

OFFICIAL REPORT OF PROCEEDINGS.**Meeting of 3rd February, 1960.**

PRESENT:HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR ROBERT BROWN BLACK, K.C.M.G., O.B.E.

THE HONOURABLE THE COLONIAL SECRETARY

MR. CLAUDE BRAMALL BURGESS, C.M.G., O.B.E.

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR HOOTON, Q.C. (*Acting*).

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. PATRICK CARDINALL MASON SEDGWICK (*Acting*).

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE, C.M.G.

THE HONOURABLE ALLAN INGLIS

(Director of Public Works).

DR. THE HONOURABLE DAVID JAMES MASTERTON MACKENZIE C.M.G., O.B.E.

(Director of Medical and Health Services).

THE HONOURABLE COLIN GEORGE MERVYN MORRISON

(Director of Urban Services).

THE HONOURABLE KENNETH STRATHMORE KINGHORN

(Commissioner of Labour).

THE HONOURABLE NGAN SHING-KWAN, O.B.E.

THE HONOURABLE KWOK CHAN, O.B.E.

THE HONOURABLE JOHN DOUGLAS CLAGUE, C.B.E., M.C., T.D.

THE HONOURABLE HUGH DAVID MacEWEN BARTON, M.B.E.

THE HONOURABLE DHUN JEHANGIR RUTTONJEE, O.B.E.

THE HONOURABLE FUNG PING FAN, O.B.E.

THE HONOURABLE KWAN CHO YIU, O.B.E.

MR. ANDREW McDONALD CHAPMAN (*Deputy Clerk of Councils*).**ABSENT:**

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL SIR EDRIC MONTAGUE BASTYAN, K.B.E., C.B.

THE HONOURABLE RICHARD CHARLES LEE, O.B.E.

MINUTES.

The Minutes of the meeting of the Council held on 20th January, 1960 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>
Cape Collinson Training Centre Commission of Inquiry Report.	
Census Ordinance, 1960.	
Census Order, 1960	A. 3.
Emergency (Requisition) Regulations, 1949.	
Emergency (Requisition) (Use of Land by Her Majesty's Military Forces) (Chau Tau Range) Order, 1960	A. 4.
Pharmacy and Poisons Ordinance.	
Poisons (Amendment) Regulations, 1960	A. 5.
Pharmacy and Poisons Ordinance.	
Poisons List (Amendment) Regulations, 1960	A. 6.

He said: Among these is the Report of a Commission of Inquiry which was appointed last April to investigate alleged malpractices at the Cape Collinson Training Centre.

Honourable Members are, I think, aware that these allegations first came to light during the course of inquiries made by the Police in November, 1958, following upon the murder of a member of the Training Centre staff. This in turn led to the trial of four trainees on a charge of murder.

The Commissioners were, of course, unable to commence their proceedings until this trial had been concluded. Their report, therefore, was not submitted until last September. Its contents have since been carefully considered by Government, in consultation with the Secretary of State, and action has now been taken on virtually all the principal recommendations.

At the outset I would like to emphasize that Government accepts the Report of the Commission as accurately determining the extent of, and the responsibility for, the serious events which occurred at the Centre on the night in question. There can be no doubt that the conduct of the three officers principally concerned, although motivated to

some degree by fear, was wholly without justification and excuse. I am now in a position to state that disciplinary proceedings have been taken against them under the Prison Rules and that they have been dismissed from the Service. In its Report the Commission also gave close attention to the position in this affair of Mr. Burns, the Chief Officer in charge, and questioned his temperamental suitability for this post. Mr. Burns, who is about 51 years of age, applied for permission to retire from the Service last October. This permission has been granted in accordance with normal procedure.

A number of other matters emerged from this inquiry, and I am glad to have this opportunity of paying a tribute to the careful manner in which the Commission carried out its investigation, not only into the facts surrounding the assaults which took place, but into the general system and procedure at the Training Centre. Generally speaking, and with certain reservations which I shall mention later, Government accepts the recommendations in the Commission's Report. For instance, the Commissioner of Prisons has already undertaken a complete review of the discipline of the Centre and has introduced various improvements. As a result two senior officers are now in permanent residence at the Institution, and it is no longer necessary for an officer of the rank of Principal Leader to be left in charge at any time. Among other innovations, arrangements have been made for a senior officer to participate fully with the trainees in all their activities. New Rules have been drawn up and will shortly be promulgated. These Rules will emphasize, among other things, that Leaders are on no account to change patrol duty with others except with the permission of the officer in charge.

The Commission recommended that red and green grade trainees be locked in prior to lights out at 10 p.m. This rule has always been in force for trainees in the red grade but not for those in the green. This latter grade distinguishes trainees who are shortly due for discharge and who, as part of their rehabilitation, are treated as responsible persons and trusted accordingly. No such trainee has ever committed any breach of discipline, and it is not felt that it is either necessary or advisable that trainees in the green or "leavers" grade should be treated in the same way as those in the red grade.

There is one other point on which Government does not find itself able to agree with the Commission's views and that is that the site at Cape Collinson is unsuitable for an Institution of this nature. Various authorities who have visited the Centre, including some who have wide experience and a specialized knowledge of such matters, have all commented favourably on the site. The main criticisms expressed by the Commission relate to the lack of adequate playing fields and shade

trees; and these are already in process of remedy. Plans for the development of the site, which have already been drawn up, contemplate not only a considerably increased area for playing fields but also the replacement of temporary buildings by permanent accommodation, including staff quarters, workshops and classrooms. In time, therefore, the nature and appearance of the Centre will undergo complete transformation, and I am confident that those honourable Members who are able to pay a visit to Cape Collinson will agree with me that both the site and the layout and amenities are now, or will shortly be, eminently suited to an Institution of this kind.

Finally, Sir, I think it will be accepted by those who read this Report that the events with which it was principally concerned, though highly regrettable, cannot be taken to reflect adversely on the general discipline and organization of the Prisons Department or of this Institution in particular. They will, I consider, prove to have been no more than a temporary setback for the Training Centre and will not prejudice the success of its operations in future. This success may be judged by the single fact that in the five years of this Training Centre's existence (including the period during which it was located at Tung Tau Wan) the percentage of the trainees who have not subsequently been reconvicted stands at 72%, a record which compares most favourably with the results achieved by comparable institutions in the United Kingdom and elsewhere.

HOTEL PROPRIETORS BILL, 1960.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the law relating to inns and innkeepers."

He said: Sir, this Bill has been prepared on the recommendation of the Law Reform Committee in its second report and is modelled on the Hotel Proprietors Act, 1956.

Sir, the basis of the law relating to the liability of innkeepers, in respect of the goods of guests brought to the inn, lies not in the law of contract, but in the custom of the realm. The strictness of that liability at common law, which made the innkeeper the insurer of the goods of the guest, had its origin in the days when innkeepers and their servants were frequently in league with thieves and highwaymen in their operations against travellers.

Some modification of that strict liability was made in the last century, both in England and this Colony, a limit being placed on the amount recoverable by the guest in the absence of proof of negligence or deposit of the goods with the innkeeper.

This Bill proposes amendments to the existing law, some of them being designed to get rid of inconsistencies in its operation during the last 100 years.

The strict liability of innkeepers irrespective of proof of negligence is to attach only to proprietors of hotels as defined in the Ordinance, this is to say, establishments which are duty bound (within certain limits) to accept all comers. It is not to attach to the keepers of establishments which do not usually offer accommodation to transients or serve meals to persons not actually staying there. It is to attach only to the property of persons taking sleeping accommodation in the hotel and not to that of persons just calling in for a drink or a meal. It is not to attach to vehicles or goods left in them.

The limitation upon the hotel proprietors liability, in the absence of negligence or deposit, is increased from \$500 to \$2,000 in respect of the goods of any one guest. This limit will, however, only apply if the hotel proprietor displays at the reception office or at the main entrance a notice in the terms specified in the schedule.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

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

The object of the Bill is to repeal the Innkeepers Ordinance, Chapter 158, and to enact a new Ordinance to amend the law relating to inns and innkeepers.

2. The rights and obligations of innkeepers under the common law, as modified by statute, are to attach only to the proprietors of hotels within the meaning of the definition (which is based on the common law meaning of "inn") in clause 2 of the Bill read in conjunction with clause 3(1), and the law affecting such hotel proprietors is amended in the following respects—

- (a) clause 3(2) places them under the same strict liability for damage to a guest's property as for its loss;
- (b) clause 4(1) puts them under strict liability only to persons for whom sleeping accommodation has been engaged, and provided the loss or damage occurs while such persons are guests and entitled to use the sleeping accommodation or within a limited period before and after that time;

- (c) clause 4(2) will make strict liability no longer applicable in the case of motor or other vehicles, or property left in them, or live animals or their equipment, and hotel proprietors will no longer have a lien for their charges on such property;
- (d) clause 4(3) provides that in respect of other property, the hotel proprietor's liability is not to exceed \$1,000.00 in respect of any one article, or \$2,000.00 in the aggregate (instead of \$500.00 as under section 4 of the Innkeepers Ordinance, Chapter 158), except in specified circumstances, but he will not be entitled to this protection unless he displays at the reception office, or, if there is no reception office, at the main entrance, a notice in the terms set out in the Schedule to the Ordinance (instead of a copy of the Innkeepers Ordinance).
3. Clause 5 re-enacts section 8 of the Innkeepers Ordinance, which this Bill repeals (see clause 6), in order to preserve the right of the proprietor of an hotel, as an innkeeper, to sell property which has become subject to his lien.
4. A Comparative Table showing the source of the clauses is appended.

VAGRANCY (AMENDMENT) BILL, 1960.

THE COLONIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance further to amend the Vagrancy Ordinance, Chapter 229."

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

Clauses 1 to 3 were agreed to.

Council then resumed.

THE COLONIAL SECRETARY reported that the Vagrancy (Amendment) Bill, 1960 had passed through Committee without amendment and moved the Third Reading.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

The Bill was read a Third time and passed into law.

**PUBLIC TRANSPORT SERVICES (HONG KONG ISLAND)
BILL, 1960.**

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to grant to the China Motor Bus Company Limited the exclusive right to maintain and operate certain public transport services."

THE COLONIAL SECRETARY seconded.

MR. H. D. M. BARTON: —Your Excellency, I must first declare my interest in this Bill in my capacity as Chairman of the Tramway Company. It is not my intention, nor would it be appropriate, for me to address this Council on behalf of the Tramway Company, so I shall confine myself to comments on certain principles involved in the Bill and in the manner of its presentation.

Every piece of legislation is of public interest to a greater or less degree. Some Bills more directly affect certain sections of the public than do others. It is important that ample opportunity be given to all members of this Council, to parties directly affected, and to the public, fully to consider a Bill and all its implications, and that a reasonable period of time is available for any representations which may have to be made.

This Bill is a particularly unfortunate instance of departure from this procedure. This Bill was first published in the *Gazette* on the 22nd January and even then the proposed Schedule of Services which really contains the meat of the Bill—the routes and fares to be charged—was not attached, though some reports as to its contents did appear in certain newspapers. Government may say that this was a matter of urgency because the present franchises of the two Bus Companies are due to expire on the 15th of this month. I submit, Sir, this is not a valid argument in that existing bus franchises are by contract. They have already been extended, and could presumably have been extended for a further month or so.

If a piece of legislation, or even a franchise by contract for that matter, is likely to affect adversely particular interests, it is most desirable that the parties affected should be given reasonable opportunity to make representations. This after all is a basic principle of natural justice. An apt illustration of how this principle is applied in the United Kingdom is provided by the procedure under the Road Traffic Acts.

In the United Kingdom any 'bus undertaking has to submit every proposed alteration of its fares, or fare stages, to a Traffic Commissioner, with a view to obtaining a licence under the Road Traffic Acts. The Traffic Commissioner causes the schedule to be published in a

booklet entitled "Notices and Proceedings" and any interested party can buy a copy of this. If any transport interest or member of the public or any association wishes to make representations on the proposed schedule, a memorandum can be submitted. If the Traffic Commissioner does not consider the objections frivolous, he orders a public hearing and the date and place of the meeting are published. After the hearing the Traffic Commissioner reaches a decision and he can, and frequently does, indicate that he will only grant a licence for the proposed schedule if certain modifications are accepted, to meet the objections he considers reasonable.

I am not suggesting that the Colony should go to the expense of setting up similar procedure here, but surely some improvement could be made on the present system—where these problems are left to my honourable Friend the Financial Secretary. Able and versatile as he is, he has so many other problems of equal or even greater magnitude to handle.

Furthermore, my honourable Friend will, I am sure, agree that he does not have at his disposal the necessary specialist knowledge and advice to make a proper adjudication on such issues as the fare structures of different forms of passenger transport.

Government, in my opinion, would be well advised to adopt some better method of determining its policy, and the legislative form its policy should take, in matters which so vitally affect the travelling public.

I now pass to another point. Under the present Ordinances controlling the Road Passenger Transport Companies, maximum fares are prescribed. No minimum fares are laid down. I question whether the introduction of minimum fares would not be a prudent measure where there are competing interests and where a "fare war" could result in loss of efficiency in the two services and even the possible elimination of one of them to the obvious detriment of the travelling public.

To turn to another issue—While I do not propose to enter into the *pros* and *cons* of the royalty system, I would like to draw this Council's attention to what, to my mind, seems to be a loophole in the proposed royalty arrangement in cases where these royalties are related to the net profits of an undertaking.

The China Motor Bus Company and the Tramway Company are two such instances, in that neither of their Ordinances provides for any limitation of emoluments to be paid to Directors and Senior Officials. There is therefore, in theory, nothing to stop a Company voting its Board, or a Board voting its senior executives, very substantial emoluments thus greatly reducing the net profits available for assessment of royalty.

I am not suggesting for a moment that this situation will arise with either of these Companies under their present management, but there is seldom any permanency in the constitution of the Board of any Public Company, and I suggest that, in the public interest, Government should consider introducing some simple means of closing this loophole.

Finally, I would like to say that Government's efforts to ensure cheaper bus services for the travelling public are indeed to be commended. It is only in respect of the procedure adopted in this case that I have been critical.

As an interested party, I shall not vote on this Bill, nor do I propose to move its rejection or amendment.

This Crown Colony, Sir, owes its strength, its prosperity, and its stability, in large measure to the adoption here of basic British principles of natural justice and fair play.

Under your wise leadership, Sir, we know that these principles will be zealously upheld, and it is with this reassuring thought in mind that I have addressed you to-day.

THE FINANCIAL SECRETARY: —Sir, I have to confess that as I listened to the eloquent speech of my honourable Friend I felt a growing sense of mystification, for so many of the statements that he made were quite incorrect.

He stated, Sir, and I think I quote him correctly, that this Bill is “a particularly unfortunate instance” of departure from the normal procedure. This statement, Sir, completely puzzles me. The normal procedure is for a Bill to be introduced and given its first reading with an explanation of the principles. Thereafter any interested person is at liberty to address Government on the matter and very frequently representations are received and given careful consideration. If these representations are of sufficient importance then the second reading of the Bill can be, and very frequently is, deferred to allow more time for consideration. This Bill, Sir, was introduced in the normal manner and so far only one representation has been received by Government. That came from my honourable Friend's company. I might add that the representations were not directed to the Member who was in charge of the Bill, but was made to the Attorney General. This representation from the Tramway Company was rejected by Government and it would seem my honourable Friend is not objecting to the Bill either. Had any points of importance been raised, the second reading could have been deferred for a week or even longer. It is not correct that the existing licence could have been renewed. Had the existing system been continued, it would have been necessary to issue a new licence.

Then my honourable Friend stated that the meat of the Bill was in the proposed schedule of services. This, in Government's view is completely wrong. The meat of the Bill is the principle that a public utility shall be operated by private enterprise in collaboration with Government, contrary to the principle recently enunciated by the Electricity Supply Companies Commission. My honourable Friend has not touched on this point of principle at all. The schedule of services is ancillary.

I should add, Sir, that the reason why the proposed franchises for these bus companies have been incorporated in Bills rather than granted in the form of licences by Your Excellency in Council, as in the past, was to seek the approval of this Council for the principle.

I dislike disappointing my honourable Friend, but I must disclaim any responsibility for fare structures. If he studies the Bill he will see that under clause 14 the schedule of services is a matter for arrangement between the bus company concerned and the Commissioner of Police. The Financial Secretary is not mentioned at all.

So far as minimum fares are concerned, the position as proposed under the Bill is no different from that under the old licence. No difficulty seems to have arisen in the past by reason of the lack of a minimum fare and I see no particular reason why difficulty should arise in the future. If it does, Sir, we can deal with it.

So far as the bus companies are concerned, I doubt if my honourable Friend's concern about a possible loop-hole in the royalty arrangement is justified. Under the Bill royalty is related to net profits as ascertained under the Inland Revenue Ordinance, and the Inland Revenue Ordinance clearly lays down that in the ascertainment of profits there shall be deducted all outgoings and expenses wholly and exclusively incurred in the production of the profits. I would emphasize "wholly and exclusively". This is an important point and under it the Inland Revenue Department disallow many items which companies in Hong Kong regard as legitimate expenses. Charitable donations are one example, and I think that the Inland Revenue Department would be perfectly justified in disallowing excess payments made to directors or staff for the purpose of reducing profits, even if the shareholders did not do so. On the other hand, Sir, the Tramway Company's franchise which was granted before the Inland Revenue Ordinance was enacted provides rather a loose definition of profits and therefore, Sir, I am very glad to accept my honourable Friend's suggestion that we should consider introducing some simple means of closing the loop-hole which does exist in this case.

H. E. THE GOVERNOR: — You have declared an interest, Mr. Ngan.

MR. NGAN SHING-KWAN: —Your Excellency, I declare an interest in this Bill and shall abstain from voting at each stage.

H. E. THE GOVERNOR: —Thank you very much.

The question was put and agreed to.

The Bill was read a Second time.

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

Clauses 1 to 31 were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that the Public Transport Services (Hong Kong Island) Bill, 1960 had passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed into law.

PUBLIC TRANSPORT SERVICES (KOWLOON AND NEW TERRITORIES) BILL, 1960.

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to grant to the Kowloon Motor Bus Company (1933) Limited the exclusive right to maintain and operate certain public transport services."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

Clauses 1 to 29 were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that the Public Transport Services (Kowloon and New Territories) Bill, 1960 had passed through committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed into law.

ADJOURNMENT.

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

ATTORNEY GENERAL: —Sir, I suggest this day three weeks.

H. E. THE GOVERNOR: —Council stands adjourned until this day three weeks.