

16th November, 1949.

PRESENT:—

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

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING IN CHIEF
(LIEUTENANT-GENERAL SIR E. C. R. MANSERGH, K.B.E., C.B., M.C.)

THE COLONIAL SECRETARY (HON. J. F. NICOLL, C.M.G.)

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.)

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

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

HON. E. A. BOYCE (Director of Public Works).

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

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

DR. HON. CHAU SIK-NIN.

HON. LEO D'ALMADA E CASTRO, K.C.

HON. M. M. WATSON.

HON. C. BLAKER, M.C., E.D.

MR. G. C. HAMILTON (Clerk of Councils).

ABSENT:—

HON. D. F. LANDALE.

MINUTES.

The Minutes of the meeting of the Council held on 2nd November, 1949, were confirmed.

PAPERS.

THE COLONIAL SECRETARY, by command of His Excellency the Governor, laid upon the table the following papers:—

- The Pensions Ord., 1932,—Declaration under Section 2(b)(i) (G.N. No. A.235 of 1949).
- The Registration of Persons Order (No. 3), 1949. (G.N. No. A. 286 of 1949).
- The Places for Post Mortem Order, 1949. (G.N. No. A. 237 of 1949).
- The Air Transport (Licensing of Air Services) Regulations, 1949. (G.N. No. A. 238 of 1949).
- The Price Control Order, 1946,—Amendments to the Schedule. (G.N. No. A. 240 of 1949).
- The Public Health (Sanitary Provisions) Regulations, 1948,— Declaration under section 2(10)(a). (G.N. No. A. 241 of 1949).
- The Ferries Ord., 1917,—Amendment to the regulations. (G.N. No. A. 242 of 1949).
- The Shing Mun Road Closed Area Order, 1949. (G.N. No. A. 243 of 1949).
- The Curfew (Shing Mun Road) Order, 1949. (G.N. No. A. 244 of 1949).
- The Quarantine & Prevention of Disease Ord., 1936,—Order declaring Bassein infected on account of smallpox. (G.N. No. A. 245 of 1949).
- The Price Control Order, 1946,—Amendments to the Schedule. (G.N. No. A. 246 of 1949).

MAGISTRATES AMENDMENT AND VALIDATION BILL, 1949.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled “An Ordinance to amend further the Magistrates Ordinance, 1932, and to provide for the appointment with retrospective effect of officers who have been functioning as magistrates and to validate the acts judgments orders and decisions of such officers in a magisterial capacity.” He said: Sir, as Honourable Members are aware, the Magistrates Ordinance, 1932, the principal Ordinance, was extensively amended this year upon the enactment of the Magistrates Amendment Ordinance, 1949. Among such amendments the repeal and replacement of section 5 of the principal Ordinance occurred so as to introduce

for the first time the necessity for magistrates to be appointed by way of warrant of the Governor, which appointment should, be followed by notification of such appointment in the Gazette.

Now, Sir, following the amendment as described, an oversight unfortunately occurred in that appointments of magistrates who have been functioning since 20th May of this year when the amendment came into force have not in fact been made by warrant, nor have such appointments been notified in the Gazette. The consequence of this emission is that magistrates who have functioned since 20th May have done so with imperfect jurisdiction.

Sir, cure has been effected as to this position as regards magistrates functioning at this date by the grant of warrants which were gazetted in the Gazette of 11th November. It is necessary, however, that the defect also be cured as regards the period 20th May to 11th November.

Therefore, Sir, clause 2 of the Bill before Council provides that the appointments of persons named in the Schedule to the Bill shall be deemed to have been duly made and notified under section 5 of the Magistrates Ordinance, and furthermore, clause 2 provides for the validation of the exercise of jurisdiction by the magistrates concerned as between the dates 20th May and 11th November of this year.

Now, Sir, as to this clause, I would add that in my view it is necessary that the Bill before Council should, if Your Excellency so directs, in accordance with Standing Order No. 29(2) of the Standing Orders of this Council, pass through all stages today. Such is my view, Sir, because if the Second and further stages of this Bill be not passed today, the validity of convictions and sentences imposed as between 20th May and 11th November are capable of being impugned.

Sir, the remaining clauses of the Bill represent the taking of opportunity afforded by the introduction of this Bill to cure certain minor defects in the principal Ordinance, as amended by the Ordinance earlier this year, whereby clarification of intentions of certain sections are necessary.

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

H.E. THE GOVERNOE—Under Standing Order 29(2), I declare that in my opinion I consider it desirable that this Bill should pass through its remaining stages this afternoon.

THE ATTORNEY GENERAL:—In view of Your Excellency's opinion, I move that Standing Orders be suspended to admit the remaining stages of this Bill being taken this afternoon.

THE COLONIAL SECRETARY seconded.

THE ATTORNEY GENERAL:—I move that the Bill before Council be read a Second time.

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 ATTORNEY GENERAL reported that the Magistrates Amendment and Validation Bill, 1949, 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.

Objects and Reasons.

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

1. Under sections 51 and 84 of the Magistrates Ordinance, 1932, the powers of punishment given to magistrates were limited. Prior to the commencement of the Magistrates (Amendment) Ordinance, 1949, certain magistrates had power to award heavier punishment by virtue of the Powers of Magistrates (Emergency) Ordinance, 1946, and all the magistrates had power to award heavier punishments where this was expressly conferred by Ordinance.

2. As a result of sub-section (3) of the new section 5 substituted by section 3 of the Magistrates (Amendment) Ordinance, 1949, special magistrates could not lawfully exercise any powers of punishment in excess of those expressly conferred upon them by the Magistrates Ordinance, 1932, as amended and in particular they could not impose sentences of imprisonment aggregating to more than twelve months. (See section 51 as amended.)

3. The new section 5 above referred to also requires by subsection (1) that permanent and special magistrates should be appointed by warrant under the hand, of the Governor. Nearly all the persons who have been exercising the function of permanent and special magistrates were already sitting as magistrates when the Magistrates (Amendment) Ordinance, 1949, came into force and they continued to do so although the requisite warrants of appointment were not issued. Two of the special magistrates under the impression that they could still exercise the powers conferred by certain Ordinances, e.g. the Arms and Ammunition Ordinance, 1933, on a magistrate, imposed sentences in excess of their powers and which could have been lawfully imposed only by duly appointed permanent magistrates.

4. The magistrates have been acting in perfect good faith and with the exception of the sentences in excess of jurisdiction referred to above to which the failure to issue warrants of appointment no doubt contributed, they have been discharging the precise duties which they were intended to discharge. It is clearly desirable that their actions be validated and the defects in their appointment removed. This is the object of clause 2 of the Bill.

5. The opportunity has been taken to make some minor amendments to the principal Ordinance the object of which is to clarify the meaning of the provisions amended.

TOTALIZATOR BETS (RATES OF DUTY)

VALIDATION BILL, 1949.

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to validate the imposition and collection of duty on totalizator and pari-mutuel bets at the rate of three per centum in lieu of two per centum without an appropriate resolution of Legislative Council."

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 FINANCIAL SECRETARY reported that the Totalizator Bets (Rates of Duty) Validation Bill, 1949, 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:—Council will adjourn to this day week.