

OFFICIAL REPORT OF PROCEEDINGS
Meeting of 10th January 1968 PRESENT

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE OROSBIE TRENCH, KCMG, MC
THE HONOURABLE THE COLONIAL SECRETARY (*Acting*)
MR DAVID RONALD HOLMES, CBE, MC, ED
THE HONOURABLE THE ATTORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, QBE, QC
THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS (*Acting*)
MR PAUL TSUI KA-CHEUNG, QBE
THE HONOURABLE THE FINANCIAL SECRETARY (*Acting*)
MR LI FOOK-KOW
THE HONOURABLE ALEC MICHAEL JOHN WRIGHT, CMC
DIRECTOR OF PUBLIC WORKS
DR THE HONOURABLE TENG PIN-HUI, CMG, OBE
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE WILLIAM DAVID GREGG, CBE
DIRECTOR OF EDUCATION
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC
COMMISSIONER OF LABOUR
THE HONOURABLE ALASTAIR TODD
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE TERENCE DARE SORBY
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE GEOFFREY MARSH TINGLE
DIRECTOR OF URBAN SERVICES
THE HONOURABLE KENNETH STRATHMORE KINGHORN
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE DHUN JEHANGIR RUTTONJEE, CBE
THE HONOURABLE KAN YUET-KEUNG, CBE
THE HONOURABLE FUNG HON-CHU, OBE
THE HONOURABLE TANG PING-YUAN, OBE
THE HONOURABLE TSE YU-CHUEN, OBE
THE HONOURABLE KENNETH ALBERT WATSON, OBE
THE HONOURABLE WOO PAK-CHUEN, OBE
THE HONOURABLE GEORGE RONALD ROSS
THE HONOURABLE SZETO WAI, OBE
THE HONOURABLE WILFRED WONG SIEN-BING, OBE
DR THE HONOURABLE CHUNG SZE-YUEN, OBE
THE HONOURABLE WILSON WANG TZE-SAM

ABSENT

THE HONOURABLE JAMES DICKSON LEACH, OBE

IN ATTENDANCE

THE DEPUTY CLERK OF COUNCILS
MR DONALD BARTON

MINUTES

The minutes of the meeting of the Council held on 20th December 1967 were confirmed.

ANNOUNCEMENT

THE COLONIAL SECRETARY:—Sir, by Your Excellency's direction I rise to announce the appointment of the Standing Law Committee for 1968. The following honourable Members have agreed to continue to serve and have been reappointed: —

The Honourable the Attorney General (*Chairman*)

The Honourable Dhun J. RUTTONJEE

The Honourable Y. K. KAN

The Honourable P. C. Woo

The Honourable G. R. Ross

PAPERS

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

Subject

LN No

Subsidiary Legislation:—

Pilots Ordinance.

Pilots (Amendment) Regulations 1967 203

Interpretation and General Clauses Ordinance.

Deputy Director of Immigration (Powers and Duties)

Notice 1967 210

Sessional Papers 1968:—

No 1—Annual Report by the Registrar General for the year
1966-67.

No 2—Annual Report by the Director of Medical and Health
Services for the year 1966-67.

No 3—Annual Report by the Controller of Stores and Sand
Monopoly for the year 1966-67.

WILLS (FORMAL VALIDITY) BILL 1968

THE ATTORNEY GENERAL moved the First reading of:—“A Bill to amend the law relating to the formal validity of wills.”

He said:—Sir, this Bill seeks to make important amendments to the rules of private international law which govern the formal validity of Wills.

At present, in Hong Kong, the validity of a will dealing with immovable property is governed by the law of the place where the property is situated at the time of the testator's death, whereas wills of movable property are governed by the law of the domicile of the testator at the date of his death. These rules are based on the common law.

With an increasing movement of people between countries, it has become a matter of international concern to ensure that wills do not fail merely because they do not comply with some formality which is required by the law of a foreign country, which is used to test their validity by virtue of some rule similar to the common law rules to which I have referred.

The Hague Conference on Private International Law, held in 1961, produced recommendations which were followed closely in the English Wills Act 1963, upon which the Bill before Council is based.

The Bill is founded on the principle that, where possible, the law should give effect to testamentary documents, so far as the formal requirements as to execution are concerned. To achieve this, the Bill gives, in clause 3, a wide choice of law for the determination of the formal validity of the will, so that wills which under the present law might fail for technical defects, will be preserved.

A will shall be treated as properly executed if it conforms to the law of the country where it was executed, the country where the testator was domiciled or had his habitual residence at the time of execution, or of a country of which he was a national at the time of the execution or of his death.

Clause 4 sets out additional rules governing wills executed on vessels or aircraft and certain special kinds of disposition.

Clause 5 specifies certain matters which are to be treated as formal requirements and so subject to the rules set out in clause 3.

Clause 7 seeks to resolve problems which may arise in a territory where two or more systems of law apply to the formal validity of a will.

Clause 9 ensures that a will which is valid under the Wills Ordinance shall not be affected by this Bill.

This Bill will bring our law into line with that of the many countries which have implemented the Hague Convention and will save wills which would otherwise fail for technical reasons, thus defeating the desires of testators.

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 purpose of this Bill is to provide for the adoption generally of the provisions of the Convention on the Conflict of Laws relating to the form of Testamentary Dispositions concluded on the 5th October 1961 at the ninth session of the Hague Conference on Private International Law. Under the present rules of private international law in Hong Kong the formal validity of a will of immovable property is governed by the *lex situs* of that property at the date of the testator’s death and that of movable property by the *lex domicilii* of the testator at his death. It is considered that, with the increasing movement of people between countries, the wishes of a testator and the expectations of his dependants should not be in peril of frustration by technical rules of law whenever they settle in a new country and that wills should be treated as valid wherever possible. This Bill, which closely follows the Wills Act 1963 in England, therefore seeks to provide for the application in Hong Kong of the wider choice of law for the determination of the formal validity of wills agreed upon at the above-mentioned Convention, thereby preserving wills which under the present law would otherwise fail for technical defect.

2. Clause 3 seeks to provide that as a general rule a will shall be treated as properly executed if its execution conforms to the internal law in force in the territory where it was executed or in the territory where, at the time of its execution or of the testator’s death, he was domiciled or had his habitual residence, or in a state of which at either of those times, he was a national.

3. Subclause (1) of clause 4 sets out additional rules which are to be applicable, without prejudice to the general rule in clause 3, in the following cases—

- (a) a will executed on board a vessel or aircraft;
- (b) a will disposing of immovable property;
- (c) a will revoking a will or a provision in a will;
- (d) a will exercising a power of appointment.

It is further sought in subclause (2) of clause 4 to provide that a will, so far as it exercises a power of appointment shall not be treated as improperly executed by reason only that its execution

was not in accordance with any formal requirements contained in the instrument creating the power. At present if a will derives its formal validity from foreign law it is in general necessary that any formal requirements set out in the instrument creating the power should be complied with.

4. Clause 5 declares that where a law in force outside Hong Kong falls to be applied in relation to a will, any requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the execution of the will are to possess certain qualifications, shall be treated as a formal requirement only.

5. Clause 6 declares that a will shall not be altered by reason of any change in the testator's domicile after its execution.

6. Clause 7 seeks to resolve a problem which may arise where there are two systems of law in force in a territory or state and provides for the choice of one such system.

7. Clause 8 provides that, in determining whether a will was executed in conformity with a particular law, regard shall be had to the formal requirements of that law at the time of execution but that account may be taken of an alteration of law affecting wills made at that time if the alteration enables the will to be treated as properly executed.

8. Clause 9 deals with the extent of the application of the proposed provisions and in subclause (2) provides that the validity of a will valid under section 3 of the Wills Ordinance shall not be affected by anything in this Ordinance except insofar as the will may be revoked or altered by a subsequent will valid under this Ordinance.

LEGAL AID (AMENDMENT) BILL 1968

THE ATTORNEY GENERAL moved the First reading of: —“A Bill to amend further the Legal Aid Ordinance.”

He said: —Sir, at present, by virtue of section 14(3) of the Legal Aid Ordinance, a person receiving legal aid is exempt from liability to pay court fees, service and bailiff's charges and the cost of notes of evidence. Consequently, when an aided person obtains an order for costs against his opponent, these do not include the expenses named, which have to be met from public funds.

The proposed amendment in clause 2 of the Bill will remedy this situation, and provide that, where an order for costs is made in favour of an aided person, the party against whom the order is made shall be obliged to pay those fees and charges to the Director of Legal Aid.

Clause 3 transfers from regulation 14 of the Legal Aid Regulations to the Ordinance, as a new section 29B, the provisions governing the disposal of moneys paid to the Director of Legal Aid in favour of an aided person. It is thought this is a more appropriate place for these provisions.

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: —

By virtue of section 14(3) of the principal Ordinance, a person who receives legal aid is not required to pay the court fees, service or bailiff’s fees, or charges for notes of evidence, which he would be liable to pay if he was not an aided person. Consequently, when an order for costs is made in favour of a legally aided person, this does not at present include the court fees and other fees and charges mentioned, as they have not been incurred as disbursements by the aided person.

The purpose of clause 2 of this Bill is to provide that, when an aided person obtains an order for costs in his favour, the party against whom the order is made shall be liable also to pay the court fees and other fees and charges mentioned. Thus, in such cases, these expenses will not be borne by the Government.

Paragraph (b) of the proposed section 19(1A) provides that the party against whom the order for costs is made will pay the court fees and other fees and charges to the Director of Legal Aid.

The purpose of clause 3 of the Bill is to transfer to the principal Ordinance the provisions of regulation 14(5) of the Legal Aid Regulations relating to the disposal of moneys received by the Director. It is thought that this is the most appropriate place for these provisions, especially if clause 2 of this Bill is adopted. The new section 19B also provides that the Director of Legal Aid shall pay to the Registrar of the Supreme Court any court fees or other fees or charges recovered under the proposed section 19(1A).

UNIVERSITY (AMENDMENT) BILL 1968

THE ATTORNEY GENERAL moved the Second reading of:—“A Bill to amend further the University Ordinance.”

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read the Second time.

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

Clauses 1 to 8 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Bill before Council 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 the Third time and passed.

TELECOMMUNICATION (AMENDMENT) BILL 1968

THE ATTORNEY GENERAL moved the Second reading of:—"A Bill to amend further the Telecommunication Ordinance."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read the Second time.

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

Clauses 1 to 4 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Bill before Council 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 the Third time and passed.

MENTAL HEALTH (AMENDMENT) BILL 1968

THE ATTORNEY GENERAL moved the Second reading of:—"A Bill to amend the Mental Health Ordinance."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read the 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 ATTORNEY GENERAL reported that the Bill before Council 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 the Third time and passed.

SUMMARY OFFENCES (AMENDMENT) BILL 1968

THE ATTORNEY GENERAL moved the Second reading of:—"A Bill to amend the Summary Offences Ordinance."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read the Second time.

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

Clauses 1 and 2 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Bill before Council 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 the Third time and passed.

LAW REVISION (MISCELLANEOUS REPEALS) BILL 1968

THE ATTORNEY GENERAL moved the Second reading of:—"A Bill to repeal certain Ordinances."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read the Second time.

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

Clauses 1 and 2 and the Schedule were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Bill before Council 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 the Third time and passed.

MAGISTRATES (AMENDMENT) BILL 1968

THE ATTORNEY GENERAL moved the Second reading of:—"A Bill to amend further the Magistrates Ordinance."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read the Second time.

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

Clauses 1 to 4 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Bill before Council 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 the Third time and passed.

JUVENILE OFFENDERS (AMENDMENT) BILL 1968

THE ATTORNEY GENERAL moved the Second reading of:—"A Bill to amend further the Juvenile Offenders Ordinance."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read the Second time.

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

Clauses 1 and 2 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Bill before Council 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 the Third time and passed.

ADJOURNMENT

THE COLONIAL SECRETARY moved the adjournment.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

NEXT MEETING

HIS EXCELLENCY THE GOVERNOR:—Council will now adjourn. The next meeting will be held on 24th January.