

28th July, 1948.

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 F. R. G. MATTHEWS, D. S. O.)

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

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

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

THE FINANCIAL SECRETARY (HON. A. G. CLARKE, *Acting*).

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

DR. HON. G. H. THOMAS, O. B. E. (Acting Director of Medical Services).

HON. E. HIMSWORTH (Acting Superintendent of Imports and Exports).

HON. D. F. LANDALE.

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

DR. HON. CHAU SIK-NIN.

HON. C. C. ROBERTS

HON. N. O. C. MARSH

MR. ALASTAIR TODD (Deputy Clerk of Councils).

ABSENT: —

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

HON. LEO D'ALMADA, K.C.

MINUTES.

The Minutes of the meeting of the Council held on 14th July, 1948, were confirmed.

QUESTIONS.

THE HON. N. O. C. MARSH asked: —

In connection with the loss of a Hong Kong registered Catalina aircraft on the Macao - Hong Kong service on 16th July, 1948: —

Will Government assure this Council: —

- (1) That an inquiry will be held in Hong Kong into the causes of the disaster—and
- (2) That such inquiry will be held in accordance with the practice in force in the United Kingdom.

THE COLONIAL SECRETARY replied as follows: —

An inquiry into the recent accident in which a Hong Kong registered Catalina was lost is being held in Macao by the authorities there: this follows international practice which is that enquiry should be made at the last port of call except where the accident occurs while landing. At the same time, in accordance with procedure and practice in the United Kingdom and, under the Air Navigation Directions, 1932, in Hong Kong, an Inspector of Accidents has been sent to Macao with the consent of the Portuguese authorities to enquire in conjunction with them into the cause of the accident. The inspector will in due course submit his report to the Governor, when it is hoped to issue a public statement. Sir, for the words "in due course" I should like to substitute "shortly". In fact we have every reason to believe that the report will be ready by about Monday.

THE HON. N. O. C. MARSH: —Thank you, Sir.

MOTIONS.

THE ACTING FINANCIAL SECRETARY moved the following resolution: —

"Resolved that this Council approves the expenditure of \$30,360,747 on the items in the schedule attached to the Order Paper during the financial year 1946/47; which sum shall be met from loan funds and shall be charged as an advance from the surplus funds of the Colony."

He said: Sir, there is nothing in the Schedule for which approval is sought which is new to Honourable Members, as it appears in full in the printed Estimates for 1948/49. For audit purposes formal approval of this Council is required for the amount to be spent on

each item of loan expenditure and where the cost is, in the first instance, being met by advances from surplus funds in anticipation of the raising of a loan, formal approval is further required. As Honourable Members are aware, the first part of the Loan was not raised until the early part of 1948, and all Loan Expenditure during 1946/47 was in fact met from the Colony's surplus balances. This motion merely regularises this procedure.

THE COLONIAL SECRETARY seconded, and the motion was carried.

THE ACTING FINANCIAL SECRETARY moved: —

That the Supplementary Provision for the first quarter ended 30th June, 1948, Schedule No. 1 of 1948/49, be approved. He said: Sir, the Special Warrants set forth in the schedule have already been approved by Finance Committee and it is now necessary that this approval be confirmed by a formal resolution of this Council.

With one exception all the items of supplementary expenditure involved are comparatively small and are covered to a considerable extent by savings.

The exception is the item for nine million dollars in respect of pay for non-interned Government servants, and gratuities for non-interned volunteers and members of the Civil Defence Services. It was at one time hoped that we would be able to charge this non-recurrent item to Loan, but this has not proved possible.

We budgetted this year for a surplus of just over a million dollars, so that it will be seen that if revenue and expenditure go according to estimate we now face a deficit of eight million dollars. Fortunately things are not quite so straightforward as that, and I have hopes that if revenue can be maintained we will be able to make up this eight million dollars by saving on expenditure. Until the financial situation becomes clearer it will, however, be necessary to watch our outgoings.

THE COLONIAL SECRETARY seconded, and the motion was carried.

POLICE FORCE BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend and consolidate the law relating to the Police Force." He said: Sir, the object of this Bill is to repeal the present Police Force Ordinance, 1932, and various amending Ordinances and to put in their place a new Ordinance which has been drafted in the light of experience gained not only in this Colony but in other Colonies.

Particular attention has been paid to the discipline of the Force—See clauses 30-36 of the Bill which should be read together with clauses 12-14. The main feature is that officers other than gazetted officers will be dealt with exclusively under the Ordinance and that the Commissioner is now given power to dismiss subordinate officers and constables.

Other new features of the Bill are: —

First: The creation of a Police Welfare Fund which is a normal feature in the United Kingdom and other Colonies. The providing of certain sports and other amenities which such a fund makes possible should go a long way towards promoting a healthy Force and to compensate the police for the lack of comfort which often arises from their being forced to spend considerable time in barracks or other uncomfortable quarters.

Second: The exemption from civil process of the pay and allowances of non-commissioned officers or constables—clause 16. This is necessary to remove the temptation on the one hand for the unscrupulous to obtain control over members of the Force by lending them money or supplying them with commodities and on the other hand the temptation for members of the Force to use their position in order to obtain credit.

Third: Power is given to the Commissioner to engage Special Constables. Clause 24.

In general, however, the Bill only seeks to improve upon the existing law relating to the constitution, organisation and powers of the Police Force. Honourable Members are referred to the Objects and Reasons which summarise the various parts 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. The Police Force Ordinance which was enacted in 1932 and amended in subsequent Ordinances between that year and 1941, provides the existing legislation governing the establishment and control of the Hong Kong Police Force. Experience gained in the operation of the Police Force Ordinance, 1932, and the need for general re-constitution and re-organisation of the police force consequent on the period of enemy occupation of the Colony, has shown the necessity for substantial amendment and consolidation of such law. In particular has it been found necessary to make more precise definition of the control of the force. For instance, the existing Ordinance empowers the Commissioner to make regulations under

the Ordinance which, after they are made, are subject to the approval of the Governor in Council by whom such regulations may be amended or rescinded. Such provision is in contrast with that usually to be found in modern legislation governing a police force whereunder regulations under the Ordinance are made by the Governor in Council, the Commissioner and commanding officers of the force being empowered by Ordinance to issue Police general orders, routine orders and standing orders within the limits imposed by Ordinance and dealing with day to day administration control and direction of the force. Other such instance is afforded by the fact that the existing Ordinance unnecessarily makes provision for the "civilian staff", i.e. departmental staff of the police force not being police officers, while making relatively small and inadequate provision for the discipline of the force. Thus, it is the present position that the Commissioner of Police cannot, of his own authority, suspend a constable or dismiss him and cannot punish subordinate officers with a greater penalty than a fine of \$25, 10 drills, reduction in rank or class or loss of pay during a period of absence from duty, while the disciplinary powers afforded senior officers of the force are also inadequate.

2. This Bill, which is intended to provide such amendment and consolidation, consists of eight Parts as follows: —

- Part I : Preliminary.
- Part II : Constitution of police force.
- Part III : Discipline and duties.
- Part IV : Welfare Fund.
- Part V : Unclaimed property and intestate estates.
- Part VI : Procedure.
- Part VII : Miscellaneous provisions.
- Part VIII : Repeal.

3. Part I: This Part (Clause 2) provides for the application of the Ordinance to all persons who, at the commencement of the Ordinance, are serving in the Police Force. Clause 3 includes interpretation of the terms "commanding Officer" and "gazetted police officer" and by Clause 4 vests in the Commissioner the supreme direction and administration of the force subject to the orders and control of the Governor, while Clause 8 tabulates the duties of the police force.

4. Part II provides for the constitution of the police force. In particular, this Part deals with the appointment and payment of police officers and for their conditions of engagement and duration of service and the interdiction, suspension or dismissal of gazetted police officers. In this Part also, by Clause 24, the Commissioner is empowered, without written engagement, to employ persons to serve temporarily as special constables.

5. Part III (Clauses 30-36 inclusive) deals with the discipline of the force. Such Clauses afford a code of discipline and clarify and amplify the powers of the Commissioner and other officers of the force in imposition of punishment for breaches of such code. Such enhanced powers of punishment (together with provisions for appeal) given by the Ordinance to the Commissioner and commanding and other officers of the force, conform with the powers ordinarily to be found in legislation governing a police force, such powers being essential for a disciplined force.

6. Part IV (Clause 37) makes provision, not hitherto existing, for the establishment, definition and control of a Police Welfare Fund.

7. Part V (Clauses 38, 39 and 40) makes necessary provision for the safeguard and disposal of unclaimed property and for property, the property of deceased persons, not exceeding \$500 in value which are required to be safeguarded pending the establishment of claim.

8. Part VI: In this Part, Clause 43 empowers the Governor in Council to make regulations dealing, *inter alia*, with conditions of service, pensions and gratuities, while Clauses 45, 46 and 47 empower the Commissioner and commanding officers to make Police general orders, headquarters orders and standing orders for the purposes of and to the extent empowered by such Clauses.

9. Part VII: Clauses 49-62 inclusive, reproduce substantially the provisions of sections 18-29 of the Police Force Ordinance, 1932. Such provisions relate to the powers of the police as to arrest, search, detention and release on recognizance.

10. Part VIII provides, by Clause 63, for repeal of the Ordinances named in the Clause. By operation of section 11 of the Interpretation Ordinance, 1911, existing regulations made under the principal Ordinance, including Pensions Regulations, will remain in force until replaced by regulations made under Clause 43 of the Bill upon enactment.

SEPARATION AND MAINTENANCE ORDERS (AMENDMENT) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Separation and Maintenance Orders Ordinance, 1935." He said: Sir, I have only one observation to add to the Objects and Reasons. When the Bill was first drafted in lieu of the words "two hundred and fifty" now appearing in clause 2(a) of the Bill the words "one hundred and fifty" appeared, and clause 2 of the Objects and Reasons should be read in connection with that "one hundred and fifty". But it was thought that no harm could be done, apart from the question of the increase in the cost of living, in giving increased jurisdiction to Magistrates in this respect, and that is why "two hundred and fifty" now appears in 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. Under sections 5(c) and 5(d) of the Separation and Maintenance Orders Ordinance, 1935, a Magistrate may order a husband to pay to his wife weekly sums not exceeding \$50 for her maintenance and weekly sums not exceeding \$10 for the maintenance of each child of the marriage committed to her custody until such child attains the age of sixteen years. These amounts have not been revised since 1935 and they are now found to be inadequate.

2. Clause 2 of the Bill has been designed to empower a Magistrate to award sums which are commensurate with the higher cost of living.

RADIO-ACTIVE MINERALS BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to regulate and control prospecting and mining for radio-active minerals and the export thereof and for purposes connected therewith." He said: Sir, the objects of the Bill are very clearly set out in the Objects and Reasons and I have nothing to add to these observations.

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. Legislation has been enacted in the United Kingdom (The Atomic Energy Act, 1946) and in certain Colonies, where radio-active minerals are believed to exist, to provide for the control of the exploitation and export of such minerals.

2. It is considered desirable to enact similar legislation and on a uniform pattern in all Colonies whether or not the existence of radio-active minerals (specified in the Schedule to the Bill) is confirmed or suspected.

3. The object of this Bill is to provide the desired legislation the primary effect of which will be to create prohibitions against prospecting or mining for radio-active minerals the Colony without a licence (clause 3) and against the export (clause 5) of such minerals without a permit.

PREVENTION OF CORRUPTION BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the law for the Prevention of Corruption."

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

Council then went into Committee to consider the Bill clause by clause.

Clause 9.

THE ACTING ATTORNEY GENERAL: —Sir, I rise to move that clause 9 be amended by the deletion of the words "if the evidence of such accomplice, if believed, would warrant a conviction." It is thought that if these words remained in that clause it would be a question of law for the judge, in the first instance, to say whether the evidence would warrant a conviction, whereas what is intended is merely to alter the form in which the judge now directs the jury, and accordingly the clause would give effect to that intention if we delete the words suggested.

The amendment was agreed to.

Clause 12.

THE ACTING ATTORNEY GENERAL: —Sir, I rise to move that the following clause be substituted for clause 12.

"It is hereby declared that in any trial or inquiry by a magistrate or a court in respect of an offence against this Ordinance it may be proved and taken into consideration by such magistrate or court that an accused person—

(a) is in possession or has disposed of pecuniary resources or property disproportionate to his known sources of income for which he cannot satisfactorily account; or

(b) has at or about the time of an alleged offence obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account."

The reason for the amendment is: —

Firstly. That the clause as it stands at present is somewhat clumsily drafted.

Secondly. That reference has been made only to "court" and it is necessary to make reference to a magistrate because the offence might be before a magistrate, and

Thirdly. That, the expression "satisfactorily" which appears in the second part of the clause should also appear in the first part thereof.

This was agreed to.

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the Prevention of Corruption Bill, 1948 had passed through Committee with two amendments and moved the Third reading.

THE COLONIAL SECRETARY seconded, and the Bill was read a Third time and passed into law.

LAND REGISTRATION (FEES AMENDMENT) BILL, 1948.

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Land Registration Ordinance, 1844."

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

Council then went into Committee to consider the Bill clause by clause.

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the Land Registration (Fees Amendment) Bill, 1948 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 into law.

ADJOURNMENT.

H.E. THE GOVERNOR: — That concludes the business, Gentlemen. When is it your pleasure that we should meet again. Two weeks hence?

This was agreed to.

H.E. THE GOVERNOR: — Council will adjourn until this day fortnight.