

10TH SEPTEMBER, 1909.

**PRESENT:—**

HIS EXCELLENCY THE GOVERNOR, SIR FREDERICK DEALTRY LUGARD, K.C.M.G., C.B., D.S.O.

H. E. COLONEL DARLING, R. E. (General Officer Commanding).

HON. MR. A. M. THOMSON (Colonial Secretary).

HON. MR. C. McI. MESSER (Colonial Treasurer).

HON. MR. P. N. H. JONES (Director of Public Works).

HON. MR. A. W. BREWIN (Registrar-General).

HON. MR. F. J. BADELEY (Capt. Superintendent of Police).

HON. DR. HO KAI, M.B., C.M., C.M.G.

HON. MR. W. J. GRESSON.

Hon. Mr. E. OSBORNE.

HON. MR. E. A. HEWETT.

Hon. Mr. MURRAY STEWART.

Hon. Mr. WEI YUK, C.M.G.

MR. C. CLEMENTI (Clerk of Councils).

**Minutes**

The minutes of the last meeting were read and confirmed.

**Financial**

THE COLONIAL SECRETARY, by command of His Excellency the Governor, laid on the table the report of the Finance Committee (No. 14) and moved its adoption.

THE COLONIAL TREASURER seconded, and the motion was agreed to.

**Liquor Licences**

THE COLONIAL SECRETARY withdrew the resolution standing in his name under section 6 of the Liquor Licences Extension Ordinance, 1908.

**Liquor Ordinance**

THE ATTORNEY-GENERAL moved the first reading of a Bill entitled an Ordinance to provide for the collection of a Revenue of Excise upon Intoxicating Liquors.

THE COLONIAL SECRETARY seconded.

HIS EXCELLENCY—The Bill before the Council which we propose to read a first time to-day overlaps, and to some extent supersedes, two other items which stand on the agenda, viz.:—the resolution introduced on the 13th August last, and the second reading of the Bill to amend the Liquor Licences Ordinances. Before the resolution was introduced into the Council last month the two systems of raising revenue on intoxicating liquors, namely, by increasing licences or by import duties, received my most careful and earnest consideration.

When I spoke on that resolution I used the following words: "Beyond doubt it seems to me that the simplest and fairest method, and the most advantageous to the revenue, would be the imposition, so far as European liquor is concerned, of import dues....Import duties fall equally on all sections of the community, upon private importers and upon service canteens, as well as upon the trade." The difficulties surrounding the effective collection of such duties appeared, however, to be so many and so serious that we considered that the increase in licence fees was on the whole preferable. I was fully alive to the fact that such an increase would tend to create a monopoly in the hands of a few capitalists, who might put up the price of liquor with no limit except the limit of their desire for profit, and without any benefit to the revenue. I was aware that it might create a hardship on some of the smaller dealers. I foresaw that it would be necessary also, if licences were put up, to tax clubs either on their turnover or by licences, and I saw that it would inevitably tend to increase private imports by non-licencees.

In spite of these difficulties the resolution was introduced to the Council, for after mature consideration the difficulties surrounding the imposition of import duties seemed to be even greater, especially as regards Chinese liquor. In a greater or less degree import duties must mean a Customs service for the collection of duties and to prevent evasion and also a system of bonded warehouses. The proximity of Hongkong to the mainland, and to the free port of Macao, seemed also to increase the danger of smuggling, a danger which is further enhanced by the known venality and inefficiency of Chinese detectives when under the supervision of Europeans. Liquor once smuggled into the Colony cannot be detected like the opium of the opium farmer, and, therefore, once it is in, there is little further risk to the smuggler. Then there is the difficulty of dealing with liquor imported for re-export after blending and bottling, which must either involve an elaborate system of rebates or of bonded warehouses in which such operations must be carried on. I am informed also that goods are largely imported into this Colony "to order"—that is to say, that the name of the consignee does not appear on the case. If liquor were thus imported in disguised packages and were discovered, it is possible, perhaps even probable, that there would be no claimant for it, as we have often found in the case of smuggled morphia and firearms, for it is a curious thing that when illicit goods are detected the fact invariably appears to leak out. The importer therefore suffers no penalty other than the forfeiture of the whole or part of his consignment, which he could well afford in view of the profit to be made on undetected consignments. I need not, however, go into the difficulties in detail. They are well known to you, and some of them have been discussed in the local Press.

The resolution of August 13th had, as I anticipated, the result of focussing public attention upon the question. The unofficial members consulted the views of their constituents. They held a meeting, and I received from the senior unofficial member a copy of the resolutions then passed in which they embodied their views. Looking at the thorny nature of the question at issue it struck me as a remarkable fact that those resolutions were passed unanimously without a single reservation on the part of any individual

member. So strongly did the members hold those views that they took the somewhat unusual course of sending the resolutions to the Press for public information, confident that they would meet with the approval of the community. The senior unofficial member informed me his colleagues would value an opportunity of discussing the subject with me. I gladly acceded to this proposal, and a very useful and interesting discussion took place upon the first resolution, which runs as follows: "That a duty be imposed on all foreign and Chinese alcoholic liquors imported and consumed in this Colony. Liquors supplied to ships in unbroken cases for consumption on board, and liquors re-exported, to be exempt from duty." In the course of that discussion I pointed out the difficulties which I have already alluded to, and others which I have not to-day dealt with in detail. In some cases effective answers were given; in others difficulties were made light of or gave way to optimistic forecasts. I will confess that I was myself a willing convert, and wished if possible to give the system of import duties a trial.

Assuming that import duties are levied on intoxicating liquors, three methods of collection present themselves. First, by a contract under tender, leaving the contractor to provide all machinery for collection. It is not correct to call such a system "a farm," for no monopoly, either of import or of manufacture, is given, and it is simply a contract for the collection of duties instead of the Government collecting them itself. One drawback to this system (as I have already pointed out in connection with the resolution regarding licence fees) is that the contractor's profits form an extra burden on the community, and are additional to the amount paid in as revenue, but that, of course, is the essence of all contracts, including contracts for railways and public works. Another drawback is that the contractor must deduct from the amount of his tender the whole cost of the machinery for collection, whereas the Government could to a certain extent use the machinery it has, namely, the Harbour Office, the Police Department, the Treasury and other departments of the Government. But still it is conceivable that in calling for a tender, the machinery of the Government may to some

extent be made available to the contractor and so decrease his expenses.

When discussing the question of the railway, I have had occasion to state my views to the Council regarding the contract system and its advantages and disadvantages, and I then observed that in my opinion the disadvantages of the contract system predominated when it was likely there would be an alteration in the contract subsequent to the signature by the contracting parties. In the present case, however, no alteration of contract would be probable. In this Bill there is nothing which precludes the system of contract either for European or Chinese liquor should it be found more expedient to adopt such a system later on. At the present time, however, there is a great prejudice against it, a prejudice which I put down to confusion of ideas between a contract for the collection of duties such as I have described and a farm such as the opium farm. Under such a contract there need be no right of search of persons or of private houses except under a Magistrates' Warrant, and therefore the two most objectionable features of the farm are eliminated.

The second method of collecting import duties is to prohibit the sale of any liquor except in vessels bearing a revenue label which would have to be broken in order to extract the liquor. Under such a system it would be illegal to have in possession any vessel containing liquor except with a broken or unbroken label. The label would bear a revenue stamp proportionate in value to the quantity and value of the liquor contained in the vessel. Casks would in addition be branded, numbered and entered in a book by the revenue officer. The system has some advantages. Detection would be easy. The contravention of the law would be so palpable to servants and others that the risk would be too great to be incurred by people occupying respectable positions in the Colony. Its cost is negligible, for it involves no machinery. Private importers would import through an agent who would have the labelling done for them, or it could be done in a Government warehouse. The wholesale dealers would have to label before sale and would get a rebate for re-exportation. A reasonable time would be given for the consumption of existing stocks, say, from three to six months. This system has

of course its disadvantages. It involves to some extent domiciliary visits. It involves the opening of cases, and I am told that the cases in which liquor is imported is a very important item. (Hon. Mr. Murray Stewart—Hear, hear.) Broken and damaged cases are not so saleable and are regarded with suspicion. This system, however, forms another alternative to the system of collection by Government, and may conceivably be resorted to if the system we now propose to introduce should fail.

Lastly, there is the system to which we propose to give a trial, that is to say, the collection by Government of duties on importation combined with the minimum possible Customs and preventive service. The simplest way in which I can describe that system will be to examine briefly the main provisions of the Bill before you.

So far as it is applicable the Bill is based on the Liquor Ordinance of the Straits Settlements. The duties which we propose to levy are the same as those in the Straits. They are, roughly speaking, so far as spirits are concerned, half the existing duties levied in England. Hon. members may have noticed in the papers that it is proposed in the new Budget to increase these duties by about 33 per cent. The duty imposed on Chinese liquors does not of course follow the Straits, since they have the Farm system there with a monopoly of manufacture and import, but I am informed by the Registrar-General that the proposed rate is acceptable to and considered fair by the Chinese community. The duties are specific on certain groups of liquors. The advantage of this system is that every quality of liquor of the same class pays alike, and therefore there is a tendency to improve the class of liquor consumed in the Colony. (Hon. Mr. Murray Stewart—Hear, hear.)

Liquor of all kinds pays upon import unless it is removed under permit for storage in bond. It must be stored in bond either in the King's warehouse or in a private licensed warehouse. If it is placed in bond it remains (under the definition in the Bill) a "dutiable liquor," and cannot be taken out of bond except under a permit for export, in which case it can only be removed in unbroken cases or on payment of duty. Bottling, blending, watering down proof spirits and so on, can be done in a private

licensed warehouse. This method avoids the necessity for an elaborate system of rebates on re-exportation. It also avoids the troublesome task of testing the strength of spirits, special and does away with the necessity of any special marks or labels. Ships must declare their imports of intoxicating liquors. Their manifests show all liquor on board, and they have already a legal remedy against anyone who ships liquor disguised as any other wares. The system of the private licensed bonded warehouse obviates the necessity of storing in public godowns, and therefore decreases the risk of illicit consignments "to order," as also to some extent the risk of smuggling. The licence fee for private licensed warehouses is somewhat high, but it is the same as is imposed in the Straits Settlements. Wholesale dealers who import for re-export can afford a fairly large fee, and the establishment of private licensed warehouses involves considerable supervision by government and an extra staff.

Upon liquor distilled, manufactured or prepared in the Colony, an excise duty is imposed equal to the import duty. Imports, of course, have to pay freight, while licencees of distilleries, breweries, etc., have to pay a licence. Hitherto apparently the two have fairly balanced each other. That is to say, that imported liquor has competed on fair terms with liquor of local manufacture. If it should appear that the excise duty in any way handicaps the local manufacture it may be a matter for consideration whether that excise duty should not be decreased to a small extent. The place where the liquor is distilled or manufactured is treated for the purpose of this Ordinance as a private licensed warehouse from which no liquor may emanate until it has paid duty, unless it is removed under permit for export, but it is exempt from the fee for a bonded warehouse. It eventuates, therefore, that all liquor in transit and all liquor dealt with in the Colony for export are duty free. They only pay such fees as may be charged for storage in the King's warehouse or the licence fee for a private warehouse. The Bill, therefore, in no way affects this port as a distributing centre. It only imposes duties on liquor consumed in the Colony.

The preamble of the Bill shows that it is avowedly of the nature of "hasty legislation,"

because it is inevitable that any Bill introduced in this or any other country imposing a new duty should be passed with expedition in order to guard against imports in anticipation. I hope that even the hon. member who represents the Justices of Peace (Hon. Mr. M. Stewart) will not find occasion to cavil at the hasty nature of this legislation, and that he and the other unofficial members will assist the Government in passing it in the shortest possible time. In my anxiety to allow ample time for the fullest consideration of this very important subject, together with the difficulty of drafting a long Ordinance of this kind, and also, I may add, the pressure on our time caused by the passing of the lengthy Opium Consolidation Ordinance, the present Bill has been deferred to the last possible moment. I hope that we may be able to pass it at our next meeting.

The Bill itself is only provisional, and I will undertake to introduce as soon as possible a consolidating Ordinance so that hon. members may have an opportunity of dealing with the question of licence fees under the existing Ordinance, which are not touched at all by the Bill now before Council. The schedule which was the subject of the resolution of August 13th will take a new form, and although it is a matter which has nothing to do with the Bill before us, it will perhaps be convenient if I state at once that when this Bill is passed there will be no necessity to increase the existing licence fees. Meanwhile they remain as they are.

The Bill as it stands gives somewhat large powers to the Governor-in-Council to make regulations to carry out the principles which are embodied in it. You will note especially that no special methods are indicated as to how Chinese liquors shall be dealt with. Regulations on such a subject will no doubt require somewhat frequent amendment before we elaborate a complete and serviceable scheme. When they have been elaborated those of them which are of sufficient importance will be embodied in the new consolidating Ordinance, and this Council will then have an opportunity of thoroughly discussing them. I think that in the circumstances in which we are placed this is the most practicable and most useful course. Meanwhile you will notice that it has

been reserved to the Legislative Council to modify by Resolution either the scale of duties or the fees charged on the new licences created, viz.—the fee for private bonded warehouses and the fee for what is called a chemist's licence.

I will add one word concerning Part VI. which gives certain powers of search. Those powers are necessary, but it s all be my special care to see that they are not arbitrarily or unnecessarily exercised. They are adapted from the Straits Ordinance, but that Ordinance also gives power for domiciliary and personal search, both of which have been eliminated as unnecessary here except in the former case by warrant. The powers retained are, in fact, the minimum necessary. I would remind you that these powers already exist under the Opium Consolidating Ordinance which we passed a few days ago. It is unlikely that any respectable people would have their baggage interfered with, but without such powers any coolie could bring into the Colony a handbag full of liquor either foreign or Chinese and could defy the revenue officer. It is necessary for the Government to have power in reserve to protect its revenue, and also to have power to protect those who are paying their full duties and those who are paying licence fees. It is specially necessary as regards *samshu*, and we cannot impose it on one class of liquor to the exclusion of others. The search of godowns is, I think you will all admit, a very necessary power. That already exists in the case of morphia and arms. The stringency with which that search is prosecuted will entirely depend upon the co-operation of firms in the Colony to assist the Government in preventing smuggling, but they cannot do it alone. I am told that the intimate knowledge which the various firms have of each other's business will be sufficient to prevent any systematic smuggling.

I can assure you there is no one at this table who is more jealously anxious to safe-guard Hongkong as a free port than I am myself. (Applause.) We propose to provide only a small preventive service, relying, as I said, on the co-operation of the big firms in the Colony, on the heavy penalties against offenders under this Ordinance, and the risk to their good name which will be involved by anyone who contravenes it. Liquor, after all, is not like drugs. It is a bulky article. The profit on

smuggling it could only be worth while if the smuggling takes place in large quantities, whereas the profit on a single case of morphia is very large.

The sole object of the Government in introducing this Bill is to raise revenue on intoxicating liquors in a way that will cause least inconvenience to the community and the least disturbance to trade. It is a difficult matter, the more so as the restrictions now placed on opium may tend to an increase in the consumption of liquor by the Chinese. Therefore, in selecting this particular method of raising revenue, viz., by taxing intoxicating liquors, we are acting not only in the interests of the revenue, but, as I take it, in the interests of the peace and good order of this Colony. Already I am informed that the Chinese community consume as much if not more foreign liquor than the Europeans. Our object is to tax the consumer and not the vendor. The latter has paid sufficient by paying the existing licence fees. The Bill before you is a sincere attempt to give effect to the wishes of the community as they are represented by the unofficial members of this Council. I look confidently to the unofficial members to assist the Government in passing this Bill at an early date, and I look confidently to the community to make it effective when it has been passed. (Applause.)

HON. MR. HEWETT—Have I the right to reply, your Excellency?

HIS EXCELLENCY—It is usual for the debate to take place on the second reading unless you have anything special you wish to say.

HON. MR. HEWETT—I have a few remarks which I think it advisable to make, if you will allow me. I understand the member who represents the Justices of the Peace also wishes to say something, and it would rather clear the ground if you allowed us to say what we have in our minds. In the first place, we all know this Bill has of necessity been prepared somewhat hurriedly, and as a matter of fact I think no member of the Council had seen a copy of this Bill before yesterday afternoon. For myself I can only say that this morning was the first time I had an opportunity of carefully studying the provisions of the Bill.

There is much to recommend it, but I think your Excellency, if you allow me to say so, is somewhat optimistic in the belief you have expressed as to the manner in which this Bill will be accepted by the community. The Bill appears to be in many respects highly contentious, and I think before it is passed very considerable modifications will be asked for. This is a new departure. We recognise the necessity for increasing the revenue of the Colony at a very early date, and therefore this change of administration must, of course, be carried through in the shortest possible time, but a Bill of this far-reaching importance cannot possibly be rushed through within a few weeks. It must be carefully considered not only by the legislators of the Colony but by the public at large. We must see in striving to make up the necessary increase in our revenue that we do not deal a serious blow to the trade of the Colony. The Bill requires to be modified to meet the views of the community at large, who are largely business men, as well as those engaged in that particular trade. When once a reasonable Bill is put before the Chamber your Excellency can rely upon the hearty and honest co-operation of the greater section of the community. This Bill does not, I think, meet the views of a certain section of the community, particularly in regard to domiciliary visits, and there are one or two points to which your Excellency referred, such as bottling, and warehousing — a very important branch of the trade of the Colony — which require consideration. Your Excellency spoke of ships returning manifests of liquor on board, but as I pointed out to your Excellency privately on a previous occasion, it seems to me that it might be a hardship to ask ships to return manifests of all the cargo of liquor on board. It should be only on the liquor landed in the Colony. Another question — this is a debatable point which will be discussed in Committee — is that the duties are altogether too high. Allowing for the profits and the expense of the spirit farm in the Straits Settlements the Government nets something like seven and a half lakhs. If we work on the same basis, we should expect, if the Bill is carried into force as it stands, to have a revenue of something over a million, especially as your Excellency has said that the cost of a preventive service would be very small. I thought it was right to ask your

Excellency to allow me to make these remarks — I speak for myself only, as I have had no opportunity of consulting my unofficial colleagues — in order to show as far as I can understand, that this question will require much more consideration and possibly alteration than your Excellency seems to think desirable.

HON. MR. MURRAY STEWART — Your Excellency, — It is true, as the hon. member for the Chamber of Commerce has just said, that I had intended, with your permission, briefly to address the Council even at this early stage, with a view to accelerating the passage of the Bill. My idea is to indicate to the Government where their proposals are likely to excite opposition. Originally, opposition to putting on an import duty arose out of the fear that this could not be done without creating the whole paraphernalia of a Custom House. That fear I formerly shared. The idea seemed to be incompatible with the preservation of Hongkong as a free trade port. No one believes more firmly than I do in the absolute necessity for maintaining that. At an interview granted to the unofficial members at Government House, to which your Excellency has referred, I spoke strongly against examining the luggage of European passengers by ocean steamers. It was only because so many gentlemen, who are in a position to know how the trade is worked, were found to maintain that such things need form no part of a scheme of import duty that I ever agreed to the idea of imposing one. In subscribing to the unofficial members' recommendation to impose one, I was actuated by the belief that such petty smuggling as might be improbably attempted from ocean steamers by European passengers need not seriously engage the attention of the Government, whose business of collecting the duty could be conducted through the Harbour Office on broad and simple lines calculated to create the least possible amount of friction. Only on such lines did I advocate an import duty, and only in so far as such lines are adhered to by the terms of the Bill does it command my support. I am opposed to the idea of granting immediately powers which provide for the institution of a Customs service — powers conferred by sections 30 to 35. The latter clause, providing for domiciliary visits, is particularly repugnant

to me. Your Excellency has just said that you will undertake that these powers will not be invoked vexatiously. I am sure that such will always be your Excellency's desire. But, nevertheless, I deprecate putting such a power into the hands of subordinate officers until the absolute necessity for it has been proved to exist. I suggest that regulations conferring such powers might be made hereafter by resolutions of this Council, to be passed when, in the public interest, it is seen to be necessary. I suggest that the Government should so modify this Bill. I quite appreciate the necessity of enacting it quickly, if at all.

HIS EXCELLENCY — Before I put the motion I would like to correct a statement made by the hon. member who represents the Chamber of Commerce. I said that the proposed duties are identical with those in the Straits Settlements. They appear perhaps larger in the Bill, but I think if the hon. member works them out on the basis of the fixed exchange in the Straits he will find they are exactly identical.

#### **Magistrates and Criminal Law Amendment Ordinance**

THE ATTORNEY - GENERAL moved the second reading of the Bill entitled an Ordinance to amend the Magistrates and Criminal Law Amendment Ordinance, 1909. In doing so he said—The object of the Bill is to repeal section 8 of the Magistrates' Criminal Law Amendment Ordinance of this year, which conferred power upon the Governor-in-Council to make certain limitations with regard to spitting in streets and other public places. The Chinese community, in the persons of those qualified to speak on their behalf, have undertaken to do all that this clause would give the Governor-in-Council power to do. In the circumstances the Government considered it better that such a matter should be regulated by the Chinese themselves.

THE COLONIAL SECRETARY seconded, and the Bill was read a second time.

Council then resolved itself into a Committee of the whole Council to consider the Bill clause by clause.

On resuming, the ATTORNEY-GENERAL

reported that the Bill had passed through Committee, and moved that it be read a third time.

THE COLONIAL SECRETARY seconded, and the Bill was read a third time and passed.

#### **Malicious Damage Amendment Ordinance**

Council went into Committee on the Bill entitled an Ordinance to amend the Malicious Damage Ordinance, 1865.

THE ATTORNEY-GENERAL—In the first place, the Committee will remember that we left for further consideration clauses 5 and 6 of the Bill, which deal with the penalties to be imposed for injuries to trees in the New Territories, and the mode of collecting the impositions. After discussing them after with an unofficial member I propose to amend section 5 so as to make penalties fall only on those who reside within the area.

HIS EXCELLENCY — I have taken the opinion of the district officer in the New Territories on this subject, and he thinks the amendment now proposed will be quite satisfactory.

On Council resuming, the ATTORNEY-GENERAL reported that the Bill had passed through Committee with slight amendment.

#### **Governor-in-Council Relief Ordinance**

Council went into committee to consider the Bill to relieve the Governor-in-Council of certain ministerial duties.

THE ATTORNEY-GENERAL stated that the Bill was left in Committee to enable members to make themselves familiar with the provisions of the Ordinances which the Bill dealt with in the schedule.

On Council resuming the ATTORNEY-GENERAL reported that the Bill had passed through Committee.

#### **Orders Postponed**

The following orders of the day were postponed:—

Second reading of the Bill entitled an Ordinance to authorize the Construction and Maintenance of a Harbour of Refuge upon and over certain portions of the Sea Bed and Foreshore situated upon the Harbour frontage at Taikoktsui, Mongkoktsui and Yaumati, Kowloon, in this Colony.

Second reading of the Bill entitled an Ordinance to amend the Tramway Ordinance, 1902.

Second reading of the Bill entitled an Ordinance to amend the Liquor Licences

Ordinance, 1898, and the Liquor Licence, Extension Ordinance, 1908, and to repeal the Liquor Licences Amendment Ordinances 1902.

Committee on the Bill entitled An Ordinance to set apart certain Crown Land to be used as a burial ground for persons professing the Christian Religion, other than members of the Roman Catholic Church.

HIS EXCELLENCY—Council will adjourn until Thursday next.