

31ST OCTOBER, 1919.

**PRESENT:—**

HIS EXCELLENCY THE GOVERNOR, SIR  
REGINALD EDWARD STUBBS, K.C.M.G.

HIS EXCELLENCY MAJOR-GENERAL F.  
VENTRIS, C.B. (General Officer Commanding  
Troops in China).

HON. MR. CLAUD SEVERN, C.M.G.  
(Colonial Secretary).

HON. MR. H. E. POLLOCK, K.C. (Attorney-  
General).

HON. MR. C. MCL. MESSER, O.B.E. (Colonial  
Treasurer).

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

HON. MR. E. R. HALLIFAX, O.B.E.  
(Secretary for Chinese Affairs).

HON. MR. E. D. C. WOLFE (Captain  
Superintendent of Police).

HON. MR. LAU CHU PAK.

HON. MR. R. G. SHEWAN.

HON. MR. C. G. ALABASTER, O.B.E.

HON. MR. E. V. D. PARR.

MR. A. G. M. FLETCHER, C.B.E. (Clerk of  
Councils).

THE ATTORNEY-GENERAL — I beg to move the second reading of a Bill intituled "An Ordinance to consolidate and amend the law relating to Places of Public Entertainment." As hon. members are aware, the second reading of this Bill was held over because of a question which has been raised many times recently by hon. unofficial members of this Council as to the Regulations made by the Governor-in-Council being submitted to the Legislative Council; I propose, sir, in committee on this Bill to move a new sub-Section to be called sub-Section B of Clause 6 to read as follows:—

"All regulations made as aforesaid shall be laid before the Legislative Council at the first meeting after they have been made; and if a resolution is passed at the next meeting,

after they have been so laid before the Legislative Council, praying that any regulation shall be annulled, such regulation shall thenceforth be void, but without prejudice to anything done thereunder."

This proposed amendment to Clause 6 of the Bill is founded in the main upon the form of procedure in legislation in the Colony of Ceylon, and, as a matter of fact, sir, it very much embodies the principle which was suggested by the Hon. Mr. Dodwell as a member of this Council on the debate on the Rice Bill. The hon. member then asked, with reference to this question, whether it would meet the case if words were inserted that the Regulations should be submitted to the Legislative Council at the earliest possible moment without prejudice to the validity of anything done under them. My hon. and learned friend who represents the Justices stated, on that occasion, that he was willing to make the concession if the hon. member would alter his amendment to read "at the next meeting of the Legislative Council," but my hon. and learned friend at the same time also observed that he would prefer the amendment he himself had proposed originally. With regard to the general principle of Regulations, made by the Executive Council being laid before the Legislative Council, which has been raised, as I mentioned just now, by hon. unofficial members in this Council on several occasions recently, I am authorised by H.E. the Governor to state that, except in the case of Regulations dealing with matters of pure form or of a trivial nature, the Government is prepared, on all future occasions, to insert in Bills giving to the Governor-in-Council power to make Regulations, a provision similar to that which is now being inserted as sub-Section (2) of Section 6 of the Bill now under discussion. It is hoped that this solution of the matter will meet with the approval of hon. unofficial members. I shall have one or two other amendments to suggest when in Committee on the Bill, but I will move them when we come to them.

THE COLONIAL SECRETARY seconded.

HON. MR. C. G. ALABASTER—Sir, while I appreciate the announcement that you have authorised the hon. and learned Attorney-General to make, I would ask you if you could not go further and incorporate these Regulations—which, in this instance have actually been re-shaped by a Committee of this Council—in this Bill and delete from Section 6 all reference to the other Council. The objection to this form of legislation is fundamental. You have cast upon you, sir, by the Charter of this Colony, the duty of governing it with such assistance as you are able to obtain from two Councils—one, the Executive Council, which helps you to shape your policy and which must, therefore, of necessity, sit in secret; and the other, the Legislative Council, which is here to help you to clothe that policy in language, and, in doing so, to turn the search-light of criticism on that policy and help you to mould it. There is no necessity whatever in this Colony for giving any legislative function to another body. In some places, as at Home, the machinery of Parliament is so cumbersome that a certain amount of delegation of powers is absolutely necessary. "Needs must when the devil drives," but it is wrong, and even in matters of form such as the hon. and learned Attorney-General has referred to there are great dangers in delegating power. I would ask the hon. and learned member, when he has time, to read the decision in the Court of Appeal in the case of Dyson and the Attorney-General if he wants to know what happens when power to make forms is delegated to other bodies. Here, in this Colony, up to a certain point the delegation of power is mainly done in those Ordinances which were adapted from Home legislation. Where it was found that certain powers were delegated to the Board of Trade, as we had no Board of Trade, we delegated those powers here to the Executive Council. But that was bad draftsmanship. It was not necessary. In or about 1912 a change seems to have come over the policy of the Government in this matter, and ever since then it has been asking this Council to render itself absolutely impotent by severing its muscles tendon by tendon, and that policy must be stopped. We do not want legislation by Order-in-Council. During the war the exigencies of war made it necessary for this Council to make certain concessions, but the war is over and this Bill is

not a war measure, nor a matter of appointing officers or making forms. It is substantive law which will govern the type of building to be used for entertainments in the Colony and the regulations as to fire, etc. There is no reason whatever why this Bill should not be remodelled in Committee so as to include all these regulations in the schedule, and no reason why Clause 6, as it stands now, should not be abolished. Some such procedure was adopted in the year 1911 in the Electricity Supply Bill. I refer to the Bill as it was originally passed and not as it was amended in 1914. I would ask Your Excellency to accept the amendment and so preserve a principle for which for some months we have been fighting.

#### **The Governor's Reply**

H.E. THE GOVERNOR—I shall like to speak on this matter myself instead of leaving it to my hon. and learned friend. I have had to deal with legislation in a good many Colonies and I can assure my hon. friend who raised this question that the universal trend of legislation in every civilised country is to reduce laws, as far as possible, to essentials and put details into regulations which can be altered without the cumbersome machinery of three readings and the numerous other formalities required. I am fully in agreement with the idea which lies behind the hon. member's objection, that legislation should be conducted by the legislature, but that object is fully obtained by the power left to the legislature—the power to object to any of the regulations that have been passed by the body, which, as I will proceed to demonstrate, is better able to draft regulations than the legislative body. In practically every case of recent legislation in England, the regulations have been left to the public departments to frame, with the usual power of Parliament to override them or to insist upon their modification. That, I submit, is the only business-like course possible. I have been concerned with the drafting of a very large number of regulations and I suppose I have experience of every possible way of dealing with them, framing them and so forth, and I say, without hesitation, that the method of having them framed by the Legislative Council is the very worst possible to be conceived. Invariably it results in them having to be amended, sometimes very shortly afterwards. The

reason why regulations are left to the public offices is not on account of any desire on the part of H.M.'s. Cabinet to concentrate power in their own hands, but simply that the system of leaving a large body of men to deal with regulations has been found to be excessively unsatisfactory, owing to the confusion in draftsmanship. Every one, quite naturally, strives to bring forward his own point, and it is almost impossible for every person in a large assembly fully to realise the exact meaning of verbal alterations. The result often is that you get neither commonsense nor law, nor even, in some cases, grammar. The hon. member has only to consult some of the legislation in England of five or six years ago to find plenty of examples of what I mean. The proper course is to leave the framing of regulations always in the hands of a small body. The members can go into them with care, consider every point as it arises, and they are not bound to adhere strictly to the rules of debate and procedure. They may dodge from one regulation to another and back again if that will enable them to draft the regulations in a more satisfactory way. The power of the legislature is absolute. It has only to bring forward a resolution desiring that the regulations which have been laid before it should be modified or cancelled and the matter is then fully discussed. The Legislative Council has just as much power as if it had drafted all the clauses. Take the present case, with regulations framed for dealing with many matters of very small detail. It is extremely probable that the working of these regulations will show that very minor amendments will be desirable. For instance, I will take as a hypothetical case Regulation 36, which provides that buckets of water of not less than three gallons capacity shall be placed in certain positions. It is very conceivable that a bucket of three gallons may not be sufficient for, or may be excessive to, the requirements in certain cases. Am I to come to this Council in order to ask that it may be enacted that the three-gallon buckets of this Ordinance may be made into two-and-a-half gallons or five gallons, as the case may be? I think you will agree that such a procedure would waste a large part of the time of very busy men. It appears to me, that both from a practical point of view and from the point of view of principle, the course we now propose to adopt is the right one.

The Bill was then read a second time and Council went into Committee to consider it clause by clause.

In Clause 3 the words "or matshed" were inserted after the words "building" in lines 3 and 5.

HON. MR. C. G. ALABASTER moved that Clause 6, the clause giving the Governor-in-Council power to make regulations, be deleted and that, in substitution thereof, the words be inserted that "The regulations contained in the Schedule shall govern all places of public entertainment." He pointed out that this would make the regulations, which were now ready, part of the Bill

This amendment was not seconded.

THE ATTORNEY-GENERAL moved that Clause 6 as it stood in the Bill should be re-numbered Clause 6a, and that in sub-section 6 the words "peace and" should be inserted before "good order."

This was agreed to.

THE ATTORNEY-GENERAL moved that a new clause should be added, to be numbered 6b., reading as follows:—"All regulations made as aforesaid shall be laid before the Legislative Council at the first meeting after they have been made; and if a resolution is passed at the next meeting after they have been so laid before the Legislative Council praying that any regulation shall be annulled, such regulation shall thenceforth be void, but without prejudice to anything done thereunder."

This was agreed to.

There were no further amendments and, upon Council resuming, the Attorney-General moved the third reading of the Bill as amended.

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

Council then adjourned *sine die*.

## FINANCE COMMITTEE.

A meeting of the Finance Committee followed, the Colonial Secretary presiding.

**Moorings and Buoys**

The Governor recommended the Council to vote a sum of one thousand three hundred dollars in aid of the following votes:—

Harbour Master's Department, *A.*—Harbour Office, Other Charges:—

Moorings .....	\$ 400.00
Repairs to boats, buoys. etc. ...	900.00
Total .....	<u>\$1,300.00</u>

The vote was agreed to.

**Training Nullahs**

The Governor recommended the Council to vote a sum of six hundred dollars in aid of the vote Public Works, Extraordinary, Hongkong, Drainage, (14) Training Nullahs: (*a*) Colonial Cemeteries.

THE CHAIRMAN—The excess on this vote is due to the increase in the contract rates for drainage work from 12 per cent. to 30 per cent. between 1918 and 1919.

The vote was agreed to.

**Public Works**

The Governor recommended the Council to vote a sum of one thousand and eighty dollars in aid of the following votes:—

Public Works, Extraordinary, Hongkong, Buildings, (12) Latrines and Urinals:—

( <i>a</i> ) Trough Closet at Happy Valley .....	\$ 430.00
( <i>b</i> ) Urinal at junction of Seymour and Robinson Roads .	650.00
Total .....	<u>\$1,080.00</u>

THE CHAIRMAN—The first vote is due to an under-estimate. The second vote is required owing to a modification in the original design. The urinal has been changed from an above

ground to an under ground one.

The vote was agreed to.

**Magistracy**

The Governor recommended the Council to vote a sum of one hundred dollars in aid of the following votes:—

Judicial and Legal Departments, *B.* — Magistracy, Other Charges:—

Electric Fans and Light .....	\$ 80.00
Vehicle hire for summonses .....	20.00
Total .....	<u>\$100.00</u>

THE CHAIRMAN—As regards the first item there was no vote to which this expenditure could be charged. The sum for vehicle hire is due to the larger number of summonses served.

The vote was agreed to.

**Moorings**

The Governor recommended the Council to vote a sum of three thousand dollars in aid of the vote Harbour Master's Department, *A.*—Harbour Office, Special Expenditure, Acquisition and rearrangement of moorings in Victoria Harbour.

THE CHAIRMAN—This is due to a mistake. Two additional moorings were ordered and it was thought that the cost of the two was \$3,000. Afterwards it was found that they were \$3,000 each. A vote was taken for \$3,000 and now another vote is required for the second \$3,000.

THE CHAIRMAN—It was merely a clerical error. There was no mistake by the Department.

The vote was agreed to.

**Motor-Car**

The Governor recommended the Council to vote a sum of one thousand five hundred dollars on account of Miscellaneous Services, Purchase of a Motor-Car.

THE CHAIRMAN—It has been decided, now that the roads in the New Territories have been completed, to have a small motor-car for the use of certain departments—Public Works, Forestry and so on, in order that the officers may get to their work more quickly. A suitable car can be obtained; it has been examined and approved.

HON. MR. C. G. ALABASTER—Is it not a small sum for which to buy a motor-car?

THE CHAIRMAN—It is not a new one.

HON. MR. C. G. ALABASTER—Would it not be better to buy a new one?

CAPT. SUPERINTENDENT OF POLICE—It is a very serviceable car. It is only three months old.

The vote was agreed to.

#### **Police Department**

The Governor recommended the Council to vote a sum of five thousand one hundred and fifty dollars in aid of the following votes:—

Police and Prison Departments, *A.*—Police, Other Charges:—

Good Conduct Reward .....	\$ 550.00
Incidental Expenses .....	800.00
Electric Fans and Light .....	1,500.00
Secret Service .....	800.00
Transport .....	1,500.00
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Total .....	\$5,150.00
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THE CHAIRMAN—In the case of Good Conduct Awards the vote is \$800. Already it has been supplemented by \$600 and up to the end of September the expenditure has been \$1,660. It is estimated that at least \$550 more will be required to meet the demand to the end of the year. The increase is due to rewards having been paid to certain persons outside the service for their zeal and cooperation in capturing robbers. It is extremely satisfactory that during this year the public have come forward to help the Police and some very good captures have been made. The increase in incidental expenses is due to the fact that the vote has had to bear the charge of certain items of extraordinary expenditure; \$695 for expenses in regard to recruiting native police in India, \$573 for hotel expenses for the family of an inspector who was being sent back to England, \$200 for lodging expenses for the families of two Inspectors while their quarters were being repaired, etc. There was no vote for these sums and it was found convenient this year to take them from the vote of Incidental Expenses. The money for fans and light is due partly to more fans and lights being installed. The increase for the Secret Service vote is due to other demands being made for deserving cases. The payments made monthly are submitted to the Government. The increase in Transport is due to the fact that more men have been sent out into the New Territories in connection with special undertakings on the frontier.

The vote was agreed to.