

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 3rd June 1964****PRESENT:**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE CROSBIE TRENCH, KCMG, MC
BRIGADIER THE HONOURABLE THOMAS HADDON, CBE
SENIOR MILITARY OFFICER
THE HONOURABLE EDMUND BRINSLEY TEESDALE, MC
COLONIAL SECRETARY
THE HONOURABLE MAURICE HEENAN, QC
ATTORNEY GENERAL
THE HONOURABLE JOHN CRICHTON McDOUALL
SECRETARY FOR CHINESE AFFAIRS
THE HONOURABLE JOHN JAMES COWPERTHWAITTE, CMG, OBE
FINANCIAL SECRETARY
THE HONOURABLE KENNETH STRATHMORE KINGHORN
DIRECTOR OF URBAN SERVICES
DR THE HONOURABLE TENG PIN-HUI, OBE
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE JAMES JEAVONS ROBSON
ACTING DIRECTOR OF PUBLIC WORKS
THE HONOURABLE DHUN JEHANGIR RUTTONJEE, OBE
THE HONOURABLE FUNG PING-FAN, OBE
THE HONOURABLE RICHARD CHARLES LEE, CBE
THE HONOURABLE KWAN CHO-YIU, OBE
THE HONOURABLE KAN YUET-KEUNG, OBE
THE HONOURABLE WILLIAM CHARLES GODDARD KNOWLES
THE HONOURABLE SIDNEY SAMUEL GORDON
THE HONOURABLE LI FOOK-SHU, OBE
MR ANDREW McDONALD CHAPMAN (*Deputy Clerk of Councils*)

ABSENT

THE HONOURABLE WILLIAM DAVID GREGG
DIRECTOR OF EDUCATION

MINUTES

The Minutes of the meeting of the Council held on 20th May 1964, 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> |
|--|--------------|
| Report of the Working Party on the provision of Education Allowances for the children of Government Officials. | |
| Police Force Ordinance. | |
| Police Regulations (Discipline) (Amendment) Regulations, 1964 | 75 |
| Registration of Persons Ordinance, 1960. | |
| Registration of Persons (Re-registration) (No 20) Order, 1964 | 78 |

He said: Included among these is the Report of a Working Party, which was appointed towards the end of 1963, on the Provision of Education Allowances for the Children of Government Servants. The Governor in Council has accepted the Report and the Finance Committee of this Council subsequently approved the payment of education allowances for the children of overseas staff who attend full-time boarding schools overseas. The allowances, which are payable with effect from the autumn term of 1963, are estimated to cost about \$1 million a year.

The arguments adduced by the Working Party in support of these proposals are clearly set out, and speak for themselves. The only point I would wish to emphasize is this. While these allowances represent a new departure for Hong Kong, they have, as the Working Party noted in paragraph 13 of its Report, been in operation for some time in countries where overseas officers are employed. In introducing them here, therefore, Hong Kong is falling into line with a generally accepted practice.

QUESTIONS

MR S. S. GORDON, pursuant to notice, asked the following questions: —

Sir, during the 1961 Budget Debate the then Colonial Secretary said, *inter alia*,

"Despite the value of the land on which these buildings would have to stand, we have accepted the view that it is necessary in the public interest to provide such car parks

in high-density business districts, and in districts of a mixed residential and business character. We have already announced the intention of constructing one of these buildings each year; but on closer examination it appears that this does not go far enough. If funds permit, therefore, it is proposed to double this provision and to build two multi-storey car parks each year, for the next few years at all events; and we have drawn up a tentative list of sites which might be developed for this purpose in the immediate future."

May I enquire—

How many multi-storey car parks have been completed since that date?

How many are in course of construction?

How many are planned in the immediate future?

What steps Government is taking to make land available to be sold for private development as multi-storey car parks?

What provision is being made for car parks in districts of a mixed residential and business character?

THE COLONIAL SECRETARY replied as follows: —

Sir, one multi-storey car park has been completed since the date mentioned, at Garden Road. It can accommodate 746 cars and was opened in March 1963. It is not fully used at present.

A car park at Middle Road in Kowloon, which will accommodate about 900 cars, is nearing completion.

As to future plans, under an agreement between Government and the Hong Kong and Kowloon Wharf and Godown Company Limited, a total of about 1,000 parking places will be provided in the new Ocean Terminal, on which work started last year.

In the less immediate future the approved Central Area Town Plan, for the implementation of part of which tenders will be called shortly, provides for the construction of about 8,000 car-spaces, of which 1,380 have already been provided in the three existing multi-storey parks, 1,000 may be provided in a combined bus station and multi-storey car park, and 2,400 are to be provided at public expense by the successful tenderer below podium level on the former Naval Dockyard site.

Two multi-storey car parks were included in the Category C of the Public Works Programme at the end of 1960—at Causeway Bay and Yau Ma Tei, but in neither case is the site available yet.

An engineering study is also being made of the possibility of constructing a car-park under the Southorn Playground.

As to the sale of land for the private development of multi-storey car parks, work is in progress on drawing up tender documents for disposal of a site at Leighton Road, one of the conditions of lease being the provision of about 200 car spaces. This is experimental. If successful, it is hoped to extend this procedure to other sites earmarked in different areas for multi-storey car parks.

The former Naval Dockyard scheme will cater for a mixed commercial/residential district and the Middle Road car park has this character to some extent. This is true also of Leighton Road and Southorn Playground.

Further sites are being earmarked in all such districts, both old and new. But there is little spare land available in some of the older districts and provision of sites for car parks might require refusal to regrant or renew existing leases or the resumption of land.

My predecessor's reference to proposals for constructing two car-parks a year (of unspecified size) was qualified in two ways. In the first place it was conditional on funds being available, and secondly on adequate charges being made. Charges were raised a first stage in 1961, but are still well below the level he suggested might be appropriate. As to availability it is clear that demand for funds for essential public works considerably exceeds the amount we can at present foresee as likely to become available. It is therefore largely a question of priorities.

In last year's budget debate the Financial Secretary spoke of some of the considerations affecting the use of public funds for the provision of parking facilities for private cars and expressed some doubts about the priority to be given to them in our social and economic situation. We have recently decided to review our whole policy in this field as a matter of urgency.

MR S. S. GORDON: —Sir, may I ask a supplementary question? There are quite a number of queries which arise out of my honourable Friend's reply but for the present I will confine myself to one. Will this Council or Executive Council be consulted when the whole policy in this field is being reviewed?

THE COLONIAL SECRETARY: —I understand it is the intention to prepare a paper on the policy of this matter for the consideration of Executive Council and I have no doubt that Finance Committee will in due course have to consider the financial considerations arising from it.

MR Y. K. KAN: —Sir, may I also ask a supplementary question? Would Government be prepared in its review of the whole policy to consider the proposal which I made, I think two years ago, to build an underground car park below the Hong Kong Cricket Club?

THE COLONIAL SECRETARY: —I don't think I can give an assurance of that to my honourable Friend today, but I will certainly take note of it.

SCHEDULE OF WRITE-OFFS FOR THE FINANCIAL YEAR 1963-64

THE FINANCIAL SECRETARY moved the following resolution: —

Resolved that the Write-offs for the Financial Year 1963-64, as set out in the Schedule, be approved.

He said: Your Excellency, the Schedule to the resolution comprises those write-offs approved by Finance Committee during the last Financial Year which require the covering approval of this Council.

I should perhaps refer to one item in the Schedule, that is, the write-off of an unknown sum representing a claim by Government against the Telephone Company. This claim derived from an anomaly in the Schedule to the Telephone Ordinance which was removed when it was amended by resolution of this Council on 22nd January this year.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

LARCENY (AMENDMENT) BILL, 1964

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

He said: Sir, there are a large number of separate offences dealing with dishonesty and unless the actions of a fraudulent person bring him within the scope of one or the other of these offences no proceedings can be brought against him, and moreover, if he be charged with an offence which does not precisely fit his fraudulent actions, a fact which may only emerge after proceedings before the court have progressed some way, he may well escape punishment for his dishonesty. In

particular the law as to the offences of obtaining goods by false pretences and of obtaining credit by fraud at present offers a great number of technical defences which often prevent the courts from deciding cases on their merits.

Accordingly, the purpose of clauses 3 and 4 of the Bill is to simplify the law of false pretences and fraud by consolidating the offences of obtaining goods by false pretences and of obtaining credit by fraud in one section, and, whilst maintaining the obligation on the prosecution to prove the dishonesty of the defendant, to deprive a fraudulent person of many of those technical defences which frequently prevent the courts from deciding a case on its merits.

Subsection (1) of section 50 proposed in clause 3 combines the present two separate offences of obtaining by false pretences and obtaining credit by fraud into one offence, and thus disposes of one very common technical defence to a charge of obtaining credit by fraud, namely the defence whereby it is contended that the credit was obtained not for the defendant but for some other person. In addition, the opening words of this new subsection are designed to remove doubts created by a recent decision of the Supreme Court of Hong Kong as to whether or not the false pretence charged must be the main inducement. Although there is now little distinction between a misdemeanour and a felony, an offence under subsection (1) is made a felony as it is considered that such an offence is just as serious as the felonies of larceny and embezzlement. The practical effect of making an offence under subsection (1) a felony is that persons assisting defendants after the crime has been committed by sheltering them and hindering the Police, or destroying or altering evidence, will become punishable as accessories after the fact and also persons not reporting the crime may be guilty of misprision of felony.

Subsection (2) of the proposed section 50 extends the meaning of "false pretence" in that a false pretence need no longer be confined to a pretence as to an existing fact. The unsatisfactory state of the law in England on this point was commented on by the Lord Chancellor, Lord Dilhorne, in the House of Lords, in the case of Fisher against Raven, when he said *inter alia* "it may be that consideration should now be given to closing this gap in the criminal law—and one possible solution might be to change the law so that a false pretence need no longer be a pretence as to an existing fact".

The defence that a false pretence related to the future or to the intention of the defendant rather than to an existing fact is particularly effective in a community such as Hong Kong where a large proportion of the rural community uses the lunar calendar whilst the official and business community uses the Gregorian calendar, making it almost impossible to fix exact dates. This defence is also particularly common

in Hong Kong owing to the prevailing practice of accepting and trading on post-dated cheques. If it can be proved that the pretence was false to the knowledge of the defendant at the time when he made it, then it is considered that there is no merit in a defence, that the pretence, although false, did not relate to an existing fact.

Subsection (3) of the proposed section 50 is concerned with the definition of credit and is designed to meet difficulties flowing from the decision of the House of Lords in the case of Fisher against Raven to which I have referred earlier. The effect of that decision is that credit is restricted to an obligation to pay money in return for goods supplied or services rendered whereas obtaining money in return for goods to be delivered or services to be rendered does not amount to obtaining credit. It is perhaps fortunate that the effect of the decision in Fisher v. Raven has not yet been widely appreciated by those fraudulently inclined and the amendment sought by subsection (3), if enacted, will re-instate the law as it was before Fisher and Raven.

Subsection (4) of the proposed section 50 permits a charge to be drafted without distinguishing whether it is false pretence or some other fraud which is charged since it frequently happens that this only becomes clear in the course of the hearing of the case. This subsection is included for the avoidance of doubt as it has been decided by the Court of Criminal Appeal in 1945, that such a charge is lawful.

Subsection (5) of the proposed section 50 is concerned with the problems of "bouncing" cheques. If a fraudulent person in possession of a genuine bank account issues cheques, especially post-dated cheques, which are subsequently dishonoured, it is virtually impossible to prove that he knew when he drew them, that they would be dishonoured unless of course he is foolish enough to issue a very large number of such cheques within a short period of time. The overseas visitor who opens a bank account in Hong Kong with a relatively small deposit and then issues cheques which are greatly in excess of the deposit is by no means unknown, and under the present law only rarely can such a person either be prosecuted or prevented from leaving the Colony with his gains. The fraudulent issue of bad cheques is particularly prevalent in Hong Kong due partly to the fierce competition for business and partly to the widespread practice of trading on post-dated cheques. Last year alone the Police received three hundred and eleven reports relating to the issue of five hundred and sixty four post-dated cheques to a total value of HK\$1,792,100; the year before, that is the year ending 31st March 1963, the Police received 166 such reports. It was not possible to take any effective action in any of these cases and it is, I believe, only because it is widely known that the law provides no effective remedy, that there are not hundreds more such reports. It is considered

that local circumstances justify the change in the burden of proof introduced by subsection (5) and that there is little danger of an innocent person being placed in jeopardy since—

- (a) it is unlikely that such a person would issue cheques which could not be honoured; and
- (b) if such person by some misfortune did issue such a cheque, he should have no difficulty in showing what uncalled for or unexpected event prevented his cheque from being honoured.

Hon Members will also notice that the maximum penalty for the offence of false pretences has been increased from five years to ten years. It is felt that the legislature should make known to the courts in this way the serious view which is taken of such fraudulent offences and the danger which they constitute to a commercial community such as Hong Kong.

Section 52 of the principal Ordinance is at present in line with United Kingdom law and has the effect of creating two separate offences, one of receiving and obtaining under circumstances such as fraud which amounts to misdemeanour and another of receiving goods under circumstances such as stealing which amount to felony. Thus a person charged with receiving goods obtained by false pretences has a complete defence if he proves that the goods were stolen. In a recent case in England (*D.P.P. v. Neiser* (1958) 3 W.L.R. page 757), the Court of Queen's Bench described the situation as being the height of absurdity and such that it should be remedied, and this is sought to be achieved in Hong Kong by clause 5 of the Bill which repeals and replaces the current section 52 so as to make the receiving of goods dishonestly obtained one offence only.

Clause 6 is consequential on the repeal and replacement of section 50 by clause 3 and it also extends the powers afforded under section 63 of the principal Ordinance to trials before magistrates, while clause 7 amends section 64 in consequence of the wording of the proposed new section 52.

Clause 8 repeals and replaces section 66 of the principal Ordinance and in so doing extends to magistrates the powers afforded under this section. Opportunity has been taken to extend and consolidate the existing alternative convictions into a schedule and consequentially sections 62 and 63 of the Criminal Procedure Ordinance are repealed by clause 10.

In conclusion, Sir, I would say that I believe that this Bill if enacted will afford a much greater measure of protection to the public against fraudulent transactions than has hitherto been the case in Hong Kong.

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 purpose of this Bill is to seek amendments to the Larceny Ordinance to reduce the number of technical defences available to persons accused of certain types of fraud.

2. The effect of clause 2 is to enlarge the categories of documents coming within the meaning of the expression "valuable security" and in particular to include certain types of less formal mercantile documents.

3. The law on obtaining goods by false pretences and on obtaining credit by fraud at present offers a number of technical defences which prevent the Courts from deciding cases on their merits. Clause 3 seeks to remove these by consolidating the offences of obtaining goods by false pretences and of obtaining credit by fraud in a new section replacing section 50 of the principal Ordinance. The consolidation has the effect of preventing the setting up of the common defence by persons charged with obtaining credit that the credit was in fact obtained for someone else or for a firm. The new subsection (2) provides that a false pretence need no longer be a pretence as to an existing fact and subsection (3) renders more comprehensive the meaning of the term "obtaining credit". Subsection (5) is concerned with an offence particularly prevalent in this Colony and enables the prosecution to establish a *prima facie* case against persons obtaining goods by means of cheques which are subsequently dishonoured. Owing to the prevalence of offences falling within the scope of section 50, this clause also seeks an increase in the maximum penalty applicable from imprisonment for five years to imprisonment for ten years.

4. Section 52 of the principal Ordinance has the effect of creating two separate offences—one of receiving goods obtained under circumstances such as stealing which amount to felony and the other of receiving goods obtained under circumstances such as fraud which amount to misdemeanor. It may only become apparent in the course of a trial that goods have been stolen rather than obtained by fraud or *vice versa* and it would, for example, be a good defence that the goods had been obtained by fraud where an accused person is charged with receiving stolen goods. Clause 5 seeks the repeal and replacement of section 52 in order to remove the distinction and to make it one offence

to receive goods obtained under circumstances which amount to any indictable offence.

5. Clauses 8 and 9 seek the repeal and replacement of section 66 modified to extend to magistrates comparable powers of returning substitute convictions as are enjoyed by judges of the District Courts in exercise of their criminal jurisdiction and juries in the case of verdicts in trials before the Supreme Court. These clauses also seek to increase the number of offences in respect of which substitute convictions or verdicts may be returned and for convenience and clarity to list them in the form of a Schedule to the Ordinance.

FORGERY (AMENDMENT) BILL, 1964

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

He said: Sir, clause 2 of the bill seeks to amend the definition of "valuable security" in section 2 of the principal Ordinance so as to include any authority or request for the payment of money or delivery or transfer of goods. This amendment is designed to enlarge the definition of "valuable security" to include, for example, an order for the delivery of goods from a warehouse and if enacted will bring the law in this respect into line with the United Kingdom Criminal Justice Act, 1925.

Clause 3 seeks to amend section 3 of the principal Ordinance by the addition of a new subsection which declares that a document may be false notwithstanding that it may not be false in a manner described in subsection (2) of that section. Subsection (2) prescribes actions which may render a document false and therefore constitute forgery but it does not have the usual introductory word "includes" and as a result it has been held to be exclusive. Common law has established that other actions, such as making a false copy of a genuine document, may also constitute forgery, and in England the Forgery Act, 1913, was amended by the Criminal Justice Act, 1925, so that the Act of 1913 thereafter applied to such additional actions.

The purpose of the present Bill is to make identical amendments to the Hong Kong Forgery Ordinance.

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 object of this Bill is to make amendments to the Forgery Ordinance similar to those which were made in England by section 35 of the Criminal Justice Act, 1925 to the Forgery Act, 1913.

2. The effect of section 2 is to enlarge the categories of documents coming within the meaning of the expression "valuable security", the forgery of which is an offence under section 4(2) of the principal Ordinance.

3. Decisions of the courts in England have established that acts may be done to a document constituting it a forgery other than those listed in subsection (2) of section 3 of the principal Ordinance. For the avoidance of doubt section 3 is therefore amended to make it clear that a document may be a false document for the purposes of the Ordinance even though it is not false within the meaning of subsection (2).

**CHINESE UNIVERSITY OF HONG KONG (AMENDMENT)
BILL, 1964**

THE COLONIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to amend the Chinese University of Hong Kong Ordinance, 1963."

THE ATTORNEY GENERAL 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.

Council then resumed.

THE COLONIAL SECRETARY reported that the Chinese University of Hong Kong (Amendment) Bill 1964 had passed through Committee without amendment and moved the Third reading.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

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

WORKMEN'S COMPENSATION (AMENDMENT) BILL, 1964

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance further to amend the Workmen's Compensation Ordinance, 1953."

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 9 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Workmen's Compensation (Amendment) Bill, 1964, 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.

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: —Sir, may I suggest this day two weeks?

HIS EXCELLENCY THE GOVERNOR: —Council will adjourn until this day two weeks.