

25TH APRIL, 1921.

PRESENT:—

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT, HON. MR. CLAUD SEVERN, C.M.G.

H.E. MAJOR-GENERAL SIR GEORGE MACAULAY KIRKPATRICK, K.C.B., K.C.S.I. (General Officer Commanding the Troops in China).

HON. MR. E. D. C. WOLFE (Colonial Secretary).

HON. MR. J. H. KEMP, C.B.E., K.C. (Attorney-General).

HON. MR. C. McL. MESSER, O.B.E. (Colonial Treasurer).

HON. MR. E. A. IRVING (Director of Education).

HON. MR. S. B. C. ROSS (Secretary for Chinese Affairs).

HON. MR. T. L. PERKINS (Director of Public Works).

HON. MR. H. E. POLLOCK, K.C.

HON. MR. LAU CHU PAK.

HON. MR. HO FOOK.

HON. MR. H. W. BIRD.

HON. MR. A. G. STEPHEN.

HON. MR. A. O. LANG.

MR. S. B. B. McELDERRY (Clerk of Councils).

New Member

Mr. A. O. LANG took the oath and his seat as a member of the Council representing the Chamber of Commerce in the absence on leave of Mr. P. H. HOLYOAK.

Minutes

The minutes of the meeting held on the 14th inst. were confirmed and signed.

Finance

THE COLONIAL SECRETARY, by command of H.E. the Officer Administering the Government laid upon the table Financial Minutes Nos. 25 and 26 and moved that they be referred to the Finance Committee.

THE COLONIAL TREASURER seconded.

HON. MR. POLLOCK—In connection with Financial Minute No. 25 in which it is recommended that the Council shall vote the sum of \$5,000 as payment to Messrs. Lowe, Bingham & Matthews for professional services in connection with a report on the China and Japan Telephone and Electric Company, Ltd., I should like to ask whether the report will be laid on the table.

HIS EXCELLENCY—The report is at present in manuscript and is being circulated for consideration by the Government. Whether it will be printed and laid on the table will be decided later. The report was obtained with a view to considering the future position of the Telephone Co. No conclusions have been come to and I cannot give an answer at the present moment whether the report will be laid on the table or not.

THE COLONIAL SECRETARY, by command of H.E. the Officer Administering the Government, laid on the table the Report of the Finance Committee (No. 4) and moved that it be adopted.

THE COLONIAL TREASURER seconded, and the motion was agreed to.

The Dairy Farm Property

HON. MR. BIRD in pursuance of notice previously given asked the following question:—

“ In view of the fact that the housing problem is still acute and that the Dairy Farm Co. hold some 210 acres of highly suitable and accessible building land on the cool side of the Island, will the Government take preliminary steps to develop some spot on the mainland, such as the slopes of the Shatin Valley, with a view to the ultimate removal of that Company's sheds and cattle to such spot and the resumption of the land at present in its possession? ”

THE COLONIAL SECRETARY replied—The Government has for some time past been in communication with the Dairy Farm Co. on the matters referred to in the question, but it is not possible to make any statement at present.

The Custodian Ordinance

THE ATTORNEY-GENERAL moved the second reading of the Bill intituled, An Ordinance to provide for the transference of property, rights and powers to successive holders of the office of Custodian of Enemy Property.

THE COLONIAL SECRETARY seconded, and the motion was agreed to.

THE ATTORNEY-GENERAL—I beg to move that the Council now go into Committee to consider the Bill clause by clause.

THE COLONIAL SECRETARY seconded, and the motion was agreed to.

On the Council resuming, the ATTORNEY-GENERAL reported that no amendments had been made, and moved that the Bill be read a third time.

THE COLONIAL SECRETARY seconded, and the motion was agreed to.

HIS EXCELLENCY—The Bill is passed.

The Treaty of Peace (Amendment) (No. 2) Order, 1920, Ordinance

THE ATTORNEY-GENERAL moved the second reading of the Bill intituled, An Ordinance to modify certain provisions of the Treaty of Peace Order, 1919, as amended by the Treaty of Peace (Amendment) Order, 1920, and by the Treaty of Peace (Amendment) (No. 2) Order, 1920, for the purpose of adapting the provisions of the Order to the circumstances of the Colony of Hongkong.

THE COLONIAL SECRETARY seconded, and the motion was agreed to.

The Council went into Committee to consider the Bill clause by clause. No amendments were made and on the Council resuming,

THE ATTORNEY-GENERAL moved that the Bill be read a third time.

THE COLONIAL SECRETARY seconded, and the motion was agreed to.

HIS EXCELLENCY—The Bill is passed.

The Stamp Ordinance

THE ATTORNEY-GENERAL said—I beg to move the second reading of the Bill intituled, An Ordinance to Amend the Law relating to Stamp Duty, and in doing so, I would like to acknowledge the assistance received from various bodies and individuals, members of both Councils, and others. The time has unfortunately been short and I think we are greatly indebted to the various bodies and persons who have devoted so much time and care to the examination of the Bill and given to the Government the benefit of their views and deliberations. The course of the criticism has taken the form of efforts to reduce the increases of the various duties proposed by the Bill and to induce the Government to omit certain other duties altogether. Even where the Government have not been able to agree with all the arguments put forward, I think those arguments have helped very much to clear up the position, and will enable us eventually to come to just decisions.

I would like to refer, sir, to two or three general points. It has been suggested more than once that, as the Government are only asking for a million from the new stamp duties, and as the present yield is about \$800,000 or \$900,000 a year, they might have obtained that sum by simply doubling the existing duties. But, apart from the fact that in some cases—in many cases—particular duties have been doubled, I would like to point out that there are a good many headings of duty in the present stamp law which cannot fairly be doubled, or even increased at all. There are others that we think cannot safely be doubled because, if they were, the probable effect might be either to drive trade from the Colony—which is a thing one must always bear in mind—or else encourage evasion to such an extent that doubling the duty would produce nothing like double the yield of the present tax. Doubling as a means of obtaining another million is impossible because there are certain items—they amount to more than half—which cannot fairly or safely

be doubled. We, therefore, have to look to other means of increasing the stamp revenue.

It has been suggested, both in this Council, and elsewhere, that the duties imposed by this Bill are an attack on Free Trade. I venture to say, sir, that is an improper use of the term "Free Trade," and that nothing in this Bill has any bearing at all on the question of Free Trade. "Free Trade" I think, is used in two senses: in the first as being opposed to a system of monopolies or chartered companies. There is nothing of that kind here. In the second sense, it is used as being opposed to a system of taxation under which import duties are imposed on imports from abroad, or bounties given for the protection of home industries. This Bill, of course, imposes no import duty whatever, and gives no bounty; it has nothing at all to do with the question of Free Trade. I mention this because phrases are very dangerous and that phrase might get abroad and give the idea that Hongkong is abandoning its policy of Free Trade. The only import duties in Hongkong are the duties on tobacco and liquor, and they are not touched by this Bill.

Another suggestion made for dealing with the deficiency in revenue is that we should obtain money by means of Short Loans. On that point, I only want to say that I think the phrase "extraordinary expenditure" which appears in the estimates is perhaps (though quite a good phrase for its purpose) a little misleading for the man in the street. It has been suggested that to make roads and put up houses and other buildings we ought not to rely on taxation but obtain Short Loans for the purpose. As long as I have been in the Colony—over 20 years—we have always been making roads and putting up buildings; it is a constantly recurring expenditure and though it does result in the permanent improvement of the Colony, still, as Hongkong is, fortunately, a developing Colony we always have had, and shall have, I hope for many years to come, to go on building roads and putting up buildings out of revenue and not relying on short loans for the purpose.

Now, on further consideration of this Bill, the Government have come to the conclusion that a good many of the proposals in it must be either altered or

abandoned. There are also a number of small amendments which it is proposed to submit in committee—some are drafting amendments; others of some slight substantial importance. I propose to go through the Bill and state the amendments which we propose to bring forward in committee, and state what particular provisions of the Bill we are prepared, at this stage, to abandon.

Clause 3, sub-clause 29, contains a definition of the term "vesting order." It has been pointed out that that definition includes too much. A great many vesting orders which are not transfers of property for consideration, but are made, *e.g.*, on the appointment of new trustees, would have to pay conveyance duty. What is proposed to be done in this case is to omit that sub-clause altogether and to insert in sub-clause 9, which is a definition of "conveyance on sale," after the word "instrument" these words: "and every decree or order of any Court." That will make the section practically a copy of the English section and will confine the duty on vesting orders, to vesting orders on sale. It may be that we shall not get the duty on all the vesting orders we ought to get it on, but I think, on the whole, it is fairer than the present draft.

Clause 17 provides that instruments executed out of the Colony, other than bills of exchange and promissory notes, shall, before being executed, brought into force, acted upon, or registered within the Colony, be stamped with the duty to which they would have been liable if executed here in the first instance. It had been pointed out that that might be unduly hampering in the case of policies, bills of lading and, I think, mates' receipts, attached to bills of exchange, and if a form of wording can be found to exempt those from the section, I think that that exemption might very well be made. I have not had time to draft an amendment to that effect, but I have no doubt that some form of words can be found.

Clause 21 is the clause dealing with the duty on agreements for the sale of property. It is proposed to omit that altogether, and to omit, of course, the corresponding Heading 5 in the schedule. I think it is a duty which would not result in a very large yield because I think the cases to which it would apply in this Colony are small in number.

Clause 23 is the clause dealing with exchange contracts. Hon. members will find on the table a proposed new draft of that clause. It is not really a change of substance but what I should call a drafting amendment. I think I explained it in introducing the Bill. The point is this: the schedule is a list of duties which are imposed on particular instruments; there was nothing in clause 23, as drafted, to require any instrument at all to be drawn up on cancellation of an exchange contract. The new clause remedies that defect so that there will be in future some instrument on which the duty must be paid. It is called an "exchange contract cancellation note." It is not intended that any particular form of note shall be used, and I understand that the brokers' note will be marked "cancelled" and be used as a cancellation note. Whatever form may be found convenient by the bankers and brokers will no doubt be quite sufficient, but some document must be executed as a cancellation note, and, on that document, duty must be paid. A consequential amendment is the amendment of the schedule so as to read "exchange contract cancellation note."

Clause 29 is the clause dealing with late registration duty. It is proposed now to abandon that. There are many difficulties and it is felt on the whole that the best thing will be not to introduce that duty but to accept the suggestion made by the Stockbrokers' Association to increase the stamp duty on share contract notes instead.

Clause 41, sub clauses (1) and (2), deal with the liability of corporate bodies and firms, and their officers and partners and servants, for failure to stamp. I am not sure that I fully grasp the objection to these clauses as they now stand, but we are prepared to alter that as regards the directors and officers in the one case, and partners and servants in the other case, so as to agree with the form of the section in the Companies Ordinance dealing with failures to comply with the provisions of that Ordinance by companies and their officers and servants. I think the proposal which has found favour is to make sub-clause (1) read: "Every director, manager, secretary and other officer who knowingly is a party to the default." I am not sure that alters the meaning very much. We shall be

prepared, if that is not thought enough, to make the clause read "who knowingly and wilfully authorises or permits the default." The same remarks apply to sub-clause (2). In case any members wish to refer to the Companies Ordinance, the first form is to be found in section 65, and the second form is to be found in section 37, of the Ordinance of 1911.

Clause 42 has been objected to, but I think chiefly on the ground that it is indefinite and that it is not quite clear to what it refers. It was meant, chiefly, to refer to appeals from the Collector to the Summary Court and it has been suggested that the clause might be transferred from its present place to Clause 15 which deals with appeals against assessments. The party appealing from the collector has clearly got to establish his case against the decision already given and the whole thing is carried out by means of a stated case. I think the simplest thing would be to omit that "onus" clause altogether; it does not exist in the present Ordinance and we have got on very well without it.

Clause 45, limitation of time. It is proposed to add to that clause another subsection providing that no prosecution shall be instituted under this Ordinance except with the consent of the Collector. That is to prevent the institution of prosecutions by unauthorised persons.

Clause 46. It is proposed to insert after the word "commits," the words "or attempts to commit" any offence. I do not think many cases will occur in which the added words will take effect, but some may occur.

Clause 43 is a clause which gives power of inspection and search. That has been objected to, but I think unreasonably. It is a clause that no honest person has any ground for objecting to. It is intended to save the honest person from having to bear an undue share of taxation by reason of the evasion of duty by the dishonest person. It will be used, I have no doubt, only in cases where there is good reason to believe that duty is being evaded, systematically and deliberately, and to give up that power, I suggest, would be to invite the disloyal and dishonest citizen to attempt to evade the duties imposed by this Bill.

Dealing with the schedule, and Heading No. 4, it is proposed to abandon that—to omit it altogether. It would, no doubt, produce a very large revenue even if the rate of duty were reduced, but it is doubtful how far one could collect anything like the proper amount. No doubt a great many agreements would escape the duty and it is thought fairer to omit that proposal altogether.

Heading 5 I have already mentioned in dealing with clause 21. That will also be omitted.

In Heading No. 12, bill of exchange, Sub-heading (4), letter of credit, has been objected to and it has been suggested that persons leaving this Colony and taking with them letters of credit for ordinary travelling purposes would go to Canton and get their letters of credit there. I do not think there is much in that, and I do not think that heading ought to be omitted. But there is another form of letter of credit which I think ought to be exempted from duty on the precedent of the United Kingdom Stamp Act. One of the exemptions is letters of credit granted in the United Kingdom authorising drafts to be drawn out of the United Kingdom payable in the United Kingdom. I think that we ought to have a similar exemption here.

Heading No. 13. The increased rate of duty above the line of \$3 has been objected to. I have no doubt that that increased duty would not be felt at all on the higher freights, but to meet the objection, and as a compromise, it is proposed to make the dividing line \$5 instead of \$3, so that under \$5 the duty will be ten cents, and over \$5 thirty cents.

Heading 16, Charter Parties. That, sir, it is proposed to reduce to fifteen cents instead of twenty-five: the present rate is ten cents.

In Heading 17, conveyance on sale, it is proposed to make the dividing line \$20,000 instead of \$5,000, allowing a certain number of smaller transactions to escape on payment of the lower scale of duty. The present limit is \$5,000.

Heading 30. I must apologise for some of these drafts being incomplete, but there was no time to draft and get printed complete drafts. The effect of the proposed amendment is simply to make

the duty on collateral securities ten cents instead of twenty cents. It is also proposed to make Sub-heading (4) a little clearer by inserting the word "additional" before the words "principal sum secured." That I understand is proposed in the memorandum drawn up by the Chinese Chamber of Commerce, which unfortunately I have not yet had an opportunity of reading.

Heading 33. It is proposed to reduce the duty from \$20 to \$10. I think the Chinese Chamber of Commerce also made a representation that that duty was too high and would press unfairly on the smaller firms.

Heading 34. In the original draft of the Bill a pure drafting mistake occurred, and it appeared that an *ad valorem* duty on marine policies was imposed. It was never intended that any *ad valorem* duty should be imposed. The proposal with regard to marine policies is simply that the existing duties should be doubled and where the amount does not exceed \$1,000 the duty should be twenty cents, and where it exceeds \$1,000, fifty cents. The draft amendment omits two more heads which ought to appear—duplicates of policies, and reinsurances, to be found on page 27. It is not intended to drop those two sub-heads, but owing to haste they did not appear where they should.

Heading 35 is to read "power of attorney or revocation of power of attorney." That appears in the existing Ordinance, too.

Heading 41. In Sub-heading (1), transfer of shares, it is proposed to reduce the duty from fifty cents to twenty cents, that is to twenty cents a hundred, instead of fifty. Sub-heading (2) will be omitted altogether as clause 29 is being omitted, in other words, the late registration duty goes.

There is another amendment which I did mention in introducing the Bill. In the 5th column, opposite "transfer of shares" the words should be "Before execution" instead of "Do."

In Sub-heading (5) it is proposed to adopt the scale which, I understand, has been proposed by the Stockbrokers' Association—with one alteration. The scale proposed is this: Up to \$1,000 at the rate of \$1, over \$1,000 up to \$10,000,

\$3 each contract note; over \$10,000 and up to \$20,000, \$5; over \$20,000 and up to \$50,000, \$7.50; over \$50,000, \$10. It is supposed that that scale may bring in about \$80,000 to \$100,000.

In Sub-heading (4) it is proposed to reduce the amount to \$1, instead of \$2.

Heading 42. It is proposed to make the amount \$5, instead of \$3.

Heading 45, as I explained in dealing with clause 29, will be omitted altogether.

I beg to move the second reading.

THE COLONIAL SECRETARY seconded the motion.

HON. MR. POLLOCK — As I am not opposing this Bill going into Committee, and as I shall have an opportunity there of raising certain points, I do not propose to take up the time of the Council in making any remarks.

H. E. THE OFFICER ADMINISTERING THE GOVERNMENT—The Attorney-General has, I think, dealt very fully with the amendments which the Government propose to move in the Committee stage of the Bill and I agree with him that the representations that have been made by the various bodies and people in the Colony who are affected by the proposed increase in the Stamp Duties have been very useful to the Government in coming to various decisions on the subject of the new duties, and I also agree with him in recording our appreciation of the labours of the Committee, which sat for months, in drawing up the amending Ordinance. On the principle of the Bill I would like to make one or two remarks at this stage. The Bill, as was pointed out by the Attorney-General, and by myself in the first reading debate of the Council, is one for raising more revenue, but the mere fact that the Bill is being brought forward for this purpose has, I think, led to certain misapprehensions. One is that the Government is imposing upon the present generation of tax-payers greater burdens than they should bear and that part of the burden of carrying on the work of the Colony should fall on those who come after us. It has been suggested, and it is a very attractive suggestion at first sight, that part of the

expenditure of the Colony which is devoted to public works should be defrayed by loan—they have generally been described as “short-term loans”—and in that way the annual Budget would be relieved of the very large sums which have appeared recently for what are known as “public works extraordinary.” We have had the proposal put forward for some years, and I must say that some years ago I was attracted by it until I came to examine more closely what the effect would be in after years if we adopted that policy. The usual practice in the case of the Colonies—especially the self-governing colonies which are now in most cases merged in the Dominions—has been to borrow money for their public works and to schedule in the case of the loans certain public works as securities which subscribers to the loan can see at once the nature of, and naturally the public works to which the loans were to be devoted have been works of a productive nature, which are likely either at once or after a lapse of years to be remunerative to such an extent as to provide not only interest on the loan but an adequate sinking fund. But I cannot see how in this Colony, even if we were permitted to do so, any loan which we raise could have a schedule attached to its prospectus of public works which would be of a productive nature. We have practically no public works which can be said to produce revenue which would pay interest and provide for the amortisation of the loan, and, therefore, if a short-term loan were to be raised as required, we should find ourselves after a certain number of years, when the works had been completed out of the proceeds of the loan, without any direct return coming in to pay interest or to provide for a sinking fund, and the result would be that our annual Budget would be loaded with a large amount for interest and sinking fund. If I may suppose that in a period of, say, 25 years a loan of \$25,000,000 were to be raised for our public works, or the most important of our public works, what rate of interest could this Government expect to raise it at? English funds produce practically 6 per cent. and our experience is that other bodies in the East who have raised loans have had to give 7 and even 7½ per cent. We should find ourselves, when all the money was expended, faced with the necessity for providing a million or a million and a

half of interest at 6 per cent. and also a large amount for the sinking fund. Thus our Budget would be loaded with rather more than two million dollars a year, and it is our experience that new public works which had never been foreseen would come up as "urgent services," with the result that we should have to find money not provided by the loan to pay for them. So far as I can see, our last state would be worse than the first, and those who would have to face the taxes required to meet such a Budget would complain very bitterly of those who a few years before advocated the floating of a short loan for public works and had been so effective in their arguments as to get the Government to agree to that.

Another point arising out of the principle of this Bill, which, as I have said, is a revenue-producing Bill, is that the Government has latterly been extravagant in its expenditure and we are asking for revenue which we should not be asking for if we had kept our Budgets within proper bounds. I do not know what such arguments are based on. We have had to put forward larger budgets—to ask for more provision for public works extraordinary than for in other years, because during the war we kept that part of our expenditure as low as possible in order that we might have as much money as possible to send to His Majesty's Government for the prosecution of the war. It is natural that after four years of a policy of that nature many public works of a more or less urgent nature have been in abeyance and it is necessary that we should proceed with them now. Hon. members are aware also that the revenue derived from the opium monopoly, which during one of the later years of the war reached a sum of over \$8,000,000 fell last year to, I think, under \$5,000,000, and I think it is likely this year to be well under \$4,000,000. I cannot tell whether this is due to people smoking less or to the smuggling of cheaper opium into the Colony, but I suspect that the latter is probably the reason for the fall in our revenue. But that fall is in pursuance of the policy adopted by this Government for the reduction in the use of opium to the legitimate limits of the population.

We have to raise revenue to meet that loss and we have to raise revenue for carrying into effect absolutely necessary public works. It has been contended that part of these works—for example,

our road-making policy—is extravagant and unnecessary at the present time. I think that view is a mistaken one. The road policy—that portion of our road policy which has taken the shape of making roads in the hill district and eventually extending that system to the south side of the island—is a policy which I think future generations will recognise as a far-seeing one. With the great development of motor traffic and the enormous uses which can be made of these roads, it is essential that the ever-increasing population of the higher levels of this Colony should not remain dependent on one effective means of access, which is cut off absolutely for seven hours every day. I do not need to go into details to show what immense service that particular road system is going to be to the growing population. It has been in several cases of great service already. In the future it will be of vastly greater use. I know of no other item of expenditure to which objection can be taken. The building of quarters for Government servants, I consider, is a policy which should be supported with the greatest enthusiasm, and if it is considered at the present time that the class of house which is being erected is too expensive it must be remembered that these houses will require a very low sum for repairs and will stand for very many years more than would houses built at a lower cost and which would require either heavy and expensive repairs or need to be entirely rebuilt within probably the limits of the present generation. That part of our expenditure will bring in an income, although from an economical point of view the percentage is a low one, and cannot possibly be made an excuse for raising a loan. Our expenditure which has been thought in some quarters to be expensive is already millions lower than during the years of the war. We sent, I think, it is over one and a half millions sterling to His Majesty's Government for the prosecution of the war and when the need for sending that money had ceased it was obvious that we should reduce our expenditure. We have done so. Last year our expenditure was 14½ millions and our revenue was \$200,000 more—Hon. members have had figures during the last few days—and, therefore, our Budget more than balanced itself. We shall probably this year, I hope, again make our budget balance—probably have a balance on the right side—but we shall only achieve that by the sale of Crown lands. Such sales,

which are exempt from payment of military contribution, cannot be held to be revenue in the ordinary sense but are really drawing upon our capital resources. It is probable, therefore, that at the end of this year our balances will remain as they are at present and may even be slightly increased, but we shall have parted with some of our capital resources in the shape of Crown lands.

I, therefore, consider the suggestion that the Government is adopting a spend-thrift policy cannot possibly be sustained, and that the suggested policy of floating short term loans for paying for permanent public works would not be a wise one. The Bill, therefore, which is before you and the principle of which is to raise revenue, I hold to be entirely vindicated by our present position and with the amendments, which have been adumbrated by the Attorney-General will prove a measure which will inflict no sort of hardship upon the community.

HIS EXCELLENCY—It has been moved and seconded that the Bill intituled, An Ordinance to amend the Stamp Duty be read a second time.

On being put to the vote, HIS EXCELLENCY declared "The ayes have it."

THE ATTORNEY-GENERAL moved that the Council go into committee to consider the Bill clause by clause.

THE COLONIAL SECRETARY seconded, and it was agreed to.

On clause 3 the ATTORNEY-GENERAL moved to add the words "any other decree or order of any court" to sub-clause 9. This was agreed to.

On sub-clause 15, HON. MR. LAU CHU PAK moved that the words "with a banker" in the second line be deleted as otherwise any hypothecation to a person other than a banker would have to be stamped as a mortgage within the meaning of section 3 (19).

The ATTORNEY-GENERAL—I think the words ought to stand. I do not think other mortgages should escape merely because they are made in that form. In the present schedule the limitation does not occur. The present schedule reads "letter or other instrument hypothecation."

HIS EXCELLENCY—Is this a narrower definition?

THE ATTORNEY-GENERAL—Yes, this limits it. The original form of the proposal was to make all mortgages liable to full duty, but it was pointed out that would unduly hamper a regular part of the banker's business, and, therefore, this exemption of letters of hypothecation to a banker was inserted.

HIS EXCELLENCY—I think the intention is to keep the exemption as narrow as possible.

HON. MR. LAU CHU PAK—I do not press it.

HIS EXCELLENCY—If the hon. member does not press it, I think we will keep to the present clause of the Bill.

On sub-clause 19, the HON. MR. POLLOCK said—You do not say that a marketable security should be a mortgage. All the other sub-heads refer to documents dealing with securities.

HIS EXCELLENCY—Would it not be better to put in a sub-head?

THE ATTORNEY-GENERAL—That might be done if it would be more convenient. It amounts to the same kind of thing as a mortgage.

At the HON. MR. POLLOCK's suggestion it was agreed that sub-clause 19 should stand over in order that he might confer with the Attorney-General on the subject.

On sub-clause 29 relating to vesting orders, the ATTORNEY-GENERAL moved that it be omitted from the Bill and this was agreed to.

HIS EXCELLENCY—Clause 3 of the Bill will stand over for further amendment if necessary.

On clause 4, HON. MR. LAU CHU PAK said—Regulations (c) and (d) seem unnecessary in view of section 5 (7) and section 30 (3).

The ATTORNEY-GENERAL—Clause 4 (1) (c) gives power to make regulations for giving directions as to the manner in which any stamp duty is to be calculated or ascertained. The reference to regulations in clause 30 is intended to make it clear that that particular pro-

vision as to calculation of duty is liable to alteration by the Governor in Council.

HIS EXCELLENCY—The first one is absolutely general in character applying to the whole Ordinance and the second is particular.

THE ATTORNEY-GENERAL—Clause 5 is a clause which deals generally with stamp duty and provides that the duty described in the schedule shall be paid on the instrument. Sub-clause (7) is drafted chiefly with a view to Heading No. 11 in the schedule which is the duty on bank notes. It is not intended that bank notes should be stamped. The schedule provides that the bank note duty shall be paid to the collector by the banker on a statement made by the bank as to the average number of notes in circulation, and this sub-clause is meant to deal with that case, where the duty is not paid on an instrument but in some other way.

HIS EXCELLENCY—This is of a special nature, and it is clear that it is of a special nature.

HON. MR. POLLOCK—One is a general power; the other a particular power.

HIS EXCELLENCY—Clause 4 stands part of the Bill.

On clause 5, sub-section 5, HON. MR. POLLOCK said—The learned Attorney-General has already pointed out that he proposed to make amendments to clause 41. I think there is a similar amendment required for this so as not to make a person guilty of an offence simply if an instrument is not stamped, but to put in some provision with regard to his knowingly or wilfully authorising or committing the default. If this could stand over, perhaps I could confer with the Attorney-General. I think he would be willing to concede that some provision of that sort is necessary.

HIS EXCELLENCY—This is a civil offence.

HON. MR. POLLOCK—It is a criminal offence.

THE ATTORNEY-GENERAL—The difficulty is this: the intention is to bind someone to see to it that the duty is paid; neglect in this case as in many others should be an offence. It is dangerous to leave the door open to evasion. I think that criminal

liability ought to arise on mere neglect. There must be, of course, knowledge.

HON. MR. POLLOCK—There is civil liability and also a penalty.

THE ATTORNEY-GENERAL—Civil liability would be a totally inadequate remedy. You could only recover the actual duty on that particular transaction and nothing in respect of other evasions. It would be an invitation to everybody to evade the duty.

HON. MR. POLLOCK—Is there not a penalty?

THE ATTORNEY-GENERAL—He could be sued for the duty, plus the penalty.

HIS EXCELLENCY (to Mr. POLLOCK)—What is it you propose?

HON. MR. POLLOCK—Some words similar to those suggested by the Attorney-General in the case of clause 41 as in the Companies' Ordinance.

THE ATTORNEY-GENERAL—In the Companies Ordinance the company is always made liable for the default and the mere failure to comply. Mere neglect entails a criminal penalty on the company; the directors and partners are not liable unless they are knowingly a party. I put it that there ought to be a liability on somebody to see that a document is stamped and that there ought to be a penalty for neglect.

HON. MR. POLLOCK, as an instance of possible hardship, suggested that a banker's customer might fail to put the proper stamp on a cheque.

THE ATTORNEY-GENERAL replied that the banker did not issue the cheque form in that case.

HON. MR. POLLOCK suggested that he might discuss it with the Attorney-General and they might find some agreed form of language to provide that the penalty should fall on the person knowingly or wilfully evading the Ordinance.

THE ATTORNEY-GENERAL—I think the wording would be very dangerous. How are you going to prove that the man has done it "wilfully." Here you have a document which everyone knows ought to be stamped. You charge him with wil-

fully evading the duty and he says "it was not wilful; I was careless and did not bother."

It was agreed that clause 5 should stand over.

On clause 6 the HON. MR. POLLOCK said—I draw attention to the fact that the first sub-section renders an unstamped document wholly inadmissible in civil proceedings. That is a great departure from the law at home where documents can be admitted on payment of a penalty.

THE ATTORNEY-GENERAL—That is dealt with in a later clause. If a document or instrument is not stamped as it ought to be, it can be done by special leave.

HON. MR. POLLOCK—It is extraordinarily inconvenient. Are the whole proceedings in court to be held up while the party goes to the Collector, and possibly appeals from him to the Governor?

HIS EXCELLENCY—I think those in charge of the case would see that the documents are properly stamped.

HON. MR. POLLOCK—It seems to me rather cumbersome. It does not follow the wording of the English Act at all. I think if I had an opportunity of conferring with the Attorney-General we might arrive at a satisfactory wording. It is a very important point.

THE COLONIAL SECRETARY—I may point out, sir, that it has been the law of the Colony since 1901. I think it will make many people more careful. That is what it is designed for. Under section 12 of the old Ordinance the Court actually takes possession of the document and hands it over to the Collector.

It was agreed that the clause should be held over.

On clause 9, the HON. MR. LAU CHU PAK said this section was taken from the English Act in which there were the words "with intent to defraud Her Majesty." He thought some similar words should be inserted such as "with intent to evade the Stamp Ordinance."

HON. MR. POLLOCK—Could that stand over, sir?

THE ATTORNEY GENERAL suggested the addition of the words "with intent to defraud the Government," and the clause as amended by the addition of the words suggested was passed.

Slight verbal amendment was made to clause 14.

On clause 16 the HON. MR. POLLOCK said it had been suggested by the Chinese Chamber of Commerce that there ought to be an appeal to the Governor-in-Council from the Collector.

It was agreed that the clause should stand over, in order that words to provide this might be inserted.

Clause 17 was also postponed in order that the Attorney-General might draft a different form of words to protect bills of lading attached to drafts.

THE ATTORNEY-GENERAL announced that clause 21 relating to agreements of sale would be omitted, and consequently subsequent clauses would require to be renumbered.

On clause 23, which now becomes clause 22, the ATTORNEY-GENERAL proposed a new draft clause.

HON. MR. POLLOCK suggested that the clause should stand over to give members an opportunity to consider it.

HON. MR. LANG—I should like to suggest that this question of telegraphic transfers be held up for further discussion. A few minutes before coming into this Chamber the manager of one of the leading banks put certain information into my possession which makes it desirable that there should be no duty until the matter be further gone into. It has been represented to me that in the event of this taxation being brought into force one client alone of this bank would refuse to bring the firm's outstation collections to the Colony. It would mean a loss of twenty-five or thirty million dollars a year to the Colony.

HIS EXCELLENCY—How do they propose to finance these transactions?

HON. MR. LANG—This money is brought in from outstations to Hongkong to be sent home.

HON. MR. STEPHEN—I do not agree with the remarks of one of the leading bankers. I do not think there is any chance of the tax having the effect feared. It is a perfectly just stamp tax and is applied in other parts of the world. I am perfectly certain the Colony will not suffer.

HIS EXCELLENCY—And you think that the client would not be able to negotiate his business elsewhere?

HON. MR. STEPHEN—Only to a very small extent. He must come to the biggest market, which is Hongkong.

HIS EXCELLENCY—I will take the sense of the Council on the question of postponing the clause or not.

HON. MR. POLLOCK—I should be in favour of it being postponed simply because we have not had time to consider it.

HIS EXCELLENCY—We have been considering it for some time.

HON. MR. POLLOCK—The Hon. Mr. LANG has just brought before us some objection.

THE COLONIAL SECRETARY—We have had a very definite reply to the question raised by Mr. LANG.

HON. MR. STEPHEN—If this clause is to be allowed to stand over I shall probably not be here when it comes up and I should like to say that in my opinion it is a perfectly legitimate source for the Government to go for revenue and cannot possibly in any way effect the interests of the Colony.

HON. MR. POLLOCK—I was not, of course, disputing the hon. member's knowledge of the effect of the transaction generally. I only wanted to know the specific arguments on the subject.

HIS EXCELLENCY—Has the hon. member who moved that this clause should stand over any other material to show that this enormous body of business would be dealt with elsewhere and that for the sake of ten cents on every \$500 a man would take the chance of the market in these other places.

HON. MR. LANG—I have not had time to go deeply into the matter with

the banker who supplied me with the information. I mentioned it to the Hon. Mr. STEPHEN and he was inclined to discredit what my informant said.

THE ATTORNEY-GENERAL said that he had heard the same thing. Some business might be lost to the Colony. If the business came to Hongkong we would get the duty and if it did not we would not. There was a large volume of business which could not be driven away and on which they would get duty.

HIS EXCELLENCY remarked that they would not be driving it away if it could not be financed out of the Colony.

HON. MR. HO FOOK said that he would like time to consider it but would not be in the Colony when the Bill came forward again.

The question was put to the vote and HIS EXCELLENCY declared that the "ayes" had it, seven members having voted in favour of passing the clause and six in favour of postponement.

HIS EXCELLENCY—Clause 27 stands part of the Bill.

On clause 29 the ATTORNEY-GENERAL moved that the clause be omitted.

On clause 41 the ATTORNEY-GENERAL said a question had arisen on this clause regarding the words "who knowingly is a party to the failure to stamp." It had been suggested that the wording was not strong enough and did not imply any guilty knowledge or guilty intent on the part of the person failing to do certain things and that wording should be used such as that in the Companies Ordinance involving intention to default.

It was agreed that the clause should stand over for a form of words to be considered.

On clause 42, renumbered 40, the ATTORNEY-GENERAL moved that the clause be omitted and this was agreed to.

On clause 43, renumbered 40, the Hon. MR. LANG drew attention to the resolution of the Chamber of Commerce that "it is unnecessarily inquisitorial and should be redrafted in a modified form." He asked that it be postponed for redrafting.

HIS EXCELLENCY—What is the particular objection?

HON. MR. LANG—It is unnecessarily inquisitorial.

HIS EXCELLENCY—Was there not some difference of opinion? It was not generally agreed that the clause was of that nature?

HON. MR. LANG—It was not suggested from the Chair but from the body of the hall.

HON. MR. LAU CHU PAK said the Chinese Chamber of Commerce had suggested that power should be vested in a magistrate or the puisne judge.

HON. MR. POLLOCK—I think the suggestion was that there should be only entry after a search warrant had been applied for.

THE COLONIAL SECRETARY—The Collector has to get a warrant every time he wants to see the books of a firm.

HON. MR. POLLOCK—It is rather a serious matter if a firm can be invaded at any time by the Collector's office.

HIS EXCELLENCY—It has been said that this clause has no terrors for honest men.

HON. MR. POLLOCK—I think the Attorney-General would concede that there should be some safeguard with regard to the search warrant.

THE ATTORNEY-GENERAL—A delay sometimes results in a document not being found.

HON. MR. POLLOCK—I do not suppose any firm having any business to speak of would suddenly close its doors.

THE ATTORNEY-GENERAL—No, but it might make away with the incriminating document.

HON. MR. POLLOCK—All cases dealing with smuggling require a warrant when the existence of smuggling goods is suspected.

HIS EXCELLENCY—There are many cases in which there is power to inspect

without sworn information. Of course, all this is akin to smuggling.

HON. MR. BIRD—I do not think it is a question of honesty, but of the inconvenience a man might be put to quite unnecessarily. If the books were found all right and the stamps in order there is no redress.

HIS EXCELLENCY—It is not likely that any action will be taken without practical certainty that an offence has been committed.

HON. MR. POLLOCK—But the Collector can only have reason to believe.

HON. MR. STEPHEN—I think it leaves the public too much open to persecution at the hands of the Collector. He may be a very good man, but he may not be. If we were always in the hands of Mr. Messer we might always be quite content.

HON. MR. BIRD—It seems to me that if it is only to be an isolated action there is all the more reason why a warrant should be obtained and it would not take many minutes to get one.

It was agreed that the clause should stand over in order that it might be redrafted.

On clause 45 the ATTORNEY-GENERAL moved that the clause be amended as shown in a printed sheet of amendments laid on the table. These amendments were agreed to.

THE ATTORNEY-GENERAL moved a similar resolution with regard to clause 46 (renumbered 43).

HON. MR. POLLOCK—I should like to know what these words "or attempts to commit" are intended to cover. What sort of a case?

THE ATTORNEY-GENERAL—Say, an attempt to destroy a book of account to evade the duty. That would be a case covered by the words.

HIS EXCELLENCY—Or going into a room and seeing a person attempting to throw a document into the fire.

The clause as amended was passed.

The Adjournment

HIS EXCELLENCY—We will leave the Bill in committee and meet again on Thursday, at 2.30.

HON. MR. STEPHEN—Am I in order in referring to clause 29? I think the clause unworkable and it has been wisely abandoned, but I would like to know if the Attorney-General intends to take notice of the Sharebrokers' Association suggestion that it should be compulsory to transfer shares in the name of the owner before claiming dividend.

HIS EXCELLENCY—That is to try and obviate the old difficulty of dividends going to the wrong persons. It is a question whether it can be done in a stamp ordinance. It may be a most desirable thing.

HON. MR. STEPHEN—You would get more revenue from your transfer by stamps.

HON. MR. POLLOCK—There is also a difficulty in various companies when certain people are registered as trustees for certain other people.

HIS EXCELLENCY—I do not think that it properly comes in a stamp bill.

THE ATTORNEY-GENERAL—It would tend to produce a little more revenue from transfers but not a great amount.

HON. MR. STEPHEN—I was only suggesting that as a means by which the revenue might receive a substantial increase.

HIS EXCELLENCY—In place of getting this we have raised the rate on share contract notes, at the instance of the brokers themselves. It is an expression of their great relief in getting rid of this section.

HON. MR. STEPHEN—Yes, they did.

HIS EXCELLENCY—What is the sense of the Council as to making some provision in this Bill?

THE ATTORNEY-GENERAL—If you like, sir, I will try and draft something.

HIS EXCELLENCY—I think we have made this Bill as little obnoxious as it can be made as a revenue-producing machine, and I think it would be better to keep clear of anything that would hamper it. Does the Council wish the Attorney-General to draft anything or not? I think not.

The Council then adjourned until April 28th, at 2.30 p.m.

FINANCE COMMITTEE.

A meeting of the Finance Committee was held immediately after the Council, the COLONIAL SECRETARY presiding.

The Telephone Co.

H.E. the Officer Administering the Government recommended the Council to vote a sum of \$5,000 on account of Miscellaneous Services, payment to Messrs. Lowe, Bingham & Matthews for professional services in connection with report on the China and Japan Telephone and Electric Co., Ltd.

THE CHAIRMAN—This sum was, of course, not provided in the Estimates but it was asked that Messrs. Lowe, Bingham & Matthews should make a report on the value of the buildings, plant, and goodwill separately, of this undertaking, and it was proposed that the Government should pay for it.

HON. MR. POLLOCK—I hope the public will have an opportunity of seeing this report for which they are paying \$5,000.

THE CHAIRMAN—I do not think it will be impossible to publish this report, but His Excellency was not able to say at the time he spoke.

The minute was approved.

A Railway Vote

H.E. the Officer Administering the Government recommended the Council to vote a sum of \$3,337 on account of Kowloon-Canton Railway, special expenditure, Ramapo switch stands.

THE CHAIRMAN—These were to be procured last year and they were not actually procured. The manager of the railway was proposing to put it in the Estimates for this year. A special warrant was actually taken last year. These switches have now arrived but they were not allowed for in this year's Estimates, and this is in the nature of a re-vote.

The vote was approved and the Committee rose.