

22ND JUNE, 1905.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR, SIR MATTHEW NATHAN, K.C.M.G.

H. E. MAJOR-GENERAL VILLIERS-HATTON, C.B. (General Officer commanding the Troops).

Hon. Mr. F. H. MAY, C.M.G. (Colonial Secretary).

Hon. Sir H. S. BERKELEY, K.C. (Attorney-General).

Hon. Mr. L. A. M. JOHNSTON (Colonial Treasurer).

Hon. Mr. A. W. BREWIN (Registrar-General).

Hon. Captain L. A. W. BARNES-LAWRENCE, R.N. (Harbour Master).

Hon. Mr. W. CHATHAM (Director of Public Works).

Hon. Sir C. P. CHATER, C.M.G.

Hon. Dr. HO KAI, M.B., C.M., C.M.G.

Hon. Mr. WEI YUK.

Hon. Mr. GERSHOM STEWART.

Mr. A. G. M. FLETCHER (Clerk of Councils).

The minutes of the previous meeting, meeting No. 3 of the present year, held on June 1st, were confirmed.

REPORTS.

Hon. COLONIAL SECRETARY—Sir, I beg to lay on the table the Report of the Harbour Master for the year 1904, Report
o n t h e B l u e B o o k

for 1904, Report of the Government Bacteriologist for the year 1904, Report of the Acting Medical Officer of Health on the Epidemic of Plague in the Colony during the year 1904, and the Report of the Director of the Observatory for 1904. I also, by Your Excellency's command, beg to lay on the table Financial Minutes 15 to 18 and move that they be referred to the Finance Committee.

Hon. COLONIAL TREASURER seconded and it was carried.

QUESTION RE VAGRANTS.

Hon. Mr. GERSHOM STEWART—I beg to ask the question standing in my name.

"Will the Government take into consideration the
"advisability of relaxing the present rule, in regard to
"vagrants having to wear prison clothes when entering
"the House of Detention? Could not the application of
"this regulation be deferred until men have been guilty
"of a breach of discipline or some other misconduct?"

Hon. COLONIAL SECRETARY—I beg to state that the regulation regarding the dress to be worn by vagrants in the House of Detention is under consideration.

THIRD READING SUGAR AMENDMENT.

Hon. ATTORNEY GENERAL—I beg to move the third reading of the Bill entitled An Ordinance to amend the Sugar Convention Ordinance, 1904.

Hon. COLONIAL SECRETARY seconded and it was carried.

Hon. ATTORNEY GENERAL—I beg to move that the Bill entitled An Ordinance to amend the Sugar Convention Ordinance, 1904, which has been read three times, be now passed.

Hon. COLONIAL SECRETARY seconded and it was carried.

THIRD READING VAGRANCY AMENDMENT.

Hon. ATTORNEY GENERAL—I beg to move the third reading of the Bill entitled An Ordinance to amend the Vagrancy Ordinance 1897.

Hon. COLONIAL SECRETARY seconded and it was carried.

Hon. ATTORNEY GENERAL—I beg to move that the Bill entitled An Ordinance to amend the Vagrancy Ordinance, 1897, which has been read three times, be now passed.

Hon. COLONIAL SECRETARY seconded and it was carried.

NEW TERRITORIES LAND BILL.

Hon. ATTORNEY GENERAL—I beg to move that the Council resolve itself into Committee of the whole Council on the Bill entitled An Ordinance to facilitate the transfer of land in the New Territories and for settling disputes in respect thereof and for other purposes.

Hon. COLONIAL SECRETARY seconded and it was carried.

Amendments, moved by Hon. ATTORNEY GENERAL, as follows:—

Sub-Section 4, Section 1, was struck out, and the following substituted:—

"(4.) Upon the application of the registered owner of any land in the New Territories which has been purchased from the Crown since the 17th day of April, 1899, and in respect of which a separate Crown Lease has been or is intended to be issued, the Governor may exempt the said land from the provisions of this Ordinance by a Memorandum under his hand written in or upon the Crown Lease thereof."

A fresh sub-section, Sub-Section 5, was added to Section 1:—

"(5.) Upon the application of the registered owner of any land in the New Territories not covered by the provisions of the last preceding sub-section, and upon proof to the satisfaction of the Land Officer of the title of such owner, and surrender of such land to the Crown, the Governor may direct a new Crown Lease for such land to be issued after due survey thereof has been made and the prescribed fees paid, and the Governor may thereupon exempt the said land from the provisions of this Ordinance by a Memorandum in writing under his hand written in or upon such new Crown Lease, Provided always that in any case in which such application refers to land of such small value that, in the opinion of the Governor, it is undesirable to grant exemption the

"Governor may refuse to grant the same."

Section 6 was amended to read as follows:—

"6. The Land Officer shall have power to decide in a summary way all questions and disputes in connection with, or in anywise arising out of, or regarding, any land, and *he may within three calendar months from the giving of his decision*, re-open and re-hear the case upon such grounds as he shall in his discretion deem sufficient, and reverse, vary or confirm the previous decision or judgment. The Land Officer shall have power to recognise and enforce any Chinese custom or customary right in relation to land, and the decision or judgment of the Land Officer shall be binding on all parties concerned unless and until the same is varied or set aside as hereinafter provided; Provided that the Land Officer shall not have power to decide any question or dispute to which the Crown is a party unless the Crown consents in writing to his so doing; And further the Land Officer shall not have power to decide any question or dispute in respect of any land having a capital value exceeding \$5,000 or an annual value exceeding \$500 unless with the written consent of the parties to such question or dispute.

The figures "\$5,000" and "\$500," respectively being substituted for \$10,000 and \$1,000.

Hon. ATTORNEY GENERAL moved that Section 9 be amended to read as follows:—

"9. Every judgment or order of the Land Officer and every entry thereof in the Land Register shall be conclusive for all purposes; Provided that if any person shall consider himself aggrieved by any such judgment or entry, and if the Land Officer shall certify that the capital value of the subject in dispute exceeds *two thousand dollars, or if a Judge of the Supreme Court shall on good cause shown grant special leave to appeal*, such person may within three months from the date of such judgment, order or entry move a Judge of the Supreme Court to vary or set aside the same; and it shall thereupon be lawful for such Judge to vary or set aside the said judgment, order or entry on such terms as he may think fit.

That was substituting the words *two thousand* for the words *five hundred*, and adding the other words in italics.

Hon. Dr. HO KAI—I beg to move that the word *or* be changed to *and*; because *or* means that if the property be worth only \$100, say, so long as the decision is not satisfactory to a party he can go to the Supreme Court and if good cause is shown get leave to appeal. As it stands this section will take away the good conferred by this Ordinance, because this Ordinance is for the settlement of disputes relating to land as well as the transfer of land. So if a person who owns a small homestead worth \$100 gets into dispute with another who has money, if the judgment

of the Land Officer is not favourable to the latter he would say "I am dissatisfied with the decision of the Land Officer," and would employ a solicitor and counsel to obtain special leave to appeal, and the decision of the Land Officer could always be shifted. Notice to the other side that the party was going to apply for special leave to appeal would be given, and the small man would have to go to instruct a lawyer and counsel to appear for him, and would then be asked to deposit a couple of hundred dollars to cover expenses. So the small holder would be subject to great legal expenses or injustice.

Hon. ATTORNEY GENERAL—Leave the word *or*, or strike out the whole of the added portion. If you strike it out it deprives a man from leave to appeal unless the property is valued at \$2,000.

Hon. Mr. GERSHOM STEWART—May I ask about No. 8?

HIS EXCELLENCY—The object is to prevent small land holders being let in for heavy legal expenses.

Hon. Dr. HO KAI—Then it would avoid one principal object of the Ordinance, which is to save expense in the settlement of disputes over land; and if any man can go to the Supreme Court for special leave to appeal in every case these small holders would suffer.

Hon. ATTORNEY GENERAL—I think it is an absolutely wrong principle to compel any man to be contented with a judgment which affects his land. I have had long experience and would not attempt to deprive a man of right to appeal on the ground that lawyers' charges are too heavy, whereas if a man gets unqualified advice it ultimately leads him to the Courts. It does no good to stifle a man's right to appeal. It is wrong on principle. There may be cases where he ought to be allowed to appeal.

Hon. COLONIAL SECRETARY — In the Land Court Ordinance there are precedents for both these clauses. Under that Ordinance lawyers are not permitted to appear except by permission of the Court, and the right to appeal is limited to claims where the value is over \$5,000. The point is that speculators in land who have money will be able to go to the Supreme Court on appeal, and those who have not money will not be able to cover the expense of contesting the appeal. It is taking away the right to appeal on very small amounts, under \$2,000. I think, myself, there should be no power to appeal except in small cases.

Hon. ATTORNEY GENERAL—That is the stock argument against all appeals. It is said that it allows the rich man to oppress the poor man. There may be cases of oppression, but it ought to go to the judge if cause can be shown.

Hon. Dr. HO KAI—There is a limit of £500 in an appeal to the Privy Council. I wish to say that I advance this argument on principle, not that I suggest any overcharging by the legal practitioners in this Colony. I move that the words be struck out altogether.

HIS EXCELLENCY.—Your motion is in effect to negative the amendment.

The amendment was carried.

Hon. ATTORNEY GENERAL moved that Section 10 be amended to read as follows, and that 10*a* be added:—

"10. Except by way of appeal from the Land Officer, "no proceedings relating to land in the New Territories shall "be commenced in the Supreme Court of Hongkong, "unless the Crown is a party, or unless the Land Officer "shall certify that the capital value of the land affected or in "dispute exceeds \$5,000 or the annual value thereof "exceeds \$500.

"10*a*. In any proceedings in the Supreme Court in "relation to land in the New Territories the Court shall have "power to recognise and enforce any Chinese custom or "customary right affecting such land."

Hon. Mr. GERSHOM STEWART—How is an English judge to know Chinese law?

Hon. ATTORNEY GENERAL—It is a matter of fact which will be proved.

Hon. Mr. GERSHOM STEWART—Our own law is very much disputed and—

Hon. ATTORNEY GENERAL—Our own law is based on common sense.

It was subsequently decided to leave the Bill in Committee on this point.

Section 11 was amended to read as follows:—

"11. The Land Officer shall, on judgment being given "in respect of any land, forthwith enter a memorandum of "such judgment in the Land Register. No fee shall be "payable for such entry.

Section 23 was amended to read as follows:—

"23. In a Conveyance by way of mortgage in Form C "in the Schedule hereto there shall be deemed to be "included the following further covenants and provisos in "addition to the covenants contained in sub-sections (b) and "(d) of Section 22 of this Ordinance:—

"(a.) A covenant *by the Mortgagor with the Mortgagee* "that it shall be lawful for the Mortgagee, as from the date "of the mortgage, if not receiving any interest on the "mortgage money, to enter into possession of the property "conveyed and thenceforth to quietly hold, occupy, enjoy "and take the same and all benefits and advantages "accruing in respect thereof without in any way accounting "to any person whatsoever in respect thereof, and without "any interruption by any person until the time when such "mortgage shall be redeemed.

"(b). A covenant by the Mortgagor with the Mortgagee "that the Mortgagee will on demand refund to the "Mortgagor all sums paid by the latter on account of any "Crown Rent or taxes payable in respect of the property "conveyed during the possession of the Mortgagee, and "t h a t t h e M o r t g a g e e w i l l

"during such possession indemnify the Mortgagor against "the non-performance and non-observance of the "covenants and conditions, so far as they relate to the "property conveyed, contained in the Crown Lease, "Licence or Grant under which such property is held.

"(c.) A proviso that on the Mortgagor paying to the "Mortgagee the principal money (without interest) and all "costs lawfully due to the Mortgagee in respect of the "mortgage the Mortgagee will at the request and cost of the "Mortgagor release the mortgaged property to the "Mortgagor as in this Ordinance is provided.

"(d.) A proviso that the Mortgagor shall not be entitled "to redeem the mortgage except on giving three months' "previous notice in writing to the Mortgagee of his "intention so to do.

Hon. Dr. HO KAI—The Chinese have no solar calendar months. They do not use the solar months but the lunar months.

His EXCELLENCY—The Chinese months are not exactly lunar months?

Hon. Dr. HO KAI—No.

His EXCELLENCY—Then they are calendar months.

Hon. ATTORNEY GENERAL—Why we should use the Chinese system I do not know.

His EXCELLENCY—The law will apply mainly to persons who use Chinese months. Others will get exemption under section 1 subsection 4.

Hon. Dr. HO KAI—All the native banks use Chinese calendars, and all houses let to Chinese are on the Chinese calendar month.

Hon. SIR PAUL CHATER—Chinese to Chinese.

Hon. DIRECTOR OF PUBLIC WORKS—Would it not be better to put it in days; 90 days or 100 days.

It was subsequently decided to leave out the words "Chinese Calendar" wherever they occurred in the Ordinance.

Section 42 was amended to read as follows:—

"42. Nothing in this Ordinance shall be deemed to affect "the interests of the Crown, or to confer a larger right in "relation to any land than is granted in the Crown Lease, "Grant or Licence whereunder the said Land is held; and no "liability shall attach to the Land Officer, or to any Assistant "Land Officer or to the Government of the Colony, or to the "Crown, in respect of any act done, or entry

"made by such Land Officer or Assistant Land Officer in "the course of his duty."

FINANCE COMMITTEE.

There was afterwards a meeting of the Finance Committee, the Hon. Colonial Secretary presiding. The following votes were made:—

Financial Minute — No. 15. The Governor recommended the Council to vote a sum of one thousand dollars (\$1,000) in aid of the vote Public Works Annually Recurrent, for Maintenance of Public Cemetery.

Financial Minute. — No. 16. The Governor recommended the Council to vote a sum of three thousand dollars and sixty cents (\$3,000.60) in aid of the vote Sanitary Department, Other Charges, for Cemetery Incidental Expenses.

Exhumations had to be made to make room for further burials.

Financial Minute—No. 17. The Governor recommends the Council to vote a sum of ten thousand four hundred and twenty dollars (\$10,420) in aid of the vote, Public Works Extraordinary, for the following items:—

RAIN-STORM DAMAGES.

Roads inside Victoria.—Removing slips, re-institating road surfaces, &c.	\$ 2,050
Roads outside Victoria.—Removing slips, re-institating road surfaces, &c.	4,960
Roads in Kowloon.—Removing slips, re-institating road surfaces, &c.	1,200
Roads in New Territory.—Removing slips, re-institating Sai Kung, Tai Po, etc,	800
Praya Wall and Piers.—Repairs to wall, Causeway Bay	100
Colonial Cemetery.—Rebuilding portion of boundary wall and repairing earth slips and damage to walls	960
Repairs to Nullahs	350
Total	\$10,420

Financial Minute.—No. 18. The Governor recommends the Council to vote a sum of twelve thousand dollars (\$12,000) in aid of the vote 22.—Miscellaneous Services, for the following items:—

Coals for Offices	\$2,000
Other Miscellaneous Services	10,000
Total	\$12,000

The second vote was in connection with extra legal assistance respecting a land appeal case.