

Tuesday, 27th August, 1946.

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PRESENT: —

HIS EXCELLENCY THE GOVERNOR (SIR MARK AITCHISON YOUNG, G.C.M.G.).

THE HONOURABLE THE OFFICER COMMANDING THE TROOPS (BRIGADIER P. L. LINDSAY).

THE COLONIAL SECRETARY (HON. MR. R. R. TODD, *Acting*).

THE ATTORNEY GENERAL (HON. MR. G. E. STRICKLAND, *Acting*).

THE SECRETARY FOR CHINESE AFFAIRS (HON. MR. T. MEGARRY, *Acting*).

THE FINANCIAL SECRETARY (HON. MR. C.G.S. FOLLOWS, C.M.G., *Acting*).

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

HON. MR. C. H. SANSOM, C.M.G., C.B.E., (Acting Commissioner of Police).

HON. MR. V. KENNIFF, (Director of Public Works).

HON. DR. J. P. FEHILY, O.B.E., (Acting Chairman, Urban Council).

HON. MR. D. F. LANDALE.

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

HON. MR. LO MAN-KAM, C.B.E.

HON. MR. LEO D'ALMADA E CASTRO.

HON. MR. R. D. GILLESPIE.

HON. DR. CHAU SIK-NIN.

MR. D. R. HOLMES, M.B.E., M.C. (Deputy Clerk of Councils).

MINUTES.

The Minutes of the meeting of the Council held on Thursday, 15th August, 1946, were confirmed.

PAPERS.

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

Amendments made by the Governor in Council under Section 8 of the Law Amendment (Transitional Provisions) Ordinance, 1946, Ordinance No. 2 of 1946, to the provisions of Schedule 11 of the said Ordinance, dated 7th August, 1946.

Additional items made by the Acting Director of Supplies, Trade & Industry, under Defence Regulation 50 of the Defence Regulations, 1940, to the Schedule to the Price Control Order, 1946, dated 7th August, 1946.

No. 582 Nathan Road declared by the Urban Council under By-Law 2 of the Market By-Laws made pursuant to the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, to be a market within the meaning of By-Law 1 of the Markets By-Laws, dated 6th August, 1946.

QUESTION.

The HON. Mr. R. D. GILLESPIE asked: —

The Right Honourable the Secretary of State for the Colonies stated, during a debate on Malaya in the House of Commons on July 25th, that the Tin industry in Malaya had been offered loans by the local Government for an approved programme of repair. The loans to be set off against compensation for war damage. Payment of any of the loans, or payment of interest, not to commence until a decision had been taken upon the amount of compensation due for war damage. Loans on these terms to be available to Chinese as well as Europeans. Will Government consider assisting in the rehabilitation of industry in this Colony on similar terms?

The FINANCIAL SECRETARY replied: —

The Government is taking steps to obtain full particulars regarding the loans which have been offered by the local Government in Malaya to the Tin industry. Any application which may be received by this Government for similar assistance towards the rehabilitation of any industry in Hong Kong will certainly be given full and sympathetic consideration, but it must be remembered that this Government would itself have to borrow before it could make any loan.

SUMMER TIME BILL. 1946.

The ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to enable the Governor-in-Council to provide for the observance of Summer Time." He said: —The objects and reasons are fully set out and I don't think I need add anything to these objects and reasons. I would like, however, to point out to Honourable Members of the Council that the actual time for the commencement of summer time and for the cessation of summer time each year is not provided for by the Bill, but is left to the Governor-in-Council to determine each year when summer time should commence and when it should end. That is a subject which is inclined to be controversial from time to time, views differ as to the exact time which is most convenient both for the commencement and cessation of summer time, and it is considered better to allow that to be settled by experience in the course of ensuing years.

The COLONIAL SECRETARY seconded, and the Bill was read a First time.

Objects and Reasons.

1. The objects of this Ordinance are

- (1) to validate and provide for the present observance of Summer Time in the Colony;
- (2) to enable the Govern or-in-Council to order the observance of Summer Time in future years.

2. Summer Time which is nine hours in advance of Greenwich Mean Time, has been observed in this Colony since 5 p.m. on the 20th of April, 1946. No legal provision was made at the time because the imminent resumption of civil Government counselled reserving the matter for adequate provision by Ordinance.

3. The observance of Summer Time not only effects daylight saving but facilitates healthy recreation.

4. Summer Time has become permanent in Great Britain, Northern Ireland, the Channel Islands and Isle of Man, and as it will be observed from the comparative table the time for its commencement and cessation are fixed. It is considered that in Hong Kong there has not been the opportunity to gain sufficient experience of what would be the most suitable dates to justify fixing commencement and cessation dates. Power is accordingly given to the Governor-in-Council to order commencement and cessation not earlier and not later respectively than the 1st of April and the 1st of December. December 1st has been selected because providing other interests are not damaged, it is hoped that more daylight might thus be saved.

TABLE OF COMPARISON.**Summer Time Ord., 1946.****Summer Time Act, 1922 to 1925.****Section 3 (1):**

The time for general purposes in Hong Kong shall be exactly nine hours in advance of Greenwich Mean Time, that is to say, one hour in advance of the mean time of the 120th Meridian east of Greenwich and one hour in advance of Standard Time.

Section 1 (1):

The time for general purposes in Great Britain shall, during the period of summer time, be one hour in advance of Greenwich mean time.

Section 3 (2):

Reference to a point of time in any enactment or in any byelaw deed notice or other document whatsoever shall unless the contrary is expressly stated be deemed to refer to such point of time computed in accordance with Summer Time.

Section 1 (2):

Wherever any reference to a point of time occurs in any enactment, Order in Council, order, regulation, rule, bye-law, deed, notice or other document whatsoever, the time referred to shall, during the period of summer time, be deemed, subject as hereinafter provided, to be the time as fixed for general purposes by this Act.

Section 4:

Nothing in this Ordinance contained shall affect the use of Greenwich Mean Time or Standard Time for purposes of astronomy, meteorology, or navigation or affect the construction of any document mentioning or referring to a point of time in connection with any of those purposes.

Section 1 (3):

Nothing in this Act shall affect the use of Greenwich mean time for purposes of astronomy, meteorology, or navigation, or affect the construction of any document mentioning or referring to a point of time in connection with any of those purposes.

**CODE OF CIVIL PROCEDURE (AMENDMENT)
BILL, 1946.**

The ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Code of Civil Procedure." He said: —I don't think I need add anything further to the objects and reasons as set out, but I would draw your attention to the fact that in each case the discretion to fix the daily rate is given to the Court and there is therefore no reason to apprehend that such rate will not be fixed in accordance with the actual cost of living.

The COLONIAL SECRETARY seconded, and the Bill was read a First time.

Objects and Reasons.

When a judgment debtor is committed to prison in execution of the judgment the person at whose instance the judgment has been executed must pay to the Superintendent of Prisons an allowance for the debtor's support and maintenance in prison. The amount of such allowance is fixed by the Court in each case, under section 439 of the Code of Civil Procedure, at a rate not exceeding \$2.00 per day. The Superintendent of Prisons reports this rate to be inadequate as the present cost of a European diet is \$2.95 per day. In order to allow some latitude, it is considered that the rate should be increased to an amount not exceeding \$5.00 per day.

THE MORATORIUM.

The HON. Mr. M. K. LO moved: —

1. That this Council expresses the hope that every possible step will be taken with all convenient speed for the removal of the existing restrictions imposed by the Moratorium Proclamation particularly in regard to transactions in shares and property.

2. That if the Secretary of State's decision in regard to Debtor-Creditor Relationships involves any alteration in the law of the Colony otherwise than by the Legislature of the Colony an opportunity may be given to this Council to express its views before such legislation is enacted.

3. That the terms of this Motion and a record of the Debate be transmitted to the Secretary of State for his information.

The HON. Mr. M. K. LO said: I venture to think that the motion, by its very terms, would commend itself to this Council without any elaborate arguments from me in its support. To borrow a legal phrase from a branch of the law, which happily has no application to this debate—I am not alleging negligence against the Government—I can almost describe this motion as an example of *res ipsa loquitur*.

On September 13, 1945, the Moratorium Proclamation (No. 6) was published. Whilst subsequent provisions have somewhat decreased the rigour of the provisions of this Proclamation, an amendment issued on November 17, 1945, added shares etc. to the list of prohibitions. At the present moment subject to certain specified exceptions or subject to special approval in certain cases: (1) The prohibition against the recovery of debts—the official "freezing" of old bank accounts—remains; (2) dealings in land which had been dealt with during the Japanese occupation are still forbidden; and (3) dealings in shares, securities, etc., are also forbidden.

As regards the monetary aspect of the Moratorium, the Financial Secretary, in his answer to a question put by my colleague, Hon. Mr. Chau in this Council on July 19, pointed out that "the Moratorium does not in any way prevent the voluntary payment of any debt." But I feel sure my Hon. friend realises, as well as anyone, that the voluntary discharge of a debt during the operation of moratorium implies a disposition which unfortunately rarely exists in this hard, practical, mundane world. In any case why should the Moratorium be continued as regards debts owing before the war in respect of which there was no repayment, wholly or in part, during the Japanese occupation?

I observe that the Government's position is that "it is not possible for this Government to lift the Moratorium until a decision has been reached on Debtor-Creditor Relationships, which is now under consideration in London. I do not deny—indeed it is too obvious—that it is essential to come to a decision on the Debtor-Creditor Relationships question before the whole of the Moratorium can be lifted. But my point is that this question should have engaged, and no doubt did engage, the serious attention of the local as well as the London authorities at least since the Japanese surrender, which is nearly one year ago, and that all the relevant data must have been placed before the London authorities months ago. Surely mere consideration of a problem with all known facts should not take such a long time. I believe the Big Four Foreign Secretaries have succeeded in solving many complicated international questions within a much shorter time.

I appreciate that in any final solution of a problem of this complexity absolute justice to all parties can hardly be expected. But surely it is better to come to a decision, imperfect though it may be, than to wait indefinitely for a perfect solution.

As regards land, I have never been able to understand the delay in implementing the recommendations of the Law Society for perfecting the transactions put through during the Japanese occupation. I believe a Bill in draft, approved by the Law Society, has been in existence for some considerable time. I deliberately say that I know of no justification for this delay.

As regards shares, here again I must confess I have never been able to understand the necessity or the value of prohibiting transactions in shares. As a matter of fact shares change hands daily in the so-called "black market." But I do say that there is a definite need for some legislation dealing with such questions as loss of register and non-holding of statutory annual meetings, loss of scrips, etc., and no such legislation has yet been placed before this Council.

As regards the second paragraph of my motion, I would observe that legislation on the question of Debtor-Creditor Relationships would appear to be in its nature a financial measure which may alter the existing legal rights acquired under pre-war commercial contracts, and involve the differential treatment of various classes of debtors and creditors. It is, therefore, a matter in which the members of this Council are vitally concerned. If such legislation were to take the form of an enactment by this Council, its members will no doubt be afforded enough time to study its provisions before the Second reading. But if such legislation should take some other form, then I feel bound to state that, in spite of the urgency of the matter, I deem it most important from a constitutional point of view that before the decision of the London authorities on the issues involved are embodied in any legislation, the members of this Council should first have adequate opportunity to examine any proposed measures. They are matters which affect local property rights and local financial obligations, and they require consideration in the light of local knowledge and their bearing on the local community.

Sir, I respectfully submit that it is of the utmost importance to the rehabilitation of the Colony that impediments like the Moratorium should be removed as soon as possible, and I appeal to Your Excellency to direct that the highest priority be given by your officers to deal with this question.

The HON. Mr. D. F. LANDALE. —I rise to second Mr. Lo's motion and in doing so would like to endorse all the points he has raised in moving it.

I would, however, like to lay special emphasis on one of them. To my certain knowledge the question of Debtor-Creditor Relationship has been receiving the consideration of H.M. Government for at least a full year and I submit that this is amply sufficient time for Government to have obtained all the relevant information on the problem and to have arrived at a definite decision.

The ATTORNEY GENERAL said. —The Honourable Member who has moved this motion, which is welcomed by Government not only because of the terms in which it is couched but as bringing the matter to the attention of Government and also to the attention of the Secretary of State, has made certain observations with regard to the maintenance of the Moratorium.

May I say that Government appreciates that the restrictions resulting from the continuance in force of that Proclamation which are absent from the normal commercial life of the community hamper and retard rehabilitation but, Sir, I would also like to say that it would be worse if these restrictions were removed without adequate thought having been given as to what legislation was first

of all necessary in order that they might be removed without inconvenience to various sections of the community, and I feel sure that that was appreciated by the Hon. Member who moved the motion and that when he used the words "possible steps," he meant possible for a Government which recognises its responsibilities to all sections of the community affected by the removal of these restrictions.

I think, Sir, I can make that clearer if I say that there are, as Hon. Members know, many complex problems arising from such matters as the liquidation of banks, the introduction of military yen as legal tender and the fact that the Hong Kong Dollar ceased in 1943 to be legal tender until it was eventually restored by the Currency Proclamation. While all of us are agreed that it is undesirable to remove the Moratorium without making some provision by legislation for some, at all events, of these complex problems, not all of us are in complete agreement as to what provisions should be made; and in that connection, Sir, Hon. Members will, I think, understand the difficulties when I say that very often when you have two parties who are innocent it is very difficult to choose which of them should suffer because of the unlawful action of the third party, in this case, the Japanese occupiers of the Colony.

In some cases the position is even more complex in that one party appears to be more entitled to protection than another in that he was deprived of all liberty of action during the occupation while the other innocent party had at all events enjoyed some liberty: in, this sense, I am referring to liquidation of banks who were prevented from exercising their normal rights.

A further complication arises with regard to this last problem I have mentioned and it is that arguments can be put forward on both sides that all this has happened in the past and that people have changed their position as a result of this happening and you have to regard that factor as well as the factor of how far any party was an innocent party or how far he enjoyed liberty of action.

Honourable Members, Sir, will readily appreciate that in putting forward these considerations to the Secretary of State and his advisers the view advanced by this Government is not always in conformity with the view of the Secretary of State and his advisers. The Secretary of State has to consider not only the particular problem arising from this territory but also the problems arising from other territories, such as Malaya and Borneo, and so far as possible to harmonise any solution he may adopt with regard to Hong Kong with those he adopts for those other territories.

If all these factors are taken into consideration I don't think the delay in arriving at a decision is so unreasonable as it might appear from the observations made by the mover of the motion. That is not to say that Government does not fully appreciate that it is a delay which should not be allowed to continue more than is absolutely necessary.

The Honourable mover of the motion has made certain observations with regard to transactions in land and transactions in shares. It is quite correct that certain recommendations were made by the Law Society. These recommendations were made, I may say, pursuant to suggestions put forward on Government's behalf to the Law Society and it was done with a view to preparing so far as we could in Hong Kong, legislation which would be consequent on the removal of the Moratorium. It was not intended that that legislation should be enacted before the Moratorium or the restrictions imposed by the Moratorium Proclamation had been removed, and perhaps I might give some examples of the undesirable results that might follow, if you were now to permit all transactions in land that took place during the Japanese occupation to go forward without any sort of check. There are a number of cases, I think about 30, to take an example, in which it is alleged that some form of duress was exercised in forcing the sale of the property concerned—if we remove the restrictions it would of course be possible, for those persons who allege they were under duress to take appropriate proceedings in the Courts, but supposing at the time that the transaction took place the Yen was the only currency in legal tender in the Colony and payment was effected in Yen, on what principle would the Courts, in endeavouring to do justice, decide either what the damages were, or upon any order in favour of the person who, had satisfied it that the sale of that property was made under duress; how would it determine what additional consideration should be paid. Shall we say Yen 50,000 had been paid and the party is able to satisfy the Court that the proper price at that period of the occupation should have been Yen 80,000, and the Court accepts it, how is it going to adjust that difference between Yen 50,000 and Yen 80,000?

Until a decision has been taken as to whether that difference should be adjusted and on what basis it should be adjusted, it would obviously not be practicable to allow that type of case to come before the Court. That is one example.

Another class of cases are cases which are affected by the liquidation of the banks, mostly mortgages that were paid off to the liquidators of the banks, thereby enabling the mortgagors to dispose of their property subsequently. Until a decision has been reached, how far is a transaction involving any liquidation to be treated as valid? It is not possible to free transactions of that sort.

There are other cases on mortgages where advantage was taken of the Hong Kong Dollar being no longer legal tender, to pay off in Yen the indebtedness incurred by the mortgage. The position differs largely according to the time at which payment was made. It also differs in that in some cases it appears to be established that the Japanese Courts accepted payment at the rate of HK\$4 to Yen 1, although the Hong Kong Dollar had ceased to be legal tender. The persons who are adversely affected by these transactions would not be able to protect themselves unless the courts were fully open to them, and I repeat the Courts cannot be fully opened until a number of consequential decisions are taken.

These observations apply perhaps not with the some force but with some force to the question of transactions in shares. If you take the case of liquidation as an example, the securities were in some cases redeemed from the Liquidator. The securities so redeemed and dealt with by parties are the greatest number of transactions which cause concern.

Quite apart from the question of Moratorium, however, as the Honourable Member already has indicated, the question of dealing in shares is bound up with the question of how far the companies are in a position to register the transfer of shares, how far they can provide copies of their memorandum and articles of association. The Honourable Member, I think, will remember that in the last days of the Military Administration a committee was appointed by the Commander-in-Chief, Sir Cecil Harcourt, to deal with this question of reconstruction of the registers of the Companies and the filing of returns. That committee met on a number of occasions and it has made certain recommendations. Following upon these recommendations, which were of a complicated nature, Government considered it would be better to have before it the legislation recommended by the Committee before deciding on the recommendations, for in that way it would be better informed what the recommendations implied.

I am happy to say that that draft legislation is very nearly completed.

Meanwhile, the position of companies has improved and I am willing to admit to the Honourable Member that a stronger case can be made now for consideration of the removal of the ban on the transfer of shares than could be made some weeks ago. Even so the figures are not as reassuring as they might appear. Three hundred and twenty-five companies have filed some sort of particulars. Of these 269 companies possess memorandum and articles of association and 240 companies possess share registers.

I do not propose to go into any more details on the points that have been raised. I wish to repeat that in my view Government

should adhere to the motion before Council, but that the adherence should not be construed as implying that it considers that there is any step which is immediately possible to remove the restrictions.

However, I can give an undertaking that the observations made by the Honourable Member in moving the motion will be given consideration by Government and that if after such consideration there is any step which Government thinks it can take to remove such restrictions it will endeavour to do so.

The HON. Mr. M. K. LO said: —Taking advantage of the Attorney-General's concluding words that Government would consider the observations that came from me and from the seconder and consider what it can do in the way of removing the restrictions, I should perhaps answer some of his points.

If I may say so, the Hon. Attorney-General explained the inherent difficulties of the Debtor-Creditor Relationship question which I admitted in my opening remarks. I did not deny it. It would have been futile to do so. The only difference in opinion between him and myself and the seconder is as to when, having regard to all these difficulties, a year's consideration has or has not been sufficient to enable any party to come to a decision on it.

I have not heard one word from the Hon. Attorney-General as to when that decision may be expected. We know that the situation is difficult, but on the same argument, a decision may not be reached in another 12 months. What I have endeavoured to say in my opening remarks is to convey an indication that we, the Unofficials, have felt that there has been sufficient time for a decision to be reached, and that is why I appeal to Your Excellency to direct that priority be given to dealing with this question.

That decision has to depend on the Secretary of State. We are powerless and can only ask Your Excellency to pass on what has happened to-day for the Secretary of State's decision and hope that a decision can be reached before too long.

Having said that, I do respectfully wish to join issue with the Hon. Attorney-General as regards to other items, property and shares. Speaking from memory, the idea of the legislation or proposals to Government drafted by the Law Society was merely machinery. During the occupation there were thousands of transactions in property on which there is no dispute at all. There may be 20 or 30 disputed transactions. As regards the undisputed transactions all that was required is some legal machinery for putting those transactions into legal form so that they can be registered.

There is no question of Yen or other complications in relation to that question. I should have thought it would not have been

difficult in the draft legislation to make it quite clear that if there were any dispute which is subject to a Court case as to whether the transaction was a valid one or as a result of duress or anything of that kind that it should be excluded. The question is, was there a necessity to hold up the formal perfection of transactions which run into thousands?

I have endeavoured to express this view time and again. The Hon. Attorney-General refers to the Commander-in-Chief's committee and I have expressed similar views before the Commander-in-Chief. I am not seeking or asking Government here to anticipate the result of the decision on the Debtor-Creditor Relationship.

In the same way about mortgages to Liquidation Banks. I don't know the amount but I should imagine relatively there are not many, but any such mortgages which involved payment in Yen should be excluded. There is no difficulty in the machinery of exclusion at all.

It is the same thing with shares. The Attorney-General admitted that the argument against the question of shares is not so strong, but the most effective test is this: The public now knows that no decision having been reached on the Debtor-Creditor Relationship, redemption of securities from banks in Yen may not be accepted. They know that if they buy and sell securities which are officially the subject of the Moratorium they run a risk. And yet it is a fact that shares are sold every day. What does it mean? It means buying and selling of share does not depend on transfers at all. People can buy or sell shares without putting them on the register at once. All I can say, Sir, is that the Hon. Attorney-General I has not said anything which has convinced me that it is necessary at the present time to attempt by law to enforce a measure which in practice is evaded every day. It is not necessary as part of the general Moratorium to insist upon a general prohibition of sale and purchase of shares.

I felt that in justice to the view entertained by myself and others on this question, I should answer the Attorney-General shortly. All I can hope is that after further consideration of the discussion to-day the lifting of the Moratorium either wholly or in part will be expedited.

H.E. The GOVERNOR: —Before I put the question to the Council I wish to confirm what the Hon. Attorney-General has said to the effect that Government is prepared to assent to the terms of the motion, but in doing so it must be understood that it is not assenting to any suggestion that the matter or any part of this matter admits of a simple solution or that there has been any unreasonable delay in settling the matter. The Hon.

Attorney-General has given an account of some of the difficulties inherent in the question and he has made it quite clear that Government agrees with the general view that the question should be concluded as early as possible.

The matter on which we are not all agreed is precisely what steps are practicable. The Government is prepared to accept and vote for this motion so long as it is understood as the Hon. Attorney-General has said that in any action which it takes Government is bound to recognize its responsibilities towards all sections of the community.

I now put to Council the question standing in the name of the Honourable Member appearing on the Order paper. The question is seconded by the Hon. Mr. D. F. Landale. Those who are in favour of the adoption of the motion say "Aye."

Council unanimously adopted the motion, which was carried.

ADJOURNMENT.

H.E. The GOVERNOR.—Council is now adjourned until Thurs-day, 5th September, 1946.
