

12th July, 1934.

PRESENT:—

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

HIS EXCELLENCY THE OFFICER COMMANDING THE TROOPS (MAJOR-GENERAL O. C. BORRETT, C.B., C.M.G., C.B.E., D.S.O.).

THE COLONIAL SECRETARY (HON. SIR THOMAS SOUTHORN, K.B.E., C.M.G.).

THE ATTORNEY GENERAL (HON. MR. R. E. LINDSELL).

THE SECRETARY FOR CHINESE AFFAIRS (HON. MR. N. L. SMITH).

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

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

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

HON. DR. A. R. WELLINGTON, C.M.G., (Director of Medical and Sanitary Services).

HON. MR. R. M. HENDERSON. (Director of Public Works).

HON. SIR WILLIAM SHENTON, KT.

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

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

HON. MR. J. P. BRAGA.

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

HON. MR. T. N. CHAU.

HON. MR. W. H. BELL.

HON. MR. J. OWEN HUGHES.

MR. R. A. C. NORTH, (Deputy Clerk of Councils).

MINUTES.

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

PAPERS.

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

Regulation under section 2 of the Public Places Regulation Ordinance, 1870, relating to horses, etc., using Deep Water Bay beach.

Regulations under section 3 of the Dogs Ordinance, 1927.

Order made by the Chief Justice under section 115 of the Bankruptcy Ordinance, 1931.

By-law under section 16 of the Public Health and Buildings Ordinance, 1903.

Order including Pokfulam under section 78 of the Public Health and Buildings Ordinance, 1903.

Report of the Superintendent of Imports and Exports for the year 1933.

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. 8 of 28th June, 1934, and moved that it be adopted.

THE COLONIAL TREASURER seconded, and this was agreed to.

EXCHANGES ORDINANCE, 1934.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to regulate and control Exchanges". He said: The aim of this Bill is to make unlawful such concerns as the recent Gold Bar exchanges which were mere "bucket shops" and served no purpose beyond providing the community with facilities for one form of gambling on a large scale.

It does not touch the buying or selling forward of stocks and shares or ordinary exchange transactions with banks or operations by brokers on exchanges outside the Colony.

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 purpose of this Ordinance is to make illegal such concerns, which are generally known as "bucket shops", as the Chinese Produce Exchanges, a feature of the local market in 1921, and the Gold Bar Exchanges which have been operated recently in the Colony.

2. Section 2 is derived in the main from s. 1 of a Canadian Act of 1881 (51 Vict. c. 42) and forbids gambling in "futures" in respect of metals, currencies and commodities generally. It does not prohibit the buying or selling forward of stocks and shares.

3. Section 3 prohibits the opening and keeping of any place, and section 4 the advertising, etc., of facilities, for the purposes of such gambling in "futures".

4. Section 5 puts aiders and abettors on the same footing as principal offenders.

5. Section 6 prescribes the penalties for offences against the Ordinance.

6. Section 7 makes the consent of the Attorney General a condition precedent to the institution of proceedings.

7. Section 8 throws the onus of disproving intent to make profit and absence of *bonâ fide* intention to make or receive delivery (v. section 1) on the defendant in criminal proceedings under this Ordinance.

8. Section 9 exempts from the operation of the Ordinance agents or brokers operating in the Colony for exchange concerns outside the Colony.

9. Section 10 similarly makes this Ordinance inapplicable to exchange transactions effected by or with Banking Companies and Corporations.

10. Section 11 empowers the Governor by Order in Council to exempt from the operation of the Ordinance such persons and business concerns as he deems fit.

TRUSTEE ORDINANCE, 1934.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the law relating to Trustees". He said: The purpose of this Ordinance is to bring up to date the law of the Colony relating to trustees on the lines of the Trustee Act, 1925. As will be seen from the Table of Correspondence practically all the provisions of that Act have been incorporated with slight amendments here and there to suit local conditions. Part VII retains the provisions of Part I of the 1901 Ordinance dealing with the Official Trustee, and Part VIII which authorises and regulates Trust Companies is derived from Straits Settlement Ordinance No. 31 of 1926.

The Bill has been carefully considered by the Hong Kong Incorporated Law Society and many of their suggestions, in particular those of Mr. Edgar Davidson, have been adopted.

It has also been approved by the Judges.

I regret that a small printer's error has remained undetected in the first line of paragraph 3 of the Objects and Reasons—Ordinance for Ordinance, and the final page of the Table of Correspondence has been bound up with the rest of the Bill back to front.

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 object of this Bill is to substitute for the Trustees Ordinance, 1901, an Ordinance framed on the lines of the Trustee Act, 1925 (15 Geo. 5, c. 19) and the Straits Settlements Ordinances No. 31 of 1926 and No. 14 of 1929, and to incorporate therein certain provisions of the Judicial Trustees Act, 1896.

2. The principal amendments made by the Bill are as follows:—

- (a) A trustee unless expressly prohibited by the instrument creating the trust, may invest in securities payable to bearer, which, if not so payable, would have been authorised investments. But a trustee other than a trust corporation must deposit the securities for safe custody with a banker (s. 8).
- (b) Trustees, when lending money, may contract that the money shall not be called in during any period not exceeding seven years. On a sale of land, they may contract that the payment of a part, not exceeding two-thirds, of the purchase money shall be secured by mortgage of the land sold. Where securities of a company are subject to a trust, the trustees may concur in any arrangement for the reconstruction of the company, for the sale of any of its property to another company or for its amalgamation with another company, and, if any preferential right is offered to the trustees in respect of their holding, they may exercise or renounce or assign it (s. 11).
- (c) Trustees are given power to deposit money at a bank and to pay calls out of capital money (s. 12).
- (d) A sole trustee, not being a trust corporation, will not be able to give a valid receipt for the proceeds of sale or other capital money arising under a disposition on trust for the

sale of land, notwithstanding anything to the contrary in the instrument creating the trust (s. 15).

- (e) A personal representative, or two or more trustees acting together, or in some cases a sole acting trustee, may accept any property before the time at which it is made payable and may sever and apportion belended trust funds (s. 16).
- (f) Where trustees are authorised to apply capital money for any purpose, they shall have, and shall be deemed always to have had, power to raise the money required by sale or mortgage, notwithstanding anything to the contrary contained in the trust instrument. This does not apply to trustees of a charity (s. 18).
- (g) A trustee may insure trust property against loss by fire and typhoon up to the full value of the property (s. 21).
- (h) The application of insurance monies received by trustees is provided for (s. 22).
- (i) Trustees and personal representatives may employ agents to sell or manage property outside the Colony (s. 25).
- (j) Power is given to a trustee, who intends to remain out of the Colony for a period exceeding one month, to delegate to any person by power of attorney the execution or exercise of the trust (s. 27).
- (k) Additional protection is afforded to trustees (ss. 28, 29, 30 and 31).
- (l) An elaborate maintenance clause is provided and an advancement clause (ss. 33 and 34).
- (m) A statutory protective trust is provided similar to that which is often inserted in a will or settlement where the legatee or beneficiary is improvident. It will be sufficient to direct that the fund is to be held on "protective trusts" (s. 35).
- (n) In the case of future settlements and dispositions on trust for the sale of land the number of trustees shall not exceed four. In the case of existing trustees holding land on trust for sale the number of trustees, if over four, is to be reduced to four by means of leaving vacancies unfilled—these restrictions are not to apply in the case of land vested in trustees for charitable or public purposes (s. 36).
- (o) The donees of a power of appointment of new trustees may appoint themselves, and a new trustee may be appointed in place of an infant. Additional trustees may be appointed, although there is no vacancy, but the number of trustees must not be increased beyond four (s. 37).

- (p) Where the court appoints a corporation as trustee, it may authorise it to charge remuneration (s. 43).
- (q) Power is given to the court to authorise trustees to do acts which are *ultra vires* but are in the opinion of the court expedient (s. 56).
- (r) Provisions are made for the appointment of a Judicial Trustee similar to the provisions of the Judicial Trustee Act, 59 and 60 Vict s. 35. (ss. 63, 64 and 65).
- (s) S. 17 of the new Ordinance which reproduces s. 31 (1) & (2) of the Trustees Ordinance, 1901, does not appear in the Trustee Act, 1925 but is retained as it appears in the Straits Settlements Ordinance No. 14 of 1929.
- (t) S. 61 of the Trustees Ordinance, 1901, which enabled Trustees to apply to the court for advice has been omitted. That section was founded on section 30 of the Law of Amendment Act, 1859, (Lord St. Leonard's Act) which was repealed by the Trustee Act, 1893. It is considered that the new Ordinance coupled with section 627 of the Code of Civil Procedure is sufficient.
- (u) Part VIII of the new Ordinance permits the formation of Trust Companies and is taken from the provisions of Ordinance No. 31 of 1926 of the Straits Settlements.

3. Notwithstanding the inclusion in the new Ordinance (s. 62) of a provision relating to payment into court by trustees and to the inclusion in Part VI (ss. 63, 64 and 65) of provisions relating to judicial trustees, it has been considered desirable to retain the provisions of Part I of the Trustees Ordinance, 1901. This is effected accordingly by the inclusion of that Part as Part VII of the Ordinance.

4. A Table of correspondence between the clauses of the bill and the sections of the Trustees Ordinance, 1901, and the Trustee Act, 1925, is attached.

CROWN COUNSEL'S FEES AMENDMENT ORDINANCE, 1934.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Crown Counsel's Fees Ordinance, 1903". He said: The nature and scope of the amendment of the principal Ordinance to be effected by this Bill are clearly explained in the Objects and Reasons.

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. When the principal Ordinance, No. 24 of 1903, was framed to allow of the taxation and recovery of the appropriate fee for counsel where the Attorney General had appeared and won his case, and when the Law Revision Ordinance, 1912, made such fees, in the absence of some contractual arrangement or regulation to the contrary, payable into the general revenue, the possibility of the appointment of an Assistant Attorney General or other counsel to assist in the work of the Attorney General's department was apparently overlooked.

2. In a recent appeal case in which the Crown was interested, the Assistant Attorney General appeared for the respondent, and on the appeal being dismissed obtained an order for cost against the appellant. The bill of costs including fee for counsel was duly paid, but it was then discovered that it was very doubtful whether under the law, as it stands, such a fee was rightly included in the bill.

3. The present amendment cures this defect.

"FOREIGN MISSION SISTERS OF ST. DOMINIC" INCORPORATION ORDINANCE.

HON. SIR WILLIAM SHENTON moved the first reading of a Bill intituled "An Ordinance to provide for the Incorporation of the Regional Superior in Hong Kong of the Foreign Mission Sisters of St. Dominic commonly known as Maryknoll Sisters". He said: The order of the Foreign Mission Sisters of St. Dominic was founded in the year 1912.

The order is a Roman Catholic one and the head of the order is Mother Mary Joseph Rogers who is a citizen of the United States of America and she resides at Ossining, in the State of New York, where the operations of the whole order are directed from.

For the purposes of General Administration the order is divided into units known as Regions each controlled by a Regional Superior.

There are several Regions in the United States and one each in the South China, North China, Manchukuo, Korea, The Philippine Islands and Hawaii.

The main work of the order is Educational, Medical and Missionary.

The South China Region confines its work mainly to that of education and has been in operation here for about thirteen years.

It has branches at Kongmoon, Yeung Kong, Lo Ting and Kaying which are controlled by the Regional Superior from Hong Kong where she resides.

The South China Region has two schools in the Colony namely The Maryknoll Convent School at present at 248, Prince Edward Road, Kowloon, and the Holy Spirit School at 140, Caine Road, Hong Kong.

The South China Region has purchased the property No. 140, Caine Road and also other property known as New Kowloon Inland Lot No. 1419 on which it is proposed to build a Convent School to replace the present Maryknoll Convent School. In addition to the foregoing the South China Region has a number of residences and schools in South China which have hitherto been vested in individual names but on the Incorporation of the Regional Superior the properties will be vested in her.

The main idea for which the Regional Superior is being incorporated is to obtain security and stability and to ensure perpetual succession.

The draft Bill has been duly advertised in accordance with the Royal Instructions and the Standing Orders of the Legislative Council of Hong Kong.

Copies of the Bill have been forwarded to the Honourable The Attorney General and have been approved by him.

HON. MR. R. H. KOTEWALL 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 Mission controls and manages a number of Schools and mission Stations in South China. The Mission directs and maintains in the Colony the Maryknoll Convent School at No. 248 Prince Edward Road, Kowloon, and the Holy Spirit School at 140 Caine Road, Hong Kong.

2. The Mission has from time to time acquired land and buildings for the purpose of carrying on its work in the Colony.

3. In order to secure perpetual succession and the other advantages of Incorporation it is proposed that the Regional Superior in Hong Kong of the Foreign Mission Sisters of St. Dominic be incorporated as a Corporation Sole and the Bill now proposed follows in its main lines other incorporation Ordinances which have been passed from time to time.

(1933 SUPPLEMENTARY) APPROPRIATION ORDINANCE, 1934.

THE COLONIAL TREASURER moved the second reading of a Bill intituled "An Ordinance to authorize the Appropriation of a Supplementary Sum of Twenty-seven thousand two hundred and forty-three Dollars and sixty-seven cents to defray the Charges of the year 1933."

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

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

Upon Council resuming,

THE COLONIAL TREASURER reported that the Bill had passed through Committee without amendment and moved the third reading.

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

SUMMARY OFFENCES AMENDMENT ORDINANCE, 1934.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend the Summary Offences Ordinance, 1932."

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

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

Upon Council resuming,

THE ATTORNEY GENERAL reported that the Bill had passed through Committee without amendment, and moved the third reading.

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

ADJOURNMENT.

H.E. THE GOVERNOR.—Council stands adjourned until Thursday, July 26th.

FINANCE COMMITTEE.

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

Votes totalling \$293,416, contained in Message No. 9 from H. E. the Governor, were approved.