

*3rd December, 1947.*

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**PRESENT: —**

HIS EXCELLENCY THE GOVERNOR (SIR ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, K. C. M. G.)

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS (MAJOR-GENERAL G. W. J. ERSKINE, C. B., D. S. O.)

THE ATTORNEY GENERAL (HON. J. B. GRIFFIN, K.C.)

THE SECRETARY FOR CHINESE AFFAIRS (HON. R. R. TODD).

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

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

DR. HON. I. NEWTON (Director of Medical Services).

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

HON. D. F. LANDALE.

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

DR. HON. CHAU SIK-NIN.

HON. R. D. GILLESPIE.

HON. M. M. WATSON.

MR. ALASTAIR TODD (Deputy Clerk of Councils)

**ABSENT: —**

THE COLONIAL SECRETARY (HON. D. M. MACDOUGALL, C.M.G.)

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

HON. LEO D'ALMADA, K.C.

**MINUTES.**

The Minutes of the meeting of the Council held on 6th November, 1947, were confirmed.

**OATHS.**

Dr. the Honourable J. P. Fehily, O. B. E., (Chairman, Urban Council), took the Oath of Allegiance and assumed his seat as a Member of the Council.

**MOTIONS.**

THE ATTORNEY GENERAL moved: —

Resolved pursuant to section 3 of the Public Officers (Changes of Style) Ordinance, 1937, that the style of the office of "Auditor" be changed to "Director of Audit", that the style of the office of "Senior Assistant Auditor" be changed to "Principal Auditor" and that the style of the office of "Assistant Auditor" be changed to "Auditor", for all purposes, and that the following additions be made to the Schedule to the said Ordinance—

OLD STYLE OF OFFICER, OFFICE OR DEPARTMENT.	NEW STYLE OF OFFICER, OFFICE OR DEPARTMENT.
Auditor	Director of Audit
Senior Assistant Auditor	Principal Auditor
Assistant Auditor	Auditor

He said: The purpose of the resolution is to effect under powers given by section 3 of the Public Officers (Changes of Style) Ordinance, 1937, a change in the titles of officers of the Audit Department. The resolution is intended to give effect to a decision which has been reached to adopt for the Colonial Audit Department in the United Kingdom. Such changes of title as are set out in the terms of the resolution have been or will be adopted universally throughout the Colonies.

THE SECRETARY FOR CHINESE AFFAIRS seconded, and the motion was carried.

THE ATTORNEY GENERAL moved: —

RESOLVED pursuant to section 3 of the Dutiable Commodities Ordinance, 1931 that the provisions of the said Ordinance except Parts II, III and IV thereof shall apply to proprietary medicines and toilet preparations.

In this resolution—

"Proprietary Medicine" means and medicine or prophylactic held out to the public by advertisement, label or otherwise in writing as efficacious for the prevention, cure or relief of any malady, ailment, infirmity or disorder affecting human beings and

(a) which is sold under a trade name or trade mark to the use of which any person has or claims or purports to have an exclusive right; or

(b) of which any person has or claims or purports to have the exclusive right of manufacture or for the making of which any person has or claims or purports to have any secret.

"Toilet Preparation" means any substance commonly used for the toilet and includes: —

toilet soap,  
shaving soap and cream,  
tooth paste or powder and liquid preparations for dental purposes or mouth washes,  
perfumed spirits,  
toilet paste or powder,  
toilet cream,  
hair dye,  
scented sachets,  
lipstick, rouge and grease paint,  
preparations for use in manicure and chiropody.  
preparations, whether medicinal or not, for use on the hair, face or body,  
bath salts and essences,  
smelling salts,  
prepared Fuller's earth.

Provided that the expressions "Proprietary Medicine" and "Toilet Preparation" do not include any substances made and sold under a name or synonym specified in the British Pharmacopoeia or the British Pharmaceutical Codex.

The part of the resolution made and passed by the Legislative Council and published as Notification No. 1117 in the Government Gazette Extraordinary of 19th September, 1941, applying the provisions of the Dutiable Commodities Ordinance, 1931 except Parts II, III and IV thereof, to proprietary medicines and toilet preparations shall be and is hereby revoked.

He said: In making remarks in explanation of this resolution it is convenient that my remarks should also extend to the next following resolution standing in my name on the Order of Business. Sir, the position is that section 3 of the Dutiable Commodities Ordinance, 1941 empowers this Council by resolution to apply the

Ordinance to commodities as named in any such resolution. Again, section 4 of the same Ordinance empowers this Council by resolution to fix the duties payable upon commodities to which the Ordinance has been so applied. By resolution of the 19th September, 1941 this Council applied the provisions of the Ordinance to proprietary medicines and toilet preparations, and by the same resolution it applied the rates of duty to such commodities specifying that duty shall be a percentage upon retail price.

Now the purpose of the resolution which I am now moving and of the next resolution on the Order paper is as to 1 and 2 to repeal the resolution of September, 1941, under section 3 of the Ordinance applying the Ordinance to the commodities, namely, proprietary medicines and toilet preparations, and by the resolution under section 4 to apply or to fix the rates of duties payable on such commodities. Now in so doing a change of method in the manner of assessment is the chief objective of the resolutions. As I have mentioned hitherto the duty has been levied on retail prices. Such procedure has been found to be unsatisfactory; such is the case, because, although duty is assessed on retail prices, such duty is payable by a person who is not necessarily the retailer, and thus payable by a person who would have a vague idea only of the appropriate retail price. Furthermore, it has been found that such system of assessing duty has tended to rigidity in price because there has been reluctance to charge a lower price, even if feasible, than the retail price upon which duty has been paid. Furthermore the method of assessing duty as hitherto has entailed computation on c.i.f. cost, but insurance and freight differ, particularly nowadays when the self-same type of cargo can come by air or by sea with of course differing rates for the conveyance of the commodities in either fashion.

The purpose of the resolution which I am moving and the next following is to provide that in future duty on toilet preparations and proprietary medicines will be assessed at the rate of 25 per cent. f.o.b. price in respect of imported commodities and 25 per cent. on ex factory price in respect of such commodities of this type as are locally manufactured. It is considered that by this change in the method of assessment of duty the collection of duty will be facilitated and importers assisted, and it is not anticipated by this change that over-all the price of the commodities concerned to the consumer will in fact be increased.

THE SECRETARY FOR CHINESE AFFAIRS seconded, and the motion was carried.

THE ATTORNEY GENERAL moved: —

RESOLVED that—

(1) Pursuant to section 4 of the Dutiable Commodities Ordinance, 1931, duty shall be payable on proprietary medicines and toilet preparations at the following rates: —

On toilet preparations and proprietary medicines made in Hong Kong 25 per cent. of the selling price ex factory.

On imported proprietary medicines and toilet preparations 25 per cent. of the f.o.b. price ex shipping port.

(2) In this resolution—

"Proprietary Medicine" means any medicine or prophylactic held out to the public by advertisement, label or otherwise in writing as efficacious for the prevention, cure or relief of any malady, ailment, infirmity or disorder affecting human beings; and

(a) which is sold under a trade name or trade mark to the use of which any person has or claims or purports to have an exclusive right; or

(b) of which any person has or claims or purports to have the exclusive right of manufacture or for the making of which any person has or claims or purports to have any secret.

"Toilet Preparation" means any substance commonly used for the toilet and includes: —

toilet soap,  
shaving soap and cream,  
tooth paste or powder and liquid preparation for dental purposes or mouth washes,  
perfumed spirits,  
toilet paste or powder,  
toilet cream,  
hair dye,  
scented sachets,  
lipstick, rouge and grease paint,  
preparations for use in manicure and chiropody,  
preparations, whether medicinal or not, for use on the hair, face or body,  
bath salts and essences,  
smelling salts,  
prepared Fuller's earth.

Provided that the expressions "Proprietary Medicine" and "Toilet Preparation" do not include any substances made and sold under a name or synonym specified in the British Pharmacopoeia or the British Pharmaceutical Codex.

"F.o.b." means the price free on board charged to the consignee in Hong Kong and is calculated less any discounts or rebates which the manufacturer may have permitted the purchaser.

(3) For the purposes of calculating the H.K.\$ equivalent of foreign currencies the rate of exchange shall be \$16 to the £ sterling, \$4 to the U.S.\$ \$12 to the £ Australian, \$2 to the Philippine peso and 1 to \$30 French francs.

(4) The Superintendent of Imports and Exports shall have the right to require the importer to produce consular or other certified invoices and where the information on such invoices is not considered correct, he may fix a price for the calculation of duty.

Further resolved that the part of the resolution made and passed by the Legislative Council and published as Notification No. 1117 in the Government Gazette Extraordinary of 19th September, 1941, specifying the rate of duty to be paid on proprietary medicines and toilet preparations shall be and is hereby revoked.

THE SECRETARY FOR CHINESE AFFAIRS seconded, and the motion was carried.

### **HONG KONG (REHABILITATION) LOAN BILL, 1947.**

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to make provision for raising a Loan of one hundred and fifty million dollars for the general rehabilitation of the public services of the Colony following a period of enemy occupation."

He said: As Honourable Members know only too well, this Government has been faced with extremely heavy expenditure for the repair of the devastation caused by the war and for the complete re-equipment of the various Government services. Although revenue has recovered in a very remarkable manner, it was obvious from the start that it could do little more than cover normal current expenditure and that a loan would in consequence be necessary. This Government has, for many months, been in consultation with His Majesty's Government in regard to the floating of such a loan, but unfortunately it was not possible to settle outstanding points in time to take advantage of the favourable market conditions earlier in the year.

Fortunately it has up to recently been possible to finance a good deal of capital expenditure on rehabilitation from the large floating balances which were available on the S.T. & I. trading account owing to the fact that payment for foodstuffs imported into the Colony was made considerably in arrears. This saved the Colony large sums which it would have necessary to pay out in interest if a new loan had been floated earlier but lately it has become necessary to arrange payments for foodstuffs directly they are shipped. Thus, instead of receiving payment from local distributors and being able to retain the money for some months before paying it out again, this Government now has to pay in advance. As a consequence it has become increasingly difficult to remit sufficient funds to meet commitments in London and also to retain an adequate balance locally.

Honourable Members will observe that the Bill now before the House makes provision for the raising of a loan not exceeding \$150,000,000 by one or more issues either in Hong Kong or in London though it is hoped that the response in Hong Kong will be sufficiently good to render recourse to the London market unnecessary. Power is given to raise the money by one or more issues and it is proposed that the

firs issue should be for \$50,000,000. This will be in the form of bearer bonds issued at par and redeemable not earlier than 1973 and not later than 1978. The bonds, which will bear interest at 3½%, will be secured on the general revenue and assets of the Colony and provision has been made for a sinking fund for the redemption of the loan. It is proposed to fix the minimum contribution to the sinking fund at 1% but in years when revenue comes in well the rate of contribution will, of course, be increased. The sinking fund may be used for the purchase of bonds when they can be obtained at a price below par.

It is not at present contemplated that these 3½% bonds should be issued up to the maximum figure of \$150,000,000 provided in the Bill. A premium bond issue is also under consideration, and if such an issue is made, the total borrowings in respect of both types of bond will be limited to the maximum figure of \$150,000,000 laid down in the present Bill. The type of premium bond issue which the Government has in mind is on the lines of one issued in Palestine in 1946. Such bonds bear interest at the rate of 1% and a small number is redeemed at the end of each quarter at attractive prices. In one quarter of the year the principal prize is much larger than during the other three quarters. I am afraid that I cannot deal with this premium bond issue in greater detail at the present stage, but when a decision is finally reached, a Bill will be introduced into this Honourable Council.

THE SECRETARY FOR CHINESE AFFAIRS seconded, and the Bill was read a First time.

### **Objects and Reasons.**

1. The object of this Bill is to make legislative provision to empower the raising of a loan of \$150,000,000 for the general rehabilitation of the public services of the Colony following a period of enemy occupation, and such further sum as may be necessary to defray the expense of issue.

2. In this Bill—

*Clause 2* empowers the Governor, or the Crown Agents acting on behalf of the Governor, to raise a loan in Hong Kong or in London or partly in Hong Kong and partly in London, of an amount not exceeding a total of \$150,000,000.

*Clause 3* provides that the principal moneys and interest represented by the loan be charged upon and payable out of the General Revenue and Assets of the Colony.

*Clause 4* requires that money borrowed under the powers given by the Bill upon enactment shall be appropriated and applied only to the purposes specified in the Schedule to the Bill, the proviso being made, however, that the transfer of money from one item of the Schedule to another may be made if such transfer be approved by resolution of the Legislative Council and by the Secretary of State.

*Clauses 6 and 7* make provision for a Sinking Fund for the redemption of a loan, according as to whether such loan, or part of it, is raised in London or in Hong Kong.

*Clause 8* empowers the Governor, *inter alia*, to determine the time for any issue and redemption of bonds issued in respect of the loan.

### **JURY AMENDMENT (No. 2) BILL, 1947.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Jury Ordinance, 1887."

He said: Under the present law in trials upon indictment for offences not punishable by death it is possible, if in the course of a trial one or two members of a jury absent themselves by reason of illness or other similar reason for the Court to order the trial to proceed to conclusion, notwithstanding such absence of a member or two members of the jury. The law however does not allow the Court to order proceedings to continue where a jury-man is absent, and notwithstanding that proceedings may have almost concluded in cases where trials are taking place for offences punishable with death. The main purpose of this Bill is therefore so to amend the Jury Ordinance as to empower the Court to allow proceedings to continue even in a case where the offence is punishable with death, if before proceedings are concluded one, but one only, member of the jury is absent from the jury of trial.

THE SECRETARY FOR CHINESE AFFAIRS seconded, and the Bill was read a First time.

### **Objects and Reasons.**

1. Section 21 of the Jury Ordinance, 1887 (the principal Ordinance), provides *inter alia* that in criminal cases the verdict of a majority consisting of not less than five jurors shall be taken to be the verdict of the jury provided that in a trial for an offence punishable with death the jury must be unanimous in their verdict of guilty or not guilty. Section 22 of the principal Ordinance provides that in the event of death, illness or default of attendance of any one or two jurors during the trial of any information or indictment it shall be lawful for the Court to order the trial to be proceeded with in like manner as if the full number of jurors had continued to serve on the jury and any verdict returned by the remaining jurors by a majority consisting of not less than five of the remaining jurors shall be of equal validity as if it had been returned by a jury of the full number of jurors. The proviso is made, however, that in a trial for an offence punishable with death, the jury shall not consist or less than seven members. The Section does not, however, empower the Court to order a trial to proceed in a case where for any reason the Court has, after commencement of a trial, ordered the discharge of one or two jurors.

2. It happens not infrequently during the trial for an offence punishable with death that one of the jurors is unable to attend or has to be discharged from attendance. In such event it is necessary for the Court to discharge the whole jury and for the case to be heard again before a new jury.

3. The object of this Bill is (Clause 2) to amend Section 22 of the principal Ordinance so as to provide—

- (a) that the Court be empowered to order a trial to proceed in the event that a juror has to be discharged from attendance after commencement of a trial; and
- (b) that upon the trial of an offence punishable with death, the jury may consist of the six persons remaining in the event of absence or discharge of one juror occurring after a trial has commenced.

### **BIRTHS REGISTRATION (SPECIAL REGISTERS) BILL, 1947.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to authorise the Registrar General of Births and Deaths to keep special registers of births for the purpose of registering births previously registered in specified lost registers of births formerly kept by the Registrar General of Births and Deaths."

He said: This Bill affords yet another example of legislation made necessary by enemy action or enemy occupation of the Colony. As a result of such action or occupation loss of registers of births has occurred, as kept in District Registries and in the central or General Register Office of the Registrar General of Births and Deaths, that is to say the Director of Medical Services. Such loss has occurred in respect of registers and in respect of births which are described in parts I, II and III of the First Schedule of the Bill. The Bill as in the hands of Honourable Members is accompanied by exhaustive if not perhaps exhausting, Objects and Reasons which indicate that the Bill is heavily charged with detail. It will I think suffice merely if I mention in moving this First reading that the Bill is as complicated as it appears because it has been necessary to take into account the fact that the lost registers relate not to registers kept under a single Ordinance but on the contrary to registers and entries in such registers kept under three Ordinances, one of 1872, another of 1896 and another under the existing Ordinance of 1934. The objective of the Bill is, shortly stated, to empower the Registrar General of Births and Deaths to open and keep special new registers which so far as possible can be facsimile reproductions of the registers which have been lost, as to which entries can be provided which will have evidential value equivalent to the original registers and copies of entries as they were recorded in the registers which have been lost.

THE SECRETARY FOR CHINESE AFFAIRS seconded, and the Bill was read a First time.

### Objects and Reasons.

1. During the Japanese occupation of the Colony a number of registers of births (including certified copies of entries in District Registers) formerly kept in the General Register Office and in District Registry Offices were lost. A complete list of all the lost registers (which by Clause 3 of the Bill are deemed to be lost) is contained in the First Schedule to the Bill which is divided into three parts so as to distinguish the lost registers by reference to the Ordinances under which they were kept. The lost registers listed in Part I were kept under the Births and Deaths Registration Ordinance, 1872, (Ordinance No. 7 of 1872); those listed in Part II were kept under the Births and Deaths Registration Ordinance, 1896, (Ordinance No. 7 of 1896) and those listed in Part III were kept under the Births and Deaths Registration Ordinance, 1934, (Ordinance No. 21 of 1934).

2. Many persons still possess certified copies of entries in the lost registers originally given to them pursuant to Section 16 of Ordinance No. 7 of 1872, Section 21 of Ordinance No. 7 of 1896 or Section 23 of Ordinance No. 21 of 1934, and desire to re-register the births to which such certified copies relate. Many other persons possess some other form of evidence of registration of a birth in a lost register of lesser evidential value (e.g. a certificate in Form No. 3 in the Second Schedule to Ordinance No. 21 of 1934) and they too desire to re-register the birth to which that evidence relates. But legislative provision is absent to enable such re-registration of births to be effected. The object of this Bill is to provide such legislation.

3. Clause 2 of the Bill necessarily contains definitions of—

(a) birth certificates originally given pursuant to Section 16 of Ordinance No. 7 of 1872, Section 21 of Ordinance No. 7 of 1896 or Section 23 of Ordinance No. 21 of 1934 respectively;

(b) the groups of lost registers formerly kept under those three Ordinances; and

(c) the three pairs of special new registers intended to be opened and kept for re-registration purposes.

4. Clause 4 of the Bill provides that for the purposes of re-registration there shall be kept a pair of new registers (numbered 1 and 2) in respect of each of the three Ordinances above quoted. Pairs of new registers are necessary in respect of each Ordinance because the evidence to support application for re-registration will be of two distinct categories, i.e. —

(a) evidence afforded by certified copies of entries in lost registers;

(b) evidence other than that afforded by certified copy and therefore of lesser value.

Accordingly in the No. 1 Registers, the evidence afforded by certified copies of entries given pursuant to Section 16 of Ordinance No. 7 of 1872, Section 21 of Ordinance No. 7 of 1896 or Section 23 of Ordinance No. 21 of 1934 will be registered. In the No. 2 Registers, the information made available by any other form of evidence will be registered provided the Registrar General considers such evidence satisfactory and gives his consent to registration.

5. The forms of the No. 1 Register and of No. 2 Register in respect of each such Ordinance are contained in separate Schedules to the Bill (namely, the Second, Third and Fourth Schedules). In each such Schedule Form No. 1 is a facsimile of the statutory form employed under Ordinance No. 7 of 1872, Ordinance No. 7 of 1896 or Ordinance No. 21 of 1934 respectively; and Form No. 2 in each such Schedule differs respectively from Form No. 1 only in so far as it provides for the recording of the Registrar General's consent.

6. Clause 5 of the Bill entitles as of right any person in possession of a certified and sealed copy of an entry of a birth given pursuant to Section 16 of Ordinance No. 7 of 1872, Section 21 of Ordinance No. 7 of 1896 or Section 23 of Ordinance No. 21 of 1934 to registration in Form No. 1 of the appropriate special register of births.

7. Clause 6 of the Bill provides for registration in Form No. 2 of the appropriate special register of births, i.e. where the Registrar General considers the evidence of previous registration to be satisfactory and records his consent to registration.

8. Clause 8 of the Bill requires the sealing of all certified copies of entries given in the Registrar General's Office and also distinguishes between the evidential value which will attach to entries and certified copies of entries in a No. 1 Register relating to Section 16 of Ordinance No. 7 of 1872 and Section 21 of Ordinance No. 7 of 1896, and the evidential value of entries and certified copies of entries in a No. 1 Register relating to Section 23 of Ordinance No. 21 of 1934. The necessity for distinction in the evidential value (Clause 8(2) and (3) of the Bill) occurs because Section 16 of Ordinance No. 7 of 1872 and Section 21 of Ordinance No. 7 of 1896 respectively provide that every entry and every certified copy of an entry in registers kept under those two Ordinances respectively shall be received as evidence of the birth to which the same relates without other or further proof of such entry, whereas Section 23 of Ordinance No. 21 of 1934 provides that the evidential value of entries and certified copies of entries in registers kept under that Ordinance shall be qualified by various conditions mentioned in such Section. Additionally, Clause 8(4) of the Bill provides that an entry or certified copy of an entry in any of the No. 2 Registers will not of itself alone afford proof of registration in a lost register because the evidence required by the Bill (Clauses 5 and 6) for registration in a No. 2 Register is inferior to the evidence required for registration in a No. 1 Register.

9. Clauses 7, 9, 10, 11, 12 and 13 of the Bill contain necessary ancillary provisions.

**ADJOURNMENT.**

H.E. THE GOVERNOR. —That concludes the business of the Council for this afternoon. When would you like to meet again. —Two weeks hence?

THE ATTORNEY GENERAL. —I propose the 17th December.

This was agreed.

Council was accordingly adjourned until Wednesday, 17th December, 1947, at 2.30 p.m.