

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 6th November 1963****PRESENT:**HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR ROBERT BROWN BLACK, GCMG, OBE

HIS EXCELLENCY LIEUTENANT-GENERAL SIR RICHARD WALTER CRADDOCK, KBE,
CB, DSO

COMMANDER BRITISH FORCES

THE HONOURABLE EDMUND BRINSLEY TEESDALE, MC
COLONIAL SECRETARYTHE HONOURABLE DENYS TUDOR EMIL ROBERTS, OBE
ACTING ATTORNEY GENERALTHE HONOURABLE JOHN CRICHTON McDOUALL
SECRETARY FOR CHINESE AFFAIRSTHE HONOURABLE JOHN JAMES COWPERTHWAITTE, OBE
FINANCIAL SECRETARYTHE HONOURABLE KENNETH STRATHMORE KINGHORN
DIRECTOR OF URBAN SERVICESTHE HONOURABLE ALEC MICHAEL JOHN WRIGHT
DIRECTOR OF PUBLIC WORKSDR THE HONOURABLE TENG PIN-HUI, OBE
DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE RICHARD CHARLES LEE, CBE

THE HONOURABLE KWAN CHO-YIU, OBE

THE HONOURABLE KAN YUET-KEUNG, OBE

THE HONOURABLE SIDNEY SAMUEL GORDON

THE HONOURABLE LI FOOK-SHU, OBE

THE HONOURABLE WILFRED WONG SIEN-BING

THE HONOURABLE JAMES DICKSON LEACH, OBE

MR GORDON ERIC MATHER (*Deputy Clerk of Councils*)**ABSENT:**

THE HONOURABLE PETER DONOHUE

DIRECTOR OF EDUCATION

THE HONOURABLE DHUN JEHANGIR RUTTONJEE, OBE

MINUTES

The Minutes of the meeting of the Council held on 23rd October 1963, were confirmed.

PAPERS

THE COLONIAL SECRETARY, by Command of His Excellency the Governor, laid upon the table the following papers: —

<i>Subject</i>	<i>LN No</i>
Sessional Paper, 1963: —	
No 24—Annual Report of the Accountant General with the Accounts of the Colony for the year 1962-63.	
Places of Public Entertainment Ordinance.	
Places of Public Entertainment (Amendment) Regulations, 1963	131
Registration of Persons Ordinance, 1960.	
Registration of Persons (Re-registration) (No 41) Order 1963	132
Births and Deaths Registration Ordinance.	
Births and Deaths Registration (Amendment of First Schedule) (No 3) Regulations, 1963	133
Registration of Persons Ordinance, 1960.	
Registration, of Persons (Re-registration) (No 42) Order, 1963	134

DUTIABLE COMMODITIES ORDINANCE, 1963

THE FINANCIAL SECRETARY moved the following resolution: —

Resolved, pursuant to section 6 of the Dutiable Commodities Ordinance, 1963, that regulation 7 of the Dutiable Commodities (Marking and colouring of Hydrocarbon Oils) Regulations, 1963, made by the Governor in Council on the 5th day of September, 1963, under section 6 of the Dutiable Commodities Ordinance, 1963, be approved.

He said: Sir, section 6(3) of the Dutiable Commodities Ordinance provides that in any regulation made under the Ordinance provision may be made to the effect that a person charged with a contravention of the regulation shall prove certain facts or that facts may be presumed unless the contrary be proved.

Section 6(4) provides that any regulation made in exercise of the powers conferred by section 6(3) shall be subject to the approval of this Council.

The Dutiable Commodities (Marking and Colouring of Hydrocarbon Oils) Regulations, 1963, were made by the Governor in Council on 5th September. Regulation 7 reads as follows: —

"Where treated oil is found in the fuel tank of any motor vehicle, other than in accordance with a permit issued by the Director, the owner, the driver and any person for the time being in charge of the vehicle shall be guilty of an offence, unless he proves that the treated oil was in the fuel tank without his knowledge."

The Regulation therefore requires the covering approval of this Council and the Resolution seeks to secure that approval.

As members are aware, treated oil for industrial use or for use in ships of less than 60 tons attracts duty at only 10 cents a gallon, whereas untreated oil for road vehicles pays \$1 a gallon. As I mentioned when presenting this year's estimates, there has been widespread evasion of duty by persons using such treated oil for road vehicles and much revenue has been lost. It would be extremely difficult for the prosecution to prove that a particular person knew that a treated fuel oil had been put in his tank. Therefore, in proceedings for an offence under Regulation 7, the prosecution will not have to prove as part of its case that the defendant knew that treated fuel oil was in his tank, but it will be a defence for the defendant himself to show on the balance of probabilities that he did not know. Such provisions are not unusual where protection of the revenue is at stake.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

COPYRIGHT (AMENDMENT) BILL, 1963

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Copyright Ordinance."

He said: Sir, honourable Members will be aware of the recent increase in prosecutions in respect of the importation and distribution of sound recordings which have been made in Taiwan in breach of the copyrights subsisting in the original recordings.

The traffic in pirated records in the past 12 months has reached such proportions as seriously to jeopardize the existence of the legitimate sound recording industry in the Colony both in respect of records

imported into the Colony and in respect of those made in the Colony. The extent of the interference with legitimate trade in sound recordings in the Colony can be illustrated by the fact that one of the leading firms of manufacturers and importers of records made a profit of over £ 16,000 in 1961/62 and a loss of over £ 9,000 in the year 1962/63. Although this company has recently re-equipped its recording studios in Hong Kong, for the purpose of making Chinese records, it has been forced to consider seriously stopping the production of these records because as soon as a new record is published a pirated version is likely to appear selling at a cost approximately 1/5th of the, legitimate recording.

It has been estimated that up to 150,000 pirated long playing records a month, produced in breach of copyright, are imported into the Colony from Taiwan. Approximately 1/3rd of these is thought to be sold locally and 2/3rd re-exported from Hong Kong to other countries. In addition to the grave damage this trade causes to the sound recording industry and to record distributors in the Colony, such a traffic can only tarnish the trading reputation of the Colony abroad.

The majority of persons who infringe copyright in the works concerned are outside the jurisdiction of the Courts of the Colony and those who import them into the Colony are often difficult to detect. It would be theoretically possible for an owner of a copyright which is the subject of a breach to institute civil proceedings against the seller of pirated copies, but this could only result in a multiplicity of actions of limited effectiveness.

Accordingly, it is considered that recourse must be had to the criminal law to attempt to ensure a proper protection to owners of copyright. The volume of copyright infringements taking place at present shows that the present penalties contained in the Copyright Ordinance are of little deterrent value. The present maximum penalty for a breach of copyright is \$50 for each article infringing the copyright, not exceeding \$1,000 in total in respect of the same transaction, or, in the case of the second or subsequent offence the same maximum fines and 3 months imprisonment. It is therefore proposed by clause 2 of the Bill to increase the maximum fine which may be imposed for any single breach of copyright from \$50 to \$500 and the total maximum in respect of the same transaction from \$1,000 to \$10,000 and in the case of a second or subsequent conviction, the maximum amount is raised to \$50,000 and 12 months imprisonment.

The Ordinance at present only provides for the destruction of pirated recordings or works by order of a magistrate where a prosecution is brought under section 3 of the Ordinance. From time to time the Police are able to seize quantities of pirated recordings but are

unable to assemble sufficient evidence to bring a charge against any individual person and there is no power to order such recordings to be destroyed. It is considered that a police officer should be able to apply to a magistrate for a destruction order against pirated recordings or works even where it is not possible to take criminal proceedings against any individual and this power is contained in a new subsection (4) to section 3 of the Ordinance introduced by paragraph (c) of clause 2 of the Bill.

I have commented only on the situation with regard to sound recordings. Honourable Members will be aware of the long standing traffic in pirated copies of books. This traffic still continues at a serious level though not to the extent that exists in the case of sound recordings. It is hoped that the increase in penalties proposed in this Bill will also help to reduce the traffic in pirated copies of books.

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: —

This Bill seeks to increase the penalties in respect of offences against the provisions of section 3 of the Copyright Ordinance, Chapter 39. The need for a substantive increase in the penalties in subsection (1) of section 3 has arisen as a result of the substantial increase in the importation and sale of books and sound recordings made in breach of the copyright subsisting in the original work. This traffic has reached such proportions, in the case particularly of sound recordings, as seriously to jeopardize the existence of the legitimate sound recording industry in the Colony, both in respect of recordings imported into and made in the Colony.

2. It is considered that since the persons who infringe the copyright in the works concerned are without the jurisdiction of the courts in the Colony and that those who import them into the Colony are difficult to detect, the right to sue for breach of copyright is rendered useless. While it would be possible for the owner of a copyright which is the subject of a breach to sue the seller of infringing copies, such a multiplicity of actions would be resulted as to render such actions unprofitable. Accordingly it is considered that recourse must be had to the criminal law in order to protect owners of copyright. It has been observed that the penalties at present contained in the Copyright Ordinance are of little deterrent value having regard to the volume of copyright infringements at present taking place.

3. Although there appears to be little making of infringing copies in the Colony, this Bill also seeks to increase the penalties in subsection (2) of section 3 in order to maintain the parity between the two subsections. It would be anomalous to provide a small penalty in respect of the making of infringing copies in the Colony and a large penalty in respect of importing infringing copies made elsewhere.

SUMMARY OFFENCES (AMENDMENT) BILL, 1963

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Summary Offences Ordinance, Chapter 228."

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 3 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Summary Offences (Amendment) Bill, 1963, 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 into law.

LI PO CHUN CHARITABLE TRUST FUND BILL, 1963

MR KWAN CHO-YIU moved the Second reading of a Bill intituled "An Ordinance to provide for the establishment and administration of a trust fund to be known as the Li Po Chun Charitable Trust Fund and for the purposes connected therewith".

MR KAN YUET-KEUNG 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 and 2 were agreed to.

MR KWAN CHO-YIU: —Sir, I rise to move that Clause 3 be amended as set forth in the paper before honourable Members.

Proposed Amendment.

3. In the proviso to subclause (2), leave out the words "on condition" and substitute therefor the following—
"a condition".

Clause 3, as amended, was agreed to.

Clauses 4 to 6 were agreed to.

MR KWAN CHO-YIU: —Your Excellency, I rise to move that Clause 7 be amended as set forth in the paper before honourable Members.

Proposed Amendment.

7. After the words "monies of the fund", insert the following—
"including the proceeds of the realization of any of the shares enumerated in the Schedule hereto".

Clause 7, as amended, was agreed to.

Clauses 8 to 14 and the Schedule were agreed to.

Council then resumed.

MR KWAN CHO-YIU reported that the Li Po Chun Charitable Trust Fund Bill, 1963, had passed through Committee with certain amendments and moved the Third reading.

MR KAN YUET-KEUNG seconded.

The question was put and agreed to.

The Bill was read a Third time and passed into law.

ADJOURNMENT

HIS EXCELLENCY THE GOVERNOR: —That concludes the business for today, gentlemen. When is it your pleasure that we should meet again.

THE ATTORNEY GENERAL: —May I suggest, Sir, Wednesday the 4th December.

HIS EXCELLENCY THE GOVERNOR: —Council is adjourned until Wednesday, 4th December.