and *bona fide* offer on the part of the Government fell to the ground. Then letters came in again to me asking, "How much am I (A) to get?" "How much am I (B) to get." Then it was suggested that perhaps an Ordinance would be the best way out of the difficulty and I was instructed to draft that Ordinance. I settled that Ordinance, and in doing so I had in my mind two principles. The first was to facilitate and accelerate the payment of the money to persons who were entitled to it. The money might just as well be in their pockets as elsewhere. My second idea was that there should be as little litigation as possible, in order that a lot of costs should not be incurred, which must be paid by someone. I need hardly point out that the Government has no interest in this \$180,000, except to apportion it fairly. There are certainly Government piers, if you call them such—you may prefer to call them public piers—that, as was pointed out by the late Dr. Stewart at the time in a letter which is dated February 19th, 1889, three or four months before the passing of the Ordinance. must take their share of the \$180,000, and the Ordinance contemplated that that sum was to be for both public and private piers. I should have thought that there would have been very little difficulty in settling this matter by some competent expert. You only want a competent honest man, and by appointing such you avoid a lot of trouble and a vast amount of expense and bother. In the absence of other means I endeavoured to draw up the Ordinance to meet the desires of people who wanted to obtain their money. The Ordinance states, "Whereas by the Praya Reclamation Ordinance, 1889, a sum not exceeding \$180,000 was included in the costs of the Reclamation works now being carried out under the said Ordinance, by way of compensation to the owners and occupiers of the wharves and piers along the line of the Reclamation then proposed and now being carried out." That is simply a recital in the exact words of the Praya Reclamation Ordinance. In order to

make that still clearer I say, "and such sum was intended to provide for compensation for the removal only of such wharves and piers, inclusive of the Government wharves and piers, along the line of the said Reclamation and not for consequential damages. And whereas difficulties have arisen as to the amounts to be paid in respect of the removal of the said wharves and piers and the periods for the payment of such amounts and it is expedient to provide there for." The Ordinance then proceeds to detail the scheme, which is a very simple one and, as I think a very fair one. The scheme is this. First, let the Director of Public Works do his best to apportion this sum in such a way as he thinks right and fair. When he has done that, let him put the various apportionments on a schedule, published in the *Gazette*, and deposit three copies at the Supreme Court Registry, open to inspection free of charge. The pier owners would then have the opportunity of going to see how much was allotted to each individual man among them, and I should take it that, knowing the character of the Director of Public Works, nine out of ten pier owners. I should venture to predict, would be perfectly satisfied with this fair and equitable adjustment of their claims and would be satisfied to take it. But there are always some men who if they do not seek it certainly do not try to avoid litigation, and for the benefit of such, if they think they are not dealt with fairly, and feel that they must have some litigation about it before they are satisfied, then means are provided for them to appeal against the amount which they say is not right or proper. Section 4 of the Ordinance says:—"Such schedule shall be final unless the owner or occupier of any wharf or pier mentioned therein or any Crown lessee or his assigns registered at the said Land Office in respect of any of the lots of the land or sections thereof along the line of the said proposed Reclamation, who has signed the articles of agreement contained in the schedule to the Ordinance No. 16 of 1889, shall, within a period of three months from the date of the publication of the said schedule, appeal to the Supreme Court in its Summary Jurisdiction in the manner hereinafter provided." What could be fairer? The amount is put down in black and white. If you do not like it, if you think that you have not enough, and ought to have more allotted, you can appeal. But you must not delay, because if you do then it is a matter not merely concerning yourself, but it keeps other people from their money. Therefore we only give you three months in which to appeal. I need not go into the procedure by which they make the appeal; that is merely technical. When it is settled whether the appellant is to get any more or not, and, say, he is awarded by the Court a larger sum, which has to be added to his original award, then, if the total added to the other sums does not exceed the \$180,000, everyone will be paid and satisfied. If this appellant, however, succeeds

in persuading the Court to think that he ought to have a much larger sum, and if that sum added to the rest should make the total exceed \$180,000, all the amounts must then be abated proportionately—that is to say, a small proportion taken off each until the amount does not exceed \$180,000. Gentlemen, I can conceive of nothing fairer than that. When this Bill was brought before the Council at the latter part of last Session, near the end of the Session, it was thought that there would be no objection to it. It was not a Bill that the Government wanted to press; it was rather to help the pier owners who desired to get their money. It was suggested in Council that it would appear like hasty legislation to pass the Bill then, and your Excellency, not desiring to have anything of that kind on record, adjourned the second reading for a fortnight. The Bill then came up again. In the meantime, however, I expected to hear whether any objections were to be raised to it, and I think it was a day or two before the meeting of Council, towards the end of the fortnight, that another Bill, drafted by a learned gentleman, was brought to me, and I had the pleasure of interviewing Mr. Chater, who knows more about these matters probably than any one else in the colony. That Bill, as I said, was brought to me to see whether I thought it was a better Bill than that I was bringing before the Council. It was brought to me so soon before the meeting that I had not much time to look into it, but I did go into it sufficiently to see that it did not assist in any way the two things I had principally on view—namely, acceleration of the payment of the money and the minimising of litigation. On the other hand it seemed to me to actually delay the time of payment and to afford facilities, not only reasonable facilities, but unreasonable facilities, for litigation. The Bill did not commend itself to me, and that, gentlemen, was the state of things at the second reading of the Bill, which came before the Council at the end of last Session. It was then that the hon member, Mr. Chater, rose and said—and I am quoting now from *Hansard*:—"I tried very hard to see if some arrangement could be arrived at on Saturday. I devoted two hours to the hon. and learned Attorney-General to see if matters could be brought to a head, but I regret to say that the difference between the learned Q.C. and the hon. and learned Attorney-General was so great that no definite arrangement could be arrived at. Under these circumstances I think that the best course to be pursued is the one now proposed by the hon. and learned Attorney-General, namely, to postpone until the next Session the discussion on the Bill, and I hope by that time—I am sanguine that by that time—some arrangement will be made which perhaps will obviate the necessity for an Ordinance at all." Soon after that the Session closed. Now I find here that there is no

arrangement made, and the Bill comes on again to-day for the second reading. There is no desire on the part of the Government to unduly press this matter in any way, only, if anything is to be done, now is the time to do it. On a former occasion it was suggested that a learned counsel should be heard on support of the wharf owners, and to oppose, I suppose, some parts of this Bill. It was decided by your Excellency at the time that that could not be allowed. I understand, however, that your Excellency in the meantime has reconsidered the point, and if it is still the desire that the learned counsel should be heard you will hear the learned counsel upon the usual method being adopted. The rule regarding that is in the standing orders, No. 52, which reads as follows:—"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." I understand that your Excellency is very desirous that everyone should have his rights and views in this manner considered and if it is still the desire that counsel should be heard you will be prepared to give consent. The course then would be to move that counsel be heard, that motion would be seconded, and upon that I understand that your Excellency will accede to the proposition. I do not know whether it is the desire of hon. members. I may say that I have some experience in this kind of matter by hearing cases under the Lands Clauses Act. Under that Act you will have the highest experts employed. You may have six experienced gentlemen come forward on one side and six on the other side—men of the highest probity and honour, standing first-class in their professions as engineers, &c.,—and when you have heard the first six you will think that the property in dispute is worth next to nothing. Then the other six experienced gentlemen give evidence, and you are led to the conclusion that the property is about as valuable as a man could possibly possess. The arbitrator generally manages to go between the two estimates. I was never very much impressed with the working of the Lands Clauses Act, nor very satisfied either with the

great amount of litigation involved in regard to the value of things which technical men could value much better. Is there nobody in Hongkong, gentlemen,—are there no two persons—that they could select, with a third as umpire, to go down and look at these piers, and say, "We have \$180,000 to divide and we will fairly and equitably apportion it"? It would be much better to appoint someone in consultation with the Director of Public Works to settle this matter in an amicable way. If that is impossible we must go on with the Bill. My only desire has been to facilitate the efforts of pier owners in their attempts to get their proper shares of the money. If the Bill can be improved, by all means let it be improved. I have now to move the second reading of the Bill. I do not propose to go on any further to-day, but I shall be very glad indeed to receive any suggestions for the improvement of the Bill, and only too happy to consider them. This is an earnest attempt, gentlemen, to try to facilitate the payment of the money and to minimise litigation.

The COLONIAL SECRETARY seconded.

Hon. C. P. CHATER—I regret, sir, that I have to repeat the words quoted by the Attorney-General. I have found it a very difficult matter to get the various owners of one mind either for the appointment of an arbitrator, or for devising a scheme by which to enable this sum of \$180,000 to be divided equitably among them. Perhaps under these circumstances the best course would be to go on with the Bill. They have had ample time to come to a decision, but I regret to say that we cannot make them all agree to one course.

HIS EXCELLENCY—I am quite prepared to postpone the second reading for a fortnight. My only desire is to facilitate matters. I should like to see the Bill withdrawn.

Hon. C. P. CHATER—Perhaps the best course would be to postpone it for a fortnight.

HIS EXCELLENCY—Do you think that during that time there is any prospect of an arrangement being made?

Hon. C. P. CHATER—The only chance, sir, is that which you have just afforded—they will know that in a fortnight's time the Bill will be proceeded with unless something is done.

HIS EXCELLENCY—Then we will adjourn until this day fortnight.

The Council then adjourned.