

OFFICIAL REPORT OF PROCEEDINGS

Meeting of 26th June 1968

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE CROSBIE TRENCH, KCMG, MC
THE HONOURABLE THE COLONIAL SECRETARY
MR MICHAEL DAVID IRVING GASS, CMG
THE HONOURABLE THE ATTORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, OBE, QC
THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS
(*Acting*) MR PAUL TSUI KA-CHEUNG, OBE
THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN COWPERTHWAITTE, KBE, CMG
THE HONOURABLE ALEC MICHAEL JOHN WRIGHT, CMG
DIRECTOR OF PUBLIC WORKS
DR THE HONOURABLE TENG PIN-HUI, CMG, OBE
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE WILLIAM DAVID GREGG, CBE
DIRECTOR OF EDUCATION
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC
COMMISSIONER OF LABOUR
THE HONOURABLE TERENCE DARE SORBY
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE KENNETH STRATHMORE KINGHORN
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE
DIRECTOR OF URBAN SERVICES
THE HONOURABLE ALASTAIR TREVOR CLARK
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE DHUN JEHANGIR RUTTONJEE, CBE
THE HONOURABLE LI FOOK-SHU, OBE
THE HONOURABLE TANG PING-YUAN, OBE
THE HONOURABLE TSE YU-CHUEN, OBE
THE HONOURABLE KENNETH ALBERT WATSON, OBE
THE HONOURABLE WOO PAK-CHUEN, OBE
THE HONOURABLE GEORGE RONALD ROSS, OBE
THE HONOURABLE SZETO WAI, OBE
THE HONOURABLE WILFRED WONG SIEN-BING, OBE
THE HONOURABLE ELLEN LI SHU-PUI, OBE
DR THE HONOURABLE CHUNG SZE-YUEN, OBE
THE HONOURABLE WILSON WANG TZE-SAM
THE HONOURABLE HERBERT JOHN CHARLES BROWNE

IN ATTENDANCE

THE DEPUTY CLERK OF COUNCILS
MR DONALD BARTON

MINUTES

The minutes of the meeting of the Council held on 5th June 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>
Subsidiary Legislation: —	
Motor Vehicles Insurance (Third Party Risks) Ordinance.	
Motor Vehicles Insurance (Third Party Risks)	
(Amendment) Regulations 1968.....	54
Road Traffic Ordinance.	
Road Traffic (Roads and Signs) (Amendment)	
Regulations 1968.....	55
Boilers and Pressure Receivers Ordinance.	
Boilers and Pressure Receivers (Forms) (Amendment)	
Order 1968	56
Exportation (Cotton Manufactures) Regulations.	
Exportation (Cotton Manufactures) (Amendment of	
Schedule) (No 2) Order 1968.....	57
Trade Marks Ordinance.	
Trade Marks (Amendment) Rules 1968.....	58
Money-lenders Ordinance.	
Order of Exemption.....	59
Importation (Coffee) Regulations.	
Importation (Coffee) Regulations (Amendment of	
First Schedule) (No 2) Order 1968.....	60
Banking Ordinance.	
Specification of Specified Liquid Asset.....	61

Sessional Paper 1968:—

No 15—Annual Report by the Director of Agriculture and Fisheries for the year 1966-67.

Report:—

Triennial Survey of the Education Department for the years 1964-67.

MR T. D. SORBY, by Command of His Excellency the Governor, laid upon the table the following paper and addressed the Council:—

Subject

Report on the operation of the Rice Control Scheme in 1967.

He said:—Sir, this Information Paper on the rice trade relates really to the fifteen months ending 31st March this year. It brings up to date the report which I tabled in this Council on 1st February last year, which was subsequently printed and published as a Sessional Paper*.

I believe honourable Members will feel that the subject is of sufficient interest to warrant a few remarks on the report.

Thailand's ban on the export of rice, imposed in November 1966, was lifted towards the end of January 1967, and rice exports started again, although they remained subject to quantitative restriction. The Thai Government gave Hong Kong requirements priority as one of her traditional markets, and this enabled importers quickly to build up stocks which had run low at the beginning of the year. Nevertheless the world shortage of rice persisted and an abnormally strong demand from importing countries upon limited and uncertain supplies resulted in continuing higher prices. Import prices for Thai rice rose sharply during the first part of the year 1967 and prices for China rice followed the trend. This had its inevitable effect on wholesale and retail prices which started to rise again in April. During May and June as a result of malicious rumours of shortage, spells of heavy buying pressure resulted in some further sharp rises in retail prices. With the cooperation of importers and wholesalers, however, this inflationary trend was halted and prices were restored within a few days reverted to a more reasonable level.

Subsequently in July and August, deliveries from China were below a quarter of the normal level, and later in the year, in an attempt to stabilize its own domestic prices, the Thai Government once again placed restrictions on exports. These events could have had a serious effect upon Hong Kong prices had it not been for the measures we took earlier in the year in anticipation. For example, stocks were built up after April to a level which in normal times would be unwarranted when rice, although expensive, was more readily available. A number of importers, in response to the Department's advice that new sources of supply should be opened up, also purchased substantial quantities from America, where supplies were relatively abundant. I would like to add here that those importers who were the first to buy and market United States rice in Hong Kong did so at considerable financial risk to themselves.

* 1967 Hansard, page 28.

[MR SORBY]

A rise in retail prices between January and July of about 20 per cent was however inevitable, after which they remained stable during the period of more acute shortages of pork and certain fresh foodstuffs which characterized the two following months.

World prices continued to rise sharply throughout the first three months of 1968, but the rise was not reflected in domestic retail prices. In March world prices started to move downwards. Between the end of February and the end of May, the c.i.f. price for Thai whole rice, for instance, decreased by some \$17 a picul or 18%, and the mark up between the c.i.f. price and importers' selling price narrowed substantially. There was a corresponding drop in the price of rice from China. Towards the end of May, retail prices followed suit and there has been a general decrease of some five to ten dollars a picul depending on the grade of rice sold. Other things being equal, this downward trend should continue.

The events of the past year imposed a severe test on the Rice Control Scheme. Its value has been proved by the abundant supplies of good quality rice and relatively stable price levels which were maintained in the face of internal difficulties and a tight world supply position.

Sir, I shall continue to keep a close watch over the trend of prices and the statistical position to ensure that the objects of the Scheme are achieved, that is to say plentiful supplies of rice at a cost to the consumer commensurate with world selling prices.

SUPPLEMENTARY PROVISIONS FOR THE QUARTER ENDED 31st MARCH 1968

THE FINANCIAL SECRETARY moved the following resolution: —

Resolved that the Supplementary Provisions for the Quarter ended 31st March 1968, as set out in Schedule No 4 of 1967-68, be approved.

He said:—Sir, the Schedule for the fourth quarter of the 1967-68 financial year covers supplementary provision totalling \$61 million. Of this sum \$33 million was required to clear the advance account which was opened to meet expenditure incurred during the 1967 disturbances— the greater portion of which was devoted to pay and allowances for the Police and the Auxiliary Services. \$9 million was needed for Public Works Non-Recurrent of which \$3.5 million represented revotes; \$6 million was required for the Post Office to meet the increased cost of conveyance of mails and dues to other Administrations. A further \$1 million was needed to meet the cost of the new Department of Census & Statistics which was established during the year.

All the items in the Schedule have been approved by Finance Committee and the covering approval of this Council is now sought.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

DUTIABLE COMMODITIES ORDINANCE

THE FINANCIAL SECRETARY moved the following resolution:—

Resolved, in exercise of the power conferred by section 4 of the Dutiable Commodities Ordinance, as follows—

That the Resolutions of the Legislative Council, published as Legal Notice No 19 of 1966 in the *Gazette* of 11th March 1966*, and Legal Notice No 106 of 1967 in the *Gazette* of 14th July 1967†, which imposed duties on tobacco be revoked with effect from 5.30 p.m. on Wednesday, the 26th day of June 1968, and that thereafter duty shall be payable on tobacco at the following rates per pound—

A—on UNMANUFACTURED TOBACCO—

- | | |
|------------------------------------|---------|
| (1) Tobacco of Malawi origin | \$ 7.70 |
| (2) Other tobacco | \$ 8.00 |

B—on MANUFACTURED TOBACCO—

- | | |
|---|---------|
| (1) Cigars— | |
| (a) of Commonwealth manufacture ... | \$ 9.50 |
| (b) other cigars | \$11.25 |
| (2) Cigarettes— | |
| (a) of Commonwealth manufacture..... | \$10.00 |
| (b) other cigarettes | \$10.90 |
| (3) Other manufactured tobacco including
snuff and cigar cuttings— | |
| (a) of Commonwealth manufacture | \$ 8.05 |
| (b) Chinese prepared tobacco | \$ 2.50 |
| (c) other varieties | \$ 8.95 |

He said: —Sir, the present structure of rates of tobacco duty came into force nearly a year ago when certain simplifications were adopted. There are two main sections: Unmanufactured Tobacco and Manufactured Tobacco.

* 1966 Hansard, page 95.

† 1967 Hansard, page 358.

[THE FINANCIAL SECRETARY]

During the Kennedy Round negotiations on tariffs in 1966 and 1967 the United States, which is the largest supplier of tobacco leaf to Hong Kong, requested that the preference given to unmanufactured tobacco from the Commonwealth be abolished, and in the context of these multilateral tariff negotiations we agreed to do so subject to the consent of this Council by 1st July 1968. We did, however, propose the modification that tobacco of Malawi origin should continue to receive preference and this was accepted. The exception was made in Malawi's favour because Malawi is a developing country which is heavily dependent on earnings from tobacco exports and it is the only supplier of tobacco which grants reciprocal preference on its imports of Hong Kong manufactured goods.

The practical implications of the removal of preference are not very significant at present because, since the imposition of sanctions against Rhodesia, the only Commonwealth suppliers apart from Malawi have been Canada, India, South Africa and Zambia and only in very small quantities.

The current rates of duty on unmanufactured tobacco are \$7.70 per lb. for Commonwealth origin and \$8.00 per lb. for non-Commonwealth origin. The Resolution now before the Council proposes that in future all unmanufactured tobacco except that of Malawi origin should pay \$8.00 per lb. and that Malawi tobacco alone should be entitled to the present preferential rate of \$7.70. This may result in a very slight increase in revenue but should have no effect on retail prices as the increase in cost of tobacco is not more on average than one eighth of one cent per packet of 20 cigarettes.

The present duty structure for manufactured tobacco provides for three rates: a lowest rate for imports of tobacco products which are both of Commonwealth origin and of Commonwealth manufacture; an intermediate rate for products of Commonwealth manufacture only; and the full rate for other products. The Resolution also seeks to abolish the preference now given to imports of tobacco products manufactured in the Commonwealth from leaf of Commonwealth origin. This is a logical consequence of the first change for otherwise we would be improving the competitive position of other Commonwealth manufacturers over our own manufacturers. It is not of much practical importance, however, at the present time as only two brands of cigarettes at present attract the lowest rate and they are imported in relatively small quantities and sell already at relatively high prices. These two brands will now pay an additional 30 in duty per packet of 20 cigarettes.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

LEGAL PRACTITIONERS (AMENDMENT) BILL 1968

THE ATTORNEY GENERAL moved the First reading of: —“A Bill to amend further the Legal Practitioners Ordinance.”

He said: —Sir, the Legal Practitioners Ordinance, which came into force on the 1st August 1964*, replaced an older Ordinance on the same subject. Although the 1964 Ordinance has proved to be generally satisfactory, certain defects and omissions have been found as a result of experience of its working during the past 4 years and the main object of this Bill is to deal with these.

Clause 2 of the Bill introduces some new definitions which are consequential upon other amendments which are proposed. It also provides a definition of “misconduct”, for use in regulations which the Committee of the Law Society proposes to make under section 73 of the Ordinance to govern the professional conduct and discipline of solicitors.

Clause 3 is intended to dispense with unnecessary formalities in the renewal of practising certificates by solicitors. It will also provide for the automatic revocation of the practising certificate of a solicitor against whom a receiving order in bankruptcy is made.

Clause 4, which is based upon section 9 of the English Solicitors Act, 1965, will oblige a solicitor to deliver an accountant’s report annually to the Committee of the Law Society, containing such information as may be required by rules made by that Committee.

At present, section 9 of the principal Ordinance obliges the Committee of the Law Society to appoint a disciplinary committee to investigate the conduct of a solicitor whenever it receives a complaint against the solicitor, even where such complaint is obviously frivolous. Clause 5 will vest a discretion in the Committee of the Law Society as to whether or not to appoint a disciplinary committee.

Clause 7 introduces a new Part IIA, containing four new sections. These follow closely the provisions of the English Solicitors Acts 1957 and 1965, and they are intended, when read with the new Schedule proposed by clause 16 of the Bill, to give the Law Society powers of control over the conduct of solicitors and their employees in certain circumstances. The new sections 26A, 26B and 26C empower the Committee of the Society to assume control of the property, cash and documents in possession of a solicitor in three sets of circumstances. Firstly, where the Committee has reason to believe that a solicitor, or any solicitor’s employee or articled clerk, has been guilty of dishonesty in connexion with his practice. Secondly, where a complaint is made of

* 1964 Hansard, pages 183 and 214.

[THE ATTORNEY GENERAL]

undue delay by a solicitor in connexion with any matter in which he has been instructed and he fails to give a satisfactory explanation within eight days of the Committee requiring him to do so. And thirdly, where a solicitor dies and his representatives are alleged to have been guilty of dishonesty or undue delay. The new section 26D provides that the "client" accounts of a solicitor practising on his own account shall, on his death, vest in the Committee.

The various powers conferred on the Law Society by this new Part are all designed to give additional protection to any lay client who might suffer from delay or dishonesty on the part of his solicitor.

Clause 8 of the Bill sets out, in greater detail than the present section 27 of the principal Ordinance, the requirements which a barrister must satisfy before he is admitted to practice as such in Hong Kong. As at present, he must possess an English, Scottish or Northern Ireland qualification. The clause, however, introduces several fresh requirements. Firstly, an applicant must before admission have had at least 12 months experience as a pupil, or in active practice as a barrister or advocate, since being called to the Bar; secondly, he must not, while enrolled as a barrister in the Colony, practise as a solicitor in a country where the two sides of the legal profession are fused; thirdly, the applicant must have been ordinarily resident in Hong Kong for at least 8 months, or satisfy the court that he intends to take up ordinary residence in the Colony. However, paragraph (b) of the proposed section 27(2) will empower the court to admit a barrister, from Great Britain or elsewhere, who, though otherwise eligible, does not fulfil the residential requirement, for the purposes of any particular case or cases; at present, surprisingly, the court has no power to restrict admission for the purpose of a particular case.

The requirement that a barrister may not be admitted to practice unless he has had at least 12 months pupillage or other experience since his call is inserted in section 27(1) because it is considered that the mere passing of a final examination does not fully equip a person to practice at the bar, and that a period of pupillage, or of other legal experience, is desirable before he is allowed to do so.

On the other hand, it can be argued that such a requirement, if rigidly applied, would make it more difficult than at present for a newly qualified barrister to acquire the basic skill and feel of the profession. Paragraph (a) of the proposed new section 27(2) is a compromise between these two views. It will enable the Chief Justice to make rules permitting a limited form of practice to those who have not completed the necessary 12 months experience since call. Consequential amendments, resulting from the changes proposed by clause 8, are made

to sections 28, 30 and 31 of the Ordinance by clauses 9, 10 and 11 of the Bill.

I should, perhaps, mention that it will be necessary, in due course, to amend the new section 27, and section 3 which deals with the admission of solicitors, in order to provide for those who in the future obtain a local qualification to practice, as barrister or as solicitor, after taking a law degree at the University of Hong Kong and completing such post graduate studies as may be prescribed*.

Clause 12 of the Bill which follows section 7 of the English Solicitors Act, 1965, allows a solicitor to recover fees for professional work carried out by him even though he did not hold a practising certificate at the time he did the work.

Clause 13(b) prohibits a solicitor from employing any person known to him to have been convicted of a criminal offence involving dishonesty, without the prior permission of the Law Society.

Clause 14 makes minor amendments to the rule-making section of the principal Ordinance, which are consequential upon earlier amendment proposed by the Bill.

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 makes a number of amendments to the principal Ordinance. Some of these would introduce provisions from recent English legislation and others seek to make alterations which have been shown to be desirable in the light of experience of the working of the Ordinance since it came into force in 1964.

2. Clause 2 inserts some new definitions which follow from other amendments to the Ordinance.

3. Clause 3 is designed to dispense with unnecessary formality in the renewal of practising certificates by solicitors. The clause also provides for the ending of a practising certificate held by a solicitor on a receiving order being made against him.

4. Clause 4 amends section 8 so as to require a solicitor to deliver an accountant's report to the Committee of the Law Society

* Pages 255-7.

[*Objects and Reasons*]

annually. This clause follows section 9 of the English Solicitors Act 1965.

5. Clause 5 confers on the Committee of the Law Society a discretion as to whether or not it appoints a Disciplinary Committee to investigate a complaint against a solicitor. As the law now stands, such a committee must be appointed whenever a complaint is received by the Committee, even where a frivolous complaint is made.

6. By clause 6, authority to give permission to a solicitor of less than five years practice in Hong Kong to take an articled clerk is transferred from the Chief Justice to the Society.

7. Clause 7 introduces into the principal Ordinance section 31 of the Solicitors Act 1957, and sections 11, 13 and 14 of the Solicitors Act 1965, all of which are concerned with control by the Society over the conduct of solicitors and their practices. The new section 26A, read in conjunction with the Schedule to the Ordinance proposed by clause 16, confers wide power on the Committee to assume control of property, cash and documents in the possession of a solicitor if the Committee has reason to believe that the solicitor has been guilty of dishonesty in connexion with his practice. Similar powers are conferred on the Committee where a complaint is made of undue delay by a solicitor and he fails to give a satisfactory explanation within eight days (new section 26B), or where a sole solicitor dies and his personal representatives are alleged to have been guilty of dishonesty or undue delay (new section 26C).

8. Clause 8 sets out in much greater detail than at present the conditions which must be satisfied before a person is admitted as a barrister in Hong Kong. The main new requirement is that the applicant shall have had not less than twelve months active practice, since call to the bar, before he may be admitted as a barrister in Hong Kong. This condition may be relaxed to allow admission with such limited right to practice as may be prescribed by rules made by the Chief Justice.

9. Clause 11 amplifies the present section 31, which lists the conditions which must be met before a person is qualified to practise as a barrister in Hong Kong.

10. Clause 12 is based on section 7 of the Solicitors Act 1965 and allows a solicitor to recover fees for professional work done by him even though he did not hold a practising certificate at the time.

11. Clause 13 prohibits the employment by a solicitor of persons who have been convicted of criminal offences involving dishonesty, without the permission of the Society.

12. Clause 14 makes consequential amendments to the rule making section of the principal Ordinance.

TRAINING CENTRES (AMENDMENT) BILL 1968

THE ATTORNEY GENERAL moved the First reading of:—"A Bill to amend the Training Centres Ordinance."

He said:—The Working Party on the Adequacy of the Law in Relation to Crimes of Violence Committed by Young Persons, which reported in January 1965, recommended that, with certain specific exceptions, a person under 21 should not be remanded in a prison but should be held in some special place of detention, away from possible contamination by adult criminals.

Since this report, the practice has been followed of detaining persons between 14 and 21, who are remanded in custody, in a training centre, unless the court specifically orders detention in a prison.

However, the Training Centres Ordinance does not at present authorize this, since it only makes provision for the reception and detention of persons who have been convicted of an offence. The object of this Bill is to regularize the position by providing, by clause 4, that a court shall remand persons between 14 and 21 to a training centre, unless the court is satisfied that an offender is so unruly or depraved that he ought to be committed to prison.

The amendments proposed in this Bill will not interfere with the power of courts to remand children or young persons under sixteen to a remand home.

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 give courts the power to remand persons aged between 14 and 21 to a training centre. This power would be in addition to the existing power vested in juvenile

[*Objects and Reasons*]

courts under the Juvenile Offenders Ordinance Cap. 226 to remand a child (a person under 14 years of age) or a young person (a person aged between 14 and 16) to a remand home. At present provision is made for the detention of persons aged between 14 and 21 in a training centre only after conviction.

2. Clauses 2 and 4 of the Bill make consequential amendments.

ESTATE DUTY (VALIDATION OF FORMS) BILL 1968

THE FINANCIAL SECRETARY moved the First reading of: —“A Bill to validate certain forms used between the 26th day of February 1932 and the 13th day of October 1967 for the purposes of the Estate Duty Ordinance.”

He said:—Sir, this Bill now before this Council seeks to give retrospective validity to certain acts done in pursuance of the Estate Duty Ordinance between its enactment in 1932* and 13th October 1967†. On this latter date the *Gazette* published for general information four forms which are necessary for the operation of the Ordinance and which had been prescribed by the Governor-in-Council under section 3 of the Ordinance three days before.

Two of the four forms, Nos ED1 and ED12, had been in use at least as early as 1937 and it must be assumed that they were originally prescribed some time before then. But the original prescription cannot be traced and, in an appeal case before the Privy Council, attention had been drawn to this fact by the Lords of the Judicial Committee who cast doubt on the validity of all acts or things done or purported to have been done using the forms in pursuance of the purposes of the Ordinance. These two forms were therefore prescribed by the Governor in Council in November 1966.

It was later discovered that two other forms, ED3 and ED11, appeared to be similarly invalid; they also had been in use pre-war. On this occasion all four forms were submitted for prescription at the same time as the opportunity was taken for the incorporation of some minor amendments resulting from the revised section numbering of the 1964 Edition of the Laws.

These prescriptions do not have retrospective effect. This has serious implications, particularly with regard to assessments of duty made before 13th October 1967 and involving the use of Form ED3—Certificate of Assessment. For it means that no assessment issued prior to 13th October 1967, which is still outstanding and in respect of which

* 1932 Hansard, pages 5, 12 and 16.

† 1967 Hansard, page 416.

legal action for recovery is required, can be legally pursued. Similarly, it is doubtful whether money paid on assessments made prior to the relevant date has been legally collected.

The Bill therefore seeks to validate, with retrospective effect to the date of enactment of the Estate Duty Ordinance in 1932, all acts done in pursuance of the provisions of the Ordinance involving the use of the four forms set out in the two Schedules to the Bill.

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 validate certain Estate Duty forms, which have been in use since the principal Ordinance came into force on the 26th February 1932. Section 28 of the principal Ordinance empowers the Governor in Council to prescribe such forms as he thinks expedient for regulating the practice under the Ordinance. As a result of a Privy Council decision in 1967 a search was made in an effort to trace any instrument by which the forms were prescribed. Unfortunately, as a result of the war, records before 1945 are scarce, and no trace of a prescription can be found. To regularize the position, four essential forms were prescribed by the Governor in Council, with effect from 13th October 1967. This Bill would validate the use of those forms before that date.

2. Clause 3 of the Bill seeks to validate those acts done between 26th February 1932 and 13th October 1967 under the provisions of the principal Ordinance, which depend on the four forms which would be validated by clause 2.

STAMP (AMENDMENT) BILL 1968

THE FINANCIAL SECRETARY moved the First reading of: —“A Bill to amend further the Stamp Ordinance.”

He said:—Sir, the preparatory work for this Bill began a number of years ago. An interim Bill in 1961 introduced a number of small and generally uncontroversial amendments*. But many other matters already under consideration at that time were of a complicated and contentions nature. Progress has been slower than I would have liked but it has been necessary to consult widely, and at length, to ensure

* 1961 Hansard, pages 146 and 165.

[THE FINANCIAL SECRETARY]

that further amendments take into account the needs of commercial practice as well as of public revenue. Full agreement has not been reached, as I shall explain later, but full agreement is rarely possible on a taxing statute and stamp duty is a difficult subject. Indeed I could have wished that our tax structure was such as to have made it possible to abolish much of it. But at present this is not, I believe, possible, or desirable.

One of the main fields of difficulty has been that of Bills of Exchange and similar documents in use in banking and other financial transactions. It was evident that there were uncertainties and inconsistencies in practice, particularly on certain exchange contracts. Some documents were being stamped by some banks and not by others; some were not being stamped by any bank because of misinterpretation of the law as it stands.

It also became clear that, as the law stands, there are a number of undesirable and anomalous features. For example, it is legally necessary to stamp the same exchange document on each occasion it passes in a series of transactions, as, for example, in the case of travellers' cheques; this is clearly undesirable in an international exchange market. Again, while time bills pay an *ad valorem* duty, sight bills, for no apparent reason, pay a flat rate duty which is lower except on very small transactions.

Furthermore *ad valorem* rates are administratively inconvenient requiring a separate calculation for each transaction.

The Bill therefore seeks to simplify and clarify the law on this subject and remove anomalies.

The Schedule is amended to treat all these exchange transactions on the same basis so far as that is possible, while provision is made in clause 14 of the Bill to limit duty to one of a series of associated transactions. The Exchange Banks Association have suggested that all these transactions should attract a flat rate of duty for ease of administration. This has attractions but investigations have shown that a flat rate duty large enough to avoid a substantial loss of revenue would be excessive for the large number of smaller transactions, nearly \$5 million in fact; while a reasonable flat rate duty would lose between \$3 and \$4 million in revenue. We have therefore devised a system, inelegantly called by some a "slab system", which combines *ad valorem* and flat rates by setting three different rates; a flat rate of 250 per \$1,000 or part thereof is applied up to \$10,000, another flat rate of \$2.50 per \$10,000 up to \$100,000, and a third flat rate of \$25 per \$100,000 thereafter. This has the effect of charging less on larger transactions but rather more on smaller transactions (as will any financially acceptable resort to flat

rates); but it is estimated to reduce revenue in total by \$1,300,000, when taken with the other changes proposed in this particular field.

I have been a little surprised to receive a communication from the Exchange Banks Association, since publication of the Bill, objecting to the increased burden of duty allegedly imposed and to the administrative difficulty of the proposed “slab system.” I have already explained that there is no increase in the burden but only a slight redistribution of it, in the interests of administrative convenience, combined with a relatively small reduction in yield. But if the Association is in earnest in its view that the proposed new system is in fact administratively less convenient to the banks, and ‘they would prefer a straight *ad valorem* rate, I shall be happy to reconsider the proposal and propose amendments at the Committee stage—which perhaps might involve no sacrifice of revenue.

It is proposed at present to make up part of the loss of revenue involved in the proposed reorganization of exchange duties by an increase from 150 to 200 in the duty on cheques. I do not think that this can be regarded as any hardship. It is estimated to produce \$900,000 a year against the estimated reduction of \$1,300,000. The new duty will not affect cheques already issued by bankers to their customers. These two linked proposals are the only ones in the Bill which have any immediate or substantial effect on revenue or the burden of taxation.

The Exchange Bank Association has also pointed out that the Bill does not cure the anomaly whereby certain letters of credit are liable to a duty of 500 while others are exempt. I propose to introduce an amendment at the Committee stage imposing a duty of 250 on all letters of credit. The revenue effects will not be substantial.

Clause 3 of the Bill seeks to grant exemption from duty on the transfer of certain assets from one company to an associated company. This is designed to ease the process of company reorganization and has been suggested on more than one budget debate. It is a requirement for exemption that one firm have beneficial ownership of not less than 90% of the other. Shares and marketable securities are not covered by the exemption and to this extent the proposal does not go quite as far as some of its supporters have advocated.

Clause 4 of the Bill deals with the levying of Excess Stamp Duty under section 6 of the Ordinance. Certain complications have arisen connected with property exchanges involving surrender and re-grant of Crown Leases which have resulted in a double liability to Excess Duty. The double duty was never levied in the urban areas but was collected in the New Territories until it was administratively stopped in 1961. The clause seeks a statutory cure for this anomaly.

[THE FINANCIAL SECRETARY]

Clause 7 of the Bill contains another proposal designed to simplify the operation of the Ordinance by increasing the number of documents which do not need to be referred to the Collector for stamping. This will involve amendment also to the Stamp Duties (Franking Machines) Regulations; these have already been approved in principle by the Governor in Council.

Section 21 of the Ordinance requires that an instrument which is executed outside the Colony shall be stamped before it is “used, brought into force or registered in the Colony.” There are two problems connected with this section. Firstly, it is not possible to institute action to recover duty where the persons liable for duty under subsection 4 of section 5, that is, generally those who execute the documents, are and remain outside the Colony. Secondly, it has become an increasingly common practice to evade duty by use in Hong Kong of copies of documents which have been executed abroad.

Clause 11 of the Bill seeks to stop these loopholes, in the first place by imposing a liability to stamp, both civil and criminal, not only on those already made liable by the Schedule but also on anyone who “uses, brings into force or registers” a stampable document; and secondly by providing that anyone who uses a copy of a document shall be deemed to use the original.

The first of these provisions has been objected to by the Hong Kong General Chamber of Commerce (from which further representations have been received since publication of the Bill) on the grounds that they create a new criminal offence and that they make innocent persons liable for the failure of others to stamp. In the latter context they refer largely to professional men such as accountants and lawyers who may “use” such documents while acting for their clients.

As to creation of a new offence, failure to stamp by those now liable to stamp is already an offence and it would seem logical to extend it where liability is extended. This extension of liability is, of course, only in connexion with what is normally a limited class of documents, those executed outside and brought into the Colony.

The second point is, I admit, a more difficult one. There is certainly no intention on Government’s part to impose criminal, or even civil, liability on innocent, uninterested, persons; and I would think myself that the great majority, if not all, of the “uses” to which the Chamber sees such persons putting this class of stampable documents in the exercise of their professions are not within the legal meaning of the word “use” for the purposes of this ordinance. There is some judicial authority for this view.

Again, in nearly all cases involving professional men, the document will have been “used etc.” by the client prior to its “use” by the professional man and action would clearly be in the first place against the client. Indeed it may be held that the professional man’s “use” is a “use” by his client, and not by himself.

The Chamber has suggested a modification to get over the difficulty it foresees which would limit liability to such “use” of those stampable documents as is made “to effect or enforce or implement the carrying out of the act or transaction to which the original relates.” I fear that this appears at first sight to limit excessively the circumstances in which wholly proper reliance could be placed on this clause in the prevention of evasion. Furthermore it would modify the existing scope of section 21 as it stands at present, and has stood for many years, in relation to persons at present liable for stampable documents brought into the Colony. However, further consideration will be given to this proposal before the second reading of the Bill.

A number of ingenious devices have been thought up in recent years for evading duty chargeable on leases of property by use of an incorporated company. These take several forms. Clause 17 of the Bill seeks to prevent this and covers, it is hoped, all the numerous variations on the basic theme.

I have already mentioned the main changes proposed in the Schedule which have significant effects on revenue. I shall not go through the whole list of duties but I might mention one substantial change; the reduction of duty on Charter Parties from 15¢ for every \$100 or part thereof to a flat rate of \$20. This head of duty is, or should be, at present a source of substantial revenue but the yield fluctuates unpredictably according to factors beyond our control; while the location and value of these transactions is a matter of special difficulty.

I have covered only the main features of this unavoidably complicated Bill but the objects and reasons attached to it are very full and can be referred to for further explanation.

Finally, I have one apology to make. It has not been possible to include in this Bill a remedy for the anomaly which my honourable Friend Mr Woo pointed out in this year’s Budget Debate in connexion with the reduction in duty on conveyances of small property, introduced last year*. Work is continuing on this and it will, I hope, be the subject of a further amending Bill.

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 amend the Stamp Ordinance (hereinafter referred to as the Ordinance) in a number of respects.

Clause 2.

Paragraph (a) amends the definition of “contract note”, consequential upon the amendment of section 30 of the Ordinance contained in clause 16.

Paragraph (b) introduces a definition of “exchange contract cancellation note”, which is for the purposes of section 26 of the Ordinance. The definition of “money changer” is consequential upon the amendments to section 26 contained in clause 14.

Clause 3.

The object of the proposed new section 5A is to make provision for the granting of relief from the payment of stamp duty on the transfer of property, other than shares or marketable securities, between associated companies which satisfy the requirements set out in subsection (4) of section 5A. The section is derived from section 42 of the Finance Act 1930 and section 50 of the Finance Act 1938, both of the United Kingdom.

Clause 4.

By paragraph (a) the existing proviso to subsection (1) of section 6 of the Ordinance is re-enacted as paragraph (a) of the proviso. A new paragraph (b) is added to section 6(1) to remove a doubt as to whether certain conveyances of land attract duty twice. The conveyance of land, granted by the Crown in exchange for the surrender to the Crown of the same or other land, will be exempt from the excess duty in the circumstances set out in sub-paragraph (i) and (ii) of the new paragraph (b) of the proviso.

The proposed new subsection (4) contained in paragraph (b) imposes a fee of ten dollars for the giving of the certificate mentioned in the new proviso to subsection (1).

Clause 5.

The proposed new section 6A confers power on the Collector to ascertain, in such manner as he thinks fit, the value of property which is the subject of a conveyance or transfer. The new section is based on an administrative practice which is followed in Hong Kong.

Clause 6.

The proposed new subsection (2) of section 10 of the Ordinance which is comparable with sections 80(5) and 82(2) of the Inland Revenue Ordinance, enables the Collector to compound an offence arising under subsection (1) of section 10 upon the payment of a fine not exceeding ten times the amount of duty unpaid.

Clause 7.

Paragraph (a) replaces the proviso to subsection (1) of section 14 of the Ordinance so as to permit the use of stamps franked by a franking machine as well as adhesive stamps in the cases Where the Schedule to the Ordinance allows adhesive stamps to be used.

Paragraph (b) is consequential on the amendments contained in paragraphs (a), (d) and (q) of clause 22, permitting adhesive stamps to be used to stamp documents under certain heads, and in paragraph (j) of clause 22.

Paragraph (c) repeals subsection (5) of section 14 of the Ordinance which becomes redundant by reason of the proposed new subsection (6) of section 19 of the Ordinance, introduced by clause 10.

Clause 8.

This clause adds new sections 15A-15E, which enable the Collector to enter into agreements for the composition of stamp duty in the case of dividend warrants (section 15A), godown warrants (section 15B) certain policies of insurance, other than life insurance, and renewals thereof (section 15C) and receipts (section 15D). Section 15E sets out the provisions governing agreements entered into under sections 15A, 15B, 15C or 15D.

Clause 9.

This clause clarifies section 17 of the Ordinance.

Clause 10.

It is considered that section 19(1)(b)(ii) unduly limits the powers of the Collector to grant special leave to stamp instruments after the time allowed for stamping under the Ordinance has expired and that the strict application of this provision may result in undue hardship. The amendment contained in paragraph (a) extends the powers of the Collector to grant special leave under section 19(1)(b)(ii) to stamp instruments out of time.

[*Objects and Reasons*]

The proposed new subsection (6) contained in paragraph (c) re-enacts in improved form the provisions at present contained in subsection (5) of section 14.

Clause 11.

The existing section 21 of the Ordinance provides that every instrument, other than a bill of exchange or promissory note, executed out of the Colony shall, before being used, brought into force or registered within the Colony, be stamped according to the rate of duty to which it would have been liable if it had been executed in the first instance in the Colony. Subsection (4) of section 5 of the Ordinance as read with the Schedule thereto specifies the persons liable for stamping. The new subsection (2) provides that, in addition to the persons made liable for stamping an instrument by virtue of subsection (4) of section 5 of the Ordinance, there shall also be liable, in the case of an instrument to which section 21 of the Ordinance applies, any person who uses, brings into force or registers such instrument.

The new subsection (3) provides that where under the Ordinance more than one person is liable for stamping an instrument chargeable with stamp duty under section 21, the liability shall be joint and several.

The proposed new subsection (4) creates an offence for failure to stamp an instrument required to be stamped by virtue of section 21.

In the *Collector of Stamp Revenue v. Manners Navigation Company Limited* 1962 D.C.L.R. 197 it was held in the District Court that the use of a copy of an instrument was not use of the instrument for the purposes of section 21. The new subsection (5) provides that any person who uses a copy of an instrument chargeable with stamp duty under section 21, shall for the purposes of section 21, be deemed to use the original of that instrument, so that duty will become payable under the section.

Clause 12.

This clause makes an amendment consequential on that proposed to subhead (1) of head 11 in the Schedule by paragraph (e)(ii) of clause 22.

Clause 13.

This clause substitutes a new subsection (4) in section 25, to exclude certain persons from the application of that section. The new subsection will exempt from the need to take out a

practising certificate any person who does part time work for the Crown, the University of Hong Kong, The Chinese University of Hong Kong or a charitable institution and who does not, otherwise than for any of such purposes, practise his profession, as well as to any person who works full time for one of these bodies. This exemption only applies in the case of a person who works for a charitable institution if he is exempted, the power of exemption in the new subsection (4) being transferred from the Governor in Council to the Collector.

Clause 14.

This clause amends section 26 by exempting from liability for stamp duty exchange contracts made between two bankers, two money changers or a banker and a money changer.

Clause 14 also amends section 26 so that exchange contracts shall attract *ad valorem* duty once only, notwithstanding that such transactions may consist of two or more associated transactions involving more instruments than one.

Clause 15.

This clause provides that a transfer operating as a voluntary disposition *inter vivos* of shares or marketable securities shall be chargeable with duty under head 48(1).

It also amends section 27 by the addition of a new subsection (6), which sets out how property is to be valued for the purpose of assessing stamp duty under section 27.

Clause 16.

The amendments proposed in this clause are intended to prevent the evasion of the payment of stamp duty on transfers of shares and marketable securities, the transfer of which are required to be registered in the Colony. By this clause and clauses 15(b) and 22(v) it is sought also to provide that contract note duty, or the equivalent thereof, shall be paid on every purchase and sale, and on any transfer otherwise than by way of purchase and sale, of such shares or marketable securities.

Paragraph (a) re-enacts the existing subsection (1) of section 30 of the Ordinance with the following changes—

- (i) as a result of the amended definition of “contract note” contained in clause 2, subsection (1) will apply to all purchases and sales of shares and marketable securities;
- (ii) an additional proviso has been added requiring the instrument of transfer to be endorsed to the effect that *ad valorem* duty in respect of each bought and sold contract

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note has been paid. Under the new subsection (10), contained in paragraph (b), this endorsement is made by the Collector or by a person authorized by the Collector.

The proposed new subsection (8) provides that where, on the purchase or sale of any shares or marketable securities, contract note duty has not been paid stamp duty equivalent to the unpaid contract note duty shall be payable on the instrument of transfer.

The effect of the new subsection (10), as read with subsection (2) of section 7 of the Ordinance, is that an instrument of transfer of shares or marketable securities the transfer of which is required to be registered in the Colony will not be deemed to be duly stamped unless it is endorsed in the manner required by the subsection and consequently such instrument cannot be registered by a company or otherwise acted upon. This gives legislative effect to a practice followed for some time by the Collector.

Subsection (12) creates an offence for making an endorsement under subsection (1)(b) on an instrument of transfer of shares or marketable securities which is false in a material particular.

The result of the definition in subsection (13) will be that contract note duty or its equivalent will be payable only in respect of shares or marketable securities the transfer of which is required to be registered in the Colony.

Clause 17.

By subsection (1) of the proposed new section 33A, an instrument under which rent, which was reserved by another instrument duly stamped as a lease, is increased is to be charged with duty as a lease in consideration of the additional rent thereby made payable. The subsection is based on section 77(5) of the Stamp Act 1891 of the United Kingdom.

A practice has developed of executing leases in consideration of the lessee erecting a building or otherwise expending money on the subject matter of the lease. Subsection (2) deems such a consideration to be a premium and thereby liable to *ad valorem* duty.

Subsection (3) deals with the practice whereby a limited liability company is formed for the purpose of erecting a building and subleasing the flats therein. By the articles of association or otherwise the holder of a specific number of shares in the company becomes entitled to a lease from the

company of an apartment in the building. The lease from the company is usually at a nominal or very low premium or rent attracting a low assessment for stamp duty. The real price for the lease, which is the purchase price of the shares, is technically not part of the consideration for the lease and attracts the comparatively low stamp duty payable on contract notes. The subsection also provides against other possible evasions of stamp duty by transactions of a similar nature. Under paragraph (a), where the ownership of, or entitlement to, shares in a company confers a right to a lease or an option to take a lease of any property, the consideration for the lease or agreement for a lease granted or entered into in pursuance of the right or in exercise of the option shall, for the purpose of assessing the stamp duty payable, be deemed to consist wholly or partly of a premium equal to the purchase price or value of the shares or the value of the property whichever is the greatest. Paragraph (b) provides for stamp duty payable where there is a transfer of the shares or the entitlement to shares and an assignment of the lease or agreement for lease.

By subsection (4), a lease which does not provide for the payment of a premium or fine and reserves no rent or which, in the opinion of the Collector, reserves an inadequate or indeterminate rent shall be deemed to reserve a rent equivalent to the rateable value of the property as determined by the Commissioner for Rating and Valuation.

Clause 18.

This amendment increases from one dollar to three dollars the fixed duty payable on certain instruments under subsection (2) of section 37.

Clause 19.

Subsection (4) of section 40 of the Ordinance sets out a list of instruments which are exempt from stamp duty. Subsection (4)(b) exempts instruments relating to property situate out of the Colony, other than shares or marketable securities. Paragraph (a)(i) of this clause removes this exclusion. Paragraph (a)(ii) replaces paragraph (d) of subsection (4) so that grants and leases by the Crown and surrenders of such grants and leases shall be wholly exempt from stamp duty. The present exemption is considered too wide since it exempts leases to the Crown as well as by the Crown.

Paragraph (b) inserts new subsections (5), (6), (7) and (8) in section 40. These subsections provide that no duty shall be paid by the Government of Hong Kong or of the United Kingdom or an exempted person in respect of any lease or

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agreement for a lease to which any of them is a party. Under subsection (6) any such lease or agreement for a lease made between the Government of Hong Kong or of the United Kingdom or an exempted person and any other person who is not an exempted person shall be deemed to contain a provision whereby the party thereto other than the Government of Hong Kong or of the United Kingdom or an exempted person undertakes to pay fifty *per cent* of the duty payable in respect of the lease or agreement for a lease.

Clause 20.

This clause makes the provisions of section 48 of the Ordinance more comprehensive.

Clause 21.

This amendment will provide that a prosecution for an offence under the Ordinance must be brought within two years from the discovery of the offence by the Collector or within six years from the date of the commission of the offence whichever is the earlier. At present the time limit for prosecution of such an offence is two years from the date of the offence.

Clause 22.

Detailed explanations are given in the attached Table of the effect of the proposed amendments to the Schedule.

**REGISTRATION OF UNITED KINGDOM PATENTS
(AMENDMENT) BILL 1968**

THE ATTORNEY GENERAL moved the Second reading of:—"A Bill to amend the Registration of United Kingdom Patents Ordinance."

He said:—Sir, it is now 13 weeks since the First Reading of this Bill, on 27th March*, and 5 weeks since the Second Reading, which was set down for the 22nd May, was postponed at the instance of the honourable Mr RUTTONJEEI.

This substantial interval has, I suggest, given an ample opportunity to members of the public, who may consider their rights to be in any way prejudiced by the Bill, to make representations to the Government about its provisions.

Advantage has been taken of this opportunity by a recently formed body, known as the Hong Kong Association of the Pharmaceutical

* Page 225.

† Page 263.

Industry, which comprises a number of local companies which represent patentees who manufacture drugs outside the Colony. It is, I think, desirable that I should deal briefly with some of the submissions which have been put forward by the Association and to which the Government has already replied in writing.

One of the objections which has been raised, to the use by the Crown of the powers conferred by the proposed new section 7B(1) of the Ordinance, is that there is a danger that the standards of the patentee may not be maintained by the manufacturer who supplies for the services of the Crown. So far as this is concerned, I can assure honourable Members that the Director of Medical and Health Services will not agree to the purchase from anyone, other than the patentee or the latter's licensee, of any drug if there is, in his opinion, any significant risk that the drug would fall below the standards of that produced by the patentee.

It has been represented that there is no pressing need for the Bill on the grounds that it should be possible for the Government to negotiate prices with the industry and that in any event there is no evidence of excessive charges for drugs in Hong Kong. As to this, in the action brought against the Government by a drug patentee, which I mentioned during the First Reading, the price charged by a local manufacturer would have been one sixth of that asked for by the overseas patentee, though I realize, of course, that the patentee often incurs expenses which would justify him in charging higher prices than those of a manufacturer. Furthermore, the Report of the Committee of Enquiry set up in England under Lord Sainsbury, which reported only last year on the relationship of the Pharmaceutical Industry with the National Health Service, sets out five instances where section 46 of the Patents Act 1949 which is the equivalent to the proposed new section 7B(1) was used. In these examples the prices which the patentees charged in 1965 were between 5 and 11 times greater than those paid to the supplier who was authorized to make the drugs under section 46. Even allowing for generous compensation to the patentee, the differences in cost to the Ministry of Health were described in the report as "very great". I do not assert that such differences are typical, but they suggest that profit margins may in some instances be very high.

Almost \$14 million a year is spent by the Government in the purchase of drugs for use in Government hospitals. It is the duty and the intention of the Government to do its utmost for the sick and injured, within the limits of our resources. This is a case in which private rights, if exercised without restraint, can prejudice the Government's duty to provide as satisfactory a medical service as possible. Consequently, the public interest may require that patentees, if their charges are found to be unreasonably high, shall forego a measure of their profits.

[THE ATTORNEY GENERAL]

This does not mean that the Government intends to use the powers in this Bill in total disregard of patentees rights and they will be used as reasonably and fairly as we can, bearing in mind the conflicting interests involved.

We have already informed the Association, and I am glad to repeat the assurance, that the Government is ready at any time to enter into discussions with a view to agreeing with the Association and other patentees some form of voluntary price regulation machinery acceptable to both the Government and the industry, though I must make it clear that the Government is not prepared to forbear from exercising the powers conferred by the Bill while any negotiations of this kind are in progress.

I shall, however, be moving amendments to the Bill at the Committee Stage to deal with two objections which were raised by the Association.

Section 7B(1) empowers the Governor to “make, use and exercise” a patented invention for the services of the Crown. Section 7B(3), however, provides for payment to the patentee where there has been “use” of a patent under the section, and does not mention the “making or exercise” of the patented invention. In a recent Court of Appeal decision in England, the opinion was expressed that there was no difference in effect between the two phrases. However, to remove any doubt, I shall move the deletion of the phrase “make, use or exercise” in section 7B(1) and its replacement with the word “use”; a similar amendment will be proposed to section 7B(4).

The Association has objected that section 7B(6) would allow the Government to buy beyond its requirements and then to flood the market with the surplus, thus greatly prejudicing the patentees’ sales. Government would not, of course, intentionally misuse its powers under the Bill in this manner. And such a situation could only accidentally arise if there had been a serious miscalculation, amounting to irresponsibility in the handling of public funds, as to the Government’s needs. Nevertheless, to remove any fear that this subsection might be used in a way which is unfair to patentees, I shall propose its deletion and also that of subsection (7), which is linked with it.

I hope that the assurances which I have given, and the amendments which I propose to move, will satisfy honourable Members that the Government intends to exercise the powers conferred by the Bill in a reasonable manner and that this is a case where the public interest requires that the Government shall have available a means of keeping private profit within reasonable bounds, if such a curb proves to be necessary.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read the Second time.

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

Clause 1 was agreed to.

THE ATTORNEY GENERAL:—I move that clause 2 be amended as set forth in the paper before honourable Members.

Proposed Amendment.

Clause 2.

In the new Section 7B—

- (1) in paragraph (a) of subsection (1), delete “make, use and exercise” and substitute therefor the following— “use”;
- (2) in subsection (4), delete “make, use, exercise and vend” and substitute therefor the following— “use”;
- (3) Delete subsections (6) and (7).

Clause 2, as amended, was agreed to.

Council then resumed.

THE ATTORNEY GENERAL report that the Bill before Council had passed through Committee with certain amendments and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read the Third time and passed.

COMMISSIONS OF INQUIRY BILL 1966

HIS EXCELLENCY THE GOVERNOR:—We will now resume consideration of the Commissions of Inquiry Bill 1966*.

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

THE ATTORNEY GENERAL:—I move that clause 1 be amended as set forth in the paper before honourable Members.

* Pages 271-278 (Resumption of debate on Second reading).

[THE ATTORNEY GENERAL]

Proposed Amendment.

Clause 1. Delete “1966” and substitute “1968”.

Clause 1, as amended, was agreed to.

Clause 2.

THE ATTORNEY GENERAL:—I move that clause 2 be amended as set forth in the paper before honourable Members.

Proposed Amendment.

Clause 2.

In clause 2 (1) delete—

“in respect of which an inquiry would, in his opinion, be in the public interest”

and substitute—

“which is, in his opinion, of public importance”.

In clause 2(2)(d) delete “, if no member thereof holds judicial office”.

Clause 2, as amended, was agreed to.

Clause 3.

THE ATTORNEY GENERAL:—I move that clause 3 be amended as set forth in the paper before honourable Members.

Proposed Amendment.

Clause 3.

Insert the following at the beginning of paragraph (b)—

“without prejudice to the powers of the Commission to receive and consider such other evidence as it may think fit,”.

Insert the following at the beginning of paragraph (e)—

“without prejudice to the powers conferred upon the Commission by paragraph (i) of section 4,”.

Clause 3, as amended, was agreed to.

Clause 4.

THE ATTORNEY GENERAL:—I move that clause 4 be amended as set forth in the paper before honourable Members.

*Proposed Amendment.**Clause 4.*

In paragraph (g) insert “on oath, affirmation or otherwise” after “examine”.

Delete paragraph (i) and substitute—

“(i) hold in camera, or exclude any person (including any person implicated or concerned therein and his legal representatives) from, the whole or any part of the inquiry:

Provided that any legal representative entitled to appear by virtue of the provisions of section 6—

- (i) may only be excluded from such part of the inquiry as is held in camera;
- (ii) shall not in any event be so excluded which his client is giving evidence;”.

In paragraph (j), insert “to” after “publication”.

Clause 4, as amended, was agreed to.

Clause 5 was agreed to.

Clause 6.

THE ATTORNEY GENERAL:—I move that clause 6 be amended as set forth in the paper before honourable Members.

*Proposed Amendment.**Clause 6.*

Clause 6(1) to be deleted and the following substituted—

“(1) Any person whose conduct is the subject of an inquiry, or who is implicated or concerned in the subject matter of the inquiry, shall, subject to the provisions of section 4, be entitled to be represented by a barrister or solicitor at the inquiry.”.

In clause 6(3) delete—

“notwithstanding any of the provisions of this Ordinance”

and substitute—

“notwithstanding the provisions of subsections (1) and (2) but subject to the provisions of section 4,”.

Clause 6, as amended, was agreed to.

Clause 7.

THE ATTORNEY GENERAL:—I move that clause 7 be amended as set forth in the paper before honourable Members.

Proposed Amendment.

Clause 7. Substitute a full stop for the colon and delete the proviso.

Clause 7, as amended, was agreed to.

Clause 8.

THE ATTORNEY GENERAL:—I move that clause 8 be amended as set forth in the paper before honourable Members.

Proposed Amendment.

Clause 8.

In clause 8(1)(a) insert “without reasonable excuse” after “fails”.

Delete Clause 8(1)(d) and substitute—

“(d) wilfully interrupts the proceedings of the Commission or otherwise misbehaves during any hearing of the Commission;”.

Delete clause 8(1)(f).

In clause 8(2)(a) insert “wilfully” at the beginning.

Clause 8, as amended, was agreed to.

Clause 9.

THE ATTORNEY GENERAL:—I move that clause 9 be amended as set forth in the paper before honourable Members.

Proposed Amendment.

Clause 9.

In clause 9(1) delete “where so directed” and substitute “if so empowered”.

In clause 9(2) delete “where so directed” and substitute “if so empowered”.

Add a new Clause 9(5)—

“(5) Any person aggrieved by any decision, order or sentence of the Commission in exercise of the powers conferred

by subsection (1) or (2) may appeal to a judge of the Supreme Court, in the same manner as if it were an order of a magistrate in respect of which an appeal lies under section 113 of the Magistrates Ordinance, in accordance with rules made by the Chief Justice.”.

Clause 9, as amended, was agreed to.

Clause 10 was agreed to.

Clause 11.

THE ATTORNEY GENERAL:—I move that clause 11 be amended as set forth in the paper before honourable Members.

Proposed Amendment.

Clause 11.

In clause 11(2) insert after “judge” where it first appears—

“, if it were committed towards the Supreme Court or a judge as the case may be,”.

Clause 11, as amended, was agreed to.

Clause 12.

THE ATTORNEY GENERAL:—I move that clause 12 be amended as set forth in the paper before honourable Members.

Proposed Amendment.

Clause 12.

A colon to be substituted for the full stop in clause 12(1) and the following proviso added—

“Provided that nothing in this subsection shall be deemed to limit the power of the Supreme Court to make an order of mandamus, certiorari or prohibition in relation to proceedings before a Commission.”.

Clause 12, as amended, was agreed to.

Clauses 13 and 14 were agreed to.

Clause 15.

THE ATTORNEY GENERAL:—I move that clause 15 be amended as set forth in the paper before honourable Members.

[THE ATTORNEY GENERAL]

Proposed Amendment.

Clause 15. Delete “suit or other proceeding” and substitute “civil or criminal proceedings”.

Clause 15, as amended, was agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Bill before Council had passed through Committee with certain amendments.

HIS EXCELLENCY THE GOVERNOR:—In view of the material changes which have been made the procedure in Standing Order 28 will be followed and the Third reading will be postponed to a subsequent meeting of this Council.

ADJOURNMENT

THE COLONIAL SECRETARY moved the adjournment.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

HIS EXCELLENCY THE GOVERNOR:—Honourable Members, before we adjourn I should like to mention that this is the last occasion upon which Mr RUTTONJEE, Mr LI, Mr TANG and Mr Ross will be here as substantive Members of this Council.

Mr RUTTONJEE has served on the Legislative Council for almost fifteen years, the longest period of service of any Member of the Council since the war. Throughout that exceptionally long period he has rendered the most valuable services to the public of Hong Kong, and I am sure he will not fail to continue to do so in many spheres other than here. He has, to our great advantage, given to us in this Council, and in the Finance Committee and as Chairman of the Establishment Sub-Committee, the benefit of much wisdom and much experience. I am therefore particularly glad to be able to announce today that this unsurpassed period of service has been recognized by Her Majesty The Queen, who has approved the retention within Hong Kong of the style “Honourable” by Mr RUTTONJEE on his retirement from Council. I am sure that honourable Members will join me in congratulating Mr RUTTONJEE on this unusual distinction.

It is with much regret also that I have to announce that Mr Li Fook-shu is resigning from this Council and from the Executive Council for personal reasons of health. This will bring to an end six years of

service on Council and I would like to express to him also, on behalf of us all, our sincere thanks for all the help and advice he has given to us during this long period.

Mr P. Y. TANG will become a Member of the Executive Council on 1st July, in the place of Mr LI. He has accordingly informed me that he does not wish to seek reappointment to this Council. May I take this opportunity of thanking him very sincerely also for his contribution to the work of Council during his four years of office.

Mr Ross has recently received a most well merited recognition for his public services, which of course includes four years as a Member of this Council. I offer him on all our behalf our most hearty congratulations. His advice and assistance have been much appreciated, and we are all most grateful to him for the contribution which he too has made to this Council's business.

The departure of these Members will leave four vacancies on the Council, and I have received Her Majesty's approval to appoint Dr S. Y. CHUNG, Mr Wilson WANG, Mr Q. W. LEE and Mr HERRIES to fill these vacancies from 1st July. We shall be welcoming them as substantive Members at our next meeting.

Mr RUTTONJEE, Mr LI, Mr TANG and Mr Ross, on behalf of Council I thank you all for all you have done in your capacity as Members of this Council: services which I assure you have been very much appreciated.

MR RUTTONJEE:—Your Excellency, I would like to thank Her Majesty the Queen Elizabeth II for the great honour which she has bestowed upon me. Then I would. Sir, also like to thank you for the nice things which you have said about me, in some cases unwarranted, Sir, but sitting today in this Council Chamber and looking round it, it certainly dawned upon me that 15 years ago, Sir, I sat in an old squeaking building with creaking chairs, at each move it would creak all over, may be due to my weight or not I couldn't know, but I can assure you, Sir, I was much lighter then than I am today. I must take this opportunity, Sir, to express my thanks especially to you, to all Heads of Departments and their staff of every one of the departments for having given me the greatest help possible and without their help, Sir, I am sure I would not have accomplished one-tenth of what I have done.

To my Unofficial Colleagues, I would like to thank them as they have borne with me for the last six years as their Unofficial Senior Member. At times it was not so easy to bear with me, but I can assure them that whatever I have done it was for the interests of Hong Kong and, Sir, with your guidance and the Members of this Council, Hong Kong will prosper more and more. Thank you, Sir.

NEXT MEETING

HIS EXCELLENCY THE GOVERNOR:—Council now stands adjourned until 10th July.