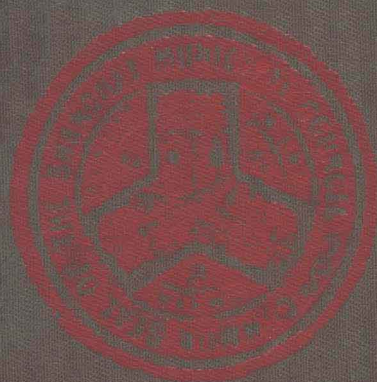


工部局董事会 会议录

第二十册

上海市档案馆 编



上海古籍出版社

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上海市档案馆 编

编审委员会主任 张 乾

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THE MINUTES OF SHANGHAI MUNICIPAL COUNCIL

Volume XX

SHANGHAI MUNICIPAL ARCHIVES

Director of the Editorial and Examination Committee Zhang Qian

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Shanghai Classics Publishing House

工部局董事会会议录

THE MINUTES OF

SHANGHAI MUNICIPAL COUNCIL

(1917—1919)

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No. 28.

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At the meeting of the Council held on Wednesday, January 3, 1917,

at 4.30 p.m., there are:

Present:

Messrs E.C. Pearce (Chairman)
E.I. Ezra
Count L. Jezierski
Messrs J. Johnstone
C.G.S. Mackie
W.L. Merriman
E.C. Richards
A.S.P. White-Cooper and
The Assistant Secretaries

Absent:

Baron Y. Fujimura

The minutes of the meeting of December 20 are confirmed and signed by the Chairman.

Byelaws. Copies of the second draft of the Special Committee's Report with a memorandum indicating the differences between the byelaws therein suggested and those proposed by the Council at the Special Meeting of Ratepayers in March 1916 have been seen by the members. This draft, into which the recommendations of the Council and of the Heads of Departments have in the main been introduced differs considerably from that originally drawn up by the Committee, and seems on the whole to be acceptable, but before the Council's views thereon can be communicated, closer scrutiny is desirable: to this end copies of the memorandum thereon will be submitted for consideration by members at their leisure.

Opium.

Searches of the Person. Following upon the arrest in September 1916 of two Chinese "seconds" of the employes of the Opium Combine for stopping and searching a person for opium, representations were addressed to the Chairman of the Combine protesting against this procedure. To these representations no reply has been forthcoming but a recurrence of these attempts by the Combine's employes to exercise a right of search of the person is reported in the Police Daily State of December 23. In disclaiming any responsibility on the part of the Combine, Mr Ezra explains the position of these so-called employes: that they are really informers who receive no pay from the Combine but only rewards for smuggled opium detected as a consequence of their information, that originally a number of them were provided with letters as to their bona-fides, but that subsequently these letters had

so far as possible been withdrawn. He strongly deprecates such action as that reported in the Police Daily State and agrees with the other members that a further letter should now be addressed to the Combine calling its attention to the incident in question and requesting particulars of the number of letters originally issued to these informers and of the number still in circulation.

Kumsao v. Shibbeth. In this action tried in H.M. Supreme Court damages £20,000 for trespass in connexion with the execution of a Mixed Court Search warrant on a British subject have been awarded by the jury whose rider "The Jury is of opinion that it is contrary to public policy that any corporation or combine should possess the powers apparently exercised by the Combine or that the Municipal Police Force should be the medium by which such powers are exercised", has been communicated to the Council by the Registrar at the direction of the Judge of H.M. Supreme Court. The judgment and dicta strike at the root of the procedure whereby these warrants and those of the various Consular Courts are executed by the Police, for it seems that, owing to the incidence of extra-territoriality, a foreigner in Shanghai is immune from the process of any Court except that of his own nation - ality, that the protection afforded by the Constables' Protection Act - if that Act applies at all - only applies to British warrants, and not to the warrants of the Mixed and Consular Courts; that as a consequence any member of the Police Force executing these warrants does so at his peril; that he must satisfy himself not only that the Court issuing the warrant has jurisdiction but also that the warrant is valid; that if he is of British nationality the warrant must be valid according to British Law, otherwise he is liable to an action for trespass in the British Courts; that all Mixed Court Search Warrants are invalid according to British Law, and that although the duty of executing them is imposed on the Police by the rules of that Court which have the sanction of the Consular Body acting under the instructions of the Diplomatic Body, that duty cannot as a consequence of extra-territoriality be safely performed except by the Chinese members of the Police Force who alone are subject to the jurisdiction of the Mixed Court. As the Police apparently still remain the servants of the Council while executing these warrants the ultimate liability will it seems be the Council's whether or not the indemnity contained in Land Regulation XXVI applies.

As a consequence of the views expressed by H.M. Consul General to the Chairman, the members have approved of representations to him for the issue of an Order in Council extending full protection to the British members of the Police engaged in the execution of these

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warrants, and to the Consular Body to place the procedure with regard to Mixed Court warrants upon a more satisfactory basis. Meanwhile Mr. White-Cooper has conferred with the Judge of H.M. Supreme Court, who, whilst reluctant to make any statement in view of the possibility of an appeal, has given his assurance that means will be devised to adequately protect the Police and the Council. Under the circumstances the proposed representations will be deferred, and the opinion of the Legal Adviser will not be sought unless and until it is decided to proceed with the introduction of special constables in connexion with the ^{suppression} ~~suppression~~ of armed robberies, when it will be desirable to obtain his advice as to the steps which should be taken to protect them in the execution of their duties. In reply to the Registrar it will be pointed out that the Jury's rider discloses a misunderstanding by them of the true status of the Council and the Police vis-a-vis the Mixed Court: that following upon the Revolution of 1911 the Police took the place of the Mixed Court runners in executing the process of that Court and that they did so at the request of the Consular Body acting under the instructions of the Diplomatic Body.

The Members' attention is directed to the Senior British Assessors recent statement in the Mixed Court that so far back as November 1 he had intimated in writing to the Council that search warrants in future should only issue after a more rigid examination of the informer as to the grounds of his information. This examination is a duty which falls upon the Court and not upon the Police, whose sole function is the execution of the warrants after their issue; the Police Legal Assistant will accordingly be directed to make a statement in the Mixed Court so as to dispel misapprehension on this point.

Bund Pontoons. To a request by the Canadian Pacific Ocean Steamship Service to be allowed to close the gates of the Bund pontoons to the general public for an hour previous to the departure of their tenders, so as to facilitate the examination of passengers' baggage, reply has been made that there is no objection on the understanding that upon no occasion shall both of the passenger pontoons be closed to the public and that the Company will have its own representative at the gates to examine passengers' tickets. The Company having subsequently notified these arrangements in the press the Commissioner of Customs has made verbal representations claiming joint rights with the Council over these pontoons and indicating that the permission given should have been without prejudice thereto. Whilst these rights have apparently never been defined it is clear that the Customs Authorities have with the Council's approval exercised the usual right of functioning in connexion with the examination of baggage: it is accordingly directed

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K