

HONG KONG LEGISLATIVE COUNCIL.

2nd February, 1939.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR (SIR G. A. S. NORTHCOTE, K.C.M.G.).

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS, (MAJOR GENERAL A. E. GRASETT, D.S.O., M.C.).

THE COLONIAL SECRETARY (HON. MR. N. L. SMITH, C.M.G.).

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 FINANCIAL SECRETARY (HON. MR. S. CAINE).

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

HON. MR. R. M. HENDERSON, C.B.E., (Director of Public Works).

HON. MR. T. H. KING (Commissioner of Police).

HON. DR. P. S. SELWYN-CLARKE, M.C., (Director of Medical Services).

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

HON. MR. J. J. PATERSON.

HON. MR. CHAU TSUN-NIN, C.B.E.

HON. MR. LO MAN-KAM.

HON. MR. S. H. DODWELL.

HON. DR. LI SHU-FAN.

HON. MR. A. L. SHIELDS.

MR. B. C. K. HAWKINS (Deputy Clerk of Councils).

ABSENT:—

HON. MR. LEO D'ALMADA E CASTRO, JNR.

MINUTES.

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

STANDING LAW COMMITTEE.

THE COLONIAL SECRETARY.—By Your Excellency's direction I rise to announce the appointment of the Standing Law Committee for 1939.

The following Members have been appointed and have agreed to serve: The Honourable the Attorney General (Chairman), the Honourable the Secretary for Chinese Affairs, the Honourable Sir Henry Edward Pollock, KT, K.C., LL.D., the Honourable Mr. T. N. Chau, C.B.E. and the Honourable Mr. M. K. Lo.

PAPERS.

THE COLONIAL SECRETARY.—By command of Your Excellency I lay upon the table certain papers, copies of which are in the hands of Honourable members, except Item No. 12 on the list, the list of statements and abstracts of reports, which is too bulky to print, but these are available for Honourable Members to scrutinize if they desire.

The papers laid on the table were as follows:—

Rescission of the Order made by the Governor in Council on the 20th June, 1938, under section 18 of the Quarantine and Prevention of Disease Ordinance, 1936, Ordinance No. 7 of 1936, dated 19th December, 1938.

Resolutions made and passed by the Legislative Council under section 49 (4) (b) of the Rating Ordinance, 1901, Ordinance No. 6 of 1901 (as enacted by section 2 of the Rating Amendment Ordinance, 1935, Ordinance No. 10 of 1935) on the 22nd day of December, 1938.

Order made by the Governor in Council under section 167 (1) of the Buildings Ordinance, 1935, Ordinance No. 18 of 1935, dated 31st December, 1938.

Order made under the Rating Ordinance, 1901, Ordinance No. 6 of 1901, for making a valuation of the tenements in Hong Kong, Aplichau, Kowloon and New Kowloon for the year commencing 1st July, 1939, dated 6th January, 1939.

Regulations made by the Governor in Council under section 4 of the Stamp Ordinance, 1921, Ordinance No. 8 of 1921, dated 6th January, 1939.

Amendment made by the Governor in Council under section 28 of the Births and Deaths Registration Ordinance, 1934, Ordinance No. 21 of 1934, to the First Schedule to that Ordinance, dated 7th January, 1939.

Rescission of the Order made by the Governor in Council on the 27th June, 1938, under section 18 of the Quarantine and Prevention of Disease Ordinance, 1936, Ordinance No. 7 of 1936, dated 9th January, 1939.

Order made by the Governor in Council under section 12 (1) of the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, regarding the enforcement of the By-laws relating to the pasteurization and sale of milk, dated 10th January, 1939.

Amendment made by the Governor in Council under section 17 of the Prisons Ordinance, 1932, Ordinance No. 38 of 1932, to the Prison Rules, dated 16th January, 1939.

Notification made by the Governor in Council under section 2 of the Quarantine and Prevention of Disease Ordinance, 1936, Ordinance No. 7 of 1936, declaring tuberculosis as an infectious disease, dated 18th January, 1939.

Amendment made by the Governor in Council under section 42 of the Merchant Shipping Ordinance, 1899, Ordinance No. 10 of 1899, to Table M in the regulations, dated 20th January, 1939.

List of statements and abstracts of reports of the following Companies which have been deposited with the Registrar of Companies under the Life Insurance Companies Ordinance, 1907, during the year 1938:—

Statements under Section 12.

The China Hong Nin Life Insurance Company, Limited.

The Sincere Life Assurance Company, Limited.

The Wing On Life Assurance Company, Limited.

The Luk Hoi Tong Life Assurance Company, Limited.

The Oi Kwan Life Assurance Company, Limited.

Statements under Section 13.

Tai Shan Insurance Company, Limited.

China Insurance Company, Limited.

Statements under Sections 14 & 15.

The Sincere Life Assurance Company, Limited.

QUESTIONS.

HON. SIR HENRY POLLOCK asked:—

Has the Government any statement to make as to the financial position of the Tung Wah and allied Hospitals?

THE COLONIAL SECRETARY replied:—

The question of increased financial assistance to the Tung Wah and associated Hospitals has been under consideration for a considerable time. It came to a head early in 1938 when the Tung Wah Committee approached the Government with a request for a grant to cover the deficit shown on the working for the year 1937 equal to approximately \$150,000. As the result of discussions which followed, certain important steps have been agreed for the improvement of the financial control of the hospitals. In particular it has been agreed that:—

- (a) The committee shall prepare and adhere to a proper annual budget and shall submit annual accounts audited by an auditor approved by the Government.
- (b) The annual budget shall be approved by the Permanent Advisory Committee already established.
- (c) The medical and charitable work of the hospitals shall be separated. It is intended that separate budgets shall be prepared for each of these two functions and that the premises used for medical and hospital purposes shall, as far as possible, be separated from those used for the other great charitable works for which the Tung Wah Hospital organization has for long been well-known, namely the relief of distress, however caused, the care of destitute and aged persons and the burial of the dead.
- (d) All matters relating to the medical administration of the Hospitals will in future be under the control of a Medical Committee appointed by His Excellency the Governor. This committee has already been set up and its membership was announced in the *Government Gazette* of 16th December, 1938. It includes the Honourable Director of Medical Services or his deputy (Chairman), two members of the

Tung Wah Hospital Advisory Committee, three members of the Board of Directors of the Hospital Committee, the Visiting Medical Officer of Chinese Hospitals and Dispensaries and the three Medical Superintendents of the Tung Wah, Tung Wah Eastern and Kwong Wah Hospitals.

- (e) Chinese herbal treatment for medical in-patients is for the present to be provided in certain specified wards in each of the hospitals to those who spontaneously ask for it.
- (f) Future investments of the Tung Wah funds will be in gilt-edged securities instead of in mortgages and property.

2.—Investigations of the accounts of the hospitals have already been made during 1937 and have fully satisfied the Government of the accuracy of the accounts as submitted and of the satisfactory nature of the system of accounting, subject to certain minor improvements recommended by the Accountants who made the investigations.

3.—A supplementary vote for the grant of an additional sum of \$150,000, the approximate deficit for the year 1937, is being submitted at the meeting of the Finance Committee which follows immediately the meeting of this Council. This deficit was due:

- (a) to increased expenditure due to attempts to improve the standard of treatment,
- (b) to the increased number of patients partly as a result of the present hostilities,
- (c) to reduced income from investments,
- (d) to the partial drying up of the flow of subscriptions in favour partly of the claims of war charities.

4. Under these arrangements the Government has every confidence that the valuable work done in the past for the Chinese community of the Colony by the Tung Wah and associated Hospitals will not only continue but will increase in value and that the existing co-operation between the Directors and the Government will be strengthened without any change in the fundamental characteristic of voluntary institutions supported in the main by private contribution. It is indeed hoped that the assurance of efficient administration which is afforded by the steps now taken will encourage the charitably-minded members of the community to continue and increase their support of this worthy foundation.

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. 11 of 22nd December, 1938, and moved that it be adopted.

THE FINANCIAL SECRETARY seconded, and this was agreed to.

MOTIONS.

THE ATTORNEY GENERAL.—I rise to move "That the order dated the 12th day of January, 1939, made by the Chief Justice under section 32 of the Supreme Court Ordinance, 1873, Ordinance No. 3 of 1873, be approved." The Attorney General said: A copy of the order is on the table before Honourable Members and refers to a charge of \$5 for a writ of attachment. That has been the fee for a number of years, but owing to a printer's error in the regulations passed last year, the decimal point was put in the wrong place and made to read 50 cents. This order makes the fee as it was originally, namely \$5.

THE COLONIAL SECRETARY seconded, and this was agreed to.

DANGEROUS DRUGS AMENDMENT BILL, 1939.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Dangerous Drugs Ordinance, 1935." He said: The objects and reasons for this Bill are fully set out in the Memorandum at the end of the Bill.

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. Authority has been obtained from the Secretary of State for the payment of fines and estreated bail in dangerous drug cases into a special account. Present legislation only authorizes such payment in cases arising under the Opium Ordinance, 1932, (*see* Ordinance No. 7 of 1932, s. 41).

2. The object of this Bill is authorize the same procedure for disposal of fines and estreated bail in cases arising under the Dangerous Drugs Act, 1935, as is at present followed in cases arising under the Opium Ordinance, 1932, but in the new section of the Dangerous Drugs Ordinance the words "the Court or" are inserted before the words "a magistrate" to cover any case in which the bail may be estreated by the Supreme Court and not by a magistrate.

**GOVERNMENT HOUSE AND CITY DEVELOPMENT FUND WINDING UP
BILL, 1939.**

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance for the repeal of the Government House and City Development Scheme Ordinance, 1934, and for the appropriation to the general revenue of the Colony of any balance standing to the credit of the Fund at the Treasury established under section 4 of the Ordinance. He said:

The object of this bill is to authorize the winding up of the Government House and City Development Fund. This is a matter of considerable interest to the general public in view of the circumstances in which that Fund was originally set up and Your Excellency has instructed me to give a full explanation of the reasons underlying the proposed legislation.

The Fund was designed to finance a large, specific scheme of re-development of an area including the site of the former City Hall and the site of the Government House and Colonial Secretary's Office buildings. There was paid into the Fund the proceeds of the sale of a part of the City Hall site to the Hong Kong and Shanghai Banking Corporation, and it was also proposed in due course to pay into the Fund the proceeds of the sale of other land in this area as development proceeded on the basis of a detailed plan drawn up and referred to in the 1934 Ordinance. It was the hope that the proceeds of these sales would be sufficient to pay for the re-building of Government House and Government offices and also for the provision of a new City Hall in replacement of that demolished.

The operation of this scheme was suspended for various reasons and when Sir Andrew Caldecott became Governor he indicated his opposition to the whole scheme because he disliked the idea of intensive development of the Government House and neighbouring sites, and was not convinced of the necessity of re-building Government House itself. The whole subject was, therefore, in abeyance when Your Excellency assumed the Government.

When Your Excellency had considered the question your views were set out in a memorandum which, after discussion with the unofficial members of this Council, was published as an enclosure to Sessional Paper 13 of 1938, relating to the programme of Public Works. You expressed the view that it was advisable to proceed with the building of a new Government House on the Magazine Gap site, while agreeing with Sir Andrew Caldecott in disliking the proposal for the intensive development of Government House and neighbouring sites. You made it clear, Sir, however, that you envisaged the ultimate building of a new City Hall either as part of a large public building including new central Government offices or in some other way. It was shown in your memorandum and in the principal memorandum on the Public Works programme that the balance of about \$839,000 in the Government

House and City Development Fund should go some way to meet the contemplated expenditure of the new Government House, but would certainly not be sufficient to meet it all. It was also demonstrated that there might be further receipts from the sale of the remainder of the old City Hall site and possibly other portions of the area covered by the original scheme, but the general principle of a self-contained scheme financed wholly from the proceeds of sales of land in that area no longer appeared practicable; accordingly it was proposed that the re-building of Government House, and the provision of other public buildings on the sites in question should be financed from revenue, and that the balance in the Fund should, as a preliminary, be transferred to revenue.

The intention to proceed at once with this plan was stated by the Financial Secretary in paragraph 11 of his Memorandum on the Financial Position published in connection with the estimates for 1939 and referred to also in his speech in Council introducing these estimates. The present bill is, therefore, only intended to give formal sanction to a plan which has already received the tacit approval of Council.

In effect, the original plan of re-development of the sites in question has been abandoned and it is proper, therefore, that the scheme designed to finance it should be declared as abrogated: it follows that the preservation of a fund created 'ad hoc' would not only serve no useful purpose but it would actually be misleading. At the same time I have Your Excellency's authority for saying that the Government does intend in due course to provide a new City Hall for public use in the Colony. One of the great difficulties, however, is to find the right site. Neither what remains of the old site nor the site suggested in the scheme now forgone is adequate in area or suitable in situation, and until more land is rendered available by the removal of the present buildings below Government House or in some other way, it is impracticable to proceed with the actual construction of a new City Hall. That must be considered as part of a general scheme of re-planning of the area which is to be made available. It is pertinent to refer, in this connection, to the speech made in Council by the Honourable the Senior Member on 10th November when he indicated that the unofficial members supported the proposed building of a new Government House on the ground *inter alia* that it is an essential preliminary to the re-planning of this area.

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. As indicated in Sessional Paper No. 13 of 1938, His Excellency the Governor's memorandum printed therewith and paragraph 11 of the Financial Secretary's memorandum on the Estimates for 1939, it

has been decided to abandon the Government House and City Development Scheme, as planned in 1934 and financed by a special Fund established under Ordinance No. 30 of that year, and to finance the proposed new Government House and further city development without having to resort to a special Fund.

2. Provision is made in section 4 (3) of that Ordinance for the appropriation to general revenue of any balance to the credit of the Fund "when the said scheme is completed or abandoned", and it may well be that that provision is sufficient to give effect to the plan now contemplated.

3. It is thought better, however, to make special provision, as is done by this Bill, for the repeal of the 1934 Ordinance and for the transfer of the Fund's credit balance to general revenue.

PREVENTION OF EVICTION AMENDMENT BILL, 1939.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Prevention of Eviction Ordinance, 1938." He said: This Bill is fully explained in the Memorandum of Objects and Reasons attached to the Bill. The amendments have been made on suggestions from the Courts dealing with eviction cases and those who have had to do with the working 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. Clause 2 of the Bill adds a new sub-section (1) to section 3 of the Prevention of Eviction Ordinance, No. 6 of 1938, and makes a consequential renumbering of the existing sub-sections.

2. The principal Ordinance contained no express provision preventing a landlord exercising his common law rights of re-entry and so defeating the object of the Ordinance.

3. These common law rights are thus stated in 20 Hailsham's Halsbury s. 315:—

"Where the tenant fails to deliver up possession, the landlord is entitled to re-enter and take possession, subject only to certain statutory restrictions. Thus he can re-enter where the tenant has abandoned possession, or where he can effect entry peaceably; and even if he enters forcibly, and is thus liable to criminal proceedings under the statutes, yet the tenant has no civil remedy against him in respect of the re-entry, or in respect of the eviction, if no more force than is necessary is used."

4. The object of the new sub-section is to suspend the landlord's common law rights during the continuance in force of the principal Ordinance, except where the tenant has abandoned possession, and also to give to the tenant a civil remedy by way of injunction and damages.

5. Clause 3 of the Bill renumbers sections 4, 5 and 6 of the Prevention of Eviction Ordinance, No. 6 of 1938, as sections 6, 7 and 8 thereof and adds two new sections 4 and 5 to the principal Ordinance, of which new section 4 gives to the court similar powers to those which a reference committee has to determine any question in relation to the rent payable or to be paid by a sitting tenant under section 4 (2) of the principal Ordinance.

6. Cases have occurred in which landlords have sought to evade the provisions of the principal Ordinance by not collecting rent, or avoiding receipt of rent when the tenant attempts to render it, and then exercising their powers of distress under the Distress for Rent Ordinance, 1883. In such cases it is often difficult to show that there has been any wrongful distress. New section 5 therefore, added by clause 3 of this Bill to the principal Ordinance, gives a judge or the Registrar, as the case may be, power to require proof to his satisfaction that the tenant is unwilling to pay the rent demanded or that such rent is not excessive.

7. Clause 4 of this Bill substitutes a new sub-section (3) in section 6 of the principal Ordinance as renumbered in which the wording of the old sub-section which it replaces has been altered to make it clear that the right of appeal from a decision of a reference committee may be exercised either by a landlord or a tenant.

8. Clause 5 of this Bill adds a new sub-section (4) to section 6 of the principal Ordinance as renumbered providing for the enforcement by leave of the court of decisions of reference committees on questions submitted to them by the tenants and landlord in the same manner as judgments or orders of the court to the same effect.

EVIDENCE AMENDMENT BILL, 1939.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Evidence Ordinance, 1889." He said: The object of this Bill is to introduce a new section to bring our law into line with that in England under an Act of last year, and to repeal a section, somewhat to the same effect, that we have had in our Ordinance for some time.

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 incorporates, as sections 28A, 28B, 28C, 28D, 28E and 28F, in the Evidence Ordinance, 1889, the provisions of the Evidence Act, 1938, (1 & 2 Geo. 6, c. 28).

2. Clause 3 of this Bill repeals section 26 (1) of the principal Ordinance, the provisions of which are rendered no longer necessary by the new provisions enacted by clause 2.

OFFENCES AGAINST THE PERSON AMENDMENT BILL, 1939.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend section 45A of the Offences Against the Person Ordinance, 1865, as enacted by the Offences Against the Person Amendment Ordinance, 1938. He said: The effect of this is to restore a sub-section to section 45A which was omitted when that section was last enacted.

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. Sub-section (4) of section 45A of the Offences Against the Person Ordinance, No. 2 of 1865, as printed in Volume I of the Ordinances of Hong Kong (1937 Edition), provided that it should be no defence to a charge under the section that the minor, whose transfer was the subject of a prohibited transaction, consented to it or received the whole or any part of its consideration.

2. The substituted section 45A, enacted by Ordinance No. 16 of 1938, which no longer limited the offence to transactions concerning minors and which made it indictable, contained no provision relating to the consent of the person transferred or to his receipt of any part of the consideration.

3. The object of this Bill is to add to the new section 45A of the principal Ordinance, a sub-section to the effect generally of the provision omitted in 1938.

ASIATIC EMIGRATION (NO. 2) AMENDMENT BILL, 1938.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend further the Asiatic Emigration Ordinance, 1915." He said: When this Bill is in Committee, there are two minor corrections to be made in the short title.

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

CRIMINAL PROCEDURE AMENDMENT BILL, 1938.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend the Criminal Procedure Ordinance, 1899." He said: When this Bill is in Committee there is one minor amendment to be made in the short title.

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

On the motion of the Attorney General, seconded by the Colonial Secretary, the Council then went into committee to consider the bills clause by clause.

ASIATIC EMIGRATION (NO. 2) AMENDMENT BILL, 1938.

Clause 1.

THE ATTORNEY GENERAL.—I move that the words in brackets (No. 2), be deleted and the date be changed from 1938 to 1939.

THE COLONIAL SECRETARY seconded, and this was agreed to.

CRIMINAL PROCEDURE AMENDMENT BILL, 1938.

Clause 1.

THE ATTORNEY GENERAL.—I move that the date 1938 be changed to 1939.

THE COLONIAL SECRETARY seconded, and this was agreed to.

Upon Council resuming,

THE ATTORNEY GENERAL reported that the Asiatic Emigration Amendment Bill, 1938, had passed through committee with two immaterial amendments and moved the third reading.

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

THE ATTORNEY GENERAL reported that the Criminal Procedure Amendment Bill, 1938, had passed through committee with a minor 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.—The Council stands adjourned *sine die*.

FINANCE COMMITTEE.

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

Votes totalling \$1,698,573, being \$1,261,126 under Estimates 1938, and \$437,447 under Estimates 1939, contained in Message No. 1 from His Excellency the Governor, were considered.

Item 328.—28, Miscellaneous Services:— Unallocated Stores, Kowloon-Canton Railway, \$147,953.

HON. SIR HENRY POLLOCK.—Do the Expenditure Accounts all go into general revenue?

THE FINANCIAL SECRETARY.—In the past stores when originally purchased have not been charged to any vote of expenditure but to a Suspense Account in the first place and then to the proper expenditure sub-head when issued to departments. In future they will all be charged under a new sub-head of expenditure, giving the legislature power of control over actual purchases of stores instead of over the actual issue of stores.

Item 329.—28, Miscellaneous Services:—48, Transport of Government Servants, \$34,184.

HON. MR. DODWELL.—It is surprising to me how they have under-estimated—first there were \$150,000 and now \$34,000.

THE FINANCIAL SECRETARY.—It is very difficult to tell sometimes when newly-appointed officers are going to come out.

THE CHAIRMAN.—The ordinary leave is easier to estimate.

THE FINANCIAL SECRETARY.—Even then it is difficult because I can call to mind at once two or three officers who had to be sent Home on medical grounds.

Item 8.—13, Kowloon-Canton Railway:—Special Expenditure: One New Superheated Boiler for Class B Locomotive, \$45,000.

HON. SIR HENRY POLLOCK.—What is a superheated boiler?

THE DIRECTOR OF PUBLIC WORKS.—Steam is raised to a high temperature and dried. It is a modern type of engine.

HON. SIR HENRY POLLOCK.—Does that mean the boiler will stand a greater amount of heat?

THE DIRECTOR OF PUBLIC WORKS.—No. It is really difficult to explain.

HON. MR. PATERSON.—There is far greater efficiency, that is the thing.

All the votes were approved.