

24th October, 1929.

PRESENT:—

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT (HON. MR. W. T. SOUTHORN, C.M.G.)

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS (MAJOR GENERAL J. W. SANDILANDS, C.B., C.M.G., D.S.O.).

THE COLONIAL SECRETARY (HON. MR. D. W. TRATMAN).

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

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

THE COLONIAL TREASURER (HON. MR. M. J. BREEN).

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

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

HON. MR. T. H. KING (Captain Superintendent of Police).

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

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

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

HON. MR. J. P. BRAGA.

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

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

ABSENT:—

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

HON. SIR SHOU-SON CHOW, K.T.

HON. MR. A. C. HYNES.

HON. MR. B. D. F. BEITH.

MINUTES.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT.—If Hon. Members will refer to the copy of the minutes of the meeting held on 23rd September, 1929, they will notice that one paragraph has been added since the minutes were approved in circulation. It is the fourth paragraph on Page 3: "On the item of \$25,433 for the Royal Naval Volunteer Reserve Sir Henry Pollock stated that all the Unofficial Members objected to this vote and asked that that objection be recorded." I take it the minutes are approved.

The minutes were approved.

NEW MEMBER.

The Colonial Secretary (Hon. Mr. D. W. Tratman) took the oath and his seat as a member of the Council.

PAPERS.

THE COLONIAL SECRETARY, by command of His Excellency The Officer Administering the Government, laid upon the table the following papers:—

Appointment of a Harbour Board on 13th September, 1929.

Declaration under section 21 of the Merchant Shipping Ordinance, 1899, *re* Ports of the Colony on 20th September, 1929.

Regulations under the Public Places Regulation Ordinance, 1870, on 24th September, 1929.

Report of Analysis of 16 soils from Hong Kong (Sessional Paper No. 9 of 1929).

Report of the Stamp Duties Committee (Sessional Paper No. 10 of 1929).

FINANCE COMMITTEES REPORT.

THE COLONIAL SECRETARY, by command of H.E. The Officer Administering the Government, laid upon the table the report of the Finance Committee, No. 13, of 23rd September, 1929, and moved that it be adopted.

THE COLONIAL TREASURER seconded and this was agreed to.

BRITISH MERCANTILE MARINE UNIFORM ORDINANCE, 1929.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to make provisions with respect to the

British Mercantile Marine Uniform." He said: The object of the Bill is to prevent the improper use of the British mercantile marine uniform. The Bill is based on the British Mercantile Marine Uniform Act of 1919 and the uniforms to be worn are prescribed by an order of His Majesty in Council. 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:

The object of this bill is to prevent improper use of the British mercantile marine uniform. It is based on the British Mercantile Marine Uniform Act, 1919, 9 & 10 Geo. 5, s. 62.

UNIFORMS AMENDMENT ORDINANCE, 1929.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Uniforms Ordinance, 1895." He said: The object of this Bill is to extend to Air Force uniforms the protection already given to military uniforms by the Uniforms Ordinance, 1895. 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:

The object of this bill is to extend to Air Force uniforms the protection already given to military uniforms by the Uniforms Ordinance, 1895.

PROTECTION OF WOMEN AND GIRLS AMENDMENT ORDINANCE, 1929.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Protection of Women and Girls Ordinance, 1897." He said: This Bill, Sir, represents no change in Government policy and makes no very great change in the law. Its objects are two-fold, first to strengthen the hands of the authorities in dealing with the elusive and persistent evil of the traffic in women and girls, and, secondly, to get rid of certain inconsistencies in our present law.

As to the first point, there are two principal changes effected. In the first place it is provided that it shall be no defence to a charge of trafficking in women and girls that the victim herself consented to the transaction or received any share in the consideration for it. In the second place the powers of the Secretary for Chinese Affairs as

regards the detection of offences against the principal Ordinance, are strengthened. At present he has a power of search but he has under the principal Ordinance no power of arrest and no power of seizure of things which may be useful as evidence in the subsequent prosecution of an offence. These powers are given to him by this Bill. He is also given power to question persons found on any premises which he searches in the belief that some offence against the Ordinance has been or is being committed there. It is also made an offence to obstruct any such search.

With regard to the second main object of the Ordinance, that is, the removal of certain difficulties in our present legislation, the matter is a rather technical one. It is fully explained in the Objects and Reasons. The main objects of the alterations which this Bill proposes to make on that point are to make it quite clear that the natural rights of the parents or other natural guardians of a girl who has been parted with in adoption or parted with in return for payment of money are not absolutely negated, and in the second place to make clear that the statutory guardianship of the Secretary for Chinese Affairs, given to him where a girl has been given in adoption or has been parted with by her natural guardians in return for payment of money, shall be exercised subject to the provisions of the Female Domestic Service Ordinance. The particular provision which we have in mind is one which provides that if the parents of a *mui tsai* under eighteen wish to have the girl returned to them the girl must be returned to them without any payment whatsoever unless the Secretary for Chinese Affairs sees some grave objection to such restoration in the interests of the *mui tsai* herself. In this, as in all other respects, the guiding principle is the question of the interests of the girl herself. 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. This Ordinance proposes to make various alterations in the Protection of Women and Girls Ordinance, 1897, Ordinance No. 4 of 1897, some with a view to strengthening the hands of the authorities in dealing with the traffic in women and girls, and some in order to get rid of certain difficulties, explained below, which exist at present in our legislation.

2. Section 2 of this Ordinance amends section 3 of the principal Ordinance so as to make paragraph (4) of the latter section more complete. At present that paragraph contains correlative provisions, applicable to the two parties to the transaction, in three cases, *i.e.*, sale, pledge and hire, but "disposal" has no correlative. The amendment now to be made adds a reference to obtaining possession, as a correlative to disposal.

3. Section 3 of this Ordinance inserts a new section 3A in the principal Ordinance. This new section takes one defence away from the defendant to any charge under section 3 of the principal Ordinance, as it provides that it shall be no defence to any charge under that section that the woman and girl in question consented to the transaction or received any part of the consideration.

4. It has been suggested that a possible defence to a charge of harbouring under section 18 of Ordinance No. 4 of 1897 would be that the accused was the person who had taken the girl out of the possession of the person having the lawful care of her, and that harbouring and taking are mutually exclusive. It is not to be supposed that the accused would expressly admit the suggested fact, but it would be argued that the evidence for the prosecution would naturally lead to that conclusion. On the other hand, it is just possible that the evidence of the prosecution would not be sufficient to discharge the onus of proof of a charge of taking under section 26 of the Ordinance, because under that section practically the whole onus is on the prosecution, whereas under section 18 a considerable onus is thrown on the defendant. Accordingly, section 4 of this Ordinance amends section 18 of the principal Ordinance so as to make it clear that the person who abducts or imports may be convicted of harbouring. The opportunity is taken of expanding the word "harbour" into "harbour, detain or have under control."

5. Section 32 of the Protection of Women and Girls Ordinance, 1897, Ordinance No. 4 of 1897, had a curious history in the five Women and Girls Ordinances enacted between 1889, the year in which the section first occurred, and 1897, and in its present form it is not quite satisfactory, especially in view of the provisions of the Female Domestic Service Ordinance, 1923, Ordinance No. 1 of 1923. Section 5 of this Ordinance proposes to substitute a new form of the section.

6. In the first place, the present section negatives in undesirably wide terms the right of a parent to the custody of a girl where the parent has parted with the girl for the purpose of adoption into another family, or has received money for parting with the custody of the girl for any purpose. The proposed new section 32 does not expressly negative any right on the part of the parent, but merely vests the guardianship of the girl in such a case in the Secretary for Chinese Affairs. It empowers the Secretary for Chinese Affairs as legal guardian to make any order regarding the custody of the girl which he may think desirable in her interests, subject to one qualification which is referred to below. In making any such order the Secretary for Chinese Affairs would no doubt give full weight to the natural and moral claim of the parent to the custody of the girl. Thus, the Secretary for Chinese Affairs will still have the full rights of a legal guardian, but there will be no provision to suggest that the natural claims of the parent have been extinguished. Further, there will be nothing to suggest that the parent could not successfully

assert a claim as against a third party to the custody of the girl if the Secretary for Chinese Affairs were not to exercise his legal right of guardianship.

7. In the second place, the present section appears to give the Secretary for Chinese Affairs the full and unfettered right of a legal guardian. Section 10 of Ordinance No. 1 of 1923, however, considerably limits his right to refuse to restore a girl who is a *mui tsai* to the custody of her parent or natural guardian. There is a distinct conflict here between the two Ordinances. No doubt the later Ordinance would prevail, but it is advisable to make that position quite clear. Accordingly, the proposed new section 32 provides that the rights of the Secretary for Chinese Affairs as legal guardian shall be subject to the provisions of section 10 of Ordinance No. 1 of 1923. That section provides that any *mui tsai* who wishes to be restored to the custody of her parent or natural guardian, and any *mui tsai* under eighteen whose parent or natural guardian wishes such *mui tsai* to be restored to his or her custody, shall be restored to such custody unless the Secretary for Chinese Affairs sees some grave objection in the interest of such *mui tsai* to such restoration.

8. In the third place, it might be argued that the declaratory clause of Ordinance No. 1 of 1923, *i.e.*, section 2, negatives the right of guardianship conferred on the Secretary for Chinese Affairs by section 32 of Ordinance No. 4 of 1897. Reasons are given in the Objects and Reasons attached to the Female Domestic Service Amendment Bill for suggesting that the conflict here is only apparent, but it has been thought better to make the matter quite clear, and this is being done by means of a new section 23 which the above bill proposes to insert in Ordinance No. 1 of 1923. That new section will provide that nothing in Ordinance No. 1 of 1923 is to affect any right of guardianship vested in the Secretary for Chinese Affairs under Ordinance No. 4 of 1897, or to be vested in him under Ordinance No. 4 of 1897 as amended by this Ordinance.

9. Section 39 of the principal Ordinance gives to the Secretary for Chinese Affairs, and any officer authorised for that purpose by him in writing, power to search any vessel or place where he has reasonable cause to suspect that there is any woman or girl who may be liable to be dealt with under the Ordinance, or in which he has reasonable cause to suspect that an offence against the Ordinance is being committed. It also gives power to search for the purpose of ascertaining whether there is in any vessel or place any woman or girl who may be liable to be dealt with under the Ordinance, or for the purposes of ascertaining whether any offence against the Ordinance is being committed there. The section gives power to remove and detain the woman or girl, but it gives no power to arrest, and it gives no power to seize documents or other articles which may be evidence of an

offence. It also fails to make it an offence to obstruct any such search. Section 6 of this Ordinance substitutes a new section 39 which will remedy the above defects. The new section also gives to the Secretary for Chinese Affairs, and to the authorised officer, the right to put questions to persons found in any vessel or place searched under the sections and it requires such persons to answer such questions, truthfully, and to obey any order given connected with the search. It also makes it an offence to force or induce a woman or girl who is liable to be dealt with under the Ordinance to conceal herself, or to escape, with a view to evading or obstructing the search. This section is adapted from section 19 of Enactment No. 2 of 1914 of the Enactments of the Federated Malay States, as amended by Enactment No. 21 of 1925. It will be noticed that sub-section (1) of section 39 of the principal Ordinance disappears, because all the necessary power seems to be given under sub-section (2) of that section, which appears in the new section as sub-section (1), with slight alterations.

FEMALE DOMESTIC SERVICE AMENDMENT

ORDINANCE, 1929.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Female Domestic Service Ordinance, 1923." He said: Before I proceed to the details of the Bill I should like, Sir, to make one general observation and to announce a decision. In the first place, I would observe that the general object of the Bill is to assist the Government further in its settled policy on this subject, which is to bring to an end as soon as possible the present practice of the employment of *mui tsai*. The abolition of that practice in spirit, not merely in letter, clearly cannot be effected by mere legislation but involves the progressive education of public opinion and continued pressure on the part of the authorities. To enable that pressure to be exercised, and to assist in that education, legislation is necessary and it is considered that further legislation on this subject is necessary now.

I also have to announce that the Secretary of State has directed that registration of *mui tsai* is now to be enforced and accordingly Part III of the Ordinance will be shortly brought into operation. Correspondence on this subject will be laid upon the table at the earliest possible date. I venture to express the hope that employers of *mui tsai* will accept the situation and will register promptly and generally, especially as, if they do not do so, it may be necessary later on to introduce more drastic provisions. The proposed registration regulations are now under consideration and will shortly be published. The Government has no intention of allowing these regulations to remain a dead letter.

I now come, Sir, to the details of the Bill and I hope hon. members will bear with me if I go into them in some detail. Clause

2 of the Bill proposes to introduce a prohibition against bringing into the Colony hereafter any *mui tsai*. That prohibition will be subject to two limitations, one a permanent one which will appear in the Ordinance, and the other a temporary one which will depend upon the administration of the Ordinance. The permanent limitation is that *mui tsai* who have been previously in the Colony and have been registered may, if they are taken out of the Colony, be brought back again. It seems obvious that that limitation must be allowed. If the *mui tsai* has lived here many years, possibly happily and contentedly, and the household to which she belongs is a Hong Kong household, it would be very unreasonable to her employers, and probably injurious to the interests of the girl herself, if she were not allowed to return to the Colony after a visit elsewhere. I hope that that privilege of being allowed to bring back *mui tsai* who have been here and have been registered will act as an inducement to registration, because if an unregistered *mui tsai* is taken out she cannot be brought back again. I should like to add that the regulations which are at present in draft provide that before any *mui tsai* can be taken out of the Colony a report must be made to the Secretary for Chinese Affairs and the girl must be produced before him.

The temporary limitation of this new section 4 (a) is intended to meet the case of *mui tsai* who may be temporarily out of the Colony at the time when registration first comes into force. There, again, it would be unreasonable, I submit, and unfair to the girl, that she should be forever debarred from coming back to the place which is her real home, and as the consent of the Secretary for Chinese Affairs is required to any prosecution under the Ordinance, he will be able to control the administration of this section, and for a short while after the introduction of registration he will not enforce the section in the case of *mui tsai* who really belong to Hong Kong and are brought back here after a temporary stay outside the Colony, provided that on their return the employers take the necessary steps to register the girls promptly under the Ordinance.

Clause 3 of the Bill repeals two sections of the principal Ordinance. At first sight that might seem like a weakening of the safeguards of the principal Ordinance but instead of being a weakening it is, I think, rather a strengthening of those safeguards. Section 7 of the principal Ordinance was inserted in the Ordinance during its passage through the Committee stage of this Council. It provides that in every prosecution for overwork or ill-treatment of a *mui tsai* medical evidence shall be given before a magistrate as to the injuries received by the *mui tsai* and that the magistrate must find whether such ill-treatment amounted in his opinion to gross cruelty or not. If he finds there was gross cruelty then the offender must not be given the option of a fine but must be sentenced to imprisonment without that option. The obvious intention of course was to secure adequate punishment for cases of gross cruelty. There are, however, two dangers in this section.

It is always possible to overlook particular and unusual provisions and it might very well happen that in a prosecution for this purpose there might be failure to call medical evidence. That might conceivably lead to questions as to whether any conviction on the prosecution should be allowed to stand or not. It is possible the conviction might be quashed on that ground. Then again, the medical evidence in a case of cruelty may very well be negative. It sometimes happens that the doctor does not see the person assaulted until some time after the assault and even gross cruelty may fail to leave marks which the doctor can point to after a lapse of some time. The absence of that evidence might tend to weaken the other evidence as to gross cruelty. Section 7 is therefore repealed, but the essential features of the section are reproduced in the new section 18 which is contained in clause 7 of this Bill. There you will find repeated the provisions that the magistrate must find whether the acts or omissions charged amount to gross cruelty and if he so finds he has no option of fining the offender but must impose a sentence of imprisonment.

The case of section 8 of clause 7 which is also repealed by clause 3, is somewhat different. That again was inserted in Committee and was useful for the time perhaps in drawing attention to the fact that the existing provisions of the Offences against the Persons Ordinance and the Protection of Women and Girls' Ordinance would apply to *mui tsai* as well as to other persons, but as attention was drawn to that fact at the time it seems unnecessary to preserve a section which in effect says that the law already in existence shall continue to exist. Further, there is a certain inconsistency between the Women and Girls' Ordinance and the principal Ordinance. That inconsistency has been dealt with in a later section of this Bill and in the Protection of Women and Girls' Amendment Ordinance.

Then, Sir, follow two sections which make the powers of the Secretary for Chinese Affairs under the principal Ordinance subject in every case to the provisions of a particular section in that Ordinance, namely section 10. Section 10 provides that any *mui tsai* who wishes to be restored to the custody of her parents or natural guardian, and any *mui tsai* under 18 whose parent or natural guardian wishes such *mui tsai* to be restored to his custody, shall without any payment whatsoever be restored to such custody, unless the Secretary for Chinese Affairs shall see some grave objection in the interest of such *mui tsai* to such restoration, and the effect of these amendments will be that all the powers of the Secretary for Chinese Affairs shall be subject to that particular provision.

The next clause, Sir, to which I would refer is clause 8. That proposes to insert various sections in the principal Ordinance. The new section 20 provides that if a prosecution is instituted for ill treatment of a *mui tsai* and the magistrate does not find that the girl in question was a *mui tsai* he can still convict of common assault.

The new section 21 is of more importance. There are two great difficulties dealing with this question of *mui tsai*. One is the difficulty of detection and the other is the difficulty of proof. I think those difficulties have not always been realised by critics of the Government. The difficulties of detection are enormous and I do not see how legislation can overcome them. The difficulty of proof is another matter, and I think we can meet that to some extent at least by legislation. We are endeavouring to do so in the new section 21.

That section throws on the accused a very unusual and apparently drastic onus. It provides that in any prosecution under the Ordinance it shall, until the contrary is proved, be presumed that the girl in question was a *mui tsai* at the time of the alleged offence, and it will be for the accused to prove if he can that the girl was not a *mui tsai*. That is not so alarming as it looks. All prosecutions, as I have said, require the consent of the Secretary for Chinese Affairs and he obviously would not give his consent to any prosecution unless there were good grounds. Having commenced a prosecution it is obvious that the difficulties of the Crown of proving that any particular girl is a *mui tsai* are enormous. It might involve proof of a payment made for her perhaps years before, perhaps in the interior of China and perhaps in the absence of the girl herself—an impossible onus. The employer, on the other hand, ought to find it comparatively easy to prove what the girl, who after all is a member of his own household, with his own consent, really is and how she came under his control. So that though the onus may seem heavy, I think it is not, in the circumstances, unreasonable.

The new section 22 gives the magistrate power to find the age of the girl in question, though no actual evidence of age may be given. The new section 23 is intended as one of the steps to clear up inconsistencies between the principal Ordinance and the Protection of Women and Girls' Ordinance, to which I referred in introducing the previous Bill. It is carefully provided that any rights of guardianship possessed by the Secretary for Chinese Affairs must be subject to the provisions of section 10 of the Ordinance which I read out a little while ago. The new section 24, is another section intended to facilitate proof of offences. It is a provision for linking up the various parts of the register to be kept under the Ordinance. It provides, for example that if you have the same serial number in the descriptive part of the register and on the photograph found on a particular girl—evidently her photograph—then you can link up the two together and the photograph is deemed to be the photograph of the girl described in these entries under the same serial number. It also enables the register or extracts from it to be produced in evidence without further proof.

There are two remarks which I should like to make before I conclude. One is that the dicta of a certain former Chief Justice of this Colony have been quoted frequently on this subject. I should like to say—I think it is my duty to say—with all respect that I

think the statements of that learned Chief Justice are not always a safe guide on this subject. In one point at least the views expressed by him conflicted with those held by one of my predecessors, and, what is more important, entirely conflicted with the views held by the law officers in England, so that I think any statement made by him on this subject should not be accepted without due examination. The other remark is that I should like to repeat what has been said so often but which some people appear not to appreciate fully, that is, that the law of Hong Kong does not recognise and never has recognised that the payment of money can give any rights whatsoever on the person making the payment, no rights whatsoever of possession or property over any other human 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. This Ordinance proposes to make certain amendments in the Female Domestic Service Ordinance, 1923, Ordinance No. 1 of 1923, in order to increase its efficiency.

2. Section 2 of this Ordinance prohibits the bringing into the Colony of any new *mui tsai*, but if a *mui tsai* is already in the Colony the section will not prevent her being taken out of the Colony and brought back again, provided that she is registered under the Ordinance before she is taken out.

3. Section 3 of this Ordinance repeals sections 7 and 8 of the principal Ordinance. Section 7 was inserted in the principal Ordinance in its passage through the Legislative Council. It provides that in every prosecution for over-work or ill-treatment of a *mui tsai* medical evidence shall be given as to the injuries received by the *mui tsai*, that the magistrate must find whether such ill-treatment amounted to gross cruelty, and that if the magistrate finds gross cruelty the offender must be sentenced to imprisonment without the option of a fine. The object was the laudable one that cases of gross cruelty should be adequately punished. There are, however, two dangers. One is that even gross cruelty may leave no indications to which a medical witness can point, and the medical evidence might even have the effect of weakening the evidence of gross cruelty. A more serious danger is that inadvertent failure to call medical evidence on a charge under section 6 of the principal Ordinance might lead to the quashing of a conviction. It is even possible that if the charge were one of common assault, and medical evidence were not called, the conviction might be attacked on the ground that section 7 of the principal Ordinance would apply to the charge of assault on a *mui tsai* as well as to a charge
e x p r e s s l y l a i d u n d e r s e c t i o n 6 .

Section 7 is therefore repealed. Some of its provisions are reproduced in the new section 18 of the principal Ordinance which is to be enacted by section 7 of this Ordinance. That section will provide that in every prosecution under section 6 of the principal Ordinance the magistrate shall find whether the acts or omissions proved, if any, amounted to gross cruelty, and if he so finds the accused must be sentenced to imprisonment without the option of a fine. The provision that medical evidence must be called is omitted.

4. Section 8 of the principal Ordinance provides that the provisions of the Offences against the Person Ordinance, 1865, and of the Protection of Women and Girls Ordinance, 1897, shall as hitherto apply to *mui tsai*. To provide that an enactment in force is still in force is, to say the least, unusual, but the insertion of this section in the Ordinance in committee was justified by the desirability of drawing public attention to the fact that *mui tsai* were within the protection of the two Ordinances referred to. It was also perhaps useful as impliedly preserving certain rights of guardianship conferred on the Secretary for Chinese Affairs by section 32 of the Protection of Women and Girls Ordinance, 1897. It has, however, been thought desirable to deal specifically with these rights of guardianship, as is explained in paragraphs 12 to 15 below. It therefore seems unnecessary to retain section 8 of the principal Ordinance on the statute book.

5. Section 9 (1) of the principal Ordinance enables the Secretary for Chinese Affairs, upon the death of the employer of any *mui tsai*, to make any order which he may think fit regarding the transfer of such *mui tsai* to a new employer. The object of this provision was to give the Secretary for Chinese Affairs power to make the best arrangement for the *mui tsai* possible in all the circumstances of the case. It was never intended that this power should override the right of a *mui tsai* to be restored to her parent or other natural guardian, or the general right of the parent or other natural guardian of a *mui tsai* under the age of eighteen to have the girl restored to his or her custody. Section 4 of this Ordinance, therefore, inserts in section 9 (1) of the principal Ordinance words which make it quite clear that the provisions of section 10 of the principal Ordinance are to prevail over those of section 9 (1) in case of any conflict.

6. Section 5 of this Ordinance makes in section 11 of the principal Ordinance the same amendment as section 4 of this Ordinance makes in section 9 (1) of the principal Ordinance.

7. Section 6 of this Ordinance repeals section 13 (2) of the principal Ordinance because in future it will be illegal to bring any unregistered *mui tsai* into the Colony, and accordingly no provision can be made for the registration of *mui tsai* so brought in.

8. Section 7 of this Ordinance has already been referred to in paragraph 3 above. It substitutes a new section for the present penalty section.

9. Section 8 of this Ordinance adds five new sections to the principal Ordinance. The proposed new section 20 provides that in any prosecution under section 6 of the principal Ordinance the magistrate may convict of common assault if he fails to find as a fact that the girl in question was a *mui tsai*. It is possible that he has this power already under section 22 of the Magistrates Ordinance, 1890, but it is considered desirable in this case to place the matter beyond all doubt.

10. The proposed new section 21 deals with onus of proof, and provides that in every prosecution under the principal Ordinance it shall, until the contrary is proved, be presumed that the girl in question was a *mui tsai* in the employment of the accused at the time of the alleged offence, and that this onus will not be discharged by mere proof that the girl was described in any transaction by some term other than *mui tsai*. This may appear drastic, but the difficulties of proof are enormous. In order to prove that a girl is a *mui tsai* it might be necessary to prove some payment made years ago, outside the Colony, and in the absence of the girl herself. On the other hand, the accused should find it easy to prove the real status of any girl in his household, and the burden is therefore less heavy than it might appear. The provision that the onus will not be discharged by mere proof that the girl was described in some transaction by some term other than *mui tsai* is inserted because of the practice of describing a *mui tsai* as an adopted daughter. If the girl was in fact used as a domestic servant, and if money had been paid to secure her services as such, no doubt the magistrate would hold that she was a *mui tsai*, even though a document was produced in which she was called an adopted daughter. Of course under the main part of the section the magistrate would have to find that the girl was a *mui tsai* unless there was evidence to the contrary sufficient to discharge the onus laid on the accused by the section.

11. The proposed new section 22 will enable the magistrate to estimate the age of a *mui tsai* even though no evidence is called on the point. Such a provision is obviously necessary. Precedents in principle may be found in section 27 of Ordinance No. 4 of 1897, and in section 1 (3) of the Street Betting Act, 1906, and section 141 of the Education Act, 1921.

12. Section 32 of the Protection of Women and Girls Ordinance, 1897, provides that "No parent or person acting in the place of a parent who has voluntarily parted with a girl for the purpose of adoption into another family, or who has received money for parting with the custody of such girl for any purpose, shall be

deemed to be entitled as of right to the custody of such girl as her parent or as the person acting in the place of her parent, and the legal guardianship of such girl shall be vested in the Secretary for Chinese Affairs." These provisions appear to be in conflict with some of the provisions of the Female Domestic Service Ordinance, 1923.

13. In the first place it might be argued that the declaratory clause of the later Ordinance, *i.e.*, section 2, negatives the right of guardianship conferred on the Secretary for Chinese Affairs by section 32 of Ordinance No. 4 of 1897 where a parent has received money for parting with the custody of a daughter. It is submitted that the conflict is only apparent, and that though the rights of the Secretary for Chinese Affairs arise upon such payment they are not conferred by that payment. Further, the rights of the Secretary for Chinese Affairs are conferred solely in the interests of the girl, and in that respect they differ from rights of an employer and even from the rights of a parent or guardian. It is therefore submitted that section 2 of Ordinance No. 1 of 1923 is concerned with such rights as those of an employer and such rights as those of a parent, and not with rights conferred on an officer of the Government to enable him to protect the girl, if necessary, against both her employer and her parent. To make this clear, however, section 8 of this Ordinance proposes to add to Ordinance No. 1 of 1923 a new section 23 which will provide that nothing in Ordinance No. 1 of 1923 shall affect any right of guardianship possessed by the Secretary for Chinese Affairs by virtue of the provisions of Ordinance No. 4 of 1897.

14. In the second place, while section 32 of Ordinance No. 4 of 1897 appears to give the Secretary for Chinese Affairs the full and unfettered rights of a legal guardian, section 10 of Ordinance No. 1 of 1923 considerably limits his right to refuse to restore a girl to the custody of her parent or natural guardian. The latter section provides that any *mui tsai* who wishes to be restored to the custody of her parent or natural guardian, and any *mui tsai* under eighteen whose parent or natural guardian wishes the girl to be restored to his or her custody, shall be restored to such custody unless the Secretary for Chinese Affairs "shall see some grave objection in the interest of such *mui tsai* to such restoration." The conflict here is real, and no doubt the later enactment would prevail. The proposed new section 23 makes it quite clear that the later enactment is to prevail, as it lays down that in exercising any right of guardianship conferred on him by Ordinance No. 4 of 1897 the Secretary for Chinese Affairs shall comply with the provisions of section 10 of Ordinance No. 1 of 1923.

15. In the third place, section 32 of Ordinance No. 4 of 1897 does negative the right of the parent, in certain circumstances, in a form which is undesirable in view of the provisions of Ordinance No. 1 of 1923. That section is, however, about to be amended

by another Ordinance so as to make it more consonant with the objects and principles of Ordinance No. 1 of 1923.

16. The proposed new section 24 makes any register kept under this Ordinance, and certified extracts, and photographs and finger prints taken for the purpose of any such register, admissible in evidence upon mere production. It also links up the photographs or finger prints with the entries in the registers by means of the serial numbers used.

WATCHMEN AMENDMENT ORDINANCE, 1928.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Watchmen Ordinance, 1928." He said: This Bill is rendered necessary by the proposed changes in the titles of some of the superior officers of the Police Force. The matter was fully explained on introduction of the Police Force Bill. 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 bill is rendered necessary by the proposed changes in the titles of some of the superior officers of the police force. The details are given in the Objects and Reasons to the Police Force Amendment Bill which was read a first time on the 23rd September, 1929.

INDUSTRIAL EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN AMENDMENT ORDINANCE, 1929.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Industrial Employment of Children Ordinance, 1922." He said: This Bill is intended to be a further step in the improvement of factory conditions in the Colony. The principal effect of the Bill itself is to include women and young persons within the scope of the principal Ordinance so that the employment of women and young persons as well as the employment of children in factories, can be regulated. It also gives the Protector of Labour power to remove and detain any young person or child found in any factory if the Protector of Labour has reason to believe that some offence against the Ordinance has been committed. The only available evidence of the offence may be the evidence of the child or young person, and it is obvious there would be great inducements for the employer in such a case to induce the child or young person quietly to disappear and any proceedings would fail. The detention, of course, would be for the shortest possible time in the interests of the person detained and

others of the same class. A set of regulations is proposed to be made under the Ordinance when this Bill becomes law. The principal points of these regulations have been given in the Objects and Reasons, One is that the employment of women and young persons between 10 p.m. and 6 a.m. will be prohibited. The employment of women in dangerous trades without the special permission of the Protector of Labour will be prohibited. The employment of young persons in dangerous trades will be totally prohibited, and lead processes and the manufacture of vermilion will be added to the list of dangerous trades. 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. This Ordinance is intended to be a further step in the improvement of factory conditions in the Colony. Such improvement must be slow and gradual, and it is very difficult in such matters to travel far ahead of neighbouring countries.

2. The main object of this Ordinance is to include women and young persons within the scope of the principal Ordinance, No. 22 of 1922. A young person is defined as any person of or over the age of fifteen years and under the age of eighteen years.

3. Paragraph (c) of section 6 of this Ordinance adds to the principal Ordinance a new sub-section 4 (3) which gives the Protector of Labour, and any inspector of labour, power to remove and detain in a suitable place for inquiries any young person or child found in any factory, etc., in which the Protector or inspector has reasonable cause to suspect that some offence against the Ordinance has been committed. Without some provision of this kind it would be difficult to investigate a suspected offence, and it might be very difficult to prove the offence if it had been committed. It is obvious that if the child or young person in question were the chief or the only witness of the offence there would be a great temptation in the mind of the offender to cause the disappearance of that witness, and this would be comparatively easy in the case of a child or young person. The detention would be in the interest of the child or young person, and in the interests of children and young persons employed in factories generally. It would be for as short a time as possible.

4. A set of draft regulations proposed to be made when the bill is passed, is published simultaneously with the bill. These regulations make the following provisions:—

- (a) Lead processes and manufacture of vermilion are added to the list of dangerous trades.

- (b) The employment of young persons in dangerous trades is prohibited.
- (c) The employment of women in dangerous trades without the special permission of the Protector of Labour is prohibited. It is proposed to allow the employment of women in fire cracker factories.
- (d) The employment of women and young persons between 10 p.m. and 6 a.m. is prohibited.

CHATER MASONIC SCHOLARSHIP FUND ORDINANCE, 1929.

HON. MR. W. E. L. SHENTON moved the first reading of a Bill intituled "An Ordinance to provide for the incorporation of the Trustees of the Chater Masonic Scholarship Fund." He said: On the retirement of the late Sir C. P. Chater, K.T., C.M.G., from the office of District Grand Master of Hong Kong and South China, an office he had held for more than 30 years, various Masonic Lodges and Chapters in the District contributed funds for the foundation of a Scholarship at the University of Hong Kong to be awarded to the fatherless children of Masons. This fund, known as the Chater Masonic Scholarship Fund, was administered by a Board of Trustees. In order to secure perpetual succession and the other advantages of incorporation, it is proposed to incorporate the Board of Trustees under the title of "The Trustees of the Chater Masonic Scholarship Fund." The Bill now proposed follows the general form of other incorporated ordinances passed from time to time. I beg to move the first reading.

HON SIR HENRY POLLOCK seconded and the Bill was read a first time.

Objects and Reasons.

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

1. On the retirement of the late Sir C. P. Chater, K.T., C.M.G., from the office of District Grand Master of Hong Kong and South China, an office he had held for more than 30 years, various Masonic Lodges and Chapters in the District contributed funds for the foundation of a Scholarship at the University of Hong Kong to be awarded to the fatherless children of Masons. This fund known as the Chater Masonic Scholarship Fund was administered by a Board of Trustees.

2. The objects of the Fund are set out in detail in the proposed Ordinance and the By-laws appearing in the Schedule.

3. In order to secure perpetual succession and the other advantages of incorporation it is proposed to incorporate the Board

of Trustees under the title of "The Trustees of the Chater Masonic Scholarship Fund."

The bill now proposed follows the general form of other incorporating Ordinances passed from time to time.

DISTRESS FOR RENT AMENDMENT ORDINANCE, 1929.

THE ATTORNEY GENERAL moved the third reading of the Bill intituled "An Ordinance to amend further the Distress for Rent Amendment Ordinance, 1883."

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

COUNCIL went into Committee to consider the Bill clause by clause. No amendment to the Bill was proposed in Committee and upon Council resuming,

THE ATTORNEY GENERAL moved the third reading of the Bill.

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

POLICE FORCE AMENDMENT ORDINANCE, 1900.

THE ATTORNEY GENERAL moved the second reading of the Bill intituled "An Ordinance to amend the Police Force Ordinance, 1900."

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

Council went into Committee to consider the Bill clause by clause.

THE ATTORNEY GENERAL.—I beg to move that the following clause appearing on the paper circulated to hon. members be substituted for clause 6 of the Bill:

"6. Section 16 of the Police Force Ordinance, 1900, is repealed and the following section is substituted therefor:—

"16. On the completion of each period of four years resident service, every European subordinate officer and constable shall, subject to the exigencies of the service, be entitled to a free passage to such port in his native country as the Governor may direct or to some other port approved by the Governor: provided that it shall be lawful for the Governor, in his discretion, to grant to any European subordinate officer or constable a free passage to such port on the completion of a period of less than four years resident service."

The period of resident service for European police before "home" leave used to be four and a half years. It is now four years. The above amendment is merely in order to give effect to that change throughout the whole of section 16 of the principal Ordinance.

THE COLONIAL SECRETARY seconded and the amendment was approved. No further amendment being made to the Bill in Committee, upon Council resuming,

THE ATTORNEY GENERAL moved the third reading of the Bill.

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

ADJOURNMENT.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT.— The Council will adjourn until Thursday next, 31st October.

FINANCE COMMITTEE.

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

Votes totalling \$2,410, contained in Message No. 14 from H.E. The Officer Administering the Government, were considered.

Item No. 81: Public Works, Extraordinary:—Cheung Sha Wan Refuse Dump, \$1,800.

HON. MR. W. E. L. SHENTON.—I should like to ask whether this work is being done under contract.

THE DIRECTOR OF PUBLIC WORKS.—The contract for the work has been let. The rates for the contract are 11½ cents for a soft wagon load and 20 cents for rock. This is spasmodic work. It has to do with the filling in of the refuse dumped by the Sanitary Board and the contractor is frequently called upon to stop and restart the work. The material is obtained from a cutting close to the site of the dump and when the estimate for 1929 was put in it was anticipated that no large amount of rock would be met. That has not been the case. A great many boulders have had to be removed. These boulders are made use of on the outside of the dump to form protection for the dumped material. Wherever stones can be used for building purposes they are sold and \$150 has been recovered for such stone. It is peculiar work in that we have to keep pace with the dumping of refuse by the Sanitary Board. 6.8 acres of ground have in this way been reclaimed at the approximate rate of 20 cents a foot and the ground at the present time is worth about \$3, and by the time it is ready for sale it will be more valuable.

Item No. 83: Sanitary Department:—Rent of Quarters for Scavenging Coolies, \$60.

HON. MR. W. E. L. SHENTON.—Can any reasons be given for this increase?

THE CHAIRMAN.—I have a report here from the Head of the Sanitary Department. "The ground and first floor of 187, Woo Sung Street, were taken as quarters for scavenging coolies in August, 1926 at \$33 per mensem. On 31st October, 1927, the rent was raised from \$33 to \$38, five vacant houses in the neighbourhood were considered but the rentals were much higher. In May, 1929, notice of increase of rent from \$38 to \$48 as from 1st July was given. Exhaustive searches in the neighbourhood failed to discover any empty house and it appears that the inevitable will have to be accepted. The rents in the neighbourhood have been on the increase and in the opinion of the Assessor the rent, though high, is not exorbitant." You will realise it is necessary for scavenging coolies to live near where they work.

All the votes were approved.
