

*28th February, 1929.*

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**PRESENT:—**

HIS EXCELLENCY THE GOVERNOR (SIR CECIL CLEMENTI, K.C.M.G.).

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS (MAJOR GENERAL C. C. LUARD, C.B., C.M.G.).

THE COLONIAL SECRETARY (HON. MR. W. T. SOUTHORN, C.M.G.).

THE ATTORNEY GENERAL (HON. SIR JOSEPH KEMP, KT., K.C., C.B.E.).

THE SECRETARY FOR CHINESE AFFAIRS (HON. MR. R. A. C. NORTH.).

THE COLONIAL TREASURER (HON. MR. C. MCL. MESSER, O.B.E.).

HON. MR. H. T. CREASY, C.B.E. (Director of Public Works).

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

HON. COMMANDER G. F. HOLE, R.N. (Retired) (Harbour Master).

HON. DR. A. R. WELLINGTON (Director of Medical and Sanitary Services).

HON. SIR HENRY POLLOCK, KT., K.C.

HON. SIR SHOU-SON CHOW, KT.

HON. MR. A. C. HYNES.

HON. MR. J. OWEN HUGHES.

HON. MR. W. E. L. SHENTON.

HON. MR. J. P. BRAGA.

HON. MR. S. W. TS'O, O.B.E., LL.D.

MR. E. I. WYNNE-JONES, (Deputy Clerk of Councils).

**ABSENT:—**

HON. MR. R. H. KOTEWALL, C.M.G., LL.D.

**MINUTES.**

The minutes of the previous meeting of the Council were confirmed.

**NEW MEMBER.**

The Director of Medical and Sanitary Services (Hon. Dr. A. R. Wellington) took the oath and his seat as a member of the Council.

**PAPERS.**

The Colonial Secretary, by command of H.E. The Governor laid on the table the following papers:—

Declaration under the Merchant Shipping Ordinance, 1899, on 24th January, 1929.

Resolution under section 7 of the Tramway Ordinance, 1902, on 24th January, 1929.

Regulation under section 32 (2) of the Merchant Shipping Ordinance, 1899, on 31st January, 1929.

Regulation under section 15 of the Wild Birds Ordinance, 1922, on 7th February, 1929.

Amendments to the Statutes of the University under the University Ordinance, 1911, on 7th February, 1929.

Order under section 2 of the Public Revenue Protection Ordinance, 1927, on 13th February, 1929.

Regulation under sections 3 and 5 of the Tobacco Ordinance, 1916, on 13th February, 1929.

Drawback Regulations under section 3 (1) (b) of the Tobacco Ordinance, 1916, on 13th February, 1929.

**QUESTIONS.**

HON. SIR HENRY POLLOCK asked:—

What action does the Government intend to take in connexion with the recommendations of the Coroner's Jury at the Hsin Wah Inquiry?

THE COLONIAL SECRETARY replied:—

1.—The present system of communications, by telephone, telegraph and wireless telegraphy with Waglan and other similar stations is under examination with a view to the more rapid and accurate transmission of messages.

2.—So far as can be ascertained no other ships keeping W/T watch were in the immediate vicinity of the Hsin Wah at the time of the disaster, so that on this occasion broadcasting would have served no useful purpose. Government, however, agrees that in other cases broadcasting might be of

assistance to ships in distress and steps are being taken to ensure that news received of disasters, other than that broadcast by other shore stations or ships, will be broadcast in the future.

3.—The Harbour Master has full authority to deal directly and promptly in such cases. On this occasion prompt action was taken in that as soon as the message was received stating that the "Hsin Wah" was aground, arrangements were made immediately to send out the tug "Taikoo" to the ship's assistance.

4.—Police launches are built specially for Police work and it is not considered expedient to alter their design to that of deep-sea craft. The Officers in charge of these launches are competent in the handling of their launches.

5.—It would be possible to keep the Rescue Tug "Kausing" continuously under steam at half an hour's notice but this would incur an additional expense of approximately \$30,000 annually.

The "Hsin Wah," carrying W/T but not in working order, grounded on a clear night on an island on which there was a First Order Light burning brightly. A repetition of this disaster is so improbable that it is not considered that this extra recurrent expenditure would be justified.

HON. MR. J. P. BRAGA asked:—

Will the Honourable the Colonial Treasurer state, under separate heads, the amount of revenue collected by the Treasury on account of stamp duties in connexion with share transactions in respect of—

- (i) Sharebrokers' memos. for cash transactions.
- (ii) Sharebrokers' contract notes for forward transactions.
- (iii) Instrument of Transfer for the following periods, viz.:
  - (1) the year 1924,
  - (2) first and second half, respectively, of the year 1925,
  - (3) the year 1926,
  - (4) the year 1927,
  - (5) the year 1928, and separately for each month, from January to April inclusive, of last year,
  - (6) January, 1929.

THE COLONIAL TREASURER replied:—

Separate answers cannot be given to (i) and (ii). No answer can be given to (iii) as no separate record in respect of this item is kept.

For (i) and (ii) combined the figures are:

- (1) \$160,302.
  - (2) \$ 82,792, and \$5,876.
  - (3) \$ 15,923.
  - (4) \$ 11,140.
  - (5) \$ 27,570.
- |          |         |
|----------|---------|
| January  | \$4,050 |
| February | \$2,880 |
| March    | \$4,553 |
| April    | \$2,050 |
- (6) \$ 1,670.

#### **FINANCE COMMITTEE'S REPORT.**

THE COLONIAL SECRETARY, by command of H.E. The Governor, laid upon the table the report of the Finance Committee, No. 1, of 24th January, 1929, and moved that it be adopted.

THE COLONIAL TREASURER seconded and this was agreed to.

#### **THE JURORS' LIST.**

THE COLONIAL SECRETARY moved that the consideration of the Jurors' List be postponed until the end of the public business.

THE ATTORNEY GENERAL seconded.

Question put and agreed to.

#### **SUPREME COURT ORDINANCE.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled An Ordinance to amend the Supreme Court Ordinance, 1873. He said: At present, the power to appoint temporarily a judge of the Supreme Court, is confined to three cases: (1), when the office of judge has become vacant; (2). in case of the illness or absence of a judge, and (3) for the purposes of the Appeal Court held under the Full Court Ordinance, 1912. The object of this Bill is to give you, Sir, power to appoint temporarily a judge in any case in which you may think it desirable. It may, for example, be desirable to appoint a judge temporarily to deal with  
s o m e s p e c i a l a c c u m u l a t i o n o f w o r k

or congestion of litigation, or it may be desirable to appoint a judge temporarily to relieve another permanent judge for some non-judicial work on which the may be engaged for the time being. I beg to move the first reading.

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

### **Objects and Reasons.**

The "Objects and Reasons" for the Bill were stated as follows:—

1. At present the power to appoint temporarily a judge of the Supreme Court is confined to the following cases:—

- (a) Where the office of a judge has become vacant by death or otherwise: Ordinance No. 3 of 1873, s. 10 (1).
- (b) In case of the temporary illness or absence of a judge: Ordinance No. 3 of 1873, s. 10 (2).
- (c) For the purposes of the Full Court Ordinance, 1912: Ordinance No. 27 of 1912, s. 5 (3).

There is no express power to appoint a judge to relieve from or in his judicial duties a judge who may be engaged at the time in other public work, or to appoint an additional judge for the purpose of dealing with a pressure of judicial work. The chief object of this bill is to give the Governor power to appoint a temporary judge in any case in which he considers it desirable for any reasons. This is effected by clause 4 of this bill.

2. Sub-section (2) of section 9 of the principal Ordinance provides that, "save as is provided in section 5 (3) of the Full Court Ordinance, 1912," every judge shall be appointed by Letters Patent under the public seal of the Governor, in accordance with such instructions as he may receive through a Secretary of State. Sub-section (3) of the same section provides, subject to the same saving, that the judges shall hold office during His Majesty's pleasure. The obvious intention of the two savings is that a person appointed temporarily to sit as judge in the Full Court (*a*) need not be appointed in the formal manner in which permanent judges are appointed, and (*b*) shall cease to hold office when the necessity for his appointment ceases. Clause 2 of this bill extends these two exemptions to all temporary judges. The wording of the saving is slightly altered because neither of the sections referred to in it makes any express provision for either exemption.

3. Clause 2 of the bill deals with a matter which has long been awaiting a convenient opportunity. Section 6 of the Supreme

Court Ordinance, 1873, provides in effect "so much of the practice of the English Courts as existed on the 5th April, 1843, shall be in force in the Colony," except so far as the said practice may have been modified by local legislation. The former English practice had been so modified in the following branches of the law:—

- (a) Civil proceedings generally, exclusive of—
  - (1) matters testamentary,
  - (2) bankruptcy,
  - (3) Admiralty, and
  - (4) Companies.

This is under the Code of Civil Procedure: Ordinance No. 3 of 1901, s. 3.

- (b) Probate jurisdiction: Ordinance No. 2 of 1897, ss. 45, 74 and 75.
- (c) Bankruptcy: Ordinance No. 7 of 1891.
- (d) Admiralty: Ordinance No. 6 of 1896.
- (e) Companies: Ordinance No. 58 of 1911.
- (f) The practice of "the Supreme Court acting in the exercise of its criminal jurisdiction:" Ordinance No. 9 of 1899.
- (g) Magistrates appeals: Ordinance No. 3 of 1890.
- (h) Summary Court appeals: Ordinance No. 4 of 1873.

4. It would seem that all the ground of the jurisdiction of the Supreme Court is covered by local legislation with the exception of such Crown Office matters as are not instances of the exercise by the Supreme Court of its criminal jurisdiction. Such matters include habeas corpus, mandamus, and perhaps some writs of certiorari. The only reference to the Crown Office is in section 4 of Ordinance No. 9 of 1899, and that does not help in any way on the present point.

5. If the practice in these Crown Office matters is not provided for by local legislation the position is that we are thrown back on the practice of the 5th April, 1843, which is a most inconvenient state of affairs. Accordingly, clause 2 of this bill provides that the practice with regard to writs of certiorari, habeas corpus and

mandamus shall be the practice from time to time for the time being in force in England. It is unnecessary to provide for any pending matters because there are none of any of these three classes at the moment.

### **BANKRUPTCY ORDINANCE.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled An Ordinance to amend the Bankruptcy Ordinance, 1891. He said: The object of this Bill is to provide that upon a bankrupt coming up for his discharge, the Court shall take into consideration a report by the Official Receiver on the bankrupt's conduct and affairs, including his conduct in the course of the bankruptcy proceedings. The Bill also provides that the Official Receiver's report shall be *prima facie* evidence of the statements contained therein. These two provisions occur in the English Bankruptcy Act, from which our Ordinance was taken, but for some reason they were omitted when our Ordinance of 1891 was passed. It is considered desirable that they should now be introduced here. The amendments are made applicable to pending bankruptcies. I beg to move the first reading.

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

### **Objects and Reasons.**

The "Objects and Reasons" for the Bill were stated as follows:—

This short bill is to introduce two provisions of the English bankruptcy law which do not appear in the Hong Kong Bankruptcy Ordinance, No. 7 of 1891, though they did appear in the English Act on which that Ordinance was founded, *i.e.*, the Bankruptcy Act, 1890, 53 and 54 Vict., c. 71. These two provisions appear also in the present English Bankruptcy Act, 1914, 4 and 5 Geo. 5, c. 59. They are (*a*) a provision that when a bankrupt comes up for his discharge the court shall take into consideration a report of the Official Receiver on the bankrupt's conduct and affairs, including his conduct during the bankruptcy proceedings, and (*b*) a provision that the Official Receiver's report shall be *prima facie* evidence of the statements therein contained. The amendments are made applicable to pending bankruptcies.

### **TOBACCO ORDINANCE.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled An Ordinance to amend the law relating to the taxation of tobacco. He said: The present system of taxation of tobacco is a system by which the manufactured article is taxed. That involves a scale of duties v a r y i n g w i t h t h e v a l u e o f t h e p a r t i c u l a r

kind of manufactured tobacco in question, and as a result there are four different classes of cigars, four classes of cigarettes and four classes of pipe tobacco, all bearing different duties. That system also involves provisions for the manufacture of tobacco in bond. The object of this Bill is to change the system of taxation altogether and to tax tobacco at the source; in other words, to tax tobacco as it comes into the Colony, whether in raw form or manufactured form. There are various reasons for altering the system of taxation. One is that the system which the Bill will introduce is the one followed in Great Britain. Another is, it has been found very difficult, in fact almost impossible, to control the large number of very small factories where tobacco is manufactured. Nothing but constant and very meticulous supervision would enable a proper control to be kept of these factories and the collection of the proper duty. Then again, it is found very difficult to assign any particular kind of manufactured tobacco, whether cigarette or cigar or some other kind, to its proper class in the scale of taxation. Sometimes it is very difficult to say on which side of the line any particular brand falls. Then again, another difficulty which has given rise to a good deal of misunderstanding in the Colony is the difficulty of the cigarette sold deliberately at a low price, and very often at a loss, in order to kill competition or to establish a new brand. The Government are not concerned in any way with preventing such a practice or interfering in any way with competition of that kind. Some people seem to have imagined that the Government by this Bill were endeavouring to check that practice, but that is no concern of the Government. The Government, however, is concerned from the revenue point of view with that practice if the present system of taxation continues. Tobacco, of course, ought to pay duty according to its grade. Where the scale of duty depends on the value of the tobacco, more valuable tobacco ought to pay a higher tax and less valuable tobacco ought to pay a lower tax. When, however, the dealer sells a more valuable tobacco at a lower price he pays duty at a lower rate and consequently the revenue suffers. Again, the charging of a lower price for higher value tobacco at short notice or no notice at all, affects appreciably the estimates of tobacco revenue, and it is difficult sometimes to estimate what the revenue will be if the duty is liable to variation at the will of manufacturers who deliberately, and no doubt quite properly, under-sell their goods for their own special reasons.

The new duties are contained in clause 7 of the Bill. It is no part of the policy of the Bill to increase the duties on tobacco, though, of course, inevitably there will be individual variations in the incidence of the tax. It will be seen that raw tobacco will be charged at the same rate throughout; it varies according to the amount of moisture in the tobacco and according to whether the tobacco is stripped or unstripped, but practically speaking there is one flat rate for all raw tobacco. In the case of manufactured

tobacco, all cigars will be at the same rate, all cigarettes at the same rate and all other manufactured tobacco at the same rate, the amount being \$1.50 per pound for cigars, 75 cents for cigarettes and 75 cents for other manufactured tobacco. The same clause— clause 7— provides for the temporary problem of tobacco which is already in the Colony and which will now have to pay duty immediately. Under the old system that tobacco, of course, would not pay duty until it was manufactured and taken out of the manufacturer's bonded premises, but that tobacco will now, under the new system, have to pay duty immediately. The method that has been adopted in this Bill to ascertain the duty is to give the Superintendent authority to estimate the amount of tobacco on the manufacturer's premises, and to classify it as manufactured or unmanufactured. In the case of manufactured tobacco he will also estimate the weight of unmanufactured tobacco from which the manufactured tobacco was produced, and the duty is payable on the weight so estimated. No doubt he will arrive at this estimate in consultation with the persons who will pay the duty, and though perhaps the provisions seem a little arbitrary, I think they are the only possible ones in the circumstances. I do not think in practice there will be found any cause for complaint.

The alteration of the system of taxation to taxation on entering into the Colony, involves, of course, the provision of rebates or drawbacks on exportation. The Bill contains provisions to enable drawbacks to be paid, and regulations have already been made under the Bill for this purpose. The Bill was brought into force on the evening of the 13th of February by an order by you, Sir, made under the Public Revenue Protection Ordinance, 1927. That Ordinance was passed to enable alterations of taxation to be made quickly and without undue publicity, because it is obvious that when a tax is altered it is possible sometimes for persons, if they have notice, to avoid the new tax by clearances from bond and otherwise. That Ordinance recognises the desirability of making changes in the revenue quickly and secretly. Of course, that order will cease to be effective when this Bill becomes law, and the same provisions that are now in force under your order will then be in force under this Bill as an Ordinance.

The Bill contains other provisions which I think are either consequential to the main objects of the Bill or on minor points. I beg to move the reading.

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

### **Objects and Reasons.**

The "Objects and Reasons" for the Bill were stated as follows:—

1. This Ordinance will effect certain amendments in the Tobacco Ordinance, 1916, which are recommended by the Superintendent of Imports and Exports.

2. The main object of this Ordinance is to adopt in the case of tobacco manufactured in Hong Kong the principle of taxation at the source. It is on this principle that the duty is collected in Great Britain on tobacco manufactured there. Henceforward, therefore, tobacco will no longer be manufactured in bond but there will be a flat rate on the imported raw leaf used in manufacture. The same rule of a flat rate is introduced in the case of all manufactured tobacco imported, in place of the present system of division into numerous classes according to value for the purposes of taxation.

3. It has proved, in practice, impossible to control adequately the numerous factories, many of them working on a small scale, which receive raw leaf and pay duty only on such of their manufactured products as they declare for local consumption.

4. It has also proved extremely difficult to assign to their proper classes the numerous brands of cigars and cigarettes which are now on the market here.

5. There is also the problem of the cigarette deliberately sold, at a loss in order to kill competition or to establish a new brand.

6. There are also frequent alterations in the quality of the goods sold, without a corresponding alteration in the price.

7. Once the manufacturer has to pay duty on his raw material as soon as he imports it or draws it from bond, a system of paying drawbacks on such of his product as he exports must be concurrently introduced, and this will be done by regulations made under section 3 (1) (b) of the principal Ordinance as amended by clause 3 of this Ordinance.

8. The amount of drawback to be returned on export is calculated on the average amount of raw material which has been consumed in making the various kinds of manufactured tobacco.

9. Opportunity has also been taken to alter some parts of the original Ordinance, where experience has proved that the existing wording was not sufficiently clear, or required amendment.

10. Clause 3 of this Ordinance amends section 3 (1) (b) of the principal Ordinance by substituting the word "drawback" for the word "rebates," because the former is the term commonly used.

11. Clause 4 makes it incumbent upon an exporter claiming a drawback on exported tobacco to sign a declaration to the effect that the tobacco in respect of which drawback is being claimed has been actually shipped for export and is not intended to be relanded in the Colony, and stating the name of the person who, upon exportation, will be entitled to receive the drawback thereon.

12. Clause 5, which is based upon section 15 of the English, Act 3 and 4 Vict. c. 18, imposes penalties for fraudulently attempting to obtain drawbacks. It also provides for the recovery of sums forfeited.

13. Clause 6 of this Ordinance amends section 2 of the principal Ordinance as follows:

- (i) by the insertion of a new definition of "dutiable tobacco" in section 2 (a) so as to make it clear that tobacco, as defined by paragraph (n), if re-imported, must pay duty again.
- (ii) by an alteration in sub-section (c) thereof which simplifies the definition of the word "export."

14. Clause 7 of this Ordinance, which amends section 6 of the principal Ordinance, introduces the new system of duty and new scale of duties. It is no part policy of this Ordinance to increase the rate of duty on tobacco generally, though of course the introduction of the new system necessarily involves individual variations of duty. The proposed new section 6 (2) is a temporary provision dealing with the tobacco present at the commencement of the Ordinance on the licensed premises of the holders of manufacturer's licences. At present the duty on such tobacco is not payable until removal from the licensed premises, but under the new system duty is payable on the importation of the raw leaf and manufacture in bond will be no longer possible. The Superintendent is therefore given authority to estimate the amount of tobacco on any manufacturer's licensed premises at the commencement of the Ordinance, and to classify it as unmanufactured tobacco or as manufactured tobacco. In the case of such manufactured tobacco he will also estimate the weight of unmanufactured tobacco from which the manufactured tobacco was produced, and the duty will be payable on the weight so estimated. Paragraph (a) of sub-section 3 of section 6 of the principal Ordinance is repealed because exported tobacco will no longer be exempted from duty but will instead be entitled to a drawback. Through tobacco is not made absolutely exempt from duty as it might be, but if it is duly handled in accordance with the principal Ordinance the effect of section 11 of that Ordinance will be that the duty will never become payable. Sub-section (4) of section 6 of the principal Ordinance is repealed because it provided for the rate of duty to be paid on tobacco manufactured in the Colony in bond.

15. Clause 8 of this Ordinance is intended to improve the form of section 7 of the principal Ordinance. It also deals with the time of coming into operation of any resolution of Legislative Council passed under that section.

16. Clause 9 of this Ordinance repeals section 8 of the principal Ordinance as having been now rendered unnecessary by the provisions of Ordinance No. 9 of 1927 whereby the Governor has power conferred upon him to impose or alter duties, etc., in anticipation either of the passing of a bill or of a resolution of the Legislative Council.

17. Clause 10 of this Ordinance substitutes "time" for "day" throughout section 10 of the principal Ordinance, so as to correspond with the "time" provisions of Ordinance No. 9 of 1927 section 4 (1), and of the new section 7 of the principal Ordinance, which have been above referred to.

18. Clause 11 of this Ordinance amends section 11 (b) of the principal Ordinance by making provision for tobacco being removed from one bonded warehouse to another. It also repeals section 11 (2) of the principal Ordinance which is incompatible with the new system of duties as explained above.

19. Clause 12, 13 and 14 of this Ordinance eliminate the word "dutiable" from sections 17, 18, 21 and 22 of the principal Ordinance as being unnecessary. Clause 13 also corrects an error in section 18 (1) of the principal Ordinance by substituting "bonded" for "licensed" in the last line of that sub-section.

20. Clause 15 of this Ordinance effects certain verbal amendments in section 24 of the principal Ordinance, which are intended to make the meaning of that section more definite and clear.

21. Clause 16 relieves the Governor in Council of certain functions which it is thought can be dealt with more appropriately by the Superintendent of the department.

22. Clause 17 of this Ordinance repeals sub-section (2) of section 31 of the principal Ordinance as being incompatible with the new system of duties.

23. Clause 18 of this Ordinance deletes the word "dutiable" from section 38 (4) of the principal Ordinance as being an undesirable limitation on the powers of the Superintendent.

24. Clause 19 of this Ordinance substitutes a new and simplified section 50 in the place of the present section 50 of the principal Ordinance, "incorrect" being substituted for "false or inaccurate or misleading."

25. Clause 20 of this Ordinance effects an amendment in section 53 of the principal Ordinance which is intended to enlarge the utility of the Analyst's certificate as evidence at the hearing of any charge.

26. Clause 21 of this Ordinance assimilates the language of section 61 (1) of the principal Ordinance to that of section 5 (2) of this Ordinance.

### **WATCHMEN ORDINANCE.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled An Ordinance to amend the Watchmen Ordinance, 1928. He said: The object of this very short Bill is to exempt from the Watchmen Ordinance persons employed by the Air Ministry. I beg to move the first reading.

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

### **Objects and Reasons.**

The "Objects and Reasons" for the Bill were stated as follows:—

It is considered advisable that members of the Air Force and persons employed by the Air Ministry should be placed in the same category as members of the Naval and Military Forces and persons employed by the Admiralty and War Departments respectively.

### **UNCLAIMED BALANCES ORDINANCE.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled An Ordinance to consolidate and amend the law with respect to certain unclaimed balances and certain other unclaimed sums. He said: Certain defects have been discovered in the present Unclaimed Balances Ordinance, 1885. They are matters of technical detail and they are fully explained in the Objects and Reasons, and I do not think that I need go into them more fully, at least at this stage. The Bill re-enacts the main provisions of the present Ordinance, with additions to meet the defects which have been discovered in it. There is one point, perhaps, to which I ought to draw attention, and that is this. The object of the Bill generally, and of the present Ordinance, is to provide for the transfer to the general revenue of the Colony of all sums which remain unclaimed in the hands of officers of the Government, but as it is possible that the claimants—persons who could have claimed these sums—may appear even after the transfer to the revenue of the Colony, provision is made in two ways by which they can still pursue their claims. In the first place, they are given the right to apply to the Courts by petition; they are also given the right to apply to the Governor in Council on any moral ground. The present Ordinance which gives these two rights contains no limitation whatever of the legal right, and it has been thought desirable to provide that claimants to any sums which are transferred to revenue shall be barred after such time and in such conditions as they would be barred if they were suing a subject and not the Crown. That provision is taken from the English

Intestates Estates Act, which provides that in the case of balances of intestates estates in the hands of the Crown, claims by subject are barred after such time and in such conditions as they would be barred if they were suing a subject and not the Crown. It seems to be a reasonable limitation and it has been inserted in this Bill. There is no similar limitation of right to petition the Governor in Council on moral grounds. I beg to move the first reading.

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

### **Objects and Reasons.**

The "Objects and Reasons" for the Bill were stated as follows:—

1. The Unclaimed Balances Ordinance, 1885, Ordinance No. 1 of 1885, provides for the transfer to the general revenue of the Colony of the following:—

- (a) All sums of money, which, at the commencement of the Ordinance, had remained unclaimed in the Treasury for at least five years.
- (b) All sums of money, other than balances of intestates estates, which after the commencement of the Ordinance remain unclaimed in the Treasury for at least five years.
- (c) Under certain conditions, the balances of intestates estates administered by the Official Administrator.
- (d) Under certain conditions, sums of money, other than balances of intestates estates, which remain unclaimed in the Supreme Court for at least five years.

2. To enable sums under class (c), the balances of intestates estates, to be transferred, certain advertisements are necessary, except where the funds of the estate are less than \$20 in value, and these advertisements have to state that the funds remaining from the estate will be transferred to the general revenue if no claim is made within five years *from the death of the deceased*. No provision is made to meet cases in which the necessary advertisements are not made, or in which administration is not obtained, within five years from the death of the intestate. Such cases have occurred, and there would appear to be no machinery whereby due advertisement can now be made, so that the money, if unclaimed, may be transferred to the general revenue of the Colony.

3. Further, no provision is made for the transfer to the general revenue of sums which remain unclaimed in the hands of some officer other than the Treasurer.

4. The object of the present Ordinance is to meet these points.

5. Section 2 is inserted in order to make it quite clear that the Official Administrator, Official Receiver and Official Trustee are officers of the Government for the purposes of this Ordinance, though they deal with non-Government money.

6. Section 3 provides that all sums of money which, for a period of at least five years, have remained unclaimed in the Treasury, or in the hands of any officer of the Government, shall be at once transferred to the general revenue of the Colony.

7. Section 4 provides for the transfer to the general revenue of future sums which remain so unclaimed, other than (i) the balances of intestates estates and (ii) sums of money in the Supreme Court. These two classes of unclaimed money are dealt with in special ways, balances of intestates estates being dealt with by sections 5, 6 and 7, and sums of money in the Supreme Court being dealt with by section 8. In both these cases the procedure is more elaborate than under section 4. One class of balances of intestates estates is reserved for the simpler procedure of section 4, *i.e.*, balances of intestates estates administered by the Official Administrator under section 19 of the Probates Ordinance, 1897. That section applies only to estates which do not exceed \$250 in value. The transfer under section 4 will be made by the Governor under the hand of the Colonial Secretary. The order and any conditions attached thereto will be published in the Gazette.

8. Section 5 provides that where administration is granted to the Official Administrator in respect of the estate of any person who has died intestate, and where a balance from such estate remains in the hands of the Official Administrator and the next of kin of the deceased are not known to him, he shall cause advertisements to be published to the effect that if no claim is made within five years from the date of the first publication of such advertisements in the Colony the balance remaining from the estate in question will be transferred to the general revenue of the Colony, subject to the provisions of the Ordinance. The advertisement has to be published in the Colony, and also in any place where it appears probable that persons entitled to sharing in the residue may be found, if the Official Administrator considers that such further advertisement is desirable. These provisions are also applied to grants made before the commencement of this Ordinance, but it is provided that advertisement under this Ordinance will not be necessary in any case where advertisement had already been made before the commencement of the Ordinance in accordance with the law in force at the time of such advertisement. It is also provided that no advertisement will be necessary under the Ordinance where the net value of any estate remaining

unadministered at the commencement of this Ordinance is less than \$100 or where the net value of any future estate is less than \$100. Section 4 of the present Ordinance, No. 1 of 1885, requires advertisement "in the mother country of the deceased," a curious phrase. Section 5 of the new Ordinance requires instead that advertisement be made, if desirable, in the place or places where it is most likely to be effective.

9. Section 6 directs the Official Administrator to pay any unclaimed balance of an intestate either into the Treasury or under the direction of the Treasurer into an account of the Government at a named bank. The Governor has power to direct that any such sum be transferred to the general revenue of the Colony, but in the case of a balance amounting to \$100 or upwards this power can only be exercised on production of a certificate by the Official Administrator that the advertisements required have been published and that five years have elapsed since such advertisements and that no further claim can reasonably be expected.

10. Section 7 provides that interest shall run on any unclaimed balances paid into the Treasury under the provisions of section 6. The interest will cease on transfer to the general revenue. No interest will run on amounts under \$100.

11. Provision is made by section 8 for the transfer to general revenue of unclaimed balances, other than those of intestates estates, remaining in the Supreme Court for five years or longer, and the Court is empowered to require notice to such parties as it may think fit.

12. Section 9 provides that every transfer to the general revenue under the provisions of this Ordinance shall be subject to the provisions of the Ordinance as regards refunds.

13. Section 10 provides that any claimant to any money transferred to the general revenue under the new Ordinance, or under the Unclaimed Balances Ordinance, 1885, may prosecute his claim by a petition to the Supreme Court, but it is laid down that no such petition shall be presented except within the same time and subject to the same rules of law and equity in and subject to which an action for the like purpose might be brought against a subject. This limitation of time and this exclusion of merely moral claims are based on the provisions of section 3 of the Intestates Estates Act, 1884, 47 and 48 Vict. c. 71.

14. A further safeguard is provided by section 11, which empowers the Governor in Council to entertain any moral claim to any sum of money which may have been transferred to the general revenue under this Ordinance or the old Ordinance.

15. Section 12 makes any payment under this Ordinance a charge on the general revenue.

16. Section 80 of the Bankruptcy Ordinance, 1891, lays down the procedure to be followed with regard to unclaimed dividends and funds in bankruptcy proceedings. Such unclaimed amounts are paid to the Registrar of the Supreme Court, who has to hold them for a period of five years. During that time he has authority to pay out any amount to any person who satisfies him of his title to such amount. Sub-section (4) of section 80 of the Bankruptcy Ordinance directs that at the end of this period of five years the Registrar is to pay any unclaimed money to the Treasurer for the use of the Colony, and it also provides that all claims thereon shall be thenceforth barred. It is considered desirable to leave this procedure untouched, and accordingly section 12 provides that nothing in the present Ordinance is to affect the provisions of the Bankruptcy Ordinance with reference to unclaimed dividends and funds in bankruptcy proceedings. The section refers to the Bankruptcy Ordinance generally, and not to section 80 because it is probable that the present Bankruptcy Ordinance will soon be replaced by an amending and consolidating Ordinance, and it is not possible at present to say how or where the special provisions with regard to unclaimed dividends and funds will appear. The reference to the Bankruptcy Ordinance, 1891, will, by virtue of section 14 of Ordinance No. 31 of 1911, be construed as a reference to the new Bankruptcy Ordinance when it becomes law.

17. Section 13 repeals the Unclaimed Balances Ordinance, 1885.

18. Section 14 repeals section 25 of the Probates Ordinance, 1897, That section lays down that the provisions of the Unclaimed Balances Ordinance, 1885, in relation to unclaimed balances of the estates of persons dying intestate shall *mutatis mutandis* apply to moneys received or taken possession of by the Official Administrator under section 14 or section 19 of the Probates Ordinance, with a certain proviso. There are several objections to this section. A *mutatis mutandis* clause is to be avoided if possible because there is sometimes doubt as to what should be changed and as to how it should be changed. Again section 14 of the Probates Ordinance gives the Official Administrator power to take possession of all kinds of movable property. Section 25 makes Ordinance No. 1 of 1885 apply only to moneys actually taken possession of under that section 14, and makes provision for no other property taken possession of under that section or for the proceeds of such property. Similarly, section 25 of the Probates Ordinance makes Ordinance No. 1 of 1885 apply only to moneys actually taken possession of under section 19, and does not make it apply to the balance of the estate when the estate has been realised and the liabilities paid. Section 14 of this Ordinance therefore

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section 25 of the Probates Ordinance. Words have been inserted in section 4 of this Ordinance to bring the balances of small intestates estates administered under section 19 of the Probates Ordinance within the scope of section 4 of this Ordinance. There is no need to make any similar provision with regard to section 14 of the Probates Ordinance. That section merely gives the Official Administrator power to take possession of the movable property of a deceased person and to provide for its safe custody until probates or administration is granted. If the whole value of any such estate does not exceed \$250 the Official Administrator can administer it under section 19 of the Probates Ordinance.

#### **THE JURORS' LIST.**

The Jurors' List for 1929, having been considered and amended *in camera*, was approved.

#### **THE ADJOURNMENT.**

The Council adjourned to Thursday, March 7.

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#### **FINANCE COMMITTEE.**

Following the Council, a meeting of the Finance Committee was held, the Colonial Secretary presiding.

Votes totalling \$85,820, contained in Message No. 2 from H.E. The Governor, were considered.

Item No. 6: Public Works Extraordinary: Kowloon, Buildings, Conversion of Park Side for School purposes and furnishing, \$9,000.

HON. MR. J. P. BRAGA.—In connection with Item No. 6, relating to the conversion of Park Side for school purposes, I have looked through *Hansard* for last year and have been unable to discover any discussion in connection with it in Finance Committee. I should be glad if the Chairman would be kind enough to say whether Park Side is required to supplement the present accommodation at the Central British School.

THE CHAIRMAN.—It has nothing to do with the Central British School. It has to do with the school which occupied the military building at Gun Club Hill. On the arrival of bigger military forces in the Colony, the military gave us notice to quit their school and we had to make other arrangements. What we did was to take Park Side, which was the former railway manager's residence, and convert it into a school for the Kowloon Junior School.

HON. MR. J. P. BRAGA.—I feel that in connexion with the question of Government Schools in Kowloon, we ought to have some settled policy in the provision of new schools. T h e r e a r e a l r e a d y

two very large schools, one for girls and one for boys, and a third is already planned and will probably be commenced this year. It appears to me that the Government is lagging about 25 or 30 years behind the times in regard to school provision in Kowloon.

THE CHAIRMAN—I do not quite follow you. You say that two schools are already in existence?

HON. MR. J. P. BRAGA.—Yes, established by religious societies, and a third one is about to begin, and yet the Government is satisfied with buildings 25 years old, which were presented as a gift by a private resident, to the Government.

THE CHAIRMAN.—What is the building given to the Government 25 years ago?

HON. MR. J. P. BRAGA.—The Kowloon British School was a gift to the Government by Sir Robert Ho Tung. I should like to see a much more advanced policy adopted by the Government.

THE CHAIRMAN.—I am afraid we cannot deal with the question of Government policy in Finance Committee. We must stick to the agenda. The point is, will the Finance Committee agree to the vote for \$9,000 for the conversion of Park Side to take the place of the building formerly occupied by the Kowloon Junior School? I cannot go into the policy of the Government in regard to Government Schools in Kowloon.

HON. MR. J. P. BRAGA.—It was only just an expression of opinion on my part, that a tinkering policy is no good for Kowloon at the present time.

THE CHAIRMAN.—I think you know that other schemes are under consideration?

The vote was approved.

Item No. 14: Public Works, Extraordinary: New Kowloon, Communications, widening Castle Peak Road to 60 feet width and filling in areas at Cheung Sha Wan, \$30,000.

HON. SIR HENRY POLLOCK.—Does this sum of \$30,000 complete the work of this section?

THE DIRECTOR OF PUBLIC WORKS.—Yes.

HON. MR. J. P. BRAGA.—Has this to do with filling in the garbage dump at Yaumati?

THE DIRECTOR OF PUBLIC WORKS.—No, it is a different site.

All the votes were approved.