

26th July, 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).

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

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. 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 (LIEUTENANT-GENERAL SIR E. C. R. MANSERGH, K.B.E., C.B., M.C.).

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

MINUTES.

The Minutes of the meeting of the Council held on 12th July, 1950, were confirmed.

PAPERS.

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

The Registration of United Kingdom Patents Ord., 1932, —Rules made by the Registrar of Patents.

The Quarantine and Prevention of Disease Ord., 1936, —Order declaring Amoy infected on account of plague. (G.N. No. A. 150 of 1950).

The Wild Birds Ord., 1922, —Amendment to the regulations. (G.N. No. A. 151 of 1950).

The Dutiable Commodities Ord., 1931, —Amendment to the regulations. (G.N. No. A. 152 of 1950).

The Public Health (Sanitation) Ord., 1935, —Order under S. 73(4). (G.N. No. A. 153 of 1950).

The Registration of Persons Order (No. 3), 1950. (G.N. No. A. 155 of 1950).

The Price Control Order, 1946, —Addition to the Schedule. (G.N. No. A. 156 of 1950).

The Merchant Shipping Ord., 1899, —New Table O(B). (G.N. No. A. 157 of 1950).

The Ferries Ord., 1917, —Excluded Ferry. (G.N. No. A. 158 of 1950).

The Quarantine and Prevention of Disease (Plague) Regulations, 1950. (G.N. No. A. 159 of 1950).

The Jury Ord., 1887, —Order under S. 7(7). (G.N. No. A. 160 of 1950).

The Public Health (Sanitary Provisions) Regulations, 1948, —Declaration under Regulation 2(10)(a). (G.N. No. A. 161 of 1950).

QUESTIONS.

HON. P. S. CASSIDY asked the following questions: —

- (1) Whether the necessity for opening a trench along the newly constructed Shau-ki-wan Road could not have been foreseen so that the work could have been carried out prior to the completion of the road.

- (2) Whether all steps will be taken to co-ordinate the plans of public utility companies with those of the P. W. D. before the work of raising the level of Queen's Road (from Ice House Street to Pedder Street) is proceeded with.
- (3) Whether his attention has been called to the Public Utilities Street Works Bill, shortly to be presented to the Parliament of the United Kingdom, which codifies procedure to regulate the breaking-up of streets for the laying of pipes, mains and cables, as recommended by the Carnock Committee in its report of 1939.

THE DIRECTOR OF PUBLIC WORKS replied as follows: —

Answer to Question 1.

The original surface of Shaukiwan Road was untarred macadam. Very heavy traffic on the sides of the road was experienced when the Tramway Company relaid their track with the result that the surface disintegrated, and, although the necessity for enlarging the watermains was foreseen, unfortunately the pipes needed were not available. It was considered inadvisable to defer the re-surfacing of the road.

Answer to Question 2.

A system of co-ordination exists with the Public Utility Companies. When funds were voted in the current Estimates for this work, the various public utility companies were advised and it is not intended to commence works until the utility companies concerned are ready to lay their various services.

Answer to Question 3.

The Public Works Department has not received a copy of the Public Utilities Street Works Bill which is to be presented shortly to Parliament. A copy will be obtained as early as possible.

MOTIONS.

THE FINANCIAL SECRETARY moved: —

That the Supplementary provisions for the First quarter ended 30th June, 1950, Schedule No. 1 of 1950-51, be approved.

He said: Your Excellency, the Special Warrants set out in the Schedule have all been approved by Finance Committee. The great majority do not appear to call for any special explanation, but there are a few on which some comments may be desirable.

In the first place, there are several re-votes due to the fact that equipment which was expected to arrive before 31st March was not finally delivered until after that date. The provision of \$150,000 for security measures really falls under this head of re-votes, as the money is required in respect of work which was approved during the financial year 1949/50, but which the Public Works Department was not able to carry out before the end of that year.

Then there are two or three Special Warrants relating to the rental of offices and quarters. At a rather late stage in the preparation of the Estimates it was decided to vary the procedure which had been in force whereby all rentals for offices and quarters were met from a block vote under the Miscellaneous Services Head and in future to charge only the rentals of non-departmental quarters to the block vote, while departmental quarters and offices were to be provided for under departmental heads. Unfortunately, however, there seems to have been some misunderstanding and provision for certain departmental accommodation was omitted.

The largest Special Warrant appearing in the Schedule, amounting to \$1 million, is required to meet the cost of wiring the frontier which was an essential step in the establishment of immigration control. It has also been necessary to provide a sum of \$103,000 for the transfer of destitute Nationalist soldiers to a new camp at Rennie's Mill.

THE COLONIAL SECRETARY seconded, and the Motion was carried.

REGISTRATION OF UNITED KINGDOM PATENTS ORDINANCE, 1932.

THE ATTORNEY GENERAL moved the following resolution: —

WHEREAS by section 11 (1) of the Registration of United Kingdom Patents Ordinance, 1932, it is provided that the Registrar may make Rules and do such things as he may think expedient, subject to the provisions of the Ordinance, for prescribing the procedure under the Ordinance and the fees to be paid in respect of proceedings under the Ordinance;

AND WHEREAS by the said section 11(1) it is further provided that no such Rules shall come into operation until the same have been approved by the Legislative Council and published in the *Gazette*;

AND WHEREAS Rules entitled the Registration of United Kingdom Patents (Fees) Rules, 1950, dated 12th July, 1950, have been made by the Registrar and laid before Council;

NOW THEREFORE it is hereby resolved that the said Rules entitled the Registration of United Kingdom Patents (Fees) Rules, 1950, be and are hereby approved by this Council.

He said: Sir, this Council has recently enacted legislation amending the Registration of United Kingdom Patents Ordinance, 1932. That amendment was necessary as an incident in the preparation for the opening of the Patents Registry of this Colony. In this connection, the rules in the schedule to the Ordinance which I have mentioned have also come under review. The rules in the schedule provide for the fees payable at the present time to the Registrar of Patents in the process of the registration of patents in the Patents Registry.

Now, Sir, the fees as they now appear in the schedule have remained constant and unaltered since 1932. It is therefor considered at this stage that an increase of fees is warranted. For this purpose, rules have been made by the Registrar of Patents and they have been laid on the table of this Council, the rules having been made under the powers given to the Registrar of Patents by section 11 of the Ordinance, being powers to make rules to prescribe fees to be paid in respect of proceedings under the Ordinance.

Now, Sir, the rules before Council provide for a complete replacement of the fees prescribed in the now existing rules and they so provide by way of an increase in respect of all items.

Sir, I have mentioned that by section 11 of the Ordinance power was given to the Registrar to make rules, but the same section also requires that no rules shall come into force until they have been approved by this Council. It is for that reason that I move the resolution as I now do, with the objective of inviting this Council to approve the rules made, as I have described, by the Registrar of Patents.

THE COLONIAL SECRETARY seconded, and the Motion was carried.

DEFENCE WORKS PROTECTION BILL, 1950.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to afford greater protection to defence works and property essential to the security or life of the community." He said: Sir, in the course of the revision of the laws which is now taking place, attention has been focussed on two Ordinances which have for a long time been on the Statute Book of the Colony. The Ordinances are The Ports Protection Ordinance, 1891 and the Defence Sketching Prevention Ordinance, 1895. It will be appreciated that both Ordinances, in the lapse of time since they were enacted, have

become obsolete or inadequate in the provision which they make towards aiding the security of defence works or of utilities essential to the life of the community.

In these circumstances, the Bill before Council provides by clause 11 for the repeal of the Defence Sketching Prevention Ordinance, 1895, and its replacement by legislation as in terms of the Bill now before Council.

Sir, a comparison of the Bill with the Ordinance of 1895 will show that the Bill reproduces the Ordinance of 1895 to a substantial extent, but in so doing it takes account of the changed conditions in a manner indicated in the first paragraph of the Objects and Reasons which appear printed with the Bill. And notably does it take account of the fact that within recent years this Council has enacted legislation of somewhat analogous nature, namely, the Protected Places Safety Ordinance, 1946 and the Public Order Ordinance, 1948.

As regards the Forts Protection Ordinance, 1891, the other elderly Ordinance to which I have referred, it is the intention that its repeal would be provided for in a further Bill which I expect to submit to this Council at no distant date.

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: —

The Defences (Sketching Prevention) Ordinance, 1895, is out of date in a number of respects. In the first place it protects only Naval, Military or Air Force premises, ships and aircraft and does not extend either to premises used by police or local forces or to munitions of war such as tanks, torpedoes, etc. which may be of great importance for defence purposes. Secondly, there is no power to declare that the prohibition against sketching contained in the Ordinance shall apply also to vulnerable points under the control of civil authorities or of public utility companies. Lastly, since its enactment special provision has been made by legislation for protected places and closed areas.

2. The present Bill re-enacts the Ordinance with substantial modifications, however, which are designed to remedy the defects mentioned above. The opportunity has also been taken to increase penalties.

LAW REVISION (PENALTIES AMENDMENT) BILL, 1950.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to effect amendments in penalties for offences under miscellaneous Ordinances, to amend the procedure for trial in certain cases, and by amending the Interpretation Ordinance, 1950, to vary certain methods of prescribing offences and punishments therefore." He said: Sir, Honourable Members will notice that this Bill includes a lengthy Preamble which explains the authority upon which reliance is placed to submit a Bill to this Council, the primary object of which is to effect amendment simultaneously to some 85 Ordinances of the Colony. The amendments proposed are set out in a schedule to the Bill. It will be seen that they relate to sections of the various Ordinances which prescribe penalties. It will be noticed that the Ordinances affected range between the years 1865 and 1940 as to date of original enactment.

Thus, there lies the explanation that the penalties in these Ordinances, which it is sought by this Bill to increase, have become largely inappropriate at this date, having regard to the change in the value of money. And indeed, Sir, they are inappropriate for other reasons because as they stand they militate at this date against the effective use of money penalties although, of course, the imposition of penalty by way of fine is the form of punishment which the Courts would apply in preference to imprisonment, provided it is possible to make the punishment fit the crime.

Now, Sir, the penalties which are proposed by this Bill, the increase in penalties I should say, are so proposed following upon very careful consideration and after consultation with all authorities and departments respectively concerned with the enforcement or administration of the various Ordinances as to which increase of penalty is proposed.

Sir, subordinate to the main objective, as I have described it, the opportunity afforded by the presentation of this Bill has been taken to include a further relevant matter. I refer, for instance, to clause 3 which is designed to authorize, as will be done in the course of all revision, removal from Ordinances of provisions which require trial on indictment as distinct from summary trial, notwithstanding that the punishment which the Supreme Court could impose would not exceed a fine of two thousand dollars or imprisonment for two years which, in fact, represents the maximum jurisdiction at this date of a permanent magistrate acting under his general powers. Amendment will thus render it possible to have summary trial of certain relatively trivial offences which, at the present time, must unavoidably be tried upon indictment and merely because the law mentioned the necessity for trial by indictment at a time when the powers of magistrates to try offences were not so great as they are to-day.

Now, Sir, again by clause 4 provision is made for the amendment of the Interpretation Ordinance, 1950 by the addition of an additional section as section 14A. Sir, this new section is intended to effect compliance in a matter to which the attention of all Colonies has been drawn by the Secretary of State.

Sir, at paragraph 6 of the Objects and Reasons a full description of the principle involved has been set out. It suffices, I think, if I summarize in describing the objective of clause 4 of this Bill by saying that it is intended to make clear that in regulations enacted under any Ordinance it will be possible to specify the regulations contravention of which constitutes an offence, notwithstanding that the governing Ordinance has set and has provided for punishment for any contravention of any regulation.

In conclusion I invite Honourable Members' attention to clause 5 in which it will be seen that it is proposed that the Bill, if and when enacted, shall not come into force until notification to that effect is proclaimed by the Governor. The reason for this postponement is fully explained in paragraph 7 of the Objects and Reasons. Briefly, the reason is that by deferring the coming into operation of this Bill upon enactment the labour and trouble of noting up on our existing law will be avoided in the anticipation that the Revised Edition will contain the amendments and appear, as we all hope, at a reasonable date in the future in that guise.

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: —

The maximum penalties stipulated in existing legislation of the Colony are in many instances so inappropriate at this date as to militate against the effective use of monetary penalties, although imposition of fine should in appropriate cases represent the method of punishment which the Courts would apply rather than the alternative of imprisonment. In these circumstances, within the last two years amendments have been enacted to increase maximum penalties in nine specific Ordinances. In addition the amendment last year of the Magistrates Ordinance, 1932, afforded opportunity, which was taken, of modernizing the gradation of fines in respect of which maximum periods of imprisonment are provided as alternatives to payment of fine.

2. It is evident, however, that piecemeal amendment does not solve the problem, which recurs throughout the Colony's legislation. The preparation of a revised edition of the laws presents a convenient opportunity to incorporate into the laws

the many amendments necessary by application of section 6 of the Revised Edition of the Laws Ordinance, 1948, which authorizes submission to Legislative Council of this Bill to effect amendments to miscellaneous Ordinances, eighty-five in number.

3. The Bill operates (clause 2) by reference to a Schedule in which the Ordinances are specified in chronological order ranging in date from 1865 to 1940. In such a broad review, relating to legislation of diverse types, it has been difficult to apply fixed principles in proposals for substitution of new maximum fines. But guide has been afforded by the consideration that the limit on a permanent magistrate's general power to fine, as apart from greater maximum authorized by specific legislation, is one of two thousand dollars in respect of one offence.

4. In eleven instances also it has seemed necessary to propose a variation of the period of imprisonment authorized by existing legislation or to provide for the penalty of imprisonment where provision is absent. In most of these cases the proposal is made to secure conformity with other legislation, but in the case of the Criminal Intimidation Ordinance, 1920, an increase is proposed by reason of the nature of the offence.

5. The amendment proposed by clause 3 of the Bill is included to permit in the course of Law Revision of the removal from Ordinances of provision requiring trial on indictment notwithstanding that the punishment which may be imposed by sentence of the Supreme Court would not exceed a fine of two thousand dollars or a term of imprisonment of two years, which penalty constitutes the maximum jurisdiction of a permanent magistrate under his general powers. The amendment will thus render possible summary trial of certain relatively less serious offences as to which hitherto trial upon indictment has been unavoidable, with the consequential delay and expense entailed by the necessity for committal proceedings.

6. A despatch of the Secretary of State of the 13th December, 1948, of application generally within the Colonies, has invited attention to the fact that the inclusion in legislation of penalty clause providing that any breach of regulations made under an Ordinance shall be an offence and be punishable by a stated general penalty is not desirable. The principal offence against by a penalty clause in the terms described, is that at the time of enactment of the governing Ordinance there can be no certainty as to what regulations may in fact be made, with the consequence that decision as to whether any particular breach of regulations should constitute an offence and, if so, the extent of the penalty attaching to conviction of the offence, is better

postponed until actual enactment of subsidiary legislation occurs. General penalty clauses which offend against the principle above described are exemplified within existing enactments of Hong Kong as also in the legislation of the U.K. and other Colonies. In these circumstances clause 4 of the Bill is designed to provide by amendment of the Interpretation Ordinance, 1950, that in any instance where a general penalty clause subsists within an Ordinance of the Colony, power shall be implied—

(a) to specify whether or not contravention of any regulation shall or shall not constitute an offence; and

(b) if such an offence is constituted to specify the penalty to attach upon conviction.

Upon the proposed amendment being enacted, it will be possible to ensure that, in the future, when subsidiary legislation is enacted under Ordinances now containing general penalty clauses, compliance can nevertheless be made with the principle above described.

7. It is provided by clause 5 that the Ordinance shall not come into operation before a date to be prescribed by proclamation because the 236 specific amendments which are designed to be effected by the Bill can await actual incorporation into the law until publication of the revised edition of the laws has been made. Thus the necessity for the noting of a large number of minor amendments to Ordinances in addition to their appearance in printed form in the revised edition would be avoided.

**REVISED EDITION OF THE LAWS (AMENDMENT)
(NO. 2) BILL, 1950.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Revised Edition of the Laws Ordinance, 1948." He said: Sir, as Honourable Members are aware, the Revised Edition of the Laws Ordinance, 1948, was enacted to authorize the preparation of a Revised Edition of the Laws of the Colony. As so indicated the Ordinance aimed at a revision which would reflect the law as it stood at 31st December, 1948. Since that date the work has proceeded as well and as expeditiously as conditions have allowed, but the work has proved to be even more formidable than anticipated, and delay has been unavoidable for this and other reasons.

In these circumstances an amendment of the Ordinance was made in 1949 to require that the Revised Edition reflect the position of the laws of the Colony as at 31st December, 1949 instead of 31st December, 1948.

But, Sir, in reviewing the position and the legislation enacted since last December, it has been appreciated that without too much extra trouble it will be possible to go beyond 31st December, 1949 in inclusion of material in the Revised Edition, and so to achieve the most desirable objective, namely that the Revised Edition should appear as up to date as possible. The object of this Bill is therefore to substitute 1st September, 1950 for 31st December, 1949.

It is unfortunately the case that this change cannot be made merely by the amendment of a single section of the principal Ordinance, but the change needs to be reflected throughout other sections of the Ordinance. Thus it is that the Bill now before Council contains some seven clauses, although the objective of the Bill, is the relatively simple one of altering the date from 31st December, 1949 to 1st September, 1950.

I am glad, since I have had occasion to discuss the revision so frequently both in my remarks on this Bill and on others, I am glad to be able to report to Council on this occasion that printing arrangements having been concluded, the first proofs of the work were received yesterday.

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: —

The Revised Edition of the Laws Ordinance, 1948, the principal Ordinance, has been amended by Ordinance No. 4 of 1950. The two principal objectives of that amendment were—

- (a) to require that the revised edition should represent the law as it stood on the 31st December, 1949, instead of as at the 31st December, 1948, as provided in the principal Ordinance; and
- (b) to permit the inclusion, in addition, of legislation subsequently enacted which might repeal, consolidate or amend the enactments included in the revised edition, if such subsequent legislation were enacted before a date which the Governor would announce by proclamation.

2. The intention was that the date so to be announced would be the date on which revision would be complete and printing would commence. The date can now be fixed. But in

reviewing the legislation enacted since the 31st December, 1949, it has been appreciated that with little extra preparatory work it would be possible to include not only legislation which repealed consolidated or amended previous enactments but all legislation enacted up to the time that the revised edition is ready to go to the printers.

3. This Bill therefore proposes amendments to provide that—
 - (a) the revised edition of Ordinances shall include all unrepealed Ordinances enacted up to a fixed date;
 - (b) the date shall be the 1st September, 1950;
 - (c) the revised edition of subsidiary legislation shall include all unrepealed subsidiary legislation enacted up to a date (which will be somewhat later than the 1st September) to be notified in the *Gazette*.

Amendment to the principal Ordinance as proposed will have the twofold advantage that a specific date will be known to be the deadline for the inclusion of all Ordinances in the revised edition, and similarly with subsidiary legislation, and secondly, that upon its appearance the revised edition will be as up to date as the time necessarily taken in the work of printing will allow.

4. Clause 2 of the Bill accordingly provides for the deletion from section 2 of the principal Ordinance of the interpretation that the revised edition means in the case of Ordinances and subsidiary legislation the law "in force on the 31st December, 1949," because a later date, *i.e.* 1st September, 1950, is specifically stated by clause 3 of the Bill.

5. Clauses 3 and 4 provide that all unrepealed Ordinances until and including the 1st September, 1950, other than authorized omissions shall be included and that the revised edition of Ordinances shall be authoritative as to all Ordinances included and as to any amendments thereto enacted under the authority of the principal Ordinance.

6. Clauses 5 and 6 provide that all unrepealed subsidiary legislation to a date to be notified in the *Gazette* shall be included, except for authorized omissions, and that the revised edition of subsidiary legislation shall be authoritative as to subsidiary legislation included and as to any amendments thereto enacted under the authority of the principal Ordinance.

7. Clause 7 provides that the principal Ordinance, as printed at the commencement of the revised edition of Ordinances, shall upon enactment of this Bill be printed in its amended form.

PASSPORTS (MISCELLANEOUS OFFENCES) BILL, 1950.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to prevent the forgery of passports and the making of untrue statements for the purpose of procuring passports."

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 Passports (Miscellaneous Offences) Bill, 1950, 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 OFFICER ADMINISTERING THE GOVERNMENT: — That concludes the business on the Paper to-day, Gentlemen. When do you wish to meet again?

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

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