

26th August, 1936.

PRESENT:—

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT (HON. MR. R. A. C. NORTH).

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

THE COLONIAL SECRETARY (HON. MR. R. A. D. FORREST, *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, C.M.G.).

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

HON. MR. J. J. PATERSON.

HON. MR. J. P. BRAGA, O.B.E.

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

HON. MR. T. N. CHAU.

HON. MR. M. K. LO.

HON. MR. M. T. JOHNSON.

HON. MR. A. W. HUGHES.

HON. MR. E. DAVIDSON.

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

ABSENT:—

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

MINUTES.

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

NEW MEMBERS.

The Hon. Mr. R. A. D. Forrest, the Hon. Mr. A. W. Hughes and the Hon. Mr. E. Davidson took the Oath of Allegiance and assumed their seats as members of the Council.

PAPERS.

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

Amendments to the Prison Rules made by the Governor in Council under section 17 of the Prisons Ordinance, 1932, Ordinance No. 38 of 1932, dated 18th July, 1936.

Resolution made and passed by the Legislative Council on the 22nd July, 1936, under the provisions of section 2 (4) of the Hong Kong Government Service (Levy on Salaries) Ordinance, 1936, Ordinance No. 17 of 1936.

Resolutions made and passed by the Legislative Council on the 22nd July, 1936, under the provisions of section 6 of the Hong Kong Government Service (Levy on Salaries) Ordinance, 1936, Ordinance No. 17 of 1936.

Amendment to the by-laws made by the Urban Council under section 3 of the Public Health (Animals and Birds) Ordinance, 1935, Ordinance No. 16 of 1935, relating to Depots for Cattle, Swine, Sheep and Goats, dated 26th May, 1936.

Amendment made by the Governor in Council under section 4 (2) of the Mercantile Marine Assistance Fund Ordinance, 1933, Ordinance No. 24 of 1933, to the Schedule to that Ordinance, dated 30th July, 1936.

Amendment made by the Governor in Council under section 3 of the Miscellaneous Licences Ordinance, 1933, Ordinance No. 25 of 1933, to the regulations contained in Part VI of the Second Schedule to that Ordinance under the heading "Public Billiard Tables," dated 8th August, 1936.

Rescission of the Order made by the Governor in Council on the 23rd September, 1935, under the Merchant Shipping Ordinance, 1899, Ordinance No. 10 of 1899, dated 9th August, 1936.

Amendments to the Pension Regulations A and B made by the Governor in Council under section 3 (1) of the Pensions Ordinance, 1932, Ordinance No. 21 of 1932, dated 13th August, 1936.

Order made by the Governor in Council under section 12 of the Rope Company's Tramway Ordinance, 1901, Ordinance No. 21 of 1901, dated 18th August, 1936.

Administration Reports, 1935:—

Part I.—General Administration:—

Report of the Secretary for Chinese Affairs.

Report of the Superintendent of Imports and Exports.

Part VI.—Public Works:—

Report of the Director of Public Works.

QUESTIONS.

THE HON. MR. M. K. LO asked:—

1. Will Government be good enough to furnish to this Council a full statement on the question of the availability of radium treatment in Government Hospitals, with particular reference to the following points:—

- (a) Is it a fact that a certain amount of radium was loaned to the Government Civil Hospital by a privately endowed institution, for the general use of the patients of the Government Civil Hospital? If so, what were the terms and conditions under which the loan was made?
- (b) Is it a fact that the said loan was suddenly terminated? If the answer is in the affirmative, were any reasons given for terminating the said loan and, if so, what were the reasons?
- (c) Is it a fact that since the withdrawal of the radium mentioned above, there has been no radium available at the Government Civil Hospital and other Government Hospitals, for the use of the general public?

2. Will Government consider the question of providing radium, under the control of the Honourable the Director of Medical and Sanitary Services, for the use of the general public? And will Government consider the suitability of utilising, either wholly or in part, the proposed King George the Fifth Memorial Fund for the acquisition of radium for Hong Kong, so that it will be available to the poorest class in the community?

THE COLONIAL SECRETARY replied:—

1.—Since 1929 radium has been lent to the Government by the Trustees of the Matilda Hospital. The terms of the loan were embodied in regulations drawn up by that institution designed mainly to safeguard the custody of the radium. The regulations also included the following stipulations:—

Regulation 5.—No charge shall be made to any patient for the radium used in his or her treatment.

Regulation 7.—Under no circumstances may a Doctor lend the radium to a third party. In the G.C.H. however where radium is lent to the Radiologist he may loan such radium to the heads of the Surgical and Gynaecological Units for use in the Government Civil or Tsan Yuk Hospitals only.

Regulation 11.—Each Doctor who gets the use of radium agrees to furnish a quarterly report to the Superintendent of the Matilda Hospital on the special report forms supplied by the Matilda Hospital. This is in order that information and experience may be accumulated in the use of radium.

(b) The loan was terminated on the 22nd May this year. The reasons given were that for the earlier part of 1936 the quarterly reports referred to above had not been supplied; that radium had been used for the treatment of European patients at the Government Civil Hospital; and that the Medical Officer in Charge of the Matilda Hospital had not been given the facilities for exercising supervision of the use of radium in Government Hospitals required by the Trustees of the Matilda Hospital and by the Insurance Company. It is observed with regard to these points that the omission on this one occasion was due to an oversight which could have been corrected at once had attention been drawn to it; secondly that the conditions on which the loan was made contained no such discrimination; and thirdly, that the Government Radiologist is fully qualified to supervise the use of radium, and that outside supervision is not a condition of the loan regulations.

(c) The Government possesses 20 milligrammes of radium. This amount is inadequate to meet the number of cases in need of radium treatment. On two occasions since the withdrawal of the loan the Hospital has granted the Government temporary use of the radium for treatment of a special case.

2.—The Government is approaching the Trustees of the Matilda Hospital with a view to securing, if possible, the renewal of the loan. If this proves impossible the Government will consider other means of providing radium for the use of the general public. The question of a Memorial Fund is still under

consideration but, having regard to certain difficulties of care and custody, it is considered more satisfactory that radium should be purchased from the funds of the Colony rather than by the use of publicly subscribed money.

FINANCE COMMITTEE'S 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. 6 of 22nd July, 1936, and moved that it be adopted.

THE COLONIAL TREASURER seconded, and this was agreed to.

URBAN COUNCIL BY-LAW.

THE ATTORNEY GENERAL.—The Urban Council has amended the Market By-Laws under Section 5 of the Public Health (Food) Ordinance, 1935. A copy of the new by-laws is before members and it provides the conditions under which market stalls may be kept. I therefore move:—

That the amendment to the Market By-Laws made by the Urban Council under Section 5 of the Public Health (Food) Ordinance, 1935, on July 21, be approved.

THE COLONIAL SECRETARY seconded, and this was agreed to.

PENSIONS AMENDMENT (NO. 3) ORDINANCE, 1936.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend again the Pensions Ordinance, 1932." He said: The object of this Bill, which is explained in the Memorandum, is to permit a pension under certain conditions before the age of 50 is reached.

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. Paragraph (*b*) of section 8 of the Pensions Ordinance (No. 21 of 1932 as amended by No. 29 of 1935 and No. 3 of 1936) permits voluntary retirement on pension after an officer has attained the age of fifty years if the officer gets the consent of the Governor to his retirement.

2. Otherwise (except in the cases of women and of certain Indian subordinate officers in the Prison department) the normal age for voluntary retirement is fifty-five.

3. This Bill, when enacted, will give the Governor, with the approval of the Secretary of State, power to consent to voluntary retirement before the age of fifty is attained in the case of officers who so retire not later than the 4th June, 1938.

4. It is considered that economies can be effected in cases where retirement results in a reduction of staff or in filling vacancies with less highly paid officers, and it is the contemplation of such cases and the necessity to reduce the Budget deficit consequent on the fall in the sterling exchange value of the local dollar which prompt the proposed amendment in the Pension law.

5. The new proviso added to section 8 of the principal Ordinance by clause 2 of the Bill gives the effect of sections 2 and 3 of the Nigerian Ordinance No. 11 of 1932, legislation on the lines of which making provision for such voluntary retirements within a period not exceeding two years was authorised by the Secretary of State's telegram of the 4th June, 1936.

SUMMARY OFFENCES (NO. 2) ORDINANCE, 1936.

THE ATTORNEY GENERAL moved the first reading of the Bill intituled "An Ordinance to amend further the Summary Offences Ordinance, 1932." He said: This makes an alteration in Paragraph 17 of Section 3 of the principal Ordinance and also adds a new Paragraph, 17A, which is explained in the memorandum.

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 3 (17) of Ordinance No. 40 of 1932 provides that every person shall be liable to a fine not exceeding \$250 who, without lawful authority or excuse, in any public place posts up or exhibits, or causes to be posted up or exhibited, any notice or proclamation in the Chinese language without the permission of the Secretary for Chinese Affairs or a District Officer. This paragraph is not to apply to Government notices.

2. The paragraph in question was taken from paragraph (13D) of section 2 (b) of Ordinance No. 22 of 1930, which was repealed by section 32 of the 1932 Ordinance.

3. A magisterial decision in 1931, under the 1930 Ordinance, held that the distribution of a handbill in the Chinese language was "exhibiting a notice." Since then it has been the practice to provide each distributor of handbills with a chopped copy containing the approval which he could show to any police officer.

4. A more recent magisterial decision under the 1932 Ordinance has held that the distribution of handbills was not covered by the paragraph in question.

5. The object of Clause 2 of this amending Bill is to bring the distribution of handbills again within the mischief against which the paragraph is aimed.

6. Clause 3 of this Bill prohibits the unauthorised defacement of rocks or road-cuttings in or near any public place. The soft disintegrating granite of the Colony, through which most of its beautiful hillside motor-roads and foot-paths are cut, is easily carved with a knife or sharp stick with the result that, in the absence of a prohibition, much of the beauty of these roads and paths has been marred by slogans, devices, names and other efforts at self-expression carved by idle loiterers.

STAMP AMENDMENT ORDINANCE, 1936.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the law relating to Stamp Duty." He said: The effect of this Bill is explained in the memorandum.

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 clause 2 of this Bill is to prevent persons evading the stamp duty on conveyances by only executing contracts for sale which are in many cases, especially in the case of company promotions and reconstructions, found to be as good for all practical purposes as conveyances. The new section 31A inserted in the principal Ordinance by this clause follows closely the language of section 59 of the Stamp Act, 1891, as amended by section 12 of the Revenue Act, 1909, but United Kingdom Patents, or trade marks and the proportion of goodwill created thereby are mentioned expressly in the exception as they are property under the section (see *Benjamin Brooke & Co. v. Commissioners of Inland Revenue*, 1896, 2 Q.B. 356). An agreement or assignment where the only asset in the Colony is the trade mark and goodwill thereof will not be affected; but, in the case of an agreement to assign a business in the Colony including trade marks, the goodwill will be apportioned between that which relates to the trade marks and the remainder of the business.

2. Section 44 of the Companies Ordinance, 1932, relating to the filing of certain particulars of allotment of shares otherwise

than in cash, or agreements therefor, appears to contemplate a provision on the lines of the new section introduced by clause 2 of the Bill.

3. Section 35 (1) of the Stamp Ordinance, 1921, as amended by the Stamp Amendment Ordinance, 1925, provided that whenever the Land Officer shall certify that a re-assignment has been made for the sole purpose of enabling the mortgagor or his assigns as the owner of any immovable property held from the Crown to obtain a Crown Lease thereof, and that a new mortgage of the same property *similar in all respects* to the previous mortgage was made immediately upon the granting of such Crown Lease, then such re-assignment and new mortgage shall be exempt from stamp duty, and the Collector shall, on production to him of such certificate and of such re-assignment and new mortgage, indorse thereon a certificate to the effect that the same are under this section exempt from stamp duty.

4. Section 35 (2) of the 1921 Ordinance as enacted by the 1925 Ordinance provided that whenever the Land Officer shall certify that a re-assignment has been made for the sole purpose of enabling the mortgagor or his assigns as the owner of any immovable property held from the Crown to surrender the said property to the Crown as consideration or part consideration for the exchange, and that a new mortgage of the property granted in exchange *similar as far as possible* to the previous mortgage was made immediately upon the granting of such property granted in exchange, then such re-assignment and new mortgage shall be exempt from stamp duty, and the Collector shall, on production to him of such certificate and of such re-assignment and new mortgage, indorse thereon a certificate to the effect that the same are under this section exempt from stamp duty.

5. Although it has been the practice to give a liberal interpretation to the words "similar in all respects" in sub-section (1) it is felt that the presence of the words "similar as far as possible" in sub-section (2) suggests that the earlier sub-section requires a strict construction.

6. The object of clause 3 of this Bill is to substitute the words "similar as far as possible" for the words "similar in all respects" in sub-section (1) of section 35 thus putting both sub-sections on the same footing.

7. The object of clause 4 of this Bill is to create a new heading in the Schedule to make provision for the new duties under the new section 31A enacted in clause 2 of the Bill.

8. The object of clause 5 of this Bill is to change the duty on promissory notes of any kind whatsoever (except bank notes), if

drawn, or expressed to be payable, or actually paid, or indorsed, or in any manner negotiated, within the Colony, from 10 cents for every \$500 or part thereof to 10 cents for the first \$100 or part thereof and 5 cents for every subsequent \$100 or part thereof, in order to secure an additional revenue estimated at about \$20,000 per annum.

9. The object of clause 6 of this Bill is to add a new sub-heading (6A) to Heading No. 29, dealing with mortgages, in the Schedule to the principal Ordinance.

10. When, by section 12 of Ordinance No. 26 of 1929, as amended by section 4 (4) of Ordinance No. 25 of 1930, Heading No. 29 (2) was amended and the basis for determining the duty on a collateral or auxiliary or additional or substituted security (other than a mortgage executed in pursuance of a duly stamped agreement for a mortgage), or being a mortgage executed by way of further assurance, was altered, no provision was made altering the basis in respect of an agreement for such security or mortgage.

11. The duty on such an agreement therefore fell to be determined by reference to Heading No. 29 (6) (Agreement for a mortgage) so that instead of being 10 cents per \$100 on the value of the additional security it was 20 cents per \$100 on the whole principal sum secured by the original mortgage.

12. The new sub-heading 29 (6A) corrects this anomaly.

PUBLIC HEALTH (SANITATION) AMENDMENT ORDINANCE, 1936.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Public Health (Sanitation) Ordinance, 1935." He said: This Bill makes various amendments in the principal Ordinance which have been found by experience to be necessary.

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. It is desirable that the principal Ordinance should apply not merely to the City of Victoria but to the whole of the Island of Hong Kong. The amendment in clause 2 of the Bill extends the application of the Ordinance to the whole island.

2. The definition of 'Workshop' is unsuitable in that premises in which less than twenty persons are employed in manual labour do not come within its scope. The amendment in clause 3 of the Bill extends the definition to include all such premises irrespective of the number of persons employed.

3. It is considered desirable to exercise control not only over premises which are laundries in the accepted sense of the word but also over premises which are merely receiving and distributing depots. Clause 4 of the Bill enables the necessary degree of control to be exercised.

4. The amendment in clause 5 of the Bill clarifies the manner in which public baths, laundries and wash-houses are to be controlled.

5. The amendment in clause 6 of the Bill enables fees to be charged in connection with every matter with regard to which the Council has power to make by-laws.

6. It is considered necessary to extend the power of entry without notice, which is at present possessed only by a Health Officer, under section 9 of the principal Ordinance. The amendment in clause 7 of the Bill extends this power to an officer of the Sanitary Department.

7. Entry is occasionally desirable for other purposes than for ascertaining whether a domestic building is in an overcrowded condition. For example there may be grounds for suspecting that a basement is occupied without permission contrary to section 50 of the Ordinance and entry to ascertain the true condition of affairs may be necessary. This is not provided for under section 13 of the principal Ordinance and clause 8 of the Bill remedies the defect.

8. By section 22 (1) of the principal Ordinance the Council has power to serve notices directing compliance with by-laws. It is desirable to extend this power to cases of non-compliance with provisions of the Ordinance. Clause 9 enables this to be done. Consequently the amendment of clause 10 follows.

9. By the proviso to section 36 of the principal Ordinance the Council with the consent of the Governor in Council may grant exemption from the requirements of the section. It is considered unnecessary that such applications for exemption should be referred to the Governor in Council. The amendment in clause 11 abolishes the need for such reference.

10. The written permission of the Governor is required before certain acts can be done under sections 74 and 75 of the principal Ordinance. It is considered sufficient to obtain the permission of

the Colonial Secretary for the purposes of these acts and the amendments in clauses 11, 12, 13, and 14 enable the necessary change to be made.

**PUBLIC HEALTH (ANIMALS AND BIRDS) AMENDMENT
ORDINANCE, 1936.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Public Health (Animals and Birds) Ordinance, 1935." He said: Like the last Bill this makes amendments in another branch of the Public Health legislation which was passed last year.

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 the amendment effected by this Bill is to grant a right of appeal to the Governor in Council to any person dissatisfied with the decision of a person entrusted with power under the Ordinance.

2. A similar power of appeal is possessed by aggrieved persons under sections 84, 85 and 86 of the Public Health (Sanitation) Ordinance, No. 15 of 1935, and under sections 161, 162 and 163 of the Building Ordinance, No. 18 of 1935. It is considered expedient to extend this right of appeal to the present Ordinance.

PUBLIC HEALTH (FOOD) AMENDMENT ORDINANCE, 1936.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Public Health (Food) Ordinance, 1935." He said: Like the last two Bills this is an amendment of the Public Health legislation passed last year.

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. Clause 2 of this Bill amends the definitions of Dairy, Dairyman and Milk Shop. The new definitions of "Dairy" and "Dairyman" are practically identical with the similar definitions in the Milk and Dairies (Consolidation) Act, 1915 (5 and 6 Geo. 5, c. 66). In the light of the experience gained since the passing of the Ordinance it is considered that the new definitions are more suitable to the conditions in the Colony.

2. The amendment in clause 3 restores to the Chairman of the Urban Council a power which he formerly possessed as Head of the Sanitary Department. It is considered that the reversion to him of this power will simplify matters from the administrative point of view.

3. Under section 4 (5) of the principal Ordinance an article of food seized as being unwholesome was required to be kept for a period which might be as long as forty eight hours. The magistrate also had power to disallow the seizure and restore the article to its owner. In practice this section is unworkable owing to the difficulty of keeping food, particularly unwholesome food, for any length of time. Clause 4 of the Bill reduces the period within which applications must be made to the magistrate from forty eight hours to twenty four hours and also substitutes for the power of the magistrate to restore the article a power to order compensation. Consequently section 4 (6) will be repealed by clause 5 of the Bill.

4. The amendment in clause 6 enables fees to be charged in connection with every matter with regard to which the Council has power to make by-laws under section 5 of the principal Ordinance.

5. The new section 10 added by clause 7 gives a power of arrest in the absence of a police officer similar to the power of arrest given under section 16 of the Public Health (Sanitation) Ordinance, No. 15 of 1935. This is considered necessary.

6. The new section 11 added by clause 7 clarifies the position as to the application of the Ordinance to the New Territories. The section is identical with section 97 of the Public Health (Sanitation) Ordinance, No. 15 of 1935.

7. The power of appeal granted under clauses 12, 13 and 14 is similar to that already possessed by aggrieved persons under sections 84, 85 and 86 of the Public Health (Sanitation) Ordinance, No. 15 of 1935, and under sections 161, 162 and 163 of the Buildings Ordinance, No. 18 of 1935. It is considered expedient to extend this right of appeal to the present Ordinance.

CROWN RIGHTS (RE-ENTRY) AMENDMENT ORDINANCE, 1936.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend the Crown Rights (Re-Entry) Ordinance, 1870."

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.

CANE FOR BIRCH SUBSTITUTION ORDINANCE, 1936.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend the law relating to the instruments which may be used in flogging or whipping."

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.

MOTION.

HON. MR. M. K. LO.—I rise, Sir, to propose the motion standing in my name: "That in the opinion of this Council, the present censorship of the Chinese Press should be abrogated."

In rising to move the motion, I desire, at the outset, to point out that this matter not only affects public expenditure, but also raises at least two questions of principle, namely, constitutional procedure, and freedom of the press. The relation to public expenditure is, of course, obvious. According to the Estimates for 1936, there are four censors whose total annual salaries come to \$4,584.00, and two Press censorship coolies at \$336.00, making a total annual expenditure of \$4,920.00. (I do not know whether there are other items of expenditure directly or indirectly attributable to the censorship). Approximately \$5,000.00 may not seem a large annual expenditure, but I may observe that this is about the annual cost of running all the playgrounds for the poor children of this Colony, in Victoria and Kowloon, and represents about two months' expenditure of the Society for the Protection of Children for looking after the poor children of the Colony.

I now proceed to deal with the question of constitutional procedure.

The Emergency Regulations Ordinance, 1922, Section 2, provides as follows:—

2. (1) On any occasion which the Governor-in-Council may consider to be an occasion of emergency or public danger, he may make any regulations whatsoever which he may consider desirable in the public interest.
- (2) Without prejudice to the generality of the provisions of sub-section (1), such regulations may be made with regard to any matters coming within the classes of subjects hereinafter enumerated, that is to say:—(a) censorship, and the control and suppression of publications, writings, maps, plans, photographs, communications, and means of communication;
- (3) Any regulations made under the provisions of this section shall continue in force until repealed by order of the Governor-in-Council.

By order of the Governor-in-Council made on the 25th June, 1925, the following regulations were made *inter alia* under the above mentioned Ordinance:—

1. No person shall print, publish, or distribute any newspaper, placard or pamphlet containing any matter in the Chinese language (other than a *bona fide* trade advertisement) which has not been previously submitted to and passed by the Secretary for Chinese Affairs.
3. No person shall, without the permission of the Secretary for Chinese Affairs, import any newspaper, placard or pamphlet containing any matter in the Chinese language other than a *bona fide* trade advertisement. No person shall have in his possession any newspaper, placard or pamphlet imported without such permission.
4. The Governor-in-Council shall have power to suppress for such period as he may think fit or until further order the printing and publication of any newspapers.

By orders of the Governor-in-Council made on the 1st day of October, 1931, the Emergency Regulations made on the 25th June, 1925, were repealed, but re-enacted in an amended form, Regulations Nos. 22, 24 and 25 taking the places of the repealed Regulations Nos. 1, 3 and 4, and Regulation 22 having a long extra paragraph, which reads as follows:—

".... nor shall any person print, publish or distribute any news-sheet in the Chinese language as an extra, nor shall any person post up any placard purporting to contain in the Chinese language any portion of the contents of any newspaper, or any

announcement relating to the contents of any newspaper, unless the printing, publishing or distribution of such extra or the posting up of such placard has been authorised and unless the form and arrangement as well as the matter contained in such extra and placard has been previously approved by the Secretary for Chinese Affairs or any Assistant Secretary for Chinese Affairs."

Parenthetically I would like most respectfully to ask:—What steps, if any, have been taken by Government to see that the provisions of Regulation 24 have been carried out, and how can a person in the Colony satisfy himself that an imported paper has been imported with the permission of the Secretary for Chinese Affairs?

I have set out the Regulations imposing the censorship and the Ordinance under which they were made. Now, what were the circumstances under which the Ordinance was passed by this Council? The Colony was then going through one of the most critical crises of its existence. The outlook was grave; disorder threatened. On the 28th February, 1922, an emergency meeting of this Council was convened. At this meeting, after the first reading of the Bill, His Excellency Sir Reginald Stubbs moved the suspension of the standing orders in order to enable the remaining stages of the Bill to be taken at the meeting. The Bill was then taken through the remaining stages, and became the Emergency Regulations Ordinance, 1922. Sir Reginald Stubbs, in addressing the Council on the measure, spoke *inter alia* as follows:—

"The Council has been called to-day for a special purpose, which is to pass a Bill to confer upon the Governor in Council power to make regulations in cases of emergency or public danger. ... It is essential for the safety of the Colony that steps should be taken as early as possible, to confer upon the Executive the most drastic powers for dealing with a situation which may at any moment result in disorder owing to the misguided efforts of persons who are under the influence of Bolshevist doctrine."

In order to show clearly the emergency nature of the Regulations to be made under the Ordinance I may point out that certain emergency Regulations were made on the same day as the meeting, that certain other Regulations were made on the 2nd March, 1922, and that all these Regulations were repealed on the 9th March, 1922.

It is true that Section 2 (3) of the Ordinance provides that all Regulations made shall continue in force until repealed by order of the Governor-in-Council. The Ordinance, however, was proposed and passed as an emergency measure. There was, and could be, no opportunity for debate. And I venture to think that it could not have been within the contemplation of any Honourable member of this Council that any Regulations made under the Ordinance would be kept in force for over eleven years, on the plea that there is a

continued existence of "an occasion of emergency or public danger." Can it seriously be contended that the occasion of emergency or public danger which existed in 1925 has continued to exist up to the present time?

It will be seen that under the cloak of an authority which the Governor-in-Council is to exercise only on an occasion of emergency or public danger the Government has, in effect, imposed a permanent system of censorship upon the Chinese Press.

Much has been written against the undesirable modern tendency of delegated legislation—a tendency which has been criticised and deprecated by eminent judges. But I venture to think that there can be no more glaring example of the dangers of such delegated legislation than that afforded by the orders in Council under discussion.

I can deal very shortly with the third aspect of this question, namely, freedom of the press, for freedom of the press is now an accepted fact in England, and, as far as I know, in all colonies under her rule. As is succinctly stated in a work of reference which I consulted:—

"In 1693 the Government of England formally abandoned the preventive censorship of printing, and began the punitive. No one was to be prohibited from publishing anything, but he must run the gauntlet of possible prosecution for slander, sedition, immorality and blasphemy. Blackstone states that—'The liberty of the Press ... consists in laying no previous restraints upon publication and not in freedom from censure for criminal matter when published'."

Halsbury's Laws of England, Vol. 6. (Second Edition), on page 590, dealing with constitutional law, states as follows:—

"The Crown cannot, apart from the rules of law relating to the licensing of stage plays, or to blasphemous or seditious libels, or the publication of reports of judicial proceedings, exercise any control over the public press."

The author of the article on Press Laws in the Encyclopaedia Britannica, Vol. 19. (9th Edition), says:—

"At the present day the liberty of the press in English-speaking countries is (with perhaps the single exception of Ireland) a matter of merely historical importance."

The same authority's reference, on page 712, to the British Colonies makes rather pathetic reading in view of the circumstances prevailing in Hong Kong:—

"In the British colonies the press is as free as it is in England. Each colony has its special legislation on the subject for police and revenue purposes."

The censorship system under which every item of news, be it a report of the proceedings of this Council, or of proceedings in the Courts of Law, or of any and every other kind of news, has to be submitted to and approved by the censors before publication, irrespective of the urgency and stress of modern journalism, must of necessity cause dissatisfaction, and must tend to undermine the sense of independence and responsibility on the part of the journalists. By the time a complaint against improper suppression of news can be investigated and adjudicated upon, the news may become stale news. I therefore submit that such a censorship is objectionable in itself.

As I am concerned more with the question of the principle and legal basis of the existing censorship than with the actual administration of the censorship system, I do not propose to go into details as to the articles or items of news which have been suppressed by the censors within recent years. I will, however, mention two incidents as illustrating the extent to which free discussions of matters of public interest have been prevented. Hon. Members of this Council may recall that on the 19th March I introduced a motion in this Council, and Hon. Members might have read some of the comments on the debate which appeared in the English press. One Chinese newspaper translated one of the leading articles from the English press for insertion on Saturday, the 21st. This mere translation of a leader in an English paper was held up for consideration, and publication was not permitted until Monday, the 23rd. Another Chinese paper wished to publish, on Sunday the 22nd March, a leader on the debate, which also dealt with the present Constitution of the Colony, but the whole of this article was suppressed.

I did not intend to go into any more instances but just before luncheon to-day I received various complaints from the Chinese Press. It has been represented to me that an article on the debate which is to be held this afternoon was absolutely suppressed and there are other matters dealing with censorship which have been suppressed in most cases. I have the various cuttings here but have not time to go through all the suppressed lines and articles, but from a casual glance I can say without hesitation that many of the items suppressed have been suppressed for reasons which are not intelligible to me as a reasonable human being, and I look to my Honourable friend, the Secretary for Chinese Affairs, to look into these cases of wholesale and improper suppression of matters of a public interest.

I am aware that in various countries, since the Great War, a strict censorship has been imposed on the Press, and that in some countries the Press is governed by a detailed legal code prescribing its permissible content. But a censorship which is based on

regulations prescribing the permissible content of the Press is, to my mind, not quite so obnoxious as a censorship which permits the censors to allow or disallow publication of any article at their discretion.

It may be that local conditions of the Colony require some amendment of the existing substantive law of the Colony regarding the permissible content of any newspaper, but I do submit that this Council should have the privilege of critically considering any such proposed legislation before it is brought into force.

I have ventured to criticise—I hope not unfairly—the present Censorship System as a system: but before I sit down I should like to make it quite plain that my remarks are not intended to constitute any criticism against the Censors personally. I know that they have had and, indeed, have, a most difficult task to discharge, and I would like to pay a tribute to my friend Mr. Lau Tsz-ping, the Chief Censor, and his associates, for the way in which they have carried out the onerous and difficult duties imposed on them by the existing Regulations.

I now formally propose the motion standing in my name.

HON. MR. J. P. BRAGA.—Your Excellency,—I would like to second the motion introduced by my honourable friend, the junior Chinese member. In doing so, it may be as well for me to state frankly at the outset that I do not propose to deal with the matter of the censorship of the Chinese Press in this Colony from the points of view approached by the honourable mover. I have neither the wish nor the competence to deal with the subject from its legal aspect. That aspect of it is peculiarly in the province of the proposer to deal with adequately, and he has done so to an extent that does not, I believe, admit of successful rebuttal.

As regards the financial side first mentioned in the course of the honourable member's speech, I am afraid the matter resolves itself into a question whether it is advisable to continue the censorship or to abandon it. If the decision favours the former course, then the money part does not exercise me at all. It has to be met. On the other hand, if the Council is for abandonment then it follows that the attendant expenditure disappears with it.

I may say I felt a peculiar interest in the subject when it was first mentioned to me by my honourable friend, Mr. M. K. Lo, since for a period of over 25 years I had to serve the Press in a capacity calling for the exercise of some judgment, caution, and propriety demanded by the wide interests I served. From the point of view, therefore, of one who enjoyed the freedom of the Press throughout the period of my representation of two leading news agencies of Great Britain and America, I cannot but regret that the same privilege to-day is partly denied to the Press—a

denial which assumes the form of the censorship enforced against the Chinese newspapers. I am happy to think, however, that the privilege of complete freedom remains unimpaired so far as the section of the English Press is concerned. The Chinese Press is unfortunately not so favourably situated.

My honourable friend, the last speaker, has made it clear that the Chinese Press has been in a sense muzzled for the past 11 years, and muzzled in a manner that the Emergency Regulations confer powers for the closing down of any offending Chinese newspaper and the suppression of news that have appeared unquestioned and unchallenged in the English newspapers of the Colony.

The motion before the Council, designedly brief and precise in its terms, calls for the revocation of those powers, the existence of which can only be justified in times of emergency. The author of the motion has demonstrated that such emergency has not existed now for some time. It does not exist to-day.

That great Chinese author, Mr. Lin Yu-tang, in his recent book on "A History of the Press and Public Opinion in China," writes: "We cannot ignore the contemporary censorship of books, magazines and newspapers in China, because it alone explains the retarding of the growth of public opinion."

There is happily an observable tendency on the part of our Chinese fellow-citizens to take an intelligent interest in public affairs, and I should, indeed, be sorry if any avoidable attitude should be responsible for a stifling of an intellectual consciousness that makes for the improvement of our civic interests.

Without over-stating the case, and from my personal knowledge of the connections and the commercial interests concerned, there is not the least doubt that the management and the editorial staff of the responsible Chinese newspapers can be relied on for the exercise of their better judgment, prudence and caution not to jeopardise their personal interests and the prestige which their newspapers rightly enjoy by any indiscreet action that may place their good name and standing in jeopardy. As far as they can be regarded as good going commercial concerns it is not to be supposed that any proprietor would be so foolish as to risk the suspension, if only for a time, of his publication, which might involve him in serious monetary loss and "loss of face" that is of so much moment to the Chinese. I am conscious of the fact that the argument might be advanced that there will have to be new legislation for closing papers. My honourable friend urges that all the emergency regulations should be revoked. I am entirely at one with him.

Under the new regime in our neighbouring city of Canton, intimation was given at the end of last month, at a reception to a large gathering of local journalists, that the authorities would welcome candid and constructive criticisms. On that occasion the hope was expressed that, while the censorship has been lifted, the Press would exercise discretion and refrain from exploiting that liberty. That hope and that wish I feel certain would be echoed in Hong Kong; and while our neighbour in the Kwangtung metropolis has forestalled the Colony in the lifting of the ban against the Chinese Press, our action on the other hand, is belated. Our inaction invites criticism. We are much behind-hand in not having removed the censorship from a community that has beneficially used, and I am happy to think, very rarely abused, the privilege of the Press.

To come nearer home, concluding a leading article on the subject of the altered conditions in Canton, the *South China Morning Post* has this comment to make:—"With men of integrity in office it is hoped that Kwangtung will soon enjoy an unprecedented prosperity. Perhaps that happy result will be promoted more quickly if the Central Government will use newspapers as its servants and permit them continuation of the new freedom which they now enjoy. A powerful Press in China may succeed where diplomats and soldiers fail."

What is true of the Press in China, I believe, may be said to apply to a greater or lesser degree to the Chinese Press in Hong Kong.

In conclusion, I would quote again from Lin Yu-tang. "We must fight," he says, "for the constitutional principle of the freedom of the Press and of personal civil rights as a principle." With this dictum, I am inclined to think, none will be found to disagree.

Before sitting down, may I express the hope that your Excellency might be graciously pleased to endorse the views enunciated by my honourable friend, who holds his seat on this Council primarily in the interests of the Chinese community?

I have the honour to second the proposal, namely, that the present censorship of the Chinese Press in Hong Kong should be abrogated.

HON. MR. J. J. PATERSON.—Your Excellency,—I am afraid that despite the eloquence of my Hon. friend, Mr. Lo and of my Hon. friend, Mr. Braga, I remain unconvinced. The power of the Press is very great and it is because of that power, Your Excellency, and because of the delicate nature of the situation the whole world finds itself in to-day, that I think it would be better to keep the censorship for the time being at any rate. I do think, however, that there are certain things about the censorship which might be looked into by my Hon. friend, the Secretary for Chinese Affairs.

HON. MR. S. W. TS'O.—Your Excellency,—In rising to speak on the motion before the Council, for the abrogation of the censorship imposed on the Chinese Press, I must at once say that I am not at all unsympathetic with the Chinese Press.

No one appreciates more than I do the principle of the freedom of the press within certain limits, and my appreciation of that principle dates back as long as half a century. I may say that in facing the question of the withdrawal of the censorship from the Chinese Press I approach it with an unbiassed mind and in forming my opinion I must take local conditions and the interest of the Colony and in particular of the Chinese community into consideration as of first importance.

Hong Kong is situated on the outskirts of China with a population of no less than 97 per cent. Chinese. While there is, at the present moment, so much unrest and uncertainty in the political atmosphere in the Far East, it is very easy and quite natural for the Chinese papers to over-step their bounds by giving expressions to their feelings on matters Chinese and the Government can be the only judges as to the desirability or propriety of such expressions being broadcast in this Colony. Such expressions, if undesirable and unchecked, might create misunderstandings outside and stir up trouble inside the Colony. I consider prevention is better than cure. For, if bad feeling or bad blood is stirred among the mass, especially among the less intelligent section of the Chinese community, it is most difficult to restrain or pacify. There have been incidents still fresh in our mind. It must be necessary for the Government at the present time to continue to keep a check upon any writings in the Chinese Press which may disturb the peace and good order of the Colony. It may very well be that the better controlled press need little, if any, censorship but how can one discriminate?

So far I have not received any complaint from representatives of the Chinese Press of the unjustness or unfairness of the censors in doing their invidious and thankless task. Censorship no doubt causes certain inconvenience but that cannot be avoided. Under these circumstances and in the interests of the community, I do not feel justified in supporting the motion.

HON. MR. T. N. CHAU.—Your Excellency,—It is a matter of real regret to me that I find myself unable to support the resolution moved with such ability by the Hon. Mr. M. K. Lo. While I have much sympathy with the Chinese Press for being subjected to the inconvenience of a censorship, I feel very strongly that the time is not opportune for its abrogation. In times like these, it is imperative that every means should be taken to preserve peace and good order in the Colony and to maintain the good relations which happily subsist between Hong Kong and its neighbours. One of such means is the present censorship, unpleasant as it is, and I am of the opinion that its abrogation at this juncture would not be to the best interests of the Colony.

THE COLONIAL SECRETARY.—Your Excellency,—My Honourable friend's argument in favour of abrogation of the censorship falls into two parts, viz., that the regulations in question, though properly made, are improperly continued (there being no emergency at the present time), and that the censorship of the press is in itself an undesirable thing. To both of these lines of argument a certain cogency must be conceded, but I nevertheless feel that this Council will agree that there are in present circumstances good and sound reasons for the retention of the institution.

As regards the former point, the Honourable Member seems to have overstressed the word emergency. In the Ordinance which empowers the Governor in Council to make such regulations, an alternative occasion is given, viz., one of public danger. That danger exists still, and will continue to exist until a definitely stable government exists in China. In particular the danger must be admitted to remain while civil war is threatening in one of the neighbouring provinces.

It must not be forgotten either to what an extent the welfare of Hong Kong depends on good relations with her customers in trade, and that nothing will sooner prejudice those relations than an impression that the Colony can with impunity be made a base from which to foment disorder.

None will defend interference with the reasonable freedom of the press, but it is the view of Government that, so long as that freedom is open to abuse by journals which in no sense represent impartial criticism but which are the paid organs of disaffected groups, and so long as unrestrained publication can do very serious injury to our relations with China, and with other friendly Powers and so to the Colony itself, just so long is prevention better than cure.

Apart from the possibility that an article might cause serious harm and yet might not render its publisher liable to prosecution, the Government feels that fear of possible consequences will not with any certainty prevent the publication of matter open to objection, and that once the harm is done, it cannot be completely undone even if the publisher is convicted in a Court of Law. For these reasons the Government is unable to accept the motion.

HON. MR. M. K. LO.—Your Excellency,—I would like to say a few words in reply. As I understand my honourable friend the Colonial Secretary, he seems to justify the continuance of these emergency regulations because of the alternative words, "in time of public danger," and he visualises or contemplates that this danger will last until there is a stable government in China. This is really the whole of my complaint about the abuse of the Government in continuing these regulations. I appeal confidently

to all the old members of this Council who were present when His Excellency Sir Reginald Stubbs addressed this Council and asked you when you attended that meeting and agreed to an Ordinance being rushed through in three minutes; did you think that these regulations would hold good until a stable government was established in China?

The answer obviously is "No", and I cannot imagine any other. Therefore, apart from the lame excuse, if I may say so with the greatest respect to my honourable friend, I have heard, I have not heard of any reply to the constitutional impropriety involved.

I would not mind if the Government were to introduce a Bill to-morrow with the object of obtaining Chinese censorship for then we would have the opportunity of criticising it. But this is pure delegated legislation got out by the Governor-in-Council in face of a public danger and no one can possibly contend that the public danger of the type then contemplated still holds good.

If the Chinese Press is to have only a measure of the freedom of the Press while that definition of public danger exists, then I feel that I for one will not live to see the day it is free. Often during the last 20 years one has heard of troublous times and if one looks through any novel or book one will find that the time in which a person is living is always one of danger and trouble to him. If you are going to give freedom to the Chinese Press only at a time when there is an idealistic state, blissful inertia and benevolent governments without armaments, then I say to you, Sir, don't give it, because there will be nobody in this world to enjoy it!

As regards the remarks of my honourable friend, the Colonial Secretary, as well as the remarks of the other speakers, in so far as they referred to the danger of the Press creating trouble and difficulty in Hong Kong, I venture to think my point has been misunderstood. I do not say that the Chinese, or for that matter the English Press, should not be regulated. I am pleading for liberty but not for licence. If you were to have laws to say what kind of material could be published and regulations of what I call the punitive type, I cannot see what harm can be done at all.

I regret, perhaps more than I can express, that I find myself with different viewpoints to my senior colleagues, but in this case my conscience and conviction leave me no alternative. There is one matter which I want to clear up with regard to my senior colleague's concluding remarks. Feeling as I do on this question, I would have taken it up irrespective of whether the Chinese Press wanted me to or not. I think that the Chinese censorship in its guise, its improper guise, is wrong and it is my duty to put my view before the Council. If the Hon. Dr. Ts'o did not hear of

any complaints from the Chinese Press, I envy his luck because during recent years I have done nothing but receive complaints. I envy his luck if he says he thinks the Chinese Press is satisfied with the present system and is not making any complaints.

I have here a letter written by the Chinese Press Association which represents the whole of the Chinese Press of this Colony and is dated July 27. It asks me, because of the injustice they feel about this censorship, to take up this matter. The communication contains the signatures of about 50 editors and reporters and is chopped by all the leading newspapers of Hong Kong. I want to make it quite clear that if my senior colleague has not received any complaints from them I am surprised.

I do wish to assure this Council, speaking with a due sense of my responsibility, that the Chinese Press does resent the continuance of this censorship, and I am the authorised spokesman to ask this Council to abrogate this improper and unconstitutional procedure.

There is only one more point I wish to make with very great respect to my senior colleague. He has made reference to two facts which are really common-place and known to everybody; the fact that the population is 97 per cent. Chinese, and that the present political situation is not a happy one. I have already expressed my humble view on the political situation in connection with this subject, but as to the Colony's population consisting of 97 per cent. Chinese I would draw an entirely different inference to that of my colleague. I cannot see why a press which is to serve 97 per cent. of the public is to be muzzled and censored while a press which is to serve only three per cent. has the greatest freedom. I cannot see the logical reason for this curious distinction. I have tried to answer the points that were made and I have the honour to submit, Sir, that my motion be passed.

HON. MR. S. W. TS'O.—Your Excellency,—In answer to my honourable friend, I have to state that when I said that I have not received complaints from the representatives of the Chinese press, I have only stated the fact. The Chinese press is serving a population which is much bigger than any nationality, and that when trouble comes it would be most difficult to pacify, rectify or restrain them. The intelligence of the 95 per cent. Chinese are not all equal.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT.—You have a right to explain anything which has been misunderstood but not to make a speech.

HON. MR. S. W. TS'O.—Your Excellency,—Then I wish only to say that I have not heard any complaints from the Chinese Press representatives.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT.—Do you call for a division, Mr. Lo?

HON. MR. M. K. LO.—Yes.

The motion was then put to the meeting and defeated by 14 votes to two.

ADJOURNMENT.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT.—Council stands adjourned until September 9.

FINANCE COMMITTEE.

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

Votes totalling \$26,698 under Estimates 1936, were considered.

Item No. 32: 20, Police Force:—27, Rewards, \$4,000.

HON. MR. J. P. BRAGA.—Has it occurred to Government that this question of the cost of arresting and imprisoning returned deportees is growing so large as to be out of all proportion to the class of delinquents that this Colony has to keep? Every now and then we are called upon to vote these sums of money and when all is said and done I think it is about time that Government should look into the matter as one of policy whether we should go on paying out good money for these people, delinquents in a sense but not in a criminal sense, who are deported by one boat and return by another. Looking at it from the point of view of the easy ingress to and the equally easy egress from the Colony, it would seem that we have thousands of undesirables who come in and out and are a real and practical burden on the finances of the Colony.

THE COLONIAL SECRETARY.—The Government is carefully considering this matter and is dealing with it in the only practical way by reducing as far as possible the number of banishees. At the same time with regard to those already deported we must insist on the law being carried out and they must be deported after their terms of imprisonment have expired. Despite the lack of prison accommodation and the expense, the whole matter is not to be set on the debit side, for though it is true that a number of these deportees are not criminal, the majority are, and if they were allowed to be at large we should eventually have the expense of maintaining them in gaol anyway. The Government has given careful consideration and thought to this matter over a number of months and the banishment policy has been severely revised.

HON. MR. J. P. BRAGA.—I am glad to hear that. I am the last to advocate freedom for criminals in Hong Kong but I cannot help being struck by the kind of people we see returning here in groups from time to time. I cannot help thinking that the advice of the legal officers of the Crown might be sought to find a more successful method of dealing with them especially in cases of a trivial nature.

HON. MR. J. J. PATERSON.—I do not think the majority of offences are trivial. Smuggling is one of them and if you don't put that down the Colony loses revenue.

HON. MR. M. K. LO.—Would the Government consider that in the case of banishees who have returned two or three times, they should be flogged? That might deter them.

THE COLONIAL SECRETARY.—I cannot quite remember the reference but there was a law—whether it exists now I do not know—that any person returning from banishment should be flogged, if the offence for which he was originally banished was one for which that penalty might have been inflicted.

HON. MR. M. K. LO.—I think the Government should consider it.

THE COLONIAL SECRETARY.—It is worth looking into.

HON. MR. J. J. PATERSON.—The trouble is, as my honourable friend will see from the world press, we have all got too highly civilised since the Great War!

All the votes were approved.
