

20th June, 1940.

PRESENT:—

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT (MR. N. L. SMITH, 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. R. A. C. NORTH, *Acting*).

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

THE FINANCIAL SECRETARY (HON. MR. H. R. BUTTERS).

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

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

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

HON. MR. H. J. PEARCE, M.C., (Director of Public Works, *Acting*).

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

HON. MR. J. J. PATERSON.

HON. MR. LO MAN-KAM.

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

HON. DR. LI SHU-FAN.

HON. MR. A. L. SHIELDS.

HON. MR. W. N. T. TAM.

MR. C. B. BURGESS (Deputy Clerk of Councils).

ABSENT:—

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

HON. MR. S. H. DODWELL.

MINUTES.

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

PAPERS.

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

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 30th May, 1940.

Resolution made by the Legislative Council under section 3 of the Note-issuing Banks Extension of Powers Ordinance, 1939, Ordinance No. 21 of 1939, dated 31st May, 1940.

Amendments made by the Urban Council under section 5 of the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, to the by-laws under the heading "Restaurants and Eating-houses" in the Schedule to that Ordinance on 9th April, 1940, and approved by the Legislative Council on 30th May, 1940.

Amendment made by the Urban Council under sections 5 and 6 of the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, to the by-laws under the heading "Food Shops" in the Schedule to that Ordinance on 23rd April, 1940, and approved by the Legislative Council on 30th May, 1940.

Amendment made by the Urban Council under section 4 of the Public Health (Sanitation) Ordinance, 1935, Ordinance No. 15 of 1935, to the by-laws under the heading "Domestic Cleanliness and Prevention of Disease" and sub-heading "Restrictions on Sale of Certain Food-stuffs" in Schedule A to that Ordinance on 7th May, 1940, and approved by the Legislative Council on 30th May, 1940.

Amendment made by the Governor under section 1 (2) (d) of the Emergency Powers (Defence) Act, 1939, as applied to this Colony by the Emergency Powers (Colonial Defence) Order in Council, 1939, to section 3 (1) (d) of the Compulsory Service Ordinance, 1939, Ordinance No. 32 of 1939, dated 23rd May, 1940.

Amendment made by the Officer Administering the Government under section 1 (2) (d) of the Emergency Powers (Defence) Act, 1939, as applied to this Colony by the Emergency Powers (Colonial Defence) Order in Council, 1939, to section 11 (2) of the Compulsory Service Ordinance, 1939, Ordinance No. 32 of 1939, dated 31st May, 1940.

Amendment made by the Officer Administering the Government under section 1 (2) (d) of the Emergency Powers (Defence) Act, 1939, as applied to this Colony by the Emergency Powers (Colonial Defence) Order in Council, 1939, to the Merchant Shipping Ordinance, 1899, Ordinance No. 10 of 1899, dated 30th May, 1940.

Order made by the Controller of Food under the Defence Regulations, 1939, with the consent of the Officer Administering the Government, fixing the standard prices for certain articles of food, dated 31st May, 1940.

The Trading with the Enemy (Specified Persons) (Amendment) (No. 6) Order, 1940, made by the Governor with the prior approval of the Secretary of State under section 3 (2) of the Trading with the Enemy Ordinance, 1914, Ordinance No. 25 of 1914, as amended by regulation 2 of the Trading with the Enemy Ordinance, 1914, Amendment Regulations, 1939, dated 28th May, 1940.

Order made by the Officer Administering the Government under regulation 32 of the Defence Regulations, 1939, declaring certain premises as prohibited places, dated 7th June, 1940.

Order made by the Controller of Food under the Defence Regulations, 1939, with the consent of the Officer Administering the Government, fixing the standard price for certain articles of food, dated 7th June, 1940.

Amendments made by the Governor in Council under section 3 of the Vehicles and Traffic Regulation Ordinance, 1912, Ordinance No. 40 of 1912, to the regulations, dated 11th June, 1940.

Amendment made by the Governor in Council under section 11 (6) of the Compulsory Service Ordinance, 1939, Ordinance No. 32 of 1939, to regulation 1 of the Hong Kong Defence Reserve Regulations, dated 13th June, 1940.

The Defence (Ship's Stores) Order, 1940, made by the Officer Administering the Government under regulation 46 of the Defence Regulations, 1939, dated 8th June, 1940.

Order made by the Controller of Trade under the Defence Regulations, 1939, with the consent of the Officer Administering the Government, prohibiting the export, except by licence, of Hides and Skins, Feathers, Cassia and Gallnuts, dated 12th June, 1940.

Amendment made by the Officer Administering the Government under section 1 (2) (d) of the Emergency Powers (Defence) Act, 1939, as applied to this Colony by the Emergency Powers (Colonial Defence) Order in Council, 1939, to section 15 (1)

(i) of the Volunteer Ordinance, 1933, Ordinance No. 10 of 1933, dated 14th June, 1940.

Proclamation No. 4.—War broken out between His Majesty and Italy.

Administration Reports, 1939:—

Part I.—General Administration:—

Report of the Harbour Master and Director of Air Services.

Part II.—Law and Order:—

Report of the Police Magistrates' Courts

Report on the New Territories, District Office, North.

Report on the New Territories, District Office, South.

Part V.—Defence:—

Report of the Director of Air Raid Precautions.

QUESTIONS.

HON. MR. LO MAN-KAM asked:—

With reference to the Regulations relating to Schools published as Government Notification No. 711 in the Gazette of 1st September, 1939,

- (1) Will Government state whether all Government Schools, and particularly Queen's College, Wanchai School and Sai Ying Pun School, conform to the standards and requirements prescribed by the said Regulations?
- (2) If the answer is in the negative,
 - (a) Will Government indicate the nature of the defects and/or the deficiencies as judged by the standards and requirements of the said Regulations, and
 - (b) Will Government state whether it is the intention of Government to enforce the said Regulations against private schools when Government Schools fall short of the standards and requirements prescribed by the said Regulations?

THE COLONIAL SECRETARY replied:—

- (1) The Education Ordinance and the Regulations made under it do not apply to Government schools, and no

survey of Government schools has been made for the purpose of ascertaining to what extent they conform to those regulations. It can be said however that the general standard of hygiene and sanitation in Government schools is well up to the regulation requirements. In the three schools particularly mentioned (Queen's College, Wanchai School and Saiyingpun Vernacular School for Boys), there are however a few rooms which do not conform to the regulations.

- (2) (a) Those rooms at Queen's College, Wanchai School, and Saiyingpun Vernacular School for Boys which do not conform to the regulations are deficient as regards ventilation and lighting.
- (b) Yes. The general standard of hygiene and sanitation in Government schools is satisfactory and far superior to the general standard in private schools. Moreover in Government schools the number of pupils in a class is ordinarily limited to 30, as compared with the permissible 45 (in practice often exceeded) in private schools.

FINANCE COMMITTEE'S REPORT.

THE COLONIAL SECRETARY, by command of H.E. The Officer Administering the Government, laid on the table the Report of the Finance Committee (No. 4), dated 30th May, 1940, and moved that it be adopted.

THE FINANCIAL SECRETARY seconded, and this was agreed to.

MOTIONS.

THE FINANCIAL SECRETARY.—I rise to move "That this Council approves the gift to His Majesty's Government of a further contribution of £100,000 from the Colony of Hong Kong towards the prosecution of the war."

Honourable members will recollect that on 14th March last I explained the purposes to which it was proposed to devote the revenue accruing from war taxation over a 24 months' period. At the same meeting this Council approved the gift to His Majesty's Government of £100,000 as a monetary contribution from the Colony of Hong Kong, and the possibility of further such contributions was contemplated.

I know it is the unanimous desire of this Council to do what it can to assist His Majesty's Government at the present moment, and it is considered that such assistance can best take the form of an immediate monetary contribution. This item of £100,000 is included in the application for a supplementary vote which is to be made in Finance Committee after this meeting.

THE COLONIAL SECRETARY seconded.

HON. SIR HENRY POLLOCK.—This matter came before a confidential meeting of members of the Finance Committee recently and the Unofficial Members were entirely in favour of this grant being made.

The motion was carried.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT.—Gentlemen,—As you are aware the decision to make this further gift to Imperial funds was unanimously approved by the Unofficial members of this Council at a confidential meeting of the Finance Committee held on 30th May. This was at once reported to the Secretary of State for the Colonies and I think it is proper that I should read out a portion of his telegraphic reply:—

"His Majesty's Government will gratefully accept proposed further contribution of £100,000 from Hong Kong public funds towards prosecution of the war and request you will express their thanks to members of Council when vote is approved."

IMMIGRATION AND PASSPORTS AMENDMENT BILL, 1940.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Immigration and Passports Ordinance, 1934." He said: The reasons for this Bill are explained in the memorandum of Objects and Reasons.

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

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows:—

1. Section 11 (3) of the principal Ordinance provides that the holder of a valid passport or travel document which bears an endorsement defining a limited period of stay in the Colony shall not remain in the Colony after the period has expired: Provided that the period of his stay may be extended with the consent of the Commissioner of Police for which consent the official signature fee of \$5.00 shall be paid.

2. It may be argued that this ordinary Official Signature Fee is in effect the statutory fee for a temporary residential permit.

3. This Bill will add words at the end of the section which will waive the fee where reciprocal arrangements exist with the country of which the holder of the passport or travel document is a national for dispensing with fees for permits of the same or similar effect.

WAR REVENUE AMENDMENT BILL, 1940.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the War Revenue Ordinance, 1940." He said: This removes doubts as to the year which is to be taken for the purpose of assessing Property Tax.

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 2 of this Bill deletes from section 60 of the principal Ordinance the words "in respect of the property, income and profits of every person for the year preceding the year of assessment, but without prejudice to any provisions of this Ordinance which enact that tax is to be charged in particular cases in respect of property, income and profits for a period other than the year preceding the year of assessment."

2. The intention of section 60 was to fix the starting date of the Taxes under the Ordinance.

3. Provision is already made in sections 10 and 18 for the calculation of salaries and profits taxes on the basis of the preceding year.

4. In the case of property tax however, section 5 provides for charging the tax on the rateable value as assessed for Rating purposes. It does not appear to have been the intention of the War Revenue Committee which framed the principal Ordinance that for property tax the rateable value for the current year should be disregarded and that the value of the previous year should be taken as a basis; but it has been suggested that the construction of the last part of section 60 of the principal Ordinance may have that effect.

5. It has therefore been decided to repeal these words so as to restore the apparent intention of the Committee with regard to that tax. The references to income and profits in the words repealed are unnecessary in view of the provisions of sections 10 and 18 of the principal Ordinance.

POST OFFICE AMENDMENT BILL, 1940.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Post Office Ordinance, 1926." He said: The Bill adds to section 6 of the principal Ordinance another class of matter exempted from postage.

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

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows:—

The object of this amending Bill is to add a fifth exception to the Post-Master General's exclusive privilege of conveying, sending or receiving letters, corresponding to the exception contained in section 34 (2) (e) of the Post Office Act, 1908, as amended by the First Schedule to the Post Office (Amendment) Act, 1935. (8 Ed. 7, c. 48 and 25 Geo. 5, c. 15).

COMPULSORY SERVICE AMENDMENT BILL, 1940.

THE ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to amend the Compulsory Service Ordinance, 1939." He said: This gives definition to the Key-Posts Group and revises the definition for the Essential Services Group. The Tribunal is acting on this Bill already. It is urgent and I hope it will be possible to pass it through all its stages to-day if no objection is raised.

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. This Bill repeals section 11 (2) of the principal Ordinance and substitutes a revised sub-section in order to assist the Compulsory Service tribunal in making their assignments and re-assignments to the three groups into which the Hong Kong Defence Reserve is divided.

2. In its existing form the sub-section provides for (a) a combatant group (subdivided by sub-section (3) into naval, military and air sections), (b) a key-posts group of persons whose services are primarily required in the work in which they are normally engaged and (c) a general group for essential services.

3. The definition attached to the key-posts group and the lack of definition for the general group for essential services has caused some misapprehension in the minds of the tribunal, employers, employees and the general public.

4. In the proposed substituted section a definition is attached to each of these two groups which should go far to remove that misapprehension. Under it the key-posts group will consist of persons who in the event of an emergency contemplated by the tribunal will be primarily required, in the opinion of the tribunal, to continue in the work in which they are normally engaged; whilst the essential services group will consist of persons who in the event of an emergency contemplated by the tribunal will be primarily required, in the opinion of the tribunal, to perform essential services which are not those in which they are normally engaged.

5. In the revised sub-section the three provisos have been re-arranged. The third proviso added by Government Notification No. 855 of the 23rd September, 1939, will become the first proviso. The original first proviso as amended by Government Notification No. 604 of the 31st May, 1940, will become the second proviso, and the original second proviso will become the third proviso. This rearrangement of the provisos is made for greater clearness.

TRADE BOARDS BILL, 1940.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to provide machinery for fixing minimum wages, determining normal working hours and fixing overtime rates in trades where the wage standards are unreasonably low."

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

ADVERTISEMENTS REGULATION AMENDMENT BILL, 1940.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend the Advertisements Regulation Ordinance, 1912."

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

NEW TERRITORIES REGULATION AMENDMENT BILL, 1940.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend the New Territories Regulation Ordinance, 1910."

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

DEFENCES (SKETCHING PREVENTION) AMENDMENT BILL, 1940.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to amend the Defences (Sketching Prevention) Ordinance, 1895."

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

THE PREVENTION OF PASSING ON OF WAR PROPERTY TAX BILL, 1940.

THE ATTORNEY GENERAL moved the second reading of a Bill intituled "An Ordinance to Prevent the Passing On of War Property Tax."

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

On the motion of the Attorney General, seconded by the Colonial Secretary, Council then went into Committee to consider the following Bills clause by clause:—

TRADE BOARDS BILL, 1940.

ADVERTISEMENTS REGULATION AMENDMENT BILL, 1940.

NEW TERRITORIES REGULATION AMENDMENT BILL, 1940.

DEFENCES (SKETCHING PREVENTION) AMENDMENT

BILL, 1940.

THE PREVENTION OF PASSING ON OF WAR PROPERTY TAX

BILL, 1940.

TRADE BOARDS BILL, 1940.

Clause 3.

THE ATTORNEY GENERAL.—I wish to move the insertion of the words "Application of" in the marginal note before "Ordinance No. 13 of 1886."

This was agreed to.

Clause 6.

HON. MR. M. K. LO.—I meant to speak to the Attorney General in connection with this clause but owing to pressure of work was unable to do so. I wish to refer to sub-section 2 of this clause, which states, "Where an employer who is charged with an offence against this Ordinance proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Ordinance and that the offence was in fact committed by his agent or some other person without his knowledge, consent, or connivance, he shall, in the event of the conviction of that agent or other person for the offence, be exempt from any fine in respect of the offence, without prejudice, however, to the power of the court under sub-sections (2) and (3) of section 5 to adjudge him to pay any sum which appears to the court to be due to the person employed on account of wages."

It seems to me that if the employer does satisfy the Court that he has used due diligence to enforce the execution of the Ordinance, and that the offence was committed by his agent or some other person without his knowledge, consent or connivance, I do not see why he should be convicted of the offence at all or why non-conviction should depend on the fortuitous circumstances that his agent should be convicted. I would like to move that the words "in the event of the

conviction of that agent or other person for the offence" be deleted. It seems to me a man has a very heavy onus to discharge, and if he can satisfy the Court that he has done his best to enforce it, and the offence was committed by an agent, that is not an offence by the employer and I do not see why he should be convicted for something over which he had no control.

THE ATTORNEY GENERAL.—This Bill was cast from the English act mentioned in the margin.

THE FINANCIAL SECRETARY.—It is the principle of absolute liability placed upon the employer.

THE ATTORNEY GENERAL.—If we delete it I should have to explain in my report on the Ordinance why we had differed in this respect from the Home legislation, and although one can do that on due notice of consideration on a point like this, I prefer it to stand as it is because it is not local legislation.

HON. MR. M. K. LO.—I still think it is unfair.

THE ATTORNEY GENERAL.—A magistrate is not bound to impose a fine.

THE FINANCIAL SECRETARY.—It would be easy for the employer to put up a man of straw as agent and let him disappear.

HON. MR. M. K. LO.—I mentioned this point at a meeting of the District Watch Committee of which I am a member.

THE ATTORNEY GENERAL.—I would prefer that we follow the English legislation because I have no doubt that if it is unfair here it is unfair in the United Kingdom, and they do not think so.

HON. MR. M. K. LO.—Perhaps the Attorney General will agree to look up the English legislation and if the words are not there make an amendment at some other time.

THE ATTORNEY GENERAL.—Naturally. If we find it has been inserted locally we will put forward an amendment. The Bill was drafted by the Financial Secretary.

THE FINANCIAL SECRETARY.—I did not intend to tighten up the home legislation.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT.—Surely this is one of those exceptions to the general rule, like the well-known case of the billiards marker?

HON. MR. M. K. LO.—I quite agree. That is why I do not object to the employer being asked to pay; but it does not seem right that he should be liable for a criminal offence which he has not committed.

THE ATTORNEY GENERAL.—If we find it is not in the English legislation we undertake to put it right.

THE PREVENTION OF PASSING ON OF WAR PROPERTY TAX BILL, 1940.

Clause 2.

HON. SIR HENRY POLLOCK.—In sub-section (*e*) should not the word "Governor" be substituted for "Government" in the second line? I understood the appointment was made by the Governor.

THE ATTORNEY GENERAL.—Yes, there are several amendments to be made of which I gave notice when the first reading of the Bill was taken. They are that in Clause 2, (1) (*b*), the word "tenement" be substituted for "dwelling-house" as the final word; in clause 2 (1) (*e*) the word "Governor" be substituted for "Government" in the second line; and that Clause 6 be amended to read:

6. Where a notice of increase of rent in respect of any tenement has been given by the landlord, such landlord and tenant, notwithstanding anything contained in the Supreme Court (Summary Jurisdiction) Ordinance, 1873, may apply in a summary way to a judge in Chambers in the Summary Jurisdiction to decide whether the proposed increase of rent is fair and reasonable, and on such application the judge may give such directions in the matter as he thinks proper. The decision of a judge under this section shall be final as between the landlord and the tenant.

I move they be adopted.

The amendments were agreed to.

Upon Council resuming,

THE ATTORNEY GENERAL reported that the Trade Boards Bill had passed through Committee with an immaterial amendment, 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 Advertisements Regulation Amendment 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.

THE ATTORNEY GENERAL reported that the New Territories Regulation Amendment 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.

THE ATTORNEY GENERAL reported that the Defences (Sketching Prevention) Amendment 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.

THE ATTORNEY GENERAL reported that the Prevention of Passing On of War Property Tax Bill had passed through Committee with certain amendments, full notice of which he had given during the motion for the first reading. If they were ruled as immaterial by His Excellency, he would move the third reading.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT.—I rule they are immaterial.

THE ATTORNEY GENERAL.—I therefore move the third reading of the Bill.

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

ADJOURNMENT.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT.—Council stands adjourned until 2.30 p.m. on June 27th.

FINANCE COMMITTEE.

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

A vote for \$1,627,119, contained in Message No. 6 from H.E. The Officer Administering The Government, was approved.
