

OFFICIAL REPORT OF PROCEEDINGS.**Meeting of 25th July, 1956.****PRESENT:**HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT (*PRESIDENT*)

MR. EDGEWORTH BERESFORD DAVID, C.M.G.

THE HONOURABLE THE COLONIAL SECRETARY

MR. CLAUDE BRAMALL BURGESS, O.B.E. (*Acting*).

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR RIDEHALGH, Q.C.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. BRIAN CHARLES KEITH HAWKINS, C.M.G., O.B.E.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE, C.M.G.

THE HONOURABLE THEODORE LOUIS BOWRING, C.M.G., O.B.E.

(Director of Public Works).

DR. THE HONOURABLE YEO KOK CHEANG, C.M.G.

(Director of Medical and Health Services).

THE HONOURABLE DAVID RONALD HOLMES, M.B.E., M.C., E.D.

(Director of Urban Services).

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY, O.B.E.

THE HONOURABLE NGAN SHING-KWAN, O.B.E.

THE HONOURABLE DHUN JEHANGIR RUTTONJEE.

THE HONOURABLE KWOK CHAN, O.B.E.

DR. THE HONOURABLE ALBERTO MARIA RODRIGUES, M.B.E., E.D.

THE HONOURABLE JOHN DOUGLAS CLAGUE, C.B.E., M.C., T.D.

MR. THOMAS VERNON CHARLES REYNOLDS (*Deputy Clerk of Councils*).**ABSENT:**

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL WILLIAM HENRY STRATTON, C.B., C.V.O., C.B.E., D.S.O.

THE HONOURABLE PATRICK CARDINALL MASON SEDGWICK

(Commissioner of Labour).

DR. THE HONOURABLE CHAU SIK NIN, C.B.E.

THE HONOURABLE LO MAN WAI, C.B.E.

MINUTES.

The Minutes of the Meeting of the Council held on 11th July, 1956, were confirmed.

PAPERS.

THE COLONIAL SECRETARY, by Command of His Excellency the Officer Administering the Government, laid upon the table the following paper: —

<i>Subject</i>	<i>G.N. No.</i>
Importation and Exportation Ordinance.	
Importation (Automatic Machines) Regulations, 1956	A. 69.

FOOD SHOPS (AMENDMENT) BY-LAWS, 1956.

MR. D. R. HOLMES moved the following resolution: —

Resolved that the Food Shops (Amendment) By-laws, 1956, made by the Urban Council on the 3rd day of July, 1956, under section 5 of the Public Health (Food) Ordinance, be approved.

He said: Sir, these by-laws seek to make it clear that a Food-shop Licence is required for the sale of frozen food-stuffs, and also to empower the Urban Council to waive some or all of the principal by-laws in appropriate cases. The health authorities advise that the sale of frozen foods should be subject to control and the power of waiver is sought in order that the control which is exercised over food-shops generally may become rather more flexible.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

TELECOMMUNICATION (AMENDMENT) BILL, 1956.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Telecommunication Ordinance, Chapter 106, and to limit the rights conferred by existing licences issued thereunder."

He said: Sir, this is a Bill for the removal of doubt in two instances. Clause 2 removes any doubt as to the application of the principal Ordinance to television, and Clause 3 makes it clear that existing licences do not extend to television. As regards existing licences, sir, it was never the intention of Government to confer any right to distribute television.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

1. The object of clause 2 in amending the definition of "telecommunication" in the Telecommunication Ordinance, is to remove any doubt as to the application of that Ordinance to television, and so to ensure that adequate control is afforded by that Ordinance over the installation of television apparatus and the distribution of television programmes. The opportunity is taken to insert in section 2 of that Ordinance a definition of "television".

2. In order to ensure that powers of control by licensing over the distribution of television by means of wires will exist, a substantive provision is included in the Bill (clause 3) excluding from any existing licence the right to distribute television by such means.

MAGISTRATES (AMENDMENT) BILL, 1956.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Magistrates Ordinance, Chapter 227."

He said: Sir, this is ca case where I think I should expand somewhat the explanation for this Bill given in the statement of objects and reasons.

Sir, section 37 of the Magistrates Ordinance enables a fine not exceeding one hundred dollars to be satisfied out of any money found upon a search of the defendant either by the Police or by order of the magistrate. This section is of very limited application and does not allow of a sum less than the amount of the fine being taken in part satisfaction. The purpose of Clause 2 is to repeal and replace section 37 with a wider provision. This provision will enable any money found on a defendant either by the Police or upon a search by order of a magistrate or when the defendant is taken to prison, to be applied in satisfaction or part satisfaction of any fine, whatever the amount. It is provided in sub-clause (3) that money found on a defendant shall not be so applied if the magistrate is satisfied either that the money does not belong to the defendant or that the loss thereof would be more injurious to his family than would be his detention in prison. Rules will be made under the Magistrates Ordinance and the Prisons Ordinance to give administrative effect to this new provision. It is considered, sir, that if this proposal is legalized there will be a considerable reduction in the time spent in prison at public expense by short-term prisoners.

As regards the amendment to be effected by clause 3, this is a very simple one in appearance, but here again I feel that some explanation is called for. The amendment is concerned with appeals by way of case stated, that is, appeals purely on questions of law, under the Magistrates Ordinance. Section 105 of that Ordinance enables the magistrate on the application of either party to amend a case stated for the opinion of a judge of the Supreme Court. Section 109 provides that the magistrate can only refuse to state or amend a case if it is frivolous. This provision is right enough in relation to the application to state a case, but it is considered that the magistrate should have a discretion in relation to an application to amend made by either party, and this is the position in England. It may well be that although an amendment proposed by one of the parties is not frivolous, it is nevertheless undesirable or should not be acceded to for some reason or other. It is to be observed, sir, that if a party who has made application for amendment is dissatisfied with the magistrate's decision thereon, he has two remedies. He can, under section 107, ask the judge who hears the appeal to send back the case for amendment, and if the judge does so, it is obligatory upon the magistrate to

amend accordingly. Alternatively, he may under section 110 apply to a judge for an order of mandamus requiring the magistrate to make the amendment.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

The power to search contained in section 37 of the Magistrates Ordinance, Chapter 227, has rarely been exercised by a magistrate. It is, therefore, considered preferable to replace the section with a provision similar to section 68 of the Magistrates' Courts Act, 1952 (15 & 16 Geo. 6 and 1 Eliz. 2 c. 55). This is achieved by clause 2.

2. It is considered that the words "or amend" in section 109 of the Magistrates Ordinance conflict with the provisions of section 105. Clause 3 is designed to remove this conflict.

MERCHANT SHIPPING (AMENDMENT) BILL, 1956.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Merchant Shipping Ordinance, 1953."

He said: Sir, this is another Bill for the removal of doubt, the doubt having arisen in relation to certain provisions of the Merchant Shipping Ordinance, 1953, as amended by the Merchant Shipping (Amendment) Ordinance, 1954. The legal position is explained in outline in the statement of objects and reasons, but I think I should elaborate on that statement to some extent.

Section 50 of the Ordinance empowers the Governor to set up, whenever occasion requires, a marine court to investigate shipping casualties, and in section 51, which provides among other things,

for the cases in which a casualty shall be deemed to occur, subsection (3) provides as follows: —

“An inquiry shall not be held into any matter which has once been the subject of an investigation or inquiry, and has been reported on by a competent court or tribunal in any part of the Commonwealth, or in respect of which the certificate of a master, mate or engineer has been cancelled or suspended by a naval court.”

Now, by Ordinance No. 44 of 1954 a new section 49A was added to the principal Ordinance, and that section enables the Director of Marine to order a preliminary inquiry into a shipping casualty. It is to be observed, sir, that subsection (3) of section 49A requires the person holding the inquiry to report to the Governor, and he has power to require the attendance of witnesses and to examine them on oath, and to require production of documents. It is arguable therefore that the person holding an inquiry under section 49A is a tribunal within the meaning of subsection (3) of section 51 whose text I have just read, and therefore that the subsection precludes the Governor from appointing a marine court in any case where there has been an inquiry and report under section 49A.

There is no doubt, sir, that when the 1954 amendment was made the preliminary inquiry was intended as an aid and not a hindrance to the Governor in deciding whether or not to appoint a marine court. This much is plain from a passage in the statement of objects and reasons which I will quote. That passage runs: —

"In contrast with the U.K. legislation, there is no provision for the holding of a preliminary inquiry to determine whether or not it is advisable that a marine court should be appointed and it is not always possible to acquire the necessary information on which to base a report to the Governor. Clause 2 seeks to introduce a new section enabling a preliminary inquiry to be held and giving to the person holding the inquiry certain powers which include a power to require the attendance of and examine witnesses."

The rule is, however, that the Courts must interpret the actual language of a provision and cannot look for assistance to statements made either in this Council or in the "Objects and Reasons". The wisdom of this rule is obvious if one pauses for

a moment to think what otherwise the consequences would be. If the Courts were able to look outside the four walls of the statute to such things as speeches in this Council or statements in "Objects and Reasons", endless debate and speculation might thereby be invited and encouraged, and there would be great uncertainty. Moreover, the Courts would in fact be ascertaining "the intention of the Legislature" not from the formal pronouncement of that body but from extraneous sources, and would not in fact be construing the statute at all. My view is therefore that if the point now in issue were raised in the Courts, it might well be held that subsection (3) of section 51 precludes a formal investigation by a marine court where there has been a preliminary inquiry under section 49A. The question is then, what should be done.

Where a real doubt about the jurisdiction of a tribunal is known to exist, it would be quite wrong to take a chance: a great deal of time, labour and money might be expended on an investigation, but in vain because the findings could be set aside if in fact the tribunal were held to have no jurisdiction. So the Government, sir, by this Bill seeks to put this doubt away, and seeks to do so retrospectively. It is provided that these proposed amendments shall date back to the 1954 amending Ordinance, and in my submission this is justified because the purpose of the 1954 amendment was plainly stated in the passage which I have read from the "Objects and Reasons".

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

Under the Merchant Shipping Ordinance, 1953, the Governor may in certain circumstances form a marine court to make investigations as to casualties affecting ships or to inquire into charges of incompetency or misconduct on the part of masters, mates or engineers of ships. Section 51(3) of that Ordinance provides (*inter alia*) that an inquiry shall not be held into any

matter which has once been the subject of an investigation or inquiry, and has been reported on by a competent court or tribunal in any part of the Commonwealth.

2. The object of this Bill in amending sections 50 and 51 of the Merchant Shipping Ordinance, 1953, is to make it clear that that provision does not prevent the holding of an inquiry by a marine court into a matter which has been the subject of a preliminary inquiry and been reported on under section 49A of that Ordinance.

3. Clause 4 gives the amendments retrospective effect to the coming into operation of the Merchant Shipping (Amendment) Ordinance, 1954, when provision for such preliminary inquiries and reports was introduced.

INLAND REVENUE (AMENDMENT) BILL, 1956.

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance further to amend the Inland Revenue Ordinance, Chapter 112."

He said: Sir, the purpose of this Bill is set forth in the statement of Objects and Reasons annexed to it. This statement makes it clear that the Bill is designed to put into effect those recommendations of the Inland Revenue Ordinance Committee which, because of the time factor, had to be left over when Ordinance No. 36 of 1955 was enacted. It also amends certain of the amendments made last year, and makes provision for a reprint, a very necessary reprint, of the Inland Revenue Ordinance.

The statement of Objects and Reasons is very full, and I do not want to waste time elaborating on it. But there are three points in the Bill which have aroused some public interest to which I think I might invite attention.

The first is in relation to the method of recovery of tax in default. At the present moment the Commissioner has a variety of methods of recovering tax from a defaulter. He may for example issue his authority to a bailiff to go and seize the defaulter's goods and to sell them. Alternatively, he may summon a defaulter before a magistrate who must then impose a fine equal to the amount of tax in default. If the defaulter does not pay the fine, he is liable to go to prison and in one or two cases he has actually done so.

The Committee in its report recommended that these two methods should be done away with, and that tax in default should be regarded as a debt due to the Crown and should be recoverable in the same way as other debts to the Crown. It is accordingly proposed in Clause 54 of the Bill that when tax is in default the Commissioner shall issue a certificate as to the amount of tax due, and that this certificate shall be sufficient evidence to the District Court of a debt due to the Crown, whereupon the normal methods of recovery of a debt shall be applied by the court, and *not* by the Commissioner.

The second point is the question of retirement schemes and provident funds. The Committee recommended that not only should regular payments by an employer into an approved scheme or fund be allowed against profits, within certain limits, but it recommended even more generous treatment in allowing, under appropriate safe-guards, capital payments, where such payments are necessary because the accumulation of contributions may be insufficient to cover commitments arising from retirement of employees with long service. The recommendations of the Committee were incorporated into Ordinance No. 36 of 1955, but it now appears that the scope of the concessions so granted was not sufficiently wide to cover the variety of retirement schemes which have been encountered. Accordingly Clause 11 of the Bill extends the concession to cover all special payments to approved retirement scheme funds, including insurance premiums, with the limitations that any payments made must be in respect of individuals who are employed in earning Hong Kong profits, and that the amounts are not excessive.

It will be remembered that in the course of the debate of the 14th September last year I gave an undertaking that the formulation of rules governing retirement schemes would be pushed ahead as rapidly as possible. I am glad to say that I have now been informed that a draft of these rules has been prepared and I hope that it will not take too long to get the draft to the Board of Inland Revenue.

The third point follows from the recommendation of the Inland Revenue Ordinance Committee to the effect, in brief, that where any doubt exists as to the place where profits or income arise, or whence they are derived, it should be laid down that such profits or income shall be deemed to arise in the Colony, unless the taxpayer can prove that they have borne a corresponding tax elsewhere.

Now Government did not accept this recommendation. It was felt to be too drastic. Government modified it to provide that where doubt exists as to the Hong Kong origin of income or profits, the fact of payment or non-payment of tax elsewhere should be taken into account, together with all other facts relevant to the resolution of that doubt.

When the Bill embodying this modified recommendation was brought before this Council it excited certain opposition, and it will no doubt be recollected that one honourable Member, no longer with us, spoke with a lone voice against the two clauses concerned, and read in full a legal opinion which had been obtained from the United Kingdom. On behalf of Government I gave an undertaking that the question would be referred for consideration by Counsel—at leisure. This was done, and the opinion of Mr. F. N. Bucher has been obtained. I do not intend to follow the example of Mr. Blackwood and read the opinion in full, but it fully vindicates the opinion of the Acting Attorney General as expressed in the debate last September. It rejects the conclusion in the opinion quoted by Mr. Blackwood, that a court interpreting the amendment would be forced to ignore the words "*inter alid*". It goes on to say that the amendments which have been made do *not* have the same effect as the recommendation of the Committee, and that the new sections do not bring into charge, and so render liable to tax, income or profits *not* arising in or derived from the Colony.

Mr. Bucher's opinion does nevertheless suggest that the position could be made even plainer by rewording. This suggestion has been accepted, and the necessary amendments are set forth in Clause 8 and in Clause 22 of the Bill. The effect will be that if there is any item of profit or income, as to the origin of which a doubt exists, then the onus of proving that such profit or income does *not* arise in the Colony lies on the taxpayer; but, if the taxpayer can establish that the profit or income has been taxed elsewhere, then the onus is shifted back on to the Commissioner to prove that it arose in the Colony.

As I have said, I feel that the statement of Objects and Reasons annexed to the Bill provides a very full explanation of its provisions, and I have mentioned these three particular points only because they have been the subject of discussion in the past, or have been the subject of representations to Government; at a later stage I will endeavour to answer any queries or objections which may be raised by honourable Members.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

"Committee" means the Inland Revenue Ordinance Committee appointed on 20th September, 1952.

"Report" means the Report of the Committee published in 1954.

"Ord. 36/55" means the Inland Revenue (Amendment) Ordinance, 1955.

Ord. 36/55 which came into operation on the 1st day of April, 1955, implemented those recommendations in the Report which affected Parts I—VII of the principal Ordinance. The primary purpose of this present Bill is to implement the Committee's recommendations which affect the remaining Parts of the principal Ordinance, namely, Parts VIII—XV.

2. As Ord. 36/55 came into operation on the 1st day of April, 1955, there has been a little over a year in which experience has been gained in the working of the principal Ordinance as amended by Ord. 36/55 and as a result it has been found that certain sections of the principal Ordinance which were either introduced or amended by Ord. 36/55 require amendment or further amendment and opportunity has been taken to effect such amendments in this present Bill. Further, in view of the number of amendments effected by Ord. 36/55 and proposed by this Bill, it is considered that a reprint of the principal Ordinance would be in the public interest and provision has been made accordingly in clause 69 of this Bill. For the purposes of such reprint, a number of minor amendments to the principal Ordinance are made in this Bill such as the re-numbering of certain sections to bring them into their logical place in the principal Ordinance, the correction of punctuation and misprints, and rewording for clarification.

3. Clause 2 of the Bill provides in the first place that the amendments made by seven specified clauses shall have retrospective effect to the 1st of April, 1955. This has been necessary as the amendments effected by these seven clauses amend provisions introduced into the principal Ordinance by Ord. 36/55 which as previously stated came into operation on the 1st of April, 1955. Clause 2 also provides that the amendments made by another twenty-six specified clauses shall have retrospective effect to the 1st of April, 1956. This is necessary as the amendments effected by these 26 clauses amend provisions of the principal Ordinance which are concerned with assessment, and it is essential that such amendments should have effect as from the beginning of the 1956/57 year of assessment. The amendments to the principal Ordinance effected by the remaining thirty-six clauses will come into operation in the normal way on the date of publication of the Bill as an Ordinance in the *Gazette*.

4. Clause 3 introduces for the first time a definition of "approved retirement scheme". This new definition is consequent on the implementation of the Committee's recommendations in paragraph 109 of the Report as to the allowance of payments made by an employer to an approved retirement scheme as a charge against profits. Clause 3 also effects an amendment to the definition of "assessable profits" which was itself first introduced by Ord. 36/55. Prior to Ord. 36/55 the term "assessable profits" meant the adjusted profits for the basis period as determined by section 18. As the basis period is always a definite period the term "assessable profits" cannot also include net profits for "any period" as is the case under the present definition. Further, since it is quite normal for assessable profits to be ascertained by apportioning adjusted profits for several periods, it follows that the adjusted profits for those periods before they are apportioned cannot also be "assessable profits". Accordingly the present definition has been amended to remove this ambiguity by replacing the words "any period" by the words "the basis period".

5. Clause 4 substitutes the term "an approved retirement scheme" for the term "a provident fund". This is consequent on the new definition referred to above and the repeal and replacement of section 16A of the principal Ordinance effected by clause 11. Clause 5 repeals section 8A of the principal Ordinance which was introduced as a new section by Ord. 36/55. Section 8A was enacted to implement paragraph 10 (c) of the Report and

under it, salaries and pensions paid out of Hong Kong profits are in certain circumstances deemed, in the hands of the recipient, to be income arising in or derived from the Colony. The Secretary of State for the Colonies considers that this section is likely to lead to considerable difficulties in its administration and the Commissioner of Inland Revenue has recommended its repeal.

6. Clauses 8 and 22 amend sections 13A and 27 of the principal Ordinance respectively, both of which sections were first introduced by Ord. 36/55. During the passage of Ord. 36/55 through Legislative Council in a debate on the enactment of these two sections representations were made that they in effect implemented in toto the original recommendation set out in paragraphs 10 (a) and 22 of the Report and in so doing, made a fundamental change in the system of taxation in the Colony by bringing into charge to tax income and profits which did not arise in or derive from the Colony. In view of the abovementioned representations, the Government undertook to obtain an opinion from leading counsel in London as to the true effect of sections 13A and 27. This opinion has now been received and counsel confirms that sections 13A and 27 do not have the same effect as the original recommendations of the Inland Revenue Ordinance Committee and counsel further confirms that these two sections do not make a fundamental change in the system of taxation in the Colon by bringing into charge and rendering liable to tax income and profits not arising in or derived from the Colony. In the course of his opinion counsel advised that there may be some doubt as to how subsection (2) of each of the sections should be construed, and in order to remove any such doubt, counsel suggested a rewording of both subsections (2). Clauses 8 and 22 implement counsel's advice and reword subsection (2) of each section. The purpose of the two new subsections is to make clear that just as subsection (1) of sections 13A and 27 places the onus on the taxpayer to prove that the income (or profit) did not arise in or was not derived from the Colony, so subsection (2) of each section indicates the facts which may be taken into account in determining the question and in particular if the taxpayer can show that the income (or profit) has borne elsewhere a tax of substantially the same nature, then the taxpayer will have shifted the onus back to the Crown to show that even though the income or profit had borne such a tax elsewhere it was still income or profit arising in or derived from the Colony.

7. Clause 9 repeals and replaces section 15A of the principal Ordinance. Prior to Ord. 36/55 the aggregation provisions of section 15 were applicable to business profits but not to corporation profits. Ord. 36/55 divided the old section 15 into sections 15, 15A and 15B, but in so doing, may have inadvertently made the aggregation provisions of section 15A applicable not only to business profits but also to corporation profits which would be contrary to the recommendation in paragraph 41 of the Report. The new section 15A introduced by clause 9 seeks to establish clearly the position as it was prior to Ord. 36/55. Further, experience has shown that the actual aggregation of profits can be done more conveniently by the assessor than by the taxpayer, and the new section 15A provides accordingly. Experience has also demonstrated the difficulty of ascertaining the ultimate controlling interest in a partnership, so opportunity has been taken to define the expression "ultimate controlling interest".

8. Clause 11 repeals and replaces section 16A which was itself first introduced by Ord. 36/55. Experience in working the present section 16A revealed that it is too restrictive and does not implement fully the recommendations of the Committee in paragraph 109 (f) of the Report as to allowances for special payments by an employer to an approved retirement scheme. Subsection (1) of the new section 16A is wider in scope and seeks to cover all special payments to approved retirement scheme funds (including special insurance premiums), subject only to the limitations that a payment must be made in respect of individuals employed in earning Hong Kong profits and that the amount is not excessive in view of the circumstances relating thereto. Subsection (2) of the new section 16A and the proviso thereto remove a defect which arose under the old subsection (2) when basis periods overlapped. The new subsection (3) seeks to make clear that the provisions of the section apply only to payments made in or after the basis period for the year of assessment 1955/56.

9. Clause 12, *inter alia*, deletes and replaces paragraph (h) of subsection (1) of section 17. This is consequent on the introduction of the definition of the expression "approved retirement scheme", and also in order to make provision for ordinary annual premiums on insurance policies taken out under an approved retirement scheme. Clause 13 repeals and replaces section 18 of the principal Ordinance but makes no basic change. The amendment is merely rewording to clarify and to remove minor inconsistencies. Clause 14 amends section 19 by adding a proviso

to subsection (2) which remedies an omission which occurred when section 19 was repealed and replaced by Ord. 36/55. The object of the proviso is to make clear that the total set-off in respect of a loss is limited to the amount of such loss.

10. Clause 16 introduces a new section 20A which is the present section 47 of the principal Ordinance amended in accordance with the recommendations contained in paragraphs 76 and 77 of the Report and re-numbered to bring the section into its logical place in the Ordinance. The Committee recommended in paragraph 76 of the Report that provision be made in section 47 requiring the agent of a non-resident person to retain out of the funds of his principal a sum sufficient to pay any tax which might be imposed on the principal in the name of the agent. Subsection (2) of the new section 20A implements this recommendation. The Committee also recommended in paragraph 77 of the Report that provision be made requiring resident consignees to furnish quarterly returns to the Commissioner showing the gross proceeds from sales made on behalf of his non-resident consignor and to pay to the Commissioner a sum equal to 1% of such proceeds. Subsection (3) of the new section 20A seeks to give effect to this recommendation.

11. On the recommendation of the Commissioner clause 17 seeks to amend subsection (3) of section 22 in order to remove an ambiguity and to bring within the scope of the section the case of two or more partnerships amalgamating into a new partnership. The time within which a claim may be made under the proviso to subsection (3) is extended from 12 months to 2 years, as experience has shown that frequently the period of 12 months after a change in the constitution of a partnership is insufficient time within which to make the appropriate claim.

12. Clause 18 makes a number of clarification amendments to section 23 (first introduced by Ord. 36/55) but two of the amendments are sufficiently important as to warrant explanation. The amendment of subsection (1) of section 23 seeks to achieve two objects—

(a) to avoid the possibility of double taxation where a company elects assessment on the basis of an adjusted surplus by permitting the deduction from the assessable profits of—

(i) any Hong Kong dividends received by the company; and

(ii) any interest received by the company which has already borne interest tax under section 28 as amended by clause 23 of this Bill; and

(b) that an election by a company to be assessed on the basis of an adjusted surplus shall be irrevocable for all time; (Paragraph 36 (b) (iii) & (iv) of Report).

Clause 19 amends section 23A of the principal Ordinance and, *inter alia*, removes from that section passages which have proved difficult to interpret and to apply.

13. At present under the principal Ordinance the taxation of profits from the business of ship-owning is dealt with in section 48. In this Bill clause 34 repeals section 48 and clause 20 replaces it by the addition to the principal Ordinance of two new sections numbered 23B and 23C. The object of the re-numbering is to bring the new sections into their logical place in the scheme of the Ordinance. The Committee in making certain recommendations in paragraph 78 of the Report in regard to the taxation of both resident and non-resident ship-owners stated that the recommendation contained in paragraph 22 of the Report effectively disposed of difficulties connected with the taxation of profits which arise from the ownership of ships and aircraft by resident corporations. However, Government did not fully accept the recommendation made in paragraph 22 and in the event it was considerably modified before it was implemented by the enactment in 1955 of sections 13A and 27 of the principal Ordinance. In view of the modifications made, these two sections, 13A and 27 do not effectively dispose of the difficulties which arise in the taxation of the profits of resident ship-owners and it has been necessary to revert to an alternative method which was fully considered by the Committee but which was not recommended because it was felt that the position would be adequately covered by the original recommendation in paragraph 22 of the Report. Accordingly, clause 20 introduces two new sections, 23B and 23C. Section 23B applies where—

(a) the business of ship-owning is normally controlled or managed from within the Colony, or

(b) the person carrying on the business of ship-owning is a company incorporated in the Colony (*i.e.* it will apply only to resident ship-owners),

while section 23C applies to all other ship-owning businesses, (*i.e.* it will apply only to non-resident ship-owners).

14. Section 23C is based substantially on the now repealed section 48 though the wording has been amended to remove ambiguities. Under this section non-resident ship-owners will, as before, be assessed on a percentage of outward freight, passage money, etc., such percentage being the percentage of adjusted world profits to world receipts from freight, passage money, etc. Under this section, charter hire received by a non-resident ship-owner will only be subject to tax in Hong Kong if the owner maintains a "permanent establishment" (as defined) in the Colony and the charter hire is attributable to that permanent establishment. The basis of assessment under section 23B is similar to that provided by section 23C except that the provisions for the inclusion of charter hire are reversed. Charter hire received by a resident ship-owner will, in future, be required to be included in Hong Kong receipts unless such charter hire is attributable to a "permanent establishment" maintained outside the Colony. "Permanent establishment" is defined to mean in both of these sections "a branch management or agency which has and habitually exercises a general authority to negotiate and conclude contracts on behalf of its principal".

15. Accordingly in the case of a resident shipping company with no overseas permanent establishments, charter hire received will be aggregated with Hong Kong outward freights and passage money. On the other hand, a resident shipping company with a "permanent establishment" for example, in London, would not have to include charter hire received in respect of a charter party negotiated and concluded by such permanent establishment under a general authority given by its Hong Kong head office. A non-resident shipping company will only have to include charter hire with its Hong Kong outward freights etc. if it maintains a permanent establishment in Hong Kong and the charter party in respect of which the charter hire was received was negotiated and concluded in Hong Kong under a general authority given by its head office. It should be observed that under subsection (1) of section 23C a non-resident ship-owner can only become subject to Hong Kong tax if a ship owned or chartered by him makes a call at the Colony.

16. Under the present proviso (b) to section 28, interest paid or payable to a corporation carrying on a trade or business in the Colony is exempt from interest tax. Clause 23 amends section 28 with the effect that the exemption will no longer apply

in the case of interest paid or payable to a company carrying on the business of life insurance. Opportunity has also been taken to exempt from interest tax interest paid or payable to Government. The Committee recommended in paragraph 36 (a) of the Report that "profits from the business of life insurance shall be deemed to be 5% of the net premiums arising from the business in the Colony, plus all profits arising in or derived from the Colony otherwise than from the business of life insurance". Experience has shown that the main source of additional income received by life insurance of companies in Hong Kong is interest received on loans which at present by virtue of the exemption in paragraph (a) of the proviso to section 28 escapes taxation. In view of the provisions of section 14 of the principal Ordinance it is not possible to charge profits tax under section 23(1) (a) on this additional income. Accordingly it is proposed to implement the Committee's recommendation in 36 (a) of the Report by removing the exemption from interest tax on interest paid or payable to a life insurance company. This is achieved by the amendment effected by clause 23 of the Bill.

17. Clause 24 repeals section 31 of the principal Ordinance which is no longer applicable in view of amendments introduced by Ord. 36/55. Clause 27 amends section 40 by the substitution of a new definition for the expression "basis period". The new definition seeks to provide for cessation cases where the interval is usually the year prior to the year of cessation. As the assessment for that prior year (made on a preceding year basis) will normally have been completed before cessation occurs, the interval is an unknown factor at the time of assessment and so cannot conveniently be treated as part of the basis period for that year.

18. Clauses 25, 26 and 27 seek to correct misprints and reword to clarify ambiguities. Clause 29 amends subsection (2) of section 42 of the principal Ordinance in order to permit the apportionment of the assessable profits of a partnership in cases where there is no division of profits. Clause 30 amends section 42B of the principal Ordinance to permit the deduction of insurance premiums paid by a wife. Although a wife's income is aggregated with that of her husband, the relative provision in the present section 42B does not permit the deduction from such aggregated income of the amount of an insurance premium paid by the wife.

19. Clause 31 amends the heading to Part VIII made necessary by the transfer of sections 47 and 48 (now sections 20A and 23B and 23C respectively) to Part IV of the Ordinance. Clause 32 repeals section 44 of the principal Ordinance. In paragraph 74 of the Report, the Committee recommended the replacement of section 44 by a new section which would make provision for relief in the case of double taxation. The Committee's recommendation has not been implemented because the legal position has now changed and such provision is no longer necessary. The position now is that Hong Kong does not tax a person on his United Kingdom income, and the United Kingdom does not tax a non-resident on his Hong Kong income. Consequently as Hong Kong income is normally taxed in Hong Kong only and United Kingdom income is taxed in United Kingdom only, there can be no double taxation except in the case of United Kingdom residents. In the case of double taxation of U.K. residents the United Kingdom now grants full relief without requiring reciprocity. Clause 33 amends section 45 of the principal Ordinance in consequence of the repeal of section 44. Clause 34 repeals sections 47 and 48 of the principal Ordinance. As previously mentioned, section 47 has been amended and renumbered as section 20A and section 48 has been replaced by sections 23B and 23C. Clause 35 amends section 49 by deleting subsection (2) which is consequent on the repeal of section 44.

20. Clause 36 amends section 51 of the principal Ordinance in accordance with paragraphs 79 and 80 of the Report and with paragraphs 25 and 26 of Appendix II thereto. Briefly the amendments seek to clarify the obligations which rest on taxpayers to inform the Commissioner when they are chargeable to tax and also when they cease to carry on a trade, profession or business or cease to own a source of income in respect of which tax is chargeable. Further a duty is now imposed on every person chargeable to tax under Part III, IV or VII of the Ordinance to inform the Commissioner when he is about to leave the Colony for more than one month, but it should be noted that persons whose course of employment requires them to leave the Colony at frequent intervals are relieved of this obligation.

21. Clause 37 amends section 52 of the principal Ordinance and seeks to implement paragraph 82 of the Committee's Report. The Committee recommended that a duty be imposed on an employer to inform the Commissioner when he commences or

ceases to employ anyone, and further that an employer be required to inform the Commissioner when an employee is about to leave the Colony for more than a month.

22. Clause 38 repeals section 55 in accordance with the recommendation of the Committee in paragraph 83 of the Report. Section 54 has not been repealed as recommended by the Committee as its provisions are linked with the obligation to furnish the return required by section 51. Further although the section may be, in the main, merely declaratory of the prevailing general law, it is considered prudent to follow the practice in similar legislation elsewhere and retain the provision. Clause 40 amends section 57 in accordance with the recommendation of the Committee at paragraph 84 of the Report. The term "principal officer" has been replaced by the term "director" and the term "principal officer" is now applicable only in the case of a body of persons. Clause 41 amends section 58 in accordance with paragraph 85 of the Report to permit documents to be served on a person by being sent by post under registered cover to the place at which he is employed or to his last known place of employment as well as to his place of abode. The amendments to section 59 made by clause 42 are all consequent on previous amendments.

23. Clause 43 amends section 60 of the principal Ordinance and in so doing, reverts to the original wording of this section prior to the amendment introduced by Ordinance No. 16 of 1951. The present wording of the section has proved difficult of interpretation and under one interpretation works unfairly against the taxpayer. The period within which assessments may be made has been extended from 3 years after the year in which the return was made to 6 years after the end of the relevant year of assessment and where non-assessment or under assessment is due to fraud or wilful evasion, from 6 years to 10 years. In this connexion the analogous periods in the United Kingdom and Australia are 6 years and no time limit, and in New Zealand 4 years and 10 years. Clause 44 introduces a new section 63A making provision for the appointment of an agent in the United Kingdom. This is in accordance with the recommendation of the Committee at paragraph 87 of the Report. Clause 45 amends section 64 of the principal Ordinance in accordance with paragraph 91 of the Report and paragraphs 27 and 29 of Appendix II thereto. At paragraph 27 of Appendix II the Committee recommended that a limit of

one month be fixed on the period during which an assessor may make further inquiry under section 64(2). The present amendment provides for a period of 60 days as it is considered that one month would prove too short a time in practice. Clause 46 introduces a new section 64A and implements the recommendation of the Committee in paragraph 91 of the Report. The Committee considered that the Commissioner should be empowered to consider and decide an appeal without the formality of a hearing provided that the appellant signified his agreement in writing.

24. Clause 47 amends section 65 of the principal Ordinance in accordance with the recommendation of paragraph 90 of the Report. The Committee considered that the present panel system should be retained but that there should be a permanent Chairman of the Board who should be a person of legal training and experience. The Committee also recommended that provision be made for the appointment of a Deputy Chairman with similar qualifications as the Chairman.

25. Clause 48 amends section 66 of the principal Ordinance and is based on the recommendations of the Committee at paragraph 92 of the Report and paragraph 30 of Appendix II thereto. The Committee considered that while an appellant should not be permitted to advance a new ground of appeal before the Board, he should be permitted as of right to seek permission to adduce evidence which was not tendered before the Commissioner provided that the Commissioner should have an opportunity to review his decision in the light of such fresh evidence. The amendments do not specifically oblige the Board to refer the appeal back to the Commissioner in all cases where permission is granted for the introduction of fresh evidence as it is considered that a reference back is better left to the discretion of the Board. This clause also contains amendments consequential to the addition of the new section 64A and the amendment of subsection (6) of section 64. Clause 49 deletes the last proviso to subsection (1) of section 69 in accordance with the recommendation of the Committee at paragraph 93 of the Report.

26. Clause 51 introduces a new section 70A to implement the recommendation of the Committee at paragraph 95 of the Report. The Committee considered that section 70 is so universal in its prohibitions that even an obvious error cannot be adjusted after the statutory period for appeal has passed if an adjustment will

have the effect of reducing the amount of the income or profits assessed. The Committee recommended that provision be made that despite section 70, an assessor be empowered to amend an assessment if it is proved to his satisfaction within a prescribed time that an assessment is incorrect by reason of a mistake in any return or in the calculation of the amount of the assessable income or profits or in the amount of the tax charged thereon. Under the proviso the application of the new section 70A is restricted to mistakes in assessments made on or after the 1st day of April, 1956. Clause 52 amends section 71 of the principal Ordinance to correct punctuation and misprints, and to implement paragraph 97 of the Report.

27. Clauses 53 and 54 repeal sections 73, 74 and 75 of the principal Ordinance. Section 75 is replaced by a new section in accordance with the recommendation of the Committee contained in paragraph 98 of the Report. The Committee considered that non-payment of tax is a civil rather than a criminal matter and that tax should be a debt due to the Crown with the priority of payment normally afforded to Crown debts. The Committee also considered that the Commissioner should be empowered to sue for tax and that his certificate specifying the name and address of the defaulter and particulars of the amount due should be sufficient evidence and authority for the Court to give judgment for such amount. The new section 75 seeks to give effect to the Committee's recommendation and is based on the provisions of section 62 of the Gibraltar Income Tax Ordinance, 1952. Clause 55 repeals and replaces section 76 of the principal Ordinance in accordance with the recommendation of the Committee at paragraph 100 of the Report. The Committee considered that the provisions of section 76 should be extended to apply to tax charged upon a person who has quitted the Colony regardless of whether such tax is in default or not. The new section 76 while it is based on the provisions of the old section 76 now in addition applies to a person who has left the Colony without paying his tax. Effect has also been given to further recommendations of the Committee made in paragraphs 101 and 102 of the Report.

28. Clause 56 amends section 77 of the principal Ordinance in accordance with the recommendation of the Committee at paragraph 103 of the Report. The Committee considered that it was desirable that the Commissioner should have power to prevent a person from leaving the Colony until he has paid or made

satisfactory arrangement for payment of any tax to which he is liable. Further the Committee recommended that it be made an offence for a person to leave or attempt to leave the Colony knowing that a direction had been issued by a magistrate to the Commissioner of Police to prevent his departure. Clause 57 introduces a new section 77A to implement the recommendation of the Committee at paragraph 99 of the Report. The Committee considered that in the case of non-resident ship or aircraft owners (who may become liable to tax even though they have no resident agents in the Colony), the Commissioner should be empowered to enforce payment of tax in default by preventing the departure from the Colony of ships or aircraft owned by such persons. The new section 77A which is based on section 62 of the Gibraltar Ordinance and section 86 of the Singapore Ordinance seeks to give effect to the Committee's recommendation, but it should be noted that action by the Commissioner under this section requires the prior approval of the Colonial Secretary. Clause 58 repeals section 78 as it is no longer necessary in view of the changes in the recovery provisions of the principal Ordinance.

29. Clause 59 amends section 79 of the principal Ordinance in accordance with the recommendations of the Committee contained in paragraphs 104, 105 and 106 of the Report. The amendment of subsection (1), extends the period within which a claim may be made from 3 years to 6 years of the end of the year of assessment or within 6 months after the date on which the relevant notice of assessment was served whichever is the later. The new subsection (2) makes it clear that the time limit imposed on claims for refunds applies equally to an executor trustee or receiver as to a taxpayer. The new subsection (3) permits the agent of a non-resident person to make a claim for a refund of tax.

30. Clause 60 amends section 80 of the principal Ordinance by deleting sections 15(2) and 73(2) which are no longer applicable and adding thereto sections 51(7), 52(4), 52(5), 52(6) and 76(3). The additions are necessary in order to make it an offence to fail to comply with new obligations imposed by the specified subsections. The period within which a complaint concerning an offence under section 80 may be made is extended from 3 years to 6 years in accordance with the recommendation of the Committee in paragraph 31 of Appendix II to the Report. A new subsection (4) is added to section 80 in accordance with the recommendation of the Committee at paragraph 107 of the Report. The Committee

recommended that the penalty imposed on a person who aids, abets, or incites another person to commit an offence under the Ordinance should be the same as that which may be imposed on the person who actually commits the offence. Clause 62 amends section 82 in order to comply with recommendation in paragraph 107 of the Report. Clause 64 amends section 88 of the principal Ordinance and is based on the Committee's recommendation at paragraph 108 of the Report. The Committee recommended that a charitable, ecclesiastical or educational institution carrying on a trade or business in the Colony should be exempt from profits tax only if, *inter alia*, the trade or business is exercised in carrying out the expressed objects of the institution and if the profits derived therefrom are not expended substantially outside the Colony. Clauses 65 and 66 merely tidy up the Ordinance for the purpose of a reprint. Clause 67 repeals rule 4 of the Inland Revenue Rules which is no longer necessary in view of the repeal of the old section 27 by Ord. 36/55. Clause 68 repeals the Board of Inland Revenue (Seizure of Defaulter's -Moveable Property) Rules, 1953, which are no longer necessary in view of clause 53 of this Bill which, *inter alia*, repeals section 74 of the principal Ordinance. Clause 69 makes provision for a reprint of the principal Ordinance as amended.

**FRAUDULENT TRANSFERS OF BUSINESSES
(AMENDMENT) BILL, 1956.**

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to amend the Fraudulent Transfers of Businesses Ordinance, Chapter 49."

He said: Sir, this Bill also arises from the report of the Inland Revenue Ordinance Committee. Its purpose is I think sufficiently set forth in the statement of Objects and Reasons.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

Under section 3 of the Ordinance the transferee of a business becomes liable for the obligations incurred by the transferor prior to the transfer unless the prescribed notice has been given and completed at the date of the transfer. Doubt has arisen as to whether a transferee can become liable under section 3 for taxes charged or chargeable on the transferor in respect of periods prior to the date of transfer of the business. The Inland Revenue Ordinance Committee recommended that the Ordinance be amended to make it clear that a transferee can become liable for such taxes.

2. The object of this Bill is to implement the Committee's recommendation.

VEHICLE AND ROAD TRAFFIC (AMENDMENT)**BILL, 1956.**

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance further to amend the Vehicle and Road Traffic Ordinance, Chapter 220."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

Clauses 1 to 8 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Vehicle and Road Traffic (Amendment) Bill, 1956 had passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

DANGEROUS GOODS BILL, 1956.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to consolidate and amend the law relating to dangerous goods."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

H. E. THE OFFICER ADMINISTERING THE GOVERNMENT: —With the agreement of honourable Members we will take these clauses in blocks of five.

This was agreed to.

Clauses 1 to 19 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Dangerous Goods Bill, 1956 had passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

MAGISTRATES (CORONERS POWERS)**(AMENDMENT) BILL, 1956.**

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance further to amend the Magistrates (Coroners Powers) Ordinance, Chapter 14."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

Clauses 1 to 4 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Magistrates (Coroners Powers) (Amendment) Bill, 1956 had passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

HONG KONG TRAMWAYS EDUCATIONAL TRUST FUND BILL, 1956.

MR. C. E. M. TERRY moved the First reading of a Bill intituled "An Ordinance to make provision for the establishment of a trust fund to be known as the Hong Kong Tramways Educational Trust Fund, for the incorporation of the Chairman of the Management Committee to act as Trustee of the said fund, for the due administration thereof and for purposes connected with the matters aforesaid."

He said: Sir, the purpose of this Bill is fully explained in the Objects and Reasons and they require no elaboration.

MR. J. D. CLAGUE seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

1. The main purpose of this Bill is to make provision for the establishment of a trust fund to be known as the Hong Kong Tramways Educational Trust Fund, for the promotion and encouragement of education of selected children of employees of

Hong Kong Tramways Limited. Establishment by Ordinance is necessary to enable the Trust Fund to continue in perpetuity. An initial contribution of \$110,000 was allocated by Hong Kong Tramways Limited to mark the 50th anniversary of the running of the first tramcar in Hong Kong, and a further \$100,000 has since been allocated. These sums together with accrued interest thereon are held in cash or have been used to purchase shares as indicated in the Schedule to this Bill.

2. The Bill makes provision in clause 4 for the incorporation of the Chairman of the Committee set up under clause 6 to act as Trustee of the Trust Fund. This will preserve continuity in the holding of the investments of the trust and render it unnecessary for these investments to be transferred upon a change in the identity of the Chairman.

3. The constitution of the Management Committee is set out in clause 6. The purposes for which the fund is to be applied are set out in clause 7 and provisions for awards for scholarships, maintenance grants and other payments are contained in clause 8.

4. Clause 9 permits the Fund to be invested in trustee or non-trustee investments under the directions of the Committee. Clause 10 provides for the keeping and audit of accounts, and for the submission of accounts to the Board of Directors of Hong Kong Tramways Limited once in every year.

5. Clause 11 empowers the Committee to employ servants and professional advisers, and for the payment of salaries and fees of such servants and advisers out of the Trust Fund. Clause 12 permits the cost of administering the Fund to be paid out of the Fund.

6. Clause 13 provides for the possibility that Hong Kong Tramways Limited may at some future date go into liquidation or cease to be direct employers. On the happening of either of these events the Fund would be given to the Grantham Scholarships Fund to be dealt with as provided in the Grantham Scholarships Fund Ordinance, 1955.

7. Clause 14 of the Bill contains provisions saving the rights of the Crown as required, in the case of private Bills, by Clause XXVII of the Royal Instructions.

ADJOURNMENT.

H. E. THE OFFICER ADMINISTERING THE GOVERNMENT: —That concludes our business for today gentlemen. When is it your pleasure that we should meet again?

THE ATTORNEY GENERAL: —May I suggest this day fortnight, sir?

H. E. THE OFFICER ADMINISTERING THE GOVERNMENT: —Council will adjourn to this day fortnight.