

*7th May, 1931.*

**PRESENT:**

HIS EXCELLENCY THE GOVERNOR (SIR WILLIAM PEEL, K.C.M.G., K.B.E.).

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. W. T. SOUTHORN, C.M.G.)

THE ATTORNEY GENERAL (HON. MR. C. G. ALABASTER, K.C., O.B.E.).

THE SECRETARY FOR CHINESE AFFAIRS (HON. MR. A. E. WOOD).

THE COLONIAL TREASURER (HON. MR. E. TAYLOR).

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

HON. MR. E. D. C. WOLFE, C.M.G. (Inspector General of Police).

HON. DR. W. B. A. MOORE (Director of Medical and Sanitary Services).

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

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

HON. MR. C. G. S. MACKIE.

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

HON. MR. J. P. BRAGA.

HON. MR. J. J. PATERSON.

MR. N. L. SMITH (Deputy Clerk of Councils).

**ABSENT:**

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

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

**MINUTES.**

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

**NEW MEMBERS.**

The Colonial Treasurer (Hon. Mr. Edwin Taylor), and the Director of Medical and Sanitary Services (Hon. Dr. W. B. A. Moore) took the oath of allegiance and their seats as Members of the Council.

**CANTON-KOWLOON RAILWAY DISASTER.**

H. E. THE GOVERNOR.—I desire to take this opportunity of publicly thanking most sincerely all those who gave most valuable help after the disastrous railway accident which took place on the 20th. of last month, between Taipo and Shatin. It was wonderful the amount of help that was offered and given and had it not been for that fact it is almost certain that there would have been a greater loss of life. In the reports I have received, a number of names were mentioned and I have had letters sent to them expressing the thanks of this Government, but it is possible, however, that in the stress and strain of the aftermath of such a disaster a certain number of helpers might have passed unnoticed or, perhaps, their names were not known, and I should be very sorry if any of them felt that their services had not been recognised. I therefore take this opportunity of thanking them all. I should also like to congratulate, on this occasion, the Acting Manager of the Railway, Mr. Walker, and his staff for the very fine way in which they grappled with the situation. As Honourable Members may know, the great damage done to the line was not so much at the place where the accident occurred as at a place a little this side of Shatin Station where the embankment was completely washed away for a distance of many yards. I had some experience of cloud-bursts and floods on railway lines four years ago in Malaya, and I know well the amount of work involved in restoring such damage, and I think that the railway staff are to be greatly congratulated on having restored the line with such celerity and opened it again to traffic.

I should also like, on behalf of this Council, to offer our deepest sympathy to those who were injured in the accident and also to those whose relatives and friends were, unfortunately, killed.

**PAPERS.**

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

Regulation under section 3 of the Post Office Ordinance, 1926, on 7th April, 1931.

Regulations under section 3 of the Licensing Ordinance, 1887, on 7th April, 1931.

Regulation under section 2 of the Emergency Regulations Ordinance, 1922, on 17th April, 1931.

Rule under section 23 of the Estate Duty Ordinance, 1915, on 27th April, 1931.

Regulation under section 3 of the Post Office Ordinance, 1926, on 27th April, 1931.

Report on the Botanical and Forestry Department for the year 1930.

Report of the Harbour Master for the year 1930.

Kowloon-Canton Railway Annual Report for 1930.

Report of the Official Receiver and Registrar of Trade Marks and Letters Patent for the year 1930.

Report of the Head of the Sanitary Department for the year 1930.

Report of the Registrar of the Supreme Court for the year 1930.

### **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. 5 of April 2nd, 1931, and moved that it be adopted.

THE ATTORNEY GENERAL seconded and this was agreed to.

### **ASSESSMENT RATE.**

THE COLONIAL SECRETARY.—I beg to move the following resolution:—"Resolved by the Legislative Council that on and from the date to be fixed by His Excellency the Governor for the coming into effect of this resolution the following percentage shall be payable as rates, namely, for any tenement assessed, 17 per cent. Provided that the said percentage shall be reduced to 16 per cent, in the case of any tenement for the water supply of which from the Government waterworks the only provision made is a supply of unfiltered water, and shall be reduced to 15 per cent, in the case of any tenement for which no provision is made for any supply of water from such waterworks. For the purposes of this resolution provision for water supply shall be deemed to be made for a tenement, although it has no connexion with the Government watermains or waterworks, if such tenement is situated within 200 yards from a Government watermain."

It will be remembered by Honourable Members that the Acting Colonial Secretary, when moving a resolution in this Council on the 4th of December, 1930, to increase the Assessment rates, referred to the present absence of uniformity in the figures for various localities and he intimated that it was hoped to introduce in time for the

quarter beginning on the 1st of July a simpler table of rates. The resolution which I am now moving will, if it is approved, carry that policy into effect.

Honourable Members will observe that the only discrimination now proposed is on the basis of the provision of water and that there are only three rates, which vary according to the amount and quality of the water provided, the rate being 17% for a supply of filtered water, 16% for a supply of unfiltered water and 15% where no provision is made for any supply of water from Government Water Works. As was observed in the speech of the Acting Colonial Secretary to which I have already referred, the Government feels that any attempt to reflect by a variety of percentages the provision or non-provision in certain localities of police patrols, street lighting, educational facilities and the like is illogical, as the absence or presence of such amenities is sufficiently reflected in the rateable value of the premises. For this reason Government feels that the raising of the percentage in the case of certain outlying districts which will follow the adoption of the present proposal is entirely equitable.

It is proposed that the date to be fixed for the coming into effect of the Resolution shall be the 1st of July, 1931.

THE COLONIAL TREASURER seconded and the resolution was agreed to.

### **BANKRUPTCY ORDINANCE, 1930.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the law relating to Bankruptcy." He said.—Our Bankruptcy law at present is contained in Ordinance No. 7 of 1891, based mainly on the Act of 1883, which has been replaced by the Act of 1914. This Bill is modelled on the latter Act with such modifications as have seemed desirable in applying its provisions to local circumstances. These modifications are explained in the table of Correspondence on pages 68 to 79 of the print in members' hands. The Bill was prepared by the Official Receiver and has been submitted to the Incorporated Law Society of Hong Kong, whose helpful criticism has done much to bring it to the form in which it now stands. It will be noticed that the Bill, if passed, will come into operation on the 1st. January, 1932. This is to give time for the drafting of rules which under clause 114 are to be made by His Honour the Chief Justice with the approval of this Council.

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 repeal the existing Ordinance of 1891 which is out of date and to replace it by an Ordinance based on the

Bankruptcy Act, 1914, but adapted to local conditions. Its commencement is postponed until the 1st January, 1932, so as to give time for the preparation of the rules which are to be made thereunder. The principal differences between the bill and the statute law now in force in England are shown in the Table of Correspondence. That Table also shows the principal differences between the bill and the present Bankruptcy Ordinance.

### **MERCHANT SHIPPING AMENDMENT (NO. 2) ORDINANCE, 1931.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend further the Merchant Shipping Ordinance, 1899." He said.—This Bill makes statutory provision for the special exemptions from the provisions of section 4 of the principal Ordinance, which it has been for many years the practice to grant in the case of the small vessels which maintain regular communication between the Colony and the places named in clause 2 of the Bill. It also makes provision for the fixing of a reasonable purchase price for the abstract of information, known as the Hong Kong Port Regulations.

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 has been the practice to grant special exemption from the requirements of section 4 of the Merchant Shipping Ordinance, to certain small steamers holding Hong Kong passenger licences regularly plying between the Colony and places not open to general trade. The practice would seem to require an amendment of the section, which is relaxed by its proviso in the case of river steamers and trawlers and which was further relaxed in 1917, in the case of river steamers, for a period of 6½ years, by Ordinance No. 13 of 1917 and Notification No. 432 of 1923. Section 2 of this Ordinance accordingly adds a third proviso to section 4 (2) of the principal Ordinance. Section 3 amends section 44 of the principal Ordinance by substituting the words "such fee as the Governor in Council shall prescribe" for the words "a fee of one dollar" which is considered an inadequate sum to charge for the informative abstract which is to be supplied under the section. Section 4 of this Ordinance is the suspending clause usual in the case of an Ordinance relating to Merchant Shipping.

### **VACCINATION AMENDMENT ORDINANCE, 1931.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Vaccination Ordinance 1928." He said.—The effect of this Bill is to impose a uniform period of six weeks as the period of grace permitted in the case of unvaccinated children. Hitherto there have been

varying periods of grace ranging from one month to six months as well as a seasonal period of grace from the beginning of May to the end of September.

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 Ordinance reduces the period of grace for unvaccinated children born within the Colony or admitted to school therein, from six months to six weeks and repeals the sub-section of section 14 of the principal Ordinance which exempted guardians from penalties for not causing children to be vaccinated during the summer months. Sub-section (3) of that section is altered so as to allow six weeks instead of one month as the period of grace in the case of children brought here for the first time. This Ordinance also repeals a sub-section of section 21 of the principal Ordinance the effect of which is spent.

### **LEGAL PRACTITIONERS' AMENDMENT ORDINANCE, 1931.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled, "An Ordinance to amend the Legal Practitioners' Ordinance, 1871." He said.—The effect of this Bill is explained in the Memorandum of Objects and Reasons on page 2 of the print, which has been supplied to Honourable Members.

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. Under section 21 of the principal Ordinance the court is empowered to approve, admit, and enrol such persons as have been admitted as attorneys, solicitors, or writers in one of the courts of London, Dublin or Edinburgh, or as proctors in any Ecclesiastical Court in England, to practise as solicitors in the court, and the expression "writer" is to be deemed to include "law agents" as defined in section 1 of the Act, 36 and 37 Victoria, chapter 63.

2. It is felt that the limitation to named cities is too restrictive. The rights and duties of Law Agents in Scotland are regulated by the Law Agents (Scotland) Acts, 1873 and 1891. The term "Law Agent" (equivalent to "solicitor" in England) is defined by the former Act as "Law Agents, shall include Writers to the Signet, Solicitors in the Supreme Court, Procurators in any Sheriff Court, and every person entitled to practise as an Agent in a court of Law in Scotland."

3. The Secretary of State, in a recent circular Despatch (dated the 8th January, 1931) forwarding an extract from a memorandum of the Council of the Scottish Law Agents Society regarding admission to practise in the Colonies, states that he is sure that the intention is that the same privilege should be conferred upon solicitors in Scotland as upon solicitors in England and that therefore the reference, so far as Scotland is concerned, should be "law agents admitted to practise in Scotland" and nothing more.

4. Section 21 of the principal Ordinance is amended accordingly and sections 22 and 23 are made uniform therewith.

5. Sections 2, 22 and 23A of the principal Ordinance are also amended so as to give The Incorporated Law Society of Hong Kong its correct title.

### ADJOURNMENT.

H. E. THE GOVERNOR.—Council stands adjourned until this day week.

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### FINANCE COMMITTEE.

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

Votes totalling \$55,277 contained in Message No. 6 from H.E. the Governor, were considered.

Item 18: Public Works Extraordinary, Miscellaneous, Resumption at Fanling.

HON. MR J. P. BRAGA.—It seems that there is an important principle involved in this item. There may be, and perhaps there are, very good reasons why this Committee should be asked to vote the sum of \$8,324. So far as I can make out from the explanations accompanying this item, it looks very much as if the Government is making a loan of \$8,324 to the Royal Hongkong Golf Club. Why this should be so we are not told in the printed explanation, which is more or less obscure, attached to the vote. What I would like to know is this: As a matter of principle will the Government afford similar accommodation to other clubs in the Colony for facilities which, apparently, have been granted to the Golf Club? I have no complaint against this Club as a club; but I would like to point out that it is an exclusive club, the membership of which is composed, for the most part, of people in the Colony well able to afford to provide themselves with all necessary amenities for recreational purposes and who are in circumstances enabling them to look after their own affairs without the pecuniary aid of the ratepayers. Speaking for myself, I think the Government is creating a precedent which will make it very difficult for the Finance Committee of the Legislative Council with perfect consistency to refuse applications from sporting clubs in the

Colony seeking assistance of a like nature from the Government in future.

Then, again, there is this question of interest. I see that the rate of interest the Golf Club is called upon to pay is 4½% per annum. We are asked practically to make a gift to this wealthy club of 1½% per annum on \$8,324. I arrive at the difference of 1½% in this way. The Government pays on its Public Works Loan 6% per annum to the bondholders. It receives under the proposed arrangement with the Golf Club 4½% from them. The Government is, therefore, out of pocket on this loan 1½% per annum which ratepayers who are non-members of the Golf Club, and therefore precluded from enjoying its privileges, are called upon to pay for the Golf Club.

For the reasons I have stated, unless some cogent explanation be forthcoming, I shall not be able to support the vote.

THE CHAIRMAN:—I am afraid, Mr, Braga, that I cannot pledge the future members of the Finance Committee as to what assistance they may be prepared to give to any other club. The only question before us to-day is whether or not the Finance Committee is prepared to approve the vote of this particular sum to this particular club. Any future request from any other club would have to be decided on its merits.

Now, as regards this particular item, the principle involved is that the Golf Club has purchased certain areas of land. It proposes to hand these back to the Government on receiving the amount of money which it paid to purchase them. The advantage which the Government gets is this: it leases that land to the Golf Club on an annual tenancy so that the Golf Club gives up very considerable rights in return for getting an annual tenancy from the Crown. Another advantage to the Crown is that it enables the whole of the Golf Club area to be dealt with as one complete whole, subject to one or two very minor items of land, instead of having various items of private land included in the perimeter of the Golf Club. In return for these advantages to the Government and disadvantages to the Golf Club, the Government did not think it was inequitable to charge them only four and a half per cent. on the amount of money paid by the Government to the Golf Club.

HON. MR. BRAGA.—I appreciate the explanation and am thankful for such a full explanation. In fact, my questions were directed more in the interests of the public than in the interest of the limited numbers of the Finance Committee. One point I should like to get clear is this. Are these privileges, of which you speak, inherent in the Golf Club as a golf club? In which case the tenure of the land, which is nominally one year and which has to be renewed on the expiration of each year in general practice, as in the case of many older sporting institutions in the Colony which are very admirably run, may be considered to be held in perpetuity upon the payment of this nominal rental to the Government at the end of each year.

THE CHAIRMAN.—I do not think it is nominal. I think it is the regular Crown rent; as I understand it, it is the ordinary Crown rent which anybody would pay.

HON. MR. BRAGA.—If that be so, then I take it there are, or should be, certain building covenants attaching to the lease with the Golf Club. Is there any such building covenant?

THE CHAIRMAN.—I cannot answer that question off-hand, Mr. Braga. This land is rural land. Perhaps Mr. Creasy can tell us.

THE DIRECTOR OF PUBLIC WORKS.—It is not leased with a building covenant; it is on an annual premium.

THE CHAIRMAN.—I do not think anybody would take it for building on an annual tenure.

HON. MR. BRAGA.—In other words the inherency of the privileges attaching to the Hong Kong Golf Club could not be made effective in the case of trespass by any member of the public who is not a member of the Golf Club. Supposing a resident of Hong Kong, who does not happen to be a member of the Golf Club, trespasses on the grounds of the Golf Club, would that member of the public be entitled to cross the grounds which are, nominally, so leased to the Golf Club, or would he be prosecuted before a Magistrate for trespass?

THE CHAIRMAN.—I am not prepared to answer that question or any legal conundrums.

HON. MR. BRAGA.—It is not such a conundrum as it appears. It is a very practical point because, if the Golf Club has Government assistance I should like to see the interests and rights of the public at large fully protected. If a member of the public were to trespass on the grounds of the Golf Club and were to be hauled before a Magistrate, then I say that this vote is all wrong, and that we should not be called upon to pay this sum of \$8,000 to the Golf Club or any club. I think we have had a recent case in the Court for trespass on land nominally held by a particular club which has been considered a trespass in the legal sense. I may be wrong, but that is my view of the position, and if the inherent right of the Golf Club excludes a member of the public, I most emphatically say, though I regret it, that I cannot vote for this amount. I want to make it clear that my remarks are not directed against the Golf Club, but on general principles.

HON. MR. J. J. PATERSON.—The benefit is largely on the side of the Government is it not? The proposition is not the Golf Club's but the Government's?

THE CHAIRMAN.—I am not quite sure. It originated many years ago.

HON. MR. BRAGA.—Whether it was the Government or the Golf Club, I say we are depriving the public of its rights. The public has a prior inherent right to cross the Golf Club's ground and I think the public is entitled to full protection, unless it is that the Golf Club pay a sum commensurate with its rights.

HON. MR. PATERSON.—It seems to me the Golf Club is paying annual Crown rent, and that, therefore, they have full rights to do exactly as they like, and members of the public, not being members of the Golf Club, have no right on it.

THE CHAIRMAN.—I do not quite understand what right, Mr. Braga, you would give to the public on land leased to a private person, or what right you would like to reserve to the public to trespass on land leased to a private party.

HON. MR. BRAGA.—I say the Government is quite within its rights to lease any land, because there is a certain amount of revenue derived from the leasing of Crown lands and assessment, but why should we be called upon to help the Golf Club?

THE CHAIRMAN.—We are not merely helping the Golf Club, but getting something in return. We are definitely acquiring land.

HON. MR. BRAGA.—Which you are handing back to the Golf Club on a nominal rental.

THE CHAIRMAN.—It is not nominal. It is ordinary Crown rent.

HON. MR. BRAGA.—If it is nominal Crown rent you vest the Golf Club with certain privileges and those privileges cannot be acquired by the Golf Club to the exclusion of the public at large.

THE CHAIRMAN.—Your point is not very clearly made.

HON. MR. BRAGA.—I have explained myself as fully as I could.

HON. MR. W. E. L. SHENTON.—There are certain rights of way over the Golf Club property which have never been interfered with and those rights of way will not be interfered with now.

HON. MR. R. H. KOTEWALL.—I see the resumption was made for the proper development of the course. Who pays for the development of the course?

THE CHAIRMAN.—The Golf Club. They have spent enormous sums of money. I have given Mr. Braga as full a statement of the facts as I can. In the first place I do not regard the rent as nominal and I regard the Government as getting a distinct return for the money expended.

HON. MR. C. G. S. MACKIE.—I do not regard it as nominal, for I see that the Government is to receive \$1,527 out of the vote of \$8,324.

On the Chairman putting the matter to the vote, seven voted in favour and one (Hon. Mr. Braga) against.

HON. MR. BRAGA.—I would like to say a few words on a point of order. It may appear strictly theoretical. Nevertheless, I feel that the point should be raised. I refer to the voting on this question. Under Article 24, clause 7, of the Standing Orders of the Legislative Council "a member shall not vote on any subject in which he has a direct pecuniary interest." I would not go so far as to say that the voting has been influenced by the "pecuniary interest" of any member of this Committee. Nothing further than that is from my mind. On principle, however, I feel I must challenge the votes of at least those members of this Committee who are members of the Golf Club, and whose interest, therefore, in the question before the Committee is a "direct" one. I, therefore, respectfully submit to you, Sir, that the votes of those members of this Committee who are members of the Golf Club should not be counted.

HON. MR. PATERSON.—May I reply to that by reminding Honourable Members of the occasion when the vote was given on the report of the Salaries' Commission. It seems to me, Mr. Braga, that there was a direct pecuniary interest here, yet people were allowed to vote. I see no reason why I should not be able to vote on this. There was a much greater and more direct financial interest there.

HON. MR. BRAGA.—It may seem a very fine point, but it would be nice to have a decision on it. There is nothing personal in this. I think you appreciate that.

HON. MR. PATERSON.—I realise that.

THE CHAIRMAN.—I would rule in this case that the vote taken is not to the direct pecuniary interest of the members voting; that the interest is not direct and pecuniary within the meaning of sub-clause 7 of Standing Order No. 24 and the votes are therefore allowed to count.

All the votes were approved.

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