11TH JUNE, 1908.

PRESENT.—

HIS EXCELLENCY THE GOVERNOR:—SIR FREDERICK JOHN DEALTRY LUGARD, K.C.M.G., C.B., D.S.O.

HIS EXCELLENCY MAJOR-GENERAL BROADWOOD (General Officer Commanding).

HON. MR. F. H. MAY, C.M.G. (Colonial Secretary).

HON. MR. W. REES DAVIES, K.C. (Attorney-General).

HON. MR. A. M. THOMSON (Colonial Treasurer).

HON. MR. W. CHATHAM, C.M.G. (Director of Public Works).

HON MR. E. A. IRVING (Registrar-General).

HON. COMMANDER BASIL R. H. TAYLOR, R.N. (Harbour Master).

HON. DR. HO KAI, M.B., C.M., C.M.G.

HON. SIR HENRY BERKELEY, K.C.

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

HON. MR. WEI YUK.

HON MR. H. W. SLADE.

HON MR. MURRAY STEWART.

MR. C. CLEMENTI (Clerk of Councils).

Minutes.

The minutes of the previous meeting were read, and confirmed.

Finance Minutes.

THE COLONIAL SECRETARY, by direction of H.E. the Governor, laid on the table the report of the Finance Committee (No. 9) and moved its adoption.

THE COLONIAL TREASURER seconded and the motion was agreed to.

The American Fleet.

HIS EXCELLENCY—Before we proceed with the business of the day I propose to read a telegraphic correspondence respecting the invitation to the United States Fleet to visit Hongkong which has passed between the Secretary of State and myself. On 1st April I telegraphed to the Secretary of State as follows:

> "Propose, if His Majesty's Government concur, invite American Fleet to Hongkong."

The Secretary of State replied on the 8th April:

> "Your telegram of 1st April Invitation will be communicated to U.S. Government."

There was a further telegram from the Secretary of State on 25th April, as follows:

> "Your telegram of 1st April. U.S. Government accept invitation."

I telegraphed again to the Secretary of State on 6th June:

> "American Consul-General informs me latest news from Washington American Ships of War do not contemplate visit to Hongkong. See your telegram of April 25th."

The Secretary of State replied on the 10th June, viz, yesterday:

> "U.S. Government regret that it will not be possible for Fleet to visit Hongkong owing to necessity of returning home by a certain date."

The Appropriation Bill.

THE COLONIAL SECRETARY moved that the Council go into committee on the Bill entitled an Ordinance to authorise the appropriation of a supplementary sum of $166,735.85 to defray the charges of the year 1907.

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

The Bill passed through Committee without amendment.

Chemists and Druggists Ordinance.

THE ATTORNEY-GENERAL — With regard to the committee stage of the Bill entitled "An Ordinance to provide for the Registration of Chemists and Druggists," which was adjourned at the last meeting of Council in order that I might have an opportunity of conferring with a number of

persons in reference to a certain amendment, I may add that the Principal Medical Officer and myself have arrived at an agreement but the clause needs to be redrafted. I would, therefore, suggest that the committee stage be deferred until next week.

Agreed to.

Public Health and Buildings Ordinance.

The Council went into committee on the Bill entitled an Ordinance to amend the Public Health and Buildings Ordinance 1903 and the Public Health and Buildings Amendment Ordinance 1903.

HIS EXCELLENCY—We adjourned the consideration of clause 44 at our last meeting of Council in order that the unofficial members might have a little more time to consider the provisions of the new clause. The amendment in its present form had only just been received from the printers shortly before the Council met, but I understood that it had been shown by the hon. and learned member on my left (Mr. Pollock), to the unofficial members and I had hoped that they would have had time to grasp its principles. They are in brief that the Government should accept responsibility for all compensation due to the owner of the house which is demolished, together with the cost of demolition, while the owners of the two adjoining houses should be liable for the cost of making lateral windows and any alterations which might be necessary to the two inner walls if they required to be strengthened. They will be responsible solely for improvements to their own property and will incur no liabilities as regards the other houses. I am told that the proportion of cost falling upon the Government and upon the owners respectively works out at about $5,000 to the Government, as against $1,200 to each of the owners of the adjoining houses. The Government therefore bear two-thirds of the cost of the entire improvement, instead of one half as was proposed by the senior unofficial member in speaking to his resolution last June. The Government proportion would be still higher if the two inner walls did not require to be strengthened. I am taking the maximum cost to the owner of adjoining houses.

In considering this scheme I would ssk you to do so from three different standpoints. The first is: Will the scheme depreciate property, make the title uncertain, and deter investors and mortgagors? Assuming the capital spent on the improvement to be $1,200, if the interest on that sum were added to the rental of the property it would no doubt be viewed as an extra encumbrance, the equivalent of an additional ground rent. To meet this objection it has been proposed that the owner should have the option of paying the entire sum at once, or of carrying out the work at his own expense. To this proposal I have no objection whatever; in fact the Government would welcome such action. The owner then, by paying this sum down, obtains an improvement of more than double the value of what he expends and his houses are legally able to accommodate 42 instead of 38 persons, and this increased rental he alone derives the advantage of. It was argued by the hon. member who represents the Chamber of Commerce that it was strange if there was such an advantage that the scheme had not been long ago adopted by owners of property. The Colonial Secretary pointed out in reply that the advantage I described could not be obtained until the clause in the bill which allows for the reduction of the cubic space per person in rooms opening to external air had been passed. That clause in fact was amended as part of the present scheme. I also pointed out myself that unless the three houses were in the same ownership it would be very difficult for the owner of any single house to take action in this direction without the intervention of Government. It is at the option of the owner to pay the comparatively small sum at once (obtaining in return increased living space and the improvement of his property), thereby freeing his title from any new encumbrance. I think therefore the clause should recommend itself to owners of property.

The second point of view is: Is this measure calculated to improve the sanitary condition of the city? The answer to this question was abundantly supplied in the speech by the hon. and learned member on my left (Mr. Pollock) this time last year, and also in the speech of the senior unofficial member (Dr. Ho Kai) in speaking on his resolution in the following debate, and also by the verdict of the Cubicle Committee.

All agreed that it was the best scheme yet put forward from a sanitary point of view, as apart from the financial and structural side of the question. The policy of very costly resumptions adopted in the past has not been a successful policy. It has involved the taxpayers of this colony in enormous sums of money, and as a matter of fact the property resumed has for the most part remained on the hands of the Government. Moreover a resumption scheme is of necessity a very large scheme and one which involves an immediate large capital outlay, whereas the scheme we are discussing is one which can be done gradually, block by block as may be found necessary in any particular locality. It was further urged by the hon. member who represents the Chamber of Commerce (Mr. Stewart) that the roof of the third house might become the receptacle for rubbish thrown from the windows of the adjoining houses. I think it should not be beyond the resources of the police and of the Police Courts to deal with this matter by the infliction of fines or other punishment, nor, I am told, has it occurred in those blocks in the Colony which have already been built on this principle. It has also been said that the roof would be certain to leak. That is a question for the engineers and I am not aware they have raised it as an objection. Personally I think a roof with a very low pitch which would not obstruct the light and air from the lateral windows would best meet the difficulty.

The third point of view from which I ask you to consider this clause, is: Will this scheme involve the Government in a heavy expenditure beyond the resources of the Colony? I have already pointed out it is much less costly than the present alternative of resumption and that it can be applied piecemeal. I invite your attention to the fact that the clause reserves to the Govornor-in-Council the right to put the scheme into operation or not. It cannot be forced upon the Government either by an owner anxious to secure the improvement of his property on the one hand, or on the other by the Sanitary Board anxious to improve the general sanitation of the Colony to an extent which the revenue cannot bear. I think therefore that the scheme has much to recommend it from every point of view and I trust that members of Council will adopt it unanimously in principle, though in detail suggestions will be welcome more especially with regard to the recovery of the cost which falls upon the owner.

Hon. Mr. STEWART — Speaking as the mover of the rejection of this clause, I desire to make certain admissions. I admit that I did not fully appreciate the extent of the concession made by the alteration introduced into it. For that I submit the Unofficial Members are not to blame. It was not until the meeting had actually opened that the new draft of the clause was passed along to where I sit, and a lack of comprehension in understanding of its contents was entirely excusable under the circumstances. The terminology is not of so simple an order that he who runs may read. It is true that the concession made in no way affects either the structural difficulties on which I dwelt, or the objection which I put forward on sanitary grounds. As regards the structural difficulties I am willing to withdraw my objections in view of the frank acceptation of the Government's responsibility in the matter of providing against the attendant risks—a matter in which the Colonial Secretary has practically staked the reputation of the Director of Public Works. And as regards the prospect of the wells formed by the demolished upper stories being treated as convenient receptacles for shot rubbish by the occupants of the flanking houses, it has been represented to me that this aspect of the question will naturally engage the attention of the Sanitary Department, for which, under its new executive head, the Government will be equally responsible. But the concession made does affect that aspect of the question upon which I laid most stress. It does minimise the objection which I raised to the introduction of a new and undesirable element of uncertainty into the conditions of the ownership of property. I say it minimises the objection. The element of uncertainty remains, but it is obvious that a contingent liability to contribute towards the cost of improvements is less of an objection than a similar liability to contribute towards the cost of improvements and compensation as well. The degree of objection originally raised, on the score of the prospective financial effect upon property, to the scheme as previously outlined, was held to warrant the deletion of the clause, not only in my opinion, but in the opinion of many who are recognised as the accredited

unofficial authorities on questions relating to property in this Colony. I understand that the opinion of these recognised authorities on property has undergone considerable modification as a result of the concessions made in the matter of compensation, and that, in their opinion, the remaining objection is not serious enough to warrant continued opposition to the proposal. In these circumstances, I do not feel justified in pressing my individual objection to the clause on this ground. I object in principle to the imposition of vague and indefinite contingent liabilities upon any property of any kind, unless it can be shown to be an absolute necessity of the public welfare. I am not persuaded that this necessity has been made out. But I am not prepared to ride my own idea to the death. This view of the matter is now, I understand, shared by my unofficial colleagues. But though we are agreed about this, we are also agreed in viewing with a certain amount of uneasiness the nature and extent of the power which the clause as it stands puts into the hands of the Medical Officer of Health. However well assured we may feel that the present occupants of the offices upon which the responsibility rests are worthy of our unquestioned confidence, we cannot commit the community to indefinite trust in the future, and I, for one, think, and I hope others will support me in saying, that the public would prefer to have the practical working of the clause made subject to public discussion. Publicity can be obtained for discussion upon it by reverting to the original wording of the clause as it stood in the draft of the bill dated 5th May, which placed the initiative with the Medical Officer of Health. It was for him to represent to the Sanitary Board, and for the Sanitary Board, if they approved of his proposals, to pass on a recommendation in writing to the Governor-in-Council. There seems to be no good reason why the Government should seek to throw a veil of secrecy over the reasons advanced by the Medical Officer of Health for the demolition of insanitary property. I am very ready to recognise the necessity that exists for many kinds of State business being conducted with the secrecy that can alone ensure despatch, but business of this sort does not seem to create any necessity for either secrecy or despatch. Of course, if the Governor-in-Council had to confess his inability to carry out the recommendation of the Sanitary Board, owing to the state of the local exchequer, he might conceivably prefer the Executive Council with its closed doors, as a confessional box, but I think the community have a right to be consulted in such a case. In such a case the Governor-in-Council would be able to throw the responsibility back upon the community. He would merely have to state his reason and to put the problem thus for the consideration of the taxpayers of the Colony: "If you think the work of demolition sufficiently urgent to justify me in imposing fresh taxation, I am willing to impose fresh taxes. It is a matter for the Colony to decide." There would be a public benefit, inasmuch as it would saddle public criticism with the weight of the proposed increase in the burden of taxation and would be a useful means of testing the sincerity of any outcry made for drastic measures. Publicity in such matters should be encouraged. Discussion in such matters should be encouraged. And both publicity and discussion should be welcomed by the Government in all matters in which their actions are unhampered by inconvenient orders from Home. If the Government are prepared to accept the suggested amendment in the spirit in which the suggestion is made, it will be an earnest that the unofficial members have not been unduly confiding in agreeing to withdraw the motion for the deletion of the clause. Before withdrawing it we should like to have a statement on this point. I desire to make an advance which will honourably cover a retreat, but before moving off the ground I wish to be assured of the amicable intentions of the Government. (Applause.)

HIS EXCELLENCY—In reply to the speech which the member for the Chamber of Commerce has just made I would say that I was about to propose to alter the words "Medical Officer of Health" to the "head of the Sanitary Department." I assure the hon. member most strongly that the object of inserting the words "Medical Officer of Health" instead of "Sanitary Board" did not arise from any desire for secrecy; the desire was to avoid the possibility of friction. When representations have been made in the past by the Sanitary Board to the Governor-in-Council, since the meetings of the Executive Council are not public, the full reasons for acceptin

their recommendations have not been understood. But the Governor-in-Council has no desire for secrecy, and as the sums which will be required for resumption would appear in the Estimates for the year and would have to be voted by this Council, the matter would then be discussed as publicly as the Council wished. If the unofficial members think this is not sufficient I should be quite willing to accept the amendment proposed by the hon. member. But I would wish you to consider the point and mature your views as to whether sufficient publicity is not already ensured by the fact that any money required for the resumption of property must appear on the Estimates for the year and be voted upon by this Council. That would seem to dispose of the objection that there would be undue secrecy.

THE HON. MR. STEWART—May I say I did not suggest that it was the intention of the new clause to ensure secrecy, but that it had the effect of concealing what was going on from the public, and I saw no reason for that.

HIS EXCELLENCY—As you pointed out, such a matter would not be rushed through in haste. The formal recommendation would come to the Government from the Head of the Sanitary Department and the matter would be discussed at some length.

THE HON. MR. STEWART—I see an advantage in giving the representatives of the public who sit on the Sanitary Board, whose special province it is to deal with these matters, an opportunity of expressing their views and letting the public know what is proposed to be done.

HIS EXCELLENCY—I fully see the force of your argument, but it was desired to eliminate from this Bill all possibility of friction. That was the real motive in putting in the words "the Medical Officer of Health," and that he should make the formal recommendation to the Governor-in-Council in the first instance. If it is the unanimous wish of members that the Sanitary Board should be inserted in place of the Medical Officer of Health or (as I propose) the Head of the Sanitary Department, the Government is willing to do so.

THE HON. MR. STEWART—Pardon me. Not instead of, but in addition to the Medical Officer of Health. We desire the initiative to come from the Medical Officer of Health. We also desire that it should be clear that the last word in the matter should be with the Governor-in-Council.

HON. MR. SLADE—It is quite clear.

HIS EXCELLENCY read the proposed section 154a (1).

The section was agreed to as read.

HON. MR. STEWART—It leaves out the provision for the statement in writing to the Governor-in-Council.

HIS EXCELLENCY—Yes. We will retain the words. "The Board may apply in writing to the Governor-in-Council" who may direct the demolition.

THE HON. DR. HO KAI suggested that the words "and secure" be added after the word "Health" and this was agreed to.

THE HON. MR. POLLOCK—There is an amendment I want to move on the first section. It is stated that the compensation shall be paid by the Government to the owner. In the event of the building being subject to a charge or mortgage, I would like the rights of mortgagees to be protected.

THE ATTORNEY-GENERAL — The compensation shall be paid to "such persons," leaving it to the owner and those persons to arrange.

THE HON. MR. POLLOCK—We wish to put it to whom the money should be paid.

HON. SIR. HENRY BERKELEY—It would be rather difficult for the Government to ascertain the various owners and mortgagees.

THE ATTORNEY-GENERAL pointed out that the word "owner" had a definition in the Ordinance which had a very general character indeed, and added that the suggestion of Mr. Pollock might be met by leaving out the word "owner" altogether. The arbitrators would award the compensation to the persons legally entitled.

THE HON. MR. POLLOCK said it was desirable that some proviso should be inserted.

HON. SIR HENRY BERKELEY said that it was a serious obligation to impose upon the Government the duty of ascertaining to whom the money was to be paid. It was safer to allow the Bill to stand as it was.

HON. MR. STEWART—The owner will have to establish his claim before he is compensated.

HIS EXCELLENCY—Yes.

THE DIRECTOR OF PUBLIC WORKS—Such matters usually pass through the Crown Solicitor who satisfies himself as to the right of the parties.

HON. MR. STEWART—Another argument in favour of publicity.

HIS EXCELLENCY—The Government will satisfy itself through the Crown Solicitor that the money goes to the proper parties.

THE ATTORNEY-GENERAL — Does the proposed amendment meet your view?

HON. MR. POLLOCK—No, I think there ought to be some reference to the mortgagee or to any charge upon the property.

HIS EXCELLENCY—I don't think we can accept that responsibility. Do you wish to press it to a division?

HON. MR. POLLOCK—No. On further consideration I think it would be better if the section read "compensation to be paid by the Government in respect of such buildings."

THE ATTORNEY-GENERAL — The arbitrators cannot inquire into the rights of mortgagees.

The amendment was subsequently agreed to.

THE COLONIAL TREASURER moved certain amendments in section 154 a (2), which were accepted, and clause 44 as amended was passed.

HIS EXCELLENCY—It is proposed to repeal subsections 1 and 2 of section 69 and substitute the following:

"(2) The Building Authority shall within 28 days of the submission of such plans and drawings notify the person submitting the same or his architect or other representative of every matter in respect of which such plans and drawings are not in accordance with the requirements of this Ordinance and of all byelaws and regulations made thereunder, and if the Building Authority does not within such period of 28 days so notify any such matter, the building or works shown in such plans and drawings may be commenced in the same manner as if the approval of the Building Authority had been received: provided that in the event of such plans and drawings having been withdrawn during such period of 28 days by the person submitting the same or by his architect or other representative from the office of the Building Authority for alteration the said period of 28 days shall be calculated from the date of the final submission of such plans and drawings.

"(3). If the Building Authority shall within such period of 28 days notify the person submitting the plans and drawings or his architect or other representative of any matter in respect of which such plans and drawings are not in accordance with the requirements of this Ordinance or of any byelaw or regulation made thereunder, and if such plans and drawings shall be amended by the person submitting the same or his architect or other representative, the Building Authority shall approve or disapprove of such amendment within a period of fourteen days from the time the amended plans and drawings are deposited with him, and if he shall not signify his approval or disapproval within such period of 14 days the building or works may be commenced in the same manner as if the approval of the Building Authority had been received."

It is also proposed to insert a new subsection as sub-section (4) which merely confirms the existing practice. It is as follows:—

"(4). All plans and drawings submitted to the Building Authority and not disapproved by him under s.s. 2 or 3 shall be deposited in his office and filed there."

The amendments were agreed to, and the other sub-sections were re-numbered.

On clause 84, which deals with the question of appeal to the Governor-in-Council,

THE ATTORNEY-GENERAL said he understood that several amendments would be moved to that clause. The object of the clause was to make appeals to the Governor-in-Council easy, and he proposed to insert certain words extending the section and making it general. It would also be desirable to add some words in order to ensure that those appeals should not go to the Governor-in-Council in cases where the matter would go before a Magistrate, as for instance the question of nuisances, which the Ordinance provided should be dealt with summarily.

THE ATTORNEY-GENERAL read the alterations he suggested and they were agreed to, without discussion.

THE HON. SIR HENRY BERKELEY said that the effect of the section in giving the right of appeal to the Governor-in-Council was to constitute the Executive Council a judicial tribunal. Parties who came before that tribunal ought to have every facility for putting their cases fully before it. It was necessary that the appellant should know the respondent's case and have an opportunity of answering it when it came before the Governor-in-Council. It was also necessary that the appellant should have time to prepare his case to meet the case put forward by the respondent, and he suggested that the clause should include a proviso affording the appellant the time that is necessary and the information that is requisite to enable him to put his case before the Council in such a shape as will enable the Council to come to a proper decision. He would move that at the end of the clause the words be added:—

> "The Clerk of Council shall give the appellant seven days' notice of the hearing of the appeal and shall at the same time furnish the the appellant with copies of all minutes and documents submitted on behalf of the respondent for the consideration of the Governor-in-Council."

THE ATTORNEY-GENERAL said that the word "minutes" would not involve the minutes that passed between the Governor and the Colonial Secretary.

THE HON. SIR HENRY BERKELEY replied that any documents that would be likely to influence the Governor-in-Council in his decision ought to be supplied.

THE ATTORNEY-GENERAL said that minutes were privileged. He would suggest "that all information and documents submitted" should take the place of the proposed phraseology.

HON. SIR HENRY BERKELEY agreed to take out the word "minutes."

THE COLONIAL SECRETARY said the Director of Public Works furnished reports in such cases. It was those reports that they wanted.

HIS EXCELLENCY said he was afraid the papers would become too voluminous, and that the course proposed would involve unnecessary clerical work.

THE COLONIAL SECRETARY suggested the words "evidence and documents."

This was agreed to.

THE ATTORNEY-GENERAL in moving the insertion of a new section 265a, said there were certain amendments which he desired to insert in the clause and there were other amendments submitted which he was not prepared to accept. Where a magistrate is asked to state a case, it is stated by the judicial authority himself, and it is possible that an instance might arise as to the actual point for consideration to the Full Court. The Governor-in-Council might press a certain aspect of the case to engage the attention of the Court and the appellant or Building Authority might take a different view. In view of any dispute arising out of any question on which the Court was asked for direction the Court should have an opportunity of settling the cases upon which their opinion is to be given.

HON. SIR HENRY BERKELEY said it was the intention of the Bill that when the opinion of the Court had been delivered the Governor-in-Council would act in accordance. That should be stated clearly, and he would ask the Attorney-General to accept an addition to the clause giving effect to that.

HON. MR. POLLOCK remarked that it seemed a curious procedure to have the opinion of the Court remitted to the Governor-in-Council.

The COLONIAL SECRETARY explained that this procedure was taken from the London Building Act. The tribunal in London consisted of three experts, who might on their own initiative, when doubt arose as to a point of law, take the cases to the High Court, or they might be compelled by the appellant to state a case for the High Court. The High Court then remits the case to the tribunal.

THE ATTORNEY GENERAL said the object was to get a decision on the subject. The words read—"The Court shall remit the matter to the Governor-in-Council with the opinion of the Court." It was perfectly obvious the Governor would act on the direction of the Court. He thought the amendment was wholly unnecessary.

HON. MR. POLLOCK moved an amendment that in lieu of the words "shall remit the matter to the Governor-in-Council with the opinion of the Court on the case stated" there be substituted the words "and shall have power to enforce such determination by mandamus, injunction, prohibition or other order." The object of this amendment was to give to the Full Court power not only to give an academic opinon upon a question of law submitted to it but, if necessary, to enforce that order in the proper way. It was obvious that it was of no use asking the Governor-in-Council to direct a case to be stated for the opinion of the Full Court unless the Court had conferred upon it the necessary power to enforce its decrees. Notwithstanding the explanation of the hon. Colonial Secretary he thought it was absurd that a case stated should be referred back to the Governor-in-Council. The procedure to be followed presupposed that the Governor-in-Council has taken a certain view upon certain provisions which the appellant disputes and he asks that the matter shall come before the Full Court. From that moment the matter should vanish out of the jurisdiction of the Governor-in-Council entirely. The Full Court stated an opinon upon the case stated and he could not see the smallest reason for the matter being remitted to the Governor-in-Council.

THE COLONIAL TREASURER asked how a mandamus would be enforced upon the Governor.

HON. MR. POLLOCK replied that the mandamus would be enforced against the parties to the proceedings.

HON. SIR HENRY BERKELEY said that in view of the unwillingness or inability of the Government to accept his amendment he thought it was advisable to insert words to secure the protection of the interests of the appellant, and he considered that the Government should accept Mr. Pollock's amendment. Unless some clause of that kind were put in giving the remedy suggested by Mr. Pollock, the clause would become a dead letter. It was a principle that the High Court would not issue a *brutum fulmen*, would not express an opinion, would not issue a decree which it could not enforce, and therefore if the Bill passed in that particular shape the Court might refuse to exercise the jurisdiction conferred upon it because it could not ensure obedience to any judgment it might deliver. He thought it would be an easy way out of the difficulty were Mr. Pollock's amendment to be adopted.

THE ATTORNEY-GENERAL said he should like members to consider the effect of the amendment proposed. In reply to Sir Henry Berkeley he would say that their reason for not accepting such an amendment was that they considered it unnecessary. He did not wish to cast any reflection on the suggestion, but if the amendment were carried it would make the appeal to the Governor-in-Council a farce. Personally he should always advise the Governor-in-Council to follow the ruling of the Full Court. He did not agree with the observations of his hon. and learned friend as to the attitude which the Court would adopt. Cases were stated for the opinion of the Court and the Court could not refuse to exercise its discretion. The Ordinance expressly provided that upon a case being stated the Court shall give certain advice to the Governor-in-Council and shall remit the matter to the Governor-in-Council. That was according to statute, and he was quite sure no Court would refuse to act upon it. What the result might be did not concern the Court, but the Governor-in-Council. It was suggested by the mover of the amendment that the Building Authority being a Government official it would be necessary to enforce the order of the Court by mandamus, but he submitted that was absolutely un-

necessary. Sir Henry Berkeley had referred to the clause as being a dead letter, but when the Legislature had imposed duties npon the Governor-in-Council of an exceptional nature —he might say without precedent—consituting it a court of appeal, clothing it with legal jurisdiction, it was idle to say that the Governor-in-Council would ignore the opinion of the Court which it had asked for, or that an official of the Government would not act upon it. If parties having appeared desired a mandamus or prohibition against any of the parties concerned they had the remedy which the law gave them. The object of the clause was to ensure that the Governor-in-Council should have the highest possible advice on any point of law, and, speaking for himself, he considered the amendment wholly unnecessary.

HON. SIR. HENRY BERKELEY said that if the Attorney-General was of the opinion—which he would not dispute—that parties would continue to have after the passing of that Ordinance the right to bring any action for mandamus or injunction, the amendment might be allowed to drop, and he would move an amendment at a later stage safeguarding the rights of parties to bring actions for mandamus or injunction under the ordinary course.

THE ATTORNEY-GENERAL replied that he had no objection to that.

HON. SIR HENRY BERKELEY added "nothing herein contained shall exempt any person from bringing any action or any other proceeding for mandamus, injunction or prohibition."

THE ATTORNEY-GENERAL said that must not be taken as interfering with section 269 of the Principal Ordinance. It must not be taken as limiting the effect of that section.

HON. SIR HENRY BERKELEY said he did not wish to do that. The Legislature should leave nothing in doubt, and that was why he moved this further amendment. He wished it to be clear that the Bill did not take away the rights of the individual to go to the Court for a mandamus, prohibition or injunction, and that the only thing that shall be taken from him is the right to bring an action to recover damages against the officers protected by the Bill.

HON. MR. POLLOCK, in reply to the Attorney General, said that the persons whose discretion was referred to in the Bill included more than the Building Authority. It referred to the Sanitary Board and any other person who had power given to him under that Ordinance. He did not consider that his argument had been met as to the absurdity of referring the matter back to the Governor-in-Council from the Supreme Court, and he was afraid he must ask for a division upon his amendment.

HON. SIR HENRY BERKELEY suggested that the Attorney-General should consider that when the Bill became law there would be erected in the Colony a new tribunal acting outside the common law in pursuance of statutory powers conferred upon it. With all respect to the Executive Council, he was bound to say that that court would be a court of inferior jurisdiction. The Supreme Court was the High Court exercising jurisdiction over all inferior courts.

THE ATTORNEY-GENERAL said that the proposal was to authorise the Governor-in-Council to obtain the decision of the Supreme Court, and it was presumed by the amendment that the Governor-in-Council having asked for it might not act upon it, and that the Court was to issue a mandamus to enforce obedience. All he could say was that he would regard the appeal to the Governor-in-Council futile if such a course were to follow.

HON. MR. POLLOCK said that was a reason for accepting his proposal.

HON. SIR HENRY BERKELEY said that when it came to determining the rights of the inhabitants of the Colony the only proper tribunal was the Supreme Court. What unofficial members desired was to provide a safeguard that the Governor-in-Council would give his decision in accordance with law. He thought they should require the Governor-in-Council to act upon an opinion pronounced by the Supreme Court.

THE ATTORNEY GENERAL asked if the speaker could give a precedent for the order of mandamus or prohibition following on a special case stated.

HON. SIR HENRY BERKELEY replied that there was no precedent for the decision of a point of law by the Executive Council.

THE COLONIAL SECRETARY said he thought they were getting away from the first principles. One of the first principles was to render the procedure in dealing with plans and everything connected with buildings as easy and speedy as possible. That was one reason why the Government was not able to accept the principle of referring questions in dispute to the Supreme Court. No doubt legal men thought that the only proper tribunal was the Supreme Court. He had heard it stated that among property owners there was no love for the suggested procedure. The existing procedure for appeal to the Governor-in-Council, which had given considerable satisfaction, had been modified, and in order to amplify it, provisions had been inserted giving the appellant and the Governor-in-Council power to seek the advice of the Supreme Court on points of law. It seemed to him that the procedure in the clause was simpler, cheaper, more expeditious, and more efficacious than the procedure suggested by the amendment.

HON. MR. STEWART said it seemed to him that the objection to embody the principle of the amendment in the Bill was a sentimental one.

HON. SIR HENRY BERKELEY said that the action of the Executive Council as a tribunal was liable to the review of the Supreme Court.

HIS EXCELLENCY said that the Governor-in-Council might under the proposed clause be called upon to state a case for the Supreme Court where a question of law was in dispute. The Governor-in-Council was not constituted as a legal tribunal, and legal points would be referred to the Supreme Court. Clearly the meaning of the section was that in such a case the judgment of the Supreme Court would be operative.

The division was then taken. There voted:

For the amendment—Hon. Mr. Slade, Hon. Sir Henry Berkeley, Hon. Mr. Stewart, Hon. Mr. Pollock, Hon. Mr. Wei Yuk, and Hon. Dr. Ho Kai.

Against the amendment—The Harbour Master, the Registrar General, the Director of Public Works, the Colonial Treasurer, the Attorney General, the Colonial Secretary and H.E. the General Officer Commanding.

The amendment was declared lost.

Clause 86 and 87 were then passed.

On clause 88,

The ATTORNEY GENERAL moved certain amendments the effect of which, he said, was to take away the right to claim compensation for damages for loss sustained through the action or inaction of the Building Authority in his personal capacity on the principle of giving the Building Authority a like protection to that afforded to the persons protected under section 269 in all cases where he acts *bona fide* in the exercise of the duties of his office.

HON. SIR HENRY BERKELEY said it would be important to bear in mind that there was no provision made for compensation to be paid by the Government to any individual who suffered loss by the act of the Building Authority. It might be wrong: it might be right. There was the fact. The amendment which he wished to make later was to preserve certain rights to enable persons to enforce their rights in other directions than that of recovering damages against the Building Authority.

THE ATTORNEY GENERAL replied that this section was based on the Public Health Act of 1875, the Imperial Act, which laid down the principle that no action could be brought against an officer who acted in the exercise of his duty, and it was proposed to put the Building Authority here in the same position as a municipal employee at home.

HIS EXCELLENCY said that in consequence of the new sections 84 and 85 they had now a further protection. Where anyone was in dispute with the Building Authority he could appeal to the Governor-in-Council, and, if on a point of legal interpretation, could have a case stated for the Full Court. Surely that was sufficient protection.

Clause 88 was then passed.

Clause 89 was deleted as it had been introduced into the Pharmacy Bill.

HON. SIR. HENRY BERKELEY proposed a new clause, number 90, which he understood the Attorney General would accept. Its object was to do for the subject what clause 271 of the Principal Ordinance did for the Crown: it preserved rights. The Attorney General had expressed the opinion, with which he did not disagree, that the effect of section 269 was to prevent action being brought against any officer for acts done *bona fide*, but if *mala fides* could be established they could still proceed against him. He had heard the opinion expressed that if the Building Authority acted *bona fide* they might still bring an action against him personally, though not in his official capacity.

THE ATTORNEY-GENERAL said he did not think so.

HON. SIR HENRY BERKELEY said he was not going to give an opinion on that, nor was it necessary to do so for present purposes. All he wished to do was to see that all the rights now possessed by the public were retained, and that they should be entitled to appeal to the ordinary courts of law. His proviso was that "nothing herein contained shall exempt any person from proceedings by way of mandamus, injunction or prohibition." If the principle was accepted he was prepared to accept any alteration in phraseology.

THE ATTORNEY-GENERAL said he might accept it if the words "subject however to the provisions of section 269" were inserted at its commencement.

HON. SIR HENRY BERKELEY said the difficulty of accepting those words was due to the phraseology of section 269 which would prevent action being brought. To get an injunction it was necessary to bring an action.

THE HON. MR. POLLOCK said he considered the amendment very necessary. Suppose an important building was delayed for some months, serious pecuniary loss would be involved, yet an action could not be brought against the Building Authority because he had acted *bona fide*. Therefore it became all the more necessary for bringing him before the court.

THE ATTORNEY-GENERAL — You have your remedy now.

HON SIR HENRY BERKELEY said there should be no objection to reaffirming it in the Bill.

THE COLONIAL SECRETARY said he could not see the object of the amendment.

HIS EXCELLENCY—The mover of the amendment states that he has no wish that it should operate against section 269.

HON. SIR HENRY BERKELEY said the peculiar phraseology of 269 would prevent an action for injunction. He did not consider the proposed clause would affect 269. It was complementary not antagonistic. He suggested

> "Nothing herein contained shall exempt any person from any proceeding by way of mandamus, injunction or prohibition and this section shall not be construed as otherwise affecting the provisons of section 269 of this Ordinance."

HIS EXCELLENCY—I think we had better reserve further discussion of this new clause. It is possible that my learned friends may be able to arrive at a satisfactory wording before we meet again, since there is no serious divergence in our views. The Council will adjourn till Thursday next.