

18th May, 1949.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR (SIR ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, K. C. M. G.)

THE COLONIAL SECRETARY AND SECRETARY FOR CHINESE AFFAIRS

(Hon. B. C. K. HAWKINS, O. B. E., *Acting*)

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

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

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

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

HON. A. NICOL (Acting Director of Public Works).

HON. D. F. LANDALE.

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

HON. SIR MAN-KAM LO, KT., C. B. E.

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

HON. M. M. WATSON.

HON. C. BLAKEE, M. C., E. D.

MR. ALASTAIE TODD (Deputy Clerk of Councils).

ABSENT:—

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS

(MAJOR-GENERAL F. E. G. MATTHEWS, C. B., D. S. O.)

DR. HON. CHAU SIK-NIN.

MINUTES.

The Minutes of the meeting of the Council held on 11th May, 1949, were confirmed.

**OFFICERS OF THE SUPREME
COURT (REGULATION) BILL, 1949.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to make further provision for officers of the Supreme Court and to modify and regulate the duties thereof." He said: Sir, the Objects and Reasons which have been printed with the Bill before Council fully and sufficiently explain the objectives of the Bill and its content. It will suffice, I think, if I recall to the minds of Honourable Members that recent organisation of the judicial and legal departments has been taking place as to which reference has previously been made in this Council. As part of that reorganisation there has been the objective of freeing the Registrar of the Supreme Court for the full duties of that office with the addition that the Registrar of the Supreme Court should henceforth be empowered to exercise the powers and duties of a Registrar or Master of the Supreme Court in England, thereby relieving the Judges of the Supreme Court of certain duties which they now must perform, but which are duties which are more appropriately discharged by the Registrar. As indicated by the Objects and Reasons, the main objective of the Bill before Council is to give effect to the aims which I have described.

THE ACTING 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. It is customary in England, though not in Hong Kong, for many applications to be heard by a Master or Registrar of the Supreme Court of Judicature in Chambers. It is also usual for a judge to refer parties to the Master so that the latter may determine questions of detail arising on the judge's Order.

2. It is considered desirable to empower the Court or a judge to refer matters to the Registrar in any particular case and to empower the Chief Justice to make rules of a general nature under which the practice in the Supreme Court of Judicature in England as regards the powers and duties of a Master or Registrar could be applied in whole or in part to the Supreme Court of Hong Kong. This Bill (clause 2) repeals and replaces section 13 of the Supreme Court Ordinance, 1873, with a section containing the provisions necessary to achieve the foregoing objects. Sub-sections (5) and (6) of such new section are modelled on rules 20 and 21 of Order 54 of the Rules of the Supreme Court in England.

3. In view of the general power of delegation given by subsection (3) of the proposed new section 13, section 685 of the Code of Civil Procedure would no longer be necessary. The repeal of section 685 is accordingly provided for by clause 3 of the Bill.

4. The opportunity afforded by the necessity to repeal and replace section 13 of the Supreme Court Ordinance, 1873, has been utilised to recast the provisions relating to the appointments of the officers of the Supreme Court.

REGISTRAR GENERAL OF BIRTHS AND DEATHS

(CHANGE OF STYLE) BILL, 1949.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to change the style of the Registrar General of Births and Deaths and to make connected and consequential provision for a change in definition and interpretation in enactments affecting the duties of such office and instruments issued thereunder or referring to such office." He said: Sir, again, in regard to this Bill, the Objects and Reasons fully and sufficiently explain the necessity and content of this Bill. There is little that I can usefully add other than to remark that this Bill is also consequential on the reorganisation of the Judicial and Legal Departments to which I had occasion to refer in introducing the Bill which was first mentioned in today's Order of Business.

THE ACTING 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. Owing to the post of Registrar General having recently been established it is desirable to avoid confusion between this office and the office of Registrar General of Births and Deaths particularly as in a number of Ordinances under which duties are imposed upon the holder of the last mentioned office the abbreviated form "Registrar General" is used to mean the Registrar General of Births and Deaths.

2. It would have been possible to achieve the effect of clause 2 of the Bill by a resolution under the Public Officers (Changes of Style) Ordinance, 1937, but a resolution relating to the abbreviated form "Registrar General" would not have produced the desired effect as it would also have related to the new title "Registrar General" under the Ordinance establishing that post.

WAR DAMAGED SITES BILL, 1949.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to facilitate the clearance of war damaged sites, to provide for the recovery of the cost thereof, and for the sale of the sites where so required." He said, Sir, Honourable

Members will recall that last year a Committee was appointed under the Chairmanship of the Solicitor General to consider the problem presented by war damaged sites, and in particular the problem presented by the fact that, for a variety of reasons, a number of the worst sites had been given no attention towards clearance and rebuilding.

Sir, that Committee made a Report which was accepted by Government, and that Report was laid before this Council at its meeting of the 9th February of this year. The Report proposes special legislation and with the Report there was submitted a Bill which provides the foundation for the Bill now before Council. The Bill is accompanied by full Objects and Reasons and I think it will suffice if I merely say, in summarising, that the Bill is primarily an enabling Bill. Upon enactment it will enable the Director of Public Works in his discretion to call upon owners of war damaged sites, as defined in the Bill, to discover whether they are getting on with the work of clearance themselves, or to declare that Government, through the Public Works Department, will itself undertake this task, in which event the cost of clearance, including a 25 percentage allowed for the cost of supervision, will be a charge on the land cleared.

By clause 9 of the Bill, an appeal is given to the Governor in Council to any person who may feel aggrieved by the exercise of the Director of Public Works' discretion in applying the Ordinance to his case. Furthermore, the ordinary rights of recourse to the Supreme Court are, by the Bill, explicitly preserved.

THE ACTING 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. One of the worst and most obvious legacies of the war has been the extensive damage that has occurred to a large proportion of domestic and business premises in all parts of Hong Kong and Kowloon. In many cases complete destruction has taken place and the barren sites thus created, often encumbered with squatters' huts or insanitary accumulations of rubbish, are a danger to the health of the community.

2. It is necessary for the sanitation and appearance of the Colony that war damaged sites should be cleared. If re-development of sites takes place not only will such clearance automatically be effected as a preliminary step, but the present accommodation deficiency in the Colony will be gradually ameliorated. It is therefore necessary that Crown lessees should be called upon to carry out covenants to repair and to maintain contained in their leases. These covenants can be enforced without any new legislation and the remedies at Common Law and regulated in the Crown Rights (Re-entry) Ordinance, 1870, utilised. In view, however, of the magnitude and urgency of the

problem it is desired to have some standard procedure to carry out site clearance, to shorten the period which must elapse before a power of sale can be exercised in the case of an owner who is unwilling or unable himself to effect the desired improvement and to effect a number of ancillary amendments of detail. These are the main objects of the Bill.

3. In clause 2, the interpretation clause, it is envisaged (sub-clause (1)) that the Director of Public Works (referred to as “the Director”) will in most cases wish to employ contractors, and it is provided (sub-clause (2)) that a mortgagee in possession and other persons who are in the same position as Crown lessees, although they hold no lease, shall be deemed to be owners. The definition of war damage is widely drawn to include damage not the direct result of hostilities.

4. It is provided by clause 3 that the Director may declare a site to be a “war damaged site” whereupon it is subject to the provisions of the Ordinance, which require that the owner may be required to state (on Form No. 1 in the Schedule) what he intends to do with regard to site clearance. If site clearance has not been carried out within six weeks and none of the other alternative courses provided for is accepted by the owner, the Director may, under clause 4, enter upon the site and carry out the work. It has been necessary to specify comprehensively what may be included as site clearance and Form No. 1 is so drawn to enable all specific items to which the Director wishes to draw attention to be particularised.

5. Clause 5 provides for a certificate being given of the cost of site clearance and for a supervision charge to be included which will, it is hoped, both recoup the Public Works Department for the employment of the staff that will be necessary to exercise supervision, and discourage owners from automatically leaving all responsibility with the Department. It is provided that this certificate can be registered as a charge against the land, and that a sale for value of the property may be refused registration by the Land Officer unless satisfactory provision is made for paying off the charge. It is provided that an owner shall only be liable for such a charge up to the value of his land and it is not therefore envisaged that recovery of these sums should normally be effected by action in the Courts.

Under the proviso to clause 5 amounts received from the sale of usable material removed from the site will be allowed as a reduction from the cost of clearance.

6. Clause 6 provides, by a procedure analogous to that afforded by clause 3, that the Director may require an owner to state his intentions with regard to compliance with his covenants to maintain and repair, and if no satisfactory arrangement is reached then the Crown will re-enter in accordance with the provision in the lease, after which event a notification can be published in the Gazette (clause 7) of the intention to sell by public auction. Such power of

re-entry would also accrue if the clearance charge was not discharged since all Crown leases contain a covenant to pay all rates, taxes, charges and assessments, and it is provided that on the expiration of a month from the publication of such *Gazette* Notice a sale of the property by public auction may take place. Upon such sale the purchaser could be required to enter into a covenant to develop the property. The Crown will be responsible to refund to the owner the price received at public auction less charges and expenses properly incurred.

7. Under the Crown Eights (Re-entry) Ordinance, 1870, a petition for relief against re-entry may be presented by a lessee either to the Court or to the Governor in Council. It is not provided in that Ordinance that either tribunal should in addition to re-instating the lessee or refusing relief have other powers. It is therefore considered desirable that express power should be given to order, a sale by auction. In such event the realised price, less charges and expenses, will be refunded to the owner (clause 8).

8. Clauses 9 and 10 are provisions for appeal to the Governor in Council available for any person who considers his is a case of hardship or that a discretion under the Ordinance has been unfairly or unwisely exercised, and follow precedents to be found in the Buildings Ordinance, 1935, and other standard forms. Clause 11 provides for the service of notices and that a Chinese translation shall in all cases be added.

9. Clause 12 provides a moderate penalty for interference, with or obstruction of the Director's agents effecting site clearance and clause 14 is a saving clause widely drawn to obviate the Ordinance ruling out contractual or other rights or remedies already available to the Crown or private persons.

SOCIETIES BILL, 1949.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to provide for the registration of Societies and for matters related thereto." He said: Sir, at the present time the law relating to societies existing in the Colony is the Societies Ordinance, 1920. That Ordinance is a short Ordinance having 7 sections only. The Ordinance by section 3 declares Triad Societies, and societies having unlawful objects or purposes incompatible with peace and good order of the Colony to be unlawful. Again by section 4 of the existing Ordinance it empowers the Governor in Council in absolute discretion to declare any society to be unlawful for the reasons set out in that section. The rest of the Ordinance deals with the offences and penalties created and enforceable for management or membership of an unlawful society and gives powers of search and arrest, seizure and forfeiture in relation to unlawful societies.

It will be noted that the existing law does not call for registration or other formal notification of the existence of a society within the

Colony. In this respect, Sir, the existing Ordinance marks departure from the law which previously existed. Such law was the Societies Ordinance, 1911. That Ordinance required that all societies coming within the definition of "society" in that Ordinance had to become registered or exempted from registration upon application to the Registrar of Societies.

Sir, at this time when the state of the world is gravely unsettled and the maintenance of law and order in the Colony is likely to be endangered by outside influence it is considered necessary that there should be in existence a record of all societies in the Colony and a knowledge of their objects combined with enhanced powers to control societies. It is for this reason that this Bill has come before Council with the objectives of re-establishing, in effect, the Ordinance of 1911 as the law of the Colony so 'as to require, as that Ordinance of 1911 required, that all societies, coming within the definition of "local society" given in clause 2 of the Bill, shall apply for registration and be placed by the Registrar of Societies upon the registered list or the exempted list, if registration is not refused.

As I indicated, Sir, the Bill before Council to a large extent reproduces the Ordinance of 1911. As in that Ordinance and as indeed in the existing law, Triad Societies and the like are declared to be unlawful, and this of course will be the case whether or not any society achieves formal registration or exemption. There is, in fact, only one important departure from the Ordinance of 1911. It is embodied in clause 5(3) of the Bill which provides expressly what the Ordinance of 1911 left to implication, that is to say, that the Registrar of Societies shall refuse to register 'a society if it is affiliated or connected with any organisation or group of a political nature which is established outside the Colony. The Objects and Reasons which accompany the Bill, as before Council, at paragraph 5 deals with this provision. It will suffice for me to emphasise that upon this Bill becoming law, local societies now in the Colony, which are affiliated or connected with any political organisation or group outside the Colony shall be refused registration and thus become unlawful with the consequence that management or membership of any such society will constitute offences punishable under the law. This provision, as will be appreciated, reflects the experience of the present day world where, in more than one country, it has been found that peace and order has been violated or endangered through the activities of organisations of a political nature which are not domestic in character and origin but are outposts for foreign political manoeuvre and interference. In the administration of the Bill upon being enacted as an Ordinance there will also be a change. The Bill provides by clause 3 that the Governor may appoint a Registrar of Societies for the Colony and officers to be styled Assistant Registrars of Societies. The Bill to this extent, makes provision exactly the same as that contained in the Ordinance of 1911 to which I have referred. Under the 1911 Ordinance, the Secretary for Chinese Affairs was Registrar of Societies.

However, Your Excellency has authorised me to say that it is your intention upon the Bill being enacted to appoint the Commissioner of Police and selected officers of his Department to be respectively Registrar and Assistant Registrars of Societies, since it is consistent and also necessary from the point of view of practical administration that legislation which is required to aid security should be operated by the Commissioner of Police and the Police Department upon whom a primary and heavy responsibility for security is laid. It is to be noted, however, that by clause 5(7) of the Bill, a right of appeal is given to the Governor in Council against a decision of the Registrar.

Finally, I invite attention to clause 27 of the Bill which provides a duration clause. That clause will have the effect of limiting the operation of the Ordinance until the 31st December, 1950. But the clause provides that this Council may, from time to time, by resolution, extend the operation of the Ordinance for such term not exceeding one year at a time as may be specified in such resolution, and it may do so either for reasons of security or other good reason which seems to Council at that time to require the perpetuation of the Ordinance.

There is one further aspect which I would wish to dwell on, and that is that I would wish to mention in this Council a fact which Honourable Members, I believe, already know, and that is that this Bill, or the project of introducing this Bill, has, for very long been in the mind of Government in the light of its experience of the necessity for such legislation, experience gained over the past two or three years. Thus the Bill is in no sense a novel thought on the part of Government, but is introduced after, as I have indicated, a prolonged consideration of its necessity over a very long period of time.

THE ACTING 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. Prior to the enactment of the Societies Ordinance, 1920, the legislation in force in the Colony dealing with societies, i.e. the Societies Ordinance, 1911, provided for the compulsory registration of all societies.

2. The Societies Ordinance, 1920, introduced alteration of the law, particularly in that registration of societies was no longer rendered compulsory. In fact, however, many societies in the years since 1920 have continued voluntarily to register with the Secretary for Chinese Affairs thereby notifying their existence.

3. It is considered that at the present time the maintenance of law and order in the Colony would be assisted by the existence

of record of all societies in the Colony and a knowledge of their objects and by enhanced powers of control of societies.

4. In these circumstances a principal object of the Bill is to provide legislation in replacement of the Societies Ordinance, 1920, which replaces legal obligation upon every local society (as defined in clause 2) to apply for registration. Consequently (see clauses 9 and 25) within 30 days of the commencement of the Ordinance any local society which has not been registered or which has not been exempted from registration will automatically become an unlawful society and management or membership of any such society will be an offence (clauses 10 and 11).

5. The Bill, apart from the requirement of compulsory registration, contains in clause 5(3) provision, analogous to section 14 of the Trade Unions and Trade Disputes Ordinance, 1948, which is important. That provision empowers the Registrar of Societies to refuse registration of any local society which is affiliated-or connected with 'any political organisation established outside the Colony. Thus upon enactment of the Bill that provision will apply to prohibit the existence and operation in the Colony of any local society (as defined) of the category above described and notwithstanding that it may be in existence and in active operation in the Colony at the present time. Such prohibition would mark an innovation in the Colony wherein considerable latitude has long been afforded towards the existence and operation of "societies" of every kind. But a change of attitude, as regards societies, having outside political connection, is regarded as unavoidable in the best interests of the Colony while serious political unrest prevails throughout the world.

6. The Bill by clause 26 empowers the Governor in Council to make rules for the purposes therein mentioned and by clause 26(3) rules are in fact made which appear as a Schedule to the Bill providing the machinery necessary for the registration of societies which the Bill upon enactment will require. Clause 27 restricts the duration of the Bill, upon enactment, until the 31st December, 1950, but empowers its continuance in force beyond that date by resolution of Legislative Council.

INDECENT EXHIBITIONS AND OBSCENE

PUBLICATIONS CONSOLIDATION BILL, 1949.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend and consolidate the law relating to exhibitions, publications and advertisements of an indecent, obscene, revolting or offensive nature."

THE ACTING 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 Indecent Exhibitions and Obscene Publications Consolidation Bill, 1949, had passed through Committee without amendment and moved the Third reading.

THE ACTING COLONIAL SECRETARY seconded, and the Bill was read a Third time and passed into law.

EDUCATION (AMENDMENT) BILL, 1949.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance further to amend the Education Ordinance, 1913."

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

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

Clause 2.

THE ATTORNEY GENERAL:—Sir, in introducing the Bill or the First reading I indicated my wish to introduce a further clause to this Bill at Committee stage. The purpose of the clause which I will read is merely to correct an ambiguity which exists in section 7 of the principal Ordinance and it is desired to seize the opportunity of this Bill to include the amendment. Sir, the proposal is that there should be added a clause as clause 3 to read as follows:—

"Amendment
of Section 7
of the
principal
Ordinance.

3. Section 7 of the principal Ordinance is hereby amended as follows:—

(a) by the repeal of paragraph (a) of the said section and its replacement as follows:—

“(a) for any person to open, start, manage, teach in or maintain any school in the Colony unless and until a certificate of registration of such school has been issued in the manner hereinafter provided;”
and

(b) by the insertion in paragraph (c) of the said section of the words “not on the Register of Teachers” after the word “person” appearing in the second line thereof.”

This was agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Education (Amendment) Bill, 1949, had passed through Committee with one amendment and moved the Third reading.

THE ACTING COLONIAL SECEETARY seconded, and the Bill was read a Third time and passed into law.

PUBLIC HEALTH (SANITATION) AMENDMENT BILL, 1949.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance further to amend the Public Health (Sanitation) Ordinance, 1935." He said: Sir, I would like to mention that in the interval since the First reading of this Bill was taken suggestion has been made, initiated, I would say, by the Hong Kong Council of Women, that amendment of this Bill be made to introduce a power for the Urban Council to make by-laws regarding dry-cleaning establishments. The Urban Council are in sympathy with this proposal and, with Council's permission, at Committee stage I intend to move the appropriate amendment.

THE ACTING COLONIAL SECEETARY seconded, and the Bill was read a Second time.

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

Clause 3.

THE ATTORNEY GENERAL: —Sir, I move that in the new paragraph (xx) proposed to be enacted by clause 3 of this Bill there be inserted the words "dry-cleaning establishments" after the word "laundries" occurring in the third line of that paragraph (xx).

This was agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Public Health (Sanitation) Amendment Bill, 1949, had passed through Committee with one amendment and moved the Third reading.

THE ACTING COLONIAL SECRETARY seconded, and the Bill was read a Third time and passed into law.

MAGISTRATES (AMENDMENT) BILL, 1949.

THE ATTORNEY GENERAL: —Sir, at the last meeting of this Council a Report of the Standing Law Committee on the Bill shortly intituled the Magistrates (Amendment) Ordinance, 1949, was presented to Council. The Report submitted a reprint of the Bill which embodied the recommendations of the Standing Law Committee. The reprint of the Bill has, in the interval, been published in the *Gazette*. In these circumstances, I ask the permission of Council under Standing Order 27 (14) to allow the Bill as so printed and published to be substituted for the Bill as read a Second time.

THE ACTING COLONIAL SECRETARY seconded.

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

H.E. THE GOVERNOR: —As this is rather a long Bill, Gentlemen, 41 clauses, I suggest that we take the clauses in batches of five, and if any Honourable Member wishes to speak on any of these clauses, he can, of course, do so. Is that agreeable, Gentlemen?

This was agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Magistrates (Amendment) Bill, 1949, had passed through Committee without amendment and moved the Third reading.

THE ACTING COLONIAL SECRETARY seconded, and the Bill was read a Third time and passed into law.

ADJOURNMENT.

H.E. THE GOVERNOR: —That concludes the Agenda, Gentlemen. Council will adjourn to this day week.