

8TH JUNE, 1922.

PRESENT:—

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

HON. THE OFFICER COMMANDING THE TROOPS
LIEUT.-COLONEL W.N. NICHOLSON, C.M.G.,
D.S.O.

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

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

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

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

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

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

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

HON. MR. A. O. LANG.

HON. MR. CHOW SHOU-SON.

HON. MR. A. R. LOWE.

HON. MR. H. W. BIRD

HON. MR. NG HON-TSZ.

MR. A. DYER BALL (Clerk of Councils).

New Member

Mr. NG HON-TSZ took the oath and his
seat as a member of the Council.

Minutes

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

Papers

THE COLONIAL SECRETARY by
command of H.E. The Governor, laid on the
table the Report on the Finances of the Colony
for the year 1921; Report on the Assessment of
the Colony for the year 1922-1923; Report of
the Harbour Master for the year 1921; Report
of the Registrar of the Supreme Court for the

year 1921; and the Report of the Police
Magistrate for the year 1921.

Finance

THE COLONIAL SECRETARY, by
command of H.E. The Governor, laid on the
table the Report of the Finance Committee (No.
6) and moved that it be adopted.

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

**Government Replies to Hon. Mr. Lowe's
Questions**

HON. MR. A. R. LOWE put the questions of
which he had given previous notice as follows:

"In view of the one month's notice given
by the China and Japan Telephone &
Electric Co., Ltd., to increase the rates
charged to its subscribers (in the case of
business lines by 90 per cent.) have these
new charges been sanctioned by the
Government; and, if so, will the
Government lay on the table the papers on
which their decision was based?"

"Will the Government explain how much
of the proposed increase is justified by
higher working costs, and how much by
rental on heavy expenditure (in the
Company's own words) 'about to be
undertaken for the erection of a new Central
Exchange and new Central Battery
installation,' and why it should be held
justifiable for subscribers to pay such
increased rates before the improvements
have been completed or any material
expenditure incurred?"

THE COLONIAL SECRETARY replied:—

The question of the Telephone Company's
rates has been the subject of protracted
negotiations between the Company and the
Government.

The present agreement runs for a period of
t w e n t y - f i v e y e a r s f r o m 1 9 0 5 .

Previous to that year the rate was \$100 for the first mile of the distance from the telephone to the exchange and \$25 for each additional half mile, and under the 1905 agreement the figures were put into sterling at £10 and £2. 10s. 0d., the exchange value of which was at the time higher than the former dollar rates.

During the war the exchange value of the dollar rose very considerably and the Company's receipts in terms of dollars were seriously diminished. The Company accordingly asked permission to make a large increase in their charges, but the Government was not prepared to make any concession except on the condition that the Company would agree to instal an up-to-date system on the most modern method.

Terms were discussed and figures were gone into at great length, but it was found impossible to arrive at an agreement. The Government finally suggested a conference, with Mr. P. H. Cole, General Manager of the Shanghai Mutual Telephone Company, and Mr. W. W. Cook, Consulting Telephone Engineer of London, as expert advisers to itself and the Company respectively. This conference was recently held, with most satisfactory results. Mr. Cole and Mr. Cook were in close agreement in many respects, and where they differed they gave full explanations of the grounds upon which they differed; with the consequence that the Government is now in a position to come to a definite decision as to what are fair terms to offer.

The Draft Agreement containing the Government's proposals has not yet been placed before the Company. There have, however, been informal discussions regarding it, and the Company has been permitted to advertise the rates proposed under it, on the understanding that the rates will not come into force until the agreement is signed. The agreement when signed will be laid upon the table of this Council. It is not proposed to lay any other papers in view of the confidential nature of much of the information contained in the correspondence.

With regard to the latter part of the Honourable Member's question, the Government is advised that a capital of some \$3,500,000 would be required to install an entirely new telephone system on modern lines;

and, if the Government's terms are such that the existing Company cannot see its way to accept them, the community must contemplate a rapidly deteriorating service until 1930, and thereafter rates, to be charged by a new Company, at least as high as those now proposed. It is considered necessary to permit the Company to charge the new rates forthwith, in order that it may be in a position to raise new capital required and to meet the general increase in expenditure which has taken place since the present rates were introduced. The incidence of the increase between working costs and new capital expenditure cannot be accurately estimated.

It may be pointed out that the radius within which the minimum rate is charged has been considerably extended. A subscriber on the outskirts of Victoria for example, who in 1904 paid \$175, is now to pay \$140 or \$154, according as he has a private or a business telephone.

A Supplementary Question

HON. MR. LOWE—Arising out of the answer to the last question, has the Government whilst allowing the Company to avail itself of a capital expenditure revaluation apparently to the full, omitted to obtain as a set off the capitalised value of the profitable exchange contract with its subscribers from 1st July next to the end of the present concession in 1930?

H.E. THE GOVERNOR—I think it will be desirable, Mr. Lowe, to have notice of the question.

The Rents Ordinance

THE ATTORNEY-GENERAL moved the second reading of the Bill intituled, An Ordinance to extend temporarily the provisions of the Rents Ordinances, 1921, with certain amendments.

THE COLONIAL SECRETARY seconded.

HON. MR. BIRD—Sir, May I make one remark before you put that to the vote?

H.E. THE GOVERNOR—I am sorry; I did not mean to put it to the vote now. This is the time for any honourable member to discuss the principles of the measure.

HON. MR. BIRD—There is only one point. It appears to me that advantage has been taken of the definition of a domestic building to misinterpret the spirit of the Ordinance, especially as regards proviso No. 1. What happens at present, I understand, is that a tenant of a godown, workshop, or factory, has only to put in, say a dozen, or any number more than two people, and call them caretakers or watchmen, and then he is entitled to call it a domestic building. I do not think the Ordinance ever intended the term "domestic building" to apply to a building of this kind, and I think we might insert a proviso to make that impossible.

HON. MR. E. V. D. PARR—Sir, I should like to add my congratulations to the Government on having extended this Bill for another year, as it appears necessary for them to do. The Hon. Attorney-General, in proposing the Bill on the first reading, was at pains to explain that it was not expected that it would be necessary to extend it beyond the year. It is assumed, sir, that the Government will formulate new schemes for development in the same way that corporations at Home do, by laying out areas and building-districts, providing easy and cheap means of access, and offering as great an inducement as possible to builders to erect houses and domestic tenements. The question seems to be one of supply and demand, and as the demand has up to the present exceeded the supply it would be interesting to have some statement from the Government on that subject.

H.E. THE GOVERNOR—I think the point raised by the Hon. Mr. Bird would be better discussed in Committee when the clause comes up. With regard to the remarks made by the Hon. Mr. Parr, I should like to say that, as I made perfectly clear before this Ordinance was introduced and subsequently, this is a form of legislation which I myself regard with great di-trust and dislike. The Government was forced to take action to restrain landlords but it is an offence against good economic doctrine and I shall be extremely glad when the time comes when we can dispense with such legislation. I hope it will not be necessary to continue it beyond another year. If it is necessary to do so, I must say I think we shall have probably to proceed on different lines and if anything of this nature is to become

permanent I think we shall have to introduce a Fair Rents Tribunal, a thing we have shrunk from doing for very obvious reasons. It seems to me, from various indications, that this law will not really be necessary for more than another year because a great amount of building is taking place. There is no question, at any rate regarding European houses, that it is very much easier to get a house now than it was when the Ordinance was passed. In fact, reference to the advertising columns of the Press will show that several houses at present are vacant,—a position very different from that in the year 1920.

As regards Mr. Parr's question as to the provision of areas for building, I think that the Colony is very well provided with such. There is a considerable amount of land available, communications are good, the terms on which land is granted are extraordinarily favourable to the tenant, and I think it now remains for those persons in the Colony who have money to invest, to proceed to invest it, without waiting for more allurements from the Government. I think the Government has done and is doing as much as any Government that I know of. As I said I trust that this law will cease to operate after another year, but I should like to make it perfectly clear that, although I dislike such legislation, if any attempt is made, on the cessation of the law, to go back to the system of fleecing tenants which existed before it was introduced, I shall have no hesitation whatever in sinking my own feelings and asking the Council to re-introduce this law, or a similar law; and I further say, as a word of warning to certain landlords in this Colony, that if duly authenticated cases are brought before me in which people have been informed by their landlords that they had better agree quickly to pay a rent above the standard rent, otherwise their rent will be greatly increased at the expiration of the Ordinance, I shall have no hesitation in keeping the law on permanently or taking any other steps for getting home on such landlords. That I mention publicly as a word of warning to certain persons in the Colony.

The second reading was then carried.

On the motion of the ATTORNEY-GENERAL seconded by the COLONIAL

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

On clause 2,

HON. MR. BIRD raised the question he had already mentioned. He said: My idea is that another proviso should be inserted so as to do away with this objection which, I believe, really exists as regards tenants who claim that because they have got more than two caretakers or watchmen living in their godown therefore they are entitled to call it a domestic building. I suggest a proviso something on the lines of the following be inserted:—

Any workshop, or factory or building, which is used or designed to be used for the storage of cargo, will not be deemed a domestic tenement.

H.E. THE GOVERNOR—Is it not really provided for by number (ii.):

Any building or portion of a building which is used for habitation only by office attendants or their families?

THE ATTORNEY-GENERAL—Well, Sir, they may be, of course, fokis of the firm,—ordinary shop fokis or other fokis, —and they may not be office attendants at all. They may be salesmen or godown attendants, tally clerks or even workers in a factory. Might I say, Sir, it is quite true that the policy of the Ordinance is to protect domestic habitation. It is also perfectly true that incidentally it protects business premises of various kinds which are used both for business purposes and human habitation. The English Act recognises that and it definitely and distinctly lays down that where the landlord has to show alternative accommodation, the Court has to take into account the suitability of the proposed new premises, not only for human habitation but for business, trading or professional purposes. It is impossible, especially in this Colony, to disentangle the two things in view of the fact that nearly all Chinese shops are used for human habitation. The difficulty about excluding godowns is the difficulty of defining a godown. It is suggested by the Hon. Mr. Bird that the definition should be "any workshop, or factory or building, which is used or designed

to be used for the storage of cargo," but you might get a shop used partly as a shop and partly for storage. Is that to be a godown?

HON. MR. BIRD—That would not be "designed as a godown."

THE ATTORNEY-GENERAL—"Used or designed to be used:" I can also imagine many cases where it would be difficult to say whether the building was designed as a godown or not.

HON. MR. BIRD—Of course, there is a real difference between a godown and a shop used as a godown.

THE ATTORNEY-GENERAL—It is quite true that in many instances it is perfectly easy to say whether a thing is A or B., white or black, or whether it is a godown or is not a godown; but there are many cases where it is impossible to draw a line. That is what makes definitions so difficult to draw up. In legislation of this kind it is impossible to avoid hardship in particular cases and impossible to devise a law which will be perfectly fair and reasonable throughout. The reason I object to the exclusion of godowns from the scope of the Bill is that I see very great difficulty in defining a godown. There is a further reason; *i.e.*, that this is a temporary Ordinance which may come to an end at the end of another year, and it is desirable to make as few changes as possible, especially as people have regulated their contracts, so far, on the assumption that such buildings would come within the Ordinance. To make a change now would be to create uncertainty and would be undesirable.

HON. MR. BIRD—Do you suggest Sir, that people occupying a godown would bring it under the heading of a domestic tenement?

THE ATTORNEY-GENERAL—Godowns used as habitations do come within the Ordinance at present. There is a pending case involving a considerable sum depending partly on that point.

HON. MR. BIRD—That is the case I have in view.

H.E. THE GOVERNOR—I am not quite sure what is the position Mr. Bird is

trying to meet. Is it that people, in order to avoid having the rents of godowns put up, are actually putting a number of caretakers in, in order to say it is a domestic building?

HON. MR. BIRD—I do say so. Sir.

H.E. THE GOVERNOR — Well, in the Ordinance as it stands we already provide that any building used for habitation only by caretakers not exceeding two in number is not a domestic tenement. What would happen if we cut out the restricting clause "not exceeding two in number?"

THE ATTORNEY-GENERAL—The lessee would probably say that they were not caretakers but clerks.

H.E. THE GOVERNOR—Would he not then come within the definition of the Public Health and Buildings Ordinance?

THE DIRECTOR OF PUBLIC WORKS—Under the Ordinance, only caretakers may be permitted in a building which is not a domestic building, but the same definition is not carried through the proposed Ordinance.

HON. MR. BIRD—I think the tenant could be got at by the Public Health and Buildings Ordinance, but that means litigation. If we can avoid that it is much better. There is a definition in the Building Ordinance of both workshop and factory and I feel sure it is not beyond the ingenuity of the Attorney-General to define a godown.

THE ATTORNEY-GENERAL—I suppose a godown gets a certificate under section 204?

THE DIRECTOR OF PUBLIC WORKS—It gets a certificate as a non-domestic building.

THE ATTORNEY-GENERAL in reply to H.E. the Governor said he was afraid the definition proposed by Mr. Bird would not meet the case. He continued: I think it undesirable to alter the law just for a year. So far as I can remember, I only know of one case of this: there may have been others. I do not say that, in that case, the men were put in especially for the purpose of making it a domestic tenement. I do not know.

H.E. THE GOVERNOR — That is the

suggestion of Mr. BIRD. I am afraid that now attention has been called to this method it is only natural that other people should adopt the same system.

THE ATTORNEY-GENERAL — There are two views on this subject. One is that the protection given to business premises should be restricted: that is the landlords' view. The other is that the protection should be extended still further and made to apply to offices pure and simple. The bill keeps the middle course and makes no change.

THE DIRECTOR OF PUBLIC WORKS remarked that if the attention of the Building Ordinance Office was called to a case in which a godown was used as a domestic tenement this would lead to a notice being served on the owner to open up so much of the building as to make it comply with the Building Ordinance. Action could be taken without any litigation.

HON. MR. BIRD—That would be served on the owner?

THE DIRECTOR OF PUBLIC WORKS—Yes.

HON. MR. BIRD—How would that affect the tenant? It is the tenant you want to get at.

THE DIRECTOR OF PUBLIC WORKS—I think the owner can take his remedy if an illegality is being carried out against his wishes.

HON. MR. A. O. LANG—Anything that tends to keep the price of rents of godowns down is very desirable.

H.E. THE GOVERNOR—That may be so, but that is not the intention of the Bill: it is intended to deal with houses.

HON. MR. BIRD—That is why I made the remark. I felt sure it was not the intention of the Ordinance that godowns should be classed as domestic buildings.

H.E. THE GOVERNOR (to the Attorney-General)—Do you see any alternative means to effect the same object?

THE ATTORNEY-GENERAL — No Sir, except, as the Director of Public Works has suggested, that action might be taken by him.

H.E. THE GOVERNOR—It seems to me we are rather working at the wrong end. The landlord is at present suffering and would suffer more if called upon to take action to make up for the not very straightforward device of his tenant. The point is rather difficult to decide and I would suggest that we leave it open for the moment, go on to the other clauses, and recommit the Bill at the next meeting with the view to consideration of that point. Perhaps in the meantime some satisfactory definition might be reached. There is no absolute necessity to pass the Bill now.

The Committee passed to the consideration of the remaining clauses of the Bill.

On clause 9 (sub-clause 2) the Attorney-General moved an amendment that the words "commencement of this Ordinance" be omitted and the words "19th day of July, 1921," be substituted therefor. He explained that the clause as drafted made the Ordinance apply to a new building completed after the original Ordinance but before the commencement of this Ordinance, and that was not intended. The amendment excluded from the operation of the Ordinance all buildings completed after the commencement of the original Ordinance last year.

The amendment was approved.

THE ATTORNEY-GENERAL moved that clause 15 be omitted and that a new draft clause be substituted therefor as follows:

Where the interest of the lessee of a domestic tenement is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-lessee to whom the domestic tenement or any part thereof shall have been lawfully sub-let, shall, subject to the provisions of this Ordinance, be deemed to become the tenant of the lessor on the same terms as the would have held from the lessee if the tenancy had continued.

THE ATTORNEY-GENERAL said — The object, of course, of the legislation, as I said just now, is to protect domestic occupation, to protect the occupier and the tenant in occupation. It seems only reasonable to say that when the tenant ceases to be the tenant in actual occupation he should not be protected,

any further, and that the landlord should be allowed to re-take possession and to collect the rents from the sub-tenants of the original tenant. But when one comes to put that in the form of a section it is difficult. The original section 15 of the first Ordinance passed last year was one attempt to deal with the problem, and I think it failed. The clause put in the Bill is another attempt, and I do not think that is satisfactory either. One objection is that it would make a lease for a term of years—say seven or fourteen years—expire upon the lessee ceasing to occupy any part of the tenement himself, even though there might be six, ten or thirteen years to run. That seems undesirable. If it is restricted to monthly tenancies it would leave untouched a number of cases of short leases where the landlord has the same objection to the tenant remaining in and taking the profit. Another objection is that it is not made retrospective, so that all cases where the lessees have ceased to occupy during the past year would be beyond remedy. If it is made retrospective a difficulty would be found in dealing with the rent accrued and in deciding at what time the lessee determined his lease. The question also arises that if a lessee ceases to occupy for a week or a month and then resumes, does that break the tenancy or not? There are a great many difficulties in the way of dealing with the problem. The section, I think, is not satisfactory and I suggest it be omitted altogether. I think it is convenient to insert a clause dealing with the position of the sub-tenant where the tenant does drop out. This new clause is based on an English section and provides that where the interest of the lessee is determined the sub-lessees become the direct tenants of the landlord and pay the rent to him.

It was agreed that clause 15 of the Bill be omitted and that the new clause 15 be inserted.

THE ATTORNEY-GENERAL proposed a drafting amendment in clause 17 and this was approved.

THE ATTORNEY-GENERAL also moved a drafting amendment in sub-clause (2) of clause 18.

The remaining clauses of the Bill were then approved.

The Council then resumed.

Forgery Ordinance

THE ATTORNEY-GENERAL moved the second reading of a Bill intituled, An Ordinance to consolidate, simplify, and amend the law relating to forgery and kindred offences.

THE COLONIAL SECRETARY seconded, and it was agreed to.

The Council then went into Committee, on the motion of the ATTORNEY-GENERAL and considered the Bill clause by clause.

The Bill was approved in Committee, without amendment.

On the Council resuming the ATTORNEY-GENERAL moved, and the COLONIAL SECRETARY seconded, the third reading.

This was carried and the Bill passed accordingly.

Registration of Imports and Exports Ordinance

THE ATTORNEY-GENERAL moved the second reading of the Bill intituled, An Ordinance to provide for the registration of imports and exports.

THE COLONIAL SECRETARY seconded, and it was agreed to.

The Council then went into Committee on the motion of the ATTORNEY-GENERAL and considered the Bill clause by clause.

The Bill was approved in Committee, without amendment.

On the Council resuming the ATTORNEY-GENERAL moved, and the COLONIAL SECRETARY seconded, the third reading.

This was carried and the Bill passed accordingly.

Misdemeanours Punishment (Amendment) Ordinance

THE ATTORNEY-GENERAL moved the second reading of the Bill intituled, An Ordinance to amend the Misdemeanours Punishment Ordinance, 1898.

THE COLONIAL SECRETARY seconded, and it was agreed to.

The Council then went into Committee, on the motion of the ATTORNEY-GENERAL, and considered the Bill clause by clause.

The Bill was approved in Committee, without amendment.

On the Council resuming the ATTORNEY-GENERAL moved, and the COLONIAL SECRETARY seconded, the third reading.

This was carried and the Bill passed accordingly.

The Indemnity Bill

The second reading was not proceeded with of the Bill intituled, An Ordinance to restrict the taking of legal proceedings in respect of certain acts and matters done during the war and to provide in certain cases remedies in substitution therefor.

H.E. the Governor's Vacation

H.E. THE GOVERNOR — Gentlemen, if convenient to you, the Council will adjourn until Friday of next week. Thursday happens to be an inconvenient day because I hope to be leaving the Colony about 12 o'clock, and it is impossible for an Officer Administering the Government to be sworn in until I am three miles outside the Colony and certain technical difficulties would perhaps arise.

As this is the last occasion on which I shall have the pleasure of meeting hon. members before I go I desire to express my very sincere thanks for the help they have given me during the last two and a half years and the extremely kind manner in which that help has been given: also to thank them for the willingness with which they have always been ready to place their advice at my disposal. I am very grateful for their help.

The Council then adjourned.