

13TH MARCH, 1924.

PRESENT:—

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

HIS EXCELLENCY THE GENERAL OFFICER IN COMMAND OF THE TROOPS, MAJOR-GENERAL SIR JOHN FOWLER, K.C.M.G., C.B., D.S.O.

HON. SIR CLAUD SEVERN, K.B.E., C.M.G. (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. H. T. CREASY (Director of Public Works).

HON. MR. A. E. WOOD (Secretary for Chinese Affairs).

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

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

HON. MR. P. H. HOLYOAK.

HON. MR. A. O. LANG.

HON. MR. A. R. LOWE.

HON. MR. R. H. KOTEWALL.

HON. MR. CHAU SUI-KI.

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

Minutes

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

The Mosquito Peril

On H.E. THE GOVERNOR inquiring whether there were any notices of motions or questions,

HON. MR. POLLOCK said:—

SIR,—I beg to give notice that I shall put the following question at the next Meeting of the Legislative Council, namely:—

"With a view to check the breeding of mosquitoes, will the Government pass a regulation making it compulsory to cut off all bamboo scaffolding immediately above the joint, so as to prevent a receptacle for standing water from being created."

Finance

THE COLONIAL SECRETARY, by command of H.E. The Governor, laid on the table the Report of the Finance Committee (No. 8) and moved that it be adopted.

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

Papers

THE COLONIAL SECRETARY, by command of H.E. The Governor, laid on the table the following papers:—

Regulation under section 25 (4) of the Merchant Shipping Ordinance, 1899.

Regulations under section 17 of the Piracy Prevention Ordinance, 1914.

Supreme Court Rules

THE COLONIAL SECRETARY, by command of H.E. The Governor, also laid on the table Rules made by the Chief Justice under section 5 of the Judgments (Facilities for Enforcement) Ordinance, 1921, and moved that they be adopted by the Council. These rules, he said, were all very technical, and he would ask the hon. Attorney-General to second the motion and give any explanation that he might think necessary.

THE ATTORNEY-GENERAL, in seconding the motion said: There rules were made under the Ordinance which provides for the enforcement in Hongkong of judgments made by the Courts in England. The rules are based on the English rules

and have been considered by the senior Master of the Royal Courts of Justice in England.

The Rules were approved by the Council.

The Military Lands Award

The next business on the agenda was the further consideration of the following resolution which was moved and seconded at a meeting of the Council on February 7th.

"Resolved that this Council approves the acceptance of the award of Sir John Hubert Oakley dated the second day of November, 1923, in respect of certain lands situated in the Colony of Hongkong now vested in the Army Council, as set out in Sessional Paper No. 1 of 1924, and recommends that steps be taken to give effect to it as soon as possible."

H.E. THE GOVERNOR—The resolution with regard to the military lands having been moved and seconded at a previous meeting of the Council, it is open for any hon. member who desires to do so, to make any comments on it.

HON. MR. H. E. POLLOCK, K.C.— Sir,—I have been asked by my Unofficial colleagues to address this Council upon the resolution moved by the Government for the acceptance of Sir John Oakley's award, and what I am about to say represents the considered views of all of us.

In his address to this Council on the 7th ultimo, Mr. Fletcher showed that this Colony was, on Sir John Oakley's figures, making by no means a good bargain, having regard to the probable loss of very many years' interest in the laying-out and disposal of all the military lands, proposed to be taken over, and owing to the boom price of land during Sir John Oakley's visit here.

Accordingly, bearing these facts in mind, whilst we are not prepared to dissent from the proposed resolution, we desire to lay the following matters before the Government in order to see whether it may not be possible to obtain some alleviation from the heavy figures set down in Sir John Oakley's award-figures, which were arrived at on the very crest of a tremendous land boom, a boom far exceeding in intensity anything of the kind previously experienced in this colony.

The first point which we desire to make, in support

of our above plea of alleviation, is that a large proportion of these lands, which we are now seeking to take over, were conveyed to the Military in the early days of this Colony, as a free gift and solely for military purposes.

Under such circumstances, it appears clear that, upon the legal authorities relating to compensation, the Colony is under no obligation whatever to do anything more than to *reprovision* the military—that is to say, to provide the same number of officers and men with equally good accommodation on new sites.

In "Cripps on Compensation," 5th Edition (1905) at p. 118, the legal principle applicable to such a case is stated as follows:—

"Such a sum is assessed as will enable the owner to replace the premises or lands taken by premises or lands which would be to him of the same value."

And in the case of *London School Board v. South Eastern Railway Company*, 3 T.L.R. 710 (where land required by a School Board, for the purposes of building a school, had been taken compulsorily) Jessel M.R. said:—

"The school ought not either to gain or lose by acquiring a new site."

Applying the latter words to the present case, it may be pointed out that, inasmuch as the cost of reprovisioning the displaced military officers and men cannot conceivably exceed 10 million dollars at the very outside, the Military would, on the Oakley valuation, "gain" a very great deal "in acquiring a new site." It may also be pointed out, incidentally, that the Military authorities will also gain considerably in having new buildings in the place of old ones.

Reference may also be made on the above point to the modern Privy Council case of *Corrie v. McDermott*, 1914, A.C. 1056, the headnote of which case reads as follows:—

"The Government of Queensland granted certain land to the trustees of the Acclimatisation Society, and with a provision that the Government might

resume possession, paying the value of the land. The trustees had power by statute to sell the land, but only to the local authority or to a certain Agricultural Association, the proceeds to be invested and the income applied for the purpose of the Society. It was held that, upon resumption of land by the Government, the trustees were not entitled to be paid the unrestricted freehold value of the land, but, in accordance with the ordinary rules as to compensation, the value of the land to the trustees under the conditions upon which they held it."

The second point which we wish to make is that, on the actual wording and natural interpretation of the Circular Despatches relating to Military lands, both parties to the 1922 valuation, *i.e.*, the local Colonial and Military authorities, were legally bound by it.

For the purpose of making this latter point clear it will suffice to refer to the following extract from the Military Land Circular Despatch, which was quoted by Mr. Fletcher in his speech to this Council on the 7th ultimo:—

"Valuation of lands or buildings, when required under the circumstances above mentioned, should be made by the Colonial and Military Authorities conjointly, or, *in the event of their disagreeing*, by an independent and competent surveyor, to be chosen by agreement between the *Home* and Colonial Government, whose report should be final."

The meaning of the above sentence is clear.

"The Colonial Authorities" means the Colonial Authorities here on the spot, and "the Military Authorities" means the Military Authorities here on the spot, just as "Colonial Government" means the Colonial Government here in Hongkong, as distinguished from the Home Government, which is also referred to in the above extract.

Accordingly, it follows that the valuation of the military lands, as arrived at between the Colonial Government and the local Military authorities in 1922, being a valuation made by them "conjointly," was a binding valuation, and any further reference to an "independent and competent surveyor" was clearly outside of the language of the Circular Despatch, which contemplated a reference to "an independent and competent surveyor" solely in the event of a disagreement between the Colonial and Military authorities.

Moreover, we understand that, under similar circumstances in the past, the War Office has, as we contend rightly upon the true construction of the Circular Despatch, left matters of valuation to be settled between the local Colonial and Military Authorities, and we understand that the only reason which the War Office has put forward, in the present instance, for not adhering to the same interpretation of the Circular Despatch is that the present transaction was too important to be governed by a valuation arrived at locally.

With deference, such a reason seems to us to be an inadequate one for departing from figures which were carefully arrived at, after full investigation and inquiry and with special knowledge of local conditions, between the Colonial Government and the local Military authorities; and we, therefore, regard the subsequent action of the War Office in forcing this Colony (in defiance of the above-quoted words of the Circular Despatch, and notwithstanding the absence of any disagreement between the local Colonial and Military Authorities as to the valuation of the lands) to lay its case before an "independent and competent surveyor," as umpire, as being both arbitrary and irregular.

Such arbitrary action by the War Office threatens to involve this Colony in the payment of over $5\frac{1}{2}$ million dollars extra (*i.e.*, \$17,000,000 against about \$11,300,000) out of our funds, and will make a serious extra inroad on our financial resources, depriving us of almost all the Reserves which we have been accumulating for some years past.

The Unofficial Members of this Council cannot view such a state of affairs with equanimity, especially having regard to the heavy commitments which lie before us in the near future of some millions of pounds on the Fitzmaurice Harbour Scheme and seventeen to eighteen million dollars on the Shingmun Waterworks scheme, besides other large expenditure for reclamation and building and general

development, to meet the urgent needs of a rapidly increasing population.

Fortunately, a very simple, reasonable, and effective remedy lies to hand, namely, the reference of the above two points to some high legal authority on Compensation Law, and, in this connection, we would venture to suggest that Lord Par-moor would be a most suitable arbitrator, if he would kindly consent to act.

Two more points remain to be dealt with:—

(1) It is most serious from the Colony's point of view that the Military is to reserve considerable areas which have the effect of cutting off one part of the Military lands which it is suggested that we should resume from the other part, thereby rendering those lands much more difficult to develop on the best and most paying lines, *e.g.*, by driving roads parallel to the Queen's Road. The reserved areas in question are the Detention Barracks (the Western part of which is badly required for the much-needed widening of Garden Road) and the Headquarter House and grounds, and the married quarters, etc., to the south of such grounds. These reserved areas were valued by Sir John Oakley at a little over \$3,000,000.

As regards the Detention Barracks, we understand that whilst they are temporarily being retained as a possible site for Headquarter Offices, the Military Authorities have expressed their willingness that such Offices should be built on some other part, near Headquarter House, of the Military Lands which are not included in Sir John Oakley's award.

(2) Next there is a point which we should like to have cleared up, in connection with recital (i) in Sir John Oakley's award which states that "if during the period of ten years from the date of the award, and before completion of the transfer, unforeseen circumstances shall in the opinion of the Army Council render it desirable or expedient to withdraw any one or more complete block or lot or blocks or lots, then and in such event only the Army Council shall be free and at liberty to withdraw such one or more complete block or lot or blocks or lots." We should like some assurance that the above recital is only intended to cover unforeseen circumstances rendering it necessary, *as a matter of military urgency for the defence of this Colony*, that that clause should be brought into force.

In conclusion, whilst we are driven by sheer force of circumstances (*i.e.*, by this Colony's urgent need,

owing to the great increase of population and the consequent necessity for more room for residential and commercial expansion, for the removal of the Military Forces from the most central positions in the heart of the City of Victoria and the Kowloon Peninsula) to assent to the acceptance of Sir John Oakley's award, we do so under protest because we feel that the first two points, suggested by us, ought to be referred to arbitration.

We would add that there appears to be no reason why such a reference should, in any way, either delay the carrying out of any of the agreed transfers of military lands or the selection of some site other than the Detention Barracks for the erection of Headquarter Offices.

HON. MR. P. H. HOLYOAK—Sir, I rise to endorse the views expressed by my colleague, the hon. Senior Official Member. They represent, as he stated, the carefully considered views of the Unofficial Members who have repeatedly met to consider Sir John Oakley's Award. In endorsing them I am glad to say that it is our unanimous opinion, as it is also, we believe, the unanimous opinion of the Colony, that the valuation figures of the Award are unwarrantably high, very much higher than the Colony should be called upon to pay. At the same time, and with due regard to what my hon. colleague has just stated, we do not wish this Award to be unduly delayed. I should add that, as the representative of the General Chamber of Commerce, this matter has been considered by them on two occasions, and they are also of the view that the opportunity should be taken to settle this matter once and for all, as soon as possible.

HON. MR. KOTEWALL—The Hon. Mr. Chow Shou Son, before he left for England, and myself consulted the General Committee of the Chinese Chamber of Commerce on this subject. The Chamber is one of the most representative Chinese bodies in the Colony, and the Committee agreed with us that in view of the imperative and urgent needs of the

Colony, the Award should be accepted but they urged that strong representations should be made with regard to the several points dealt with by the Hon. Senior Unofficial Member, with a view to obtaining some alleviation, not so much as a legal right, but on grounds of that ordinary fairness and equity which the Chinese community expect from the Home Government. The remarks of the Hon. Mr. Pollock have therefore the endorsement of the two Chambers of Commerce as well as the Unofficial Members of this Council.

HON. MR. A. R. LOWE—Sir, I rise to support the Resolution. In the city of Manchester—in which I was born—there is a saying that "if tha wants out for nowt, do it for the sel." We cannot get these lands back for nothing, for the War Office is legally in possession, but, in spite of the heavy price we are asked to pay, I think the Colony, in time to come, will get its money back with good interest. It is no great hardship now for us to part with money—which the Official majority has insisted on hoarding up—perhaps luckily for our children, but unluckily for us. Anyway, we have the money ready in London, and I am glad to think it can be spent in Hongkong to advantage—for, as the Yorkshire people say, "Money is just like muck, no good till spread." In my opinion we need the Army and Navy here for the safety and convenience of Britishers and Chinese alike, and they must be made comfortable—even if the reprovisioning is on a better and larger scale than their old quarters call for. I am in agreement with the remarks of the Senior Unofficial Member in his endeavour to obtain a reduction in the price, but as we agreed to allow Sir John Oakley to value the lands, I agree, for celerity's sake, to the terms, and if there is any truth in "what's lost by honesty is won back by stratagem," I hope the Honourable Member will live to win.

H.E. THE GOVERNOR—I should like to express my concurrence in practically everything said by the Hon. Mr. Pollock, but I am afraid we must look at the question from a rather different angle. I do not pretend to believe otherwise than that the War Office are driving a hard bargain with us, and, of course, I will transmit to the Secretary of State, for his consideration, the views which have been put forward by hon. members in regard to the possibility of a reduction on legal and equitable grounds of the figures at which Sir John Oakley has arrived. At the same time, I am bound to say that I do not think much is to be gained by that course. The fact of the matter is that the War Office are and have been, for many years, in

possession—acquired possibly in somewhat devious ways in some respects—of land which we must have. We cannot evict them by force, and the question arises: How much is it worth our while to pay in order to relieve ourselves of the incubus which is blocking the prosperity of the Colony? The price which Sir John Oakley puts on the removal of the incubus is, in my opinion, an exceptionally high one, but on the other hand you must remember that Sir John Oakley was an entirely independent person, who stands admittedly at the head of his profession, and I think it would be unwise of me to state with too much vehemence that his figures are wrong. On the whole he is more likely to be right than I am. But assuming that his figures are too high, assuming, not to put too fine a point on it, that we are being blackmailed, we must consider whether it is worth our while to pay black-mail in order to get the military out of the central sites of the Colony. I submit that it is.

I think there has been some slight misunderstanding with regard to the actual money involved, because hon. members have spoken as though we were going to hand over at once these large sums to the Military. That is not the case. What we have undertaken to do is to reprovision the Military; that is to say to find them suitable accommodation in exchange for the quarters we are taking away from them, and I think hon. members will agree that standards of comfort having gone up considerably since these quarters were built it is perfectly reasonable to expect that we shall provide accommodation in some respects at least superior to the old. I do not think hon. members will grudge any expenditure in that respect.

The Hon. Mr. Pollock said that it was inconceivable that the reprovisioning should exceed \$10,000,000. I have not sufficient data before me to discuss the question, but assuming that the cost of reprovisioning does not exceed 10 million dollars and that the cost of the military lands according to Sir John Oakley's estimate amounts to nearly double that sum,

we are not going to pay over the difference in cash. It remains in an account which the War Office may draw upon to meet their future needs. But in order that future needs may be met it is necessary that these needs should come into existence and it seems to me improbable, if the Garrison is now adequately reprovioned, that it will be necessary in the near future to provide the additional sum, and I think the greater part of the difference will remain merely as a book entry to our debit for many years to come. The question of that debit may be regarded with equanimity. If it should become necessary to increase the Garrison in the future the sum standing to our debit would be drawn on to provide additional buildings and we might then have to pay out the whole sum. But, assuming that no such bargain as this had been made and that there was no account at all, I think that it is obvious that when the necessity for increasing the Garrison arose we should have to pay for it. We cannot ask the British taxpayer in present circumstances to bear the cost of accommodation for a largely increased Garrison and the War Office would undoubtedly say to us: "This is the Garrison which is necessary for your safety; we cannot pay for its accommodation. Are you prepared to do it, or will you retain a Garrison which is insufficient for the Colony's safety." I have no doubt the answer of the Council would be that we would pay. I think therefore that in assuming this liability we are not assuming a liability greater than in any case we should have to undertake. A further point is that it is not as if we were paying out a large sum to the War Office. Very large sums are going to be expended, but they are going to be expended in this Colony. As the Hon. Mr. Lowe said, it is all to the good of the Colony.

I think, therefore, that there are redeeming features in the situation. I think we are paying a very large price but I think it is wise to pay it. The expenditure will not all be incurred at once. It is true we shall be out of our money or part of the money for a considerable time, but by the time the full amount of expenditure has been met we shall, no doubt, have been able to dispose of a considerable amount of the military lands and shall, therefore, have got back a good deal of money before we have to spend the whole of it. I do not think there should be any great difficulty in financing this large scheme. Probably the existing balances will enable us to provide what money is necessary before money begins to come in from the sale of the land, and, if not, my suggestion is that we should get money on short term bills maturing somewhere about the time we expect to sell the rest of the land.

The Hon. Senior Unofficial Member raised other questions, which the General will be able to deal with better than I am. I can only say in conclusion that, after spending considerable time dealing with the matter, after writing many despatches—which I should like to produce to this Council. I am unable to do so, but I can assure you that I have placed the Colony's point of view very forcibly before His Majesty's Government—having, I say, fully considered these things, I am strongly of opinion that the bargain is one which the Colony should accept, and I think that in the future it will be very pleased to reflect that it has taken this opportunity of removing an obstacle to progress.

H.E. MAJOR-GENERAL SIR J. FOWLER—There are one or two points which have been raised on which I should like to say a few words. First of all, it has been said that the Colony has made a bad bargain, and that these are "boom" prices. It entirely depends on the point of view. By the time that the Colony is going to dispose of this land, prices will possibly have risen, and they will therefore be getting the land at a lesser valuation than it will then be worth. His Excellency the Governor has dealt with the reprovioning and the financial question the Hon. Member referred to. A statement has been made, which I have already spoken on, that there was an understood agreement between the War Office and the Colony as to the valuation of the lands which was made in the year 1920. There were certain recommendations made to the War Office in regard to that, but it never amounted to a practical agreement. As to another question that has been raised, it has never been contemplated, so far as I know, that the term "military authorities" in the Circular Despatches meant the military authorities here on the spot. I think from the context that it is fairly clear that it is the War Office that is meant. We recommended certain prices for the land for the War Office to ac-

cept them, but I do not think that the General Officer Commanding has ever been in a position to definitely close any bargain without the approval of the War Office. With regard to the question of the areas reserved by the War Office and the difficulty of access to the rear of the Military lands, of course, we here will endeavour, as far as possible, in the layout of these lands, to meet the wishes of the Colony as to roads, and access, and so on. We always wish to carry on with the utmost goodwill with the authorities of the Colony and I hope that will always be so in the future. We cannot get on here without the goodwill of the Colony. In regard to the clause in Sir John Oakley's award that says that lots may be withdrawn, if the War Office so desires, I think the War Office are simply safeguarding themselves. It has always been a condition in all these negotiations that the War Office would not complete the bargain until the actual time came, because it is so hard to look into the future. I am sure they will endeavour, as far as possible, to carry out their part of the bargain. With regard to new provision, I think His Excellency has fully dealt with it. As to the reserved area I referred to just now—the Detention Barracks, Headquarter House and grounds, and the married quarters—I believe the idea is that the road shall be carried in at the northern end of the Detention Barracks and that the widening of Garden Road should be extended,—I can only say that in the lay-out of these parts we will endeavour to meet these wishes, Sir. (Applause.)

H.E. THE GOVERNOR—If I may be permitted to say one word more, I cannot allow what the hon. and gallant member has said to pass without remark because it may possibly be of importance in future. I contend that there can be no question on reading the Circular Dispatch that the words Military Authorities and Colonial Authorities mean the local Military Authorities and the local Colonial Authorities, and I do not think that the action of the War Office has been in accordance with the Circular Despatches. But, as I have said before, we are in their hands because they are at liberty to say "We accept your interpretation of the Circular but we do not propose to move." I merely put this in as a *caveat* in case any question should arise again in future.

The motion was then agreed to.

Hongkong and Shanghai Bank Ordinance

THE ATTORNEY-GENERAL moved the second reading of the Bill to amend further the Hongkong and Shanghai Bank Ordinance 1866.

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

The Council then resolved itself into Committee to consider the Bill clause by clause and on the Council resuming the Bill was read a third time and passed into law.

The Adjournment

H.E. THE GOVERNOR — The Council will adjourn *sine die*.

REPLIES TO QUESTIONS

(Extract from the Hongkong Government Gazette No. 15 of the 28th March, 1924.)

THE HON. MR. H. E. POLLOCK, K.C., has given notice of the following question:—

With a view to check the breeding of mosquitoes, will the Government pass a regulation making it compulsory to cut off all bamboo scaffolding immediately above the joint, so as to prevent a receptacle for standing water from being created?

to which the following is the reply:—

It is being suggested to the Sanitary Board that a by-law should be passed under the Public Health and Buildings Ordinance prohibiting the use of bamboo scaffolding in which there is any receptacle which would retain water. It is a simple matter to fill up any hollow part of a bamboo with cement or other suitable material so that it is not necessary to require that the bamboos should be cut exactly at the joint.

THE HON. MR. H. E. POLLOCK, K.C., has given notice of the following questions:—

(i.) Will the Government state what their policy is in regard to the future running of Bus Services in Kowloon, and in particular whether they intend to adopt the policy of inaugurating a regular service in particular areas and routes with a standard scale of fares and schedule time table?

(ii.) Will the Government, in connection with the above matter, consider the advisability of stipulating for the chassis and tyres of the Buses to be of British manufacture and for the bodies to be of approved design?

(iii.) In connection with the above Question (i), is there anything in the permits or licences given to parties running the present Bus Service to prevent the Government from making such terms as they may think fit with other persons for the running of regular Bus Service as suggested in Question (i)?

to which the following are the replies:—

(i.) As soon as circumstances permit it is the intention of the Government to grant exclusive rights in respect of omnibus services in the Kowloon Peninsula for such areas and on such routes as may be deemed desirable.

(ii.) The reply is in the affirmative.

(iii.) The licences at present in force in no way prevent the Government from taking the action indicated in the reply to the first question. As soon as conditions justify the granting of exclusive rights in any area the Government will decline to renew any existing licence in respect of that area. It is desirable that this should be clearly understood by all concerned.

S. B. B. McELDERRY,

Clerk of Councils.

COUNCIL CHAMBER,

28th March, 1924.