

14th June, 1950.

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PRESENT: —

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT (MR. JOHN FEARNS NICOLL, C.M.G.).

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

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

THE SECRETARY FOR CHINESE AFFAIRS (HON. J. C. McDouALL, *Acting*).

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

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

HON. A. P. WEIR (Acting Director of Public Works).

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

DR. HON. CHAU SIK NIN, C.B.E.

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

HON. M. M. WATSON.

HON. P. S. CASSIDY.

HON. LO MAN WAI, O.B.E.

HON. LAWRENCE KADOORIE.

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

ABSENT: —

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING IN CHIEF (MAJOR-GENERAL G. C. EVANS, C.B., C.B.E., D.S.O., *Acting*).

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

MINUTES.

The Minutes of the meeting of the Council held on 31st May, 1950, were confirmed.

OATHS.

Mr. Lo Man Wai, O.B.E., and Mr. Lawrence Kadoorie took the Oath of Allegiance and assumed their seats as Members of the Council.

PAPERS.

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

The Marketing (Marine Fish) Order, 1950, —Establishment of a Wholesale Fish Market in Kowloon. (G.N. No. A. 123 of 1950).

The Stamping and Denoting of Documents Regulations, 1950. (G.N. No. A. 125 of 1950).

The Price Control (Amendment) Order, 1950. (G.N. No. A. 126 of 1950).

MOTIONS.

THE FINANCIAL SECRETARY moved the following resolution: —

Resolved that the abandonment of claims and the write-offs of losses and deficiencies as specified and explained in the accompanying Schedule No. 5 be approved.

He said: Sir, the Schedule of write-offs and abandonment of claims now before Council is in 4 parts. The items set out in parts (A) and (C) have already received the approval of Finance Committee, but those included in parts (B) and (D), which are all less than \$200, have been approved by the Financial Secretary under the authority delegated to him by Finance Committee.

It is now, however, necessary for this Honourable Council formally to approve the action taken.

THE COLONIAL SECRETARY seconded, and the Motion was carried.

PUBLIC SERVICES COMMISSION BILL, 1950.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to constitute a Public Services Commission." He said: Sir, the White Paper issued by His

Majesty's Government, and numbered 197, made recommendations for the establishment within the Colonies of public service commissions. Again, the Salaries Commission of 1947 included in its Report at Chapter 8 a recommendation that a Public Services Commission should be established for this Colony. This recommendation has necessarily required consideration in detail. The outcome is the Bill which is now before Council.

The Bill, as Honourable Members will see, provides for a statutory foundation for the constitution and operation of a Public Services Commission.

At the outset, I would remark that as is indicated in paragraph 4 of the Objects and Reasons, which have been published with the Bill, the constitution of the proposed Public Services Commission here, as elsewhere, must have regard to the constitutional foundations of the Colony. For instance, regard must be paid to the fact that by the Letters Patent there is vested in the Governor the power of making appointments in the public service, and further that in the exercise of this power it is also prescribed that in regard to certain classes of appointment the Governor's power to appoint is also conditioned by the necessity to act in conjunction and with the advice of the Secretary of State.

It is for this reason that clause 6 of the Bill will be seen to make it clear that the function of the Public Services Commission, which this Bill is designed to establish, shall be advisory, and be so advisory in relation to the matters specified in clause 6(1). For instance, the said clause 6(1) indicates that for the reasons dealt with more particularly in paragraph 4 of the Objects and Reasons, certain appointments and offices of the Colony are excepted from the purview of the proposed Public Services Commission.

For the rest, Sir, I think I can summarize my remarks by saying that the Bill is concerned mainly with describing the nature and the actual manner of constitution of the Public Services Commission and of the appointment and tenure of office by its Chairman and Members, and again the clauses of the Bill are designed to make it clear that within its province the Public Services Commission shall discharge its advisory duties with substantial measure of independence.

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 object of the Bill is to provide for the appointment of a Public Services Commission to advise Government on the selection and appointment of candidates for the public

services in Hong Kong and to ensure that the claims of local candidates receive full consideration thus giving effect to the recommendations of the Salaries Commission of 1947.

2. By clause 3 of the Bill the Commission is to consist of a Chairman and two members, all of whom will be appointed by the Governor and hold office during his pleasure. Under sub-clause (2) of the same clause the Governor is empowered to fill temporary vacancies.

3. Clause 4 prohibits appointment as a member thereof of a member of Legislative Council or any person who is the holder of a pensionable office or post the emoluments whereof are payable wholly or partly out of public or municipal revenue. Acting appointments as Chairman and appointments of persons on leave prior to retirement are excluded from this prohibition by the proviso to clause 4. It is contemplated that the Chairman will normally be a retired Government servant familiar with the organization and administration of the public service. The Commission will have a Secretary provided by Government but the Secretary will not be a member of the Commission. (See clause 5).

4. The Letters Patent vest in the Governor the power of making appointments to the public service but in exercising this power he must necessarily be guided by the Secretary of State. (See the Royal Instructions and regulations 23-26 both inclusive of Colonial Regulations.) Clause 15 of the Bill accordingly contains a saving provision to show that no derogation of these provisions is indicated. Consistently with the constitutional position thus arising the functions of the Commission are purely advisory. This is clarified by clause 6 which also requires that regulations be made specifying more particularly the spheres in which the advice of the Commission will be sought. It is proposed to consult the Commission fully whenever a vacancy in the pensionable establishment of the public service arises unless the vacancy arises in one of the posts excepted by sub-clause (2) of clause 6. The exceptions are made for a variety of reasons. In the case of the Governor and Heads of Department the Secretary of State has inevitably to consider candidates from other Colonies about whom the Commission will have no information. In the case of military organizations or a quasi-military force such as the Police it is thought desirable that promotion should proceed on the normal lines counselled by experience of such forces. In the case of the Governor's personal staff the Governor's wishes should clearly be the paramount consideration. Save in regard to excepted posts the Commission will also be consulted on all questions of promotion save where an increment in salary does not involve the passing of an efficiency or promotion bar. The Commission will be asked to advise on conditions of service generally and it should also be observed that under clause 6(1)(d) the Governor may refer any matter affecting the public service to the Commission. Temporary appointment on a

monthly basis and acting appointments will not be referred to the Commission. These matters will be dealt with by regulations made under clause 6 but it is necessary to refer to them here to indicate the practical effect of the Bill.

5. Clause 9, which makes it an offence to give false information to the Commission, is designed to deter applicants from concealing or misrepresenting material facts while clause 10 extends the protection of privilege to the official reports, statements or other communications of the Commission. Clause 11 affords the same protection to a Chairman or member of the Commission against legal proceedings as is by law afforded to a magistrate.

6. Clause 12 prohibits the publication or disclosure to unauthorized persons of information supplied to the Commission. Clause 13 makes it an offence to influence or attempt to influence the Commission.

7. Clause 14 empowers the Governor in Council to make regulations on a number of subsidiary matters as well as on the matters which by clause 6 require to be prescribed.

FULL COURT AMENDMENT BILL, 1950.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Full Court Ordinance, 1933." He said: Sir, in the constitution of the Full Court of the Colony, that is a Court constituted by two or more judges of the Supreme Court, provision existed of practical value in the past, which enabled the services of judges of His Britannic Majesty's Supreme Court for China being secured so as to sit in membership of the Full Court.

Honourable Members are well aware that such a Court, that is His Britannic Majesty's Supreme Court for China, no longer exists. Consequently reinforcement for the Full Court from that source is no longer obtainable. In these circumstances, Sir, consultation has taken place with the Government of Singapore, and as a result agreement has been reached whereby it will be possible, if and when necessary or desirable, for the Chief Justice of Singapore to be invited and to sit as a member of the Full Court of this Colony. Such an invitation would be extended, for instance, should it not be possible to constitute a Full Court while at the same time excluding a judge or judges concerned in the matter of appeal, where such judge or judges have had connection with a case as a judge or judges of first instance.

Sir, in reaching the arrangement to which I have alluded, it has been so reached on the basis of reciprocity, that is, that provision will equally be made in Singapore, in the laws of Singapore, to make it possible for the Chief Justice of Hong Kong to be a member of the Courts of Appeal of that Colony.

The object therefore of this short Bill before Council is so to amend the Full Court Ordinance, 1933 as to give legislative effect to the arrangement which has been concluded in the manner I have described.

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. In order to strengthen the composition of the Full Court arrangements have been made whereby the Chief Justice of Singapore will on occasion be available to sit on the Full Court. The main object of this Bill is to give legal effect to such arrangements.

2. Section 2 of the existing Ordinance contains certain positive provisions as to the composition of the Court when it is constituted by two or three judges respectively. Subsection (4) for example requires the Chief Justice to sit on a court of three judges although he may have been the trial judge. Such a provision may have been necessary when there was only one Puisne Judge but when the trial judge has been the Chief Justice the Court could now more suitably be composed by the Chief Justice of Singapore and the two Puisne Judges. It is accordingly considered desirable to replace such positive provisions by a provision conferring a discretion on the Chief Justice as to the composition of the Court. See subsection (1) of the new section 3 introduced by clause 2 of the Bill.

3. Under subsection (4) of section 4 of the existing Ordinance if no judges of a Full Court of three can agree as to the order to be made, the judgment of the President prevails unless the trial judge is a member of the Court in which case his judgement becomes the judgment of the Full Court. It is more logical that the judgment of the trial judge, if any, should stand in both cases. Provision is made by clause 3 of the Bill.

SUPREME COURT AMENDMENT BILL, 1950.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend further the Supreme Court Ordinance, 1873." He said: Sir, this Bill is a companion measure to the Bill amending the Full Court Ordinance, the first reading of which has just been taken. The Bill is in furtherance of the reciprocal arrangements which I have recently described. The Bill is designed to amend the Supreme Court Ordinance so as to empower and to authorize the Chief Justice of this Colony to be a member of the Courts of Appeal in the Colony of Singapore.

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. As part of the arrangement made with the Colony of Singapore for enabling the Chief Justice of Singapore to be a member of the Full Court of Hong Kong, it was agreed that legislation should be enacted in Hong Kong to enable the Chief Justice of Hong Kong to be a member of the Court of Appeal and Court of Criminal Appeal of Singapore. Provision is made by clause 4 of the Bill.

2. The amendments contained in clauses 2 and 3 of the Bill are consequential upon the amendments which will result in the Full Court Ordinance, 1933, if the Bill amending that Ordinance is passed into law.

ADJOURNMENT.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT: — That concludes our business for to-day. When would Honourable Members wish to meet again?

THE ATTORNEY GENERAL: —I propose this day fortnight, Sir.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT: —Council stands adjourned to this day fortnight.
