

31st December, 1952.

PRESENT:

HIS EXCELLENCY THE GOVERNOR

SIR ALEXANDER WILLIAM GEORGE HERDER GRANTHAM,
G.C.M.G.

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL SIR TERENCE AIREY, K.C.M.G., C.B., C.B.E

THE HONOURABLE THE COLONIAL SECRETARY

MR. ROBERT BROWN BLACK, O.B.E.

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR RIDEHALGH, Q.C.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. RONALD RUSKIN TODD.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRFNFELL CLARKE.

THE HONOURABLE THEODORE LOUIS BOWRING, O.B.E.

(Director of Public Works).

THE HONOURABLE DOUGLAS JAMES SMYTH CROZIER.

(Director of Education).

DR. THE HONOURABLE YEO KOK CHEANG

(Director of Medical and Health Services).

THE HONOURABLE KENNETH MYER ARTHUR BARNETT, E.D.

(Chairman, Urban Council).

THE HONOURABLE CHAU TSUN-NIN, C.B.E.

DR. THE HONOURABLE CHAU SIK-NIN, C.B.E.

THE HONOURABLE LEO D'ALMADA E CASTRO, Q.C.

THE HONOURABLE MAURICE MURRAY WATSON.

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY.

THE HONOURABLE LO MAN WAI, O.B.E.

THE HONOURABLE NGAN SHING-KWAN

THE HONOURABLE HUBERT JOHN COLLAR, C.B.E.

MR. RONALD THOMPSON *(Deputy Clerk of Councils).*

MINUTES.

The Minutes of the meeting of the Council held on 17th December, 1952, were confirmed.

PAPERS.

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

<i>Subject</i>	<i>G.N. No.</i>
The Control of Publications Consolidation Ordinance, 1951.	
The Printed Documents (Control) (Amendment) Regulations, 1952 ..	A. 210
The Vehicle and Road Traffic Ordinance, Chapter 220.	
The Vehicle and Road Traffic (Amendment) Regulations, 1952	A. 211
The Emergency (Principal) Regulations, 1949.	
The Emergency Regulations (Commencement) Order, 1952	A. 216
The Landlord and Tenant Ordinance, Chapter 255.	
Notification under section 31(1)	A. 217

**GIFT TO HER MAJESTY'S GOVERNMENT AS A
CONTRIBUTION TO THE COST OF
REINFORCING THE GARRISON.**

THE FINANCIAL SECRETARY moved the following Resolution:—

RESOLVED that,

in view of the heavy expenditure being incurred by Her Majesty's Government in the United Kingdom on the defence of the free world and on the reinforcement of the garrison of this Colony, this Council do approve the gift to Her Majesty's Government from the general revenues of the Colony of the sum of eight million dollars, over and above the sum of sixteen million dollars already approved in the Estimates for the current financial year as a contribution to the cost of reinforcing the said garrison.

He said: Sir, Honourable Members will recollect that the Estimates for the current financial year as finally approved showed an estimated surplus for the year's working of just over \$2 million. The course of events during the year has shown that for most heads of revenue, so far as can be judged, the estimate is proving to be fairly accurate. It is the case that the yield from what I may describe as the luxury taxes, that is duty on liquor and tobacco (and also, I may add, duty on petrol) together with entertainment tax and meals tax is running at a lower level than last year, a state of affairs due unquestionably to the lower level in trade and the difficulties now being experienced by many firms as a result, primarily, of the strategic controls which have been introduced. But a number of other heads are making up for this deficiency.

There is just one head of revenue which is surpassing all expectations. It will be recollected that one Honourable Member in the course of the Budget Debate, queried the estimate of \$60 million for Earnings and Profits Tax. At the beginning of the year considerable additions were made to the staff of the Inland Revenue Department, and I am glad to say that these additions have been more than justified. It now appears fairly clear that the revenue to be expected from this source will not be \$60 million but will be \$100 million, an excess of \$40 million. Thus at the moment I feel fairly confident in forecasting the surplus for the current year at not less than \$40 million, as expenditure is being held well in hand.

In these circumstances it appears to Government that it is not unreasonable to consider our position as a member of the Commonwealth and of that part of the Commonwealth which used to be known—and I think still is known—as the Colonial Empire, a part for which Her Majesty's Government assumes considerable responsibility, especially in the field of defence. The garrison of this Colony was reinforced in 1949, and in addition to its obligations to Hong Kong, Her Majesty's Government has now assumed heavy responsibilities to the North Atlantic Treaty Organization and to the European Defence Community. It is, moreover, maintaining considerable bodies of troops in Korea and in Malaya, and has recently had to incur additional responsibilities in Kenya. Government therefore feels that, on this last day of the year, it would be appropriate to give some practical expression to our loyalty to Her Majesty, and to our appreciation of the efforts now being made by Her Majesty's Government, and by the people of the United Kingdom on behalf of the free world of which this

Colony is a part, by making a New Year gift of half a million pounds to relieve in some small degree the burden now being borne by the United Kingdom. This sum will be in addition to the \$16 million already provided in the Estimates, making this Colony's contribution for the current year £ 1 1/2million.

HON. CHAU TSUN NIN:—Sir, I beg to second the Resolution. The contribution we propose, to make to Her Majesty's Government may seem but a tiny drop in the bucket, but to us it represents an appreciable part of our humble effort towards the general purpose, and I am sure Her Majesty's Government will appreciate the sentiments that prompt the gift more than the gift itself. Sir, the Unofficial Members of this Council unanimously support this Motion.

The Motion was carried.

DISTRICT COURT BILL, 1952.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to establish a new court, having limited civil and criminal jurisdiction, to be known as the District Court of Hong Kong, and to make provision for the jurisdiction, procedure and practice thereof and for purposes connected with the matters aforesaid."

He said: Sir, the principal features of this Bill are, I think, sufficiently described in the statement of Objects and Reasons appended thereto and there is little I need add at this stage. The Bill contains a good deal of legislation by reference, which is normally an undesirable method of legislating, but in this instance the method is justified, I think, by the circumstances because an endeavour has been made to fit the proposed District Court into the existing judicial structure with the fewest possible departures from established procedure and practice, and it would have been a waste of time and energy to repeat all the numerous provisions relating to procedure and practice.

As Honourable Members will be aware the proposed new Court will have both Civil and Criminal jurisdiction. As regards the Criminal jurisdiction it is hoped that it will relieve both the Supreme Court and the Magistrates of an appreciable amount of work

To provide an example: I have examined the cases in the calendar for the present Assizes and of the fourteen effective cases in that calendar no less than seven would have been tried in the District Court were it now functioning. I am informed by the Senior Crown Counsel in charge of prosecutions that this proportion, that is to say, 50%, reflects approximately the position over the last twelve months. If this is so, a Court with the Criminal jurisdiction now proposed to be given to the District Court would have saved a considerable amount of the time not only of the Judges of the Supreme Court but also of the Magistrates who, to the extent that cases were transferred to the District Court, would have been relieved of the tedium of taking depositions with a view to the committal of the cases to the Supreme Court for trial. On the Civil side, the proposed court will take over the summary jurisdiction at present exercised by the Supreme Court.

Courts of intermediate jurisdiction, civil and criminal, have worked well in other territories to my knowledge and I think we may hope that with the co-operation of the legal profession, the District Court will make a valuable contribution to the administration of justice in this Colony.

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 main object of this Bill is to establish a new court, to be known as the District Court of Hong Kong, with limited civil and criminal jurisdiction.

2. The volume of litigation, civil and criminal, passing through the courts of this Colony is such that it cannot be adequately and rapidly dealt with by the present establishment of judges and magistrates. At first sight, the solution to this problem might appear to lie in a further increase in the number of judges and magistrates. It is, however, anomalous that there is no court in Hong Kong, other than the Supreme Court, with jurisdiction in civil proceedings where the subject matter of the dispute is not of great value. In the United Kingdom, there are the County Courts and in other colonial territories civil jurisdiction is frequently given to magistrates or to a court of intermediate jurisdiction. It is also anomalous that there should be no court

with jurisdiction and powers of punishment greater than those now conferred upon magistrates but less than those conferred upon the Supreme Court. Here again, in other colonial territories the problem has been solved either by conferring greater powers and jurisdiction on magistrates or by the creation of District Courts. It is considered that the best solution is to create a District Court of Hong Kong.

3. The District Court will be a court of record and will have the limited civil and criminal jurisdiction conferred upon it by this Bill. It will be constituted of two or more judges, (to be known as District Judges) to be appointed by the Governor; and proceedings in the court will be disposed of by a District Judge sitting alone. Provision is made for the appointment of temporary judges, and also for the appointment of officers of the court. Barristers and solicitors qualified to practise in the Supreme Court will be entitled to practise in the District Court and will have a right of audience in both civil and criminal proceedings, while the Attorney General is empowered to appoint public prosecutors.

4. *Civil Jurisdiction.* The civil jurisdiction conferred upon the District Court will, at the outset, be the jurisdiction (except jurisdiction in Admiralty) exercisable by the Supreme Court in its summary jurisdiction immediately before this legislation comes into operation, but the intention is that the question of jurisdiction should be reviewed during the coming year. Eventually, the jurisdiction of the District Court may be defined with more precision, and perhaps extended.

A Rules Committee is to be established (clause 22), and empowered to make rules touching civil procedure and practice, but until such time as rules are made, the procedure and practice of the District Court will be the same as that of the Supreme Court in its summary jurisdiction. It is thought desirable that this should be so, because practitioners are familiar with existing procedure and practice, and it would seem preferable not to break new ground in this direction at the outset. Similarly, it is thought desirable that the provisions at present regulating appeals from the Supreme Court in its summary jurisdiction should, for the time being, regulate appeals from the District Court: such appeals will lie to the Full Court.

Civil proceedings may be disposed of with the aid of assessors, but the decision of the judge will be the decision of the court.

Provision is made touching the transfer of cases from the District Court to the Supreme Court and *vice versa*, and the costs of cases brought in the Supreme Court which could have been tried in the District Court.

5. *Criminal Jurisdiction.* A proposed amendment to the Magistrates Ordinance (Cap. 227) contained in a separate Bill will provide for the transfer to the District Court, on application by the Attorney General, of charges and complaints in relation to indictable offences other than those described in a new Part III to be inserted in the Schedule to the Magistrates Ordinance. Under Part IV of the District Court Bill, the District Court will, upon such transfer being ordered, have cognizance of the case and will have jurisdiction to hear and determine charges against the accused person preferred by the Attorney General. The charge sheet must be delivered to the registrar of the District Court within fourteen days after the date of the order of transfer or such longer period as the District Court may allow.

Provision is made (clause 36) enabling the District Court Rules Committee (established under clause 22) to make criminal procedure rules. Subject to such rules, the procedure and practice of the District Court when exercising its criminal jurisdiction will be the same, *mutatis mutandis*, as the procedure and practice in force in the Supreme Court in relation to criminal proceedings therein. But there will be no trial by jury. In the District Court, the maximum sentence of imprisonment, whether for one or more offences, which may be imposed on conviction is limited to five years, and there are further limitations on penalties set forth in clause 31. Moreover, provision is made for appeals in criminal cases to go to the Full Court, and the trial judge is required (clause 30) to place on record a short statement of the reasons for his verdict. It is considered that these provisions are an adequate safeguard against miscarriages of justice. To provide for trial by jury in the District Court would place a grave additional burden on an already over-worked jury list, and to provide for a right to elect to be tried by jury would be to introduce something which is not at present available to an accused person, and might very well defeat one of the main objects of the Bill.

6. Finally, the present intention is that the District Court will sit in both Victoria and Kowloon, and that, on the civil side, rules will be made as to venue to provide for distribution of civil work. Distribution of work on the criminal side is not at present

regulated, but normally cases coming in the first instance before a magistrate sitting in Kowloon or the New Territories will go before the District Court sitting in Kowloon, and those coming before a magistrate sitting in Hong Kong will go before the District Court sitting in Victoria. The Chief Justice is empowered to give directions (subject to any rules of court) touching the distribution and disposal of the business of the court.

MAGISTRATES (AMENDMENT) BILL, 1952.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend -the Magistrates Ordinance, Chapter 227. He said: Sir, this Bill is complementary to the Bill which has just been read a First time, the purpose of which is to create a District Court, and I think the purposes of this Bill are adequately described in the statement of Objects and Reasons, and I need not add anything to them.

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:—

This Bill is complementary to the District Court Bill and reference should be made for the statement of objects and reasons appended to that Bill. This Bill provides that a magistrate shall, on the application of the Attorney General, order the transfer to the District Court of a charge or complaint in relation to any indictable offence other than one described in the Schedule. The offences transferable are all indictable offences triable by a permanent magistrate, with the addition of the offences of aggravated robbery, malicious wounding and possession of arms, which are not so triable.

SUPPLEMENTARY APPROPRIATION (1951-52) BILL, 1952.

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to authorize a supplementary appropriation to defray the charges of the financial year ended the 31st day of March, 1952." He said: Sir, this Bill represents the final stage of the accounts for 1951-52. I had hoped that the Annual Report of the Treasury for that year would have been laid on the table today to coincide with its introduction, but I regret that printing appears to have taken a little longer than anticipated.

Actual expenditure for the year 1951-52 was \$275,855,951, an excess of \$41,186,901 over the estimated expenditure shown in the approved estimates for that year. This Bill authorizes additional expenditure of \$60,688,114, the difference between the two figures being accounted for by savings. The total net excess of \$41 million odd is attributable to a number of fairly large votes which were taken in the course of the year, the largest of which, for approximately \$25¾ millions, was for the purpose of charging off to expenditure the item on the Assets side of the Colony's Balance Sheet, being advances from surplus funds against a future loan. Other large items which appeared during the year were; \$6½ millions as an additional contribution to the cost of reinforcing the garrison, making a total of \$16 million for the year; \$5 millions, being an advance to the University against its expectations from the realization of Japanese assets; \$5 millions as an additional contribution to the Rehabilitation Loan Sinking Fund; approximately \$2½ millions for the purchase of assets and stocks of the former Government printers; and \$2½ millions for the purchase of Marine Lot 285 at Causeway Bay. All these fairly large votes together total something like \$47 millions, so that it will be seen that in actual fact the cost of the services provided for in the estimates was well below that which was forecast.

The Bill appears in slightly different form from similar bills in the past, although it has the same effect. My Honourable Friend the Attorney General has remodelled it on the lines of similar bills in other Colonies such as Nigeria.

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

UNDESIRABLE MEDICAL ADVERTISEMENTS BILL, 1952.

THE DIRECTOR OF MEDICAL AND HEALTH SERVICES moved the First reading of a Bill intituled "An Ordinance to restrict certain advertisements relating to medical matters." He said: Sir, the purpose of this Bill is directed entirely to the protection of the public from the dangers inherent in faulty and ineffective treatment of the diseases listed in the Schedule of the Bill and also from exploitation of the public by unscrupulous persons.

Virtually all of the diseases mentioned in the Schedule are non-selflimiting and progressive and any delay in giving appropriate or specific treatment only means that the disease will progress to a stage in which when proper medical treatment is sought it might be unable to effect a cure and in serious cases to save the life of the patient.

I should like to point out that the well known newspapers of this Colony, the English press in particular, have co-operated in refraining from publishing objectionable medical advertisements and have on several occasions consulted the Medical Department when they were in doubt. I am indeed grateful to them for their co-operation in this matter.

I have nothing further to add to the Objects and Reasons which are very clearly stated.

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:—

Advertisements of medicines and surgical appliances purporting to be effective in the treatment of cancer, tuberculosis and certain other grave diseases are prohibited in the United Kingdom as various abuses are caused by such advertisements and the diseases are such as should properly be treated by qualified medical practitioners. Advertisements of this nature in respect of medicines of undisclosed composition and in respect of treatment by unqualified persons are common in Hong Kong and are undesirable as they take advantage of credulity and fear of ill health.

2. The object of this Bill is to prohibit the circulation of such advertisements except amongst classes who either are qualified to assess their efficiency or who as herbalists have traditionally dealt in certain of such remedies.

3. As present contractual liabilities may be affected by such prohibition it is provided by clause 1 that the Ordinance, if enacted, shall not come into operation until the 1st April, 1953.

4. Clause 2 provides that the class of advertisements so restricted includes both newspaper and similar advertisements and posters and these of a more restricted class such as circulars and labels, and medicine is defined in a manner that will include any substance either taken or applied as a medicine.

5. Clause 3 prohibits advertisements relating to medicines or surgical appliances, or relating to offers to give treatment in respect of certain diseases, and specifies such diseases by reference to a schedule, but it provides in sub-clause (2) that advice

emanating from official medical sources shall not be subject to the ban. The diseases in the Schedule follow with little variation a list of diseases adopted for a similar purpose in Nigeria, but adds advertisements relating to the restoration of lost youth which are undesirably common here.

6. Clause 4 prohibits advertisements relating to the procuring of abortion. This follows without variation the procedure of section 9 of the Pharmacy and Medicines Act of 1941.

7. Clause 5 exempts from the prohibition of the Ordinance advertisements which are contained in technical periodicals, circulars etc., disseminated amongst certain medical and professional persons, and also amongst persons of Chinese race practising as herbalists (so far as the latter are concerned because it is recognized by the Medical Registration Ordinance that the activities of such herbalists may be allowed to continue). Sub-clause (2) however makes it plain that no such herbalist may advertise his wares to the general public if they relate to treatment of the specified diseases.

8. Clause 6 provides for penalties of a moderate nature upon first conviction, and of a heavier nature upon second or subsequent conviction.

ADJOURNMENT.

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

THE ATTORNEY GENERAL:—May I suggest this day fortnight?

H.E. THE GOVERNOR:—Council will adjourn to this day fortnight, and may I wish you all a very Happy New Year.
