

28TH SEPTEMBER, 1922.

PRESENT:—

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

H.E. THE GENERAL OFFICER COMMANDING THE TROOPS, MAJOR-GENERAL SIR JOHN FOWLER, K.C.M.G., C.B., D.S.O.

HON. MR. A. G. M. FLETCHER, C.M.G., C.B.E. (Colonial Secretary).

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

HON. MR. D. W. TRATMAN (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).

Minutes

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

Finance

THE COLONIAL SECRETARY, by command of H.E. The Officer Administering the Government, laid on the table Financial Minute No. 73, and moved that it 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 a Report of the Finance Committee (No. 10) and moved that it be adopted.

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

Stamp (Amendment) Ordinance

THE ATTORNEY-GENERAL moved the first reading of a Bill intituled, An Ordinance to amend the Stamp Ordinance, 1921. He said: This Bill proposes to make certain amendments in the principal Ordinance, which was passed last year. The most important clause is clause 2, which proposes to alter the law with regard to stamping agreements out of time. I mention agreements because, while there are certain other classes of instruments which are affected by the clause, by far the most important class of document affected is the agreement. At present, under the existing law, an agreement must be stamped within seven days of execution, and if not so stamped it cannot be produced as evidence. The principal Ordinance contains a certain power of stamping agreements out of time, but the section is worded so strictly that an agreement can be stamped out of time only under very exceptional circumstances. Agreements are often entered into by persons who have no legal training, who have received no legal advice, and who probably do not think for a moment of the obligation to stamp. If litigation ensues, the party to an unstamped agreement may find either that he cannot enforce his claim against the defendant or cannot defend himself against the plaintiff's claim, simply because his agreement was not stamped within seven days. The other side is, therefore, sometimes provided with a not very moral defence, or a not very moral ground of claim, and great hardship is caused. It was thought when the principal Ordinance was draft-

ed, that in time the public would learn that they must stamp all agreements within seven days, but the conclusion we have come to is that occasional individual cases of hardship caused by the rejection of unstamped agreements will never avail to teach the public at large that the agreements should be stamped within seven days. We think that the possible advantage to the revenue would be more than counterbalanced by the hardship caused to individuals and by the undesirability of shutting out evidence which would otherwise be admissible. The clause therefore proposes to provide that an agreement may be stamped at any time on payment, of course, of certain penalties if it is not stamped within seven days. The penalties are set out in the proposed new sub-clause 5: if the instrument is within one month out of time, \$5; if it is within three months, \$25; within six months, \$50; over six months out of time, \$100.

Clause 3 is intended to make it clear that the certificates which must be taken out each year by barristers, solicitors, medical practitioners, architects and so on, must be taken out by each professional man whether he is in practice on his own account or not.

Clause 6.—I am omitting for the moment clauses 4 and 5—adopts a heading taken from the English Stamp Acts. It is not of very great importance, but it provides that any conveyance or transfer not specifically referred to in the schedule of the principal Ordinance is to pay a stamp duty of \$20. It is a general provision to "rope in" any conveyances which are not specifically provided for elsewhere; the ordinary conveyance pays an *ad valorem* duty.

Heading 15A, which clause 6 proposes to add, would have the effect of subjecting to that duty of \$20 transfers of property made on the appointment of a new trustee. The present duty on the appointment of a new trustee is \$10 and apparently that duty covers also the transfer of property for the purpose of effecting the appointment. If no change were made in the payment of trustee duty, the effect of clause 6 would be that on the appointment of a new trustee the duty would be \$30 and not \$10. Clause 4 is intended to provide that, in spite of clause 6, the \$10 duty will still cover both the appointment of a new trustee and the transfer of the property to him.

Clause 5 is also a relaxation of duty and provides that every bond to secure the payment or repayment of money has to pay an *ad valorem* duty, and not a fixed sum of \$20. That is really a relaxation, or reduction, of duty. There may be cases in which a higher sum will be payable under this clause, but in practice—in most cases—the new heading will provide for a lower duty. It seems rather unfair that every bond—whatever the amount—should have to pay the comparatively large sum of \$20. The new heading, 12A, applies to bonds the usual rate of mortgage duty.

I have dealt with clause 6 already. Clause 7 is merely intended to make it clear that, upon the re-assignment of a security, duty must be paid on the total amount which was advanced. That was the intention of the original heading, but it was not quite clear.

Clause 8 deals with the duty on assignment of trade marks. In February of this year the heading which appeared in the principal Ordinance was repealed by regulation and another heading substituted. That regulation was clearly, I think, valid in part, but its validity was doubtful on another point, because it seemed to have the effect of subjecting the transfer of the goodwill—which must, of course, be transferred with the trade mark—to an *ad valorem* duty. This heading, proposed to be substituted, is a return to the former duty, and the effect will be that the duty on the assignment of a trade mark or marks, with, of course, the goodwill, in the goods to which the trade marks apply, shall pay only \$10, whether one trade mark be assigned or more than one, and that no additional duty shall be payable on the transfer of the goodwill. It simplifies the duty very much, because it is difficult, often, to ascertain the value of the goodwill, and in the great majority of cases it is stated to be of nominal value.

Clause 9 is another unimportant amendment and provides for a stamp duty of \$20 on vesting orders other than those which come under the definition of a conveyance on sale.

Clause 10 is merely an attempt to clear up a doubt which has arisen and to provide that the duty on voluntary dispositions is to be the same as the duty on

conveyances—that is, \$1 on every \$100. The original Bill provided for a scale of 50 cents on small assignments and \$1 on large assignments, but that was altered, later, by the amending Ordinance, and it is now proposed by this clause 10 to apply the same rule to voluntary dispositions. I beg to move the first reading.

THE COLONIAL SECRETARY seconded, the motion was carried, and the Bill was read a first time.

The "Objects and Reasons" state:—

1.—The amendments proposed to be made by this bill would probably not have justified immediate legislation but for the fact that a revised edition of the Ordinances is in course of preparation and that it is desirable that these amendments should be made in time for inclusion in the revised edition.

2.—In general, it is a criminal offence not to stamp any instrument included in the schedule in the Stamp Ordinance. There are four exceptions to this rule, agreements of service with a corporation, attested copies, and duplicates. In these four cases, the only important class of which is that of agreements, it is no offence not to stamp, but an unstamped document may not be received in evidence. Section 16 of the principal Ordinance, which at present contains the only power to stamp an instrument out of time, is so strictly worded that exceptional circumstances are generally necessary before stamping can be allowed. It is thought that this would be likely to cause considerable hardship in the case of agreements. Agreements are very frequently entered into by persons who have no legal training or advice, and who probably never think of the question of stamping at all. If a dispute arises and litigation ensues the party relying on the agreement may find himself wholly unable to enforce his rights, solely because the agreement was not stamped within seven days of execution. The other party to the contract is thus sometimes provided with a not very praiseworthy defence to a claim otherwise perfectly good. The reason for this strictness in the principal Ordinance in the case of agreements was that it was hoped that the public generally would be induced to stamp all agreements, but it is now thought that would probably never teach the

community at large, so that the only justification for inflicting hardship in in-sporadic cases of individual hardship individual cases disappears. The effect of clause 2 is that all "voluntary" instruments, *i.e.*, instruments where the nonpayment of duty is no offence, may be stamped as of right, subject to certain penalties which are set out in the new subsection (5) which is to be added to section 6 of the principal Ordinance.

3.—Clause 3 is intended to make it clear that the persons who are required to take out certificates to practise must do so although they may not be practising on their own account.

4.—The present duty on the appointment of a new trustee is \$10, and apparently there is no duty on the transfer of the property to the new trustee. The addition of the proposed new Heading No. 15A, which is the object of clause 6 of the bill, would have the effect of making the total duty on the appointment of a new trustee, and the transfer of the property to him, \$30. To avoid this, clause 4 proposes the addition to Heading No. 5 of words which will make the \$10 duty cover both the appointment and the transfer. In England the instrument pays 10/- as an appointment and 10/- in respect of the transfer. The latter duty is under section 62 of the Stamp Act, 1891. Similar words are included in the new Heading No. 43A which is proposed in clause 9 of the bill.

5.—Bonds to secure the payment or repayment of money, *e.g.*, an arbitration bond, pay \$20 at present. This seems too high. Under the Stamp Ordinance, 1891, they paid the same *ad valorem* duty as a mortgage, and this is the rule in England. Clause 5 adopts this rule, which had already been adopted in Ordinance No. 21 of 1921, for the case of bonds to secure the payment of estate duty.

6.—Clause 6 proposes to insert a heading which is adapted from the English Stamp Acts.

7.—Clause 7 is intended to make it clear that upon re-assignment of a security, whether the re-assignment be a single re-assignment of the whole security or consist of several separate re-assignments, the total re-assignment duty must amount

to 10 cents for every \$500 of the whole sum secured. It may happen that the mortgage is paid off in instalments, without any re-assignment taking place on the payment of any given instalment. This case is not met very clearly by the form of the present heading.

8.—The repeal of heading No. 43, which the regulations published on the 24th February, 1922, purported to effect, was of doubtful validity, as it subjected the assignment of trade marks to the *ad valorem* conveyance duty. Clause 8 is intended to make the stamp duty on an assignment of a trade mark (or trade marks) with the goodwill \$10. This was probably the intention of the original heading No. 43, because a trade mark cannot be validly assigned without the goodwill.

9.—Clause 9 imposes a stamp duty of \$20 on vesting orders other than vesting orders which fall within the definition of a conveyance on sale. An example of a vesting order which would come under heading 43A would be a vesting order on the appointment of a new trustee.

10.—Clause 10 proposes to effect an amendment which the regulations published on the 24th February, 1922, purported, with doubtful validity, to effect. It is arguable that the amendment is not absolutely necessary, because section 23 of Ordinance No. 8 of 1921 provides that a voluntary disposition *inter vivos* is to be charged as if it were a conveyance on sale, and Ordinance No. 21 of 1921 made on the duty on conveyances for sale \$1 for every \$100. It is, however, desirable to correct the present misleading heading No. 44, especially as it is also arguable that the duty on voluntary dispositions *inter vivos* is really governed by that heading and not by section 23 of Ordinance No. 8 of 1921.

Dangerous Goods Ordinance

THE ATTORNEY-GENERAL moved the second reading of the Bill intituled, An Ordinance to amend the Dangerous Goods Ordinance, 1873.

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

On the motion of the ATTORNEY-GENERAL, the Council went into Committee to consider the Bill clause by clause.

THE ATTORNEY-GENERAL moved the insertion, after clause 4, of a new clause 5, which appeared on a paper placed on the table. The amendment was approved. Subsequent clauses were re-numbered accordingly.

On the Council being resumed, the ATTORNEY-GENERAL moved the third reading, the COLONIAL SECRETARY seconded, the motion was carried and the Bill passed accordingly.

The Evidence Amendment Ordinance

THE ATTORNEY-GENERAL moved the second reading of the Bill intituled, An Ordinance to amend the law relating to evidence and to the administration of oaths.

THE COLONIAL SECRETARY seconded, and the second reading was approved.

On the motion of the ATTORNEY-GENERAL, the Council went into Committee to consider the Bill clause by clause. The Bill passed through the Committee stage without amendment, and, on the Council resuming.

THE ATTORNEY-GENERAL moved and the COLONIAL SECRETARY seconded the third reading; the motion was carried and the Bill passed accordingly.

The Perjury Ordinance

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

THE COLONIAL SECRETARY seconded, and the second reading was approved.

On the motion of the ATTORNEY-GENERAL, the Council went into Committee to consider the Bill clause by clause. The Bill passed through the Committee stage without amendment, and, on the Council resuming.

THE ATTORNEY-GENERAL moved and the COLONIAL SECRETARY seconded the third reading; the motion was carried and the Bill passed accordingly.

Industrial Employment of Children Ordinance

THE ATTORNEY-GENERAL moved the second reading of the Bill intituled, An Ordinance to regulate the employment of children in certain industries.

THE COLONIAL SECRETARY seconded.

HON. MR. CHOW SHOU-SON said—Sir, While my Chinese colleague and I are in sympathy with the Bill in its principle, we wish to bring to the notice of the Government a point arising out of this proposed legislation. The Bill, if passed as it now stands, would not only deprive some poor families of a part of their earning power, but would also make it more difficult for such poor parents as are earning their living away from home, to look after their children. Apart from this, there is also the possibility of the number of juvenile criminals being increased, if such children were allowed to run wild in the street. I therefore hold the view that it is the duty of the Government to do something for this class of children, not only for their individual good, but also for the welfare of the community. As there are neither reformatories nor industrial schools in the Colony to which children of this class may be sent to learn a useful trade or handicraft the only alternative that I can think of, is for the Government to establish, or assist in establishing, free schools for their education. I do not anticipate any difficulty in establishing this kind of school nor that the expense would be heavy. I do not suggest compulsory education, which has been considered to be impracticable here, but what I have in mind is the establishment of free schools under the direct charge of, say, the Confucian Society and the Tung Wah Hospital Committee (they are already doing fairly good work in this line) or any other educational body, with the financial assistance of the Government. A feasible scheme can easily be thought out. My colleague and I strongly recommend the matter to the serious consideration of the Government, and hope that before long the Government will make an announcement that the proposal will be adopted.

HON. MR. PARR—Sir, I rise to support the views expressed by the hon. senior Chinese member. I think my Unofficial colleagues will agree with me that the Government should make some arrangements on the lines suggested.

HON. MR. BIRD — Sir, I believe the community at large will welcome this Bill because it is high time that there was some legislation to regulate the employment of

children in this Colony. The community is responsible for the labour conditions that prevail here and, in particular, for the protection of women and children from any suspicion of sweating, and there can be no doubt that factory laws are a necessity in Hongkong. This Bill is a move in the right direction, but I think that some provision should be made for women inspectors as well as men in factories. As regards children under 12 —under which age they are not allowed to carry loads,—and those under 10,—which is the age limit for employment in factories,—I must admit that I do not know what is to be done with these children when their parents are at work. My Chinese colleague has suggested that schools should be provided where useful trades should be taught. That is an excellent suggestion, but is it practicable? It seems to me that these schools would have to be dotted all over the Colony, otherwise, I am afraid, the children would never reach them, because they have not the wherewithal to pay for transport. As regards the reformatory, there is one in the Colony already, but, I understand, it is not in use as a reformatory because there is no one to put into it. With these remarks, Sir, I beg to support the Bill.

THE ATTORNEY-GENERAL — I might mention that I have been informed that there is one small industrial school at present, which, I think, is conducted by the Church Missionary Society at Causeway Bay.

THE OFFICER ADMINISTERING THE GOVERNMENT—No, at Kowloon City.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT—I am glad to hear the remarks of the senior Chinese member on the principle of the bill, as well as the remarks made by the senior unofficial member (Mr. Parr), and by the honourable member on my right (Mr. Bird). Of course, it was realised by the Commission which sat on this question, and out of whose labour this Bill has been drafted, that some hardship would be caused if the employment of children under certain ages and in certain trades was forbidden by law, but anyone who examines the proceedings of the Commission will see, all through, that it recognised that that was the lesser of two evils: that unless legislation of this

kind was introduced those evils would continue, merely from economic pressure and from what we may call ancient custom. It has also come out, from time to time, not only in connection with the evidence given before the Commission, but also from reports made by persons interested, that children do accompany their parents—mothers principally—to places of employment, and, though they occasionally do a little work, they are really taken there in order that they may not be left at home without anyone to look after them. I think employers recognise the fact that that must be the case, or else it would inflict great hardship and lead to children being neglected in such a way as to be a public scandal. The question of making other arrangements for the children has been considered by the Government from time to time and, three years ago, I think,—quite that—the Government gave an assurance that they would give every consideration to the extension of educational facilities, either under Government auspices or under the auspices of various societies such the senior Chinese member mentioned, and either fix a small fee or make the schools free. Effect was given, partly, to that principle when the Confucian Society established, I think, 18 schools about three years ago, and the Government gave a contribution towards their maintenance. There are two difficulties: of course, one is forming suitable centres and finding suitable premises, and, two, finding sufficient funds. I can assure honourable members that the Government, when this legislation has been passed, will not neglect the question and will do everything in its power to extend educational facilities to the many thousands of children who are at present without them.

The late Mr. Lau Chu Pak, on more than one occasion, brought to the notice of the Government the scenes which occurred when new schools were opened: how the children came up in numbers far in excess of the accommodation, and it was a painful sight to see them turned away. The Government is not unmindful of the necessity of providing, as far as possible, for these children and I am sure that the Tung Wah Hospital Committee, the Kwong Wah Hospital Committee, the Confucian Society and other societies will do all in their power to help. We have had under consideration, for some time, the question of establishing a large industrial home and I think

that question will come up again very shortly. There are certain industrial schools in the Colony: there is one at the west end of the city and one being conducted on the same lines as the school formerly conducted by Miss Eyre at Causeway Bay, and now conducted at Kowloon City. No doubt the experience gained will be of assistance when we come to deal with something larger. I am perfectly sure that this Bill, if properly worked, will effect a very wonderful improvement in the industrial conditions in Hongkong. To all of us who have been for any time in this Colony it has always been a painful sight to see children carrying loads and to see very young children engaged for long hours in unsuitable industries. We have always known that there has been the difficulty of the poverty of the parents but I am hoping that the general improvement in industrial conditions in Hongkong will serve to mitigate any hardship caused by enacting this legislation. The elders of the family are now getting better wages. I may say, in this connection, that the Government is going to take up the subject of providing better homes for the working classes, and the arrangement provides for houses both for families and single labourers at lower rents and better conditions than at present. That, incidentally, will help the question of the expense of keeping a family in the Colony. I need not say any more on the subject, except to give an assurance to honourable members that if any difficulties arise out of the passing of this legislation they will be dealt with by the Government in as sympathetic and energetic a manner as possible.

The second reading of the Bill was then carried.

On the motion of the ATTORNEY-GENERAL the Council went into committee to consider the Bill clause by clause.

Sub-clauses 2 and 3 of Clause 3 were reversed in order. On clause 8, the Attorney-General moved that the "first day of January, 1923," be inserted.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT—The reason for leaving the clause open was that there was

a great deal of machinery to be got ready; it is thought that three months will be enough.

The amendment was approved and the Bill, having passed through committee, the Council resumed.

THE ATTORNEY-GENERAL moved and the COLONIAL SECRETARY seconded the third reading.

THE OFFICER ADMINISTERING THE GOVERNMENT—Before this Bill is passed, and before I put the third reading, I should like to express what I know is the feeling of the Council; that is the feeling of great appreciation towards the members of the Commission who drew up the report on which this Bill is founded. It makes great changes in the industrial life of the Colony—changes which most people have thought desirable for many years. I would like to mention, in connection with this work, the names of one or two very hard workers in this Colony. One is Mr. Wells, of the London Mission, who works among the Chinese and who has a great knowledge of Chinese life, and the other is Miss Pitts. I do not know how many years they have worked here, but I am sure the passing at this time of this Bill puts a seal so to speak on their work here in connection with the Chinese. Whatever we do in the future will, no doubt, supplement what has been done by this Bill. The Bill is the beginning, at any rate, of a proper recognition of the rights of both women and children in the industrial life of the Colony which has so long been considered desirable, but which has not hitherto been very noticeable.

The third reading was carried and the Bill passed accordingly.

The Zetland Hall Trustees Incorporation Ordinance

HON. MR. A. R. LOWE moved the second reading of the Bill intituled, An Ordinance to amend the law relating to the incorporation of the Zetland Hall Trustees.

HON. MR. A. O. LANG seconded, and the second reading was carried.

On the motion of the HON. MR. LOWE, the Council went into Committee to consider the Bill clause by clause On clause 2 MR. LOWE moved the insertion of the date "28th day of September, 1922," the statutory declaration, he said, having been made that day.

The amendment was approved and the Bill, having passed through Committee, the Council resumed.

HON. MR. LOWE moved, and the HON. MR. LANG seconded the third reading: this was carried and the Bill passed accordingly.

Adjournment

THE OFFICER ADMINISTERING THE GOVERNMENT — The Council stands adjourned till the 12th of October by which time the Government hope to have the first reading of the Supply Bill.

FINANCE COMMITTEE

A meeting of the Finance Committee was afterwards held, the COLONIAL SECRETARY presiding.

Cost of a Railway Bridge

The Officer Administering the Government recommended the Council to vote a sum of \$24,000 in aid of the vote Kowloon-Canton Railway. Special Expenditure, Construction, Bridge No. 7.

THE CHAIRMAN—This is the bridge over the new main road from Kowloon City to Samshuipo. The vote is \$61,000, but that was on a dollar estimated at 3s. 6d A large amount of steelwork was ordered from England; it was rather heavier and more substantial in design. The total cost is now \$90,000. The extra \$24,000 is required for this year and the remaining \$5,000 will be put in the estimates next year.

The vote was approved.