

27TH APRIL, 1911.

PRESENT:—

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

HON. MR. C. CLEMENTI (Colonial Secretary).

HON. MR. C. G. ALABASTER (Attorney-General).

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

HON. MR. W. CHATHAM, C.M.G. (Director of Public Works).

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

HON. CAPTAIN F. W. LYONS (Captain Superintendent of Police).

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

HON. MR. WEI YUK, C.M.G.

HON. MR. POLLOCK, K.C.

HON. MR. E. A. HEWETT.

HON. MR. E. OSBORNE.

HON. MR. C. MONTAGUE EDE

MR. R. H. CROFTON (Clerk of Councils).

Minutes

The minutes of the last meeting were read and confirmed.

Revenue and Expenditure

HON. DR. HO KAI gave notice of his intention to ask the following question at the next meeting of Council:

Will the Government lay on the table at the next meeting of this Council a return showing

- (1) The total amount of revenue
- (2) The total amount of expenditure
- (3) The amount of margin (if any)
- (4) The amount of military contribution
- (5) Total amount spent on Public Works extraordinary

for the years 1899 to 1910 inclusive?

New Member

Mr. C. Montague Ede took the oath and assumed his seat as a member of Council.

Papers

THE COLONIAL SECRETARY, by command of His Excellency the Governor, laid on the table the following papers:— Report on the assessment for the year 1911-12; Report of the Director of the Observatory for the year 1911.

Financial Minutes

THE COLONIAL SECRETARY, by command of His Excellency the Governor, laid on the table Financial Minute (No. 26), and moved that it be referred to the Finance Committee.

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

Financial

THE COLONIAL SECRETARY, by command of His Excellency the Governor, laid on the table the report of the Finance Committee (No. 6), and moved its adoption.

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

Kowloon-Canton Railway

THE COLONIAL SECRETARY—Sir, I request the permission of Council to resume the discussion of the resolution which stands on the orders of the day and was adjourned at our last meeting. The resolution proposes in effect that out of the unexpended balance of the railway loan authorised by Ordinance No. 11 of 1905 a sum of \$412,501.59 should be advanced for the requirements of the British section of the Kowloon-Canton Railway during the current year. What these requirements are

is stated in detail in the fifth column of the 1st table appended to Mr. Lindsey's report of the 5th instant, which I had the honour to lay on the table of this Council last Thursday, and I confidently look for the support of honourable members in passing the present resolution, since it not only covers the cost of completing the main line, but includes (as your Excellency has explained) the construction of a branch line from Fanling to Shataukok and considerable additions to rolling-stock on account of through traffic to Canton, and nevertheless shows a saving of \$74,566.11 on the estimate which was presented to Council and accepted without demur, and without even debate, in April last year. It would have been unnecessary for me to detain the Council longer were it not for certain remarks made at our last meeting by the honourable member who represents the Chamber of Commerce. The honourable member said:—"I doubt if any other railway in the world, with the exception of one or two in South America, has ever cost such a terrible sum of money. I certainly think that those who are responsible for the construction and expenditure have not had the proper interests of the taxpayers before them." He said that the original estimate for the line "was something between 5 and 6 million dollars." He expressed the opinion that the British section of the Kowloon-Canton Railway runs "over comparatively simple country," and he finally made, without the slightest hesitation, the statement that "there is no necessity for a railway 22 miles long to go to the expense of keeping two large staffed workshops which cannot possibly be kept fully employed." Sir, it has been said by Coleridge that "Truth is a good dog; but beware of barking too close to the heels of an error, lest you get your brains kicked out." I have therefore some hesitation in following hard on the heels of the honourable member's errors, and the Council will be relieved to hear that I propose to abstain entirely from barking. I cannot, however, allow so many mistakes to pass without at least a growl of dissent; and as regards the question of workshops I must add my protest to that contained in an interesting letter written to the *Hongkong Telegraph* on the 21st instant by "One associated with railway construction and management in other parts of the world." The writer says in that letter:—"Experience

has elsewhere and universally proved that a railway can no more be economically and profitably worked without its own workshops than our homes can be economically or satisfactorily run without their kitchen." I commend the whole letter to the honourable member's attention, and I may add to what your Excellency has already said on this subject that it was not possible to lay sidings to small yards such as Bailey's and MacDonald's and others of a like capacity; and that the Taikoo Dock and the Naval Yard, as a little thought would have shown, were out of the question, because it is not possible to transport engines and rolling stock across the harbour on lighters every time they need repair. The choice, therefore, was between building our own workshops or giving a monopoly of railway repairs to the Hongkong and Whampoa Dock Company. Taxpayers will, I think, agree that it would not have been sound business to place the railway solely in the hands of the Dock Company without the usual safeguards afforded by competition; moreover, in the opinion of experts, there are grave objections to allowing rolling stock to go out of the supervision of the railway staff. On this point I venture to read the following further extract from the letter which appeared in the *Hongkong Telegraph*: "it is quite possible for the heavy repairs of railway engines and vehicles to be done by private firms and outside shops, but not economically done. Such work requires specific machinery and tools, and such plant is not ordinarily provided in general workshops in the same way as in essentially locomotive shops. Then, again, it is quite impossible to have the light repairs done outside. Some have to be done at once, and this can only be secured by the railway having at its command its own means, machinery and men. The honourable member has not taken fully into consideration, if at all, the most important fact of all, and that is, that railway locomotive engineering is a speciality, and that there are requirements in actual railway working which can only be met by a locomotive expert with the specific experience and training which cannot in the same degree be possessed by the staff of engineers engaged in general engineering works such as are found established for other commercial purposes." These statements are s o u n d s e n s e ; t h e y

coincide with the expert advice given to this Government on the subject; and I am glad to have this opportunity of thanking "Outsider" for his letter. Sir, I could hardly believe my ears when I heard the honourable member remark that our railway runs "over comparatively simple country." All country is no doubt simple when traversed in agreeable post-prandial repose and a 1st class railway carriage; but will the honourable member accompany me on a walk from Kowloon to Lowu over the centre line of the existing railway? It would give me the greatest possible pleasure to accompany the honourable gentleman in such an expedition, for the case is emphatically one to which the method "solvitur ambulando" should be applied. But perhaps I am taking the honourable member at a disadvantage, for I have frequently had occasion to walk over the centre line of the railway both before it was constructed and during its construction. Therefore, in order that he may be forewarned as to the nature of the country which he will have to cross, I have brought with me progress plans and sections of the railway, and I would invite such members of Council as are not yet satisfied that our railway traverses unusually difficult and arduous country to study these plans with some attention. They will notice such items as 5 tunnels of a total length of 8,784 feet, 49 bridges and culverts, many heavy cuttings, high banks running along an exposed foreshore and often built through the sea—all in a length of 22 miles. If such works are required in "comparatively simple country," then I take it the honourable member would consider no country arduous unless it were so rugged that a remunerative railroad could not possibly be constructed through it. The honourable member referred to Mr. Bruce's original estimate of \$5,055,500. But your Excellency explained to the Council so long ago as the 6th February, 1908, and again on the 10th June, 1909, at meetings attended by the honourable member, that Mr. Bruce's figures were in no sense a detailed estimate, that no drawings or calculations of quantities and rates were supplied with his estimates, and that his alignment was considerably altered by Mr. Eves. Mr. Bruce's problem was to determine which of three suggested routes the railway should take, viz., whether it should be built *viâ* Castle Peak and San T'in,

or *viâ* Ch'ong - sha - wan along the line of the Taipo Road, or through the Beacon Hill. He made preliminary surveys and estimates and decided finally—and, as all experts agree, rightly—in favour of the Beacon Hill line. There his work ended. The first detailed estimate was that submitted by Mr. Eves in June, 1907, and amounted to \$8,003,642. That estimate was revised by Mr. Eves in 1909 and increased to \$11,004,128. It was again revised in 1910 and increased to \$12,371,495. It has now been finally revised by Mr. Lindsey and reduced to \$12,296,929. The reasons for these variations in the estimate were fully explained to the Council in your Excellency's speeches of 13th May, 1909, and the 10th March, 1910, as well as in the remarks which you made at the last meeting of Council, and, in order to avoid vain repetition, I would request honourable members to be good enough to re-read those speeches, in which they will find a full account of the financial history of the railway. I would also invite reference to the tabular statements in Mr. Lindsey's reports of the 28th February, 1910, and the 5th instant, both of which have been laid on the Council table. The honourable member for the Chamber of Commerce doubted whether any railway in the world except one or two in South America had ever cost so much as ours, and he placed the cost of our railway at what he called "the incredible sum of something like £50,000 per mile." Presumably he arrived at this figure by taking the total revised estimate of \$12,296,929 and dividing it by 22 miles, the product thus obtained being some \$558,951 per mile; but it must be remembered that the very heavy cost is due directly to the very short length of our railway, and to the unfortunate fact that the British section runs through extremely difficult country. I have been informed by Mr. Chao Ching-hua, manager of the Chinese section of the Kowloon-Canton Railway, that the probable capital cost of the Chinese section, which is 89 miles long and does run through comparatively simple country, will be some \$15,500,000. Therefore the capital cost of the whole line from Kowloon to Canton will probably be \$27,796,929 for a length of 111 miles, or \$250,442 per mile—by no means an "incredible sum." But judgment by averages and percentages tends often to be fallacious, and I would refer

h o n o u r a b l e

members to the judicious remarks made by Mr. Murray Stewart in this Chamber on the 10th June, 1909. He said: — "A very misleading impression is created by simply taking the total of the revised estimate for the railway and dividing it by the number of miles between Kowloon and Samchun. The product is startling, but if to the original 22 miles were to be added the many miles of sidings which will be provided at the terminus a much better result would appear. Even so, however, justice would not yet be done. If the whole cost of reclamation is to be debited to the railway, some thought should be taken of the value of the land reclaimed, some of which will be used for other than strictly railway purposes—for godowns and other requirements of the Port scheme. Hereafter that land should prove a valuable asset to the Colony." It will, I submit, Sir, be much more to the point if the honourable member for the Chamber of Commerce can indicate in less general terms in what way, if at all, money has been wasted. I have consulted Mr. Lindsey, and I give the following figures and comments upon his authority. The cost of the Beacon Hill single-line tunnel was \$455.28 per foot—in Mr. Lindsey's opinion moderate; the average cost of the other 4 double-line tunnels was \$370.74 per foot—very cheap for such work. Reclamation also was very cheap; it cost 65 cents a foot. The rates paid for earthwork and bridging were extremely moderate, and land resumption (save at the terminus in Kowloon) was very cheap. It is unfortunately true that owing to failure of some major and minor bridges a loss of \$94,378.97 was incurred; but the engineer responsible for the error of judgment which resulted in those failures has left the service of this Government, and I would remind you that the loss in question amounts to no more than 0.7 per cent. of the capital cost of the line. Can the honourable member point out any other item on which there has been waste of public money by the engineering staff of our railway? If he cannot, I beg to suggest to him that he should withdraw the undeserved slur which he cast upon the past and present staff of our railway in saying that "those who are responsible for the construction and expenditure have not had the proper interests of the ratepayers before them," and that he could "not understand how

it is possible they can say they have done the best they can in the interests of the ratepayers." I do not think that the honourable member could have weighed those words before he used them; and on behalf of an exceedingly hard-working staff of British engineers, who have given their best efforts to the construction of the railway, and who cannot themselves reply to the honourable member's criticisms, I emphatically repudiate the suggestion that they have not conscientiously endeavoured from first to last to construct the line with the utmost care and economy. I submit, Sir, that the true method of analyzing our expenditure on the railway is not to say that the total length of the line is 22 miles and that it has cost \$558,951 per mile, but rather to say that 6 miles of our line, built over comparatively simple country, cost \$116,616 per mile; that $14\frac{1}{3}$ miles in very arduous country, cut for a double line, and including 34 acres of reclamation available both for railway purposes and for lease to the public, cost \$377,490 per mile; and that $1\frac{2}{3}$ miles of tunneling in rock cost \$2,599,020 per mile. This leaves a balance of \$1,854,843, which is not directly chargeable to construction and includes such items as \$615,000 for resumption of Blackhead's, \$579,000 for purchase of rolling-stock, \$310,892 for the construction of a sea wall, dredging, pierre perdue and concrete, \$124,000 for workshops, \$72,000 for the Fanling branch line and further sums on account of interest and Home charges. I venture to think that expert opinion will pronounce these figures to be very moderate, and in conclusion I may add, upon the authority of Mr. Lindsey, that there is no better laid road-bed out of England than that of the British Section of the Kowloon-Canton Railway.

HON. MR. HEWETT — Your Excellency, you invited us—

THE COLONIAL SECRETARY—I rise to a point of order. The hon. member has already spoken to this resolution.

HIS EXCELLENCY—Gentlemen, in my opinion our procedure in this Council in the past has been somewhat irregular in regard to motions involving grants of money. Motions of that nature should, I think, be referred to a committee of the whole Council. In the circumstances I would ask the Council

to allow the hon. member to continue his speech, more especially as he has been challenged and may wish to reply to one or two statements. It is perfectly true, as the Hon. Colonial Secretary infers, that in accordance with the usual procedure the hon. member would be out of order in speaking a second time to the same motion, but if Council have no objection I propose that the hon. member be allowed to continue.

No objection was raised.

HON. MR. HEWETT—Your Excellency, you invited unofficial members when putting the resolution before us to ask questions and make such remarks as might occur to us. As I pointed out then, the figures were placed before us for the first time and we had no opportunity of considering them, but I have since done so, and there are one or two questions which I would ask your Excellency or the hon. Colonial Secretary to be good enough to reply to. Touching the item of \$747,000 odd, value of reclamation of land transferred to public works, I presume that is part of the land reclamation carried out in conjunction with the railway system, and is not now included in the \$12,300,000, the estimated cost of the railway. The other question is whether the whole of the balance of the reclaimed ground known as Blackhead's property resumed by the Government at very great cost, and also one or two sites either prepared or repurchased by the Government on the south side of the Peninsula, are now included in that \$12,300,000, and if so whether there is a possibility of a still further portion of land being transferred from the cost of the railway to public works or some other account. I would like some idea on these points before I go on with my remarks.

HIS EXCELLENCY—If I understood the hon. member aright the first question he asks is in reference to the two lots resumed by the Government north of Salisbury Road?

HON. MR. HEWETT—The item of \$747,000. I don't know what the lots are.

HIS EXCELLENCY—The total of the two lots north of Salisbury Road amounted to seven and a half lakhs, and it is therefore to them that you refer, I presume. The sum paid for their resumption was not debited to the

railway. They have been acquired by the Colony and can be disposed of by the Colony to the railway or to any private purchaser at any time. The second question was whether the amount paid for the wharf, pier and land at Blackhead's Point was debited to the railway.

HON. MR. HEWETT—And the whole of the reclamation.

HIS EXCELLENCY—And the whole of the reclamation. That has been debited to the railway. There will be a considerable part of the railway reclamation which will not be used for railway purposes, and will be available to be leased or rented. The rentals derived from these areas may either be included in the railway if the capital cost is included, or they may be included in colonial revenues. The matter is of no essential importance and one which for the moment is not decided.

HON. MR. HEWETT—Sir, as the Council has been good enough to allow me to continue the remarks which I commenced at our last meeting, I beg to thank your Excellency and the Council for that permission. It is very necessary that I should have this opportunity of continuing what I have to say. As all are aware, the question of constructing the railway and the manner in which it was carried out was all practically settled before your Excellency arrived here, and I understand that in the main you have been merely carrying on something to which the Colony was already committed before your Excellency's arrival. In view of the importance of this question the unofficial members asked that the final decision on the vote be deferred in order to enable us to have a meeting on the subject. The unofficial members, or four of them, have since had a meeting. The Hon Mr. Osborne had left the Colony and my hon. and learned friend opposite (Mr. Pollock) was prevented from attending, but the others were present and we discussed the question very fully. In view of the statement put before us which was drawn up by the Resident Engineer, and in view of the explanation made by your Excellency, we decided that it was inadvisable to go too much into detail, but there were some points on which it was possible that all or some of us might like to express an opinion, but

in view of what we understood to be the present position of affairs, more particularly with regard to the working with the Chinese section, we decided we would only deal with them as a body, and I was asked to speak for the unofficial members on certain points. I will now proceed to deal with that side of the question first, and as my three colleagues are present they will be able to correct me if I do not correctly express their views. Then it is possible that I will have something to say on my account in reply to the speech made by the hon. Colonial Secretary. It is perfectly true that Mr. Bruce's estimate, which I had in my mind when I spoke last Thursday, and which was between five and six million dollars, was only a rough one. Later the then Chief Resident Engineer put forward an estimate of eight million odd thousand. That was to include everything, even the terminal station. The only two factors which were left out were workshops and rolling-stock. The cost, as we now understand, for workshops and rolling-stock is \$648,932,87. That is to say, as we could reasonably suppose that Mr. Eves made a careful estimate before putting the figure before the Government, that we could expect to have the railway built for nine million dollars. Instead of that we have to pay \$12,300,000 for the railway as it stands now, which does not include the cost of the terminal railway station. That sum would have been still further increased by a quarter of a million had it not been for the very lucky and unforeseen chance which the Government got of saving that sum on the rate of exchange. The point to be made is that the original estimates, which we presumed were more or less correct, were apparently hopelessly wrong. With regard to the workshops, about which great stress has been made, from a financial point of view, that is, comparatively speaking, an unimportant matter, but another point of view, and I maintain a very important one, is the question whether the Government is going to compete with local industries. Your Excellency assured us that it was not your wish, in fact you demonstrated that you had endeavoured to pass your patronage to local industries where you could. Speaking on the 29th September on the Acting Governor's budget speech last year on behalf of the unofficial members, all of whom were present with the exception of the hon. Mr. Keswick, I was

authorised to state that in our opinion it was not necessary for a railway of the length of the British Section of the Kowloon-Canton Railway to have a complete set of workshops with all the necessary staff they would entail. We still maintain that principle. I am perfectly prepared to admit, and believe it may be necessary to have workshops for small running repairs, but still I do not see that a railway of this size, in spite of the official authority thrown at our heads, should have a complete set of workshops. We think a certain amount of work might be done elsewhere. I do not propose to follow the Colonial Secretary through all his arguments, especially where he asks if it would be advisable to carry engines and carriages across the harbour in lighters, and so forth. I beg to point out to the Government that it is not merely the question of the \$110,000 or two-thirds of that sum involved. The expenditure involved will be largely increased by the staff which it will be necessary to maintain. A large amount of machinery must be kept up, and although the capital expenditure is not very great, perhaps \$70,000, or \$80,000, over and above the cost of the running workshops, the excessive expenditure in a matter of that sort is in staff, renewals and repairs, and unkeep, because machinery deteriorates very quickly unless it is kept in full working order the whole of the year. Another point upon which I and my three colleagues agreed upon was that the expenditure on the railway has very largely exceeded an estimate which we were given at the time to believe was a carefully prepared and most reliable one, and I cannot but consider that a mistake was made by your predecessor for which neither you, Sir, nor I, think any official in the Colony at the present moment can be possibly held responsible. If, in the first instance, the contract had been given to some reputable railway construction firm, people who have had experience of building railways in far more difficult countries and further away from civilisation than Hongkong, it is quite possible that it would have cost less than it has done in Government hands. We do believe that if that railway had been constructed by a proper railway construction company, rather than by what I might call day to day work, or what is known as being constructed departmentally, we would have got it completed

quicker and at less cost, because if the contractors had under-estimated the cost they would have to stand the loss. Again, we would have had the railway completed quicker, because, as we know, the opening was delayed and consequently the earnings were decreased by the late arrival of the rolling-stock which the Crown Agents sent out. Another difficulty which we know, and which has practically been admitted, I think, by your Excellency, by your predecessor, or by the Officer Administering the Government, is that in constructing a railway of this sort departmentally there is the difficulty of supervision. The Government are supposed to have authority and to keep control of the railway, but in all technical matters, whatever the Government's technical adviser may maintain, the matter has to be left in the hands of the experts on the spot. For those reasons the unofficial members still consider that it would have been better and more satisfactory from the Colony's point of view had the work been carried out by contract. We are still in doubt as to where the terminal station is to be located, but I gathered from the reply made to one of the questions just put that over and above the cost of the railway, which now stands at \$12,300,000 plus the cost of the terminal station, a sum of seven and a half lakhs will also be incurred outside the railway for land not at the moment required, and possibly out of 30 or 40 acres of reclaimed land a good deal of that which has been debited to the railway may have to be disposed of later on. That is one of the reasons, I understand, why my colleagues agree with me in objecting to the manner in which the expenditure on the railway has been piled up. We consider that the Government has invested too much in resuming and purchasing land which we do not want, and in reclaiming an undue area. The ratepayers' money has been sunk in this land, and later on, as your Excellency pointed out last Thursday, it is only reasonable to suppose that the Government will do its best to dispose of it at a profit. I am speaking now of Blackhead's reclamation, which can only be used for wharves and godowns. Your Excellency pointed out at the last meeting that the Government did not mean to compete with existing institutions such as Holt's wharves, the Godown Company and the Star Ferry, which have gone to build up the trade of the Colony. You went on to say, "I

may say at once that the Government has no idea of building either wharves or godowns on that reclamation unless and until the development of the railway would justify and necessitate such extensions." Now I hope and sincerely believe it will not be long before a satisfactory agreement is made with the Chinese and that the railway will develop by leaps and bounds, although it does not necessarily follow that the trade of the Colony will develop to the same extent. There is a large sum of money invested in Holt's wharves and the godowns by people who are large ratepayers. As we know perfectly well, trade in the Far East has been depressed for some years. Trade also has changed. There is not the same demand for large storage accommodation which made the Wharf and Godown Company such a profitable concern some years ago. Merchants live more from hand to mouth with their stocks. The godown accommodation on the Kowloon side is very much in excess of the requirements of the Colony, and I am very much afraid that it will be a long time before the godowns now in existence will be fully required for the trade of the Colony. It does not at all follow before the demand exceeds the supply that it may not be to the advantage of the Government to dispose of that property on behalf of the ratepayers. These, I think, Sir, cover the points which were discussed by my three colleagues and myself and which we agreed we would put before you. We decided there were other points which we possibly might like to have referred to, and which I did touch upon at our last meeting. I should prefer now to take my seat, but in view of the somewhat violent personal attack which the Colonial Secretary has thought fit to make upon me I must make some reply. I am speaking now for myself, on my own responsibility and without the consent of my colleagues, although I trust they may endorse what I have to say. Much stress has been laid on the uncertainty of the estimates, and Mr. Clementi went on to explain that the increase of the present estimates over what they were a few years ago was on account of the cost of through traffic to Canton. Surely from the very first the Hongkong Government must have realised that the way to make the railway a success was to run through trains to Canton. How they can come forward now and put

that forward as a reason for the present estimate being so largely in excess of the old one I fail to see. The cost of the railway I still maintain to be excessive. I was invited by the hon. Colonial Secretary to accompany him in a trip over the hills. I think I walked over them long before the Colonial Secretary came to the Colony. I have a good head for topography, and my legs have carried my gun and me many miles over the hills in the Territory long before it passed under the British flag. There are few parts of the New Territory with which I am unfamiliar. When I came back here I found the railway was likely to become a factor in colonial life, and took the trouble to go all over the hills and the valleys again, and I think I have as good an idea of the topography of the country as most people. I may also say, quite incidentally, that I have travelled through some of the most difficult parts of the world, the Rockies, the Andes, Switzerland, and various other places, so that I know something about railway construction and make a point of speaking of what I saw, not merely looking out of a window. I must express my astonishment that the Colonial Secretary should take as a text for his personal attack against me a letter written under a *nom de plume* in one of the local papers. I should have thought it would not have been worth the attention of a high official, and that it would not have received the weight it has apparently done. It is certainly not worth quoting as an argument by a high official in reply to an unofficial member who has the temerity and audacity to criticise the expenditure of the Government. I think I can guess who the writer of the letter was; but I don't know, I may be wrong. I do know that last Friday a gentleman's card was brought to me, and I had to explain I regretted in the circumstances that I was unable to see him. He met me later at the Club. By that time he had simmered down, and I gathered that having bolted a hasty breakfast and illy-digested the morning paper he came down to the Club to have it out with me because I made a personal attack on him and his late colleagues. I was astonished. I could not conceive how anything I said last Thursday could be construed as an attack upon him or his colleagues. The person is a good friend of mine—and I hope he will still allow me to call him so—and I cannot understand how he

could have conceived that I made a personal attack upon individual officers concerned in the construction of the railway. I did not, and it is still more astonishing that after a week the Colonial Secretary should take that up as a text against me.

THE COLONIAL SECRETARY—The hon. member's last speech especially exempted the Government from attack.

HON. MR. HEWETT—I beg your pardon. It especially exempted His Excellency, who was not responsible for the manner in which the line has been constructed. My criticism was directed against the whole of the system. I did not in the slightest degree intend to cast any reflection on any of those very worthy and capable officers who carried out the railway. I am perfectly prepared to accept that the actual work of putting down and laying the permanent way and the tunneling is just as good as could be got, and as far as that is concerned we have got good value for our money. Therefore I made no slur upon officers, and I do not take back anything I said. I would much rather not have made these remarks, but they were forced upon me by the criticisms which the hon. Colonial Secretary has felt constrained to make on the remarks I made last week. I still consider that an undue amount of money has been sunk in the railway, and that the cost can be materially reduced by transferring half of the land not required to other accounts, such as public works. For the construction of the railway we have been called upon to pay a large sum in excess of what was estimated, and the figures and speech made by His Excellency explaining that expenditure came without any warning. As I had been one of those taking a leading part, not only on behalf of myself, but on behalf of my colleagues, in speaking last September, I could not have remained silent, otherwise it would have been cast up against us later that on this occasion we allowed the resolution to pass without comment and therefore endorsed everything done and said.

HON. MR. POLLOCK—Your Excellency, the hon member who represents the Chamber of Commerce has explained that recently a meeting was held consisting of himself and three other unofficial members of this Council. Sir, I was not present at that

meeting, nor was the hon. member who took his seat at the table to-day (Mr. Montague Ede). Nor was I present in this Council last year when the hon. member made his criticisms on the budget. Sir, it is always for me a painful duty to have to dissociate myself in any way from any of my unofficial colleagues, and more especially is that the case with my old friend the hon. member representing the Chamber of Commerce. But, Sir, the hon. member made a statement at the meeting of the Council on Thursday last which I feel it my duty to challenge, because I feel that although the hon. member has stated to-day that he never did intend in the least to cast any reflections upon the efficiency of the railway staff, I feel that the words actually used by the hon. member were calculated to convey imputations upon them. A portion of what the hon. member said on Thursday last reads as follows: "The cost is now estimated, including everything, at something like $1\frac{1}{2}$ million dollars, some 100 or 150 per cent. more than the original estimate." Now, Sir, I must confess that I think that statement of the hon. member would convey to anybody reading it the meaning that originally the then engineer in charge of this railway had solemnly drawn out a full estimate of the proposed work and that that estimate had been exceeded by some 100 or 150 per cent.; but on looking back through the pages of *Hansard* one finds that the original estimate, as the hon. member calls it, was an estimate which is called, for the sake of convenience, Bruce's estimate, and was not in the ordinary sense of the term an estimate at all. Your Excellency has yearly addressed the Council upon the subject of this railway, and so long ago as the 6th February, 1908, you stated very clearly that Mr. Bruce's estimate was only a rough one, and that point appears still more clearly later on in your Excellency's speech addressed to this Council in the following year. There are two speeches in that year, one on the 13th May, 1909, and one on the 10th June, 1909. In the latter speech your Excellency showed how very roughly this so-called estimate was made by Mr. Bruce. In fact your Excellency described it, and I think quite correctly, as being rather in the nature of a preliminary survey than an estimate. I will just quote a few words from your Excellency's speech on that occasion: "When Mr. Bruce made his preliminary survey the question was

under discussion as to whether the railway should follow a route along the eastern or the western side of the peninsula. It was issues of this kind upon which his advice was sought. His figures did not purport to be a considered estimate of the cost. There were no calculations of quantity, and the length of the tunnel was (I am told) estimated upon the map with a pair of dividers. He purposely omitted a large number of items such as telegraphs, workshops, roads, boundaries, ballast, salaries, and all items under plant, including rolling-stock." Your Excellency a little further on went on to say: "The first reliable estimate that we had of the cost of the railway under the authority of the Chief Engineer was the one which was made in June, 1907. It took nine months to prepare. It amounted to a little over eight million dollars. It did not include, as I have repeatedly pointed out, several items which were under discussion at the time it was presented." There your Excellency stated very clearly for the information of this Council that the so called original estimate was merely in the nature of a rough preliminary survey, and omitted altogether the inclusion of very many important and expensive items connected with this railway, I had forgotten to mention that a few weeks before this, on the 13th May, 1909, by your Excellency's direction, there had been laid upon the table of this Council a revised estimate revising the estimate made by Mr. Eves in June, 1907, which revised estimate showed an estimated grand total of, roughly speaking, eleven million dollars. Therefore when this meeting of the 10th June was held unofficial members had had in their hands for some four weeks, not merely Mr. Eves' estimate of June, 1907, but also his revised estimate, which was laid on the table on the 13th May, 1909, showing a sum of \$11,000,000 to be expended on the railway. As the hon. Colonial Secretary has pointed out, at that meeting of the 10th June, 1909, the hon. Mr. Stewart pointed out in the remarks that he made to the Council that the idea which apparently had obtained some credence in the Colony at the time was that we were paying far too much for this railway. Mr. Stewart expressed the opinion that that idea ought to be dissipated by your Excellency's remarks and figures addressed to members of this Council. (Hon. Colonial Secretary—Hear,

hear.) I will not quote the portion of the hon. Mr. Stewart's speech quoted by the Colonial Secretary, but I will refer to another part. The hon. Mr. Stewart said: "Your Excellency, I have listened to your remarks with considerable satisfaction. I hope that they will effectually destroy the idea that this Colony is being called upon to pay for the railway a price nearly twice as large as it ought. As your Excellency has indicated, this erroneous impression arose from comparing the preliminary with the detailed estimate as if they were different estimates for an identical work. It has already been pointed out by those who sought to combat this erroneous notion that the preliminary estimate was for a single line throughout, whereas the actual construction provides for development into a double line on all bridges, culverts and tunnels except Beacon Hill. It has further been pointed out that the preliminary estimates did not provide for land reclamation and land resumption at the terminus." Sir, the hon. Mr. Stewart appears to have been at that time the only unofficial member who offered any criticism on Mr. Eves' revised estimate of eleven million dollars, and, as will be seen from the quotation I have made from his speech, that hon. member arrived at the conclusion that—of course, naturally all of us would deplore an increase in the estimate—your Excellency had given a satisfactory explanation of the considerable increase in the estimate from June, 1907, when it stood at \$8,000,000, to May, 1909, when it stood at \$11,000,000, and I cannot find, Sir, that any unofficial member dissented from that view expressed by Mr. Stewart, although amongst them was present my hon. friend who represents the Chamber of Commerce. Again, Sir, turning to the debate in the Council under date of 21st October, 1909, when certainly there had been ample time for all unofficial members to have very fully considered Mr. Eves' revised estimate of eleven million dollars, which had been laid on the table more than five months before, I find that the hon. member for the Chamber of Commerce had been entrusted by the unofficial members to criticise the budget speech and the general policy of the Government, and I find, Sir, he criticised it at some length—his remarks occupy nearly seven columns of *Hansard*—but I am unable to find in the speech of my hon. friend of 21st October, 1909, any criticism

bearing adversely upon the question of railway policy or railway administration. Therefore, Sir, I take it that the position then was, that at all events so far as can be judged from the debates in Council, that on this date, 21st October, 1909, there did not appear to the unofficial members of this Council to be any particular ground for criticising the Government's railway policy or the increased estimates which were laid on the table on the 13th May of that year. Then, Sir, on the 10th March, 1910, there was laid upon the table by your Excellency's command a further revised estimate amounting to 12 million dollars odd, and when that was laid on the table your Excellency took occasion, as was customary in the Spring of every year, to make a statement in regard to the Kowloon-Canton Railway, explaining for the benefit of members of the Council how it was that the estimate was increased from eleven million to, roughly, twelve and a quarter million dollars. Sir, those figures do not, so far as I could see, seem at the time to have occupied any attention at the hands of hon. unofficial members. They seem to have passed away to the consideration of the finest site in the Colony, and that seems for some time to have occupied the attention of the Council. That was a matter which caused debate during more than one meeting of this Council. The hon. member representing the Chamber of Commerce referred, I think, at the meeting of the Council on Thursday last to some remarks which he made in connection with the budget on the 29th September, 1910. I was not present at that meeting, not having then returned to the Colony, but I am rather surprised, Sir, to read in that speech the following remark of the hon. member for the Chamber of Commerce. He says: "There is only one more matter to which I will refer, the Kowloon-Canton Railway. Here again is a question concerning which we would like to have further information. Again an estimate of eight millions has swelled up fifty per cent., the actual expenditure to date being nearly 12 million dollars." Well, Sir, the hon. member, when he made those observations, seems to have entirely lost sight of the fact that on the 13th May, 1909, nearly eighteen months previously, the estimates had moved up from eight million to eleven million dollars, and about six months before he made his speech on the budget the estimates had still

further moved up to twelve and a quarter million dollars, roughly speaking, the amount which is now before the Council. In fact, I think it is rather in excess of that amount. I have thought it advisable, Sir, to go into these matters in some detail, not because I hold any brief for the Government, but because I am persuaded that your Excellency and the officials of this Colony are quite able to make a good presentation of the expenditure upon this railway. But, Sir, I must confess it did seem to me, although I am glad the hon. member has withdrawn the imputation in this Council—

HON. MR. HEWETT—I never made any imputation.

HON. MR. POLLOCK—I am very glad to hear the hon. member say that. The hon. member in dealing with this question to-day has made two statements which seem to me are inconsistent with one another. He stated that we had received good value for the amount of money spent on this railway.

HON. MR. HEWETT—Not at all.

HON. MR. POLLOCK—Those are your words I took them down. If we have received good value for our money, that is all I am contending for, but, Sir, if we have received good value for our money it seems to me that what the hon. member said only last Thursday, that the cost is some 100 or 150 per cent. more than the original estimate, that it conveys an impression more or less at variance with that statement.

HON. MR. HEWETT—I must rise to a point of order. I cannot allow the hon. member to misquote me like this.

HON. MR. POLLOCK — I am not misquoting you.

HON. MR. HEWETT—You are. I ask to be allowed to make an explanation on this one sentence only. I did not say we had received good value for our money as regards the twelve and a half million dollars. What I did say was that we had received good value for our money in rolling-stock, the laying of the permanent way, tunnelling and embankments. Because I said we received good value for our money in these things it does not in any manner amount to an admission that we have

got \$12,300,000 worth out of the railway. Half a truth is something worse than something not true at all.

HON. MR. POLLOCK—I think the hon. member when he comes to see the words in print—

HON. MR. HEWETT—I know perfectly well what I said, but I don't know what the reporters will put down.

HON. MR. POLLOCK—The hon. member always speaks very slowly and distinctly. The hon. member admits as regards the tunnelling and railway work that we have received good value for our money. I take it what the hon. member objects to is that we have got more land than is actually required for the purpose of the railway. If he admits that the actual construction work is well done, the extent of criticism he levels against the Government is this: that it has been somewhat extravagant in the purchase of land. I take it, Sir, that what the hon. member said as to good value for our money refers to the tunnelling and so on, and the fact that he does not intend to cast any reflection upon the engineers supervising and superintending the work shows that, although it must be a disappointment to all of us in the Council that the cost of the work mounted up to the extent that it has, still we have the satisfaction of knowing that the work has been well done, that good work has been put in, and in fact the only criticism so far as I can see that can be levelled against the Government when we come down to hard facts is that they are in possession of more land than is required for the purposes of the railway at the present moment. Sir, now that the hon. member has stated so clearly that in the tunnelling and so on good work has been put in, it is unnecessary for me to dwell much upon that point. I would simply remark that as regards, I suppose, the most difficult matter connected with the engineering of the whole thing, the exact meeting of the two ends of the line in the Beacon Hill tunnel, they met to an inch. I do not put that forward as being anything extraordinary, but as just exactly what we should have expected from competent British railway engineers. I put that forward as a fact showing that the engineers in charge of this tunnelling and works were competent men who knew their

business. Therefore, Sir, I think that, apart from the question of bridges, in regard to which the hon. Colonial Secretary has frankly admitted that an error of judgment was made, we may take it that, looking at this railway as a whole, although, as I say, it has cost a great deal more than any of us would wish, that we have got in fact good value for our money, and, in view of the figures which your Excellency put before us at the last meeting of the Council, I think we may say that the prospects for our railway appear to be a good deal better than was originally anticipated. A sum of money is being expended on a small two-foot branch line from Fanling to Shataukok, and I think we may reasonably expect that that will bring an increase of traffic to the railway. On Monday last I went over on a locomotive a mile of that line, and I understand it has been laid for a distance of two miles beyond where I went. I do not propose to deal at all with the question of a working agreement with the Chinese Government, in regard to which we understand from your Excellency that negotiations are being carried on. I will only say that I feel confident, for I have the greatest reliance in the business instincts of the Chinese people, that although for the moment an arrangement for the running of the line with a joint staff has not been come to, I feel that our Chinese friends, who very fully appreciate just as much as we do the importance of economical working, will in the end come round to our point of view on that subject.

HON. MR. KESWICK—Your Excellency, at the last meeting of this Council you referred to some criticisms which I made to the shareholders of the Dock Company and the Wharf & Godown Company. I made those criticisms because I thought it was my duty as chairman of directors of these two concerns to lay before the shareholders the dangers which, from information in my possession at the time, I thought threatened their interests. At the last meeting of the Council you referred to those speeches, and have dissipated some of my fears. Others, I regret, you have not. However, with regard to that, it is all a matter of opinion. It is past, and I know the futility of crying over spilt milk. My object has been attained, because I drew the attention of shareholders to possible

dangers, and I drew the attention of Government to the fact that there were a number of people in the Colony who were watching the action of Government very closely, and were intimately concerned as ratepayers. Enough of that. With regard to the original estimate for this railway and the ultimate cost, the original estimate, it appears to me, Sir, was made for the purpose of constructing a line which would connect the Chinese section from its terminus with Kowloon. At that time it was not considered necessary that there should be the elaborate and most excellent railway which we now possess. It was merely determined that there should be a connection made sufficient to meet the ordinary traffic which would pass over it, a line which later on might be made to meet the improving and more onerous conditions. As we have gone along, the expenses have largely increased, and it is that which we people in Hongkong rather "kick at," if I may use a colloquial term. If we had money we would be only too pleased to provide the best railway possible, but we have not the money. I wonder whether my astute fellow-countryman, the hon. Mr. Chatham, is chortling at the ideas of all these public works being secured almost entirely at the expense of the railway. I venture to use the word "chortle," because although it is not perhaps of the same classic as quoted by the hon. Colonial Secretary, still "Alice and the Looking-Glass" is more or less of a classic. It seems to me that we are all more or less looking through a looking-glass, and I would suggest that we should come back again as soon as possible. The railway exists, and, as my hon. friend the Colonial Treasurer said to me the other day, it doesn't matter a row of pins whether you pass this vote or not, because the money has already been spent, and, as my hon. friend Mr. Pollock says, we have got a good railway. The representative of the Chamber of Commerce also concedes, and concedes willingly, that the engineers on the line have done their work well. Let us get back through the looking-glass to ordinary times, and take particular care that as we have so expensive a toy, or instrument, to work, we use it to the best advantage.

HIS EXCELLENCY — Gentlemen, it only remains for me to wind up, in as few

words as possible, the debate on this resolution. The criticisms made by the hon. member who represents the Chamber of Commerce have been so very fully replied to, both by my hon. friend the Colonial Secretary and my hon. and learned friend on my left (Mr. Pollock), that I think there is little need for me to deal with them in any detail. I have frequently, as the hon. Mr. Pollock said, on former occasions explained that the so-called "Bruce's estimate" was merely a preliminary survey for comparing the probable cost of two different alignments and excluded items common to both. That cannot be said to be an estimate for a railway.

The hon. member on my right referred to the initial method by which this railway was constructed. I dealt with that question at some length in a speech which I made on this subject on the 6th February, 1908. You will find it on page 9 of *Hansard* of that year. He said that if the railway had been constructed by contract it would in all probability have been a very much cheaper speculation for this Colony, and gave as one reason that we should not then have had the expense of supervising which we now have. On that point I think the hon. member is in error. If we had employed contractors there would still be the need of supervision to see that their contract was fulfilled, and that supervision, in a technical work like a railway, would have been in itself very costly. The ordinary reason for adopting what has been called the Departmental system is that the Government is able thereby to save contractors' profits.

I do not desire to examine this much debated subject at length this afternoon, but I ask you, when discussing the question of railway building by contract, to bear in mind those two points, together with one other, and that is this: If you can place before the contractors a definite self-contained scheme which you are certain is going to include all you need, it may be better to adopt the contract system, but if you cannot specify every item to be included in the railway scheme you are entirely at the mercy of the contractor for every addition to the terms of the contract. When we originally had this line in view it would have been impossible to include in the tender for contract many important items, more especially the terminal

station, the reclamation, and various other portions of the work which were long under discussion. I may also say in regard to this particular railway that it was unknown what sort of material would be encountered in the tunnel, and this would undoubtedly have involved an exceeding heavy contract price.

On the general question as to whether we have good value for our money, after what has been said by my hon. and learned friend (Mr. Pollock) I think there is little occasion for me to deal with that point. I may, however, recall to your memory that two years ago, following on a debate in this Council, there was considerable discussion on this subject, and Mr. Law, who at that time was the head of the large firm of Messrs. Butterfield, & Swire, a firm which had recently been undertaking very extensive reclamation and building works, went himself over the railway to see whether in his opinion the results warranted the expenditure, and on his return he expressed the view that the Colony had got exceedingly good value for the money spent on the railway. I regard his opinion as of value, because he had himself for some period previously been engaged in contracts with Chinese for similar work.

With regard to the question of the reclamation, the hon. member representing the Chamber of Commerce repeated the fears which he expressed before that the reclamation would be used to the disadvantage of existing companies. I may inform the Council that a considerable portion of that reclamation has already within the last few days been let on a very advantageous lease, and I may repeat what I said the other day that it is not the intention of the Government to build wharves and godowns to compete with private firms unless and until the expansion of the railway traffic makes it a necessity to do so. The hon. member informed us that the godown accommodation in the Colony at the present time is considerably in excess of the needs of the Colony. Of that fact I am well aware, but for the storage of bulky low-grade freights imported (or for export) by steamers such as cement, coal and, perhaps, live stock, etc., godowns will in all probability be required in close proximity to the sidings and terminus of the railway.

My hon. and learned friend (Mr. Pollock) reduced the criticisms made about the railway to one point, viz.: that we had in all probability resumed more land than we required. If he alluded to the two areas north of Salisbury Road, I may remind him that I have already stated that the cost of neither of those areas has been debited to the railway. They are an asset acquired by the Colony, and in the opinion of those with whom I have discussed the subject they constitute a very valuable asset, and I think, should the Colony desire to part with them, it will do so certainly at no loss. We did not acquire them, as the hon. member on my right (Mr. Hewett) said, although we had no use for them, but because up to the present day it has not been finally decided where the railway terminus shall be, and I explained very fully when speaking at the last meeting the reason why the final decision on that point had not yet been taken. On that particular subject no criticism or comments have been made, and I assume therefore that the Council endorses the wisdom of waiting to spend our money until we know exactly how the traffic with Canton is going to turn out.

With the question of workshops I have already dealt, and I think there is little more to be said on the matter. The hon. member representing the Chamber of Commerce said that he and those who thought with him still maintained that at any rate a certain amount of work for the railway could be done by private shops. I would ask the Council, how can the railway rely only on a certain amount of work being done outside? Unless all its repairs can be done outside it must have shops of its own. As to the cost of staff and of maintenance I have already spoken so fully that there is no need to add to what I have said. I pointed out emphatically that as the railway will be compelled in any case to have a locomotive superintendent and a mechanical railway staff, that staff will be available for work in the shops, and they will therefore be able to turn out work more cheaply than could be done by any private firm, especially firms which have not got the machinery required for such work. I will now put the resolution, which is as follows: "It is hereby resolved that a sum of Dollars Four hundred and twelve thousand five hundred and one and Cents fifty-nine (\$412,501.59)

be advanced out of funds in the custody of the Government for the construction of the Kowloon-Canton Railway (British Section) during the year 1911."

The resolution was carried unanimously.

Flogging Amendment Ordinance

THE ATTORNEY - GENERAL moved the second reading of the Bill entitled, "An Ordinance to amend the Flogging Ordinance, 1903." In doing so he said—This is an Ordinance which has been sanctioned in its present form by His Majesty's Secretary of State for the Colonies. It has been welcomed by the Judges, and though it has to a certain extent been criticised by the Press the criticisms that I have seen have been to the effect that it did not go far enough. It goes, however, as far as the Home Authorities will allow it to go, and it is useless for this Council to pass legislation which will be disallowed shortly after being passed. It authorises the use of the birch in the case of the most serious forms of kidnapping, and following at a distance the principle of the Garroters' Act it allows the infliction of the "cat" on those who commit robbery with violence. Under the Garroters' Act it is permissible to inflict three floggings with the "cat" of fifty strokes each, in all 150 strokes. This Ordinance allows one flogging of not more than 24 strokes. It cannot be said, therefore, in my opinion, that the principle of this Ordinance is a principle of vengeance. (Applause.) We care not for the prisoner who receives it, and we have no desire to wreak our vengeance on him. The principle of this Ordinance is not vengeful. It is not remedial. But it is exemplary. We want to inflict the "cat" on an individual because we want to show the class from whom this individual is sprung that they do these things at their peril. We inflict the punishment as an example to others and not as a punishment to the one man. With these few remarks, I beg to move the second reading of the Bill.

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

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

On clause 3,

HON. MR. POLLOCK said—I understand from what has fallen from the learned Attorney-General that the corresponding provisions of the Home Act authorise three floggings of 50 strokes each. I do not know, Sir, for what particular reason there was any departure from that Act in adapting it to this Colony.

HIS EXCELLENCY—The Secretary of State has limited the number of strokes to 24. The original number proposed was in excess of that.

HON. MR. POLLOCK—It is not clear here. Does this mean 24 strokes in one flogging?

HIS EXCELLENCY—Yes.

THE ATTORNEY-GENERAL—There is a section in the principal Ordinance which limits the floggings to one.

HON. MR. POLLOCK—The clause says that flogging shall be inflicted privately in the prison and within six months of the sentence. The Attorney-General pointed out that one of the objects to be attained was that these floggings would act as a deterrent to others. It seems to me that the word "privately" is an unfortunate word to use. It implies that a prisoner will be taken somewhere and flogged privately so that his fellow-prisoners will not see him being flogged.

THE COLONIAL TREASURER—That has been the custom for many years in Hongkong, and it is a very proper custom, too.

HON. MR. POLLOCK—I don't see how a private flogging can act as a deterrent. It seems to me that the word "privately" should come out and after the words "in prison" the following words might be inserted: "in the presence of the other prisoners."

THE ATTORNEY - GENERAL — The people we wish to deter from committing armed robbery are not those already suffering imprisonment for other offences, but those outside of the prison. The fact that the sentence is pronounced publicly is, I submit, sufficient intimation to them that the prisoner will receive the "cat." It would be creating a very unpleasant spectacle to carry out

flogging publicly, and merely to flog a man before other prisoners who cannot possibly by reason of their being in prison commit armed robbery would be to defeat the object of the Ordinance.

HON. MR. POLLOCK—The hon. Attorney-General does not seem to see that these people in prison very often go into prison again, and in this Colony as well as in other places there is a class of prisoner known as habitual criminals, and it is for the benefit of those people that a prisoner should be flogged before them so that the flogging will act as a deterrent to them.

THE ATTORNEY-GENERAL — My experience in England was that the majority of criminals there were habitual criminals, but I was informed by the Captain Superintendent of Police the other day that he had never experienced a case in the Colony in which a man who had served a sentence of seven years or over had relapsed.

HON. MR. KESWICK — Wasn't that on different grounds? The Captain Superintendent of Police said that the prisoners did not come back after seven years because they were so well looked after and taught a trade, and they thought it paid them better to work at a steady job than to go back for another seven years.

THE ATTORNEY - GENERAL — That was so. Prisoners are so improved by prison discipline that they do not require to see these horrible sights.

THE CAPTAIN SUPERINTENDENT OF POLICE.—I think it would be considered brutal to flog a prisoner before the other prisoners.

THE ATTORNEY-GENERAL—I have not the English Act before me, but I believe that that Act provides for private flogging.

HON. MR. EDE—Sir, if flogging is not brutal, flogging, in my opinion, in the presence of other prisoners cannot be brutal either, and I do not think that flogging in private can be the deterrent it would be if other prisoners were allowed to watch.

HON. MR. KESWICK—After all it is a punishment for a brutal assault. Of course we want to avoid the question of vengeance as much as possible.

HIS EXCELLENCY—I must admit that my feeling is entirely with the suggestion of my hon. and learned friend. (To Mr. Pollock)—Do you wish to make an amendment?

HON. MR. POLLOCK—I would suggest that the words "in private" be omitted, and that after the words "in prison" be added the words "in the presence of the other prisoners."

HON. DR. HO KAI—I would suggest that the word "privately" be deleted, and that the matter be left to the prison authorities.

HON. MR. POLLOCK — I accept the suggestion of the hon. member.

THE COLONIAL TREASURER — I am almost certain that the Secretary of State will instruct us to put in the word "private" again when the Ordinance is sent Home for confirmation. Public floggings have been out of date now for many years.

HON. MR. KESWICK—They don't know at Home the class of people we have to deal with here.

THE COLONIAL TREASURER—That is the tone of public opinion at Home.

The amendment was then put to the vote and declared lost. The voting was as follows: Ayes—Hon. Mr. Keswick, Hon. Mr. Ede, Hon. Mr. Pollock, Hon. Mr. Wei Yuk. Noes—Hon. Dr. Ho Kai, Captain Superintendent of Police, Registrar-General, Director of Public Works, Colonial Treasurer, Attorney-General, and the Colonial Secretary.

On Council resuming,

THE ATTORNEY-GENERAL reported that the Bill had passed through Committee without amendment, and moved that it be read a third time.

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

Correction of References Ordinance

THE ATTORNEY-GENERAL moved the second reading of the Bill entitled, "An Ordinance to correct certain references to previous Ordinances contained in the Ordinance passed in the years 1902 and 1903." In doing so he said—As you know, Sir, during the years 1902-03 the present authorised edition of the Ordinances of this Colony was in course of preparation by the editor, Sir John Carrington, and in the course of his editing and with the powers conferred upon him by the Revision Ordinance he altered the numbers of the Ordinance with which he was dealing so as to make the numbers of the Ordinances in the revised edition consecutive, but the revision did not cover the Ordinances passed in those two years, and this Ordinance corrects that by transferring the old numbers and changing them to Sir John Carrington's numbers.

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

Council then went into Committee to consider the Bill clause by clause.

On resuming,

THE ATTORNEY-GENERAL reported that the Bill had passed through Committee without amendment, and moved the third reading.

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

Registered Partnership Ordinance

THE ATTORNEY - GENERAL moved the second reading of the Bill entitled, "An Ordinance to establish Registered Partnerships and to give effect to certain Chinese Partnership Customs." In doing so he said—The principles of an eye for an eye and a tooth for a tooth have been proved totally inapplicable to commercial communities, and all the laws of commerce from those of Hammurabi, King of Babylon, who died some 2,000 years before the Christ an era, down to modern times have always recognised that it was better for the State that a debtor should escape to a certain extent from his obligations rather than he should be handed over and ruined by his

creditors. But different nations have different ways of dealing with it. In the case of the associations there are four ways, two of which exist in the laws of the Colony at the present moment. Those two are the two extremes. In between them is the French method. At one extreme we have the principle of the limited liability company under which the shareholder of a fully subscribed company is inviolate. We cannot touch his private property at all, even when the company fails. At the other extreme we have our ordinary partnership law, which enables us to take the whole of a partner's private property to satisfy a partnership debt. In between comes the French system, the associations en commandité, in which there is a general partner who is responsible for all the debts of the firm and limited partners whose liability is limited. In between also we have the Chinese system, in which there is no general partner, and in which the liability of every partner is limited to the extent of his interest in the firm. As your Excellency said on the first reading of this Bill the question has been considered ever since 1874. In 1900 a committee finally reported on it, and as a result of their report the question was shelved, and probably but for an accident it would have been shelved for a very much longer time. The accident was this. In the year 1907 the French system was introduced in England, so that sleeping partners could get, by registration, the benefit of the French law as to associations en commandité. Two years later, about September, 1909, the acting Attorney-General at the time asked me if I would draft for him an Ordinance on the lines of that Act. It was unnecessary for me to see any papers to do that. I had the Act in my own library, and I drafted a Bill. That Bill went through the usual channels and eventually came before the Chinese Commercial Union. That body did not know that it was an attempt to bring into force in this Colony the French law which had already with modifications been introduced into England. They thought it was one more attempt to grapple with the question of their own Chinese partnership customs. Therefore they criticised it, and the Bill was dropped. As a result of it being dropped, His Excellency the Officer Administering the Government asked me if I would take the matter up in consultation with the Registrar-

General, the senior unofficial member of the Council, and others, As a result of conferences between those gentlemen and myself a Bill was drafted. The framework is the same as the framework of the English Act of 1907, but the principles are different. Its principle is to recognise Chinese partnership customs, as far as we feel we can. As the committee reported in 1900 that legislation was impossible on the subject, and as someone admitted at any rate that it would be impossible unless it were heaven - inspired, before drafting this Bill I had to consider the question as to why previous attempts proved abortive. The reason is given in the report of the Committee, which recommended that nothing could be done. They advised that it would be inadvisable to introduce such legislation whether penal or disabling. Try as you will you cannot force people to register unless you make it to their advantage; that is, people engaged in commerce. If it is not to a commercial man's advantage to register he either evades the Act and refuses to register or else takes his business elsewhere. The only people who would register under a compulsory registration Ordinance would be the very people whom it does not matter whether they are registered or not, honest people. We would never get the rogues. This Bill is different, and whether it succeeds or not will depend very largely, I venture to think, on whether we have given them enough, whether the bribe is big enough. If they do not register they remain as they are subject to the present partnership law. I believe it has been suggested that this Bill should go before a special committee. That will come up afterwards. At present I beg to add what I have already said to the objects and reasons attached to the Bill, and to move that it be read a second time.

The objects and reasons which were omitted from Hansard's Report of the first reading were in the form of a memorandum which stated:—

The present partnership law, codified in Ordinance No. 1 of 1897, is habitually evaded by respectable and responsible members of the Chinese mercantile community because it runs counter to the essential characteristics of Chinese partnerships. In deciding a case under that Ordinance the Chief Justice said (3 H.K.L.R., 170):—"This is an Ordinance passed in 1897 by the local Legislature, and I can only hold, there being no reference from end to end to Chinese customs, that it was the
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intention to ignore the Chinese customs of partnership. Whether this was wise or unwise is not for me to say. But I must point out to the Government the extreme danger of reproducing English legislation bodily into the Colonial Statute Book without at least considering the question how it may effect the customs of the large body of Chinese who are legislated for."

The chief characteristics of the present partnership law are the unlimited liability of each partner for the debts of the firm, the dissolution of the partnership upon the death or bankruptcy of any partner, and the limit to the number of partners.

The chief characteristics of a Chinese partnership are:

(1.) Each partner is liable to pay out of his private property only such proportion of a partnership debt as his share bears to the total of the shares of all the partners. But the partnership as a whole may be sued for the whole debt.

(2.) Partnerships do not come to an end on the death of a partner, but the deceased partner's sons are admitted as partners and their father's share is sometimes divided between them and sometimes remains intact under the father's *T'ong* name, the interest being divided among the sons.

(3.) Firms may take shares in other firms, and there is no limit to the number of persons who may become partners.

(4.) Shares are frequently held in *t'ong* names, names invented by the individual partner for the purpose of holding property and, not infrequently, also for the purpose of concealing his identity from the general public.

(5.) Before a dividend is paid out of profits interest on capital, usually at the rate of 10% *per annum*, is paid to the partners who have subscribed it.

(6.) Many firms have, in addition to the partners subscribing capital, a *hung kú* or red shareholder, a person, usually the promoter or manager, who is given a share though he subscribes no capital. He gets no interest on capital, but he shares with partners the surplus profit after interest on capital has been paid. He is not, moreover, liable for the debts of the firm.

The objection to the recognition of the first of these characteristics is that unless the unpaid creditor of an insolvent firm can find and sue every single partner of the debtor firm he cannot hope to be paid in full. But this is not a fatal objection, as his position is better than that of the creditor of an insolvent limited company, who cannot reach the private property of individual shareholders at all.

As to the second characteristic. There seems no reason why the death of a partner should destroy the partnership. In fact in the case of limited partnerships registered under the Imperial Act 7, Ed. VII., chap 24, the death of a limited partner does not dissolve the partnerships. But the death of a partner would result, of course, in a change in the proportionate interests of the remaining partners in the firm, and the value of the share of the dead partner would have to be paid to his personal representatives. It would be undesirable, if only for fiscal reasons, to recognise the right of sons to take their deceased father's share without taking out Letters of Administration.

As to the third characteristic. There is *primâ facie* no reason why a firm should not hold a share in another firm. This can be done subject to one limitation under the present partnership law (*see Warner v. Smith*, 32 L.

L. J. (h., 573). The limitation is that imposed by section 4 of the Companies Ordinance, No. 1 of 1865, which provides that no partnership consisting of more than twenty persons may be formed for the purpose of carrying on any business that has for its object the acquisition of gain unless it is registered as a company. A firm is not, like a body corporate, a single entity. It is merely a convenient name for describing a number of individuals who are associated together. So if firms are allowed indiscriminately to take shares in other firms the number of partners in the latter firms would often exceed twenty. The difficulty can be got over by providing that where a firm is registered as a partner it is to be regarded for the purposes of the Ordinance as one person, and by providing that only one of its members should be allowed to interfere in the management of the partnership in which the firm has taken a share.

With regard to the fourth characteristic. It is undesirable that individuals should hide their identity under *t'ong* names. It is submitted that a Chinese partner should be registered either in the first name he receives after birth or in the name he receives when he reaches manhood's estate. A *t'ong* name may be registered in addition.

The last two characteristics are typically Chinese, and to ignore them in a Bill intended, as far as possible, to give effect to Chinese customs would be measurably to defeat the object of the Bill.

The accompanying Bill embodies the views expressed in this memorandum. Registration is voluntary, but partners who do not register are subject to the unlimited liability of the present partnership law. The principles of the new Bill are essential different from the principles of the Limited Partnership Act, 1907, which limits the liability of sleeping partners, and which, some day, it may be necessary to introduce into the Colony; but as far as it has been practicable to do so the Bill is modelled on that Act.

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

THE ATTORNEY - GENERAL then moved that the Bill be referred to a special committee of the Council.

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

HIS EXCELLENCY appointed the following members to be a special committee: The Attorney-General (Chairman), Hon. Dr. Ho Kai, Hon. Mr. Wei Yuk, the Hon. Mr. H. E. Pollock, K.C., and the Registrar-General.

Summary Offences Amendment Ordinance

THE ATTORNEY - GENERAL moved the second reading of the Bill entitled, "An Ordinance to further amend the Summary Offences Ordinance, 1845." In doing so he said—"This Bill simply corrects a mistake which somehow or other crept into Sir John Carrington's edition of the Ordinance. It has been pointed out by the editor at present engaged in revising the edition. He has advised that it is necessary to make the amendment by a Bill and not in the ordinary course of revision.

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

Council then went into Committee to consider the Bill clause by clause.

On resuming,

THE ATTORNEY-GENERAL reported that the Bill had passed through Committee without amendment, and moved that it be read a third time.

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

HIS EXCELLENCY—Council will adjourn *sine die*.

FINANCE COMMITTEE.

A meeting of the Finance Committee was held afterwards, the Colonial Secretary in the chair. The following vote was passed:

Crown Solicitor

The Governor recommended the Council to vote a sum of Three thousand four hundred and twenty-eight dollars and fifty-seven cents (\$3,428.57) in aid of the vote Judicial and Legal Departments, *D.* — Law Officers, Personal Emoluments, Crown Solicitor's office, Crown Solicitor (being salary of Mr. J. H. Kemp at $\frac{1}{2}$ of £900 per annum for the period from 1st January to 31st August, 1911).

The CHAIRMAN—This vote is due to the appointment of Mr. Kemp as Crown Solicitor. The Secretary of State has ruled that the appointment shall take effect from the first day of this year.
