

20TH SEPTEMBER, 1923.

PRESENT:—

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

HIS EXCELLENCY THE OFFICER IN COMMAND OF 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. C. McI. MESSER, O.B.E. (Colonial Treasurer).

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

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

HON. MR. H. T. CREASY (Director of Public Works).

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

HON. MR. P. H. HOLYOAK.

HON. MR. R. H. KOTEWALL.

HON. MR. CHAU SIU-KI.

HON. MR. A. O. LANG.

HON. MR. A. R. LOWE.

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

Minutes

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

Finance

THE COLONIAL SECRETARY, by command of H.E. the Governor, laid upon the table Financial Minutes Nos. 78 to 80, 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 Governor, laid upon the table the report of the Finance Committee (No. 9) and moved that it be approved.

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

Statute Laws (Proof and Preservation) Ordinance

THE ATTORNEY-GENERAL moved the first reading of a Bill intituled, An Ordinance to provide for the preservation of certain portions of the Statute Laws (New Revised Edition) Ordinance, 1911. He said: An Ordinance which was passed last week provided for the publication of a new edition of the Ordinances, and repealed Ordinance No. 19 of 1911, which provided for the publication of the last revised edition of the Ordinances—the one at present in use. Most of the provisions of that Ordinance are, of course, now spent, but there are some provisions which require to be preserved, either permanently or temporarily, and they are preserved in this Bill. The permanent provisions are those dealt with in clause 3, which refers to the questions of the proving of Ordinances, and searches of the original Ordinances, matters which seldom occur. The temporary provisions are contained in clause 4. The main provision therein is one which provides that, in the intermediate period between the coming into force of the Ordinance passed last week and the coming into operation of the new revised edition now being prepared, what I may call Mr. Alabaster's edition will continue to be the sole and proper Statute Book of the Colony.

THE COLONIAL SECRETARY seconded, and the first reading of the Bill was carried.

Fire Brigade Ordinance

THE ATTORNEY-GENERAL moved the first reading of a Bill intituled, An Ordinance to regulate the Fire Brigade. He said: The present Ordinance, which was passed

in 1866, contemplated a voluntary, though not necessarily unpaid, force. It also contained certain inconsistencies and unnecessary repetitions. The force has now been reorganised and is a whole-time force, and some of the terms used in connection with the force have been changed. This Bill is practically a formal one: it is intended to make the law agree with the present conditions of the Fire Brigade.

THE COLONIAL SECRETARY seconded, and the first reading of the Bill was agreed to.

Public Health and Buildings Ordinance

THE ATTORNEY-GENERAL moved the first reading of a Bill intituled, An Ordinance to amend further the Public Health and Buildings Ordinance, 1903. He said: This Bill deals only with the public health part of the Public Health and Buildings Ordinance, and I think the amendments which it makes, though desirable, are not very contentious and not of great importance.

The first group of amendments is dealt with in clauses 2, 4 and 8, which all deal with the question of offensive trades. Clause 2 amends the definition of "offensive trade"; clause 4 enlarges the by-law-making power with regard to offensive trades; and clause 8 deals with the question of when an offensive trade is a nuisance within the meaning of the Ordinance.

First of all, with regard to the definition: the present definition enumerates six particular offensive trades and then adds a general clause, "any other noxious or offensive trade or business or manufacture." The by-laws made under the Ordinance contain a much longer list of offensive trades, and it seems desirable that the Ordinance and the regulations should formally agree in the list of particular offensive trades given. A greater objection to the definition in the present Ordinance is that it contains no indication that the offensiveness of an offensive trade may be connected with the health of the persons engaged in the trade. The suggestion rather is that the trade is offensive only as regards persons outside and not as regards workers in the trade. The definition proposed by the Bill is divided into three parts. The first part contains the list of offensive trades, which is at present contained

in the by-laws; the second part provides that the term "offensive trade" shall include any trade, business or manufacture which is carried on in such a way as to be dangerous or injurious to the health of the persons engaged in it, or to be dangerous or injurious to the health of persons residing in the neighbourhood; and the third part is "any other noxious, offensive, noisome or unhealthy trade, business or manufacture, whatsoever."

Clause 4 deals with the power of the Board to make by-laws with regard to offensive trades. The new form of the paragraph to be inserted in section 18 is intended to make it clear that the Board can prohibit the carrying on of any offensive trade without a license and that licenses are revocable. Conditions, of course, may change as time goes on and a locality which may be suitable at one period for carrying on an offensive trade may become unsuitable. An alteration in the definition made by clause 2 will have the effect of giving the Board power to make by-laws, if necessary, aimed at the preservation of the health of persons engaged in the trade as well as of persons not engaged in the trade.

Clause 8 provides that an offensive trade carried on without a license is a nuisance. The present paragraph makes every offensive trade a nuisance, even though carried on with a license, which, of course, is not correct.

Clause 5 of the Bill deals with that part of section 16 of the principal Ordinance which relates to the by-law-making power of the Board with regard to the importation of cattle, swine, sheep and goats. The proposed new paragraph extends this by-law-making power to the case of horses and other equine animals. The main object of the amendment is to acquire power to take steps to prevent the introduction of glanders into the Colony. It also gives the Board some wider powers than at present with regard to the examination and segregation of imported animals.

Clause 11 amends the law with regard to compensation for animals slaughtered by order of the Board. The present law is defective in two respects. It applies only to cattle, and not to animals generally, and gives no power to withhold compensation for animals imported in a

diseased or infected condition. The provisions now proposed to be inserted in the Ordinance are based on the English Diseases of Animals Act, 1894. They make the amount of compensation depend on the nature of the disease and give power to withhold compensation if the owner has been guilty of an offence in connection with the importation of the animal, and provide that as a rule no compensation shall be paid for any animal which was imported in an infectious condition.

Clause 14 deals with the sections of the principal Ordinance relating to cemeteries and exhumations. They amend and recast the present sections; no very serious changes are made but a certain amount of unnecessary verbiage is eliminated. Urn cemeteries, which do exist, are recognised for the first time, the list of authorised cemeteries is revised, and a sub-list is added of authorised cemeteries which have been closed. The Governor is given power to remove a body from any grave in any place, for public purposes. I have given a case in the "Objects and Reasons" where that power may be very useful. The Head of the Sanitary Department is given authority to move any body, or the remains of any body, if buried or deposited without permission elsewhere than in a cemetery. The Governor is given power to issue a permit for the removal of a body or remains from a place other than an authorised cemetery, even though the actual legal personal representative, the next of kin, cannot be ascertained. At present there is no power to do that. The other amendments proposed to be made by the Bill are more or less formal or not of very great importance. I do not think I need refer to them at this stage. I beg to move the first reading.

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

Dangerous Drugs Ordinance

THE ATTORNEY-GENERAL moved the first reading of a Bill intituled, An Ordinance to regulate the importation, exportation, manufacture, sale and use of dangerous drugs. He said: This Bill is intended to give effect to the International Opium Convention which was signed at The Hague on the 23rd January, 1912. That Convention dealt both with opium and other drugs. Forty-two states took part in

the Conference and the Convention was signed by all but two: Serbia and Turkey did not sign. The great war occurred before the Convention had been fully ratified. Germany was one of the nations which did not ratify it, so it did not come into force before the war. The Treaty of Versailles, by Article 295, provided that the Convention should be ratified and that the contracting Powers signing that Treaty should enact legislation to carry out the Convention. This Bill is based on the English Dangerous Drugs Act, 1920, and the English Amendment Act of 1923, so far as those Acts relate to dangerous drugs. The question of opium is being dealt with separately. We already have considerable control in the case of opium, but a Bill is being drafted to consolidate and amend the law relating to opium, and the new Bill will give still greater powers with regard to opium. This Bill relates to dangerous drugs other than opium.

The delay in carrying out the terms of the Treaty of Versailles and applying the Convention may seem long, but we had considerable powers already and the trade was not unregulated. No doubt, however, we require much wider powers.

A good deal of the practical legislation occurs in the regulations, a draft of which was published with this Bill. These regulations are based, almost word for word, on the English regulations and I think it is an advantage—though the drafting is not always what it might be—to have our regulations in the same form as the English regulations. The Bill is largely based on the English Acts, but there are certain provisions which have been adapted from local Ordinances. The general intention of the Ordinance and regulations is that no one shall manufacture, import, export, supply, or possess any of the drugs to which the Ordinance applies without some authority under the Ordinance. Transit cargo—cargo which passes through the Colony on one ship without any transshipment—will not be subject to the Ordinance, provided that it is fully reported and that the ship which brings it in comes straight into the harbour and when it leaves goes straight out of the harbour, away from the Colony altogether. Clause 8 provides that no person is to send by post, except by license, any drug to which the Ordinance

applies, and it gives the Postmaster-General power to detain and open any parcel suspected of containing any drug or anything that would be evidence of an offence under this Ordinance.

The penalties are severe. The penalty for an offence tried by a magistrate is \$2,500 and imprisonment for twelve months, and on conviction on indictment the convicted prisoner is liable to a fine of \$10,000 and imprisonment for any term not exceeding ten years. These penalties are high, but I think they are none too high.

Certain alterations have been made in the Bill since it was published in the *Gazette*. I think that I ought to refer shortly to them and point out where they occur.

In Clause 2, a definition has been inserted of the word "person," in order to make that term include "firm," so that if the only evidence, for example, of the possession of dangerous drugs, is evidence against a firm, it would be possible to proceed against the firm and impose a fine on the firm. Cases of that kind do occur, sometimes, where it is not possible to bring an offence home to any particular individual. That definition is supplemented by sub-clause (5) of clause 11 which provides that where a person convicted of an offence under the Ordinance is a firm, every partner in the firm and every person concerned in the management of the firm shall be guilty of the like offence unless he proves that the act or omission constituting the offence occurred without his knowledge or consent. That, I think, will not be any burden on innocent persons and will be very useful in the case of guilty persons.

There is an unimportant addition made at the end of sub-clause (2) of clause 2, providing that the certificate referred to in that clause shall be admitted in evidence on production by the Superintendent.

Sub-clause (1) of clause 3 has been altered in order to strengthen the prohibition against importation and exportation. It provides now that not only shall it be an offence to import or export any drug to which the Ordinance applies, but it shall be also an offence to do any act preparatory to or for the purpose of importing or exporting any such drug. That attempt to catch preparatory acts is based on the definition of the word "export" in the

present Opium Ordinance of 1914, and is intended to prevent any possible discussion as to whether the particular acts which have been proved against a defendant have gone sufficiently far to amount to an attempt in law. The law on the subject of "attempt" is rather technical and this prohibition of preparatory acts will no doubt get some cases which the prohibition of attempts proper would not catch.

Paragraph (d) of sub-clause (4) of clause 3 is new, as also are the words at the end of paragraph (e). They provide that, in order that transit cargo may be free from the restrictions of the Ordinance, the ship when it leaves the harbour of Victoria must go direct out of the Colony. That is to prevent any possible case of a ship hanging about to dump dangerous drugs outside the harbour so that they may be picked up by persons in league with the smugglers here. Paragraph (c) of the same sub-clause has been slightly altered so as to require the report to be in writing and to be made at the Central Police Station, and not at any Police Station, if the Superintendent's office is closed.

There are some unimportant alterations to clauses 4, 5, 6 and 7.

A new sub-clause has been added to clause 9, which perhaps is the most important change made since the Bill was printed and published in the *Gazette*. The sub-clause provides that every person who is proved to have had in his possession or under his control any document of title, such as a bill of lading, relating to anything whatsoever containing any drug to which this Ordinance applies shall, until the contrary is proved, be deemed to have been in possession of such drug and to have known the nature of such drug. That is intended to deal with the case where drugs are brought into the Colony under a false description. It happens, sometimes, that a cargo may be described, for example as "sardines," and when the case is opened, the top layer does consist of tins of sardines, but the lower layers consist of tins of heroin or cocaine. This clause simply throws on the person holding the documents of title the onus of proving that he did not know that the package contained the drug, and did not know the nature of the drug. I do not think that that will throw any undue onus on innocent persons.

Clause 10 is new. It is based on a somewhat similar provision in the Opium Ordinance, and provides that a certificate signed by the Superintendent as to the character, quantity or market value of any drug to which this Ordinance applies shall be conclusive evidence as to such character, quantity or market value.

I can only hope that this Bill will help to check to some extent the trade in dangerous drugs. I beg to move the first reading.

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

Fraudulent Transfers of Businesses

HIS EXCELLENCY—With the approval of the Council, it is proposed to defer again the second reading of the Bill intituled, An Ordinance to prevent certain Fraudulent Transfers of Businesses.

Prison Ordinance Amendment Bill

THE ATTORNEY-GENERAL formally moved the second reading of the Bill intituled, An Ordinance to amend the Prison Ordinance 1899.

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

The Council resolved itself into Committee to consider the Bill clause by clause. No amendments were made, and on Council resuming the Bill was read a third time and passed into law accordingly.

Public Places Regulation Ordinance

THE ATTORNEY-GENERAL moved the second reading of the Bill intituled, An Ordinance to amend the Public Places Regulation Ordinance, 1870, and to repeal the Queen's Recreation Ground Ordinance, 1898, and the Recreation Grounds Ordinance, 1909.

THE COLONIAL SECRETARY seconded and the motion was agreed to.

The Bill having passed through the Committee stage without amendment,

THE ATTORNEY-GENERAL, on Council resuming, moved the third reading of the Bill.

THE COLONIAL SECRETARY seconded,

and the Bill was duly passed into law.

The Chinese Recreation Ground

THE ATTORNEY-GENERAL moved the second reading of the Bill intituled, An Ordinance to provide for the management of the area known as the Chinese Recreation Ground and the expenditure of the revenue derived therefrom, and to repeal the Recreation Grounds (Amendment) Ordinance, 1914, and the Recreation Grounds Amendment Ordinance, 1922.

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

The Bill passed through the Committee stage without amendment and on the Council resuming it was read a third time and passed into law.

The Adjournment

H.E. THE GOVERNOR—The Council will adjourn till this day week at 2.30. I may say I hope the Estimates for next year will be ready for the week after that. We want to get all minor matters out of the way first.

FINANCE COMMITTEE

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

Public Works

The Governor recommended the Council to vote a sum of \$200 in aid of the vote Colonial Secretary's Office, Special Expenditure, Document Presses.

THE CHAIRMAN — The Public Works Department have removed from the floor of the Colonial Secretariat to the new building opposite, and these document presses are needed for the increasing number of records in the Colonial Secretary's Department.

Approved.

Typhoon Damage on the Railway

The Governor recommended the Council to vote a sum of \$15,000 on account of Kowloon-Canton Railway, Special Expenditure, Typhoon of 18th August, 1923.

THE CHAIRMAN—This vote contains a great variety of items. The main one is \$7,000 odd for the reconstruction of the pier at Taipo. The whole of the woodwork was taken off. Many roofs were more or less damaged: in most cases the roofs were of French tiles which, however, stood the typhoon remarkably well. They have the great advantage that they can be repaired from within and require no scaffolding or mortar. These were all repaired within two days of the typhoon. One of the old stores buildings at "Blackhead's" collapsed, a motor trolley shed was destroyed and 13 signal arms were either torn off or bent double. Practically the whole of the fencing from Kowloon to Hunghom went down which (to quote a report) resulted on Saturday afternoon in "the entire adult population of Hunghom, and most of the children, swarming in to collect wreckage coming ashore and incidentally to clean up the P.W.D. bathing sheds and bamboo fencing, of which not so much as a palm leaf is left." There were minor damages, and at Hunghom the quarters were badly unroofed. The total outlay is \$15,000.

HON. MR. A. O. LANG—This railway is becoming a very expensive item.

THE CHAIRMAN—I am afraid it is. Of course it is mainly due to the trouble over the border.

HON. MR. LANG—We are pouring money into it, now.

THE CHAIRMAN—Yes, we have to keep it efficient in the hope that some day the

Chinese section will also be efficient. If we could run right through it would be very much better.

HON. MR. LANG—It is only a few weeks ago that we voted a sum for more wagons, because the Chinese section could not maintain their proportion. I hope some arrangement has been made whereby later on we may recover some of this from the Chinese.

THE CHAIRMAN—I am afraid I cannot hold out much hope of that. We have a very large claim maturing against them already. They are under liabilities for the train service not running properly, and of course the running has been interrupted during a considerable part of this year. However, I think it would be very foolish to abandon our section in any way. We must keep it up-to-date.

HON. MR. LANG—We cannot very well abandon it now.

The vote was approved.

Tower for the Fire Brigade

The Governor recommended the Council to vote a sum of \$2,000 on account of the vote Public Works, Extraordinary, Kowloon, Buildings, Tower on Railway ground for the Fire Brigade.

THE CHAIRMAN—This is a small tower for drying hose and for drill practice.

Approved.