27th May, 1936.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR (SIR ANDREW CALDECOTT, Kt., C.M.G., C.B.E.).

THE HONOURABLE THE OFFICER COMMANDING THE TROOPS (BRIGADIER H. G. SETH-SMITH, D.S.O.).

THE COLONIAL SECRETARY (HON. MR. R. A. C. NORTH, *Acting*).

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

THE SECRETARY FOR CHINESE AFFAIRS (Hon. MR. W. J. CARRIE, *Acting*).

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

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. T. H. KING, (Inspector General of Police).

HON. MR. A. G. W. TICKLE, (Director of Public Works, *Acting*).

HON. SIR HENRY POLLOCK, Kt., K.C., LL.D.

HON. MR. J. J. PATERSON.

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

HON. MR. T. N. CHAU.

HON. MR. W. H. BELL.

HON. MR. M. K. LO.

HON. MR. S. H. DODWELL.

HON. MR. A. F. B. SILVA-NETTO.

MR. D. M. MACDOUGALL (Deputy Clerk of Councils).

MINUTES.

The Minutes of the previous meeting were read and confirmed.

NEW MEMBER.

The Hon. Mr. A. F. B. Silva-Netto took the Oath of Allegiance and assumed his seat as member of the Council.

STANDING LAW COMMITTEE.

H.E. THE GOVERNOR.—Sir William Shenton's departure from the Colony left a vacancy on the Standing Law Committee. I have decided that his place be filled by the Hon. Mr. M. K. Lo, who has kindly agreed to serve.

PAPERS.

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

Merchant Shipping (Life-Saving Appliances) Regulations, 1935.

Merchant Shipping (Fire Appliances) Regulations, 1935.

Amendment to the Post Office Regulations made by the Governor in Council under section 3 of the Post Office Ordinance, 1926, Ordinance No. 7 of 1926, relating to the increase of postal rates, dated 22nd April, 1936.

Amendments to the Tobacco Regulations made by the Governor in Council under sections 3 and 5 of the Tobacco Ordinance, 1931, Ordinance No. 39 of 1931, under the heading "Drawback" contained in the First Schedule to that Ordinance, dated 9th May, 1936.

Order made by the Governor in Council under the Liquors Ordinance, 1931, Ordinance No. 36 of 1931, rescinding condition No. 9 of the Drawback conditions, dated 9th May, 1936.

Order made by the Governor in Council under section 2 (a) of the Evidence Ordinance, 1889, Ordinance No. 2 of 1889, recognising The Shanghai Commercial and Savings Bank, Limited, dated 13th May, 1936.

Amendment to the by-laws under section 5 of the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, under the heading "Slaughter-houses" and sub-heading "Slaughter of animals" set forth in the Schedule to that Ordinance, dated 28th April, 1936.

Administration Reports, 1935:—

Part II.—Law and Order:

Report of the Superintendent of Prisons.

Part IV.—Education:

Report of the Director of Education.

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. 4, dated 13th May, 1936, and moved that it be adopted.

THE COLONIAL TREASURER seconded, and this was agreed to.

MOTIONS.

THE COLONIAL TREASURER.—Officers on sterling salaries on leave are paid in sterling and the levy only applies. The arbitrary rate of exchange, at which officers are paid locally, does not apply to officers on leave, has not been applied and should not apply.

As the wording of the Ordinance is perhaps obscure on this point, I am advised that to remove all possible doubts, although no other construction was ever intended, the resolution standing in my name should be adopted. Advantage has also been taken to exempt from the special conversion rate the salary of officers who may be absent from the Colony on duty. They are of infrequent occurrence but cases might arise. At the same time the resolution limits the exemption, in the case of officers on leave, to those whose leave exceeds three months so as to exclude short vacations taken in neighbouring countries by officers who would normally draw their pay from the local Treasury and not from the Crown Agents.

I move:

Resolved pursuant to section 6 of the Hong Kong Government Service (Levy on Salaries) Ordinance, 1936, that with effect on and from the 1st day of January, 1936, the salaries, which are expressed in terms of sterling, of all officers of the Hong Kong Government Service, who are or shall be absent from the Colony on leave for a period exceeding three months or who are or shall be absent from the Colony on duty for any period, shall be wholly exempt from the operation of the special conversion rate provided for in section 2 (4) of the said Ordinance during the period in which such officers are so absent.

THE COLONIAL SECRETARY seconded, and this was agreed to.

MARRIAGE AMENDMENT ORDINANCE, 1936.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Marriage Ordinance, 1875." He said: The object of this Bill, which is fully set out in the Memorandum of "Objects and Reasons," is to provide for a fine as an alternative penalty for offences against section 29 of the principal Ordinance.

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. Section 29 of the principal Ordinance provides that any minister, who (1) wilfully celebrates a marriage in the case of a minor without such written consent as is therein prescribed or (2) wilfully celebrates a marriage contrary to any other provision of the Ordinance, or knowing that any provision of the Ordinance has not been complied with, shall be guilty of a misdemeanor and shall be liable to imprisonment, without hard labour, for any term not exceeding two years.

2. The object of the amending Bill is to provide for the imposition of a fine as an alternative to imprisonment.

3. The maximum fine is placed at $1,000 as that is the normal maximum fine in the case of misdemeanors—see Ordinance No. 1 of 1898, s. 5; but if the case is dealt with summarily the maximum would be reduced to $250 under section 84 (1) of Ordinance No. 41 of 1932.

4. Cases have occurred where ministers of religion have disregarded the requirements of the Ordinance to an extent meriting the imposition of some penalty but which did not justify proceedings leading to imprisonment.

5. It is hoped that legislative sanction of this alternative penalty will have the effect of promoting a closer attention by the persons concerned to the requirements of the principal Ordinance.

PROTECTION OF WOMEN AND GIRLS AMENDMENT ORDINANCE, 1936.

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: The object of this Bill, which is fully explained in the Memorandum of "Objects and Reasons," provides a new series of sections to the principal Ordinance which are up-to-date in place of certain sections now obsolete.

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 clauses 2 and 3 of this Bill is to get rid of a group of sections 12, 12A, 13, 14 and 15 of Ordinance No. 4 of 1897, which belong to the days when houses of ill-fame were tolerated, when they were not disorderly, dangerous or a nuisance, and to substitute new sections 12, 13, 14 and 15, which are more appropriate to the policy of complete suppression of such establishments.

2. Clause 4 deletes from section 16 the words "or disorderly persons" a phrase which was used in the repealed sections 12A, 13, 14 and 15, but which is not used in the new substituted sections.

FEMALE DOMESTIC SERVICE AMENDMENT ORDINANCE, 1936.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend the Female Domestic Service Ordinance, 1923."

THE COLONIAL SECRETARY seconded.

HON. MR. S. W. TS'O.—Your Excellency, I rise to oppose the second reading of this amending Bill and in doing so I have the full support of my Chinese colleagues in Council.

In the "Objects and Reasons" for introducing this Bill, the Hon. Attorney General quoted the Straits Settlements Ordinance No. 5 of 1932 and also stated that in the House of Commons, on 19th February, 1936, the Secretary of State for the Colonies, while referring to *mui-tsai* cases in Hong Kong, said "I have looked into the prosecutions and I find there are too many fines. I would like to see imprisonment as a deterrent."

I must point out that the conditions obtaining in and the geographical position of the Straits Settlements are in many respects different from that of Hong Kong. For, if there are 1,000 Chinese going to the Straits Settlements in a year, there would be tens of thousands coming to Hong Kong in every year.

It must be remembered that the majority of the Chinese who go to the Straits Settlements go there to seek work or on business. Persons who go there to visit their friends and relatives must necessarily be few in view of the great distance between the Straits Settlements and China and the expense and trouble of travelling, and few would take a *mui-tsai* along with them on such a visit.

On the other hand, Hong Kong being so near to China, Chinese families are constantly passing through this Colony for transhipment to the North or other parts of China. Many too pay visits to their relatives and friends here, and every day we see thousands of Chinese coming to Hong Kong from Canton, Macao, Wuchow and other districts in the interior. Many of our visitors are ignorant of the law of Hong Kong so that the imposition of a prison sentence will be directed more against our visitors than against our local residents who know, or must be presumed to know, our law.

To commit a person to prison and stigmatise him or her for life as a "jail bird" for ignorance is, to say the least, a serious matter, and we consider that a fine of $250 for contraventions of our Ordinance, other than Section 6, or of any regulations made under such Ordinance, should be a sufficiently strong deterrent.

With regard to the opinion expressed by the Secretary of State for the Colonies, we are not in a position to say what was actually in his mind. From our point of view, and from our own knowledge of the cases commonly found in Hong Kong, we would choose to think that the reason why our magistrates have not imposed more imprisonment sentences is not because they do not wish to carry out our law vigorously but rather because there are so few cases of ill-treatment or cruelty to *mui-tsai* which really justify imprisonment. I do not know whether the Secretary of State for the Colonies had in his possession copies of the annual reports of the Hong Kong Society for the Protection of Children, but if he had, he would have seen from such reports that there are indeed very few cases of intentional ill-treatment or cruelty to children by the Chinese in the Colony. All cases in their charge are cases of dire poverty.

We are glad indeed and heartily welcome the Mui-Tsai Commission who have come here to investigate on the spot our *mui-tsai* question. The Commission, I understand, is requested to make recommendations for any legislation necessary on the question of female domestic servants, and I would ask Your Excellency to defer any legislation touching upon this question until after the Commission has made its report.

For the above reasons, I beg to move that the proposed Bill be not read a second time.

HON. MR. T. N. CHAU.—I am in complete agreement with the views expressed by my senior colleague. Like him, I hold the view that, except for contravention of Section 6 of the principal Ordinance, wherein punishment by imprisonment is already provided for, a maximum fine of $250 would be a sufficient penalty for all other offences.

In the "Objects and Reasons" attached to the Bill it is stated that "in the House of Commons on February 19, 1936, the Secretary of

State, referring to *mui-tsai* cases in Hong Kong, said: I have looked into the prosecutions and I find there are too many fines. I would like to see imprisonment as a deterrent."

With great respect to the learned Attorney General, I venture to place on the words imputed to the Secretary of State a different construction. The words "I have looked into the prosecutions" seem to me to bear the implication that the Secretary of State had examined some of the prosecutions made under the Ordinance, and found that where there was the penalty of imprisonment authorised by the Ordinance, the award of the alternative penalty of fines had been too frequent. If he did mean what the Hon. Attorney General had assumed him to mean, surely he would have expressed himself in some different way.

My Chinese colleagues and I consider the present Ordinance quite adequate, and that the question of imposition of penalties, where the alternatives of fines and imprisonment are authorised, may well be left to the discretion of our competent Magistrates. I may say that for ill-treatment or cruelty I am in favour of severe penalties, and I have no objection to even increasing the maximum penalty provided in Section 6.

With a due sense of my responsibilities, I am opposed to the Bill, not only because there has been an undue haste in the proposed legislation as a result of a remark reported to have been made by the Secretary of State, which in my opinion has been misinterpreted, but also on the ground that the proposed Bill is unnecessary and, if it becomes law, may entail great hardship on many people not guilty of criminal act or intent.

HON. MR. M. K. LO.—Your Excellency,—In rising in support of my Senior Colleague, I crave leave to set out my reasons for opposing the second reading of this Bill. At the outset I should like to state that if the Motion for the second reading of this Bill is passed, I will propose a certain amendment in the Committee stage.

I am of course aware that the effect of the amendment is not that imprisonment should be awarded for every breach of the Ordinance or of the regulations made thereunder, but that the magistrate is merely given a discretion to impose a prison sentence in a case in which he finds it desirable to do so. But my objection to the Bill is based on two main grounds:—

First, that no case has been made out for the proposed amendment, and

Secondly, that in the Colony, the value of avoiding sending a first offender to jail is so obviously inadequately appreciated, and the powers conferred on magistrates for dealing with first offenders are so deficient, that I do foresee grave risk of the power of imprisonment being improperly exercised.

I propose to deal shortly with my latter point first. Anyone who is at all familiar with the literature on the subject cannot but be impressed with the valuable work achieved in England in saving men and women from becoming criminals by not sending them to prison for a first offence, except in very special circumstances.

I should like to quote rather extensively from an address by Lord Hewart, Lord Chief Justice of England, to the International Prison Congress in London in October, 1925. Dealing with the object of punishment Lord Hewart makes the following remarks:—

> "We are to look to the common safety, to the security of all, and to making less likely the doing of similar wrongs in other cases. Yes, but a very little reflection shows that this is essentially a task of discrimination. As there are great differences between one offence and another, so also there are great differences between one offender and another, and society has come more and more to recognize that it owes a duty not only to the common security but also to the individual offender himself. Society, after all, consists not of classes but of individuals, and it is the first and most elementary task in any adjudication to try an individual case upon its merits. .... Nothing, it goes without saying, is more injurious to the public interest than the manufacture of criminals. What is not so generally recognized is, that there are few more effectual ways of manufacturing criminals than to send young offenders unnecessarily to prison, ... Grave indeed is the responsibility of those who, otherwise than in a case of clear necessity, send any youth or girl, or indeed any man or woman, to prison for the first time."

Pausing here, I do respectfully desire to emphasise and underline the concluding sentence of the paragraph above set out. Time and again one sees in the local Papers the case of a man or woman, without any criminal record and, indeed, hitherto a harmless and law abiding citizen, being sentenced to a short term of imprisonment for a relatively trivial offence.

After pointing out that the criminal law of England already permits, and therefore encourages, certain alternatives in particular cases, the Lord Chief Justice proceeds to deal with the powers conferred by the Probation Act, 1907:—

> "The first section of the Act of 1907 manifestly invites that discrimination to which reference has been made. It provides that where any person is charged before a Court of summary jurisdiction with an offence punishable by that Court, and the Court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health or mental

condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the Court may, without proceeding to conviction, make an order either (1) dismissing the information or charge, or (2) discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order. Now these are very remarkable and far-reaching powers, and the next sub-section proceeds to confer them, with such minor changes as are necessary, upon Courts before whom any person has been convicted on indictment of any offence punishable with imprisonment. It may be doubted whether the full meaning of this provision has been universally, or even usually, appreciated and turned to account. Wide indeed is the range of the several and alternative matters which the legislature has deliberately invited the Court to consider for the purposes of the Act—with regard to the defendant himself, (1) his character, (2) his antecedents, (3) his age, (4) his health, or (5) his mental condition; or, with regard to the offence charged, the question whether it was or was not really of a trivial nature; or finally, any extenuation to be found in the circumstances in which the offence was committed."

After dealing with probationers and their duties the Lord Chief Justice proceeds as follows:—

"But it may be convenient to state quite shortly certain propositions which seem to be reasonably clear, with reference to the actual working of the system of probation:

.....

2. There is evidently in some quarters an impression that probation has nothing to say to cases which are not in themselves insignificant. But this view ignores the plain terms of the Statute. The "trivial nature of the offence" is only one among many of the alternative grounds to which the Court is empowered to have regard."

Parenthetically I do desire to remark that this impression, which the Lord Chief Justice criticises, appears to be actually the law of Hong Kong. As far as I know the only powers conferred on our Magistrates of discharging a convicted defendant on his recognizances are contained in Section 30 of the Magistrates Ordinance 1932, which in terms limits such powers to a case in which "the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment." Under Section 30, no consideration can be given to the defendant himself, his character or his antecedents.

"3. In 1923 rather more than 603,000 persons were tried in the Courts to which the Statute applies. Of this number, some 12,600 persons were placed on probation—that is to say, about 2 per cent."

Pausing here, may I enquire whether any statistics have been compiled, showing the number of persons who have been placed on probation in Hong Kong during any year? I hope that I may be entirely wrong, but my own regrettable impression is that the percentage is not 2 per cent., but something like .002 per cent.!

The Lord Chief Justice then proceeded to touch upon the work of Juvenile Courts (and here I desire, if I may, to express my humble admiration for the fine work which is being done locally by our kind and careful Chief Magistrate) of the Industrial School and of the Reformatory School, and concluded as follows:—

"These are good works. May they increase and succeed more and more. They make it plain that this country, at any rate, is rich in means, if they are faithfully employed, for helping those who have made a lapse and for forming or retrieving a character able to resist temptation and to avoid crime. Let us beware of any voices of indolence or of cynicism that might belittle these efforts or hamper their further development. Above all let us put aside the heresy that in some cases it may be right to consult the interests of the offender, while in other cases it is necessary to consult the interests of the public. Upon any fair analysis, those interests are found to coincide. The State may sometimes be compelled to be stern. It must not be cruel. It cannot afford to be indifferent. By all means let us keep alive the feeling of terror in the contemplation of serious crime and its punishment. But let us at the same time endeavour to resist the beginnings; let us not forget that more than half of the uncharitable judgments in the world are due to lack of imagination; and let us remain unalterably convinced that magnanimity owes to prudence no account of her motives."

My humble opinion is that the administration of the Criminal law is much more humane in England than in Hong Kong, and that legislation on the lines of the Probation Act 1907 is urgently called for.

Unless a case is made out for increasing the penalties under the Female Domestic Service Ordinance, and for the reasons I have indicated, I am opposed to increasing the powers of the magistrate under the Ordinance.

Has, then, a case been made out?

The Honourable the Attorney General, in his Objects and Reasons, gives as the sole reasons the fact that certain provisions

of the law regarding penalties in the Straits Settlements, differ from our Ordinance, and the quotation of a somewhat cryptic sentence by the Rt. Honourable the Secretary of State for the Colonies. As regards the former I have no materials to judge how the Criminal law is administered in the Straits Settlements, and in particular how far the magistrates there do avail themselves of the powers, if any, conferred upon them to put first offenders on probation. As regards the quoted sentence by the Secretary of State, I have described it as being somewhat cryptic. He may have meant that he had found too many cases of prosecutions under Section 6 (which already confers powers of imposing imprisonment), in which fines only were imposed, and accordingly expressed a wish that magistrates would more frequently exercise their power of imposing a prison sentence. On the other hand, he may have meant what the Honourable the Attorney General evidently took him to mean, namely, that the law should be altered so as to allow of the imposition of a sentence of imprisonment for other offences. I feel that we really do not know what the Secretary of State had in mind when he expressed himself as quoted. But in any case I desire most respectfully to add this, that if the Secretary of State advocates imprisonment merely as a general policy and by way of deterrent, then he has apparently ignored all consideration of the other relevant circumstances mentioned above from the point of view of the first offender. As far as I know, no magistrate in Hong Kong, in the course of the hearing of a case before him, has ever expressed the view that imposition of fines for offences other than against Section 6 is inadequate.

Now, what are the other "provisions" in respect of which it is now proposed to make the imposition of a prison sentence possible?

So far as the Ordinance is concerned they may be summarised as follows:

Sec. 4. Taking into employment a *mui-tsai*.

Sec. 4A. Bringing into the Colony a *mui-tsai* not previously here and not registered.

Sec. 5. Taking into employment a female domestic servant aged under ten years.

Sec. 9. (1) Transferring a *mui-tsai* otherwise than on the death of an employer.

(2) Failing to report on becoming actual employer of a *mui-tsai* on death of an employer.

Sec. 13. Having custody of an unregistered *mui-tsai*.

Sec. 14. Having in employment an unregistered *mui-tsai*.

Sec. 15. Having in employment a female domestic servant aged under 10 years.

So far as the Regulations are concerned they may be summarised as follows:—

Reg. 5. Failure to report death, disappearance or intended removal from the Colony or intended marriage of a *mui-tsai* or to report change of address of the *mui-tsai* or her employer.

Reg. 8. Failure to produce *mui-tsai* when required by S.C.A.

Reg. 11. Failure to comply with the reasonable requirements of the Inspector.

With great respect I submit that offences against the above provisions are all of a quasi-criminal nature only, and that it is not necessary to impose a prison sentence.

I feel sure Your Excellency will gladly acknowledge that the Chinese community as a whole has loyally endeavoured to carry out the Female Domestic Service Ordinance as a matter of government policy. The Chinese accept as an accomplished fact the abolition of the *mui tsai* system in Hong Kong. But the basis of the *mui-tsai* system as it has existed and exists in China for hundreds and hundreds of years is poverty. Bearing this in mind, and recalling the transitory nature of the Colony's population we should, I submit, be agreeably surprised that, relatively speaking, there are so few cases of infringing the Ordinance, and I do submit that it would be wrong to subject an offender to imprisonment in cases which do not involve any cruelty.

The Hong Kong *Government Gazette* of 8th May sets out the terms of reference of the Mui Tsai Commission. It is the duty of the Commission "to report to the Secretary of State for the Colonies on any legislative or other action which the Commissioners may consider practicable and desirable in relation to" the *mui tsai* question, etc. Surely this Council should at least await the report of the Commissioners before taking any further action.

THE ATTORNEY GENERAL.—Sir, My Honourable and learned friend Mr. M. K. Lo was good enough to furnish me with an advance copy of his speech in opposition to the Second Reading of this Bill and I am glad to note that he realises that the effect of the amendment in the law proposed by this Bill will not be the infliction of imprisonment in every case in which there has been a breach of the principal Ordinance or of the Regulations made thereunder, but that the Magistrate will merely be given, in his discretion, the power to impose a prison sentence in any case in which he finds such a sentence to be merited.

The Honourable and learned member has devoted four fifths of his eloquent address to a discussion of the merits of legislation on the lines of the Probation of Offenders Act, 1907. Legislation on those lines based on earlier English enactments, namely section 16 of the Summary Jurisdiction Act, 1879, and section 1 of the Probation of First Offenders Act, 1887, are to be found in section 30 of the Magistrates Ordinance and section 96 of the Criminal Procedure Ordinance. The Honourable member's remarks would have been relevant had the question of amending either of these Ordinances been before this Council to-day.

But it is only in the final fifth of his eloquent speech, in arguing that no case for amendment of the Female Domestic Service Ordinance is made out, that the Honourable and learned member has addressed himself, with any relevance, to the Bill which we are now discussing. In this part of his speech, though he has been relevant, I submit he has been wholly unconvincing. Who can doubt that the Secretary of State after what he has said in Parliament is dissatisfied with the present condition of the principal Ordinance, No. 1 of 1923, as a deterrent? That Ordinance definitely abolished for ever the taking of *mui-tsai* into employment and the taking into employment of any female domestic servant under the age of ten. The amending Ordinance No. 22 of 1929 forbade the importation of *mui-tsai* acquired elsewhere.

The rest of the Ordinance and the Regulations deal with the care and custody of those *mui-tsai* who had been taken into service before the Ordinance came into force and who, when registered, were permitted to remain in the families of their employers whilst they grew up. But that permission was conditional and was given out of consideration for the welfare of the *mui-tsai* themselves, not out of any tender regard for those who employed them. The primary condition was that these girls should not be over-worked or ill-treated, or be provided with food, clothing or medical attendance on a less generous scale than that which is provided for the daughters of the family. The other requirements have been summarised by the Honourable and learned member. They are well known to all Chinese in the Colony who have registered *mui-tsai* in their families. Breach of the conditions has been punished by fine since 1923. So far only gross cruelty has been punishable by imprisonment. It is proper, I submit, that all bad cases of breach of the Ordinance or Regulations should now be punishable here, as they are in the Straits Settlements, by a reasonable term of imprisonment.

The Honourable and learned member has endeavoured to make light of the provisions of the Female Domestic Service Ordinance and of the Regulations which he summarised by describing them as being of a quasi-criminal nature only. But I submit, Sir, that every one of them has been carefully considered as being vitally

necessary, particularly regulation No. 5 which requires the employer of a registered *mui-tsai* to report her death, disappearance, removal or intended marriage. It is this regulation, more than any other, which prevents the sale of registered *mui-tsai* by their employers. Such sales are often difficult to prove; but proof of a breach of regulation No. 5 presents no difficulty and resource can be had to this regulation in all cases where a sale is believed to have taken place. It is common knowledge that many registered *mui-tsai* are untraceable by the inspectors. It is otiose to suggest that such cases can be dealt with in accordance with the principles of the Probation of Offenders Act. Fines have not proved a deterrent or prevented the occasional disappearance or removal from inspection of a registered *mui-tsai* and imprisonment for bad cases must be tried.

The Senior Chinese member my Honourable and learned friend Dr. S. W. Ts'o has opposed the Bill on other grounds. In the first part of his speech he has dealt with the daily unrestricted flow of population to and from the Colony and contrasts it with conditions in Malaya where the population is more static. He pleads that *mui-tsai* may be brought into the Colony by innocent and ignorant immigrants. This is no argument for refusing to arm the magistrates with the power to imprison persons who are not ignorant of the fact that *mui-tsai* may not be brought here. Still less is it an argument in favour of saving from the risk of imprisonment the residents who keep registered *mui-tsai*, whom he admits should know the law. The magistrates have ample power to deal leniently with those who are really ignorant and can be trusted not to imprison these. But it is time that it should be known generally by would-be immigrants that the introduction of *mui-tsai* into the Colony is as much against the law as the introduction of unlicensed arms, opium or dangerous drugs and will not be tolerated by the authorities.

At the end of his speech the Honourable Dr. Ts'o has suggested that this Bill be postponed until after the receipt of the Report of the Mui-Tsai Commission. This suggestion has received consideration, but it is felt that it would be best to bring our existing *mui-tsai* legislation into line with that of the Straits Settlements so that any suggestions the Commission may have to make for further safeguards may apply equally to both Colonies.

Those of our Chinese friends who are genuinely trying to comply with the law need suffer no anxiety that it will be administered harshly by persons unacquainted with their psychology, for not only are all our Magistrates Cadet Officers who understand Chinese, but there is also the additional express provision in section 19 of the principal Ordinance which ordains that no prosecution under it shall be commenced without the consent of the Secretary for Chinese Affairs.

The Honourable Mr. T. N. Chau has opposed the Bill on additional grounds to those mentioned by the other two Chinese members, in that I have misinterpreted what the Secretary of State has said. Really Sir, I think it is quite impossible to fairly and impartially misunderstand it; but, at any rate, if I have erred, the whole Government has erred in the interpretation of the Secretary of State's remarks. I therefore support my original motion that the Bill be read a second time. (Applause.)

H.E. THE GOVERNOR.—There is very little that I can usefully add to the admirably clear and conclusive arguments with which my Honourable and learned Colleague, the Attorney General, has met the points raised in opposition to this Bill. There was however one passage in the speech of my Honourable friend Mr. Lo, which calls for response from me. He said that he felt sure that I would gladly acknowledge that the Chinese Community as a whole had loyally endeavoured to carry out the Female Domestic Servant Ordinance. I do acknowledge this, Gentlemen, and very gladly and gratefully. I will even go further and state my opinion that my Honourable friend has done unconscious injustice to an increasing number of his community in attributing the support given by the local Chinese to our Anti-Mui-tsai measures to a passive, negative submission to Government policy rather than to a positive conviction as to their essential rightness and necessity.

My Honourable friend went on to say that the Chinese accept as an accomplished fact the abolition of the *mui-tsai* system in Hong Kong. What, however, has actually been accomplished is statutory prohibition, and abolition can only be predicated when, looking back over a long period of years we are able to satisfy ourselves that the machinery of prohibition has been thoroughly effective. After reading the reports on *mui-tsai* cases week by week over the last six months I feel sure that there is at present one defect in that machinery. It does not enable the infliction of reasonable punishment on offenders who knowingly and wilfully flout and disobey clauses and regulations on which the whole efficacy of statutory prohibition depends. I do not desire it to be understood that there is a very large number of such cases; since I came here six months ago there have, however, certainly been two in which the imposition of a fine was neither reasonably retributive nor adequately deterrent. The coming of the Secretary of State's Commission had nothing to do with my consequent discovery (for to me it was a discovery) that our law here was not on all fours with that of the Straits; I see no reason therefore to leave it to them to point out a short-coming in past legislation which is quite manifest to myself and my advisers, and which can be remedied by the passage of this short Bill. I commend it therefore to your support, and on resuming my seat I shall put to you the question of its second reading.

A vote was then taken, the motion for postponement being defeated by 13 votes to 4.

Those in favour of the Bill being read a second time were: Hon. Sir Henry Pollock, Hon. Mr. J. J. Paterson, Hon. Mr. W. H. Bell, Hon. Mr. S. H. Dodwell, Brigadier H. G. Seth-Smith, the Colonial Secretary, the Attorney General, the Secretary for Chinese Affairs, the Colonial Treasurer, Hon. Commander G. F. Hole, Hon. Dr. A. R. Wellington, Hon. Mr. T. H. King, Hon. Mr. A. G. W. Tickle.

Those against: Hon. Mr. S. W. Ts'o, Hon. Mr. T. N. Chau, Hon. Mr. M. K. Lo, Hon. A. F. B. Silva-Netto.

The Bill was read a second time.

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

Clause 2.

HON. MR. M. K. LO.—I propose as an amendment the addition of the following words between the words "and" and "to"—"in the case of a second or subsequent conviction."

THE ATTORNEY GENERAL.—Which line?

HON. MR. M. K. LO.—The first line, Sir.

H.E. THE GOVERNOR.—That will still allow a wilful offender to go unscathed and deliberately to flout the law. I instance a case like this, where an employer of a registered *mui-tsai*, knowing the law, deliberately employs an unregistered *mui-tsai*.

HON. MR. M. K. LO.—I submit, Sir, that a fine for a first offender is adequate in such a case.

H.E. THE GOVERNOR.—But surely the good faith of the Government, in its prohibition of the *mui-tsai* system, will be open to severe question, if we allow, for a moment, a fine as generally adequate for a person flouting it in that manner, knowing the conditions of the law perfectly well.

HON. MR. M. K. LO.—I have indicated the reasons why I think it will be dangerous for a first offender to be punished by imprisonment.

H.E. THE GOVERNOR.—But surely you talk of the time element in offences—whether it is a first or second offence—as if it was the only element entitling a Magistrate to decide a case. A person keeping a *mui-tsai*, who, after having her registered, engages another *mui-tsai* has, in fact, committed a second offence in the sense that there is fore-knowledge.

HON. MR. M. K. LO.—I am afraid I was not aware of the facts of the two cases mentioned by Your Excellency, but my own general impression is that these *mui-tsai* cases have often been accompanied by extenuating facts and circumstances and are attributable mainly to poverty. I feel, therefore, that a stringent law of this kind may wreck great hardship on certain persons. One or two persons deserving imprisonment would possibly escape. If you permit the law without this amendment you may put many people who do not deserve imprisonment into prison. I would prefer to allow one or two bad cases to go free rather than to allow even one deserving, decent case to be sentenced. That is my chief reason for proposing this.

H.E. THE GOVERNOR.—I understand your anxiety that there should be no injustice to people, but are you not forgetting, as the Attorney General has pointed out, that every prosecution has to be approved by the Secretary for Chinese Affairs before it can go before the Magistrate? One of the good points of a Court prosecution is that it brings the law to the notice of the public. The Secretary for Chinese Affairs can prevent a prosecution or ask the Court to impose a heavy or a light penalty. We can rely on the Secretary for Chinese Affairs, surely, to ask for a heavy sentence only if necessary.

HON. MR. M. K. LO.—If Your Excellency will permit me I would like to refer to a case, which is not a *mui-tsai* case, but which I have in mind, in connection with sentences imposed by our magistrates. It is a case of the sale of a boy—which was in essence a case of adoption only—which was the subject of correspondence in the Press. In the case the seller, the middleman, and the buyer were all given prison sentences—six months' and three months' imprisonment. The Chinese members of Council addressed the Secretary for Chinese Affairs on the matter. We feel that the prison sentences were unconscionably severe.

H.E. THE GOVERNOR.—I do not agree with you on that particular case.

HON. MR. M. K. LO.—My whole point is that in view of the deficiency in the Hong Kong law in treating first offenders I feel that it would be dangerous to entrust these additional powers to our magistrates. That is why I resent the Attorney General's reference to my irrelevancy. I submit that every word I said was directly relevant to my theme.

H.E. THE GOVERNOR.—I quite understand you. Will someone second the amendment?

HON. MR. S. W. TS'O.—I would like to second it and I wish my opposition to be registered because of the hardship the amending Bill will cause. If there was any way of allowing latitude to first offenders I would support the Bill.

H.E. THE GOVERNOR.—A magistrate has every power to grant latitude if there are extenuating circumstances. This only enables a magistrate to use imprisonment as a penalty as an alternative to a fine. I am unable to accept the amendment and I must call for a vote.

The amendment was defeated by 13 votes to 4, members voting as in the motion for postponement of the second reading of the Bill.

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 Wednesday, June 3.