

14TH APRIL, 1921.

**PRESENT:—**

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT, HON. MR. CLAUD SEVERN, C.M.G.

H.E. MAJOR-GENERAL SIR GEORGE MACAULAY KIRKPATRICK, K.C.B., K.C.S.I. (General Officer Commanding the Troops in China).

HON. MR. E. D. C. WOLFE (Colonial Secretary).

HON. MR. J. H. KEMP, K.C., C.B.E. (Attorney-General).

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

HON. MR. E. A. IRVING (Director of Education).

HON. MR. S. B. C. ROSS (Secretary for Chinese Affairs).

HON. MR. T. L. PERKINS (Director of Public Works).

HON. MR. H. E. POLLOCK, K.C.

HON. MR. LAU CHU PAK.

HON. MR. P. H. HOLYOAK.

HON. MR. HO FOOK.

HON. MR. H. W. BIRD.

HON. MR. A. G. STEPHEN.

MR. S. B. B. MCELDERRY (Clerk of Councils).

**New Member**

The Hon. Mr. E. D. C. WOLFE having taken the oath previous to the meeting, took his seat as Colonial Secretary.

**Minutes**

The minutes of the last meeting of the Council were approved and signed by the President.

**Suggested Removal of the Dairy Farm**

HON. MR. H. W. BIRD gave notice of his intention to ask the following question at the next meeting of the Council:—

"In view of the fact that the housing

problem is still acute and that the Dairy Farm Co. hold some 210 acres of highly suitable and accessible building land on the cool side of the Island, will the Government take preliminary steps to develop some spot on the mainland, such as the slopes of the Shatin Valley, with a view to the ultimate removal of that Company's sheds and cattle to such spot and the resumption of the land at present in its possession?"

**Finance**

THE COLONIAL SECRETARY, by command of H.E. the Officer Administering the Government, laid on the table Financial Minutes Nos. 18 to 24 and moved that they be referred to the Finance Committee.

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

THE COLONIAL SECRETARY, by command of H.E. the Officer Administering the Government, laid on the table Financial Report of the Finance Committee (No. 3) and moved that it be adopted.

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

**The Peak Motor Road**

HON. MR. H. E. POLLOCK, K.C., in accordance with notice previously given, asked the following questions:—

1.—In view of the fact that additional taxation is being imposed on all the inhabitants of the Colony in an unsuccessful endeavour to balance the Budget for the current year, 1921, will the Government take a referendum of Magazine Gap and Peak Residents with a view to ascertain whether it is the wish of the majority of such residents that a motor road should be made from Magazine Gap to the Peak? if not, why not?

2.—What is the estimated cost of making such motor road, and when was such estimate obtained?

THE COLONIAL SECRETARY replied:—

1.—The Government is not prepared to take such a referendum as is suggested, because the construction of the road has been approved by the Legislative Council. The road will be of the greatest value not only as a means of access to all parts of the Peak eventually by motor vehicles but also it will reduce the cost of carriage of road and building materials to at least one half the present price. It may also have the desirable result of lessening considerably the employment of women and children in carrying burdens to the Hill district. The new alignment of the road will make it possible to construct branch roads connecting other portions of the Hill district with the lower levels. I may add that applications for building sites on the portion of road in question are being received.

2.—The Public Works Committee of this Council at a meeting held on October 8th, 1920, unanimously recommended the construction of this road at an estimated cost of \$86,200. At a further meeting of the Committee held on January 13th, 1921, a change in the route was recommended at a revised estimate of \$118,187, the hon. member dissenting. Government adopted the policy advocated by the Committee, but the revised estimate proved somewhat too low and on April 9th a contract for the construction of the road at a cost of \$127,965 was signed.

HON. MR. POLLOCK—Arising out of the answers given to the questions put, I should like, sir, to ask what grounds the Government have for the statement that the road will reduce the cost of carriage of road and building materials to at least one half of the present price. Also, what applications have been received for buildings sites on the portion of the road in question.

HIS EXCELLENCY — I do not know whether the Director of Public Works is in a position to answer without notice of these questions.

THE DIRECTOR OF PUBLIC WORKS—Last week I saw at Wanchai Gap a Dennis Car which has a carrying capacity of 2 tons. It was not loaded, but it was quite capable of taking

two tons or rather more. The weight of the car was 2 tons 15 cwt., and its total loaded weight 4 tons 15 cwt. This lorry was taken unloaded over the Wanchai Gap Road which has a gradient of 1 in 20, in 15 minutes, at an average speed of ten miles per hour. The rate at present paid to contractors for material carried to the Peak totals \$7.92 cents per ton. The total over-haul costs of taking material delivered at Mount Kellet with one of these cars allowing the fullest value to every conceivable item would be \$1.71 per ton as against \$7.92 at present paid. Applications have been received for building lots, and other tentative applications have been made asking when the road will be completed.

HON. MR. POLLOCK inquired what applications.

THE DIRECTOR OF PUBLIC WORKS—I have only one at present actually under consideration and that is from the Asiatic Petroleum Company.

#### **The Custodian Ordinance**

THE ATTORNEY-GENERAL moved the first reading of a Bill intituled, An Ordinance to provide for the transference of property, rights and powers to successive holders of the office of Custodian of Enemy Property.

The "Objects and Reasons" attached to the Bill state:—"The object of this Bill is to make it clear that property, rights and powers vested in, or conferred upon, any holder of the office of Custodian pass to his successors in office. This is important for the purpose of dealing with the legal estate, particularly in the case of leasehold property."

THE ATTORNEY-GENERAL said—This bill, sir, is merely to provide that when property is vested in the Custodian it will pass to any succeeding Custodian. There have been a great number of changes in the office of Custodian, and, as the Custodian is not a corporation sole, property vested in one Custodian does not pass to another without an assignment or special vesting order. It is inconvenient that one should have to follow every piece of property in that way, and divest and re-vest on changes in the holder of the office. This bill will have the effect of passing  
a n y s u c h p r o p e r t y

to each successive holder of the office.

THE COLONIAL SECRETARY—I beg to second the motion.

The first reading was agreed to.

**The Treaty of Peace (Amendment) (No. 2) Order, 1920, Ordinance**

THE ATTORNEY-GENERAL moved the first reading of a Bill intituled, An Ordinance to modify certain provisions of the Treaty of Peace Order, 1919, as amended by the Treaty of Peace (amendment) Order, 1920, and by the Treaty of Peace (amendment) (No. 2) Order, 1920, for the purpose of adapting the provisions of the Order to the circumstances of the Colony of Hongkong.

The "Objects and Reasons" attached to the Bill state:—

1.—The object of this Bill is to adapt to the circumstances of the Colony the amendments made in the Treaty of Peace Order, 1919, by the Treaty of Peace (amendment) (No. 2) Order, 1920.

2.—The latter Order was published in the *London Gazette* of January 21st, 1921. and in the *Hongkong Gazette* of April 1st, 1921.

3.—The method followed in the Bill is similar to that of Ordinance No. 3 of 1920, and Ordinance No. 15 of 1920, the reference is in the second column of the schedule being to the articles of the original Order, as amended by the amendment Orders.

THE ATTORNEY-GENERAL said—Various Orders in Council have been made by His Majesty for the purpose of making the provisions of the various treaties part of the law of the land. Those orders are, of course, drafted primarily for the United Kingdom, and though they are in force throughout the rest of the British Empire, other than the self-governing Dominions, yet they require certain modifications to make them suitable for the circumstances of the Colonies. For example, the fines are expressed in terms of pounds sterling, and references occur to the Board of Trade and the Treasury, which, of course, would not be applicable here. Each Order-in-

Council requires here an Ordinance making the modifications required to enable the Order-in-Council to be applied to Hongkong. This is merely one of a series which we have had to introduce to make the Orders-in-Council applicable to this Colony. The only change made in this Order is the substitution of the word "Governor" for the word "Treasury" in two places. I move the first reading.

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

**The Stamp Ordinance**

THE ATTORNEY-GENERAL moved the first reading of a Bill intituled, An Ordinance to amend the law relating to stamp duty.

The "Objects and Reasons" attached to the Bill state:—

1.—The objects of this Bill are (a) to increase the revenue from stamp duties, (b) to facilitate the collection of those duties and prevent evasion, and (c) to correct various defects in the present law which have long been known to exist. The need for additional revenue is urgent.

2.—The Bill is based as far as possible on the United Kingdom Stamp Acts, references to which appear in the marginal notes throughout. There is, however, one great difference between the Acts and this Bill. In the United Kingdom, speaking generally and subject to certain clear exceptions, the payment of stamp duty is voluntary. In other words, it is no offence not to stamp an instrument, and the Crown cannot sue for the duty. The only sanction is that if the instrument ever has to be given in evidence in civil proceedings it is not admitted until the duty, and a small penalty, have been paid. In the bill the payment of stamp duty is made compulsory in every case except four, *i.e.*, attested copies, duplicates, agreements of service with a corporate body, and agreements under hand (other than agreements for the sale of goods and other property, the stamping of which is made compulsory). In other words the Collector can sue for the duty, and it is also a criminal offence not to stamp. The position under the existing Ordinance is not clear: it is arguable t h a t s t a m p i n g

is compulsory, but the current opinion is that except in certain special cases, stamping is voluntary as in the United Kingdom.

3.—Certain duties imposed by the bill are entirely new, *i.e.*, the duties on agreements for the sale of goods. (Heading No. 4), on exchange contracts (Heading No. 22 and clause 23), and on telegraphic transfers (Heading No. 43 and clause 28), and the late registration duty referred to in Heading No. 41 (2) and clause 29. Others are new to the Colony, *i.e.*, the duties on share contract notes imposed by Heading No. 41 (5) and clause 27, and on certificates to practise (Heading No. 15 and clause 22).

4.—Sections 10, 41, 42, 43 and 44 are also peculiar to the bill. They are attempts to facilitate collection and to prevent evasion.

5.—The definitions in clause 3 of the bill are based largely on the United Kingdom Acts. Attention is drawn to the new definitions of "cheque" and "partnership instrument." The former will make illegal the evasion of bill of exchange duty carried out by the use of cheques (in the old sense) drawn by bankers here on their branches or agents outside the Colony. The definition of "partnership instrument," it will be seen, is not limited to instruments used in the formation of a partnership.

6.—Sub-clause (5) of clause 5 makes the payment of stamp duty a civil debt, and the non-payment of stamp duty, a criminal offence, except where in the schedule stamping is stated to be voluntary.

7.—Clause 6 is intended to make all unstamped instruments inadmissible in evidence or for registration, even though, at the time when the instrument is tendered, the payment of duty has not yet, by lapse of time, become a civil debt or a criminal liability.

8.—Clause 10, which deals with splitting, is a general application of a principle which has hitherto been applied in the Colony, and in the United Kingdom, only to the particular case of receipts.

9.—Clause 16, which relates to late stamping by special leave, gives to the Collector some powers at present possessed only by the Governor-in-Council. It is thought that this will conduce to greater convenience and despatch, and any person aggrieved will be able to appeal

to the Governor in Council.

10.—The duty on agreements for the sale of property, introduced by clause 21, has been adopted from the United Kingdom Stamp Acts. It is intended to prevent evasion of conveyance duty. The agreement pays the same *ad valorem* duty as a conveyance, and the subsequent conveyance pays nothing. If the agreement is rescinded, the duty is returnable. The heading does not apply to agreements for the sale of goods, vessels, or immovable property situate out of the Colony.

11.—Clause 22, which deals with certificates to practise, introduces a form of taxation new to the Colony. The only precedent known is the annual certificate required in the United Kingdom from solicitors and notaries public. The fee there varies from (E02)3 to (E02)9. Under the clause in the bill the certificates must be taken out before beginning to practise, *i.e.*, in the general case, they should be taken out in December for the following year. A temporary regulation will, however, be made allowing to persons in practice at the commencement of the Ordinance a period of one month from that date to take out their certificates for 1921.

12.—Clause 23 introduces another entirely new duty, that on exchange contracts. Exchange contracts which result in transactions that pay bill of exchange or telegraphic transfer duty will not pay exchange contract duty. The rate of duty is the same as that on bills of exchange and telegraphic transfers, *i.e.*, 10 cents on every \$500.

13.—The share contract duty introduced by clause 27 is new in Hongkong, but it exists in the United Kingdom. The scale in the United Kingdom advances by thirteen steps, from 6d. on (E02)100 to (E02)1 on amounts over (E02)20,000. The scale in the Schedule to the bill is \$2 for all amounts up to \$10,000, and \$5 for all amounts above that figure.

14.—The telegraphic transfer duty introduced by clause 28 is new, but there seems to be no valid reason why remittances by telegraphic transfer should escape duty while remittances by bill of exchange pay. The rate is the same as the bill of exchange and exchange contract rate, *i.e.*, 10 cents for every \$500

15.—Clause 29 is an attempt to deal with the problem of blank transfers, *i.e.*, transfers of shares executed by the registered owner in which the name of the transferee is left blank. These transfers pass to successive purchasers before being finally completed and registered and thus many transfers escape paying duty. The question of making all blank transfers illegal was considered but it was thought that such a prohibition would interfere unduly with a common practice which has been found to be useful and convenient. Blank transfers are therefore not made illegal, but an inducement to prompt registration of transfers is offered, or, perhaps it should be said, a penalty is placed on late registrations. The scale of penalties is given in Heading No. 41 (2) in the Schedule. No late registration penalty is incurred if the transfer is registered within one month after execution by the transferor. It must, however, not be overlooked that this late registration duty is only an additional safeguard against evasion, and that every transfer of shares must in any event pay the share transfer duty. It should be noted that in future all transfers of shares must contain the true date of execution by the transferor, and that no transfers must be accepted unless they either (a) contain the date of execution by the transferor or (b) are duly stamped. This clause refers only to shares on registers kept in the Colony.

16.—Clause 41 is meant to fasten and broaden the liability in the case of instruments executed in the name of a corporate body or firm. It is intended that criminal liability shall attach, to the corporate body itself in the former case, and to the person appearing to have the management in the latter case, upon mere failure to stamp. In other words, the corporate body in the one case, and the manager in the other case, will be liable for the mere omission, apart from any question of intention to evade or of guilty knowledge, and will be bound to see that the instrument is duly stamped.

17.—As it is desirable that the onus should be placed expressly on one side or the other it seems not unreasonable to place it on the party who has both the knowledge of the facts and a personal pecuniary interest in the result of the claim or appeal (see clause 42).

18.—The power of inspection given by clause 43 may seem rather wide and severe, but it will probably be used comparatively seldom and it is considered very desirable to have the power in

reserve.

19.—The maximum penalty provided in clause 46 may seem high, but the temptations to evasion, and the gain resulting from continued evasion, will be great in certain cases.

20.—The Companies (Sale of Shares) Ordinance, 1891, Ordinance No. 5 of 1891, which is known as "Keswick's Ordinance," is repealed in clause 47 (1) because it does not seem reasonable to collect under one Ordinance a duty on instruments which are made void by another Ordinance. That position would arise if Ordinance No. 5 of 1891 were allowed to stand on the statute book after the introduction of the new Share Contract Note duty (see Heading No. 42 (5) in the schedule). The Ordinance, in any case, has not justified itself.

21.—The subject of death duties was formerly regulated by the Stamp Ordinance, 1901, Ordinance No. 16 of 1901, and when a new scale of death duties was introduced by the Estate Duty Ordinance, 1915, Ordinance No. 16 of 1915, it was provided that the old scale should apply to the estates of persons dying before the commencement of the Estate Duty Ordinance. It seems unnecessary to preserve this temporary provision any longer. To repeal it is the object of sub-clause (3) of clause 47 of the bill.

22.—The following remarks apply to the Schedule to the bill:—

*Heading No. 1:—Adjudication fee:—*The adjudication fee has been raised from \$1 to \$10. The amount of duty involved in an adjudication is usually large.

*Heading No. 4:—Agreement for the sale of goods:—*This duty is new, but the point seems to be a convenient and suitable one at which to impose a tax, and the yield should be substantial. Agreements where the value of the goods does not exceed \$100 are exempt. An adhesive stamp may be used if the agreement be stamped before execution by any party thereto: otherwise, the agreement must be stamped with an over-embossed stamp. Stamping is compulsory.

*Heading No. 5:—Agreement for the sale of property:—*This has been dealt with in paragraph 10 above.

*Heading No. 12:—Bill of Exchange and Promissory note:—*The bill of exchange and promissory note duty in force at present is on a graduated scale. The new rate will be a uniform one of 10 cents for every \$500. For large amounts this is lower than the present rate. It is also considerably lower than the rates in force in the United Kingdom and Straits Settlements. The bill of exchange duty is expressly made to apply to circular notes, letters of credit and "traveller's cheques." The duty on cheques is raised from 5 cents to 10 cents. A temporary regulation will be made allowing the use up to 30th June of cheques stamped before a date to be specified in the regulation.

*Heading No. 13:—Bill of Lading:—*The duty on bills of lading when the freight is \$3 or more is raised from 20 to 30 cents. For Chinese shippers' books and other ships' receipts see Heading No. 42 below.

*Heading No. 15:—Certificate to practise:—*This is dealt with in paragraph 11 above.

*Heading No. 16:—Charter party:—*The duty is raised from 10 cents to 25 cents for every \$100 of the charter hire.

*Heading No. 17:—Conveyance on sale:—*The present conveyance duty is 50 cents for every \$100. The new schedule keeps to this rate for all cases in which the amount or value of the consideration does not exceed \$5,000, but where it exceeds that figure the new rate will be \$1 for every \$100.

*Heading No. 18:—Declaration of trust:—*The duty on this has been raised from \$10 to \$20, and the heading is made to include revocations of trust also.

*Heading No. 19:—Deed:—*The general deed duty has been raised from \$10 to \$20.

*Heading No. 21:—Exchange:—*The new duty is to be the same duty as on a conveyance of the property of the greater value. The present duty is a fixed one of \$50.

*Heading No. 22:—Exchange contract:—*This has been dealt with in paragraph 12 above.

*Heading No. 23:—Foreclosure order:—*This is treated as a conveyance on sale, as in the United Kingdom.

*Heading No. 25:—Godown warrant:—*The duty has been raised from 10 cents to 20 cents.

*Heading No. 26:—Lease:—*This heading

practically adopts an average of the United Kingdom rates, but it avoids the complications of those rates.

*Heading No. 30:—Mortgage:—*The present and the proposed rates are as follows:—

	<i>Present.</i>		<i>Bill.</i>	
	Per \$100.		Per \$100.	
Mortgage .....	10 cents.		20 cents.	
Agreement for mortgage .....	10	"	20	"
Collateral security .....	5	"	20	"
Extension of time .....	5	"	20	"
Transfer of mortgage.	5	"	20	"
Re-assignment .....	1	"	10	"
Certificate of satisfaction.....	—	—	10	"

*Heading No. 33:—Partnership instrument:—*This will now include all partnership documents, and the duty is being raised from \$5 to \$20.

*Heading No. 34:—Policy of insurance:—*The duty on marine policies, other than hull risks for time, has been raised to 50 cents per \$1,000, and the duty on fire and accident policies has been doubled.

*Heading No. 35:—Power of Attorney:—*The duty has been raised from \$4 to \$5.

*Heading No. 41 (1):—Transfer of shares:—*The duty has been raised from 10 cents to 50 cents per \$100.

*Heading No. 41 (2):—Late registration duty:—*This has been dealt with in paragraph 15 above.

*Heading No. 41 (4):—Share warrants to bearer:—*The duty has been raised from 30 cents to \$2 per \$100. Share warrants to bearer escape the transfer duty.

*Heading No. 41 (5):—Share contract note:—*This has been dealt with in paragraph 13 above.

*Heading No. 42:—Shippers books, etc.:—*This is designed to meet the actual practice of Chinese shippers by river craft and junk.

*Heading No. 43:—Telegraphic transfer advice:—*This has been dealt with in paragraph 14 above.

*Heading No. 45:—Vesting order:—*This is treated as a conveyance on sale, as in the United Kingdom.

*Heading No. 46:—Voluntary disposition inter vivos:—*This is treated as a conveyance on sale, as in the United Kingdom.

23.—A table is added of the correspondence between the clauses of the bill and the provisions of the existing law.

#### REGULATIONS UNDER THE STAMP ORDINANCE.

The following draft regulations to be made by the Governor in Council under sections 4 and 22 of the Stamp Ordinance, 1921, were laid on the table.

The adhesive stamps to be used on bills of exchange, circular notes, letters of credit, "traveller's cheques," Chinese shippers books and ships receipts (other than bills of lading) shall be overprinted with the letters "BE."

All instruments relating to land in the New Territories executed in pursuance of the provisions of the New Territories Regulation Ordinance, 1910, shall be exempt from stamp duty.

#### TEMPORARY REGULATIONS

Cheques stamped before the 14th day of April, 1921, with an impressed and dated stamp of the value of five cents shall be deemed to have been duly stamped if signed before the 30th day of June, 1921.

Cheques stamped before the 14th day of April, 1921, with an impressed and dated stamp of the value of five cents, if signed between the 1st day of July and the 31st day of December, 1921, both days inclusive, shall be deemed to have been duly stamped if an adhesive revenue stamp of the value of five cents shall have been affixed thereto before signature and shall have been effectively cancelled.

Certificates to practise during the year 1921, taken out by persons practising at the commencement of the Ordinance, shall be deemed to have been duly taken out and stamped if taken out and stamped within one month after the commencement of this Ordinance.

THE ATTORNEY-GENERAL, in moving that the Bill be read a first time, said—The objects of this Bill are three: (1) to increase the stamp revenue; (2) to correct defects in the existing law; and (3) to provide for the collection of stamp duties more efficiently than before and to enact certain provisions aimed at evasion. On the question of revenue, sir, I propose to say nothing because your Excellency dealt with that point at the last meeting of the Council as Colonial Secretary.

On the second point—defects in the existing law—defects have been discovered from time to time in the working of the existing Ordinance. They are quite numerous, and many of them are well-known. In many cases the definitions, on which one relies for the interpretation of particular sections, are inexact, or entirely non-existent; in other cases whole headings of revenue are omitted. For example, it was discovered the other day that no duty is payable under the existing law on vesting orders, though a vesting order has exactly the same effect as a conveyance and is treated as a conveyance under the stamp law of the United Kingdom. Agreements for the sale of property, again, are not subject to any duty, except \$1 agreement duty. In England, they are subject to the same *ad valorem* duty as conveyances. In many cases the agreement for the sale of property is the only document executed, and the sale goes through without any duty being paid. Again, certificates of satisfaction, which are one way of clearing off a mortgage, do not pay any duty here at present, though re-assignments, another method of paying off a mortgage, do pay. Many of these defects have been discovered, and they are remedied, I think, in the present bill. No doubt the Bill contains defects, and I hope that, if it does, some at least of them will be discovered in the discussion of this Bill in Committee of the Council. We also hope that when the Bill is published in the *Gazette* the various classes of persons and bodies affected by these duties will consider it as quickly as they can, and will make any representations which they may wish to make at as early a date as possible. Any criticisms will be welcomed and will be carefully considered. But it is hoped that if they are going to be made they will be made quickly, so that the passing of the Bill will not be unduly delayed.

## NOVEL CLAUSES

The third general object of the Bill is to facilitate the collection of stamp duties, generally, and to prevent evasion. Under that heading, I would like to direct attention to certain clauses, some of which I think are novel, at least in this Colony.

Clause 10 of the Bill provides that, if any minimum amount is prescribed below which stamp duty is not to be payable, no person is to execute more instruments than would ordinarily be necessary in order to evade duty by such "splitting." The present law provides that if a sum of money exceeding \$10 is paid the person receiving it must not split up that amount into two portions if it is substantially one amount, in order thereby to evade receipt duty. That principle, of forbidding splitting in order to evade duty, is now by this clause applied generally. Sub-clause (2) of the same clause is aimed at the same evil. In some cases, the duty is at a higher rate on larger amounts and this subsection prohibits any splitting for the purpose of evading the higher scale. Of course, it can be done by executing two or more documents which would pay duty only on the lower scale. That, in future, will be a criminal offence.

Clause 41 is intended to broaden and fasten the liability in cases of companies and other corporate bodies and firms. Sub-clause (1) provides that when an instrument which ought to be stamped is not stamped, every director, manager, secretary and other officer who knowingly is a party to the failure to stamp shall be deemed to have committed an offence but, in any case, the company itself shall be deemed to have committed an offence by the mere failure to stamp. The mere fact of failure to stamp—if this section effects what it is intended to effect—will render the company liable to a fine; the directors and officers will also be liable to a fine if it can be shown that they were knowingly parties to the evasion of the duty, or failure to stamp. Sub-clause (2) contains a similar provision with regard to firms. If an instrument which ought to be stamped is not stamped, and is executed in the name of the firm, every partner and servant of the firm who was knowingly a party to the failure to stamp is guilty of an offence, and in any case the person having the management of the firm is made liable merely on the ground of failure to stamp, the idea being that he is a manager of the firm and it is his duty to see that any document executed by the firm pays the proper stamp duty. Sub-clause (3) is intended to

enable the collector to obtain information, in the case of a firm, as to the person really liable for the failure to stamp, and it provides that if a document is not stamped that ought to be stamped the partners and manager must give the collector the fullest information to enable him to take proceedings against such person.

Clause 42 deals with onus, and provides that where a person claims that an instrument is not chargeable with duty or is chargeable with a duty on a lower scale than the collector claims, the onus shall be on such person to establish such claim. That is new, and does not seem unreasonable. The facts of the transaction are more within the knowledge of the person concerned than anyone else, and it seems only fair that he should have the onus of establishing the non-liability to duty, or of liability to less duty than that claimed by the collector.

Clause 43 empowers the collector to inspect and search and take copies in any case in which he thinks there may be on the premises any books of accounts, or other documents, that may tend to show that stamp duty is being evaded. That is new.

Clause 44 is also new. It provides that any person who, for the purpose of evading stamp duty falsifies or destroys books of account or other instruments shall be deemed to commit an offence. To that, I think, there can be no objection. I will refer later to a particular heading of duty relating to the late registration duty, which is also an attempt to close the door against evasion.

## EVERYONE'S DUTY

The only other thing I would like to say on this third object of the Bill is that, of course, it is everyone's duty, if these taxes are imposed by the legislature, to accept them loyally and to pay them,—if not cheerfully, at least without attempting to evade them. The Government will not hesitate in cases of deliberate and persistent evasion to ask for imprisonment. Clause 46 provides for a maximum fine of \$10,000, and also provides for imprisonment for any term

not exceeding one year. We shall not hesitate to ask for imprisonment where stamp duty is deliberately and systematically evaded.

#### UNSTAMPED DOCUMENTS

I would like to draw attention, sir, to clause 6 of the Bill; that is the clause which provides that unstamped documents are not to be admissible in evidence, except in criminal proceedings, and are not to be admissible in proceedings before any arbitrator or referee, and are not to be registered or filed by any corporation or public officer, unless they are stamped. The particular provision I want to draw attention to is expressed at the end of sub-clause (1), and in sub-clause (2). In many cases the stamp duty in posed by this Bill may be paid within seven days after execution, but if the document is to be produced in court before the expiration of those seven days it must be produced stamped, and is not admissible until it is stamped. In other words, whether the time has come by which the document must be stamped or not, if the person producing it wishes to put it in evidence, or if it is to be filed or registered, he must stamp it, before he produces, or files, or registers it.

Clause 16 deals with the question of stamping by special leave after the proper time for stamping has expired. Under the existing law the collector has, in certain cases, power to stamp after the time has expired, but in other cases it is necessary to apply to the Governor-in-Council. This clause gives the power in all cases to the collector, but gives an appeal from the collector to the Governor-in-Council. I think it would save time very often if the application is made first of all to the collector, and if a person is dissatisfied with his decision he can appeal to the Governor-in-Council.

#### PROPERTY SALES AND SHARE CONTRACTS

Certain duties imposed by this Bill are new to this Colony, though precedents for them exist elsewhere. One is heading No. 5 in the schedule: agreement for the sale of property. That does not apply to goods, or shares, or ships, but it applies to all other property, and the idea is that if an agreement is entered into for the future sale or conveyance of property that agreement must pay duty. If it is followed by a full conveyance then the conveyance is exempt from duty; if the agreement is rescinded then the stamp duty is returned.

The duty on share contract notes is also new in

this Colony, and is to be found in heading 41 (5). The scale is \$2 where the amount does not exceed \$10,000, and is \$5 where it exceeds \$10,000. A similar duty exists in England, and also, I think, in the Straits Settlements, though I think in the Straits Settlements it is lower. In England—in the United Kingdom—the scale is rather an elaborate one, but the duty amounts to 6d. on (E02)100 to (E02)1 on (E02)20,000. Here the scale and schedule is divided into two portions only for convenience—\$2 and \$5 only. The Bill also provides that on every sale or purchase of shares the broker must give a sale contract note to the principal; if he does not he commits a criminal offence.

#### CERTIFICATES TO PRACTICE

Another new duty is that on certificates to practise—Heading No. 15. That is also dealt with in Clause 22 of the Bill. These certificates must be taken out by the various classes of persons mentioned in the section—architects, barristers, dentists, medical practitioners, chemists, solicitors. They must take out an annual certificate to practise, for which they must pay \$25 a year. As this Bill will come into force in the middle of the year, it is proposed to make regulations giving a certain time after the law comes into force for taking out these certificates for 1921. After that, certificates must be taken out before the following year commences—in December of each year for the following year.

#### SHARE TRANSFERS

I should now like to refer to the various duties on shares. I have just referred to one; that is, the share contract note. The transfer of shares under the bill will in future pay 50 cents for every \$100. At present, the duty is 10 cents a hundred. I may say, 50 cents, or  $\frac{1}{2}$  per cent., is the scale of duty payable in the United Kingdom, and that is a scale not introduced during the war, but before the war. In Heading 41 (1) it is proposed in Committee to alter the fifth column so as to read "before execution"; in other words, so as to provide that transfers of shares must as at present, be stamped before execution.

The most novel feature of the bill is that dealt with in sub-head (2) of Heading 41 — late registration duty. This subject is also dealt with in clause 29 of the bill. It is an attempt to deal with the question of blank transfers. The use of blank transfers obviously leads to a great many transfers of shares escaping duty. Transfers pass from hand to hand; they are not registered, and no doubt the transfer duty is frequently evaded on such transfers. Section 29 provides that if a transfer of shares is not registered within one month from the date of transfer, then it has got to pay an additional late registration fee of \$1 per \$100; if not registered within three months, \$2; six months, \$5; one year \$10—the object being to induce people to register their transfers as soon as possible so as to obviate the possibility of transfers taking place which never come to the knowledge of the company and which therefore may evade payment of transfer duty. It is proposed—I do not know whether the copies of the Bill before members now contain the provision, or not, but it is proposed to add to Clause 29 a further sub-section (8) which will read as follows:—

"Every person who transfers to any other person any share which is on a share register which is required by law to be kept within the Colony shall forthwith make and execute an instrument of transfer of such share."

There are two exemptions from these payments of transfer duty: one is a transfer of shares on registers which are not required by law to be kept within the Colony—as for instance, English shares, Straits shares, and shares in China companies—and the other is the transfer of share warrants to bearer.

#### DUTIES ON AGREEMENTS FOR THE SALE OF GOODS

There are three duties, sir, which are entirely new to this Colony, and, I think, without precedent anywhere. One is Heading number 4 —agreements for the sale of goods. These, I think, are exempt everywhere else, but it seemed to be a convenient point at which to collect duty, and the duty imposed by the bill is a very light one, of one dollar—a flat rate of one dollar, but this does not apply to amounts under \$100, and it does not apply to a memorandum of retail sale in a shop.

#### EXCHANGE CONTRACTS

The duty imposed on exchange contracts is also new. The Heading under which that comes is 22, and the Clause 23. It is imposed only on exchange contracts which do not result in remittances, that is to say on contracts which are cancelled or set off.

The third tax which is new is that imposed on telegraphic transfers: the clause is 28 and the heading is 43. There seems to be no reason why remittances by bill of exchange should pay duty while remittances by telegraph should pay nothing, and it is proposed now to impose a duty on telegraphic transfers. The duty is the same as the present bill of exchange duty. That duty is very low, much lower than the duty in England and lower than the duty in the Straits; and I think it will not be an undue burden on commerce. I beg to move the first reading.

THE COLONIAL SECRETARY seconded the motion.

HON. MR. POLLOCK—In view what the learned Attorney-General has said I would ask that several copies of this Bill should be sent to the Hongkong General Chamber of Commerce, the Chinese Chamber of Commerce and the Stock Brokers' Association. I would also ask that a reasonable interval be allowed before the second reading is taken.

HON. MR. HOLYOAK—I should like to support the request of my honourable friend—.

HIS EXCELLENCY—You are not in order in speaking to the Bill. There is no debate on the first reading.

HON. MR. HOLYOAK—I shall feel compelled to vote against the Bill unless I am allowed to speak in support of postponement.

THE ATTORNEY-GENERAL explained that when a Bill is introduced for first reading the mover explains the bill, and the debate occurs on the second reading and in Committee. That would not of course prevent discussion as to the period of the adjournment.

HON. MR. POLLOCK—I should like to ask the authority for the statement that no debate is allowed on the first reading.

THE ATTORNEY-GENERAL read Standing Order No. 38.

The motion for the first reading was then put and agreed to.

HON. MR. HOLYOAK—I wish to ask for a lengthy adjournment between first and second reading for the reason that vital principles are involved. In the first place it is a direct attack on Free Trade, and, therefore, the Chamber of Commerce should have the fullest opportunity of discussing the various alterations and new taxes proposed. In the second place, as you are aware, the Hon. Mr. Ho Fook, the Hon. Mr. Stephen and myself will be leaving the Colony shortly for a long period, and although we are sure to be represented by very worthy substitutes, it is but reasonable that full opportunity should be given for discussion before they are called upon to pass a Bill of such importance to the trade of the Colony.

HIS EXCELLENCY—Honourable members are aware that a Committee representing many important interests in this Colony has considered this Bill for months past and the Bill is the outcome of its deliberations. The object of the Bill is to raise more revenue and the amount which it is estimated will be raised by this Bill was down in the estimates which came before the Council last October on which the honourable member and nearly all the members here voted. They were well aware that a sum estimated roughly at a million dollars was to be raised by additional stamp duties and that some of them would be new and some would make considerable advances on the present duties. I do not understand what the honourable member means when he says that these duties will interfere with free trade. They certainly do not do that. There are one or two duties which will have very beneficial effects in controlling transactions which cannot be considered to be for the benefit of trade or the benefit of the Colony and in that respect they ought to be applauded rather than denounced. I therefore consider that we must get the Bill through because we want to raise the revenue. We wish to give a reasonable time for its consideration by the various parties who are interested and who represent trade interests, professional interests and all the interests affected by this Bill in this Colony. What that time shall be we must now consider. I thought a fortnight might not be too long. I am perfectly willing to hear what honourable members think, but they must bear in

mind that there has been considerable delay in bringing the Bill forward because of the great difficulty in drawing it up, and the sooner we pass it into law the better.

HON. MR. POLLOCK—With reference to the date of the adjournment I am informed that the hon. member on my right (Mr. Holyoak), and the Hon. Mr. Ho Fook, and the Hon. Mr. Stephen will be leaving on the 28th inst. which is the very date your Excellency has mentioned.

HIS EXCELLENCY — That date was mentioned as the shortest time for the adjournment. It is very unfortunate that these members should be leaving. I had no idea that the hon. members were leaving the Colony on that date. Every day this Bill is not passed means a considerable loss of revenue. I hope that they will leave a memorandum of whatever remarks they have to make on the Bill. We want to have their opinions, but I do not think it matters much whether they are actually given in the Council; it might even be an advantage to have their memoranda for consideration before the Council meets. If it would be convenient we might have a meeting before they go away—say, on Tuesday, the 26th or Monday, the 25th. I am not saying that we should pass the Bill then, but it would give members who are going away an opportunity of discussing the Bill. We could have another meeting for passing the second reading if it is desired.

HON. MR. HOLYOAK intimated that this suggestion was agreeable to him.

HIS EXCELLENCY—Then we will bring the Bill on for second reading on the 25th inst. and if the discussion is then not completed we can have a further meeting to complete it.

HON. MR. HOLYOAK — On that understanding I am perfectly agreeable.

THE ATTORNEY-GENERAL—The Bill can go into Committee and be recommitted, if necessary, at the following meeting of the Council.

The Council was thereupon adjourned to April 25th, at 2.30 p.m.

## FINANCE COMMITTEE.

A meeting of the Finance Committee was held, the Colonial Secretary presiding.

### A Railway Vote

The Governor recommended the Council to vote a sum of \$1,050 in aid of the vote Kowloon-Canton Railway, Special Expenditure, platform awnings.

THE CHAIRMAN — This is required in connection with the construction of the awnings of the Kowloon Railway Station. There are also certain alterations necessary to the iron fences and gates which were unforeseen.

Approved.

### A Public Works Vote

The Officer Administering the Government recommended the Council to vote a sum of \$1,550 on account of Public Works, Extraordinary, Extensions and alterations to No. 1 Motor House, Garden Road.

THE CHAIRMAN—There was a balance at the end of last year of \$1,550. Owing to the building not being completed it was not paid out. This amount of \$1,550, is, therefore, in the nature of a re-vote.

Approved.

### Vote for Bathing Places

The Officer Administering the Government recommended the Council to vote a sum of \$5,300 in aid of the vote Miscellaneous Services, Bathing Places, North Point and Kennedy Town.

THE CHAIRMAN—In the estimates for this year there is a sum of \$2,700 allowed for bathing beaches. A Committee was then appointed to go into the matter and they considered the question of providing further bathing beaches and facilities. The proposals involved a total expenditure of \$8,000. The present supplementary vote is asked for to cover the deficiency.

Approved.

### Harbour Office Vote

The Officer Administering the Government recommended the Council to vote a sum of \$660 in aid of the vote Harbour Master's Department,

Personal Emoluments.

THE CHAIRMAN—In this year's estimates provision was made for another motor-boat for the use of the Harbour Office, but by inadvertence the crew was not allowed for in the estimates. The present amount is asked for the crew — one engineer, one coxswain and two seamen.

Approved.

### Boiler for Scavenging Launch

The Officer Administering the Government recommended the Council to vote a sum of \$4,500 in aid of the vote Sanitary Department, Other Charges, Launches, Steam Barges and Lighters, Repairs.

THE CHAIRMAN—This amount is required for a new boiler for the Sanitary Department scavenging launch, No. 1. The boiler has been found defective and as the launch becomes due for overhaul almost immediately, the Head of the Sanitary Board has asked for this amount to make one job of it.

Approved.

### Kennedy Town Hospital

The Officer Administering the Government recommended the Council to vote a sum of \$600 on account of Public works, Extraordinary, Installation of water closets and extension of sewer in Kennedy Town Hospital.

THE CHAIRMAN—This is a re-vote of \$600, due to the fact that the Sanitary fittings did not arrive before the end of last year.

Approved.

### Typewriter

The Officer Administering the Government recommended the Council to vote a sum of \$401 on account of Education Department, Other Charges, Typewriters.

THE CHAIRMAN—One typewriter was allowed for in the Estimate, but it has been found that one of the typewriters in the Director's Office has become absolutely useless and he has asked to be allowed to purchase one at once instead of waiting for it to be put in the Estimates for next year.

Approved.